



MULTNOMAH COUNTY OREGON

DEBORAH BOGSTAD, BOARD CLERK
OFFICE OF BEVERLY STEIN, COUNTY CHAIR
1120 SW FIFTH AVENUE, SUITE 1515
PORTLAND, OREGON 97204-1914
TELEPHONE • (503) 248-3277
FAX • (503) 248-3013

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

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

AGENDA

FOR THE WEEK OF

DECEMBER 29, 1997 - JANUARY 2, 1998

Tuesday, December 30, 1997 - 9:00 AM - Board Briefing Page 2

Tuesday, December 30, 1997 - 9:30 AM - Regular Meeting Page 2

Thursday, January 1, 1998 - NEW YEAR'S HOLIDAY - OFFICES CLOSED

The Tuesday meetings of the Multnomah County Board of Commissioners will be *cable-cast* live and taped and can be seen by Cable subscribers in Multnomah County at the following times:

Tuesday, 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 BOARD CLERK AT (503) 248-3277, OR MULTNOMAH COUNTY TDD PHONE (503) 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

AN EQUAL OPPORTUNITY EMPLOYER

Tuesday, December 30, 1997 - 9:00 AM
Portland Building, Second Floor Hearing Room
1120 SW Fifth Avenue, Portland

BOARD BRIEFING

- B-1 Status Report on Potential Lease of the Gus Solomon Federal Courthouse from the United States GSA, to Accommodate Multnomah County Courts Expansion and Some County Sheriff and Community Justice Functions. Presented by Bob Oberst, Jim Emerson, Dan Oldham, Cary Harkaway and Jerry Cooper. 30 MINUTES REQUESTED.
-

Tuesday, December 30, 1997 - 9:30 AM
Portland Building, Second Floor Hearing Room
1120 SW Fifth Avenue, Portland

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

- C-1 Appointment of Sharon Harmon to the ANIMAL CONTROL ADVISORY COMMITTEE
- C-2 Appointment of Karie Ayn Kobatake to the CITIZEN INVOLVEMENT COMMITTEE
- C-3 Amendment 1 to Intergovernmental Agreement 500318 for the Public Safety Bond Measure with the State of Oregon Judicial Department, Allowing Multnomah County to Purchase Equipment on Behalf of the State and Updating the Equipment List

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

- C-4 Budget Modification CFS 6 Restoring 1 FTE CFS Manager Sr. in the Division of Developmental Disabilities

- C-5 Amendment 1 to Intergovernmental Revenue Agreement 102008 with Centennial School District Funding Mental Health Services for Children
- C-6 Renewal of Intergovernmental Revenue/Expenditure Agreement 102928 with the Oregon Department of Human Resources to Fund the Integrated Services Project at Roosevelt High School
- C-7 Renewal of Intergovernmental Revenue/Expenditure Agreement 102938 with the Oregon Department of Human Resources to Fund the Integrated Services Project at Marshall High School
- C-8 Renewal of Intergovernmental Revenue/Expenditure Agreement 102948 with the Oregon Department of Human Resources to Fund the Integrated Services Project at Beach Elementary School
- C-9 Amendment 2 to Intergovernmental Expenditure Agreement 103557 with Portland Public Schools Changing the Name from CAPCare to CAAPCare, Deleting Risk Sharing Section of Original Contract, Adding Conditions to Include Oregon Health Plan Medicaid Demonstration Project Administrative Rules, and Extending Duration of Contract to June 30, 1998

DEPARTMENT OF SUPPORT SERVICES

- C-10 Renewal of Intergovernmental Agreement 500405 with the City of Portland for Administration of the Multnomah County Business Income Tax

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-11 Auto Wrecker License Approval for FRANK MILLER TRUCK WRECKING, 15015 NW MILL ROAD, PORTLAND
- C-12 Auto Wrecker License Approval for ORIENT AUTO PARTS, INC., 28425 SE ORIENT DRIVE, GRESHAM
- C-13 ORDER Authorizing Execution of Deed D981534 for Repurchase of Tax Foreclosed Property to Former Owner Lee Olds
- C-14 ORDER Authorizing Execution of Deed D981535 for Repurchase of Tax Foreclosed Property to Former Owner Harry E. Coleman

- C-15 Budget Modification DES 6 Creating Staffing Equivalent to Three FTE in the Engineering and Maintenance Sections of the Transportation Division, Utilizing Road Fund Contingency

DEPARTMENT OF HEALTH

- C-16 Budget Modification HD 10 Approving a \$10,985 Increase in the STD Budget Funded with Earnings from the Epitope Research Project, and Approving a \$32,000 Increase in the Field Services Budget Funded with Revenue from a Contract with the Early Head Start Program and with Increased State Grant Funds
- C-17 Intergovernmental Revenue Agreement 201128 with the City of Portland Providing Funding for Implementation of the Home Lead Reduction Program to Reduce the Incidence of Childhood Lead Poisoning

SHERIFF'S OFFICE

- C-18 RESOLUTION Annual Authorization for Designation of a Portion of Compensation as a Housing Allowance for Chaplains Serving Inmates and Employees at the Multnomah County Jails

REGULAR AGENDA

PUBLIC COMMENT

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

NON-DEPARTMENTAL

- R-2 Budget Modification MCCF 1 Transferring Appropriations and Adding Grant Revenue to Support the Operations Cost of the Youth Advisory Board Committee Reporting to the Multnomah Commission on Children and Families, Including the Creation of a Permanent Position
- R-3 RESOLUTION Declaring a Vacancy in County Commissioner District Position No. 1, Calling an Election for March 10, 1998, and Setting the Candidate Filing Deadline for January 20, 1998

- R-4 Second Reading and Adoption of an ORDINANCE Amending Ordinance No. 795 to Provide for Procedures for Conveyance of Tax Foreclosed Property to Nonprofit and Municipal Corporations for the Creation of Open Space, Parks or Natural Areas for Perpetual Public Use

DEPARTMENT OF SUPPORT SERVICES

- R-5 First Reading of an ORDINANCE Amending Multnomah County Business Income Tax MCC 5.60 to Incorporate Technical and Housekeeping Changes

DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE

- R-6 Intergovernmental Agreement 700478 with Portland School District No. 1 and Multnomah Education Service District Providing Funding and Program Services to Operate an Alternative School which Serves up to 100 Youth who have been Suspended, Expelled, or are Not Attending Traditional School Programs within Multnomah County for Reasons of Persistent Truancy or Serious Behavior Problems

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

- R-7 PUBLIC HEARING and Consideration of an ORDER Authorizing Funding Award for County Sponsored Strategic Investment Program to: Housing Authority of Portland, ROSE Community Development Corporation, Franciscan Enterprise of Oregon, Inc., Central City Concern, Housing Our Families, Portland Habilitation Center, Hacienda Community Development Corporation, Sabin Community Development Corporation, and Mt. Hood Community Mental Health Center, for Low Income Housing Purposes

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-8 Findings of Fact, Conclusions of Law and FINAL ORDER in the Matter of the Application by Tim and Angela Schillereff for the Alteration of an Existing Non-conforming Dog Kennel Use to Allow up to 75 Dogs on Remand from LUBA - LUBA No. 95-254, County File No. CU 4-95, MC 1-95

PUBLIC CONTRACT REVIEW BOARD

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

R-9 First Reading of an ORDINANCE Relating to the Creation of a Sheltered Market Program and Making Certain Technical Corrections to the Public Contract Review Board Rules

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

MEETING DATE: DEC 30 1997
AGENDA NO: 0-1
ESTIMATED START TIME: 9:00am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: POTENTIAL LEASE OF SOLOMON COURTHOUSE

BOARD BRIEFING:

DATE REQUESTED: DEC. 30, 1997

REQUESTED BY: JIM EMERSON

AMOUNT OF TIME NEEDED: 30 MINUTES

REGULAR MEETING:

DATE REQUESTED: _____

AMOUNT OF TIME NEEDED: _____

DEPARTMENT: DES

DIVISION: FACILITIES & PROPERTY MGMT.

CONTACT: JIM EMERSON

TELEPHONE #: 248-3322

BLDG/ROOM #: 421/300

PERSON(S) MAKING PRESENTATION: BOB OBERST, JIM EMERSON

DAN OLDHAM, CARY HARKAWAY

ACTION REQUESTED:

☒ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

STATUS REPORT ON POTENTIAL LEASE OF THE
SOLOMON COURTHOUSE FROM THE UNITED STATES GSA,
TO ACCOMMODATE MULTNOMAH COUNTY COURTS EXPANSION
AND SOME COUNTY SHERIFF AND COMMUNITY JUSTICE FUNCTIONS.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT

MANAGER: Larry E. Nicholas

BOARD OF
COUNTY COMMISSIONERS
97 DEC 23 PM 12:13
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

Supplemental Staff Report

To: Board of County Commissioners

From: Jim Emerson

Date: For December 30, 1997 (submitted Dec. 23, 1997)

RE: Potential Lease of Solomon Courthouse

1. **Recommendation/Action Requested:** This is a briefing only.
2. **Background/Analysis:** The availability of the Gus Solomon Federal Courthouse for lease has created an opportunity for the County to meet its space obligations to State Courts in a rapid and appropriate fashion, while simultaneously allowing for additional, co-located space for the Multnomah County Sheriff's Office and the Department of Juvenile and Adult Community Justice. After many months of negotiation we have reached agreement in principal with GSA concerning cost and term, and are now working on three fronts:
 - Identification and layout of County and State groups who could occupy the building
 - Cost estimates for occupancy, to include in the Budget
 - Detail lease agreement language and operational protocols.

We anticipate successful conclusion to these activities in time for initial moves by July 1998.

3. **Financial Impact:** Many details remain to be identified. However, we anticipate (and are building into the Budget submittals) lease costs of nearly \$ 1.25 million/year; custodial costs of about \$280,000/year - both of the above to be charged out on a square-foot basis to MCSO, DJACJ, and the General Fund on behalf of Courts; and Security costs of roughly \$250,000/year carried in the Sheriff's budget. We have not identified any offsetting lease reductions elsewhere which can occur in 1998-9.
One-time-only occupancy costs (moves, telecommunications system, modifications, and planning costs) are still being developed and will be covered by the existing \$ 500,000 in the 1997-8 CIP Budget plus approximately \$ 300-400,000 requested for 1998-9.
4. **Legal Issues:** Upon successful approval of a lease by the County and the United States, the Federal Government must cede legal authority to the County to allow the MCSO to arrest and hold on the premises. This process should be routine but will take several months.
5. **Controversial Issues:** There are no internal or inter-agency controversial issues. We believe that the proposed use of the building is in the public interest not only in its appropriate re-use of space, but also in its opportunity to enhance the workings of the Justice System through co-location of principals.
Longer-term (after the 5-year initial term and 2-year renewal option are up) replacement of the Solomon space may be controversial. There is also controversy among Federal agencies as to the best ultimate use of the building, and its value for Federal purposes.
6. **Link to Current County Policies:** Using the Solomon Courthouse for to meet County space obligations meets the obligation for "good government" since the space, at \$ 10.44 per useable square foot, is a bargain in today's market, and the location is central to related functions.

Potential Lease of Solomon Courthouse

page 2

12-30-97

7. Citizen Participation: None

8. Other Government Participation: The preliminary agreements have been negotiated between and are satisfactory to three governments: Multnomah County, the State of Oregon (Courts,) and the United States Government as represented by the GSA.



Beverly Stein, Multnomah County Chair

Room 1515, Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204

Phone: (503) 248-3308
FAX: (503) 248-3093
E-Mail: mult.chair@co.multnomah.or.us

December 29, 1997

To: Board of County Commissioners

From: Beverly Stein 

Re: Solomon Lease

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 DEC 29 AM 11:22

I am pleased to bring you the results of a year of discussions with the General Services Administration on the potential lease of the Solomon Building for court expansion and public safety operations.

DES staff and GSA have agreed on a lease that will need budgetary approval from you and a Congressional oversight committee in Washington DC. I recommend approval to move forward towards a final ratification later this spring with an expected occupancy date of July 1, 1998. I am recommending approval of the lease because of the following benefits to the County:

- provides for the space needs for the state courts for the next 5 to 7 years and allows us to proceed with the necessary steps to ensure that long term judicial space needs are met. Allows the opportunity for Senator Wyden and others to continue to pursue the possible donation of the building in the future;
- provides an opportunity for the judiciary to rethink the most efficient use of its space resources to reduce case backlogs and reduce the time to trial for both civil and crime proceedings. This is perhaps the quickest, most efficient way to expand local jail space.
- provides an opportunity to move the Sheriff's administrative functions downtown as the first step towards the vacation and sale of the Hansen Building;



- provides an opportunity to colocate the Sheriff's administrative and some program functions with similar administrative and program functions of Adult Community Justice. Given their joint responsibilities in implementing crucial public safety programs such as SB1145, this is a very positive development;
- provides an opportunity to acquire judicial and office space downtown at a very cost effective rate; and
- provides an opportunity to relocate the Southwest community office, which must vacate its current rental space.

I have included the anticipated additional costs of the Solomon lease within the framework for the Executive Budget which you received last week. I look forward to our discussion tomorrow.

MEETING DATE: DEC 30 1997
AGENDA NO: C-1
ESTIMATED START TIME: 9:30 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Animal Control Advisory Committee

BOARD BRIEFING:

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: 12/30/97

AMOUNT OF TIME NEEDED: Consent Agenda

DEPARTMENT: Nondepartmental

DIVISION: Chair's Office

CONTACT: Delma Farrell

TELEPHONE #: 248-3953

BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Appointment of Sharon Harmon to the Animal Control Advisory Committee, Oregon Humane Society Position, for a term ending 12/30/2000

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT

MANAGER: _____

Beverly Stead

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 DEC 15 PM 3:24

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURE

Any Questions: Call the Board Clerk @ 248-3277

MULTNOMAH COUNTY OREGON

INTEREST FORM FOR CITIZEN ADVISORY BOARDS & COMMISSIONS

The purpose of this form is to obtain information for use in making appointments to Multnomah County Citizen Advisory Boards & Commissions, and to assist the County Chair in making inquiries concerning the qualifications of applicants for appointment. If you have a resume or supplemental information which further details your involvement in volunteer activities, public affairs, civic services, published writings or affiliations, please attach them to this form. Thank you for your interest.

A. Please list, in order of priority, any Multnomah County Citizen Advisory Board or Commission on which you would be interested in serving.

Animal Control Advisory Committee

B. Name: Sharon Harmon

Address: PO 11364

City/State/Zip: Portland OR 97211

Home Phone: _____

C. Current Employer: Oregon Humane Society

Address: 1067 NE Columbia Blvd

City/State/Zip: Portland OR 97211

Work Phone/Extension: 503-285-7722 x213

Occupation: Director

D. Affirmative Action Information (This section is voluntary. Under Federal Law, this information may not be used to discriminate against you.)

Sex: M ☒ F

Racial/

Ethnic Background: ☐ African-American ☐ Asian ☒ Caucasian

☐ Hispanic ☐ Native American ☐ Other

Date of Birth: Month 7 Date 14 Year 58

E. List major paid employment and volunteer activities which may related to service on boards and commissions.

DATES:

EMPLOYER/VOLUNTEER ACTIVITY

7/49 - present

Oregon Humane Society - Employer

93 - present

Portland Audubon Society - Board member

F. Circle from the list below fields in which you have interest or ability:

Aging/Elderly

Agriculture

Alcohol/Drug Treatment

Animal Welfare

Art

Children and Families

Civil Rights/Discrimination

Corrections/Law Enforcement

Economic Development/Trade

Environment/Natural Resources

Food Services

Handicapped/Disabled Issues

Health Care

Housing

Juvenile Justice Issues

Labor/Labor Relations

Land Use Planning

Library Services

Mental Health Services

Minority Affairs

Transportation

Other _____

G. Conflict of Interest: Please list potential conflicts of interest between private life and public service which might result from service on a board or commission.

None

H. References: Please list names, addresses, and phone numbers of two people who may be contacted as references:

Pamela Frasch - ~~724-7199~~ 241-7199

Dr. David Goodman - 579-3300

I. My signature affirms that all information is true to the best of my knowledge and I understand that any misstatement of fact or misrepresentation of credentials may result in this application being disqualified from further consideration, or subsequent to appointment to a board or commission, may result in dismissal.

Signature: _____

Date: 11/12/97

Contact: Delma Farrell

Beverly Stein, Multnomah County Chair

1120 SW Fifth Room 1515

Portland, Oregon 97204 Tel. (503) 248-3308

FAX: (503) 248-3093

E-Mail: MultChair@aol.com

MULT.CHAIR@CO.MULTNOMAH.OR.US

MEETING DATE: DEC 30 1997
AGENDA NO: C-2
ESTIMATED START TIME: 9:30 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Appointment to Citizen Involvement Committee

BOARD BRIEFING:

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: 12/30/97

AMOUNT OF TIME NEEDED: Consent Agenda

DEPARTMENT: Nondepartmental

DIVISION: Chair's Office

CONTACT: Delma Farrell

TELEPHONE #: 248-3953

BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Appointment of Karie Ayn Kobatake to the Citizen Involvement Committee, District #4
Position, for a term ending 11/30/2000.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT

MANAGER: _____

Beverly Stein

BOARD OF
COUNTY COMMISSIONERS
97 DEC 15 PM 3:28
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

INTEREST FORM FOR MULTNOMAH COUNTY
CITIZEN INVOLVEMENT COMMITTEE

RECEIVED

4-28-96
RECORDER'S OFFICE
CITY OF TROUTDALE

In order for the Multnomah County Commission to assess more thoroughly the qualifications of persons interested in serving on the Citizen Involvement Committee, you are requested to fill out this interest form. Please feel free to attach or enclose supplemental information or a resume which further details your involvement in volunteer activities, public affairs, civic services, affiliations, etc.

We consider information from Sections I through III public, and it may be used in press releases announcing appointments.

Neighborhood Assoc:
NAME OF NOMINATING GROUP: CITY of Troutdale

SECTION I

NAME: Karie Ayn Kobatake HOME PHONE: 665-3458
ADDRESS: 2137 SW Daybreak Way WORK PHONE: _____
Troutdale, OR ZIP Code: 97060

Is your residence located in Multnomah County?

YES X NO _____

SECTION II

Why are you interested in serving on the Multnomah County Citizen Involvement Committee?

As a residential citizen of Multnomah County I support the stated mission of the CIC. I believe that in order for me to better serve my community I need to take the responsibility to be actively aware, educated, and involved, as well as educating and involving others, in all aspects of governmental policy and decision-making.

SECTION III

Please list three volunteer/civic activities:

ORGANIZATION: 1. Portsmouth Community Redevelopment Corporation 1st Annual Paint-A-Thon DATE: 5/96
2. Oregon Fair Housing - Tester DATE: 95' - Present
3. _____ DATE: _____

RESPONSIBILITIES: 1) Worked closely w/ the volunteer coordinator assisting in the set-up, organizing, & clean-up of a house painting project of a developmentally disabled woman. 2) A tester for the Fair Housing Council reporting any type of housing discrimination.

SECTION IV

Please list the name, address and telephone numbers of two people who may be contacted as references. Please name those who know about your interests and qualifications to serve on the Citizen Involvement Committee:

Misty Kiyuna

775-4921

SECTION V

Please state any potential conflicts of interest between private life and public service which might result from service on the Citizen Involvement Committee:

NONE

SECTION VI

In order to assist Multnomah County in meeting affirmative action goals, additional information is requested of you. This section is voluntary and will remain confidential.

BIRTH DATE: Month 4 Day 20 Year 68 SEX: Female X Male

ETHNIC ORIGIN: Asian X Black Hispanic

Native American White

My signature affirms that all information is true to the best of my knowledge. I understand that any misstatement of fact or misrepresentation of credentials may result in this application being disqualified from further consideration or, subsequent to my appointment to the Citizen Involvement Committee, may result in my dismissal from that Committee.

Signature: Karen Lynn Kibutale Date: 10/17/97

IntrsFrm.CIC

MEETING DATE: DEC 30 1997
AGENDA NO: C-3
ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Amendment to Intergovernmental Agreement - Contract #500318

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: _____
AMOUNT OF TIME NEEDED: _____

DEPARTMENT: Non-Departmental DIVISION: Public Safety Coordinating Council
CONTACT: Barb Disciascio TELEPHONE #: 65522
BLDG/ROOM #: 166/1075

PERSON(S) MAKING PRESENTATION: N/A

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Amendment to Intergovernmental Agreement

12/30/97 ORIGINALS to Suzanne Riles

BOARD OF
COUNTY COMMISSIONERS
97 DEC 19 PM 3:36
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT
MANAGER: Suzanne B. Riles

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

SUPPLEMENTAL STAFF REPORT

To: Board of County Commissioners

From: Suzanne Riles, Director of Research and Administration
Public Safety Coordinating Council

Date: December 9, 1997

Re: Intergovernmental Agreement, Public Safety Bond Measure

1. Recommendation/Action Requested: Approval of amended Intergovernmental Agreement with Oregon Judicial Department, office of the State Court Administrator.
2. Background/Analysis: Amends paragraphs 6 and 7 and Exhibit A. Paragraphs 6 & 7 allow for Multnomah County to purchase equipment on behalf of the State. Exhibit A is an updated equipment list.
3. Financial Impact: Not to exceed \$396,024. Bond funds.
4. Legal issues: None
5. Controversial Issues: None
6. Link to Current County Policies: None
7. Citizen Participation: Public Safety Coordinating Council recommended initial bond proposal, and continues to oversee the use of funds.
8. Other Government Participation: None

INTERGOVERNMENTAL AGREEMENT

This contract is between Multnomah County, acting by and through its Department of Support Services, hereinafter called COUNTY, and Oregon Judicial Department, Fourth Judicial District, Multnomah County Circuit and District Courts, hereinafter called STATE.

RECITALS:

1. The Multnomah County Board of County Commissioners, upon the recommendation of the Public Safety Coordinating Council, referred a ballot measure to the voters at the May 1996 election to approve a public safety bond measure.
2. Pursuant to SB 1145 (1995) and Multnomah County Ordinance 839, the Board of County Commissioners created the Multnomah County Public Safety Coordinating Council. This Council plans for the use of state and local resources to serve the criminal justice system.
3. The purpose of the bond measure is to fund public safety projects within Multnomah County, as recommended by the Public Safety Coordinating Council.
4. Among the public safety projects to be funded by the public safety bond measure is an extensive computer system upgrade which will allow public safety entities within Multnomah County to access and share strategic data. This project is more specifically described in Exhibit A, attached hereto.
5. The voters approved the public safety bond measure in May 1996 and the bonds were issued in October 1996 in the amount of \$72,700,000. Multnomah County is prepared to give grants from the proceeds to public safety and justice system entities within Multnomah County for purposes of purchasing specific computer equipment required by the project proposed in Exhibit A.

TERMS AND CONDITIONS:

6. COUNTY will pay up to \$396,024.00 to STATE for purchase of equipment listed in Exhibit A, as well as the cost of [laying] cable needed for the operation of that equipment.
7. STATE will invoice COUNTY for reimbursement of approved purchases on or before June 30, 1999.

8. STATE agrees that the equipment purchased with this grant will be used in the manner set out in the project proposal (Exhibit A) and will provide the network infrastructure required to support the project.

9. STATE agrees to allow COUNTY authorized representatives to have access to books, documents, papers and records which are directly pertinent to this contract for the purpose of making audit, examination, excerpts and transcripts.

10. STATE, to the extent permitted by the Oregon Tort Claim Act and Oregon Constitution, shall hold harmless, defend and indemnify COUNTY, its officers, agents and employees against all claims, demands, actions and suits (including all attorneys fees and costs) brought against any of them arising from the purchase, installation and/or use of the equipment purchased with this grant.

11. This contract is effective on the date of the execution by the last signatory to the contract.

12. This contract consists of this contract document and the attached Exhibit A. To the extent there are inconsistencies or conflicts between the documents, this contract document takes precedence over any conflicting provision in Exhibit A.

MULTNOMAH COUNTY, OREGON

OREGON JUDICIAL DEPARTMENT

By: 
Chair of the Board


By: _____
Title

Date: August 7, 1997

Date: _____

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By: 
Sandra N. Duffy, Chief Assistant County Counsel

Date: 7-31-97

H:\Data\Advisory\Duffy\IGA.Public Safety Bond.doc

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-10 DATE 8/7/97
DEB BOGSTAD
20100 0152K

Exhibit A

MULTNOMAH COUNTY COURTS

PROJECT PROPOSAL FOR PUBLIC SAFETY

BONDTECHNOLOGYPROGRAM

EXECUTIVE SUMMARY

The Oregon Judicial Department (OJD) is embarking upon an Advanced Office Automation and Groupware Project which is intended, in large part, to facilitate the exchange of information between the courts and other justice related agencies. The infrastructure for this project (network cabling, server hardware, server software and client software) is currently being installed in the courts. Acquisition of equipment identified in this request would enable Multnomah County Courts to extend network and groupware capabilities to all judges chambers, all courtrooms and all courthouse supervisory staff. The benefits to both OJD staff and partner agencies would include improved communication via E-Mail, Electronic document transfer and greatly enhanced access to case management, scheduling, and calendaring information.

CURRENT EINVIRONMENT

OREGON JUDICIAL INFORMATION NETWORK - The Oregon Judicial Information Network (OJIN) is comprised of several major, mission critical applications which run on a network of 18 AS/400 computers installed statewide. The applications include case management, financial accounting, jury management, accounts payable and office automation systems.

MULTNOMAH COUNTY COURT USERS - Thirty six judges and over 300 operations staff are enrolled as users on Multnomah County Court's AS/400. Roughly one third of these users attach to the system via desktop PC's. The remaining users, including the majority of judges, attach to the system via "dumb" terminals.

PUBLIC, COMMERCIAL AND GOVERNMENT USERS - In March of 1994, OJD began allowing public dial-up access to court records. Currently, more than 2000 users from commercial organizations such as Tektronics, Intel, Key Title, Kaiser Permanente, PGE and The Oregonian have dial-up access. OJD now supports OJIN access for more than 1400 users representing 105 other government agencies including Metropolitan Public Defenders, Multnomah County District Attorney, Multnomah County Sheriff, Portland Police and Gresham Police.

OUTSIDE AGENCY DATA EXCHANGE - OJD currently supports high volume electronic data exchanges with LEDS for disposition reporting, DNIV for license suspensions and reinstatements, Treasury for canceled checks and Department of Revenue for delinquent account collection.

THE NETWORK VISION

VISION 2020 - The Vision 2020 document, which sets forth strategic direction for OJD, calls for advanced computer, telecommunications and information technologies which allow appropriate information to be exchanged quickly and easily between the courts and other justice-related agencies.

IS ARCHITECTURE VISION - With the Vision 2020 directives in mind, the Information Systems Division of OJD developed an Architecture Vision which calls for:

- Transition from a computer centric model to a network centric model for deployment . of technology and information to the desktop
- Empowered User Community

ADVANCED OFFICE AUTOMATION AND GROUPWARE PROJECT

SHARING OF STRATEGIC DATA - In May of 1996, the OJD Information Systems -Steering Committee approved the acceleration of the Advanced Office Automation and Groupware Project. A stated goal of the Committee was to enhance OJD's ability to retrieve strategic data from its databases and electronically publish that information for its customers and stakeholders. To achieve this goal, OJD has specified that the groupware system satisfy the following business requirements:

- Strong Database Replication Capabilities
- Robust Development Environment
- Ability to Capture and Process Contents of Electronic Forms
- Scheduling and Calendaring Capability
- Ability to Integrate Document Imaging
- Internet Capability

PROJECT STATUS

NETWORK CABLING - The cabling required to network connect all OJD users in Multnomah County is currently in progress. Cabling is expected to be completed by June of this year.

GROUPWARE IMPLEMENTATION - The Information Systems Steering Committee has selected Lotus Notes as the groupware product for OJD. As a pilot project, a Lotus Notes business partner will install and configure server hardware, server software and client software for 30 workstations statewide. OJD personnel will then test the functionality of the product. Upon successful completion of the pilot, phase one implementation will see Lotus Notes installed for approximately 300 administrative staff statewide. The expected completion date of phase one is June 30, 1997. Following phase one success the entire OJD will expand to use this product encompassing approximately 1600 employees statewide, the current projection for this to be completed is 2 to 3 year's using phased implementation.

INFRASTRUCTURE REQUIREMENTS

OJD is currently building the network infrastructure required to support the groupware initiative. Network cabling is in progress. Network servers (IBM AS/400 IPCS server) will be installed as part of the pilot project. Windows capable personal computers, which will serve as Lotus Notes client workstations are be' installed on selected desktops.

REQUEST FOR FUNDING

Acquisition of the equipment list below will enable Multnomah County Courts to expand the network and groupware project to include all judges, all courtrooms and all court supervisory staff.

DESCRIPTION	VENDOR	QTY	UNIT	TOTAL
Dell PI 33 GsM Base PC W/ HP 5L printer, monitor, Corel WordPerfect Suite 7 and network card.	Dell Corp.	115	\$2,853	\$328,174
Installation	Entex	115	\$110	\$12,650
Training - Basic Lotus Notes	New Horizons	115	\$480	\$55,200
Total				\$396,024

EXPECTED BENEFITS

SHARING OF OFFICE INFORMATION - Groupware will enable OJD users and OJD customers and partners to more easily interact. It will provide a mechanism to organize, s e, share, discuss and electronically publish large amounts of office information such as:

- Calendars
- Documents
- Spreadsheets
- Forms
- Correspondence

DATA WAREHOUSE - In conjunction with the Office Automation and Groupware project, OJD envisions consolidating the case management data for the entire state. Data structures will be simplified thus making the data easier to understand and easier to access.

Desktop Queries - Currently, almost all management query activities are run on production machines by Information System staff. Many queries cannot be run due to lack of system processing time or lack of staff resources. With the implementation of a groupware solution and a data warehouse, most ma query activity will be off loaded from production machines to desktop systems. As a result many program and management questions asked by upper management, policy makers, justice related agencies and the public may be possible to answer for the first time.

Performance Boost - With the off loading of query activity, production systems will gain processing power and system availability for production work. The improved system performance will enhance overall trial court operations.

Cost/Benefit Summary

Cost Summary

Personnel costs for the Project.

1. Personnel costs for the development of the proposed project or service.
2. Personnel costs for the operation of the proposed project or service.
3. Total Personnel costs (1+2).

1. _____

2. _____

3.

Materials and Services costs for the project.

4. M&S costs for the development of the project.
5. M&S costs for the operation of the project.
6. Total M&S costs (4+5).

4. _____

5. _____

6. \$67,850

Capital Outlay costs for the project.

7. Capital costs for the development of the project.
8. Capital costs for the operation of the project.
9. Total Capital costs (7+8).

7. \$378,174

8. _____

9. \$328,174

10. Total project costs (3+6+9).

10. \$396,024

Benefits Summary

Tangible Benefits

11. Tangible benefits for the project.

11.

Revenue or

Reimbursement

12. Estimated revenue or reimbursement discounted by the risk.

12.

Cost Avoidance

13. Estimated value of cost avoidance discounted by the risk.

13. \$400,000

14. Total project benefits (11+12+13).

14. \$400,000

Cost Benefit Calculation

15. Estimated annual savings ((14-10)/yrs).

15. \$795.00



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

December 8, 1997
(SENT VIA FAX AND MAIL)

Ms. Suzanne Riles
Public Safety Coordinating Council
421 SW 6th, Suite 1075
Portland, OR 97204

Re: Intergovernmental Agreement, Public Safety Bond Measure
OJD Contract #04i9701

Dear Ms. Riles:

Enclosed please find triplicate originals of the revised Intergovernmental Agreement for the Public Safety Bond Measure. Kingsley Click has sign each original on behalf of the Oregon Judicial Department.

Please have the agreement signed on behalf of the County and return to me one fully executed original for our files.

Thank you for all of your help with this matter.

Sincerely,

Teresa K. Bradshaw
Assistant Legal Counsel

TKB:sh/E6S97079.F

Attachments

cc: Doug Bray
Jerry Cooper
Neal Japport
Linda Zuckerman

**CONTRACT APPROVAL FORM**

(See Administrative Procedure #2106)

MULTNOMAH COUNTY OREGON

Contract # 500318Amendment # 1

CLASS I <input type="checkbox"/> Professional Services under \$25,000	CLASS II <input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	CLASS III <input checked="" type="checkbox"/> Intergovernmental Agreement APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # <u>C-3</u> DATE <u>12/30/97</u> <u>DEB BOGSTAD</u> BOARD CLERK
---	---	--

Department Non Departmental Division Public Safety Council Date Dec. 19, 1997Contract Originator Suzanne Riles Phone 306-5894 Bldg/Room 166/1075Administrative Contact Barbara Disciascio Phone 306-5522 Bldg/Room 166/1075Description of Contract Amends paragraphs 6 & 7 and Exhibit A. Paragraphs 6 & 7 allow for Multnomah County to purchase equipment on behalf of the State. Exhibit A is an updated equipment list.

RFP/BID # _____ Date of RFP/BID _____ Exemption Exp. Date _____

ORS/AR # _____ Contractor is ☐ MBE ☐ WBE ☐ QRFContractor Name State of OregonMailing Address 1163 State StreetSalem, OR 97310Phone 986-5504

Employer ID# or SS# _____

Effective Date 8-7-97Termination Date 6-30-99Original Contract Amount \$ 396,024

Total Amount of Previous Amendments \$ _____

Amount of Amendment \$ _____

Total Amount of Agreement \$ 396,024**REQUIRED SIGNATURES:**Department Manager *Suzanne B. Riles*Purchasing Director
(Class II Contracts Only) *[Signature]*County Counsel *[Signature]*County Chair / Sheriff *[Signature]*Contract Administration
(Class I, Class II Contracts Only) *[Signature]*Remittance Address _____
(If Different) _____**Payment Schedule****Terms**☐ Lump Sum \$ _____ ☐ Due on receipt☐ Monthly \$ _____ ☐ Net 30☒ Other \$ _____ ☒ Other _____☐ Requirements contract - Requisition required.

Purchase Order No. _____

☐ Requirements Not to Exceed \$ _____Encumber: Yes ☐ No ☐Date December 19, 1997

Date _____

Date 12/19/97Date December 30, 1997

Date _____

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

INSTRUCTIONS ON REVERSE SIDE

WHITE - CONTRACT ADMINISTRATION

CANARY - INITIATION

PINK - FINANCE

INTERGOVERNMENTAL AGREEMENT PUBLIC SAFETY BOND MEASURE

This contract is between Multnomah County, acting by and through its Department of Support Services, hereinafter called COUNTY, and Oregon Judicial Department, on behalf of the Fourth Judicial District, Multnomah County Circuit Court, hereinafter called OJD.

RECITALS:

1. The Multnomah County Board of County Commissioners, upon the recommendation of the Public Safety Coordinating Council, referred a ballot measure to the voters at the May 1996 election to approve a public safety bond measure.
2. Pursuant to ORS 423.560 and Multnomah County Ordinance 839, the Board of County Commissioners created the Multnomah County Public Safety Coordinating Council. This Council plans for the use of state and local resources to serve the criminal justice system.
3. The purpose of the bond measure is to fund public safety projects within Multnomah County, as recommended by the Public Safety Coordinating Council.
4. Among the public safety projects to be funded by the public safety bond measure is an extensive computer system upgrade which will allow public safety entities within Multnomah County to access and share strategic data. This project is more specifically described in Exhibit A, attached hereto.
5. The voters approved the public safety bond measure in May 1996 and the bonds were issued in October 1996 in the amount of \$72,700,000. Multnomah County is prepared to give grants from the proceeds to public safety and justice system entities within Multnomah County for purposes of purchasing specific computer equipment required by the project proposed in Exhibit A.

TERMS AND CONDITIONS:

6. On behalf of and at the request of OJD, COUNTY will order and pay for the equipment and training services listed in Exhibit A. Such payment by the COUNTY will not exceed \$396,024.
7. All such purchases will be completed by June 30, 1999.
8. OJD agrees that the equipment purchased with this grant will be used in the manner set out in the project proposal (Exhibit A) and will provide the network infrastructure required to support the project.

9. The parties agree that the equipment purchased pursuant to this Agreement will be the property of OJD and as such OJD shall hold title to such property. OJD shall take responsibility for the risk of loss or damage of such property.
10. OJD agrees to allow COUNTY authorized representatives to have access to books, documents, papers and records which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcripts.
11. OJD, to the extent permitted by the Oregon Tort Claim Act and Oregon Constitution, shall hold harmless, defend and indemnify COUNTY, its officers, agents and employees against all claims, demands, actions and suits (including all attorneys fees and costs) brought against any of them arising from the purchase, installation and/or use of the equipment purchased with this grant.
12. This contract is effective on the date of the execution by the last signatory to the contract.
13. This contract consists of this contract document and the attached Exhibit A. To the extent there are inconsistencies or conflicts between the documents, this contract document takes precedence over any conflicting provision in Exhibit A.

MULTNOMAH COUNTY, OREGON

By: [Signature]
Chair of the Board

Date: December 30, 1997

REVIEWED:

THOMAS SPONSER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By: [Signature]
Jacqueline A. Weber, Asst. Co. Counsel

Date: 12/15/97

OREGON JUDICIAL DEPARTMENT

By: [Signature]
State Court Administrator

Date: 12/8/97

Approved as to Legal Form and Sufficiency:

[Signature]
Legal Counsel Division

Date: 12/8/97

TKB:sh/E6S97077.F
12/8/97

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-3 DATE 12/30/97
DEB BOGSTAD
BOARD CLERK

Exhibit A
MULTNOMAH COUNTY COURTS
PROJECT PROPOSAL FOR PUBLIC SAFETY
BOND TECHNOLOGY PROGRAM

EXECUTIVE SUMMARY

The Oregon Judicial Department (OJD) is embarking upon an Advanced Office Automation and Groupware Project which is intended, in large part, to facilitate the exchange of information between the courts and other justice related agencies. The infrastructure for this project (network cabling, server hardware, server software and client software) is currently being installed in the courts. Acquisition of equipment identified in this request would enable Multnomah County Courts to extend network and groupware capabilities to all judges chambers, all courtrooms and all courthouse supervisory staff. The benefits to both OJD staff and partner agencies would include improved communication via E-Mail, Electronic document transfer and greatly enhanced access to case management, scheduling, and calendaring information.

CURRENT ENVIRONMENT

OREGON JUDICIAL INFORMATION NETWORK - The Oregon Judicial Information Network (OJIN) is comprised of several major, mission critical applications which run on a network of 18 AS/400 computers installed statewide. The applications include case management, financial accounting, jury management, accounts payable and office automation systems.

MULTNOMAH COUNTY COURT USERS - Thirty six judges and over 300 operations staff are enrolled as users on Multnomah County Court's AS/400. Roughly one third of these users attach to the system via desktop PC's. The remaining users, including the majority of judges, attach to the system via "dumb" terminals.

PUBLIC, COMMERCIAL AND GOVERNMENT USERS - In March of 1994, OJD began allowing public dial-up access to court records. Currently, more than 2000 users from commercial organizations such as Tektronics, Intel, Key Title, Kaiser Permanente, PGE and The Oregonian have dial-up access. OJD now supports OJIN access for more than 1400 users representing 105 other government agencies including Metropolitan Public Defenders, Multnomah County District Attorney, Multnomah County Sheriff, Portland Police and Gresham Police.

OUTSIDE AGENCY DATA EXCHANGE - OJD currently supports high volume electronic data exchanges with LEDS for disposition reporting, DMV for license suspensions and reinstatements, Treasury for canceled checks and Department of Revenue for delinquent account collection.

THE NETWORK VISION

VISION 2020 - The Vision 2020 document, which sets forth strategic direction for OJD, calls for advanced computer, telecommunications and information technologies which allow appropriate information to be exchanged quickly and easily between the courts and other justice-related agencies.

IS ARCHITECTURE VISION - With the Vision 2020 directives in mind, the Information Systems Division of OJD developed an Architecture Vision which calls for:

- Transition from a computer centric model to a network centric model for deployment of technology and information to the desktop
- Empowered User Community

ADVANCED OFFICE AUTOMATION AND GROUPWARE PROJECT

SHARING OF STRATEGIC DATA - In May of 1996, the OJD Information Systems Steering Committee approved the acceleration of the Advanced Office Automation and Groupware Project. A stated goal of the Committee was to enhance OJD's ability to retrieve strategic data from its databases and electronically publish that information for its customers and stakeholders. To achieve this goal, OJD has specified that the groupware system satisfy the following business requirements:

- Strong Database Replication Capabilities
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GROUPWARE IMPLEMENTATION - The Information Systems Steering Committee has selected Lotus Notes as the groupware product for OJD. As a pilot project, a Lotus Notes business partner will install and configure server hardware, server software and client software for 30 workstations statewide. OJD personnel will then test the functionality of the product. Upon successful completion of the pilot, phase one implementation will see Lotus Notes installed for

approximately 300 administrative staff statewide. The expected completion date of phase one is November 1997. Following phase one success the entire OJD will expand to use this product encompassing approximately 1600 employees statewide, the current projection for this to be completed is 2 to 3 year's using phased implementation.

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REQUEST FOR FUNDING

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<u>DESCRIPTION</u>	<u>VENDOR</u>	<u>QTY</u>	<u>UNIT</u>	<u>TOTAL</u>
Dell P133 GsM Base PC W/ HP 5L printer, monitor, Corel WordPerfect Suite 7 and network card, Lotus Notes License, NT Server Client License, Surge Protectors, Mouse Pads.	Dell Corp.	139	\$2478.15	\$344,462.85
Windows 95 Upgrade-8, Memory-15, Corel WordPerfect 7 Upgrade-8, Lotus Notes License-8, NT Server Client License-35, MS Select Windows-4, Token Cards-8	Misc. Vendors			\$ 10,289.81
Computer Based Training Software (CBT) for Lotus Notes and Window 95 for users. Unlimited Users.		1	\$2200.00	\$ 2,200.00
Network Training for Technical Support Personnel (MCSE)	New Horizons	6		\$ 37,296.01

TOTAL: \$394,248.67

EXPECTED BENEFITS

SHARING OF OFFICE INFORMATION - Groupware will enable OJD users and OJD customers and partners to more easily interact. It will provide a mechanism to organize, structure, share, discuss and electronically publish large amounts of office information such as:

- Calendars
- Documents
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DATA WAREHOUSE - In conjunction with the Office Automation and Groupware project, OJD envisions consolidating the case management data for the entire state. Data structures will be simplified thus making the data easier to understand and easier to access.

Desktop Queries - Currently, almost all management query activities are run on production machines by Information Systems staff. Many queries cannot be run due to lack of system processing time or lack of staff resources. With the implementation of a groupware solution and a data warehouse, most management query activity will be off loaded from production machines to desktop systems. As a result, many program and management questions asked by upper management, policy makers, justice related agencies and the public may be possible to answer for the first time.

Performance Boost - With the off loading of query activity, production systems will gain processing power and system availability for production work. The improved system performance will enhance overall trial court operations.

1. REQUEST FOR PLACEMENT ON THE AGENDA FOR:

(Date)

DEPARTMENT: COMMUNITY AND FAMILY SERVICESDIVISION: N/ACONTACT: LES WALKERPHONE: 26777

* NAME(S) OF PERSON MAKING PRESENTATION TO BOARD:

LOLENZO POESUGGESTED AGENDA TITLE (to assist in preparing a description for the printed agenda)

Budget Modification CFS#06 restores 1.0 FTE CFS Manager Sr. in the Division of Developmental Disabilities.

2. DESCRIPTION OF MODIFICATION: [Explain the changes being made: What budget does it increase / decrease? What do the changes accomplish? Where does the money come from?]

[] PERSONNEL CHANGES ARE SHOWN IN DETAIL ON THE ATTACHED SHEET

Budget Modification CFS#06 restores 1.0 FTE CFS Manager Sr. in the Division of Developmental Disabilities effective 01/01/98. Current year personnel cost for the position is \$48,630 and will be funded by State Mental Health Department case management revenue carried forward from FY97. Future funding for the position will be from State Mental Health revenue.

Budget Modification CFS#06 increases CGF Indirect Support by \$4,704. Service reimbursements from the Fed/State Fund to General Fund increases by \$4,704. Service reimbursement from Fed/State Fund to Insurance Fund increases by \$3,070.

3. REVENUE IMPACT

(Explain revenues being changed and reason for the change)

Increase CGF Indirect Support	\$4,704
Increase Svs Reim F/S to General Fund	\$4,704
Increase Svs Reim F/S to Insurance Fund	\$3,070
TOTAL	\$12,478

BOARD OF
 COUNTY COMMISSIONERS
 97 DEC 16 PM 12:14
 MULTNOMAH COUNTY
 OREGON

4. CONTINGENCY STATUS [to be completed by Budget & Planning]

 (Specify Fund) Fund Contingency BEFORE THIS MODIFICATION (as of _____): \$ _____
 AFTER THIS MODIFICATION: \$ _____

Originated By:

Date:

Department Director:

Date:

Plan / Budget Analyst:

Date:

Employee Services:

Date:

Board Approval:

Date:

EXPENDITURES

Budget Fiscal Year: 97/98

12/10/97

REVENUES

Budget Fiscal Year: 97/98

12/10/97

BUDGET MODIFICATION CFS#06

5. ANNUALIZED PERSONNEL CHANGE (Change on a full-year basis even though this action affects only a part of the fiscal year (FY)).

		ANNUALIZED			
FTE	POSITION TITLE	BASE PAY	FRINGE	INSUR	TOTAL
(1.00)	Deputy Director (1501/9619)	(76,535)	(13,054)	(7,669)	(97,258)
1.00	CFS Manager Sr (1501/9612)	76,535	13,054	7,669	97,258
1.00	Deputy Director (0110/9619)	75,144	12,890	6,139	94,173
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
1.00	TOTAL ANNUALIZED CHANGES	75,144	12,890	6,139	94,173

6. CURRENT YEAR PERSONNEL DOLLAR CHANGE (Calculate costs/savings that will take place in this FY; these should explain the actual dollar amounts being changed by this Bud Mod.

			CURRENT YEAR			
FTE	POSITION TITLE	EXPLANATION	BASE PAY	FRINGE	INSUR	TOTAL
(0.50)	Deputy Director	Transfer to Dept Mgmt 01/01/98 (1501)	(38,268)	(6,527)	(3,835)	(48,630)
0.50	CFS Mgr Sr	Effective 01/01/98 (1501)	38,268	6,527	3,835	48,630
0.50	Deputy Director	Transfer from DD eff 01/01/98 (0110)	37,572	6,445	3,070	47,087
						0
						0
						0
						0
						0
						0
						0
						0
						0
0.50	TOTAL CURRENT FISCAL YEAR CHANGES		37,572	6,445	3,070	47,087



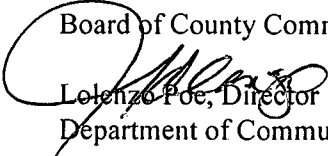
MULTNOMAH COUNTY OREGON

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

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

MEMORANDUM

TO: Board of County Commissioners

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

DATE: December 10, 1997

SUBJECT: Budget Modification CFS#06

I. RECOMMENDATION/ACTION REQUESTED: The Department of Community and Family Services recommends the approval of Budget Modification CFS#06. This modification restores 1.0 FTE CFS Manager Sr. in the Division of Developmental Disabilities.

II. BACKGROUND ANALYSIS: To meet the funding constraints of Measure 47 in our FY97/98 Adopted Budget, we cut the Developmental Disabilities Manager position and merged the duties with those of the Deputy Director. After evaluating the significant requirements of the Developmental Disabilities arena over the next few years, we feel it is imperative to separate the functions into two full-time positions. Budget Modification CFS#06 restores 1.0 FTE CFS Manager Sr. in the Division of Developmental Disabilities effective 01/01/98. Current year personnel cost for the position is \$47,087 and will be funded by State Mental Health Department case management revenue carried forward from FY97. Future funding for the position will be from State Mental Health revenue.

III. FINANCIAL IMPACT: Budget Modification CFS#06 increases CGF Indirect Support by \$4,704. Service reimbursements from the Fed/State Fund to General Fund increases by \$4,704. Service reimbursement from Fed/State Fund to Insurance Fund increases by \$3,070.

IV. LEGAL ISSUES: N/A

V. CONTROVERSIAL ISSUES: N/A

VI. LINK TO CURRENT COUNTY POLICY: N/A

VII. CITIZEN PARTICIPATIONS: N/A

VIII. OTHER GOVERNMENT PARTICIPATION: N/A



MULTNOMAH COUNTY OREGON

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BOARD OF COUNTY COMMISSIONERS
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SHARRON KELLEY • DISTRICT 4 COMMISSIONER

MEMORANDUM

TO: Daphne Teals
Deb Bogstad

FROM: Kathy Tinkle

DATE: December 10, 1997

SUBJECT: Bud Mod CFS #6

The attached budget modification restores a CFS Manager, Senior position in the Developmental Disabilities Division and is funded by State Mental Health Grant revenues. I think that it would meet the "consent agenda criteria." If that is so, please schedule for the next available meeting which according to Deb is December 30th. If, for some reason, it does not meet the criteria and must be on the regular agenda, please hold it until the first meeting in January.

Please give me a call at ext. 26858 to let me know how this will be handled. Thanks for your help.

Attachment

BOGSTAD Deborah L

From: TINKLE Kathy M
Sent: Monday, December 15, 1997 4:48 PM
To: FORD Carol M; BOGSTAD Deborah L; TEALS Daphne E
Subject: RE: Bud Mod #6/consent agenda
Importance: High

Daphne, I have copied both Carol and Deb on this Email just to cover bases with one swoop.

Why was this position cut? The position was cut with the FY 97/98 adopted budget as a result of M47. The department cut just over \$2 million both in services and administration.

What were the issues surrounding the cut? The issues were discussed at great length both with Chair and her staff as well as with the BCC during the budget hearings and discussions. Again, when you have to cut over \$2 million we were forced to look at equity in service and administrative cuts. The functions of the CFS Manager were filled by the Deputy, which has turned out to be a very difficult, if not impossible, workload considering all of the issues on the horizon with the DD program related to the Fairview closure and the long range plan for those individuals.

Where Bill and/or Bev involved in the discussion about the cut? Yes, See above. Also Bev, Bill and the BCC have been briefed by Lorenzo regarding the restoration of this position.

Would you consider this a "reclassification"? No, it is a restoration of a position that was cut to meet our budget constraints. It is being restored with State Mental Health Division grant dollars which are already in our budget. Those funds have already been approved by the BCC in the adopted budget. We are simply transferring the funds from the pass through line item to personnel.

I hope this answers the questions. If not, just let me know. Also, given that the BCC has already approved the \$\$, would it not fall on the consent agenda?? Please let me know. Thanks. KT

From: TEALS Daphne E
Sent: Monday, December 15, 1997 2:25 PM
To: TINKLE Kathy M
Subject: Bud Mod #6/consent agenda

Kathy:

Thanks for your call back regarding Bud Mod #6. I entered all the information and it balanced accordingly. When I took it up to Deb Bogstad she and Carol Ford had some questions for you.

At first glance, the Bud Mod does not meet the consent calendar criteria. Carol wants to know some history about this position:

- * Why was this position cut?
- * What were the issues surrounding the cut?
- * Were Bill and/or Bev involved in any discussion about the cut?
- * Would you consider this a "reclassification"?

I would be happy to relay your answers to Carol or you may speak to her directly. Les and I spoke and agreed that you could best provide the details.

Thanks for your help.
Daphne Teals x28594

MEETING DATE: DEC 30 1997

AGENDA NO: C-5

ESTIMATED START TIME: 9:30 am

(Above space for Board Clerk's Use Only)

AGENDA PLACEMENT FORM

SUBJECT: Increase in Revenue Agreement Between Centennial School District and Department of Community and Family Services, for Mental Health Services for Children

BOARD BRIEFING

Date Requested: _____

Requested By: _____

Amount of Time Needed: _____

REGULAR MEETING

Date Requested: As Available

Amount of Time Needed: n/a

DEPARTMENT: Community and Family Services

DIVISION: _____

CONTACT: Lorenzo Poe/Janice Gratton

TELEPHONE: 248-3691

BLDG/ROOM: B166/7th

PERSON(S) MAKING PRESENTATION: Consent

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE

Increase of \$2,500 to Intergovernmental Renewal Revenue Agreement from Centennial School District, to Pay for Children's Mental Health Services

1/14/98 ORIGINALS TO TRESE FINLEY

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR
DEPARTMENT MANAGER: Lorenzo Poe mcs

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

97 DEC 18 AM 8:39
MULTNOMAH COUNTY
OREGON
COUNTY COMMISSIONERS



MULTNOMAH COUNTY OREGON

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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: Beverly Stein, Multnomah County Chair

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

DATE: December 10, 1997

SUBJECT: FY 1997-98 Revenue Contract Amendment #1 from Centennial School District

I. Retroactive Statute: This amendment is retroactive to July 1, 1997. The school district originally funded children's school based mental health services at last year's level. The increase was decided on during the summer.

II. Recommendation/Action Requested: The Department of Community and Family Services recommends Board of County Commissioner approval of the amendment to the revenue agreement from Centennial School District, for the period July 1, 1997 through June 30, 1998.

III. Background/Analysis: The Department of Community and Family Services has received an increase in the revenue contract from Centennial School District, which pays for children's school-based mental health services.

IV. Financial Impact: The revenue contract increases by \$2,500 for a total of \$75,000 for school-based mental health services. The entire revenue agreement increases to \$112,000. These funds are included in the Division of Behavioral Health Budget Modification #4 to the Department budget.

V. Legal Issues: None

VI. Controversial Issues: None

VII. Link to Current County Policies: The contract supports the County's benchmarks concerning access to mental health services.

VIII. Citizen Participation: Children's mental health programs are advised by CAMHPAC which is comprised of representatives from the School District, provider agencies, consumers, and other involved government agencies.

IX. Other Government Participation: The CAPCare/CAPCare Plus Mental Health Organization involves funding and service coordination among multiple governmental and public organizations, including the County, State, and school districts.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☒

Contract #102008

Prior-Approved Contract Boilerplate: Attached; xx Not Attached

Amendment # 1

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$50,000 <input type="checkbox"/> Intergovernmental Agreement Under \$25,000	<input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input type="checkbox"/> Intergovernmental Agreement over \$25,000 <input checked="" type="checkbox"/> Intergovernmental Revenue Agreement APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # C-5 DATE 12/30/97 DEB BOGSTAD BOARD CLERK

Department: Community & Family Services

Division: CEU

Date: December 1, 1997

Administrative Contact: Irene Finley

Phone: 248-3691 ext 26296

Bldg/Room 166/7th

Description of Contract:

This amendment increases revenue funding mental health services for children.

RFP/BID #: _____ Date of RFP/BID: _____ Exemption Expiration Date: _____
 ORS/AR # _____ Contractor is ☐ MBE ☐ WBE ☐ QRF ☐ N/A ☐ None
 Original Contract No. 103367 (Only for Original Renewals)

Contractor Name: <u>Centennial School District, #28J</u> Mailing Address: <u>18135 SE Brooklyn</u> <u>Portland, OR 97236-1099</u> Phone: <u>(503)760-7990</u> Employer ID# or SS#: <u>N/A</u> Effective Date: <u>July 1, 1997</u> Termination Date: <u>June 30, 1998</u> Original Contract Amount: \$109,500.00 Total Amt of Previous Amendments: \$ -0- Amount of Amendment: \$2,500.00 Total Amount of Agreement: \$112,000.00	Remittance Address (if different) _____ <table> <tr> <th>Payment Schedule</th> <th>Terms</th> </tr> <tr> <td><input type="checkbox"/> Lump Sum \$ _____</td> <td><input type="checkbox"/> Due on Receipt</td> </tr> <tr> <td><input type="checkbox"/> Monthly \$ _____</td> <td><input type="checkbox"/> Net 30</td> </tr> <tr> <td><input checked="" type="checkbox"/> Other \$ <u>per invoiced summary</u></td> <td><input type="checkbox"/> Other</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements contract - Requisition Required</td> </tr> <tr> <td colspan="2">Purchase Order No. _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements Not to Exceed \$ _____</td> </tr> <tr> <td colspan="2">Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></td> </tr> </table>	Payment Schedule	Terms	<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt	<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30	<input checked="" type="checkbox"/> Other \$ <u>per invoiced summary</u>	<input type="checkbox"/> Other	<input type="checkbox"/> Requirements contract - Requisition Required		Purchase Order No. _____		<input type="checkbox"/> Requirements Not to Exceed \$ _____		Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>	
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Purchase Order No. _____																	
<input type="checkbox"/> Requirements Not to Exceed \$ _____																	
Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>																	

REQUIRED SIGNATURES:

Department Manager: *Lorenzo Paez* Date: 12/10/97

Purchasing Director: _____ Date: _____

(Class II Contracts Only) _____ Date: 12/16/97

County Counsel: *[Signature]* Date: 12/30/97

County Chair/Sheriff: *[Signature]* Date: 12/30/97

Contract Administration: _____ Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE R1				VENDOR NAME Centennial School Dist.				TOTAL AMOUNT: \$109,500.00			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	S UB OBJ	REPT CATEG	LGFS DESCIP	AMOUNT	Inc/Dec Ind.
	156	010	1630			2791				\$2,500	

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

DISTRIBUTION: Contracts Administration, Initiator, Finance

MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY AND FAMILY SERVICES
CONTRACT #102008, AMENDMENT #1

DURATION OF AMENDMENT: July 1, 1997 TO: June 30, 1998
CONTRACTOR NAME: Centennial School District TELEPHONE: (503) 760-7990
CONTRACTOR ADDRESS: 18135 SE Brooklyn IRS NUMBER: n/a
Portland, OR 97236-1099

This amendment is to that certain revenue agreement dated July 1, 1997, between the Multnomah County Department of Community and Family Services, referred to as the "COUNTY" and Centennial School District, referred to as the "CONTRACTOR". It is understood by the parties that all conditions and agreements in the original contract not superseded by the language of this amendment are still in force and apply to this amendment.

PART I: CHANGES: This amendment increase Centennial School District's contribution toward their school mental health services by \$2,500. The Districts revised total contribution to mental health services is \$75,000. The revised total of the entire revenue agreement is \$112,000.

This amendment also changes original revenue agreement language:

I.A.2a. DESCRIPTION OF SERVICE is revised to read, "Services for the Special Education Department shall consist of twelve and a half (12.5) consultant days per week..."

II.A. COMPENSATION is revised to read, "...DISTRICT agrees to pay COUNTY \$62,500 from the Special Education Department and \$12,500 from the Alternative Education Department, for a total sum of \$75,000..."

PART II: AMENDMENT NARRATIVE: Initial funding was based on last year's level. Decision to increase amount in new school year was made during the summer.

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

MULTNOMAH COUNTY

CENTENNIAL SCHOOL DISTRICT

BY *Lolene P. ...* 12/10/97
Director, Dept of Community & Date
Family Services

BY _____
Agency Authorized Signer Date

BY *Beverly Stein* 12/30/97
Beverly Stein Date
Multnomah County Chair

REVIEWED:

THOMAS SPONSLER, County Counsel for
Multnomah County, Oregon

By *Katie Gargner* 12/16/97
Date

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-5 DATE 12/30/97
DEB BOGSTAD
BOARD CLERK

MEETING DATE: DEC 30 1997
AGENDA NO: C-6
ESTIMATED START TIME: 9:30 am

(Above Space for Board Clerk's Use ONLY)

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS
AGENDA PLACEMENT FORM**

SUBJECT: Intergovernmental Revenue/Expenditure Contract Between State Department of Human Resources and County Department of Community and Family Services, for an Integrated Services Project at Roosevelt High School.

BOARD BRIEFING: DATE REQUESTED:
REQUESTED BY:
AMOUNT OF TIME NEEDED:

REGULAR MEETING: DATE REQUESTED:
AMOUNT OF TIME NEEDED: **N/A**

DEPARTMENT: Community and Family Services **DIVISION:** _____

CONTACT: Lorenzo Poe **TELEPHONE #:** 248-3691
BLDG/ROOM #: 166/7th

PERSON(S) MAKING PRESENTATION: Consent

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Renewal of revenue/expenditure agreement with the State Department of Human Resources to fund the Integrated Services Project at Roosevelt High School.

1/14/98 ORIGINALS TO BRIAN SMITH

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT
MANAGER: Lorenzo Poe

BOARD OF
COUNTY COMMISSIONERS
97 DEC 23 AM 11:42
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



MULTNOMAH COUNTY OREGON

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

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

TO: Board of County Commissioners

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

DATE: December 22, 1997

SUBJECT: Intergovernmental Agreement between Community and Family Services and State
Department of Human Resources: Roosevelt High School Integrated Services Project

I. Recommendation/Action Requested: The Department of Community and Family Services recommends Board of County Commissioner approval of the revenue/expenditure contract with Oregon Department of Human Resources, for the period January 1, 1998 through June 30, 1998.

II. Background/Analysis: The Department of Community and Family Services has received a revenue/expenditure contract from the State Department of Human Resources, to continue funding an Integrated Services Project at Roosevelt High School. The agreement allows local funds to be matched with federal funds. It also outlines responsibilities of the school district, State, and County around the Integrated Services Project. These responsibilities reflect the proposals approved earlier by these parties.

The Integrated Services Projects bring together the school, State offices, and County offices in order to provide coordinated services to children and families. Most of the Integrated Service Projects in Multnomah County include a school-based site location, to facilitate access to and delivery of services.

III. Financial Impact: The contract requires \$20,000 of local funds to match the federal funds; federal funds of \$34,000 are returned to the County for the project. These funds are included in the Department's budget.

IV. Legal Issues: none

V. Controversial Issues: none

VI. Link to Current County Policies: The Integrated Services Projects address the following benchmarks: Access to Health Care, Drug Free Teens, Teen Pregnancy, High School Graduation Rate, and Basic Student Skills.

VII. Citizen Participation: The Leaders Roundtable is instrumental in developing and implementing Integrated Service sites.

VIII. Other Government Participation: This contract is a joint effort of the Portland Public School District, State Department of Human Resources, and the County.



BRIAN R. SMITH
CONTRACTS AND EVALUATION UNIT

MULTNOMAH COUNTY OREGON

DEPARTMENT OF COMMUNITY
AND FAMILY SERVICES
421 SW SIXTH, SUITE 700
PORTLAND, OREGON 97204-1618
(503) 248-5184
FAX (503) 248-3379

12/26/97

Deb-

Robert Trachtenberg discovered an error in this contract which is on Tuesday's consent agenda. This required the entire second paragraph of the BACKGROUND section to be rewritten. Attached are two new copies with the corrected language and appropriate signatures. Please call me if you have any questions or concerns. 248-5184

Happy New Year,

Brian Smith

Oregon

Agreement #71786

DEPARTMENT OF
HUMAN
RESOURCES

Human Resources Building

INTERGOVERNMENTAL AGREEMENT

This Agreement is between the Department of Human Resources, Office of the Director, Community Partnership Team, hereinafter called DHR, and

Multnomah County
Dept. of Community and Family Services
Roosevelt Neighborhood Health and Family Resource Center Project
421 SW 6 th Ave. 7th floor
Portland, Or. 97204

hereinafter called "PROJECT".

I. BACKGROUND

The Department of Human Resources supports community partnership projects that integrate human services, engender community planning and action, align services and policy strategies, to improve human service outcomes for Oregonians. Service integration through community partnership projects is a key DHR strategy in meeting DHR and local goals and outcomes and the Oregon Benchmarks.

The Marshall Family Resource Center is a system coordination access point, working together in partnership to integrate, coordinate, advocate and develop services for youth and families in outer-southeast Portland. The Center, located in Marshall High School, has a full-time director and a family intervention specialist. Part-time outstationed staff include an AFS case manager, drug and alcohol specialist, mental health counselor, and outreach workers. Active programs are peer mediation, mentoring and a girls leadership group. The Center coordinates extensively with the Marshall Caring Community, a broad based coalition working on a variety of local concerns.

Current initiatives include increasing access through broadening services available in the evening, increasing parental involvement and improving school attendance and performance with incoming freshman, focusing on study skills and personal development.

The DHR Community Partnership Team provides direct and indirect assistance to the Center through its financial and personnel supports. The Center requests support with such areas as connecting with DHR local branch offices and resources, resolving DHR internal and external barriers, group facilitation, connecting with disability communities and upgrading DHR computer link.

II. TERM

This Agreement begins January 1, 1997 and ends June 30, 1998, unless otherwise terminated or extended in writing. DHR support for this project for the Fiscal Year 98-99 is contingent upon approval of further federal funding and a second year agreement approved by DHR.



John A. Kitzhaber
Governor

500 Summer Street NE
Salem OR 97310-1012
Salem - (503) 945-5821
FAX - (503) 378-4324
TTY - (503) 945-5928

DHR 2259 (8/95)

III. GOALS AND OUTCOMES

PROJECT shall work to accomplish the goals and outcomes outlined in Attachment A, Annual Work Plan, which is hereby incorporated into this Agreement by this reference.

IV. RESPONSIBILITIES AND EXPECTATIONS

A. All Parties shall:

- 1) Commit to the desired goals and outcomes of the project and work toward meeting those objectives.
- 2) Provide leadership and support as necessary to accomplish the goals and outcomes of the project.
- 3) Assist in the operation, oversight, and evaluation of the project.

B. DHR agrees to:

- 1) Provide assistance in overcoming service intergration barriers among agencies, governments, service providers, advocacy groups, etc..
- 2) Provide training and technical support regarding operation of state services, budgeting, technology, and branch office flexibility.
- 3) Provide assistance in areas of evaluation, strategic planning, communication, media, project design, group facilitation, volunteer development, human services data, social services coordination, alternative programs.
- 4) Provide a DHR Project Coordinator to act as problem solver for issues relating to DHR functions and resources.
- 5) Provide assistance in developing services, materials, and alternative revenue sources to support the project's operational needs.

C. PROJECT agrees to:

- 1) Work with DHR to develop a functional workplan which includes expected results. The workplan shall include or connect to an evaluation plan (e.g. outcomes, outputs impacts, inputs) that will measure the results of the project.
- 2) Develop and implement a plan for posting monthly project updates on the First Class E-Mail System.
- 3) Submit semi-annual project reports to DHR on or before January 30 and July 30. Progress reports are to include, but not limited to, information on project outcomes, goals, outputs, inputs, lessons learned, anecdotal stories, next steps, and budget narrative. These semi-annual reports may be transmitted via the First Class E-Mail System.
- 4) Produce services, materials, and alternative revenue sources to support the project's operational needs.
- 5) Develop appropriate agreements with other project partners outlining the responsibilities of each project partner.
- 6) Provide DHR with a forecasted expenditure budget and invoice before any federal funds will be disbursed. The forecasted budget shall include, but not be limited to:
 - a. Amount of local, non-federal, previously unmatched dollars being submitted for match
 - b. Sources of all local matching dollars

- c. Projected (annual or quarterly) budget expenditures, including local and federal portions of the total budget
 - d. Total project budget
 - e. An explanation of what the DHR matching funds system allows the project to do that may otherwise be beyond the local coalitions capacity or resources.
- 7) Provide a final expenditure report at the end of the contracting period, detailing actual local and federal expenditures for the project.
 - 8) Submit all invoices and local checks for payment of funds related to this agreement no later than September 15, 1998.

V. DESIGNATED LIAISONS

Liaisons for the term of this Agreement shall be as follows, all correspondence or notices shall be directed to their attention:

PROJECT: Kathleen Saadat
Multnomah County
Dept. of Community and Family Services
Roosevelt Neighborhood Health and Family Resource Center Project
421 SW 6 th Ave. 7th floor
Portland, Or. 97204
Phone # (503) 248-3658, x 26232

DHR: Carol F. Turner
Community Partnership Team
500 Summer St NE, 4th Floor
Salem, OR 97310-1012

VI. CONSIDERATION

- A. Payment for all work performed during the term of this Agreement shall not exceed the maximum sum of \$34,000.00. Consideration will be paid on a quarterly basis upon receipt and approval of an invoice and check from the PROJECT. Funding for this project for the Fiscal Year 98-99 is contingent upon approval of further federal funding and a second year agreement approved by DHR.
- B. PROJECT shall bill DHR quarterly, in arrears. At the end of each quarter PROJECT will submit an invoice for the integration services provided and accompany the invoice with a check for the non-federal portion (not to exceed \$10,000.00) of the amount being billed. The invoice and the check shall be sent to:

Brandy McDaniel, Admin. Assist.
Community Partnership Team
Department of Human Resources
500 Summer Street NE, 4th Floor
Salem, OR 97310-1012
- C. All invoices and local checks for payment of funds related to this agreement must be submitted no later than September 15, 1998 in accordance with the instructions of this section.
- D. PROJECT shall not submit billing and DHR will not pay, any amount in excess of the maximum compensation set forth above. If this maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before PROJECT performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the

expiration date of this Agreement. This Agreement will not be amended after the expiration date.

VII. GENERAL PROVISIONS

A. Effective Date and Duration

It is provided that the passage of the Agreement expiration date shall not extinguish or prejudice DHR's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.

B. Subcontracts and Assignments

PROJECT may not enter into any subcontracts for any of the work scheduled under this Agreement or transfer any of its interest in the Agreement without obtaining prior approval from DHR.

C. Termination

1. This Agreement may be terminated by mutual consent of both parties, or by DHR upon 30 days notice, in writing, and delivered by certified mail or in person.
2. In addition, DHR may terminate this Agreement, in whole or in part, effective upon delivery of written notice to the PROJECT, or at such later date as may be established by DHR, under any of the following conditions:
 - a) If DHR funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. The Agreement may be modified or terminated to accommodate a reduction in funds.
 - b) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
 - c) If any license or certification required by law or regulation to be held by the PROJECT to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.

Any such termination of this Agreement shall be without prejudice to any obligations or liabilities or either party already accrued prior to such termination.

3. DHR by written notice of default (including breach of Agreement) may terminate the whole or any part of this Agreement if:
 - a) If PROJECT fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or
 - b) If PROJECT fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from DHR, fails to correct such failures within 10 calendar days or such longer period as DHR may authorize.

The rights and remedies of DHR provided in the above clause related to default (including breach of Agreement) by the PROJECT shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

D. Access to Records

DHR, the Secretary of State's Office of the State of Oregon, the federal government, and all duly authorized representatives shall have access to the books, documents, papers, and records of the

PROJECT which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcripts.

E. Amendment

The terms of this Agreement may not be waived, altered, modified, supplemented or amended, except by written agreement signed by all parties.

F. Waiver

The failure of DHR or PROJECT to enforce any provision of this Agreement does not waive DHR's right to enforce any other provision.

G. INDEMNITY

PROJECT shall defend, save, hold harmless, and indemnify the State of Oregon and DHR, its officers, employees, agents, and members from all claims, suits or actions of whatsoever nature resulting from or arising out of the negligent activities or omissions of the PROJECT, its officers, employees, subcontractors, or agents under this Agreement.

H. Merger Clause

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. PROJECT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

VIII. SIGNATURES

APPROVED BY:

Chair, Multnomah County Board of Commissioners

Date

Lolenz Poemas
Dept. of Community and Family Services
Multnomah County

12/23/97
Date

Gary K. Weeks, Director
Department of Human Resources

Date

Reviewed by:

Kate Barry
Multnomah County Counsel

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # _____ DATE _____

BOARD CLERK

12/23/97
Date

Lennie Bjornsen, Community Projects Manager

Date

DHR Contracts Unit

Date

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☒ [X]

Prior-Approved Contract Boilerplate: Attached; XX Not Attached

Contract #102928

Amendment # 0

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$50,000 <input type="checkbox"/> Architectural & Engineering under \$50,000 <input type="checkbox"/> Intergovernmental Agreement Under \$50,000 <input type="checkbox"/> Expenditure <input type="checkbox"/> Revenue	<input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption) <input type="checkbox"/> Architectural & Engineering over \$50,000 <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input checked="" type="checkbox"/> Intergovernmental Agreement over \$50,000 <input type="checkbox"/> Expenditure <div style="text-align: center;"> APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # <u>C-6</u> DATE <u>12/30/97</u> <u>DEB BOGSTAD</u> BOARD CLERK </div>

Department: Community & Family Services

Division: _____

Date: December 22, 1997

Originator: Sue Larsen

Phone: 248-2691 x24421

Bldg/Room 166/7th

Administrative Contact: Brian Smith

Phone: 248-5184

Bldg/Room 166/7th

Description of Contract:

Funds integrated services/Caring Communities project at Roosevelt High School.

RFP/BID #: _____	Date of RFP/BID: _____	Exemption Expiration Date: _____
ORS/AR # _____	Contractor is <input type="checkbox"/> JMBE <input type="checkbox"/> WBE <input type="checkbox"/> QRF <input type="checkbox"/> N/A <input type="checkbox"/> None	check all that apply
Original Contract No. _____ (Only for Original Renewals)		

Contractor Name: Department of Human Resources Mailing Address: 500 Summer St. NE Salem, OR 97310-1012 Phone: (503)945-5821 Employer ID# or SS#: _____ Effective Date: January 1, 1998 Termination Date: June 30, 1998 Original Revenue Amount: \$ 34,000 Amendment: \$ 0 Original Expenditure Amount: \$ 20,000 Amendment: \$ 0 Total Amount of Revenue: \$ 34,000 Total Amount of Expenditure: \$20,000	Remittance Address (if different) _____ <table style="width:100%;"> <tr> <th style="text-align: left;">Payment Schedule</th> <th style="text-align: left;">Terms</th> </tr> <tr> <td><input type="checkbox"/> Lump Sum \$ _____</td> <td><input type="checkbox"/> Due on Receipt</td> </tr> <tr> <td><input type="checkbox"/> Monthly \$ _____</td> <td><input type="checkbox"/> Net 30</td> </tr> <tr> <td><input checked="" type="checkbox"/> Other \$ Quarterly</td> <td><input type="checkbox"/> Other</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements contract - Requisition Required</td> </tr> <tr> <td colspan="2">Purchase Order No. _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements Not to Exceed \$ _____</td> </tr> <tr> <td colspan="2">Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></td> </tr> </table>	Payment Schedule	Terms	<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt	<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30	<input checked="" type="checkbox"/> Other \$ Quarterly	<input type="checkbox"/> Other	<input type="checkbox"/> Requirements contract - Requisition Required		Purchase Order No. _____		<input type="checkbox"/> Requirements Not to Exceed \$ _____		Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>	
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Purchase Order No. _____																	
<input type="checkbox"/> Requirements Not to Exceed \$ _____																	
Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>																	

REQUIRED SIGNATURES:

Department Manager: *Lolenz Poemas*

Purchasing Director: _____

(Class II Contracts Only)

County Counsel: *Kathy Gantz*

County Chair/Sheriff: *Wally Flinn*

Contract Administration: _____

(Class I, Class II Contracts Only)

Date: 12/23/97

Date: _____

Date: 12/23/97

Date: 12/30/97

Date: _____

VENDOR CODE/GV0853B				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	Inc/Dec Ind.
Expenditure Coding: See Attached											
	156	010	1310			2396 Revenue			State DHR	\$34,000	

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

DISTRIBUTION: Contracts Administration, Initiator, Finance

COMMUNITY AND FAMILY SERVICES DEPARTMENT

CONTRACT APPROVAL FORM SUPPLEMENT

Contractor : OREGON - DEPT OF HUMAN RESOURCES-ROOSEVELT

Vendor Code : GV0853B

Page 1 of 1

12/22/97

Fiscal Year : 97/98

Numeric Amendment : 00

Contract Number : 102928

LINE	FUND	AGEN	ORG CODE	ACTIVIY CODE	OBJECT CODE	REPORTING CATEGORY	LGFS DESCRIPTION	ORIGINAL AMOUNT	AMENDMENT AMOUNT	FINAL AMOUNT	REQT'S ESTIMATE
01	156	010	1310	Y19A	6060	9997L <div></div>	Integr Svs Pre-Matched Funding Integrated Services Projects	\$20,000.00		\$20,000.00	
TOTAL								\$20,000.00	\$0.00	\$20,000.00	\$0.00

Oregon

Agreement #71786

DEPARTMENT OF

HUMAN

RESOURCES

Human Resources Building

INTERGOVERNMENTAL AGREEMENT

This Agreement is between the Department of Human Resources, Office of the Director, Community Partnership Team, hereinafter called DHR, and

Multnomah County
Dept. of Community and Family Services
Roosevelt Neighborhood Health and Family Resource Center Project
421 SW 6 th Ave. 7th floor
Portland, Or. 97204

hereinafter called "PROJECT".

I. BACKGROUND

The Department of Human Resources supports community partnership projects that integrate human services, engender community planning and action, align services and policy strategies, to improve human service outcomes for Oregonians. Service integration through community partnership projects is a key DHR strategy in meeting DHR and local goals and outcomes and the Oregon Benchmarks.

The Roosevelt Neighborhood Health and Family Resource Center is located in Roosevelt High School in North Portland. Services to students and families from the community and other local schools provide case management, resource development, information and referral and advocacy. Activities include an active service team, a teen pregnancy outreach program and a mentorship project. The Center has a full time director, a developmental disabilities/generalist case manager, a teen pregnancy prevention outreach worker and several practicum interns. It is closely linked with the school based health center and an evening community clinic serving the entire community.

Current objectives include redesigning the current site to further integration of services, enhancing integration with Roosevelt High School and surrounding schools, and increasing unified information and referral services.

The DHR Community Partnership Team Provides direct and indirect assistance to the Center through its financial and personnel supports. The Center requests support with such areas as resolving DHR internal and external integration barriers, coordination of human services co-location efforts, communication workshops and services, and blending service integration with community action.

II. TERM

This Agreement begins January 1, 1997 and ends June 30, 1998, unless otherwise terminated or extended in writing. DHR support for this project for the Fiscal Year 98-99 is contingent upon approval of further federal funding and a second year agreement approved by DHR.

u/CPT/71848/12-97



John A. Kitzhaber
Governor

500 Summer Street NE
Salem OR 97310-1012
Salem - (503) 945-5821
FAX - (503) 378-4324
TTY - (503) 945-5928

DHR 2259 (6/98)

III. GOALS AND OUTCOMES

PROJECT shall work to accomplish the goals and outcomes outlined in Attachment A, Annual Work Plan, which is hereby incorporated into this Agreement by this reference.

IV. RESPONSIBILITIES AND EXPECTATIONS

A. All Parties shall:

- 1) Commit to the desired goals and outcomes of the project and work toward meeting those objectives.
- 2) Provide leadership and support as necessary to accomplish the goals and outcomes of the project.
- 3) Assist in the operation, oversight, and evaluation of the project.

B. DHR agrees to:

- 1) Provide assistance in overcoming service intergration barriers among agencies, governments, service providers, advocacy groups, etc..
- 2) Provide training and technical support regarding operation of state services, budgeting, technology, and branch office flexibility.
- 3) Provide assistance in areas of evaluation, strategic planning, communication, media, project design, group facilitation, volunteer development, human services data, social services coordination, alternative programs.
- 4) Provide a DHR Project Coordinator to act as problem solver for issues relating to DHR functions and resources.
- 5) Provide assistance in developing services, materials, and alternative revenue sources to support the project's operational needs.

C. PROJECT agrees to:

- 1) Work with DHR to develop a functional workplan which includes expected results. The workplan shall include or connect to an evaluation plan (e.g. outcomes, outputs impacts, inputs) that will measure the results of the project.
- 2) Develop and implement a plan for posting monthly project updates on the First Class E-Mail System.
- 3) Submit semi-annual project reports to DHR on or before January 30 and July 30. Progress reports are to include, but not limited to, information on project outcomes, goals, outputs, inputs, lessons learned, anecdotal stories, next steps, and budget narrative. These semi-annual reports may be transmitted via the First Class E-Mail System.
- 4) Produce services, materials, and alternative revenue sources to support the project's operational needs.
- 5) Develop appropriate agreements with other project partners outlining the responsibilities of each project partner.
- 6) Provide DHR with a forecasted expenditure budget and invoice before any federal funds will be disbursed. The forecasted budget shall include, but not be limited to:
 - a. Amount of local, non-federal, previously unmatched dollars being submitted for match
 - b. Sources of all local matching dollars

- c. Projected (annual or quarterly) budget expenditures, including local and federal portions of the total budget
 - d. Total project budget
 - e. An explanation of what the DHR matching funds system allows the project to do that may otherwise be beyond the local coalitions capacity or resources.
- 7) Provide a final expenditure report at the end of the contracting period, detailing actual local and federal expenditures for the project.
- 8) Submit all invoices and local checks for payment of funds related to this agreement no later than September 15, 1998.

V. DESIGNATED LIAISONS

Liaisons for the term of this Agreement shall be as follows, all correspondence or notices shall be directed to their attention:

PROJECT: Kathleen Saadat
Multnomah County
Dept. of Community and Family Services
Roosevelt Neighborhood Health and Family Resource Center Project
421 SW 6th Ave. 7th floor
Portland, Or. 97204
Phone # (503) 248-3658, x 26232

DHR: Carol F. Turner
Community Partnership Team
500 Summer St NE, 4th Floor
Salem, OR 97310-1012

VI. CONSIDERATION

- A. Payment for all work performed during the term of this Agreement shall not exceed the maximum sum of \$34,000.00. Consideration will be paid on a quarterly basis upon receipt and approval of an invoice and check from the PROJECT. Funding for this project for the Fiscal Year 98-99 is contingent upon approval of further federal funding and a second year agreement approved by DHR.
- B. PROJECT shall bill DHR quarterly, in arrears. At the end of each quarter PROJECT will submit an invoice for the integration services provided and accompany the invoice with a check for the non-federal portion (not to exceed \$10,000.00) of the amount being billed. The invoice and the check shall be sent to:
- Brandy McDaniel, Admin. Assist.
Community Partnership Team
Department of Human Resources
500 Summer Street NE, 4th Floor
Salem, OR 97310-1012
- C. All invoices and local checks for payment of funds related to this agreement must be submitted no later than September 15, 1998 in accordance with the instructions of this section.
- D. PROJECT shall not submit billing and DHR will not pay, any amount in excess of the maximum compensation set forth above. If this maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before PROJECT performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the

expiration date of this Agreement. This Agreement will not be amended after the expiration date.

VII. GENERAL PROVISIONS

A. Effective Date and Duration

It is provided that the passage of the Agreement expiration date shall not extinguish or prejudice DHR's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.

B. Subcontracts and Assignments

PROJECT may not enter into any subcontracts for any of the work scheduled under this Agreement or transfer any of its interest in the Agreement without obtaining prior approval from DHR.

C. Termination

1. This Agreement may be terminated by mutual consent of both parties, or by DHR upon 30 days notice, in writing, and delivered by certified mail or in person.
2. In addition, DHR may terminate this Agreement, in whole or in part, effective upon delivery of written notice to the PROJECT or at such later date as may be established by DHR, under any of the following conditions:
 - a) If DHR funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. The Agreement may be modified or terminated to accommodate a reduction in funds.
 - b) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
 - c) If any license or certification required by law or regulation to be held by the PROJECT to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.

Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

3. DHR by written notice of default (including breach of Agreement) may terminate the whole or any part of this Agreement if:
 - a) If PROJECT fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or
 - b) If PROJECT fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from DHR, fails to correct such failures within 10 calendar days or such longer period as DHR may authorize.

The rights and remedies of DHR provided in the above clause related to default (including breach of Agreement) by the PROJECT shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

D. Access to Records

DHR, the Secretary of State's Office of the State of Oregon, the federal government, and all duly authorized representatives shall have access to the books, documents, papers, and records of the

PROJECT which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcripts.

E. Amendment

The terms of this Agreement may not be waived, altered, modified, supplemented or amended, except by written agreement signed by all parties.

F. Waiver

The failure of DHR or PROJECT to enforce any provision of this Agreement does not waive DHR's right to enforce any other provision.

G. INDEMNITY


PROJECT shall defend, save, hold harmless, and indemnify the State of Oregon and DHR, its officers, employees, agents, and members from all claims, suits or actions of whatsoever nature resulting from or arising out of the negligent activities or omissions of the PROJECT, its officers, employees, subcontractors, or agents under this Agreement.

H. Merger Clause

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. PROJECT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

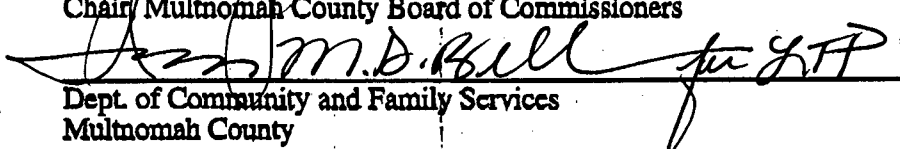
VIII. SIGNATURES

APPROVED BY:


Chair, Multnomah County Board of Commissioners

December 30, 1997

Date


Dept. of Community and Family Services
Multnomah County

Date

Gary K. Weeks, Director
Department of Human Resources

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS

Date

Reviewed by:

AGENDA # C-6 DATE 12/30/97
DEB BOGSTAD


Multnomah County Counsel

BOARD CLERK

Date

Lennie Bjornsen, Community Projects Manager

Date

DHR Contracts Unit

Date

P. 01

Roosevelt Neighborhood Health and Family Resource Center **Work & Evaluation Plan 97-98**

Project Component	Vision Impacts	Count Outputs	Measure Outcomes	Implement Strategies	Person Responsible	Time Line
BENCHMARKS/ GOAL	ACTIVITIES STRATEGY (LONG TERM)	ACTIVITIES STRATEGY (SHORT TERM)	PRODUCTS/OUTPUTS	MEASUREMENTS MEASURABLE OUTCOMES	RESOURCES/INPUTS	MEASUREMENT/ COMPLETION DATE
1. Access to Health Care 2. Decrease in Teen Pregnancy						
a. Improve integration of health and social services at service site. b. Increase handicapped access to service site c. Co-location of DHR services and those offered by other agencies	Remodel current site including redesigning phone and computer systems. This would allow for better utilization of current staff and create additional opportunities for co-located services Streamline documentation including confidentiality procedure to allow for increased collaboration between staff.	Meet with all involved parties to develop plan for space and support needs. Meet with project partners to discuss budget for remodeling. Develop timeline for remodeling RNHFRC (ideally would occur Summer 1998 at which time earthquake upgrade is scheduled to occur). Design confidentiality form and documentation guidelines to be used by all RNHFRC staff	Number of Multnomah County, DHR, and community agencies co-located at RNHFRC. Number of services available at RNHFRC. Number of referrals received by Pregnancy Prevention Outreach worker.	Remodeling of existing site completed which allows for centralized reception services. Centralized phone system in place. Integrated computer system in place. Wheelchair ramp installed. Increase in number of referrals received by Pregnancy Outreach Worker.	Operations Team PPS Administration MCDCP Administration MCHD Administration RNHFRC Staff	Remodeling plan including timeline and budget completed by 2/98 Remodeling completed Summer 1998 Confidentiality form and documentation guidelines completed 6/98 Increase in # of referrals 1997 - 1998 school year

Post-it® Fax Note 7671

Date 12/11	# of pages 1
To CAROL TURNER	From SUE LARSEN
Co./Dept.	Co.
Phone #	Phone #
Fax # 378-2897	Fax # 248-3379

Ok for FY98 Contract
LLB 12/15



Roosevelt Neighborhood Health and Family Resource Center Work & Evaluation Plan 97-98						
Project Component	Vision Impacts	Count Outputs	Measure Outcomes	Implement Strategies	Person Responsible	Time Line
BENCHMARKS/ GOAL	ACTIVITIES STRATEGY (LONG TERM)	ACTIVITIES STRATEGY (SHORT TERM)	PRODUCTS/OUTPUTS	MEASUREMENTS MEASURABLE OUTCOMES	RESOURCES/INPUTS	MEASUREMENT/ COMPLETION DATE
2 High School Graduation Rates 3. Basic Student Skills 4-Drug Free Youth						
Enhance integration with Roosevelt High School and surrounding cluster schools in order to increase school attendance, completion, and meeting Roosevelt Renaissance 2000, referred to as RR2000. (see Attachment A)	Participate with PPS on projects that better identify and address student needs. Expand Mentorship Program to provide services throughout entire Freshman year (currently ends during Fall Term - will require change in Grant).	Attend PPS Faculty meetings in which RNHFRC staff can work collaboratively with PPS staff on issues that impact student attendance and school completion. Explore changing RNHFRC Team meeting to different time to allow participation by PPS staff. Continue to coordinate Mentorship Project to match incoming Freshman students identified as at risk of not completing transition to H.S. Explore having P.S.U. M.S. Interns establish support groups for at risk students, i.e. Substance Abuse, Anger Management at H.S. and cluster schools.	Number of PPS meetings attended by RNHFRC staff. Number of PPS personnel attending RNHFRC Team meetings. Number of referrals received from PPS personnel. Number of Freshmen(Mentees) matched with Seniors (Mentors). Number of mentees who complete Freshman year. Number of support groups established.	Increase in number of RNHFRC staff attending PPS meetings. Increase in number of PPS personnel attending RNHFRC Team meetings. Increase in number of students referred by PPS personnel. Increase in number of Freshman Mentees matched with Senior Mentors. Increase in number of Mentees who complete Freshman year. Increase in number of support groups established.	RHS Staff Roosevelt Caring Community (Change in Mentorship Program) RNHFRC Staff P.S.U. M.S. Interns	1997 - 1998 School Year Mentorship Program 10/98

Roosevelt Neighborhood Health and Family Resource Center

Work & Evaluation Plan 97-98

Project Component	Vision/Impacts	Count/Outputs	Measure/Outcomes	Implement/Strategies	Person Responsible	Time Line
BENCHMARKS/GOAL	ACTIVITIES STRATEGY (LONG TERM)	ACTIVITIES STRATEGY (SHORT TERM)	PRODUCTS/OUTPUTS	MEASUREMENTS MEASURABLE OUTCOMES	RESOURCES/INPUTS	MEASUREMENT/COMPLETION DATE
2. High School Graduation Rates 3. Basic Student Skills 4. Drug Free Youth Stabilize families so that youth can be more successful in school.	Work with community members to identify and address client service needs. Provide outreach services to community members on a more individualized basis.	Identify pre-existing community groups (ie. foster care providers, youth groups). Meet with groups to assess strengths and needs. Develop strategies to address identified service needs. Approach project partners about adding FTE for case management.	Number of community meetings held per year. Number of service needs identified. Number of service need met. Number of people provided with I. & R. Number of people linked to services based on client report.	Increase in number of community meetings. Increase in number of service needs met. Increase the number of people provided with I. & R. Increase number of people successfully linked to services based on client report.	RNHFRFC staff RNHFRFC partners	1997 - 1998 School Year

CONTRACT FOR SERVICES
MULTNOMAH COUNTY COMMUNITY AND FAMILY SERVICES DEPARTMENT

**Attachment A:
Service Elements and Contract Amounts**

Contractor Name : OREGON - DEPT OF HUMAN RESOURCES-ROOSEVELT	Vendor Code: GV0853B	
Contractor Address : 500 NE SUMMER ST - 4TH FLOOR SALEM OR 97310-1012		
Telephone : 945-5821	Fiscal Year : 97/98	Federal ID # :

Program Office Name : DCYF Family Resource Center

Service Element Name : Integrated Services Projects (Y19A)

<u>Mod. #</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Payment Method</u>	<u>Payment Basis</u>	<u># of Units</u>	<u>Unit Description</u>	<u>Unit Rate</u>	<u>Amount</u>
0	1/1/98	6/30/98	Per Invoice	Match				\$20,000.00
Total								\$20,000.00

MEETING DATE: DEC 30 1997
AGENDA NO: C-7
ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Revenue/Expenditure Contract Between State Department of Human Resources and County Department of Community and Family Services, for an Integrated Services Project at Marshall High School.

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: _____
AMOUNT OF TIME NEEDED: N/A

DEPARTMENT: Community and Family Services DIVISION: _____

CONTACT: Lorenzo Poe TELEPHONE #: 248-3691
BLDG/ROOM #: 166/7th

PERSON(S) MAKING PRESENTATION: Consent

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Renewal of revenue/expenditure agreement with the State Department of Human Resources to fund the Integrated Services Project at Marshall High School.

4/14/98 ORIGINALS to BRIAN SMITH

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT
MANAGER: Lorenzo Poe

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



MULTNOMAH COUNTY OREGON

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

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

TO: Board of County Commissioners

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

DATE: December 22, 1997

SUBJECT: Intergovernmental Agreement between Community and Family Services and State
Department of Human Resources: Marshall High School Integrated Services Project

I. Recommendation/Action Requested: The Department of Community and Family Services recommends Board of County Commissioner approval of the revenue/expenditure contract with Oregon Department of Human Resources, for the period January 1, 1998 through June 30, 1998.

II. Background/Analysis: The Department of Community and Family Services has received a revenue/expenditure contract from the State Department of Human Resources, to continue funding an Integrated Services Project at Marshall High School. The agreement allows local funds to be matched with federal funds. It also outlines responsibilities of the school district, State, and County around the Integrated Services Project. These responsibilities reflect the proposals approved earlier by these parties.

The Integrated Services Projects bring together the school, State offices, and County offices in order to provide coordinated services to children and families. Most of the Integrated Service Projects in Multnomah County include a school-based site location, to facilitate access to and delivery of services.

III. Financial Impact: The contract requires \$20,000 of local funds to match the federal funds; federal funds of \$34,000 are returned to the County for the project. These funds are included in the Department's budget.

IV. Legal Issues: none

V. Controversial Issues: none

VI. Link to Current County Policies: The Integrated Services Projects address the following benchmarks: Access to Health Care, Drug Free Teens, Teen Pregnancy, High School Graduation Rate, and Basic Student Skills.

VII. Citizen Participation: The Leaders Roundtable is instrumental in developing and implementing Integrated Service sites.

VIII. Other Government Participation: This contract is a joint effort of the Portland Public School District, State Department of Human Resources, and the County.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☒ [X]

Prior-Approved Contract Boilerplate: Attached; XX Not Attached

Contract #102938

Amendment # 0

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$50,000 <input type="checkbox"/> Architectural & Engineering under \$50,000 <input type="checkbox"/> Intergovernmental Agreement Under \$50,000 <input type="checkbox"/> Expenditure <input type="checkbox"/> Revenue	<input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption) <input type="checkbox"/> Architectural & Engineering over \$50,000 <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input checked="" type="checkbox"/> Intergovernmental Agreement over \$50,000 <input checked="" type="checkbox"/> Expenditure <input checked="" type="checkbox"/> Revenue APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # C-7 DATE 12/30/97 DEB BOGSTAD BOARD CLERK

Department: Community & Family Services

Division: _____

Date: December 22, 1997

Originator: Sue Larsen

Phone: 248-2691 x24421

Bldg/Room 166/7th

Administrative Contact: Brian Smith

Phone: 248-5184

Bldg/Room 166/7th

Description of Contract: _____

Funds integrated services/Caring Communities project at Marshall High School.

RFP/BID #: _____	Date of RFP/BID: _____	Exemption Expiration Date: _____
ORS/AR # _____	Contractor is <input type="checkbox"/> JMBE <input type="checkbox"/> WBE <input type="checkbox"/> QRF <input type="checkbox"/> N/A <input type="checkbox"/> None	check all that apply
Original Contract No. _____	(Only for Original Renewals)	

Contractor Name: Department of Human Resources Mailing Address: 500 Summer St. NE Salem, OR 97310-1012 Phone: (503)945-5821 Employer ID# or SS#: _____ Effective Date: January 1, 1998 Termination Date: June 30, 1998 Original Revenue Amount: \$ 34,000 Amendment: \$ 0 Original Expenditure Amount: \$ 20,000 Amendment: \$ 0 Total Amount of Revenue: \$ 34,000 Total Amount of Expenditure: \$20,000	Remittance Address (if different) _____ <table border="1"> <thead> <tr> <th>Payment Schedule</th> <th>Terms</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> Lump Sum \$ _____</td> <td><input type="checkbox"/> Due on Receipt</td> </tr> <tr> <td><input type="checkbox"/> Monthly \$ _____</td> <td><input type="checkbox"/> Net 30</td> </tr> <tr> <td><input checked="" type="checkbox"/> Other \$ Quarterly</td> <td><input type="checkbox"/> Other</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements contract - Requisition Required</td> </tr> <tr> <td colspan="2">Purchase Order No. _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements Not to Exceed \$ _____</td> </tr> <tr> <td colspan="2">Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></td> </tr> </tbody> </table>	Payment Schedule	Terms	<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt	<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30	<input checked="" type="checkbox"/> Other \$ Quarterly	<input type="checkbox"/> Other	<input type="checkbox"/> Requirements contract - Requisition Required		Purchase Order No. _____		<input type="checkbox"/> Requirements Not to Exceed \$ _____		Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>	
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Purchase Order No. _____																	
<input type="checkbox"/> Requirements Not to Exceed \$ _____																	
Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>																	

REQUIRED SIGNATURES:

Department Manager: Lorenz Pae mcs

Purchasing Director: _____

(Class II Contracts Only) County Counsel: Katie Dwyer

County Chair/Sheriff: Janet Pae

Contract Administration: _____

(Class I, Class II Contracts Only)

Date: 12/23/97

Date: _____

Date: 12/23/97

Date: 12/30/97

Date: _____

VENDOR CODE 00028				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	Inc/Dec Ind.
Expenditure Coding: See Attached											
	156	010	1310			2396 Revenue			State DHR	\$34,000	

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

DISTRIBUTION: Contracts Administration, Initiator, Finance

f:\admin\ceu\contract.98\dhmar98.caf

COMMUNITY AND FAMILY SERVICES DEPARTMENT

CONTRACT APPROVAL FORM SUPPLEMENT

Contractor : OREGON - DEPT OF HUMAN RESOURCES-MARSHALL

Vendor Code : 00028

Page 1 of 1

12/22/97

Fiscal Year : 97/98

Numeric Amendment : 00

Contract Number : 102938

LINE	FUND	AGEN	ORG CODE	ACTIVIY CODE	OBJECT CODE	REPORTING CATEGORY	LGFS DESCRIPTION	ORIGINAL AMOUNT	AMENDMENT AMOUNT	FINAL AMOUNT	REQ'TS ESTIMATE
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TOTAL								\$20,000.00	\$0.00	\$20,000.00	\$0.00

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421 SW 6 th Ave. 7th floor
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hereinafter called "PROJECT".

I. BACKGROUND

The Department of Human Resources supports community partnership projects that integrate human services, engender community planning and action, align services and policy strategies, to improve human service outcomes for Oregonians. Service integration through community partnership projects is a key DHR strategy in meeting DHR and local goals and outcomes and the Oregon Benchmarks.

The Marshall Family Resource Center is a system coordination access point, working together in partnership to integrate, coordinate, advocate and develop services for youth and families in outer-southeast Portland. The Center, located in Marshall High School, has a full-time director and a family intervention specialist. Part-time outstationed staff include an AFS case manager, drug and alcohol specialist, mental health counselor, and outreach workers. Active programs are peer mediation, mentoring and a girls leadership group. The Center coordinates extensively with the Marshall Caring Community, a broad based coalition working on a variety of local concerns.

Current initiatives include increasing access through broadening services available in the evening, increasing parental involvement and improving school attendance and performance with incoming freshman, focusing on study skills and personal development.

The DHR Community Partnership Team provides direct and indirect assistance to the Center through its financial and personnel supports. The Center requests support with such areas as connecting with DHR local branch offices and resources, resolving DHR internal and external barriers, group facilitation, connecting with disability communities and upgrading DHR computer link.

II. TERM

This Agreement begins *January 1, 1998* *LT/mae/RS.* and ends June 30, 1998, unless otherwise terminated or extended in writing. **DHR support for this project for the Fiscal Year 98-99 is contingent upon approval of further federal funding and a second year agreement approved by DHR.**



John A. Kitzhaber
Governor

500 Summer Street NE
Salem OR 97310-1012
Salem - (503) 945-5821
FAX - (503) 378-4324
TTY - (503) 945-5928

DHR 2259 (8/95)

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B. DHR agrees to:

- 1) Provide assistance in overcoming service intergration barriers among agencies, governments, service providers, advocacy groups, etc..
- 2) Provide training and technical support regarding operation of state services, budgeting, technology, and branch office flexibility.
- 3) Provide assistance in areas of evaluation, strategic planning, communication, media, project design, group facilitation, volunteer development, human services data, social services coordination, alternative programs.
- 4) Provide a DHR Project Coordinator to act as problem solver for issues relating to DHR functions and resources.
- 5) Provide assistance in developing services, materials, and alternative revenue sources to support the project's operational needs.

C. PROJECT agrees to:

- 1) Work with DHR to develop a functional workplan which includes expected results. The workplan shall include or connect to an evaluation plan (e.g. outcomes, outputs impacts, inputs) that will measure the results of the project.
- 2) Develop and implement a plan for posting monthly project updates on the First Class E-Mail System.
- 3) Submit semi-annual project reports to DHR on or before January 30 and July 30. Progress reports are to include, but not limited to, information on project outcomes, goals, outputs, inputs, lessons learned, anecdotal stories, next steps, and budget narrative. These semi-annual reports may be transmitted via the First Class E-Mail System.
- 4) Produce services, materials, and alternative revenue sources to support the project's operational needs.
- 5) Develop appropriate agreements with other project partners outlining the responsibilities of each project partner.
- 6) Provide DHR with a forecasted expenditure budget and invoice before any federal funds will be disbursed. The forecasted budget shall include, but not be limited to:
 - a. Amount of local, non-federal, previously unmatched dollars being submitted for match
 - b. Sources of all local matching dollars

expiration date of this Agreement. This Agreement will not be amended after the expiration date.

VII. GENERAL PROVISIONS

A. Effective Date and Duration

It is provided that the passage of the Agreement expiration date shall not extinguish or prejudice DHR's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.

B. Subcontracts and Assignments

PROJECT may not enter into any subcontracts for any of the work scheduled under this Agreement or transfer any of its interest in the Agreement without obtaining prior approval from DHR.

C. Termination

1. This Agreement may be terminated by mutual consent of both parties, or by DHR upon 30 days notice, in writing, and delivered by certified mail or in person.
2. In addition, DHR may terminate this Agreement, in whole or in part, effective upon delivery of written notice to the PROJECT, or at such later date as may be established by DHR, under any of the following conditions:
 - a) If DHR funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. The Agreement may be modified or terminated to accommodate a reduction in funds.
 - b) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
 - c) If any license or certification required by law or regulation to be held by the PROJECT to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.

Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

3. DHR by written notice of default (including breach of Agreement) may terminate the whole or any part of this Agreement if:
 - a) If PROJECT fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or
 - b) If PROJECT fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from DHR, fails to correct such failures within 10 calendar days or such longer period as DHR may authorize.

The rights and remedies of DHR provided in the above clause related to default (including breach of Agreement) by the PROJECT shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

D. Access to Records

DHR, the Secretary of State's Office of the State of Oregon, the federal government, and all duly authorized representatives shall have access to the books, documents, papers, and records of the

PROJECT which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcripts.

E. Amendment

The terms of this Agreement may not be waived, altered, modified, supplemented or amended, except by written agreement signed by all parties.

F. Waiver

The failure of DHR or PROJECT to enforce any provision of this Agreement does not waive DHR's right to enforce any other provision.

G. INDEMNITY

PROJECT shall defend, save, hold harmless, and indemnify the State of Oregon and DHR, its officers, employees, agents, and members from all claims, suits or actions of whatsoever nature resulting from or arising out of the negligent activities or omissions of the PROJECT, its officers, employees, subcontractors, or agents under this Agreement.

H. Merger Clause

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. PROJECT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

VIII. SIGNATURES

APPROVED BY:



Chair, Multnomah County Board of Commissioners

December 30, 1997

Date



Dept. of Community and Family Services
Multnomah County

12/23/97

Date

Gary K. Weeks, Director
Department of Human Resources

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS

Date

Reviewed by:



Multnomah County Counsel

AGENDA # C-7 DATE 12/30/97

DEB BOGSTAD

BOARD CLERK

12/23/97

Date

Lennie Bjornsen, Community Projects Manager

Date

DHR Contracts Unit

Date

✓
LRB
12/3

MARSHALL FAMILY RESOURCE CENTER WORK PLAN: FY 1997 - 1998

OBJECTIVE	BENCHMARKS	STRATEGY	INPUTS	OUTPUTS	OUTCOME MEASURES
1. Increase range of Services in Marshall Family Resource Center.	<ul style="list-style-type: none"> • Increase Health Care & Mental Health Services. • Increase Government Responsiveness. 	<ul style="list-style-type: none"> • Develop evening parent workshop/group. • Add partner staff to MFRC. • Partnership with Portland Impact for Emp. Spec. • Partnership with AFS for evening service at MFRC. • Increase Service Team 	<ul style="list-style-type: none"> • Update MFRC brochure. • Partner with Family Works, Portland Impact, Mainstream, and other appropriate agencies. • Arrange space/time for youth employment spec. • Agreements with Mult. Co. Dev. Disabilities and AFS. 	<ul style="list-style-type: none"> # of group participants. # of DD clients served. # of youth job referrals. # of clients served in evening. # of I & R counts. # of consultative events 	<ul style="list-style-type: none"> ↑ Increase parenting confidence by survey. ↑ Increase average attendance at Service Team. ↑ Increase consultative events
2. Increase parent involvement with schools and student.	<ul style="list-style-type: none"> • School Success • Sense of Community 	<ul style="list-style-type: none"> • MFRC staff involvement with MCC family involvement efforts. • Develop and implement morning parent "coffee" hour at MFRC. • Service Team members will introduce 2 parents each per school quarter. 	<ul style="list-style-type: none"> • Invitations for coffee hour. • Supplies for "coffee hour". 	<ul style="list-style-type: none"> # of participants at MHS open house. # of "coffee hour" meetings. Average number of parents attending "coffee hour". # of parents introduced to MFRC. # of parents participating with MCC. 	<ul style="list-style-type: none"> ↑ Increase number of parents at MHS open house. ↑ Increase number of MHS parents with knowledge of MFRC. ↑ Increase number of residents participating with MCC.
3. Increase school attendance and performance.	<ul style="list-style-type: none"> • Increase High School Completion. • School Success. • Social Harmony in Schools. 	<ul style="list-style-type: none"> • Pilot 8th - 9th grade transition project with MT Scott Center for Learning • Service Team system to track student attendance. • Develop "flex fund" for incentives for attendance and support. • Continue Peer Helper Prog. 	<ul style="list-style-type: none"> • Volunteer tutors • Training from DHR • Curriculum and case management services - Portland Impact. • Intern to coordinate Peer Helper Program. • MHS student peer helpers 	<ul style="list-style-type: none"> # of tutor hours. # of students completing pilot Attendance records # of students tracked, with attendance per quarter. # of students trained in peer mediation. # of mediations and community service projects 	<ul style="list-style-type: none"> □ 90% attendance for students participating in project. ⇒ no drop outs for participants in project. ⇒ ↑ Maintain or increase attendance for 75% students tracked by Service Team/MFRC.
4. Increase access to services.	<ul style="list-style-type: none"> • Increase Health Care & Mental Health Services. 	<ul style="list-style-type: none"> • Contact community, civic and religious organizations • Contact youth serving organizations. • Plan for possible satellite RC at Binnemeed MS. 	<ul style="list-style-type: none"> • List of community agencies. • Mailing support. • Partner to print brochure. 	<ul style="list-style-type: none"> # of brochures printed. # of agencies contacted and # of responses. 	<ul style="list-style-type: none"> □ 20% of agencies will respond to contact. □ Contact 40 agencies □ Steering committee of community partners will be formed around Binnemeed plans. ↑ New brochure printed.

MARSHALL FAMILY RESOURCE CENTER WORK PLAN: FY 1997 - 1998

OBJECTIVE	BENCHMARK	STRATEGY	INPUTS	OUTPUTS	OUTCOME MEASURES
5. Build resiliency.	<ul style="list-style-type: none"> Reduce Teen Pregnancy. Reduce Domestic Abuse. School Success. 	<ul style="list-style-type: none"> Continue (GLAD) Girls Leadership & Development Program. Introduce NIA holistic fitness to GLAD. Case management at MFRC. 	<ul style="list-style-type: none"> Funding (\$60,000) for 6 months of GLAD. Funding for summer 1998 Destiny program. Partnership with Health Department and funding for NIA classes (approx. \$1000). MSW Intern from PSU. 	<ul style="list-style-type: none"> # of girls in program. # of NIA classes and # of average participants. # of case managed cases. # of GLAD participants with mentor. 	<ul style="list-style-type: none"> ⇒ No GLAD pregnancies. ↑ Improved school attendance for 75% GLAD participants. ↑ 75% of youth participants in GLAD and case managed will demonstrate increased self-esteem. ↑ 90% of GLAD participants will have increased awareness in career options.
6. Improve MFRC process for delivery of service and improve facilities for service delivery.	<ul style="list-style-type: none"> Increase Government Accountability & Responsiveness. Increase and improve access to Mental & Physical Health Care. 	<ul style="list-style-type: none"> Printer for Family Intervention Specialist. Upgrade DHR computer system. Fax machine for MFRC. Upgrade partitions and flooring to maximize confidentiality. Efficient, compatible phone system for entire center. 	<ul style="list-style-type: none"> Purchase or in-kind printer. Technical and financial assistance from DHR (AFS). Multnomah County and Portland Public School coordination for fax. Partner donations of partitions, carpet and installation. Install multiple county phone system. 	<ul style="list-style-type: none"> \$ support for system improvement. # of partner agencies supporting upgrade of MFRC. 	<ul style="list-style-type: none"> ↑ Increased service perception by partner agencies. ↑ Increase in DHR use of computer system to support clients. ↑ Increase in level of confidentiality provided in MFRC. ↑ New phone system in place.
7. Increase peace promotion and violence prevention activities in Outer SE Portland.	<ul style="list-style-type: none"> Social Harmony in Schools. Reduce Domestic Abuse. 	<ul style="list-style-type: none"> Organize a Peace Camp in summer of 1997. Work with Multnomah County in establishing a Peace Action Zone. Maintain Peer Helper Program. Continue active Peace Action Team. 	<ul style="list-style-type: none"> Funding for Peace Camp. Volunteers for Peace Camp. Intern for Peer Helper Program. Information from Health Department on Peace Action Zones. 	<ul style="list-style-type: none"> # of volunteers. # of young people attending Peace Camp. # of Peer Helpers. # of Peace Action Team Meetings. 	<ul style="list-style-type: none"> ↑ Increased perception of safety as measured by survey, of students participating in Peace Camp and Peer Helper Program ⇒ Measure number of disciplinary actions for students participating in programs.

MARSHALL FAMILY RESOURCE CENTER WORK PLAN: FY 1997 – 1998

OBJECTIVE	BENCHMARK	STRATEGY	INPUTS	OUTPUTS	OUTCOME MEASURES
8. Increase resident participation in community development activities.	<ul style="list-style-type: none"> Resident Satisfaction. Sense of Community. 	<ul style="list-style-type: none"> Encourage membership in MCC Resident Action Team. Build alliance with Portland Organizing Project. Develop trained resident leaders for MCC. 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> # of residents participating in MCC activities. # of residents completing leadership training. # of MCC members in SE chapter of Portland Organizing Project. 	<ul style="list-style-type: none"> Increased perception of influence as measured by resident survey. Increased resident participation in MCC activities.
9. Increase the scope of activities and the influence of the Marshall Caring Community.	<ul style="list-style-type: none"> Sense of Community. Livable Communities. School Success. Increased Earning Capacity. 	<ul style="list-style-type: none"> Continue merger negotiations with OSE Neighborhood Project. Work with Multnomah County on Community Building Initiative. Provide leadership in workforce development and school success efforts. 	<ul style="list-style-type: none"> Information from Multnomah County on Community Building Initiative. CBI Core Team update MCC. Locate MCC Coordinator in Southeast Portland. Continue Partnership with SE Works. 	<ul style="list-style-type: none"> # of residents utilizing SE Works. 	<ul style="list-style-type: none"> Partnership with Multnomah County for Community Building. MCC Coordinator located in SE Portland. 75% of residents utilizing SE Works will receive employment or advanced training.

CONTRACT FOR SERVICES
MULTNOMAH COUNTY COMMUNITY AND FAMILY SERVICES DEPARTMENT

**Attachment A:
Service Elements and Contract Amounts**

Contractor Name : OREGON - DEPT OF HUMAN RESOURCES- MARSHALL	Vendor Code: 00028
Contractor Address : 500 NE SUMMER ST - 4TH FLOOR SALEM OR 97310-1012	
Telephone : 945-5821	Fiscal Year : 97/98
Federal ID # :	

Program Office Name : DCYF Family Resource Center

Service Element Name : Integrated Services Projects (Y19A)

<u>Mod. #</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Payment Method</u>	<u>Payment Basis</u>	<u># of Units</u>	<u>Unit Description</u>	<u>Unit Rate</u>	<u>Amount</u>
0	1/1/98	6/30/98	Per Invoice	Match				\$20,000.00
Total								\$20,000.00

MEETING DATE: DEC 30 1997
AGENDA NO: C-8
ESTIMATED START TIME: 9:30 AM

(Above Space for Board Clerk's Use ONLY)

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Revenue/Expenditure Contract Between State Department of Human Resources and County Department of Community and Family Services, for an Integrated Services Project at Beach Elementary School.

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: _____
AMOUNT OF TIME NEEDED: N/A

DEPARTMENT: Community and Family Services DIVISION: _____

CONTACT: Lorenzo Poe TELEPHONE #: 248-3691
BLDG/ROOM #: 166/7th

PERSON(S) MAKING PRESENTATION: Consent

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Renewal of revenue/expenditure agreement with the State Department of Human Resources to fund the Integrated Services Project at Beach Elementary School.

1/14/98 ORIGINALS to Brian Smith

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT
MANAGER: Lorenzo Poe md

BOARD OF
COUNTY COMMISSIONERS
97 DEC 23 AM 11:42
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



MULTNOMAH COUNTY OREGON

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

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

TO: Board of County Commissioners

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

DATE: December 22, 1997

SUBJECT: Intergovernmental Agreement between Community and Family Services and State
Department of Human Resources: Beach School Integrated Services Project

I. Recommendation/Action Requested: The Department of Community and Family Services recommends Board of County Commissioner approval of the revenue/expenditure contract with Oregon Department of Human Resources, for the period January 1, 1998 through June 30, 1998.

II. Background/Analysis: The Department of Community and Family Services has received a revenue/expenditure contract from the State Department of Human Resources, to continue funding an Integrated Services Project at Beach Elementary School. The agreement allows local funds to be matched with federal funds. It also outlines responsibilities of the school district, State, and County around the Integrated Services Project. These responsibilities reflect the proposals approved earlier by these parties.

The Integrated Services Projects bring together the school, State offices, and County offices in order to provide coordinated services to children and families. Most of the Integrated Service Projects in Multnomah County include a school-based site location, to facilitate access to and delivery of services.

III. Financial Impact: The contract requires \$20,000 of local funds to match the federal funds; federal funds of \$34,000 are returned to the County for the project. These funds are included in the Department's budget.

IV. Legal Issues: none

V. Controversial Issues: none

VI. Link to Current County Policies: The Integrated Services Projects address the following benchmarks: Access to Health Care, Drug Free Teens, Teen Pregnancy, High School Graduation Rate, and Basic Student Skills.

VII. Citizen Participation: The Leaders Roundtable is instrumental in developing and implementing Integrated Service sites.

VIII. Other Government Participation: This contract is a joint effort of the Portland Public School District, State Department of Human Resources, and the County.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☒ [X]

Contract #102948

Prior-Approved Contract Boilerplate: Attached; XX Not Attached

Amendment # 0

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$50,000 <input type="checkbox"/> Architectural & Engineering under \$50,000 <input type="checkbox"/> Intergovernmental Agreement Under \$50,000 <input type="checkbox"/> Expenditure <input type="checkbox"/> Revenue	<input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption) <input type="checkbox"/> Architectural & Engineering over \$50,000 <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input checked="" type="checkbox"/> Intergovernmental Agreement over \$50,000 <input checked="" type="checkbox"/> Expenditure <input checked="" type="checkbox"/> Revenue <div style="text-align: center;"> APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # C-8 DATE 12/30/97 DEB BOGSTAD BOARD CLERK </div>

Department: Community & Family Services

Division: _____

Date: December 22, 1997

Originator: Sue Larsen

Phone: 248-2691 x24421

Bldg/Room 166/7th

Administrative Contact: Brian Smith

Phone: 248-5184

Bldg/Room 166/7th

Description of Contract: _____

Funds integrated services/Caring Communities project at Beach Elementary School.

RFP/BID #: _____	Date of RFP/BID: _____	Exemption Expiration Date: _____
ORS/AR # _____	Contractor is <input type="checkbox"/> JMBE <input type="checkbox"/> JWBE <input type="checkbox"/> JQRF <input type="checkbox"/> JN/A <input type="checkbox"/> None	check all that apply
Original Contract No. _____	(Only for Original Renewals)	

Contractor Name: Department of Human Resources Mailing Address: 500 Summer St. NE Salem, OR 97310-1012 Phone: (503)945-5821 Employer ID# or SS#: _____ Effective Date: January 1, 1998 Termination Date: June 30, 1998 Original Revenue Amount: \$ 34,000 Amendment: \$ 0 Original Expenditure Amount: \$ 20,000 Amendment: \$ 0 Total Amount of Revenue: \$ 34,000 Total Amount of Expenditure: \$20,000	Remittance Address (if different) _____ <table style="width:100%;"> <tr> <th style="text-align: left;">Payment Schedule</th> <th style="text-align: left;">Terms</th> </tr> <tr> <td><input type="checkbox"/> Lump Sum \$ _____</td> <td><input type="checkbox"/> Due on Receipt</td> </tr> <tr> <td><input type="checkbox"/> Monthly \$ _____</td> <td><input type="checkbox"/> Net 30</td> </tr> <tr> <td><input checked="" type="checkbox"/> Other \$ <u>Quarterly</u></td> <td><input type="checkbox"/> Other</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements contract - Requisition Required</td> </tr> <tr> <td colspan="2">Purchase Order No. _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements Not to Exceed \$ _____</td> </tr> <tr> <td colspan="2">Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></td> </tr> </table>	Payment Schedule	Terms	<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt	<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30	<input checked="" type="checkbox"/> Other \$ <u>Quarterly</u>	<input type="checkbox"/> Other	<input type="checkbox"/> Requirements contract - Requisition Required		Purchase Order No. _____		<input type="checkbox"/> Requirements Not to Exceed \$ _____		Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>	
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Purchase Order No. _____																	
<input type="checkbox"/> Requirements Not to Exceed \$ _____																	
Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>																	

REQUIRED SIGNATURES:

Department Manager: *Lolung Poems*

Date: 12/23/97

Purchasing Director: _____

Date: _____

(Class II Contracts Only)

County Counsel: *Katie Gault*

Date: 12/23/97

County Chair/Sheriff: *Mulkey*

Date: 12/30/97

Contract Administration: _____

Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE 00027				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	Inc/Dec Ind.
<i>Expenditure Coding: See Attached</i>											
	156	010	1310			2396 Revenue			State DHR	\$34,000	

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

DISTRIBUTION: Contracts Administration, Initiator, Finance

\\cfsd-fs3\vol2\admin\ceu\contract 98\dhbbs98.caf

COMMUNITY AND FAMILY SERVICES DEPARTMENT

CONTRACT APPROVAL FORM SUPPLEMENT

Contractor : OREGON - DEPT OF HUMAN RESOURCES-BEACH SCHOO

Vendor Code : 00027

Page 1 of 1

12/22/97

Fiscal Year : 97/98

Numeric Amendment : 00

Contract Number : 102948

LINE	FUND	AGEN	ORG CODE	ACTIVIY CODE	OBJECT CODE	REPORTING CATEGORY	LGFS DESCRIPTION	ORIGINAL AMOUNT	AMENDMENT AMOUNT	FINAL AMOUNT	REQT'S ESTIMATE
03	156	010	1310	Y19A	6060	9997L <div></div>	Integr Svs Pre-Matched Funding Integrated Services Projects	\$20,000.00		\$20,000.00	
TOTAL								\$20,000.00	\$0.00	\$20,000.00	\$0.00

INTERGOVERNMENTAL AGREEMENT

This Agreement is between the Department of Human Resources, Office of the Director, Community Partnership Team, hereinafter called DHR, and

Multnomah County
Dept. of Community and Family Services
Beach Family Resource Center Project
421 SW 6 th Ave. 7th floor
Portland, Or. 97204

hereinafter called "PROJECT".

I. BACKGROUND

The Department of Human Resources supports community partnership projects that integrate human services, engender community planning and action, align services and policy strategies, to improve human service outcomes for Oregonians. Service integration through community partnership projects is a key DHR strategy in meeting DHR and local goals and outcomes and the Oregon Benchmarks.

Beach Family Resource Center is located in Beach Elementary School in N/NE Portland. Its mission is to work in collaboration with community partners "to stabilize families to ensure a safe and supportive environment so children can regularly attend school." There is a full time director, and four social work interns. The Center's current focus includes increasing availability of services to students and their families, increasing parental involvement in school, facilitating integration between the Center and the school, and strengthening the area service team.

The DHR Community Partnership Team provides direct and indirect assistance to the Center through its financial and personnel supports. The Center requests support such as assistance with the stabilization and future development of the project, group facilitation, resolving DHR internal and external integration barriers, and seeking additional funding.

II. TERM

This Agreement begins ^{KG} ~~July 1, 1997~~ ^{January 1, 1998 LTP/mas/phs} and ends June 30, 1998, unless otherwise terminated or extended in writing. DHR support for this project for the Fiscal Year 98-99 is contingent upon approval of further federal funding and a second year agreement approved by DHR.

III. GOALS AND OUTCOMES

PROJECT shall work to accomplish the goals and outcomes outlined in Attachment A, Annual Work Plan, which is hereby incorporated into this Agreement by this reference.



John A. Kitzhaber
Governor

IV. RESPONSIBILITIES AND EXPECTATIONS

A. All Parties shall:

- 1) Commit to the desired goals and outcomes of the project and work toward meeting those objectives.
- 2) Provide leadership and support as necessary to accomplish the goals and outcomes of the project.
- 3) Assist in the operation, oversight, and evaluation of the project.

B. DHR agrees to:

- 1) Provide assistance in overcoming service intergration barriers among agencies, governments, service providers, advocacy groups, etc..
- 2) Provide training and technical support regarding operation of state services, budgeting, technology, and branch office flexibility.
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- 2) Develop and implement a plan for posting monthly project updates on the First Class E-Mail System.
- 3) Submit semi-annual project reports to DHR on or before January 30 and July 30. Progress reports are to include, but not limited to, information on project outcomes, goals, outputs, inputs, lessons learned, anecdotal stories, next steps, and budget narrative. These semi-annual reports may be transmitted via the First Class E-Mail System.
- 4) Produce services, materials, and alternative revenue sources to support the project's operational needs.
- 5) Develop appropriate agreements with other project partners outlining the responsibilities of each project partner.
- 6) Provide DHR with a forecasted expenditure budget and invoice before any federal funds will be disbursed. The forecasted budget shall include, but not be limited to:
 - a. Amount of local, non-federal, previously unmatched dollars being submitted for match
 - b. Sources of all local matching dollars
 - c. Projected (annual or quarterly) budget expenditures, including local and federal portions of the total budget
 - d. Total project budget

- e. An explanation of what the DHR matching funds system allows the project to do that may otherwise be beyond the local coalitions capacity or resources.
- 7) Provide a final expenditure report at the end of the contracting period, detailing actual local and federal expenditures for the project.
- 8) Submit all invoices and local checks for payment of funds related to this agreement no later than September 15, 1998.

V. DESIGNATED LIAISONS

Liaisons for the term of this Agreement shall be as follows, all correspondence or notices shall be directed to their attention:

PROJECT: Kathleen Saadat ATP/mis/KS
~~Sue Larsen~~ KG
Multnomah County
Dept. of Community and Family Services
Beach Family Resource Center Project
421 SW 6 th Ave. 7th floor
Portland, Or. 97204 5th
Phone # (503) 248-3691, x 24421
3999 26232

DHR: Carol F. Turner
Community Partnership Team
500 Summer St NE, 4th Floor
Salem, OR 97310-1012

VI. CONSIDERATION

- A. Payment for all work performed during the term of this Agreement shall not exceed the maximum sum of ~~\$68,000.00~~ ^{\$34,000.00 LTP/mus K6}. Consideration will be paid on a quarterly basis upon receipt and approval of an invoice and check from the PROJECT. Funding for this project for the Fiscal Year 98-99 is contingent upon approval of further federal funding and a second year agreement approved by DHR.**
- B. PROJECT shall bill DHR quarterly, in arrears. At the end of each quarter PROJECT will submit an invoice for the integration services provided and accompany the invoice with a check for the non-federal portion (not to exceed \$10,000.00) of the amount being billed. The invoice and the check shall be sent to:**
- Brandy McDaniel, Admin. Assist.
Community Partnership Team
Department of Human Resources
500 Summer Street NE, 4th Floor
Salem, OR 97310-1012**
- C. All invoices and local checks for payment of funds related to this agreement must be submitted no later than September 15, 1998 in accordance with the instructions of this section.**
- D. PROJECT shall not submit billing and DHR will not pay, any amount in excess of the maximum compensation set forth above. If this maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before PROJECT performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. This Agreement will not be amended after the expiration date.**

VII. GENERAL PROVISIONS

A. Effective Date and Duration

It is provided that the passage of the Agreement expiration date shall not extinguish or prejudice DHR's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.

B. Subcontracts and Assignments

PROJECT may not enter into any subcontracts for any of the work scheduled under this Agreement or transfer any of its interest in the Agreement without obtaining prior approval from DHR.

C. Termination

1. This Agreement may be terminated by mutual consent of both parties, or by DHR upon 30 days notice, in writing, and delivered by certified mail or in person.
2. In addition, DHR may terminate this Agreement, in whole or in part, effective upon delivery of written notice to the PROJECT, or at such later date as may be established by DHR, under any of the following conditions:
 - a) If DHR funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. The Agreement may be modified or terminated to accommodate a reduction in funds.
 - b) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
 - c) If any license or certification required by law or regulation to be held by the PROJECT to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.

Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

3. DHR by written notice of default (including breach of Agreement) may terminate the whole or any part of this Agreement if:
 - a) If PROJECT fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or
 - b) If PROJECT fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from DHR, fails to correct such failures within 10 calendar days or such longer period as DHR may authorize.

The rights and remedies of DHR provided in the above clause related to default (including breach of Agreement) by the PROJECT shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

D. Access to Records

DHR, the Secretary of State's Office of the State of Oregon, the federal government, and all duly authorized representatives shall have access to the books, documents, papers, and records of the PROJECT which are directly pertinent to this specific Agreement for the purpose of making audit,

examination, excerpts, and transcripts.

E. Amendment

The terms of this Agreement may not be waived, altered, modified, supplemented or amended, except by written agreement signed by all parties.

F. Waiver

The failure of DHR or PROJECT to enforce any provision of this Agreement does not waive DHR's right to enforce any other provision.

G. INDEMNITY

PROJECT shall defend, save, hold harmless, and indemnify the State of Oregon and DHR, its officers, employees, agents, and members from all claims, suits or actions of whatsoever nature resulting from or arising out of the negligent activities or omissions of the PROJECT, its officers, employees, subcontractors, or agents under this Agreement.

H. Merger Clause

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. PROJECT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

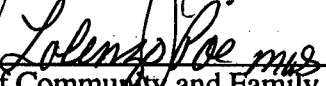
VIII. SIGNATURES

APPROVED BY:



Chair, Multnomah County Board of Commissioners

December 30, 1997
Date



Dept. of Community and Family Services
Multnomah County

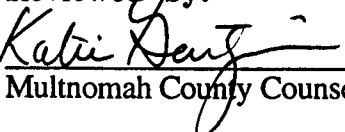
12/23/97
Date

Gary K. Weeks, Director
Department of Human Resources

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-8 DATE 12/30/97
DEB BOGSTAD
BOARD CLERK

Date

Reviewed by:



Multnomah County Counsel

12/23/97
Date

Lennie Bjornsen, Community Projects Manager

Date

DHR Contracts Unit

Date

97/98 Work Plan for Beach Family Resource Center -tbb 12/3

Project Component	Vision Impacts	Count Outputs	Measure Outcomes	Implement Strategies
<p>1. Increase availability of services to community students/families.</p> <p>BENCHMARK Nurturing families, stable home life.</p>	<p>Increase contact between school, community and resources</p> <p>Increase # of services available at Beach school to students before and after school</p>	<p># of families referred to available programs</p> <p># staff hours at BFRC</p> <p># of referrals to BFRC of families in need of I & R</p>	<p>Families are satisfied with the services they receive as measured by client survey.</p>	<p>Actively participate in Jefferson Caring Community</p> <p>Recruit MSW interns from local colleges/universities</p> <p>Apply for grants that will assist in development of services needed at Beach School.</p> <p>Develop and distribute new BFRC brochure</p> <p>Link with Foster Care Resources</p>
<p>2. Increase and support parental involvement in school</p> <p>BENCHMARK Increase readiness to learn</p>	<p>Increase interaction of Beach FRC with families of Beach students</p>	<p># of activities BFRC staff participates in which engage families with school and learning</p>	<p>Identification of issues that impact parent involvement in school activities.</p> <p>Increase # of families participating in family focused activities</p> <p>Increase types of family activities related to learning</p>	<p>Work with staff to support pertinent aspects of School Improvement Plan.</p> <p>Participate in design of events intended to encourage parental involvement.</p> <p>Attend events & activities designed to encourage parental involvement</p>

97/98 Work Plan for Beach Family Resource Center

Project Component	Vision Impacts	Count Outputs	Measure Outcomes	Implement Strategies
3. Facilitate BFRC integration with Beach School BENCHMARK Increase County Govt. accountability and responsiveness	Work with Beach school staff to enhance student success and attendance	# of Beach school/PPS meetings attended by BFRC staff # of contacts with school personnel (1:1 and group)	Count PPS generated referrals to BFRC Pre & post survey of Beach staff and families re: understanding of services available	Attend Beach school meetings to inform about BFRC. Attend Beach/PPS meetings to work together on issues that impact student success and attendance. Develop communication methods to keep Beach staff informed about BFRC.
4. Strengthen area service team BENCHMARK Healthy communities	Increase effective integrated service delivery to families	# of members attending meeting # of different agencies represented	Team members provide more coordinated service as measured by service coordination scale.	Contact each current resource team member to encourage participation Hold meeting with steering committee to review work plan and address systems issues.

Attachment A: Service Elements and Contract Amounts

Contractor Name : OREGON - DEPT OF HUMAN RESOURCES-BEACH SCHOO		Vendor Code: 00027
Contractor Address : 500 NE SUMMER ST - 4TH FLOOR SALEM OR 97310-1012		
Telephone : 945-5821	Fiscal Year : 97/98	Federal ID # :

Service Element Name : *Integrated Services Projects (Y19A)*

<u>Mod. #</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Payment Method</u>	<u>Payment Basis</u>	<u># of Units</u>	<u>Unit Description</u>	<u>Unit Rate</u>	<u>Amount</u>
0	1/1/98	6/30/98	Per Invoice	Match				\$20,000.00
Total								\$20,000.00

DEC 30 1997

MEETING DATE: C-9

AGENDA NO: 9:30am

(Above space for Board Clerk's Use Only)

AGENDA PLACEMENT FORM

SUBJECT: Ratification of Portland Public School (PPS) Amendment which 1) changes the name from CAPCare to CAAPCare, 2) deletes risk sharing section of original contract, 3) adds conditions to include Oregon Health Plan Medicaid Demonstration Project Administrative Rules, and 4) extends duration of contract.

BOARD BRIEFING

Date Requested: _____
Amount of Time Needed: _____

REGULAR BRIEFING

Date Requested: _____
Amount of Time Needed: _____ N/A

DEPARTMENT: Community and Family Services

CONTACT: Lorenzo Poe

DIVISION:
TELEPHONE: 248-3691
BLDG/ROOM: B166/7th

PERSON(S) MAKING PRESENTATION: Consent

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

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

Amendment assures that PPS is in compliance with applicable Oregon Health Plan Medicaid Demonstration Project Administrative Rules. Eliminates Risk Sharing Section of initial contract to implement agreement between County and State. Extends contract six months.

SIGNATURES REQUIRED:

1/14/98 ORIGINALS to Duane Brown

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER:

Lorenzo Poe ms

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk 248-3277

S:\ADMIN\CEU\CONTRACT\98\CAAARE\9982.BCC

BOARD OF
COUNTY COMMISSIONERS
97 DEC 18 AM 8:39
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

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

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

TO: Board of County Commissioners

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

DATE: December 3, 1997

SUBJECT: FY 97-98 Contract Amendment for Mental Health Capitation Services

I. Retroactive Status: This contract amendment is retroactive to July 1, 1997 due to the time required to implement multiple contract amendments to the State Agreement and a new Mental Health Organization (MHO) Agreement with the State while still operating under the procurement of 1992.

II. Recommendation/Action Requested: Department of Community and Family Services recommends Board of County Commissioner approval of the amendment with Portland Public Schools for the period July 1, 1997 through June 30, 1998.

III. Background/Analysis: This amendment extends the duration of the contract six months to June 30, 1998 and assures that subcontract is in compliance with applicable Oregon Health Plan Medicaid Demonstration Project Administrative Rules. The Rules were referenced in an amendment effective July 1, 1997 to the State Mental Health and Developmental Disability Services Division contract (State Agreement) for the Children's Mental Health Capitation Project. Subcontracts were notified of the Administrative Rule changes by mail in July, 1997. Effective November 1, 1997, this amendment changes the name of the Capitation Project from Multnomah County Child, Adolescent Plan Care (CAPCare) to Multnomah County Child, Adolescent and Adult Plan Care (CAAPCare). It adds new compensation terms and the Risk Sharing Section of the original contract is deleted for services purchased on a fee-for-service basis.

IV. Financial Impact: Effective November 1, 1997, State Medicaid funds for child and adult mental health services will come to the County on a capitated rate per month, per eligible member enrolled in the County's plan. In the eighteen-month demonstration project, Fiscal projections indicated that CAPCare would be in a pay-back situation to the State if the risk sharing were not removed. For this reason, the risk-sharing language was removed by amendment to the State Agreement and is now being removed from the subcontracts, as well.

V. Legal Issues: None

VI. Controversial Issues: None

VII. Link to Current County Policies: This agreement and its amendments address the County benchmark to increase access to mental health services.

VIII. Citizen Participation: N/A

IX. Other Government Participation: This agreement reflects a decision to delete the mutual sharing of risk by County and State, and subsequently by subcontractors to the County.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☐

Contract # **103557**

Prior-Approved Contract Boilerplate: ☐ Attached; ☒ Not Attached

Amendment # **2**

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$50,000 <input type="checkbox"/> Architectural & Engineering under \$50,000 <input type="checkbox"/> Intergovernmental Agreement Under \$50,000 <input type="checkbox"/> Expenditure <input type="checkbox"/> Revenue	<input checked="" type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption) <input type="checkbox"/> Architectural & Engineering over \$50,000 <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input checked="" type="checkbox"/> Intergovernmental Agreement over \$50,000 <input checked="" type="checkbox"/> Expenditure <div style="text-align: center;"> APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # C-9 DATE 12/30/97 DEB BOGSTAD BOARD CLERK </div>

Department: Community & Family Services

Division: _____

Date: December 2, 1997

Originator: Bill Thomas/Gloria Wang

Phone: 248-5464 ext. 22095, ext. 24561 Bldg/Room 166/6th

Administrative Contact: Duane Brown

Phone: 248-3691 ext 24563 Bldg/Room 166/7th

Description of Contract:

Retroactive Amendment to Contract for Multnomah CAPCare 1) changes the name from CAPCare to CAAPCare, 2) deletes risk sharing section of original contract, 3) adds contract conditions to include Oregon Health Plan Medicaid Demonstration Project Administrative Rules, and 4) extends duration of contract six months, from December 31, 1997 through June 30, 1998.

RFP/BID #: N/A IGA Date of RFP/BID: _____ Exemption Expiration Date: N/A IGA
 ORS/AR # _____ Contractor is ☐ JMBE ☐ JWBE ☐ JQRF ☐ JN/A ☐ None check all that apply
 Original Contract No. _____ (Only for Original Renewals)

<p>Contractor Name: Portland Public Schools Mailing Address: 531 SE 14th Street PORTLAND OR 97214 Phone: (503) 916-5840 Employer ID# or SS#: 93-6000830 Effective Date: July 1, 1997 Termination Date: June 30, 1998 Original Contract Amount: \$Requirements Total Amt of Previous Amendments: \$Requirements Amount of Amendment: \$Requirements Total Amount of Agreement: \$Requirements</p>	<p>Remittance Address (if different) _____</p> <table style="width:100%;"> <tr> <th style="text-align: left;">Payment Schedule</th> <th style="text-align: left;">Terms</th> </tr> <tr> <td><input type="checkbox"/> Lump Sum \$ _____</td> <td><input type="checkbox"/> Due on Receipt</td> </tr> <tr> <td><input type="checkbox"/> Monthly \$ _____</td> <td><input type="checkbox"/> Net 30</td> </tr> <tr> <td><input type="checkbox"/> Other \$ _____</td> <td><input type="checkbox"/> Other</td> </tr> </table> <p><input type="checkbox"/> Requirements contract - Requisition Required</p> <p>Purchase Order No. _____</p> <p><input type="checkbox"/> Requirements Not to Exceed \$ _____</p> <p>Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></p>	Payment Schedule	Terms	<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt	<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30	<input type="checkbox"/> Other \$ _____	<input type="checkbox"/> Other
Payment Schedule	Terms								
<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt								
<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30								
<input type="checkbox"/> Other \$ _____	<input type="checkbox"/> Other								

REQUIRED SIGNATURES:

Department Manager: *Lolanga Pae me*

Date: 12/10/97

Purchasing Director:
(Class II Contracts Only)

Katie Gaiter

Date: _____

County Counsel:

Wally Pein

Date: 12/16/97

County Chair/Sheriff:

Date: 12/30/97

Contract Administration:

(Class I, Class II Contracts Only)

Date: _____

VENDOR CODE 00285				VENDOR NAME Portland Public Schools				TOTAL AMOUNT: \$Requirements			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	S UB OBJ	REPT CATEG	LGFS DESCIP	AMOUNT	Inc/Dec Ind.
									See Attached.		

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

DISTRIBUTION: Contracts Administration, Initiator, Finance

\\cfsd-fs3\vol2\admin\ceu\contract.98\capcare\ppscaap.ca2

COMMUNITY AND FAMILY SERVICES DEPARTMENT
CONTRACT APPROVAL FORM SUPPLEMENT
Contractor : PORTLAND PUBLIC SCHOOLS-CLASS AIDES-CAP/CAP+
Vendor Code : 00285

Page 1 of 1
12/2/97

Fiscal Year : 97/98

Numeric Amendment : 02

Contract Number : 103557

LINE	FUND	AGEN	ORG CODE	ACTIVIY CODE	OBJECT CODE	REPORTING CATEGORY	LGFS DESCRIPTION	ORIGINAL AMOUNT	AMENDMENT AMOUNT	FINAL AMOUNT	REQT'S ESTIMATE
52	395	010	1663	C11X	6060	9601X <input type="text"/>	MH XIX Capitation CC/CCPlus Childrens Mental Health	Requirements	Requirements	Requirement	\$100,000.00
51	395	010	1663	C11X	6060	9699L <input type="text"/>	CC/CCPlus CC/CCPlus Childrens Mental Health	Requirements	Requirements	Requirement	\$100,000.00
TOTAL								\$0.00	\$0.00	\$0.00	\$200,000.00

MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY AND FAMILY SERVICES
CONTRACT #103557, AMENDMENT #2

DURATION OF AMENDMENT:	FROM: July 1, 1997	TO: June 30, 1998
CONTRACTOR NAME:	Portland Public Schools	TELEPHONE: (503) 916-5840
CONTRACTOR ADDRESS:	531 SE 14 th Street	IRS NUMBER: 93-6000830
	Portland, OR 97214	

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

PART I: CHANGES

A. Statement of Work

This amendment extends duration of contract six months, from January 1, 1998 through June 30, 1998. Effective November 1, 1997 this amendment changes the name of the COUNTY capitated mental health program to Multnomah County CAAPCare (Child, Adolescent and Adult Plan), hereinafter referred to as "CAAPCare."

B. Compensation and Payment

Effective November 1, 1997, this amendment deletes the risk sharing section of the original contract and adds new compensation and payment terms effective through June 30, 1998.

C. Program General Conditions

Effective July 1, 1997, this amendment adds the Oregon Health Plan Medicaid Demonstration Project Administrative Rules (410-141-0000 through 0860) as conditions of contracting for Medicaid services through June 30, 1998.

PART II: AMENDMENT NARRATIVE

A. Statement of Work

CONTRACTOR agrees to provide medically appropriate, pre-authorized mental health services as described in the Multnomah County CAAPCare (Child, Adolescent and Adult Plan) Provider Manual, herein incorporated by reference and hereinafter referred to as "PROVIDER MANUAL." CONTRACTOR agrees to provide the above referenced Covered Services in compliance with the PROVIDER MANUAL, any program instructions and special conditions, all applicable Federal, State, and local laws, State Administrative Rules, service definitions and any subsequent revisions to the above referenced documents.

B. Compensation and Payment

Effective November 1, 1997, through June 30, 1998, this amendment deletes Section 4. Risk Sharing of the original contract. During this period, November 1, 1997 through June 30, 1998, the capitation revenue received from the State of Oregon, including any interest earned thereon, will be allocated by the COUNTY as follows: eighty-eight percent (88%) distributed to a Mental Health Care Budget and twelve percent (12%) distributed to the Administrative

Budget.

The COUNTY may withhold from payment up to ten percent (10%) of the approved amount for CONTRACTOR'S covered claims expenses. The amount withheld from CAAPCare participating provider payments will be credited to an interest bearing Provider-Withhold Account. Within six (6) months of the end of the contract period, if there is no deficit in the Mental Health Care Budget, COUNTY will distribute a portion of the Provider-Withhold Account proportionally among providers based upon approved covered claims expenses.

A deficit shall be deemed to exist in the Mental Health Care Budget if the claims exceed the revenues for the contract period. If there is a deficit in the Mental Health Care Budget, funds credited to the Provider-Withhold Account will be retained by the County to offset the deficit up to the total amount of the Provider Withhold Account.

CONTRACTOR agrees to submit bills to the COUNTY-designated claims processing service, in accordance with procedures contained in the PROVIDER MANUAL. CONTRACTOR'S claims for authorized covered services will be reimbursed by COUNTY on a fee-for-service or case-rate basis, adjusted for coordination of benefits and collection of third party resources in accordance with applicable portions of Part C, Program General Conditions and the PROVIDER MANUAL. The fee schedule for CAAPCare claims for authorized covered services shall be published by COUNTY. To be eligible for payment, a claim must be submitted to COUNTY-designated claims processing service for adjudication within four (4) months from the date the claim was incurred by CONTRACTOR.

C. Program General Conditions

In accordance with the PROVIDER MANUAL updates and notices of changes provided by correspondence to CONTRACTOR from July 1, 1997 to the present, CONTRACTOR agrees that CONTRACTOR is and has been governed by all duly promulgated State Rules in Oregon Administrative Rules (OAR) Chapter 309, made applicable by this contract, and applicable Oregon Medical Assistance Program Rules in OAR Chapter 410 whether in effect at the time this Contract is signed or adopted or amended during the term of this Contract. This includes those rules pertaining to the provision of prepaid capitated health care services, OAR Chapter 410, Division 141. Specifically, and in no way limiting the foregoing sentences, CONTRACTOR agrees to comply with all the applicable Medicaid Assistance Program Rules (OMAP Rules), OMAP BA Codes, Prioritized List of Covered Services, and corresponding rate schedule for all services provided under this contract from July 1, 1997 until the termination of this contract June 30, 1998.

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

MULTNOMAH COUNTY

BY Lorenzo P. ... 12/10/97
Director, Dept of Community &
Family Services Date

BY Beverly Stein 12/30/97
Multnomah County Chair Date

REVIEWED:

BY Katie Gatzert 4/16/97
Thomas Sponsler, County Counsel
Counsel For Multnomah County, Oregon Date

PORTLAND PUBLIC SCHOOLS

BY _____
Agency Authorized Signer Date

BY _____
Agency Authorized Signer Date

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-9 DATE 12/30/97
DEB BOGSTAD
BOARD CLERK

CONTRACT FOR SERVICES
MULTNOMAH COUNTY COMMUNITY AND FAMILY SERVICES DEPARTMENT

**Attachment A:
Service Elements and Contract Amounts**

Contractor Name : PORTLAND PUBLIC SCHOOLS-CLASS AIDES- CAP/CAP+	Vendor Code: 00285
Contractor Address : 531 SE 14TH PORTLAND OR 97214	
Telephone : (503)916-5840	Fiscal Year : 97/98 Federal ID # : 93-6000830

Program Office Name : Mental Health Contracts C

Service Element Name : CC/CCPlus Childrens Mental Health (C11X); cc/cc+ classroom aides

<u>Mod. #</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Payment Method</u>	<u>Payment Basis</u>	<u># of Units</u>	<u>Unit Description</u>	<u>Unit Rate</u>	<u>Amount</u>
1	7/1/97	12/31/97	Per Invoice	Fee for Service	Req't's	15 minutes	6.63	Req't's
1	7/1/97	12/31/97	Per Invoice	Fee for Service	Req't's	15 minutes	6.63	Req't's
2	1/1/98	6/30/98	Per Invoice	Fee for Service	Req't's	15 minutes	6.63	Req't's
2	1/1/98	6/30/98	Per Invoice	Fee for Service	Req't's	15 minutes	6.63	Req't's
Total					Req't's			Req't's

MEETING DATE: DEC 30 1997
AGENDA NO: C-10
ESTIMATED START TIME: 9:30 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Renew IGA with City of Portland to administer Business Income Tax

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: December 30, 1997
AMOUNT OF TIME NEEDED: 3 to 5 minutes

DEPARTMENT: DSS DIVISION: Finance

CONTACT: Dave Boyer TELEPHONE #: 248-3903
BLDG/ROOM #: 106/1430

PERSON(S) MAKING PRESENTATION: Dave Boyer

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Intergovernmental Agreement with the City of Portland for Administration of the Multnomah County Business Income Tax

1/14/98 ORIGINALS to Theresa Sullivan

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT _____
MANAGER: DB Vickie L. Gales

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

BOARD OF
COUNTY COMMISSIONERS
97 DEC 22 PM 2:51
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY, OREGON

COUNTY COMMISSIONERS		DEPARTMENT OF SUPPORT SERVICES FINANCE DIVISION		
BEVERLY STEIN, CHAIR	DIRECTORS OFFICE	PORTLAND BUILDING	MATERIALS MGMT	FORD BUILDING
DAN SALTZMAN, DISTRICT #1	ACCOUNTS PAYABLE	1120 SW FIFTH AVENUE, SUITE 1430	CONTRACTS	2505 SE 11TH 1ST FLOOR
GARY HANSEN, DISTRICT #2	GENERAL LEDGER	PO BOX 14700	PURCHASING	PORTLAND, OR 97202
VACANT, DISTRICT #3	PAYROLL	PORTLAND, OR 97293-0700		PHONE (503) 248-5111
SHARRON KELLEY, DISTRICT #4	TREASURY	PHONE (503) 248-3312		FAX (503) 248-3252
	LAN ADMINISTRATION	FAX (503) 248-3292		TDD (503) 248-5170

MEMORANDUM

TO: Board of County Commissioners

FROM: Dave Boyer 

DATE: December 22, 1997

REQUESTED PLACEMENT DATE: December 30, 1997

SUBJECT: Intergovernmental Agreement with City of Portland to Administer Business Income Tax

I. Recommendation / Action:

Approve IGA between County and City for City to continue administering the Multnomah County Business Income Tax Code MCC 5.60

II. Background / Analysis:

In June 1993, the Board of County Commissioners adopted a new Business Income Tax Law under MCC 5.60 to achieve code conformity with the City of Portland Business License Law. The City has administered both the tax collection and license collection since June 1993.

This IGA renews this IGA for another five years and provides for the option to renew by additional five year increments..

The IGA contains no significant changes from the IGA currently in effect. This IGA is effective July 1, 1998.

III. Financial Impact:

Original IGA calls for annual administrative compensation to be increased by 3% or the Portland Consumer Price Index whichever is greater. The administrative fees will continue to be increased at this level. The 1997/98 fees are \$496,501.

IV. Legal Issues:

None

V. Controversial Issues:

None

VI. Link to Current County Policy:

Linked to County Policy

VII. Citizen Participation:

None

VIII. Other Government Participation:

The agreement was jointly reviewed by Multnomah County and the City of Portland staff.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal [X]

Contract # 500405

Prior-Approved Contract Boilerplate: _____ Attached: _____ Not Attached

Amendment # _____

CLASS I <input type="checkbox"/> Professional Services under \$50,000 <input type="checkbox"/> Intergovernmental Agreement under \$50,000	CLASS II <input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	CLASS III <input checked="" type="checkbox"/> Intergovernmental Agreement over \$50,000 APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # C-10 DATE 12/30/97 DEB BOGSTAD BOARD CLERK
--	---	--

Department: Support Services Division: Finance Date: December 15, 97

Contract Originator: Dave Boyer Phone: 248-3903 Bldg/Room: 106/1430

Administrative Contact: Theresa Sullivan Phone: 248-3635 Bldg/Room: 106/1430

Description of Contract: Administrative agreement with City of Portland to administer Business Income Tax Code

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

Exemption Expiration Date: _____

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

Original Contract No. _____ (ONLY FOR ORIGINAL RENEWALS)

Contractor Name: <u>City of Portland Bureau of License</u> Mailing Address: <u>1900 SW 4th Avenue, Portland, Or 97201</u> Phone: <u>823-5154</u> Employer ID# or SS#: _____ Effective Date: _____ Termination Date: _____ Original Contract Amount: \$ _____ Total Amt of Previous Amendments: \$ _____ Amount of Amendment: \$ _____ Total Amount of Agreement: \$ _____	Remittance Address (if different) _____ <table> <tr> <td>Payment Schedule</td> <td>Terms</td> </tr> <tr> <td><input type="checkbox"/> Lump Sum \$ _____</td> <td><input type="checkbox"/> Due on Receipt</td> </tr> <tr> <td><input type="checkbox"/> Monthly \$ _____</td> <td><input type="checkbox"/> Net 30</td> </tr> <tr> <td><input type="checkbox"/> Other \$ _____</td> <td><input type="checkbox"/> Other</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements contract - Requisition Required</td> </tr> <tr> <td colspan="2">Purchase Order No. _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements Not to Exceed \$ _____</td> </tr> <tr> <td colspan="2">Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></td> </tr> </table>	Payment Schedule	Terms	<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt	<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30	<input type="checkbox"/> Other \$ _____	<input type="checkbox"/> Other	<input type="checkbox"/> Requirements contract - Requisition Required		Purchase Order No. _____		<input type="checkbox"/> Requirements Not to Exceed \$ _____		Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>	
Payment Schedule	Terms																
<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt																
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<input type="checkbox"/> Other \$ _____	<input type="checkbox"/> Other																
<input type="checkbox"/> Requirements contract - Requisition Required																	
Purchase Order No. _____																	
<input type="checkbox"/> Requirements Not to Exceed \$ _____																	
Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>																	

REQUIRED SIGNATURES:

Department Manager: [Signature] Date: 12/22/97

Purchasing Manager: _____ Date: _____

(Class II Contracts Only)

County Counsel: [Signature] Date: 12-22-97

County Chair/Sheriff: [Signature] Date: December 30, 1997

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 DESCRIPT	AMOUNT	INC DEC
01											

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

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

EXHIBIT A

Multnomah County, Oregon City of Portland

Intergovernmental Agreement

THIS AGREEMENT entered into by and between Multnomah County, Oregon, hereinafter "County", and the City of Portland, hereinafter "City", is pursuant to authority of ORS Chapter 190.

WITNESSETH, the parties hereto recite the following reasons for entering into this agreement:

- a. The consolidated administration of the City of Portland's Business License Law and the Multnomah County Business Income Tax Law has simplified reporting requirements for businesses and has reduced administrative costs for both the City and the County for the past 5 years;
- b. A consolidated program has allowed businesses to follow a single set of procedures and definitions and to file a single reporting form for both the City and the County for the past 5 years;
- c. The City and the County jointly developed and have retained code conformity and consolidated administration for the past 5 years with positive results for both jurisdictions;
- d. The City is willing and able to continue administering the Multnomah County Business Income Tax Law for the County.

NOW THEREFORE, in consideration of the mutual promises contained herein and as authorized by ORS 190.010 to 190.030, the parties agree as follows:

1. General Administration.

A. The City of Portland's Bureau of Licenses (the Bureau) shall supervise and administer the Multnomah County Business Income Tax Law, imposed by the Multnomah County Code as adopted by the Multnomah County Commission (the County Business Income Tax).

B. The Bureau shall be responsible for all administration of the County Business Income Tax, including, but not limited to, adopting administrative rules and written policies, collecting estimated tax payments, auditing returns, assessing and collecting tax and tax deficiencies, including penalties and interest, making refunds, hearing appeals, and taking any other action necessary to administer and collect taxes under the County Business Income Tax. The County shall be responsible for defending any claims against

the County Business Income Tax regarding the legal validity or constitutionality of the County Business Income Tax.

C. In performing its duties under this Agreement, the Bureau may in its discretion determine what action shall be taken to enforce the provisions of the County Business Income Tax and collect the tax imposed thereunder. In exercising its discretion, the Bureau shall provide a level of service comparable to the level of service it provides in the administration of the Business License Law. If the Bureau deems it necessary to vary substantially from this standard, the Bureau shall notify the County of the need and obtain its written consent.

D. As the tax administrator, the Bureau is authorized to collect any and all taxes, penalties and interest for any tax year open under statute.

E. Appeals Board.

1. The County designates the Business License Appeals Board, as created by the Business License Law, as the body for reviewing taxfiler appeals from final determinations made by the Bureau under the County Business Income Tax.

2. The County Chair shall provide recommendations for appointments to be made by the Mayor to the Business License Appeals Board. The Mayor shall appoint one (1) of the three (3) public members of the Business License Appeals Board from the list of recommendations submitted by the County Chair.

2. Payments to the County.

The Bureau shall deposit all taxes collected under this Agreement to a trustee account within the City established on behalf of and for the benefit of the County. The account shall earn interest based on the City's internal interest allocation used for its own funds. The City shall, after deducting its cost of administration, refunds and other credits, remit the balance of the tax collected under this Agreement to the County by the tenth (10th) business day following the close of each month. The Bureau shall maintain a reserve balance of approximately Seventy five thousand dollars (\$75,000). The Bureau shall make payments of taxes collected under this Agreement to the County's Local Government Investment Pool Account No. 4017. Should extraordinary refunds, adjustments, or credits require funds in excess of the \$75,000, the Bureau may retain a reasonable amount in excess of the \$75,000 in the trustee account, or the County shall transfer necessary funds to the Bureau from its Local Government Investment Pool Account No. 4017 to the City's Local Government Investment Pool Account No. 4002. The Bureau shall prepare monthly reconciliations of deposits made and net revenues collected. The Bureau shall provide a minimum of 10 days prior notice if it requires transfer by the County of an amount equal to or greater then \$500,000.

3. Payments to the City.

The annual compensation to the City for administration services for FY 97-98 was \$496,501. For FY 98-99 and thereafter, the annual compensation will be adjusted annually by the greater of three percent (3%) or the Portland Consumer Price Index All Urban Consumers (CPI-U) as issued by the US Department of Labor, Bureau of Labor Statistics during February of each year. The compensation will be paid in twelve (12) equal payments, deducted from payments to the County as described in Paragraph 2. Payments to the City shall be made on the 15th of each month, or the first business day that follows.

4. Notification of Changes.

A. Law Changes. The parties shall cooperate in amending the County Business Income Tax or the Business License Law to ensure uniformity and consistency in these respective codes and in administration. Both parties to this Agreement shall notify the other of any intent to make changes, whether in the law or in the tax or fee rates, at least ninety (90) days prior to adopting the change. If both parties mutually agree to make changes, such changes may take effect in less than the ninety (90) days required.

B. Administrative Rules. The County's Finance Director, or designee, shall be involved in the development of Administrative Rules. The Bureau shall not initiate the public process for review and comment on proposed Administrative Rules until the County's Finance Director and the Bureau mutually agree on the content and substance of the Administrative Rules. The Bureau shall notify the County's Finance Director at least thirty (30) days prior to scheduling any public hearing on proposed Administrative Rules, unless both parties mutually agree to notice of less than thirty (30) days.

5. Reports.

A. The Bureau shall provide a receipts and expenditure report to the County at the close of each of the City's accounting periods. The Bureau will deliver a preliminary report, estimating receipts and expenditures by tax year, to the County by the 10th day of each month. If the 10th day falls on a legal holiday or on a weekend, the preliminary report will be delivered on the following business day.

B. The Bureau shall provide the County, upon request, a report of large potential refunds due to amended returns, appeals or overpaid estimates. For purposes of the preceding sentence, "large" shall mean an accumulated total of more than \$75,000.

C. The Bureau shall provide a written annual summary of the proceeding year to the County, showing the number of tax returns filed and dollars paid by entity type, total revenues collected, refunds paid, administrative costs, and other pertinent information.

D. The Bureau will provide other reports, or may discontinue or combine any of the above reports, as the Bureau and the County may mutually agree. If the reports requested by the County require extensive programming time, the City and the County may agree upon additional charges to be paid for such additional work under this Agreement.

6. Information.

A. The parties will cooperate in exchanging information and making joint public announcements to promote the effective administration of the County Business Income Tax and the Business License Law. In regard to the County Business Income Tax, all public announcements and all correspondence relating to policy matters and public relations will be the County's responsibility. The Bureau shall promptly notify the County of any matter arising from the administration of the County Business Income Tax that may require any legislative amendments or affect County policy, including any policy relating to the amount of taxes collected.

Additionally, the parties agree that all Business License returns and County Business Income Tax returns from any year, are available for review and may be used by Bureau staff to assess fees or taxes not previously collected under one and/or both laws.

B. Public Records.

1. All work performed by the City under the terms of this agreement shall be considered to be the property of the County. The County shall own any and all data the City produces in connection with this Agreement. Upon termination of this Agreement, the City and County shall mutually agree upon how delivery of this data is to be effected. Since the tax returns are combined with the City's business license return as of tax year 1993, the City and County jointly own these documents. The City and County will equally share any copying expenses related to these returns upon termination of this Agreement.

2. The Bureau may receive public records requests for County Business Income Tax records obtain by or provided to the Bureau under this Agreement. Any requests for such records shall be forwarded to the County's Finance Director, or routed as (s)he directs, by the following business day. The Finance Director, or designee, may determine if the requested records exist, and if such records are subject to the public records law. Any determination made by the County under the public records law shall be the County's sole responsibility, including but not limited to any legal defenses of such determinations.

7. Limitations and Conditions.

A. To the extent permitted by Oregon law, the City shall indemnify, within the limits of the Oregon Tort Claims, the County from any and all claims, demands, settlements or judgments, including all costs and

attorney fees, arising from any of the Bureau's activities under this Agreement, provided, that the City shall not be required to indemnify the County for any such claims, demands, settlements or judgments arising from the wrongful acts of the County's officers, agents or employees.

B. To the extent permitted by Oregon law, the County shall indemnify, within the limits of the Oregon Tort Claims, the City from any and all claims, demands, settlements or judgments, including all costs and attorney fees, arising from any of the County's activities under this Agreement, provided, that the County shall not be required to indemnify the City for any such claims, demands, settlements or judgments arising from the wrongful acts of the City's officers, agents or employees.

8. Confidentiality.

A. The information provided by individual taxpayers on tax returns shall be treated as confidential information to the extent permitted under Oregon law. Such information may be disclosed to the County, for purposes of monitoring or overseeing the Bureau's administration of the County Business Income Tax or for County revenue forecasting and budgeting. If authorized by the County's Finance Director, County officers, agents or employees may have access to such information after the execution of a certificate of confidentiality. The certificate shall advise the officer, agent or employee of the penalties for disclosure of confidential information. The County shall obtain and keep on file such certificates for its employees, agents and officers, and will provide a copy of the certificate to the Bureau.

B. When making requests for such information, other than routinely agreed upon reports, the County shall give not less than ten (10) days prior notice to the Bureau, stating the information desired, the purpose of the request and the use to be made of such information.

C. The County may audit the Bureau's administration of the County Business Income Tax, applying generally accepted audit standards. The County shall provide reasonable prior notice of its intent to audit the Bureau. Prior to beginning the audit, all County officers, agents or employees participating in the audit shall execute confidentiality certificates as provided herein.

D. The County has installed one "inquiry only" telephone access line to the Bureau's database. All costs associated with this line, including upgrades necessary to maintain this line, shall be the responsibility of the County. Access to this inquiry only line shall be restricted to the Finance Director and any one designee. Access to the database shall be protected by restrictions, including but not limited to, password access codes and physical lockouts. Anyone with access to this line shall execute a confidentiality certificate prior to being granted access.

9. Term.

A. The term of this Agreement shall be five years, beginning July 1, 1998, unless terminated by operation of law or by either party upon six months prior written notice. Prior to the termination date of this Agreement, the County and the Bureau will determine the disposition of pending matters which will not otherwise be completed within the term of this Agreement, and the Bureau will provide the County with such records as are necessary for the County to commence collecting the tax under the County Business Income Tax.

B. At its sole option, the County may extend the term of this Agreement by additional five-year increments, beyond the period identified above.

10. Integration.

This Agreement embodies the whole of the agreement between the parties for the administration of the County Business Income Tax. Any prior written or oral agreements shall be superseded hereby. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.

11. Severability.

If any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

12. Notice.

A. Project Managers. The City Project Manager shall be the Director of the City's Bureau of Licenses, or such other person as shall be designated in writing by the Director. The County's Project Manager shall be the County Finance Director, or such other person as shall be designated in writing by the County Finance Director.

B. Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City: Bureau of Licenses Director
1900 SW 4th Avenue, Room 40
Portland, Oregon 97201-5304

If to the County: Multnomah County Finance Director
1120 SW 5th Avenue, Room 1430
Portland, Oregon 97204

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

HEREBY AGREED:

CITY OF PORTLAND

By _____
Mayor
City of Portland, Oregon

Date signed: _____

Approved as to Form:

Jeffrey L. Rogers
Jeffrey L. Rogers
City Attorney

MULTNOMAH COUNTY

By *William Stein*
Chair
Multnomah County Board of
Commissioners

Date signed: December 30, 1997

Reviewed by:

Sandra Duff for
Thomas Sponsler
County Counsel for
Multnomah County

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-10 DATE 12/30/97
DEB BOGSTAD
BOARD CLERK

Meeting Date: DEC 30 1997
Agenda No: C-11
Est. Start Time: 9:30 AM

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Report to the Board an application for a Wrecker License for Frank Miller Truck Wrecking.

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

REGULAR MEETING Date Requested: December 30, 1997
Amt. of Time Needed: 5 minutes

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

PERSON(S) MAKING PRESENTATION: Stuart Farmer

ACTION REQUESTED

☐ Informational Only ☐ Policy Direction ☒ Approval ☐ Other

SUGGESTED AGENDA TITLE

Report to the Board an **Approval** of a Wrecker License for Frank Miller Truck Wrecking,
15015 NW Mill Rd., Portland, OR 97231

12/30/97 copy to Stuart Farmer
12/31/97 original picked up by Mr. Miller

SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: KB Lane. Uichew

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 DEC 23 AM 11:20



BOARD HEARING OF December 30, 1997

TIME 9:30 am

CASE NAME: Approval of a Wrecker License

ADDRESS: 15015 NW Mill Rd.

1. Applicant Name/Address

Frank Miller
59101 Pebble Creek Rd
Vernonia, OR 97064

2. Action Requested by Applicant

Applicant requests approval of a new automotive wrecker license at a site with a previous history of auto wrecking business.

Action Requested of Board	
<input type="checkbox"/>	Affirm Hearings Officer Dec.
	Hearing/Rehearing
	Scope of Review
	De Novo
	New information allowed
<input checked="" type="checkbox"/>	Affirm Admin. Decision

3. Planning Staff Recommendation

Staff has determined that the site meets the requirements for location under Oregon Revised Statute 822.110 and has determined that the site complies with local regulations adopted by MCC 11.15.

4. Sheriff's Office Recommendation

The backgrounds have been checked on applicant Frank Miller and no criminal history can be found .

5. If recommendation and decision are different, why?

None

6. The following issues were raised:

None

7. Do any of these issues have policy implications? Explain: None identified at this time.



MULTNOMAH COUNTY

**Department of Environmental Services
Transportation and Land Use Planning Division
2115 SE Morrison Street
Portland, OR 97214 Phone: (503) 248-3043**

December 22, 1997

Board of County Commissioners
1120 SW Fifth Ave, Suite 1500
Portland, OR 97204

RE: Auto Wrecker's License-Renewal

Frank Miller
15015 NW Miller Road, Portland, OR 97231

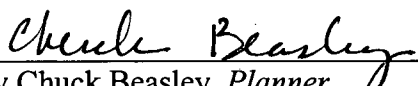
Recommend: Approval of Business Location

Dear Commissioners:

The staff of the Land Use Planning Section respectfully recommends that the above license renewal be approved, based upon the findings in the attached staff report that business satisfies the requirements contained in Multnomah County Code Section 5.10.010 B., including the applicable provisions ORS 822.110 and the locational provisions of ORS 882.135 and continues to retain a non-conforming status.

Sincerely,

Multnomah County Department of Environmental Services
Transportation and Land Use Planning Division


By Chuck Beasley, *Planner*
For: Kathy Busse, *Planning Director*

Staff Report
Determination of Compliance
Wrecker's License Renewal
15015 NW Mill Road

This Staff Report and Determination of Compliance is made pursuant to the requirements specified by Multnomah County Code Section 5.10.010 Wrecker certificate processing fees. An application for renewal of a Wrecker Certificate as required by the State of Oregon Department of Motor Vehicles was submitted by Frank Miller, 15015 NW Mill Road, Portland, OR 97231.

I. Conditions of Approval:

1. The applicant shall obtain a Business Certificate as a wrecker of motor vehicles from the Oregon Department of Transportation. Applications for future wrecker's license renewals shall include a copy of the prior years wreckers certificate issued by the Oregon Department of Transportation.
2. Applications for future wrecker's license renewals shall include submittal of a site plan drawn to scale, that clearly identifies the dimensional boundaries of the wrecking yard (fenced areas) in relation to property lines. Expansion of the dimensions of the wrecking yard shall not occur without prior approval of the County.

II. Applicable Zoning Considerations:

The applicable zoning considerations as specified in MCC 5.10.010 (C) are addressed below:

A. Compliance with the requirements of ORS 822.110:

The Oregon Department of Transportation shall issue a wrecker certificate to any person if the person meets all of the following requirements:

- (1) The person must establish that the area approved under the wrecker certificate for use in a wrecking business meets one of the following:**
 - (a) The area is more than 1,100 feet from the nearest edge of the right of way of any state highway.**
 - (b) The business conducted within the area is hidden or adequately screened by the terrain or other natural objects or by plantings, fences or other natural objects or by plantings, fences or other appropriate means, so as not to be visible from the main traveled way of the highway, in accordance with rules adopted by the director.**

- (c) The area and the business thereon are located in an area zoned for industrial use under authority of the laws of this state.**
- (2) The person must pay the fee required under ORS 822.700 for issuance of a wreckers certificate.**
- (3) The person must complete the application for a wrecker certificate described under ORS 822.115.**
- (4) The person must deliver to the department any approvals by local governments required under ORS 822.140.**
- (5) The person must deliver to the department a bond or letter of credit that meets the requirements of ORS 822.120.**

Finding: Photos taken of the site by Land Use Planning code enforcement staff on 11/25/97 indicate that both natural vegetation and a fence screen vehicles from adjacent roads consistent with ORS 833.110 (1)(b). However, due to the higher elevation of St. Helens Hwy, the screening does not hide the site from this main traveled way. Compliance with the requirements with ORS 833.110 (2)-(5) will be ensured by obtaining a Wreckers Certificate issued by the Oregon Department of Transportation.

B. Compliance with the business locational provisions of ORS 822.135:

- (1) A person commits the offense of improperly conducting a wrecking business if the person holds a wrecker certificate issued under ORS 822.110 and the person does any of the following:**
 - (b) Expands the dimensions of or moves any of the person's places of business or opens any additional places of business without obtaining a supplemental wrecker certificate by the procedure under ORS 822.125.**

Finding: Staff has found no evidence or indication that the dimensions of the wrecking yard have been expanded beyond that of the existing Wreckers Certificate. Applications for future wrecker's license renewals shall include submittal of a site plan clearly identifying the dimensional boundaries of the wrecking yard (fenced and/or screened areas) in relation to property lines. Expansion of the dimensions of the wrecking yard shall not occur without prior approval of the County.

- (g) Fails to keep the premises on the outside of the establishment clear and clean at all times.**

Finding: The Land Use Planning Section conducted a field inspection on 11/25/97 and completed a Field Inspection Record including photos of the site indicating the area outside the establishment is clear and clean.

(h) Conducts any wrecking, dismantling or altering of vehicles outside the building, enclosure or barrier on the premises of the business.

Finding: Based on the Land Use Planning Section Field Inspection Record dated 11/25/97, no dismantling or altering of vehicles outside the fenced area of the business was evident.

C. Compliance with zoning regulations:

The wrecking yard was determined to be a non-conforming use in the 12/16/91 "Report of Site Inspection" contained in the file on the subject property, located in the Land Use Planning Section. The file contains a record of license renewal requests from 1986 forward. Examination of Department land use inventory maps and zoning maps indicates that the business was in existence on the property in 1975, at which time the property was zoned M-1, which allowed the use. The property was re-zoned in 1997 to MUF-20, a district which does not allow the use, therefore it became non-conforming at that time.

III. Notification:

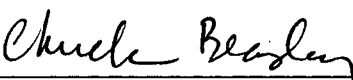
Notice of this application was sent to both the Multnomah County Sheriff and the Department of Assessment and Taxation on 12/18/97. As of the writing of this report, no response indicating concern has been reported from either department.

IV. Recommendation:

The staff of the Land Use Planning Section respectfully recommends that the above license renewal be approved, based upon findings that the business satisfies the applicable requirements contained in MCC 5.10.010 and ORS 822.110, ORS 882.135 and continues to retain a non-conforming status.

Dated this 22nd day of December, 1997,

Multnomah County Department of Environmental Services
Transportation and Land Use Planning Division


By Chuck Beasley, *Planner*
For: Kathy Busse, *Planning Director*

143737
B.P.A.

U.N. Ry. R/W to State ex 208. 8009

N. 50° 19' E
691
645

(11)
7.95 Ac.

S.E. COR.
T.M. HURLBURT
TO RUTH R. Co.
BK. 685
Pg. 302
7/24/15

MULTNOMAH

BOONVILLE POWER R/W

(12)
31.22 Ac.

(23)
2.10 Ac.

BK. 1420
Pg. 337
7/26/50

S.W. COR.
PARCEL 1, ALB.
KOWALSKI

N.W. COR.
NEHALEM BOON Co.
BK. 1060
Pg. 158
203 7/16/26

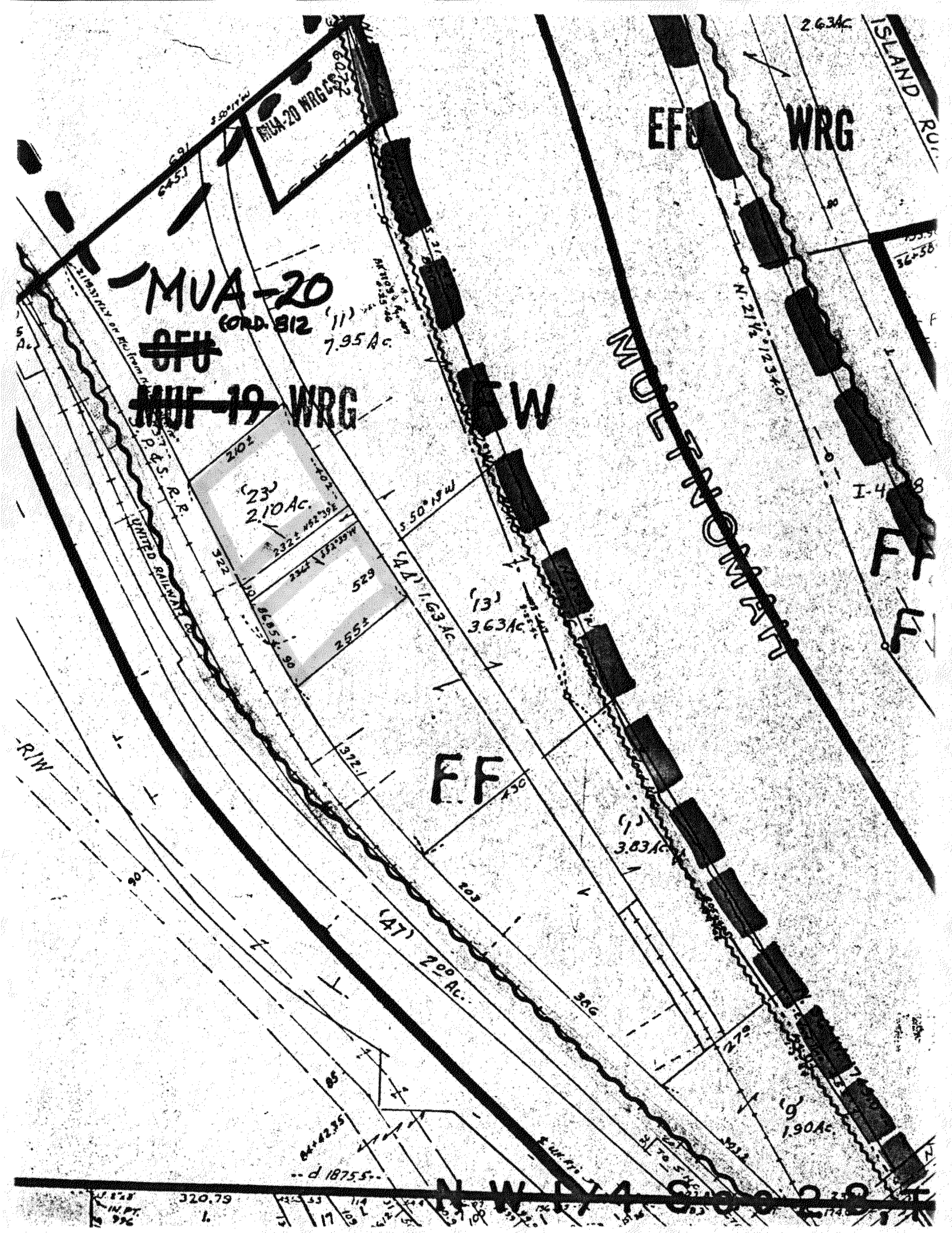
(13)
3.63 Ac.

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NORTHERN PACIFIC

N. 36° W





APPLICATION FOR BUSINESS CERTIFICATE

AS A WRECKER OF MOTOR VEHICLES OR
SALVAGE POOL OPERATOR

▼ CERTIFICATE NUMBER ▼

2426

NOTE: FAILURE TO ACCURATELY COMPLETE THIS FORM WILL CAUSE UNAVOIDABLE DELAY.
PLEASE TYPE OR PRINT LEGIBLY WITH INK.
DO NOT SUBMIT THIS APPLICATION WITHOUT YOUR SURETY BOND AND THE REQUIRED FEE.

☐ ORIGINAL
☒ RENEWAL

NAME (CORPORATION AND/OR ASSUMED BUSINESS NAME) 1 <u>FRANK Miller Truck Wrecking</u>			BUSINESS TELEPHONE <u>503-283-1797</u>
MAIN BUSINESS LOCATION (STREET AND NUMBER) 2 <u>15015 NW MILL Rd.</u>	CITY <u>Portland</u>	ZIP CODE <u>97231</u>	COUNTY <u>Multnomah</u>
MAILING ADDRESS 3 <u>15015 NW MILL Rd.</u>	CITY <u>Portland</u>	STATE <u>Oregon</u>	ZIP CODE <u>97231</u>

A SEPARATE APPLICATION MUST BE COMPLETED FOR EACH ADDITIONAL LOCATION FROM WHICH YOU OPERATE YOUR BUSINESS.

CHECK ORGANIZATION TYPE: 4 <input checked="" type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION	IF CORPORATION, LIST THE STATE UNDER WHOSE LAW BUSINESS IS INCORPORATED:
--	--

LIST NAME AND RESIDENCE ADDRESS OF THIS OWNER, ALL PARTNERS OR PRINCIPAL CORPORATE OFFICERS:

NAME 5 <u>FRANK Miller</u>	TITLE <u>Owner</u>	DATE OF BIRTH <u>5-21-43</u>	RESIDENCE TELEPHONE <u>(503) 429-0273</u>
RESIDENCE ADDRESS 6 <u>59101 Pebble Creek Rd.</u>	CITY <u>Vernonia</u>	STATE <u>Oregon</u>	ZIP CODE <u>97064</u>
NAME 7	TITLE	DATE OF BIRTH	RESIDENCE TELEPHONE ()
RESIDENCE ADDRESS 8	CITY	STATE	ZIP CODE
NAME 9	TITLE	DATE OF BIRTH	RESIDENCE TELEPHONE ()
RESIDENCE ADDRESS 0	CITY	STATE	ZIP CODE

11 THE DIMENSIONS OF THE PROPERTY ON WHICH THE BUSINESS IS LOCATED ARE _____ ft. X _____ ft.

I CERTIFY THAT I AM THE OWNER, A PARTNER OR A CORPORATE OFFICER OF THIS BUSINESS AND THAT ALL INFORMATION ON THIS APPLICATION IS ACCURATE AND TRUE. I CERTIFY THAT THE RIGHT OF WAY OF ANY HIGHWAY ADJACENT TO THE LOCATION LISTED ABOVE IS USED FOR ACCESS TO THE PREMISES AND PUBLIC PARKING.

NAME 12 <u>FRANK Miller</u>	TITLE <u>Owner</u>	RESIDENCE TELEPHONE <u>(503) 429-0273</u>
ADDRESS, CITY, STATE, ZIP CODE 13 <u>59101 Pebble Creek Rd. Vernonia, OR 97064</u>		
SIGNATURE OF OWNER/PARTNER/CORPORATE OFFICER 14 <u>[Signature]</u>		DATE <u>11-10-97</u>

5 APPROVAL: I CERTIFY THAT THE GOVERNING BODY OF THE ☐ CITY ☒ COUNTY OF MULTNOMAH HAS:

- A) APPROVED THE APPLICANT AS BEING SUITABLE TO ESTABLISH, MAINTAIN OR OPERATE A WRECKING YARD OR BUSINESS (ORIGINAL APPLICATIONS ONLY).
- B) DETERMINED THAT THE LOCATION OR PROPOSED LOCATION MEETS THE REQUIREMENTS FOR LOCATION UNDER OREGON REVISED STATUTE 822.110.
- C) DETERMINED THAT THE LOCATION DOES NOT VIOLATE ANY PROHIBITION UNDER OREGON REVISED STATUTE 822.135.
- D) APPROVED THE LOCATION AND DETERMINED THAT THE LOCATION COMPLIES WITH ANY REGULATIONS ADOPTED BY THE JURISDICTION UNDER OREGON REVISED STATUTE 822.140.

I ALSO CERTIFY THAT I AM AUTHORIZED TO SIGN THIS APPLICATION AND AS EVIDENCE OF SUCH AUTHORITY DO AFFIX HEREON THE SEAL OR STAMP OF THE CITY OR COUNTY.

FEE: \$54.00

▼ PLACE STAMP OR SEAL HERE ▼

SUBMIT APPLICATION AND SURETY BOND, WITH ALL REQUIRED FEES AND SIGNATURES TO:

BUSINESS REGULATION SECTION
1905 LANA AVE., NE
SALEM, OR 97311-2350

NAME 6 <u>BEVERLY STEIN</u>	TITLE <u>COUNTY CHAIR</u>	PHONE NUMBER <u>248-3308</u>
SIGNATURE 7 <u>[Signature]</u>		DATE <u>12/30/97</u>

SURETY BOND

▼ BOND NUMBER ▼

801881

FAILURE TO COMPLETE THIS FORM WILL CAUSE UNAVOIDABLE DELAY.

LET IT BE KNOWN:THAT Frank Miller

(OWNER, PARTNERS, CORPORATION NAME)

DOING BUSINESS AS _____

(ASSUMED BUSINESS NAME, IF ANY)

HAVING PRINCIPAL PLACE OF BUSINESS AT 15015 NW Mill Rd., Portland, Oregon 97231

(ADDRESS, CITY, STATE, ZIP CODE)

WITH ADDITIONAL PLACES OF BUSINESS AT _____

(ADDRESS, CITY, STATE, ZIP CODE)

(ADDRESS, CITY, STATE, ZIP CODE)

STATE OF OREGON, AS PRINCIPAL(S), AND CONTRACTORS BONDING AND INSURANCE COMPANY

(SURETY NAME)

1827 NE 44th Ave, Suite 100 Portland, Or 97213 287-6000

(ADDRESS, CITY, STATE, ZIP CODE)

TELEPHONE NUMBER

A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF Washington, AND AUTHORIZED TO TRANSACT A SURETY BUSINESS IN THE STATE OF OREGON, AS SURETY, ARE HELD AND FIRMLY BOUND UNTO THE STATE OF OREGON IN THE PENAL SUM OF \$2,000 FOR THE PAYMENT OF WHICH WE HEREBY BIND OURSELVES, OUR RESPECTIVE SUCCESSORS AND ASSIGN, JOINTLY AND SEVERALLY, FIRMLY BY THESE PRESENTS.

A CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEN THE ABOVE NAMED PRINCIPAL HAS BEEN ISSUED A CERTIFICATE TO CONDUCT, IN THIS STATE, A BUSINESS WRECKING, DISMANTLING AND SUBSTANTIALLY ALTERING THE FORM OF VEHICLES, SAID PRINCIPAL SHALL CONDUCT SUCH BUSINESS WITHOUT FRAUD OR FRAUDULENT REPRESENTATION, AND WITHOUT VIOLATION OF ANY OF THE PROVISIONS OF THE OREGON VEHICLE CODE SPECIFIED IN ORS 822.120(2) THEN AND IN THAT EVENT THIS OBLIGATION TO BE VOID, OTHERWISE TO REMAIN IN FULL FORCE AND EFFECT UNLESS CANCELED PURSUANT TO ORS 743.755.

THIS BOND IS EFFECTIVE January 1 19 98 AND EXPIRES December 31 19 98 (BOND MUST EXPIRE ON THE LAST DAY OF THE MONTH.)**-- ANY ALTERATION VOIDS THIS BOND --**

IN WITNESS WHEREOF, THE SAID PRINCIPAL AND SAID SURETY HAVE EACH CAUSED THESE PRESENTS TO BE EXECUTED BY ITS AUTHORIZED REPRESENTATIVE OR REPRESENTATIVES AND THE SURETY CORPORATE SEAL TO BE HEREUNTO AFFIXED THIS 27th DAY OF October 19 97.

SIGNATURE (OWNER/PARTNER/CORPORATE OFFICER)

TITLE

☒ SIGNATURE OF SURETY (AUTHORIZED REPRESENTATIVE)

TITLE

☒ Cheryl Mayes Cheryl Mayes

Attorney-in-Fact

SURETY'S AGENT OR REPRESENTATIVE MUST COMPLETE THIS SECTION:

PLACE SURETY SEAL BELOW

IN THE EVENT A PROBLEM ARISES CONCERNING THIS BOND, CONTACT:

NAME

CBIC

TELEPHONE NUMBER

287-6000

ADDRESS

PO Box 12053

CITY, STATE, ZIP CODE

Portland, Or 97212

APPROVED BY ATTORNEY GENERAL'S OFFICE



Limited Power of Attorney

Home Office:
1213 Valley Street
P.O. Box 9271
Seattle, WA 98109-0271
(206) 622-7053

KNOW ALL MEN BY THESE PRESENTS that CONTRACTORS BONDING AND INSURANCE COMPANY, a corporation duly organized and existing under the laws of the State of Washington and having its principal office in Seattle, King County, Washington, does by these presents make, constitute and appoint CHERYL MAYES, of Portland, Oregon, its true and lawful attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver contractors' license bonds issued pursuant to RCW Chapter 18.27 and ORS Chapter 701; electricians' license bonds issued pursuant to RCW Chapter 19.28; miscellaneous bonds, as those bonds are generally understood in the trade, not exceeding the penal sum of \$25,000; other license bonds not exceeding the penal sum of \$25,000; and permit bonds not exceeding the penal sum of \$25,000; and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary; hereby ratifying and confirming all that the said attorney-in-fact may do in the premises. Said appointment is made under and by authority of the following resolutions adopted by the Board of Directors of the CONTRACTORS BONDING AND INSURANCE COMPANY on November 1, 1992:

RESOLVED that the President is authorized to appoint as attorney-in-fact of the Company CHERYL MAYES with power and authority to sign on behalf of the Company contractors' license bonds issued pursuant to RCW Chapter 18.27 and ORS Chapter 701; electricians' license bonds issued pursuant to RCW Chapter 19.28; miscellaneous bonds, as those bonds are generally understood in the trade, not exceeding the penal sum of \$25,000; other license bonds not exceeding the penal sum of \$25,000; and permit bonds not exceeding the penal sum of \$25,000.

RESOLVED FURTHER that the authority of the Secretary of the Company to certify the authenticity and effectiveness of the foregoing resolution in any Limited Power of Attorney is hereby delegated to the following persons, the signature of any of the following to bind the Company with respect to the authenticity and effectiveness of the foregoing resolution as if signed by the Secretary of the Company: Donald Sirkin, Janet K. Avotins, Tom Dymont, JoAnn Johnson and Pat Dorney.

RESOLVED FURTHER that the signatures (including certification that the Power of Attorney is still in force and effect) of the President, Notary Public and person certifying authenticity and effectiveness, and the corporate and Notary seals appearing on any Limited Power of Attorney containing this and the foregoing resolutions as well as the Limited Power of Attorney itself and its transmission, may be by facsimile; and such Limited Power of Attorney shall be deemed an original in all aspects.

RESOLVED FURTHER that all resolutions adopted prior to today appointing the above named as attorney-in-fact for CONTRACTORS BONDING AND INSURANCE COMPANY are hereby superseded.

IN WITNESS WHEREOF, CONTRACTORS BONDING AND INSURANCE COMPANY has caused these presents to be signed by its President and its corporate seal to be hereto affixed, this 31st day of March, 1997.

CONTRACTORS BONDING AND INSURANCE COMPANY

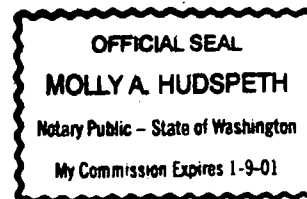
By: 
Steven A. Gaines, President



STATE OF WASHINGTON—COUNTY OF KING

On this 31st day of March, 1997, personally appeared STEVEN A. GAINES, to me known to be the President of the corporation that executed the foregoing Limited Power of Attorney and acknowledged said Limited Power of Attorney to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said Limited Power of Attorney.

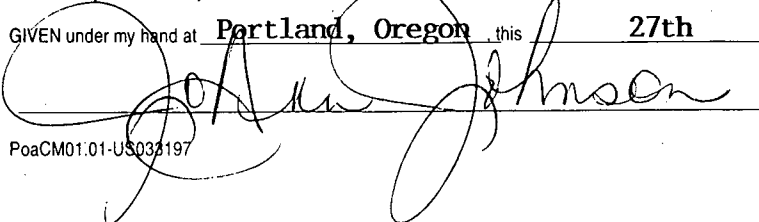
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




Notary Public in and for the State of Washington, residing at Seattle

The undersigned, acting under authority of the Board of Directors of CONTRACTORS BONDING AND INSURANCE COMPANY, hereby certifies, as or in lieu of Certificate of the Secretary of CONTRACTORS BONDING AND INSURANCE COMPANY, that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Company, and does hereby further certify that the said Power of Attorney is still in force and effect.

GIVEN under my hand at Portland, Oregon this 27th day of October, 19 97


PoaCM01:01-US033197

Meeting Date: DEC 30 1997
Agenda No: C-12
Est. Start Time: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Report to the Board an application for a Wrecker License for Orient Auto Parts, Inc.

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

REGULAR MEETING Date Requested: December 30, 1997
Amt. of Time Needed: 5 minutes

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

PERSON(S) MAKING PRESENTATION: Stuart Farmer

ACTION REQUESTED

☐ Informational Only ☐ Policy Direction ☒ Approval ☐ Other

SUGGESTED AGENDA TITLE

Report to the Board an **Approval** of a Wrecker License for Orient Auto Parts, Inc.
28425 SE Orient Dr., Gresham, OR 97080

12/30/97 ORIGINAL mailed to Rex Davis,
Copy to Stuart Farmer

SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: KB Laura E. Nicholas

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 DEC 23 AM 11:20



BOARD HEARING OF December 30, 1997

TIME 9:30 am

CASE NAME: Approval of a Wrecker License

ADDRESS: 28425 SE Orient Drive

1. Applicant Name/Address

Rex Davis
39131 SE Hudson Rd.
Sandy, OR 97055

2. Action Requested by Applicant

Applicant requests approval of a new automotive wrecker license at a site with a previous history of auto wrecking business.

Action Requested of Board

- ☐ Affirm Hearings Officer Dec.
Hearing/Rehearing
Scope of Review
De Novo
New information allowed
☒ Affirm Admin. Decision

3. Planning Staff Recommendation

Staff has determined that the site meets the requirements for location under Oregon Revised Statute 822.110 and has determined that the site complies with local regulations adopted by MCC 11.15.

4. Sheriff's Office Recommendation

The backgrounds have been checked on applicant Rex Davis and no criminal history can be found .

5. If recommendation and decision are different, why?

None

6. The following issues were raised:

None

7. Do any of these issues have policy implications? Explain: None identified at this time.



MULTNOMAH COUNTY

**Department of Environmental Services
Transportation and Land Use Planning Division
2115 SE Morrison Street
Portland, OR 97214 Phone: (503) 248-3043**

December 22, 1997

Board of County Commissioners
1120 SW Fifth Ave, Suite 1500
Portland, OR 97204

RE: Auto Wrecker's License-Renewal

RS Davis
(dba Orient Auto Parts)
28425 SE Orient Drive, Gresham, 98080

Recommend: Approval of Business Location

Dear Commissioners:

The staff of the Land Use Planning Section respectfully recommends that the above license renewal be approved pursuant to Multnomah County Ordinance 723, based upon findings contained in the staff report dated 12/22/97 that the use satisfies the applicable requirements contained in ORS 822.110, ORS 882.135 and continues to retain a non-conforming status.

Sincerely,

Multnomah County Department of Environmental Services
Transportation and Land Use Planning Division

By Phil Bourquin, *Planner*

For: Kathy Busse, *Planning Director*

Staff Report
Determination of Compliance
Wrecker's License Renewal
28425 SE Orient Drive

This Staff Report and Determination of Compliance is made pursuant to the requirements specified by Multnomah County Ordinance 723. Application for renewal of a business certificate was submitted by Orient Auto Parts, Inc , 28425 SE Orient Drive, Gresham OR, 97080.

I. Conditions of Approval

1. The applicant shall obtain a wreckers certificate from the Oregon Department of Transportation. Applications for future wrecker's license renewals shall include a copy of the prior years wreckers certificate issued by the Oregon Department of Transportation.
2. Applications for future wrecker's license renewals shall include submittal of a site plan clearly identifying the dimensional boundaries of the wrecking yard (fenced areas) in relation to property lines. Expansion of the dimensions of the wrecking yard shall not occur without prior approval of the County.

II. Applicable Zoning Considerations:

The applicable zoning considerations as specified in Section 2 (C) of Ordinance 723 are addressed below:

A. Compliance with the requirements of ORS 822.110:

The Oregon Department of Transportation shall issue a wrecker certificate to any person if the person meets all of the following requirements:

- (1) The person must establish that the area approved under the wrecker certificate for use in a wrecking business meets one of the following:**
 - (a) The area is more than 1,100 feet from the nearest edge of the right of way of any state highway.**
 - (b) The business conducted within the area is hidden or adequately screened by the terrain or other natural objects or by plantings, fences or other natural objects or by plantings, fences or other appropriate means, so as not to be visible from the main traveled way**

of the highway, in accordance with rules adopted by the director.

(c) The area and the business thereon are located in an area zoned for industrial use under authority of the laws of this state.

- (2) The person must pay the fee required under ORS 822.700 for issuance of a wreckers certificate.
- (3) The person must complete the application for a wrecker certificate described under ORS 822.115.
- (4) The person must deliver to the department any approvals by local governments required under ORS 822.140.
- (5) The person must deliver to the department a bond or letter of credit that meets the requirements of ORS 822.120.

Finding: Photos taken of the site by Land Use Planning code enforcement Staff on 11/26/97 indicate a vegetative row of arborvitae adequately screen vehicles from Orient Drive consistent with ORS 833.110 (1). Compliance with the requirements with ORS 833.110 (2)-(5) will be ensured by obtaining a Wreckers Certificate issued by the Oregon Department of Transportation.

B. Compliance with the business locational provisions of ORS 822.135:

- (1) A person commits the offense of improperly conducting a wrecking yard if the person holds a wrecker certificate issued under ORS 822.110 if the person does any of the following:
 - (b) Expands the dimensions of or moves any of the person's places of business or opens any additional places of business without obtaining a supplemental wrecker certificate by the procedure under ORS 822.125.

Finding: Staff has found no evidence or indication that the dimensions of the wrecking yard have been expanded beyond that of the existing Wreckers Certificate. Applications for future wrecker's license renewals shall include submittal of a site plan clearly identifying the dimensional boundaries of the wrecking yard (fenced areas) in relation to property lines. Expansion of the dimensions of the wrecking yard shall not occur without prior approval of the County.

- (g) Fails to keep the premises on the outside of the establishment clear and clean at all times.

Finding: The Land Use Planning Section conducted a field inspection on 11/26/97 and completed a Field Inspection Record indicating the outside of the wrecking yard is neat and provided photos of the site indicating the site is clear and clean.

(h) Conducts any wrecking, dismantling or altering of vehicles outside the building, enclosure or barrier on the premises of the business.

Finding: Based on the Land Use Planning Section Field Inspection Record dated 11/26/97, no dismantling or altering of vehicles outside the fenced area of the business was evident.

C. Compliance with zoning regulations:


A wrecking yard was determined to be a non-conforming use on 4/5/77 and 1/15/87 and evidence exists on file (file labeled: Auto Wrecking -28425 SE Orient Drive) with the Land Use Planning Section that the use has continued to occupy the site continuously and in compliance with zoning regulations since 1977.

III. Notice of this application was sent to both the Sherrifs Office and Assessment and Taxation on 12/18/97. As of the writing of this report, no response indicating concern has been reported.

IV. Recommendation: The staff of the Land Use Planning Section respectfully recommends that the above license renewal be approved, based upon findings that they satisfy the applicable requirements contained in ORS 822.110, ORS 882.135 and continues to retain a non-conforming status.

Dated this 22nd day of December, 1997

Multnomah County Department of Environmental Services
Transportation and Land Use Planning Division



By Phil Bourquin, *Planner*
For: Kathy Busse, *Planning Director*



**DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION**

**2115 SE MORRISON STREET
PORTLAND, OREGON 97214-2865
(503) 248-3043 FAX: (503) 248-3389**

Memorandum

To: Sgt. John Blackman
Multnomah County Sheriff

From: Phil Bourquin, Planner *PB*

Date: December 18, 1997

Subject: Wrecker Certificate Renewal Application for Motor Vehicle Wrecking License for
RS Davis (dba Orient Auto Parts), 28425 SE Orient Drive, Gresham, 98080.

We are currently considering a recommendation of approval to the Board of County Commissioners of a Renewal of a Wrecker Certificate (Business Certificate) for the above business under the provisions of Multnomah County Ordinance No. 723. Attached is a copy of the DMV application form which has been completed by the applicant. Please perform the background investigations necessary for a renewal recommendation. Our understanding is that if you do not contact us within 24 hours that a violation exists, we are to assume that the County Sheriff recommends approval.

Thank you for your assistance in this matter.

FAXED
12/18/97



DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214-2865
(503) 248-3043 FAX: (503) 248-3389

Memorandum

To: Eunice Butler, Clerical Unit Supervisor
Assessment & Taxation
166/300

POSTED

From: Phil Bourquin, Planner *PB*
Bldg 412/110
Fax 248-3389
Phone 248-3043 or ext. 22709

FAXED
12/18/97

Date: December 18, 1997

Subject: Wrecker Certificate Renewal Application for Motor Vehicle Wrecking License for RS Davis (dba Orient Auto Parts), 28425 SE Orient Drive, Gresham, 98080. A&T Accounts R 99419-0820 and R 99419-0990; SID 1S 4E 19BC #200, 1S 4E 19BC #300

We are currently considering a recommendation of approval to the Board of County Commissioners of a Renewal of a Wrecker Certificate (Business Certificate) for the above business under the provisions of Multnomah County Ordinance No. 723. The recommendation will likely be scheduled on 12/22/97 for a 12/30/97 Board consent item. As you are aware Ordinance No. 723 requires that there are no delinquent personal or real property taxes due or owing. We will presume no delinquent personal or real property taxes are due or owed if no response is received prior to scheduling with the Board.

Thank you for your assistance in this matter.



APPLICATION FOR BUSINESS CERTIFICATE

AS A WRECKER OF MOTOR VEHICLES OR
SALVAGE POOL OPERATOR

CERTIFICATE NUMBER

EXPIRATION DATE

- INSTRUCTIONS:**
- PLEASE TYPE OR PRINT LEGIBLY WITH INK.
 - SIGN LINE 14, SUBMIT THIS APPLICATION WITH YOUR SURETY BOND AND THE REQUIRED FEE TO BUSINESS REGULATION SECTION, 1905 LANA AVE. NE, SALEM OR 97314

☐ ORIGINAL
☒ RENEWAL

NAME (CORPORATION AND/OR ASSUMED BUSINESS NAME)

BUSINESS TELEPHONE

1 Orient Auto Parts Inc.

(663) 1909

MAIN BUSINESS LOCATION (STREET AND NUMBER)

CITY

ZIP CODE

COUNTY

2 28425 SE Orient Dr.

Gresham

97080

Multnomah

MAILING ADDRESS

CITY

STATE

ZIP CODE

3 28425 SE Orient Dr.

Gresham

Or

97080

A SEPARATE APPLICATION MUST BE COMPLETED FOR EACH ADDITIONAL LOCATION FROM WHICH YOU OPERATE YOUR BUSINESS.

CHECK ORGANIZATION TYPE:

IF CORPORATION, LIST THE STATE UNDER WHOSE LAW BUSINESS IS INCORPORATED:

4 ☐ INDIVIDUAL ☐ PARTNERSHIP ☒ CORPORATION

Oregon

LIST NAME AND RESIDENCE ADDRESS OF THIS OWNER, ALL PARTNERS OR PRINCIPAL CORPORATE OFFICERS:

NAME

TITLE

DATE OF BIRTH

RESIDENCE TELEPHONE

5 ()

RESIDENCE ADDRESS

CITY

STATE

ZIP CODE

6

NAME

TITLE

DATE OF BIRTH

RESIDENCE TELEPHONE

7 ()

RESIDENCE ADDRESS

CITY

STATE

ZIP CODE

8

NAME

TITLE

DATE OF BIRTH

RESIDENCE TELEPHONE

9 ()

RESIDENCE ADDRESS

CITY

STATE

ZIP CODE

10

11 THE DIMENSIONS OF THE PROPERTY ON WHICH THE BUSINESS IS LOCATED ARE _____ ft. X _____ ft.

I CERTIFY THAT I AM THE OWNER, A PARTNER OR A CORPORATE OFFICER OF THIS BUSINESS AND THAT ALL INFORMATION ON THIS APPLICATION IS ACCURATE AND TRUE. I CERTIFY THAT THE RIGHT OF WAY OF ANY HIGHWAY ADJACENT TO THE LOCATION LISTED ABOVE IS USED FOR ACCESS TO THE PREMISES AND PUBLIC PARKING.

NAME

TITLE

RESIDENCE TELEPHONE

12 Rex M. Dawis

President

(503) 663-7464

ADDRESS, CITY, STATE, ZIP CODE

13 32131 SE Hudson Rd Sandy, Or 97055

SIGNATURE OF OWNER/PARTNER/CORPORATE OFFICER

DATE

14 X Rex M. Dawis

11/17/97

15 **APPROVAL:** I CERTIFY THAT THE GOVERNING BODY OF THE ☐ CITY ☒ COUNTY OF MULTNOMAH HAS:

- A) APPROVED THE APPLICANT AS BEING SUITABLE TO ESTABLISH, MAINTAIN OR OPERATE A WRECKING YARD OR BUSINESS (ORIGINAL APPLICATIONS ONLY).
- B) DETERMINED THAT THE LOCATION OR PROPOSED LOCATION MEETS THE REQUIREMENTS FOR LOCATION UNDER OREGON REVISED STATUTE 822.110.
- C) DETERMINED THAT THE LOCATION DOES NOT VIOLATE ANY PROHIBITION UNDER OREGON REVISED STATUTE 822.135.
- D) APPROVED THE LOCATION AND DETERMINED THAT THE LOCATION COMPLIES WITH ANY REGULATIONS ADOPTED BY THE JURISDICTION UNDER OREGON REVISED STATUTE 822.140.

I ALSO CERTIFY THAT I AM AUTHORIZED TO SIGN THIS APPLICATION AND AS EVIDENCE OF SUCH AUTHORITY DO AFFIX HEREON THE SEAL OR STAMP OF THE CITY OR COUNTY.

▼ PLACE STAMP OR SEAL HERE ▼

NAME

TITLE

PHONE NUMBER

16 BEVERLY STEIN

COUNTY CHAIR

248-3308

SIGNATURE

DATE

17 X Beverly Stein

12/30/97

FEE: \$54.00

SURETY BOND

BOND NUMBER

804327

FAILURE TO COMPLETE THIS FORM WILL CAUSE UNAVOIDABLE DELAY.

LET IT BE KNOWN:

THAT Orient Auto Parts, Inc
(OWNER, PARTNERS, CORPORATION NAME)

DOING BUSINESS AS _____
(ASSUMED BUSINESS NAME, IF ANY)

HAVING PRINCIPAL PLACE OF BUSINESS AT 28425 SE Orient Dr Gresham, Or 97080
(ADDRESS, CITY, STATE, ZIP CODE)

WITH ADDITIONAL PLACES OF BUSINESS AT _____
(ADDRESS, CITY, STATE, ZIP CODE)

STATE OF OREGON, AS PRINCIPAL(S), AND CONTRACTORS BONDING AND INSURANCE COMPANY
(SURETY NAME)

1827 NE 44th Ave, Suite 100 Portland, Or 97213 287-6000
(ADDRESS, CITY, STATE, ZIP CODE) TELEPHONE NUMBER

A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF Washington
AND AUTHORIZED TO TRANSACT A SURETY BUSINESS IN THE STATE OF OREGON, AS SURETY, ARE HELD AND FIRMLY
BOUND UNTO THE STATE OF OREGON IN THE PENAL SUM OF \$2,000 FOR THE PAYMENT OF WHICH WE HEREBY BIND
OURSELVES, OUR RESPECTIVE SUCCESSORS AND ASSIGN, JOINTLY AND SEVERALLY, FIRMLY BY THESE PRESENTS.

A CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEN THE ABOVE NAMED PRINCIPAL HAS BEEN ISSUED A CERTIFICATE
TO CONDUCT, IN THIS STATE, A BUSINESS WRECKING, DISMANTLING AND SUBSTANTIALLY ALTERING THE FORM OF
VEHICLES, SAID PRINCIPAL SHALL CONDUCT SUCH BUSINESS WITHOUT FRAUD OR FRAUDULENT REPRESENTATION, AND
WITHOUT VIOLATION OF ANY OF THE PROVISIONS OF THE OREGON VEHICLE CODE SPECIFIED IN ORS 822.120(2) THEN AND
IN THAT EVENT THIS OBLIGATION TO BE VOID, OTHERWISE TO REMAIN IN FULL FORCE AND EFFECT UNLESS CANCELED
PURSUANT TO ORS 743.755.

THIS BOND IS EFFECTIVE January 1 1998 AND EXPIRES December 31 1998 (BOND MUST EXPIRE ON THE
LAST DAY OF THE MONTH)

-- ANY ALTERATION VOIDS THIS BOND --

IN WITNESS WHEREOF, THE SAID PRINCIPAL AND SAID SURETY HAVE EACH CAUSED THESE PRESENTS TO BE EXECUTED BY
ITS AUTHORIZED REPRESENTATIVE OR REPRESENTATIVES AND THE SURETY CORPORATE SEAL TO BE HEREUNTO AFFIXED
THIS 5th DAY OF November 1997.

SIGNATURE (OWNER/PARTNER/CORPORATE OFFICER)

☒ [Signature]

TITLE

President

SIGNATURE OF SURETY (AUTHORIZED REPRESENTATIVE)

☒ [Signature]

TITLE

Attorney-in-Fact**SURETY'S AGENT OR REPRESENTATIVE MUST COMPLETE THIS SECTION:****PLACE SURETY SEAL BELOW**

IN THE EVENT A PROBLEM ARISES CONCERNING THIS BOND, CONTACT:

NAME

CBIC

TELEPHONE NUMBER

287-6000

ADDRESS

PO Box 12053

CITY, STATE, ZIP CODE

Portland, Or 97212

APPROVED BY ATTORNEY GENERAL'S OFFICE

Orient Auto Parts, Inc.
Corporate Officers

Rex Davis,
39131 SE Hudson Rd.
Sandy, Or 97055

DOB 5/25/55
ODL# 1784307
663-7466

June Davis,
40860 SE Kitzmiller Rd.
Eagle Creek, Or 97022

DOB 6/22/37
ODL# 984691
637-6851

Dale Jackson,
33150 SE Bluff Rd.
Boring, Or 97009

DOB 12/23/45
ODL# 202010
663-6769

MEETING DATE: DEC 30 1997
AGENDA NO: C-13
ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Request Approval of Repurchase Deed to Former Owner

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: 5 minutes

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation

CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590
BLDG/ROOM #: 166/300/Tax Title

PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Request approval of Repurchase Deed to former Owner, LEE OLDS.

Deed D981534 and Board Order attached.

1/14/98 ORIGINAL DEED & COPIES OF
ALL TO VANESSA WITKA

SIGNATURES REQUIRED:

ELECTED
OFFICIAL: _____
OR
DEPARTMENT
MANAGER: K. A. Tuneberg Lawrence L. Nicholas

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 DEC 19 AM 10:04

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk 248-3277

12/95

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Authorizing Execution of Deed D981534
for Repurchase of Tax Foreclosed Property
to Former Owner
LEE OLDS

)
) ORDER
) 97-217
)

WHEREAS Multnomah County acquired the real property hereinafter described through foreclosure of liens for delinquent taxes, and that LEE OLDS is the former record owner thereof, and

WHEREAS the above former owner has applied to the County to repurchase said property for the amount of \$7,182.85, which amount is not less than that required by ORS 275.180; and it is in the best interest of the County that said property be sold to said former owner.

NOW THEREFORE, it is hereby ORDERED that the Chair of the Multnomah County Board of County Commissioners execute a deed conveying to the former owner the following described real property, situated in the County of Multnomah, State of Oregon:

LOT 23, D&O LITTLE HMS SUB 4, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

Dated this 30th day of December,

1997.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY OREGON

By 
Beverly Stein, Chair



REVIEWED:
Thomas Sponsler, County Counsel
Multnomah County, Oregon

By 
Matthew O. Ryan, Assistant County Counsel

DEED D981534

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to LEE OLDS, Grantee, the following described real property, situated in the County of Multnomah, State of Oregon:

LOT 23, D&O LITTLE HMS SUB 4, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

The true and actual consideration paid for this transfer, stated in terms of dollars is \$7,182.85.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSONS ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

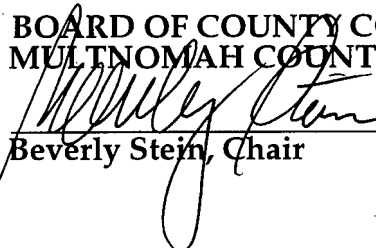
Until a change is requested, all tax statements shall be sent to the following address:

LEE OLDS
10246 SE LIEBE ST
PORTLAND OR 97266-3617

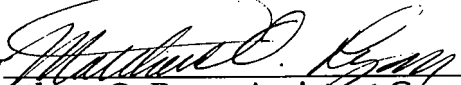
IN WITNESS, WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 30th day of December, 1997, by authority of an Order of said Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:
Thomas Sponsler, County Counsel
for Multnomah County, Oregon

By 
Matthew O. Ryan, Assistant County Counsel

DEED APPROVED:
Kathy Tuneberg, Director
Tax Collection/Records Management

By 
Kathleen A. Tuneberg, Director

After recording return to 166/300/Multnomah County Tax Title

STATE OF OREGON

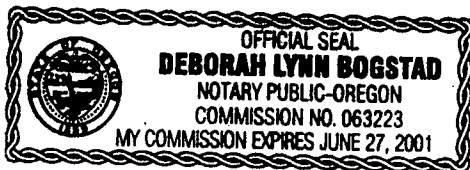
)

) ss

COUNTY OF MULTNOMAH

)

The foregoing instrument was acknowledged before me this 30th day of December, 1997, by Beverly Stein, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Deborah Lynn Bogstad

Notary Public for Oregon

My Commission expires: June 27, 2001

MEETING DATE: DEC 30 1997

AGENDA NO: C-14

ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Request Approval of Repurchase Deed to Former Owner

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: 5 minutes

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation

CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590

BLDG/ROOM #: 166/300/Tax Title

PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Request approval of Repurchase Deed to former Owner, HARRY E. COLEMAN.

Deed D981535 and Board Order attached.

1/14/98 ORIGINAL Deed & Copies of
All to VANESSA WITKA

SIGNATURES REQUIRED:

ELECTED
OFFICIAL: _____

OR
DEPARTMENT
MANAGER: K. A. Tuneberg Paul E. Nicholas

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk 248-3277

12/95

BOARD OF
COUNTY COMMISSIONERS
97 DEC 19 AM 10:04
MULTNOMAH COUNTY
OREGON

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

Authorizing Execution of Deed D981535)
for Repurchase of Tax Foreclosed Property) **ORDER**
to Former Owner) **97- 218**
HARRY E. COLEMAN)

WHEREAS Multnomah County acquired the real property hereinafter described through foreclosure of liens for delinquent taxes, and that HARRY E. COLEMAN is the former record owner thereof, and

WHEREAS the above former owner has applied to the County to repurchase said property for the amount of \$94.47, which amount is not less than that required by ORS 275.180; and it is in the best interest of the County that said property be sold to said former owner.

NOW THEREFORE, it is hereby ORDERED that the Chair of the Multnomah County Board of County Commissioners execute a deed conveying to the former owner the following described real property, situated in the County of Multnomah, State of Oregon:

N 12' OF LOT 7, BLOCK 6, GREEN HILLS, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

Dated this 30th day of December, 1997.



**BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON**

By 
Beverly Stein, Chair

REVIEWED:
Thomas Sponsler, County Counsel
Multnomah County, Oregon

By 
Matthew O. Ryan, Assistant County Counsel

DEED D981535

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to HARRY E. COLEMAN, Grantee, the following described real property, situated in the County of Multnomah, State of Oregon:

N 12' OF LOT 7, BLOCK 6, GREEN HILLS, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

The true and actual consideration paid for this transfer, stated in terms of dollars is \$94.47.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSONS ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

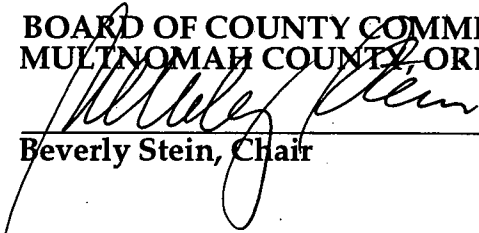
Until a change is requested, all tax statements shall be sent to the following address:

HARRY E. COLEMAN
2334 SW CACTUS DR
PORTLAND OR 97205

IN WITNESS, WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 30th day of December, 1997, by authority of an Order of said Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY OREGON


Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
for Multnomah County, Oregon

By 

Matthew O. Ryan, Assistant County Counsel

DEED APPROVED:

Kathy Tuneberg, Director
Tax Collection/Records Management

By 

Kathleen A. Tuneberg, Director

After recording return to 166/300/Multnomah County Tax Title

STATE OF OREGON

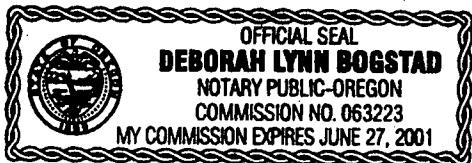
)

) ss

COUNTY OF MULTNOMAH

)

The foregoing instrument was acknowledged before me this 30th day of December, 1997, by Beverly Stein, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Deborah Lynn Bogstad

Notary Public for Oregon

My Commission expires: June 27, 2001

BUDGET MODIFICATION NO. DES 6

(For Clerk's Use) Meeting Date

DEC 30 1997

Agenda No.

C-15

1. REQUEST FOR PLACEMENT ON THE AGENDA FOR _____

(Date)

DEPARTMENT Environmental ServicesDIVISION TransportationCONTACT Chuck HenleyTELEPHONE 248-3191

*NAME(s) OF PERSON MAKING PRESENTATION TO BOARD _____

SUGGESTEDAGENDA TITLE (to assist in preparing a description for the printed agenda)

Budget modification creating staffing equivalent to three FTE in the Transportation Division.

(Estimated Time Needed on the Agenda)

2. DESCRIPTION OF MODIFICATION (Explain the changes this Bud Mod makes. What budget does it increase? What do the changes accomplish? Where does the money come from? What budget is reduced? Attach additional information if you need more space.)

☒ [X] PERSONNEL CHANGES ARE SHOWN IN DETAIL ON THE ATTACHED SHEET

Responding to growth and development, the additional staff will enable Transportation to improve customer service in the areas of transportation system management and improvement.

3. REVENUE IMPACT (Explain revenues being changed and the reason for the change)

None

4. CONTINGENCY STATUS (to be completed by Finance/Budget)

Road Fund Contingency before this modification (as of 12-15-97)\$ 205,472

(Specify Fund)

(Date)

After this modification

\$ 110,526

Originated By

Date

12-5-97

Department Manager

Date

12/15/97

Budget Analyst

Date

12-18-97

Personnel Analyst

Date

12/18/97

Board Approval

Date

PERSONNEL DETAIL FOR BUD MOD NO. DES 6

5. ANNUALIZED PERSONNEL CHANGES (Compute on a full year basis even though this action affects only a part of the fiscal year.)

Annualized

FTE Increase (Decrease)	POSITION TITLE	BASE PAY Increase (Decrease)	Increase (Decrease)		TOTAL Increase (Decrease)
			Fringe	Ins.	
1.0	Civil Engineer Associate	51,280	9,208	7,757	68,245
2.0	Engineering Technician Assoc	81,706	14,968	14,968	111,204
.2	Engineering Technician Assist.	7,856	1,404	1,184	10,444
	TOTAL CHANGE (ANNUALIZED)	140,842	25,142	23,909	189,893

6. CURRENT YEAR PERSONNEL DOLLAR CHANGES (calculate costs or savings that will take place within this fiscal year; these should explain the actual dollar amounts being changed by this Bud Mod.)

Current FY

Permanent Positions, Temporary, Overtime or Premium	Explanation of Change	BASE PAY Increase (Decrease)	Increase (Decrease)		TOTAL Increase (Decrease)
			Fringe	Ins.	
Permanent	Civil Engineer Assoc	25,640	4,604	3,880	34,124
Permanent	Engineering Tech Assoc	20,426	3,632	3,742	27,800
Permanent	Engineering Tech Assoc	20,426	3,632	3,742	27,800
Permanent	Engineering Tech Assist	3,928	702	592	5,222

EXPENDITURE

TRANSACTION EB []

GM []

TRANSACTION DATE Jan 1, 1998

ACCOUNTING PERIOD

BUDGET FY 98

Document Number	Action	Fund	Agency	Organization	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Sub-Total	Description
DESC		150	030	6105			5100	371,727	397,367	25,640		Increase Permanent
		150	030	6105			5500	67,855	72,459	4,604		Increase Salary Related
		150	030	6105			5550	50,799	54,679	3,880		Increase Ins. Benefits
		150	030	6101			5100	972,317	992,743	20,426		Increase Permanent
		150	030	6101			5500	190,808	194,440	3,632		Increase Salary - Related
		150	030	6101			5500	144,570	148,312	3,742		Increase Insurance Benefits
		150	030	6400			5100	1,677,118	1,697,544	20,426		Increase Permanent
		150	030	6400			5500	313,195	316,827	3,632		Increase Salary - Related
		150	030	6400			5550	292,641	300,125	3,742		Increase Insurance Benefits
		150	030	6400			5100	1,677,118	1,681,046	3,928		Increase Permanent
		150	030	6400			5500	313,195	313,897	702		Increase Salary - Related
		150	030	6400			5550	292,641	293,233	592		Increase Insurance Benefits
		150	030	9120			7700	205,472	110,526	(94,946)		Decrease Contingency
TOTAL EXPENDITURE CHANGE										0		TOTAL EXPENDITURE CHANGE

REVENUE

TRANSACTION RB []

GM []

TRANSACTION DATE

ACCOUNTING PERIOD

BUDGET FY

Document Number	Action	Fund	Agency	Organization	Activity	Reporting Category	Revenue Source	Current Amount	Revised Amount	Change Increase (Decrease)	Sub-Total	Description
TOTAL REVENUE CHANGE												TOTAL REVENUE CHANGE



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
1620 SE 190TH AVENUE
PORTLAND, OREGON 97233
(503) 248-5050

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

MEMORANDUM

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Larry Nicholas,
Environmental Services Director
Chuck Henley,
Engineering Services Manager

TODAY'S DATE: December 12th, 1997

REQUESTED PLACEMENT DATE: December 30th, 1997

RE: Budget Modifications for Transportation Division

I. Recommendation/Action Requested:

The Transportation Division requests approval of a budget modification affecting the Engineering and Maintenance Sections.

II. Background/Analysis:

There are four actions that are being requested in this request. Two involve Maintenance positions and two involve the Engineering positions.

Maintenance:

Create a new 1 FTE Engineering Technician Associate
Increase a current Engineering Technician Assistant .2 FTE
Both of these positions are in the IRIS program and are necessary to implement the Pavement Management System.

Engineering:

Create a new 1 FTE C. E. Associate in the Right of Way management section to deal with the increases in workload and complexity caused by both density and development. This proposed budget modification is to improve the service to customers directly. Create a new 1 FTE Engineering Technician Associate in the Construction section for inspection. Capital projects manpower projections show a need for at least one additional inspector.

III. Financial Impact:

If this budget modification is approved, net expenditures will increase approximately \$ 94,946 during the current fiscal year. These funds will come from Road Fund contingency.

IV. Legal Issues:

None.

V. Controversial Issues:

None

VI. Link to Current County Policies:

This will improve customer service.

VII. Citizen Participation:

Customer input has been received as to the need to add the Right-of-Way position.

VIII. Other Government Participation:

N/A

PERSONNEL DETAIL FOR BUDGET MODIFICATION NO.
HD 10
5. ANNUALIZED PERSONNEL CHANGES

(Compute on a full-year basis even though this action affects only a part of the fiscal year (FY).)

Permanent Positions, Temporary, Overtime, or Premium	JCN	Org	Explanation of Change	ANNUALIZED			
				BASE PAY Increase (Decrease)	Increase/(Decrease)		TOTAL Increase (Decrease)
					Fringe	Ins.	
0.80	9696	0472	Health Services Spec	40674	7305	4215	52194
-1.00	6001	0330	Office Assistant 2	(24563)	(4411)	(4611)	(33585)
1.00	6002	0330	Office Assistant/Sr.	27478	4935	2639	35052
							0
0.80	TOTAL CHANGE (ANNUALIZED)			\$43,589	\$7,829	\$2,243	\$53,661

6. CURRENT YEAR PERSONNEL DOLLAR CHANGES

(Calculate costs/savings that will take place this FY; these should explain the actual dollar amounts changed by this BudMod.)

				CURRENT FY			
Permanent Positions, Temporary, Overtime, or Premium	JCN	Org	Explanation of Change	BASE PAY Increase (Decrease)	Increase/(Decrease		TOTAL Increase (Decrease)
					Fringe	Ins.	
0.47	9696	0472	Health Services Spec	23896	4291	2460	30647
-0.75	6001	0330	Office Assistant 2	(18421)	(3308)	(3458)	(25187)
0.75	6002	0330	Office Assistant/Sr.	20609 20,607	3700	2479	26788
0.47							
TOTAL CURRENT FISCAL YEAR CHANGES				\$26,084	\$4,683	\$1,481	\$32,248

EXPENDITURE												
HD 10												
TRANSACTION EB GM []			TRANSACTION DATE				ACCOUNTING PERIOD				BUDGET FY	
Document				Organi-		Reporting		Current	Revised	Change		
Number	Action	Fund	Agency	zation	Activity	Category	Object	Amount	Amount	Increase (Decrease)	Subtotal	Description
		156	015	0472			5100			23,896		
		156	015	0472			5500			4,291		
		156	015	0472			5550			2,460	30,647	
		156	015	0472			7100			3,934		
		156	015	0472			6320			200		
		156	015	0472			6330			326	526	
											35,107	
		156	015	0330			5100			2,186		
		156	015	0330			5200			8,155		
		156	015	0330			5500			392		
		156	015	0330			5550			(979)	9,754	
		156	015	0330			7100			1,231	10,985	
		100	015	0905			6110			1,591		
		100	075	9120			7700			424		
		100	015	9130			7608			3,150		
		400	070	7522			6580			1,481		
									0			
TOTAL EXPENDITURE CHANGE										52,738		
REVENUE												
TRANSACTION RB GM []			TRANSACTION DATE				ACCOUNTING PERIOD				BUDGET FY	
Document				Organi-		Reporting		Current	Revised	Change		
Number	Action	Fund	Agency	zation	Activity	Category	Object	Amount	Amount	Increase (Decrease)	Subtotal	Description
		156	015	0472			new			23,333		Early Head Start
		156	015	0472			2375			8,624		
		156	015	0472			7601			3,150	35,107	
		156	015	0330			4900			10,985		
		400	070	7522			6602			1,481		
		100	075	7410			6602			5,165		
									0			
TOTAL REVENUE CHANGE										52,738		



MULTNOMAH COUNTY, OREGON

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

HEALTH DEPARTMENT
BUSINESS SERVICES
McCOY BUILDING
426 SW STARK
PORTLAND, OR 97204
PHONE (503) 248-3056

TO: Board of County Commissioners

FROM:  Bill Odgaard

TODAY'S DATE: Dec. 10, 1997

REQUESTED PLACEMENT DATE: Dec. 18, 1997

SUBJECT: Health Budget Modification Number 10

I. Recommendation / Action Requested:

Approve increases of \$10,985 in the STD budget funded with new fee revenue, and increases of \$35,107 and .47 FTE in the Field Services budget funded with new contract and grant revenue.

II. Background / Analysis:

Sexually Transmitted Disease

The Sexually Transmitted Disease (STD) Program conducted an evaluation of an HIV I oral specimen collection device and was paid on an encounter basis by Epitope. STD requests approval to add the earned revenue to their personnel budget to cover extra costs of on-call staff used to provide program coverage, and to reclass an OA2 position to an OA Sr.

Field Services

The Early Head Start Family Center of Portland, a local non-profit, has contracted with County Field Services, using Federal Head Start Funds to provide a staff person to be Health Services Manager for the Head Start Program. The position will be funded during the 97/98 fiscal year with \$23,333 from Early Head Start and \$8,600 of State grant funds. The Manager will be stationed at Early Head Start which will provide space, phone, mail, and printing.

III. Financial Impact: NA

IV. Legal Issues: NA

V. Controversial Issues: NA

VI. Link to Current County Policies: NA

VII. Citizen Participation: NA

VIII. Other Government Participation: NA

MEETING DATE: _____

DEC 30 1997

AGENDA NO.: _____

C-17

ESTIMATED START TIME: _____

9:30am

(Above space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Revenue Agreement with the City of Portland

BOARD BRIEFING Date Requested: _____

Requested By: _____

Amount of Time Needed: _____

REGULAR MEETING Date Requested: _____

Amount of Time Needed: _____

10 minutes (unless on Consent Calendar)

DEPARTMENT: Health

DIVISION: Disease Prevention & Control

CONTACT: Hilda Adams*

TELEPHONE #: 248-3400

BLDG/ROOM #: 160/3

PERSON(S) MAKING PRESENTATION: Hilda Adams

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Intergovernmental Revenue Agreement 201128 with the City of Portland providing funding for implementation of the Home Lead Reduction Program to reduce the incidence of childhood lead poisoning.

1/14/98 ORIGINALS to KAREN GARBER

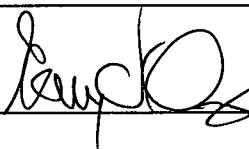
BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 DEC 23 AM 11:28

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

or

DEPARTMENT MANAGER: _____

 E. Bill Odegaard

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk at 248-3277

SUPPLEMENTAL STAFF REPORT

TO: Board of County Commissioners

VIA:  Billi Odegaard, Health Department
for Billi Odegaard

FROM:  Dave Houghton, Director
Disease Prevention and Control Division
Hilda Chaski Adams, Environmental Health Services *hca*

DATE: December 30, 1997

RE: Intergovernmental Revenue Agreement with the City of
Portland Funding the Home Lead Hazard Reduction Program

1. Recommendation/Action Requested:

The Health Department recommends Board ratification of Contract #201128 with the City of Portland for the period July 1, 1997, through August 31, 2002. The agreement is retroactive due to lengthy negotiations with the City regarding the terms and conditions of the funding.

2. Background/Analysis:

Exposure to lead-based paint is the most significant factor contributing to childhood lead poisoning. Other factors include poverty, living in a pre-1950 housing and living in rental housing. The results of such poisoning, even at low levels, affect behavioral and mental development. Acute exposure can result in neurological and kidney damage.

The City Water Bureau and the Multnomah County Health Department jointly developed a community-based program, the Home

Lead Hazard Reduction Program as an alternative method of compliance to the EPA's Lead and Copper Rule pertaining to drinking water. Since the Bull Run water supply contains no lead and the amount of lead added by piping and plumbing fixtures is insignificant when compared to the contribution of lead-paint dust, this program will reduce children's exposure to lead-paint dust.

3. Financial Impact:

The Multnomah County Health Department will receive \$656,560 to fund the implementation and evaluation of this program for Year One. The program is estimated to operate for five years. The scope of work for subsequent years shall be renegotiated annually and the budget shall not exceed \$500,000.

4. Legal Issues:

The program is in compliance with federal, state and local laws.

5. Controversial Issues:

None anticipated.

6. Link to Current County Policies:

The program supports the current county policy of protecting children's health.

7. Citizen Participation:

There has been significant citizen participation in development of the project through the Water Bureau's Stakeholders Advisory Group work. County staff have participated in this effort.

8. Other Government Participation:

Washington and Clackamas County Public Health Departments have endorsed this program. Their involvement is due to the fact that Bull Run water is sold to water suppliers in parts of these counties. In addition, the Oregon Health Division has participated in the development of this program and also endorsed it.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☐

Contract # 201128

Previously Approved Contract Boilerplate: ☐ Attached ☐ Not Attached

Amendment # _____

<p style="text-align: center;">CLASS I</p> <p><input type="checkbox"/> Professional Services under \$50,000</p> <p><input type="checkbox"/> Intergovernmental Agreement under \$50,000</p> <p><input type="checkbox"/> Expenditure</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS II</p> <p><input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCRB Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS III</p> <p><input checked="" type="checkbox"/> Intergovernmental</p> <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p>AGENDA # <u>C-17</u> DATE <u>12/30/97</u></p> <p style="text-align: center;">DEB BOGSTAD</p> <p style="text-align: center;">BOARD CLERK</p>
---	--	--

Department: Health Division: Disease Prevention & Control Date: 12/22/97

Contract Originator: Hilda Adams Phone: x22404 Bldg/Room: 160/3

Administrative Contact: Karen Garber Phone: x26207 Bldg/Room: 160/7

Description of Contract:

Funding from City for implementation of the Home Lead Hazard Reduction Program.

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

ORS/AR # _____ Contractor is ☐ MBE ☐ WBE ☐ QRF ☒ N/A ☐ None

Original Contract No. n/a (FOR RENEWALS ONLY)

<p>Contractor Name: <u>City of Portland</u></p> <p>Mailing Address: <u>Water Bureau</u></p> <p style="text-align: center;"><u>1120 SW 5th Avenue</u></p> <p style="text-align: center;"><u>Portland, OR 97204</u></p> <p>Phone: <u>823-7770</u></p> <p>Employer ID# or SS#: <u>n/a</u></p> <p>Effective Date: <u>July 1, 1997</u></p> <p>Termination Date: <u>August 31, 2002</u></p> <p>Original Contract Amount: \$ <u>2,656,560</u></p> <p>Total Amt of Previous Amendments: \$ _____</p> <p>Amount of Amendment: \$ _____</p> <p>Total Amount of Agreement: \$ _____</p>	<p>Cecilia Huang, 823-7174</p> <p>Remittance Address (if different) _____</p> <p>_____</p> <p>_____</p> <p>Payment Schedule Terms</p> <p><input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt</p> <p><input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30</p> <p><input type="checkbox"/> Other \$ _____ <input type="checkbox"/> Other</p> <p><input type="checkbox"/> Requirements contract - Requisition Required</p> <p>Purchase Order No. _____</p> <p><input type="checkbox"/> Requirements Not to Exceed \$ _____</p> <p>Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></p>
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REQUIRED SIGNATURES:

Department Manager: [Signature] Date: 12-23-97

Purchasing Director: _____ Date: _____

(Class II Contracts Only)

County Counsel: [Signature] Date: 12-23-97

County Chair/Sheriff: [Signature] Date: December 30, 1997

Contract Administration: _____ Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE <u>981625</u>				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPTION	AMOUNT	INC DEC
01	156	015	0313			2773		0402			
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

AGREEMENT FOR SERVICES

This Intergovernmental Agreement (hereinafter "Agreement") is made and entered into by the CITY OF PORTLAND, a political subdivision of the State of Oregon, (hereinafter called "CITY") and the MULTNOMAH COUNTY HEALTH DEPARTMENT (hereinafter called "COUNTY").

RECITALS

Whereas, the CITY desires to implement the Lead Hazard Reduction Program (LHRP) as an alternative compliance strategy with EPA's Lead and Copper Rule;

Whereas, the CITY desires to obtain childhood lead poisoning prevention services to reduce actual or potential risks of significant childhood lead exposure from lead-based paint and other sources in at-risk homes in high risk neighborhoods;

Whereas, the CITY desires to employ an organization with the specific expertise in lead poisoning prevention issues and activities;

Whereas, the COUNTY has been involved in the development of the Home Lead Hazard Reduction Program (HLHRP; a component of the City's LHRP) and has availability of CLEARCorps (Community Lead Education and Reduction Corps) services.

NOW, THEREFORE, THE PARTICIPANTS AGREE AS FOLLOWS:

1. EFFECTIVENESS OF AGREEMENT

This Agreement shall be effective July 1, 1997 and terminates on August 31, 2002, unless terminated earlier under the provisions of this Agreement.

2. SCOPE OF COUNTY SERVICES

A. The COUNTY shall perform the services described in the attached Scope of Work and Budget marked Exhibit A. These services include the following four major tasks:

Task 1: Implement the Home Lead Hazard Reduction Program to prevent children from being exposed to hazards due to lead-based paint in their home environments.

Task 2: Conduct Public Education efforts to raise awareness about the health risks of lead exposure and ways to prevent or reduce exposure.

Task 3: Conduct an Evaluation of the Home Lead Hazard Reduction Program and

Public Education Program to assess their effectiveness in achieving the Water Bureau's goals for regulatory compliance, protection of public health, and achievement of stakeholder objectives.

Task 4: Conduct a Lead Dust Prevalence Study to evaluate the occurrence and significance of lead dust in Portland area housing stock, and to allow refinement of the work plan for future years of this agreement.

- B. The COUNTY shall provide the services in accordance with the schedule set out in Exhibit A.

3. SCOPE OF CITY SERVICES

- A. To assist the COUNTY in carrying out its obligations hereunder, the City shall perform the services described in the attached Scope of Work and Budget, Exhibit A.
- B. The COUNTY shall provide the services in accordance to the schedule set out in Exhibit A.

4. COMPENSATION

- A. The CITY shall pay the COUNTY for work performed under this Agreement after the effective date as set out below. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to perform the work and services.
- B. The CITY shall pay the COUNTY on a time and materials basis in accordance with the COUNTY's rate schedule, Exhibit B.
- C. The estimated fees for the work in Year 1 are included in Exhibit A. The total compensation for Year 1 services shall not exceed \$656,560 unless specifically authorized through amendment of this agreement. The total compensation for services in Years 2 to 5 shall not exceed \$500,000 per year unless specifically authorized through amendment of this agreement.
- D. Total payments to the COUNTY for all work during the 5 year maximum life of this agreement shall not exceed \$2,656,560, unless specifically authorized through amendment of this agreement. Funding for services beyond the Year 1 services described in Exhibit A, Scope of Work and Budget, is contingent upon annual budget appropriation by the Portland City Council.
- E. In the event the COUNTY's CLEARCorps funding is terminated, the COUNTY reserves the right to terminate this agreement if necessary. Prior to such

termination, the COUNTY agrees to provide the CITY with immediate notice of loss of funding and to negotiate in good faith with the CITY to attempt to continue the project.

5. BILLING PROCEDURES AND PROGRESS REPORTS

- A.** Each month the COUNTY shall submit to the CITY a bill for work performed during the previous month. The bill shall set out the amount claimed as direct salary costs by person, hours worked, and rate per hour, and amount claimed as direct non-salary costs by item.
- B.** Billings from the COUNTY shall be identified by task and by activity as shown in Exhibit A. The monthly bill shall include a summary by task and activity, indicating the maximum amount authorized, the amount due for work completed during the previous month, and the total amount billed to date.

6. SUBSEQUENT WORK AND FINANCIAL COMMITMENTS

- A.** The CITY on thirty (30) days written notice, may terminate this Agreement.
- B.** The COUNTY on ninety (90) days written notice, may terminate this Agreement.
- C.** Each year COUNTY and CITY will endeavor collaboratively to devise a new annual work plan, to serve as an amendment to the Agreement's scope of work, and a new annual budget.

a) The parties agree that they will attempt to complete work on the revised budget and work plan by no later than May 1 of each year. If they are unable to reach agreement by that date, they shall proceed to implement the dispute resolution process contained in Section 12.

b) If the parties cannot reach agreement on a revised budget and work plan, even after the dispute resolution process or if dispute resolution is not complete, the previous year's work plan and budget shall continue in force to define required performance and payment obligations under this agreement until such time as a revised budget and work plan are agreed to or the agreement is terminated.

7. AMENDMENTS

- A.** The CITY and COUNTY may amend this agreement at any time only by written amendment executed by the CITY and COUNTY. The City Project Manager shall be authorized to approve amendments to this Agreement that do not increase the total contract amount.

- B. Any change in the scope of services shall be deemed an amendment subject to subsection (A).

8. SUBCONTRACTING

The COUNTY shall not subcontract its work under this Agreement, with the exception of work identified in Exhibit A, Scope of Work and Budget, as being performed by the Oregon Health Division, 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 COUNTY as specified in this Agreement. 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. COUNTY agrees that if subcontractors are employed in the performance of this Agreement, COUNTY and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

9. COUNTY'S PERSONNEL

The COUNTY shall initially assign the following personnel to do the work in the capacities designated:

<u>Name</u>	<u>Capacity</u>
Chris Johnson	HLHRP Manager
Hilda Adams	MCHD Reviewer
Larry Ehrbar	CLEARCorps Supervisor
John Dougherty	Principal Evaluator
Lisa Morley	Home Lead Risk Evaluator

The COUNTY may change assigned personnel with personnel of comparable qualifications if necessary over the life of this Agreement. Qualifications of proposed replacement personnel shall be mutually agreed to by both the City Project Manager and COUNTY prior to assignment.

10. OWNERSHIP OF DOCUMENTS

- A. All work the COUNTY performs under this Agreement shall be property of the CITY and COUNTY. The CITY and COUNTY shall jointly own any and all data, documents, plans, copyrights, specifications, working papers, and any other materials the COUNTY produces in connection with this Agreement.
- B. The COUNTY upon request by the City shall provide the City copies of the materials referred to in subsection (A) of this section, including any electronic

files containing the materials. The cost of these copies shall be paid for by project fund.

- C. Any use the CITY or COUNTY makes of the materials referred to in subsection (A) of this section, except for purposes of the work contemplated by this Agreement, shall be at the individual agency's risk.

11. MATERIALS AND EQUIPMENT

Except as provided in Section 10A. and 10B. providing for joint ownership of products produced by the COUNTY in connection with this agreement, all materials and equipment purchased by the COUNTY under this Agreement shall be transferred to the CITY within sixty days of termination of this Agreement. The COUNTY shall, within the same period of time, take whatever steps and execute whatever documents are necessary to transfer the ownership and title of the materials and equipment to the CITY.

12. DISPUTE RESOLUTION

- A. In the event of a dispute arising under this agreement between the parties, either party may initiate the following dispute resolution process:
 - a) The initiating party shall give written notice of the dispute to the other person and at the address identified in section 13D. The notice shall describe the nature of the dispute and the initiating party's proposal for settling the dispute. The notice shall also be sent to the Administrator of the CITY Water Bureau and the Director of the COUNTY Health Department.
 - b) The party against whom the dispute has been lodged shall respond in writing within thirty (30) days, to the address identified in section 13D, with copies to the Water Bureau Administrator and Health Department Director.
 - c) Both parties agree that they shall send representatives to a meeting to be scheduled no more than 20 days after receipt of the dispute response, at which resolution of the dispute shall be the goal.
- B. Neither party shall exercise its rights to terminate this agreement during the dispute resolution process. If notice of termination has been given prior to the initial notice of dispute and the notice of dispute is given prior to the effective date of the termination notice, the effective date of the termination shall be delayed until three working days after the time allotted for dispute resolution has run.

13. ADMINISTRATIVE PROVISIONS

- A.** This agreement shall be construed according to the laws of the State of Oregon.
- B.** To the extent permitted by the Oregon Tort Claims Act, the City agrees to indemnify, defend, and hold harmless the County from any and all claims, demands, suits, and actions (including attorney fees and costs) resulting from or arising out of the acts of the City and its officers, employees, and agents in performance of this interagency agreement. To the extent permitted by the Oregon Tort Claims Act, the County agrees to indemnify, defend, and hold harmless the City from any and all claims, demands, suits, and actions (including attorney fees and costs) resulting from or arising out of the acts of the County and its officers, employees, and agents in performance of this interagency agreement.
- C.** COUNTY is the responsible employer for paying wages under ORS 656.043.
- D.** Invoices to CITY and all notices to CITY shall be directed to:

Alberta Seierstad, City Project Manager
City of Portland
2010 N Interstate Avenue
Portland, OR 97227

Payments to COUNTY and all notices to COUNTY shall be directed to:

Chris Johnson
Multnomah County Health Department
426 SW Stark Street
Portland, OR 97204

14. SIGNATURES

REVIEWED AS TO FORM: 9

MULTNOMAH COUNTY

Katie Gartz
County Attorney

Multnomah County
held in check order
Em Hester Serna

By: Beverly Stein

Name: Beverly Stein

Title: Chair, Board of County Commissioners
for Multnomah County, Oregon

Date: December 30, 1997

APPROVED AS TO FORM:

CITY OF PORTLAND

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-17 DATE 12/30/97
DEB BOGSTAD
BOARD CLERK

[Signature]
City Attorney

[Signature]
Michael F. Rosenberger, Administrator
Bureau of Water Works

By: _____

Name: Erik Sten

Title: Commissioner of Public Works

Date: _____

By: _____

Name: Barbara Clark

Title: Auditor of the City of Portland

Date: _____

EXHIBIT A = SCOPE OF WORK AND BUDGET

Exhibit A: Scope of Work and Budget

Program Goals and Stages

The Portland Water Bureau is implementing a Lead Hazard Reduction Program (LHRP) as an alternative means of complying with Lead and Copper Rule requirements for optimal corrosion control treatment and public education. The goal of the LHRP is to achieve better public health protection from lead exposure in a cost effective manner with an emphasis on community input.

This program was developed as a joint effort by the Portland Water Bureau (PWB), the Multnomah County Health Department (MCHD) and the Oregon Health Division (OHD). Through use of an AmeriCorps team, Comprehensive Lead Education and Reduction Corps or CLEARCorps, this program is also a private and public partnership. The LHRP has four main components:

- Component 1: Corrosion Control Treatment
- Component 2: Expanded Free Lead-in-Water Testing
- Component 3: Home Lead Hazard Reduction Program (HLHRP)/CLEARCorps
- Component 4: Public Education

PWB will implement Components 1 and 2; services to support implementation of these components are not included in this scope of work.

This scope of work includes a description of services to support implementation of Components 3 and 4. The Water Bureau anticipates requiring such services for a period of 5 years. Services will be provided by the Multnomah County Health Department (MCHD) and the Oregon Health Division (OHD) as a major subcontractor. Two units within MCHD will be involved in the project; the Environmental Health Section and the Program Design and Evaluation Services (PDES).

A detailed scope of work and budget is provided for "formative stage" Year 1 of the program. Although Year 1 is a formative year, this scope of work projects that 125 homes will be evaluated for lead paint and that in 60 of these homes, lead hazard reduction activities will take place. A preliminary scope of work and budget anticipated for Year 2 is also included in this Exhibit. Knowledge gained a Year 1 activities will be used to jointly develop a detailed scope of work and budget for the Year 2, and likewise for Years 3, 4, and 5.

Scope of Work for Year 1
(through August 31, 1998)

The scope of work to be performed by MCHD in Year 1 of this agreement includes five main tasks that support two of the LHRP components, as is shown in the following table.

Lead Hazard Reduction Program Components:	Tasks in MCHD Scope of Work for Year 1:
Component 1: Corrosion Control Treatment	
Component 2: Expanded Free Lead in Water Testing Program	<i>Task 5: Oversight, Review and Planning</i>
Component 3: Home Lead Hazard Reduction Program	<i>Task 1: Home Lead Hazard Reduction Task 4: Household Dust Lead Study</i>
Component 4: Public Education	<i>Task 2: Public Education</i>
	<i>Task 3: Evaluation of Tasks 1 and 2 Task 5: Oversight, Review and Planning</i>

Task 1 - Home Lead Hazard Reduction Program

The purpose of this task is to prevent children from being exposed to hazards due to lead dust in their home environments. This program will be implemented as an AmeriCorps program called CLEARCorps (Community Lead Education and Reduction Corps). CLEARCorps is a national demonstration project operating in several U.S. cities that focuses on targeted, feasible, and cost-effective solutions to reduce lead exposure in high-risk neighborhoods. The Multnomah County Health Department will manage the Portland CLEARCorps program, funded by the Water Bureau and a grant from the Corporation for National Service. During Year 1, the CLEARCorps team will consist of 11 members.

This program will operate in targeted Portland neighborhoods in which children are likely to be at greatest risk for home lead dust exposure. In Year 1, the focus will be on determining how best to adapt the CLEARCorps national program model for implementation in Portland.

A pilot CLEARCorps program will be implemented in the Humboldt and other target neighborhoods located in Portland. The CLEARCorps office will be community-based and will include lead-safe residential space for program clients while the team is working in their home.

The CLEARCorps program staff will provide neighborhood-based outreach and

education to develop awareness of and support for the CLEARCorps program and recruit residents in eligible homes for participation in the program. Owners of eligible housing will be offered free individual home lead risk evaluations, free child blood lead testing, and educational materials about childhood lead safety. In homes where significant lead exposure risks are identified, free in-place lead hazard control services will be provided by a team of AmeriCorps members. In-place lead hazard control services include safe repair of deteriorated painted surfaces, repainting and specialized cleaning. Follow-up visits will be made to evaluate the long-term effectiveness of the program in reducing lead exposures to children.

In this pilot program, working protocols will be established using applicable standards, lead hazard reduction will begin, and the evaluation of the effectiveness of these activities will be started. Input from the community will be sought throughout the life of the program.

Task 1 includes four major activities:

- Activity 1: CLEARCorps Program Development
- Activity 2: CLEARCorps Program Neighborhood Outreach
- Activity 3: CLEARCorps Program Implementation
- Activity 4: HLHRP Program Management

TASK 1 Deliverables: Monthly activity reports containing description of work on Task 1 activities submitted to the Oversight, Review, and Planning Committee and the Water Bureau Project Manager.

Task 1/ Activity 1: CLEARCorps Program Development

The purpose of this activity is to develop a plan and the necessary tools to implement a CLEARCorps program in Portland. Work under this activity includes:

- Development of an implementation plan, including a description of the following:
 - CLEARCorps Program goals for Year 1
 - CLEARCorps team recruitment methods
 - training and personal development program for CLEARCorps members
 - home eligibility requirements
 - hazard evaluation protocols
 - guidelines for determining what lead hazard reduction work is to be done in each home
 - protocols for performing lead hazard reduction work
 - in-home lead safety education program
 - protocols for follow-up activities.
- Development of tools required to implement the CLEARCorps program (training materials, protocols, etc.)

- Implementation plan revisions as recommended by Oversight, Review and Planning Team (ORP Team; see Task 5) during the course of Year 1

The following team will be primarily responsible for this developmental work:

HLHRP Manager (MCHD)
Principal Evaluator (PDES)
Environmental Health Manager (MCHD)
CLEARCorps On-site Supervisor (MCHD)
Home Lead Risk Evaluator (MCHD)

Deliverables: Written implementation plan and necessary tools for implementation

Water Bureau Responsibilities:

- Review of drafts of all components of the implementation plan
- Development of LHRP Stakeholder Advisory Group

Task 1/ Activity 2: CLEARCorps Program Neighborhood-based Outreach

The purposes of this activity are to coordinate the required community outreach in targeted "high-risk" neighborhoods with Task 2, the PWB Public Education Program, to 1) develop awareness of and support for the CLEARCorps program, and 2) recruit residents in eligible homes for participation in the program. The following team will be responsible for conducting these activities:

CLEARCorps Team and On-site Supervisor (MCHD)
HLHRP Manager (MCHD)
Public Education Coordinator (PWB)

Water Bureau Responsibilities:

- Develop a written neighborhood outreach plan
- Work with Principal Evaluator in developing an evaluation plan and tracking system necessary to implement the plan for neighborhood outreach
- As needed, assist MCHD in preparing and distributing CLEARCorps informational materials (i.e., brochures, flyers)
- Identify opportunities for outreach and educational presentations to neighborhood organizations, including collaboration with existing community outreach workers
- Making initial contacts with neighborhood groups and scheduling presentations
- Maintaining schedule of outreach activities
- Maintaining tracking system to record outreach activities and share information

with CLEARCorps team and Principal Evaluator.

Work to be performed by MCHD under this activity includes:

- Preparing and distributing CLEARCorps informational materials (i.e., brochures, flyers)
- Identifying opportunities for outreach and educational presentations to neighborhood organizations
- As needed, assist PWB in making initial contacts with neighborhood groups and scheduling presentations
- Making presentations to neighborhood groups and events
- Recruiting participants for the CLEARCorps program
- Meeting with PWB's Home Lead Reduction Public Education Coordinator on a bi-weekly basis

Deliverables: Records of activities submitted to PWB's Home Lead Reduction Public Education Coordinator on a monthly basis

Task 1/ Activity 3: CLEARCorps Program Implementation

The purpose of this activity is to prevent children from being exposed to hazards due to lead dust in their home environments through the CLEARCorps program. In Year 1, a pilot program will be implemented in the Humboldt neighborhood, and activities will include:

- Determination of home eligibility for the CLEARCorps program
- In eligible homes, 1) conducting home lead risk evaluations, which may include testing dust, paint chip, and/or soil samples for lead content, and visual inspections, 2) providing blood lead testing of resident children; and 3) providing in-home lead safety education
- In homes where significant lead exposure risks are identified, offering in-place lead hazard management work to reduce lead-based paint hazards, including repair of deteriorated painted surfaces, repainting, replacing window beads and sashes, eliminating friction and impact points and specialized cleaning. Work will be performed in accordance with established protocols.

- In homes where the CLEARCorps team has performed lead hazard management work, providing follow-up visits at appropriate intervals to evaluate the short and long-term effectiveness of CLEARCorps activities, including in-place hazard management work and resident education in reducing lead hazards.

This work will be performed by the following team:

CLEARCorps Team and On-site Supervisor (MCHD)
Home Lead Risk Evaluator (MCHD)

Year 1 Goals: Conduct home lead risk evaluations in 125 homes. Provide in-place lead management work in 60 homes.

Deliverables: See Deliverables for Activity 4 of this task

Water Bureau Responsibilities: Accept donated computer equipment from MCHD

Task 1/ Activity 4: HLHRP Program Management

The HLHRP Manager is responsible for:

- Functioning as the primary administrative contact with the National CLEARCorps Office and with the Water Bureau
- Recruiting and training a CLEARCorps Team (includes mandated staff development program as per AmeriCorps guidelines; professional skills including Lead Abatement Worker training, other lead safety training, and carpentry and remodeling skills; specialized communication skills)
- Supervising the activities of the CLEARCorps Team Supervisor and Lead Risk Evaluator
- Providing other administrative support to the CLEARCorps team as required (such as making arrangements to obtain neighborhood office and donated equipment and services)
- Insuring a satisfactory level of progress toward meeting Program goals and insuring that Program costs remain within budget
- Serving as an *ex officio* member of the LHRP Stakeholders Advisory Group

Deliverables: Monthly progress reports submitted to the Oversight, Review and Planning Team (see Task 5) and the Water Bureau Program Manager, describing

CLEARCorps neighborhood outreach activities (Activity 2) and lead hazard reduction activities (Activity 3).

Water Bureau Responsibilities:

- Arrange, facilitate, and document LHRP Stakeholders Advisory Committee meetings

Task 2 - Public Education

This public education program will be implemented throughout the entire Bull Run Service Area. The purpose of this task is to raise awareness of persons who care for young children (under six years of age) about the health risks of childhood lead exposure and ways to prevent or reduce exposure. The Public Education Coordinator of the Portland Water Bureau will be responsible for conducting this program with requested assistance from:

CLEARCorps Team Supervisor (MCHD)
HLHRP Manager (MCHD)
Oversight, Review and Planning Team (MCHD/OHD/PWB/Community)

Water Bureau Responsibilities:

- Make presentations and provide educational materials
- Develop a written public education plan in collaboration with MCHD
- Work with Principal Evaluator in developing an evaluation plan and tracking system necessary to implement the plan for public education
- Identifying opportunities for outreach and educational presentations to regional and neighborhood organizations, schools, health professionals and scheduling presenters, presentations and training
- Assure that input from the LHRP Stakeholders Advisory Group is incorporated into educational materials
- Maintaining tracking system to record public education activities
- Submit monthly activity reports of public education activities to HLHRP Manager and Principal Evaluator

Work to be performed by MCHD under this activity at the Water Bureau's request includes:

- Advising the Water Bureau on lead safety issues and educational strategies
- Assisting the Water Bureau in the development of lead safety educational materials
- Assisting the Water Bureau in identifying opportunities for outreach and educational presentations
- Making lead safety information presentations to appropriate organizations

Task 2 Deliverables: Records of activities submitted to PWB's Home Lead Reduction Public Education Coordinator on a monthly basis

Task 3 - Design and Implement Program Evaluation

The purposes of program evaluation are to 1) assure that the development and implementation of these tasks will achieve the Water Bureau's public health, regulatory compliance, and stakeholder related objectives; 2) collect relevant program information; and, 3) analyze processes and results of program activities to develop an optimally effective program in Year 2.

In Year 1, evaluation plans will be developed and implemented for the Home Lead Hazard Reduction Program - Neighborhood Outreach and Hazard Control (*Program Task 1, Activities 2 and 3*) and the Public Education Program (*Program Task 2*). An evaluation plan for each activity includes a list of evaluation objectives (questions to be answered) and a plan for achieving those objectives (data to be collected, evaluation criteria/processes, reporting formats and procedures). Also, tools will be developed to implement these evaluation plans (i.e., data collection and entry protocols, data bases, data quality assurance protocols, staff training).

The Evaluation Team consists of:

- Principal Evaluator (PDES)
- Research Analyst (PDES)
- Research Interviewer (Contractor)
- Data Liaison/Entry (PDES)
- Office Assistant (MCHD)

Task 3 includes three major activities:

- Activity 1: Evaluate Home Lead Hazard Reduction Program
 - A) Neighborhood Outreach (*Program Task 1, Activity 2*)
 - B) Lead Hazard Reduction Implementation (*Program Task 1, Activity 3*)
- Activity 2: Evaluate Public Education Program (*Program Task 2*)
- Activity 3: Develop Evaluation Team, Tools, and Quality Assurance Processes

Task 3 Deliverables: Written evaluation plans for program tasks and activities; functioning evaluation team and data collection tools, data quality assurance protocols and data bases; monthly progress reports and written reports of findings about the effectiveness of program activities in meeting Water Bureau's objectives.

Task 3/ Activity 1: Evaluate Home Lead Hazard Reduction Program

- A) Neighborhood Outreach (*Program Task 1, Activity 2*)

Purpose: Develop and implement an evaluation to 1) measure the awareness and support for the CLEARCorps program from the communities in which it is implemented; 2) the impact of the outreach efforts on the level of knowledge about childhood lead safety; and 3) success in recruiting households for the CLEARCorps program.

Activities: This will primarily require documentation of community contacts/presentations, an analysis of household recruitment data, and household & community group survey/interview data. Data from the Household Dust Lead Study (*Program Task 4*) will be also be used to evaluate the effectiveness of household recruitment.

Deliverables:

- Written evaluation plan
- Reports on findings, including target population reached, knowledge retained, changes in health/preventive behaviors, and the kinds and numbers of households interested in or volunteering to participate in the HLHRP, and community satisfaction with educational and outreach efforts
- Monthly progress reports

Water Bureau Responsibilities:

- Coordinate outreach efforts with evaluation staff and provide requested data on outreach activities, using supplied data forms and protocols
- Provide feedback to evaluation staff that can be used to optimize the ability of evaluation data and reports to meet outreach program development needs

B) Lead Hazard Reduction Implementation (*Program Task 1, Activity 3*)

Purpose: Develop and implement the evaluation to determine the short- and long-term effectiveness of CLEARCorps program in-home activities (hazard identification repairs/cleaning, and education and follow-up) in identifying and reducing lead hazards.

Activities: This will primarily require evaluation of 1) environmental lead hazard data, such as results of "before" and "after" hazard evaluations, dust, soil, and blood tests, and client interviews; and 2) client participation and satisfaction data.

Deliverables:

- Written evaluation plan
- Reports on findings, including characteristics of households recruited and retained, kinds of lead hazard controls and education provided,

baseline and post-intervention changes in home environmental lead levels, changes in household knowledge and preventive behavior, and satisfaction with intervention and educational efforts.

- Monthly progress reports

Water Bureau Responsibilities:

- Provide feedback to evaluation staff that can be used to optimize the ability of evaluation data and reports to meet hazard reduction program development needs

Task 3/ Activity 2: Evaluate Public Education Program (*Program Task 2*)

Purpose: Develop and implement the evaluation of the outcomes of the Public Education Program designed to to raise awareness of persons in the Bull Run Service Area who care for young children (under six years of age) about the health risks of childhood lead exposure and ways to prevent or reduce exposure.

Activities: The budget has been developed for the following scope of work: Questionnaires/Surveys of 3 target audiences/populations (2 professional, 1 community), of about 50 persons each, will be administered at 3-6 months post-education. In addition, in-depth ethnographic interviews of 10 members of a group that has been targeted with educational messages will be conducted. Surveys and interviews will determine the amount of the education that was understood and retained by the target audience, the beliefs and intentions that were modified by the educational messages, and the changes in the recipient's health/prevention behavior that occurred in response to the information.

Deliverables:

- Written evaluation plan
- Monthly reports on findings, including percentage of target population reached, information retained/concept recognition, changes in knowledge of key lead hazard/prevention concepts, changes in beliefs and/or intentions, changes in health/preventive behaviors, and the incorporation of accurate lead hazard information in program activities of public health venues and community organizations, if selected for evaluation.
- Monthly progress reports

Water Bureau Responsibilities:

- Identify target audiences for evaluation, meet with principal evaluator to identify key educational concepts presented during the education.
- Participate in development of surveys and ethnographic interviews to ensure that central questions of interest to WB are addressed.
- Use evaluation reports to optimize effectiveness of public education efforts.
- Coordinate communications of survey findings for general public

Task 3/ Activity 3: Develop and Maintain an Evaluation Team, Tools, and Quality Assurance Processes

Purpose: Develop staff and tools necessary to implement the evaluation plans for the Home Lead Hazard Reduction Plan (*Task 1*) and the Public Education Plan (*Task 2*) as described above in Activities 1 and 2 , and to implement the study plan for the Household Lead Dust Study (*Task 4*).

Activities: Establish and maintain evaluation team. Develop necessary tools for implementation plan evaluation, including data confidentiality and informed consent procedures, data collection protocols and record keeping forms, data bases, data analysis methodologies, data management and quality assurance protocols. Train CLEARCorps team members, MCHD, and Water Bureau staff to facilitate collection of quality data.

Deliverables:

- A functioning evaluation team and system for obtaining and managing quality data at appropriate intervals
- A system for analyzing and interpreting process and outcome data for feedback to MCHD and Water Bureau staff and the oversight group
- Presentations at national conference and manuscripts describing the formative phase process and outcomes.

Water Bureau Responsibilities:

- Provide requested data on Task 1 & Task 2 activities, using supplied data forms and protocols.
- Provide feedback to evaluation staff that can be used to optimize the ability of evaluation data and reports to meet overall program development needs during the formative phase.

Task 4 - Household Dust Lead Study

The purpose of the Household Dust Lead Study is to estimate the prevalence and magnitude of dust lead hazards in high-risk neighborhoods. The results of this study will be used to 1) determine the characteristics of dwellings most likely to have dust lead hazards so that high-risk homes can be identified and residents can be recruited for participation in the CLEARCorps program more efficiently, and 2) insure that resources are targeted wisely to a problem of known magnitude.

Task 4 Deliverables: Report of study results, identifying: prevalence and magnitude of dust lead hazards and levels, and characteristics of dwellings most likely to have dust

lead hazards; recommendations for CLEARCorps household recruitment strategies; presentation of findings at scientific meeting and/or preparation of manuscript for publication in public health journal.

Activities for this study include:

- Developing a study plan, including
 - number and characteristics of homes to be sampled
 - the type and number of samples to be collected; sampling schedule; sampling and analytical protocols
 - participant recruitment, information, and assistance plan
 - plan for data analysis and interpretation, and communication of findings
- Recruiting participants
- Conducting survey, including collection of dust, soil and blood samples and household information; analyze samples for lead
- Notifying participants of analytical results, and provide appropriate recommendations for lead hazard reduction
- Analyzing data to determine the prevalence and magnitude of dust lead hazards and levels, and characteristics of dwellings most likely to have dust lead hazards.

The following team will design and implement the study:

Principal Evaluator (PDES/MCHD)
Environmental Epidemiology Manager (OHD)
Research Analyst (OHD)
Research Assistant (MCHD)
Environmental Health Sanitarian (MCHD)

Water Bureau Responsibilities:

- Participation in development of study design and implementation to ensure that central questions of interest to the Water Bureau are addressed.
- Participation in preparation of communications of study findings for general public.
- Coordinating study plan with community organizations and performing outreach activities.

Task 5 Review, Oversight and Planning

The purpose of this task is to provide on-going review of the design, implementation,

and outcome of the four previous tasks (Home Lead Hazard Reduction, Public Education, Evaluation, and Lead Dust Prevalence Study) and to make immediate recommendations to change program protocols as necessary to assure that overall PWB program objectives are met.

Task 5 Deliverables: Written summaries of monthly Team meetings with action items and recommendations for program changes as necessary.

Work under this activity includes:

- Review work completed-to-date such as:
 - written initial implementation plans for Tasks 1-4
 - current monthly progress reports for Tasks 1-4
 - current monthly evaluation reports for Tasks 1-4
- Identify emerging problems and recommend appropriate changes in design, implementation, evaluation, and/or management of Tasks 1-4
- Insure coordination of Tasks 1 and 2 with other childhood lead safety programs and activities in the community (for example, HUD-sponsored lead paint abatement activities, outreach activities by Urban League and Physicians for Social Responsibility)
- Insure that existing or emerging information about lead hazard reduction (for example, information from the U.S. Department of Housing and Urban Development, the National Center for Lead-Safe Housing, professional literature) is incorporated into Tasks 1 and 2 as appropriate
- Assist in planning the implementation and evaluation of its expanded free-lead-in water testing program as requested by the PWB

The Public Health Program Review and Oversight Team consists of the following professionals with special expertise in childhood lead exposure, health program evaluation, and community outreach and education:

Principal Evaluator (PDES)
Environmental Health Manager (MCHD)
Environmental Epidemiology Manager (OHD)
HLHRP Manager (MCHD)
CI EARCops Team Supervisor (MCHD)
Public Education Coordinator (PWB)
Community member with public health expertise

Water Bureau Responsibilities:

- Define PWB objectives for Tasks 1-4 and communicate these to the Team
- Inform Team of relevant information related to Lead and Copper Rule compliance
- Insure that any concerns raised by the LHRP Stakeholders Advisory Committee are considered by the Team

Year 2 Scope of Work Anticipated Changes

In general, the Scope of Work for Year 2 will differ from Year 1 in that it will focus on implementation of the program components, allowing for greater concentration on service delivery and program effectiveness evaluation. The data gathered in the formative Year 1 and recommendations of the Oversight, Review and Planning Team will be used to determine the specific changes to the Scope of Work.

In broad terms, the anticipated changes can be described by task as follows:

Task 1: Home Lead Hazard Reduction Program/ CLEARCorps

With established protocols, the focus will shift to an increase in numbers of clients and houses reached by the program. Some development activities will be necessary as new CLEARCorps recruits join the team.

Task 2: Public Education

The Public Education component will remain similar to that of Year 1.

Task 3: Evaluation

Year Two program evaluation will include data analysis as well as continued data collection. Any completed data analysis information will be used to formulate program modification recommendations and implement program changes.

Task 4: Lead Dust Prevalence Study

The majority of house dust sampling will have been completed. The Year 2 effort in this task will be the analysis and interpretation of the study data and development of recommendations for program modification.

Task 5: Oversight, Review and Planning

The Oversight, Review and Planning component will remain similar to that of Year 1.

COST SUMMARY - Year 1 thru 8/31/98					
Task		Activity		Cost	Task Total
1	Home Lead Hazard Reduction	1	CLEARCorps Program Development	\$85,949	
		2	CLEARCorps Program Neighborhood Outreach	\$23,345	
		3	CLEARCorps Program Implementation	\$280,563	
		4	CLEARCorps Program Management	\$32,645	
					\$422,502
2	Public Education			\$13,954	
					\$13,954
3	Evaluation	1A	Evaluate HLHRP: Outreach	\$21,791	
		1B	Evaluate HLHRP: Hazard Control	\$49,665	
		2	Evaluate Public Education	\$24,168	
		3	Evaluation Development	\$27,564	
					\$123,189
4	Lead Dust Prevalence Study				
					\$75,074
5	Oversight, Review, and Planning				
					\$21,841
GRAND TOTAL					\$656,560

Task 1			Act 1: Development				Act 2: Outreach			
Home Lead Haz Red			FTE	Months	MCHD Cost	OHD Cost	FTE	Months	MCHD Cost	OHD Cost
Personal Services	CLEARCorps (MCHD)	HLHRP Manager - Johnson	0.50	14	\$43,229		0.10	14	\$8,646	
		CLEARCorps Team Supervisor - Ehrbar	0.25	14	\$16,445		0.10	14	\$6,578	
		Home Lead Risk Evaluator - Morley	0.25	11	\$12,021					
		Credit: Grant from Corp for National Service			(\$13,039)					
	CLEARCorps Team	11 CLEARCorps Team Members								
		Credit: Grant from Corp for National Service								
	Oversight/Evaluation	Principal Evaluator (PDES/MCHD) - Dougherty	0.10	14	\$11,288					
		Env Health Manager (MCHD) - Adams	0.05	6	\$2,114					
		Env Epidemiology Manager (OHD) - Tolentino								
		Research Analyst (OHD) - Leiker								
		Research Analyst (PDES/OHD) - Smith								
Total Personal Services			1.07	14	\$72,057	\$0	0.2	14	\$15,224	\$0
			Unit Cost	Unit	MCHD Cost	OHD Cost	Unit Cost	Unit	MCHD Cost	OHD Cost
Materials and Services	Professional Services									
	Miscellaneous Services									
		Laboratory services - dust testing								
		Laboratory services - soil testing								
		Laboratory screening - blood testing								
		Medical Monitoring - Initial physicals and blood lead tests								
		Medical Monitoring - periodic blood lead tests								
		OSHA Worker Safety Training Plan			\$730					
		Waste disposal								
	External Rent		MCHD \$158/FTE/mon	1.07 FTE/14 mos	\$2,367		MCHD \$158/FTE/mon	0.2 FTE/14 mos	\$442	
			OHD \$141/FTE/mon				OHD \$141/FTE/mon			
		Room rental for CLEARCorps training								
		CLEARCorps Temp office at MCHD								
		CLEARCorps Office/ Temp Client Housing								
	Utilities	CLEARCorps Office/ Temp Client Housing								
	Office Supplies	Office supplies, duplicating, postage	MCHD \$65/FTE/mon	1.07 FTE/14 mos	\$974		MCHD \$65/FTE/mon	0.2 FTE/14 mos	\$182	
			OHD \$105/FTE/mon				OHD \$105/FTE/mon			
	Operating Supplies	Home repair/cleaning supplies								
		HEPA vacuum cleaner replacement filters								
		Credit: Grant from Corp for National Service								
	Minor Equipment	Tools and respirators								
		HEPA wet vacuum cleaner/accessories								
		HEPA vacuum cleaner/accessories								
		HEPA vacuum sander								
	Clothing	Americorps Service gear								
	Other Commodities	Furnishings for client residential space								
		Misc supplies for CLEARCorps Team training								
	Education	Employee Continuing Education	MCHD \$29/FTE/mon	1.07 FTE/14 mos	\$434		MCHD \$29/FTE/mon	0.2 FTE/14 mos	\$81	
		Training for skills for in-place lead haz management								
		Lead Risk Assessor Training @WRLTC								
		WB reimbursement								

		Lead Risk Inspector Training @ WRLTC							
		WB reimbursement							
		Lead Supervisor Training @ WRLTC							
		Lead Abatement Worker Training							
		OSHA Worker Safety Training							
		African-American Wellness Conf							
		Member Development							
	Local Travel	Bus passes							
		Mileage							
		Parking							
	Out-of-Town Travel	97 CLEARCorps National Mtg							
		Credit: Grant from Corp for National Service							
		WB reimbursement							
		CLEARCorps-sponsored meeting(s)							
		Credit: Grant from Corp for National Service							
		97 National Lead Safe Housing Conference	\$1,371			\$1,371			
		WB reimbursement				(\$1,371)			
	Miscellaneous	Printing costs (flyers, brochures, etc.)							\$5,000
		Newspaper Ads for CLEARCorps member recruitment							
	Fleet Services	Motor Pool - maintenance and insurance							
		Motor Pool mileage charges							
	Communications	Telephone/FAX/Long distance	MCHD \$38/FTE/mon	1.07 FTE/14 mos		\$569	MCHD \$38/FTE/mon	0.2 FTE/14 mos	\$106
			OHD \$85/FTE/mon				OHD \$85/FTE/mon		
		Voice Mail Service	MCHD \$5/FTE/mon	1.07 FTE/14 mos		\$75	MCHD \$5/FTE/mon	0.2 FTE/14 mos	\$14
		Pagers and service							
		Cell Phone							
		Cell phone service							
	Data Processing	Computer Services Charge	MCHD \$62/FTE/mon	1.07 FTE/14 mos		\$929	MCHD \$62/FTE/mon	0.2 FTE/14 mos	\$174
		Intra-agency ISS Charges	OHD \$93/FTE/mon				OHD \$93/FTE/mon		
		PC Software and Printer							
Total M and S						\$6,078	\$0		\$5,999
MCHD Indirect Costs (10%)						\$7,814			\$2,122
OHD Indirect Costs (1%)						\$0			\$0
State Gov't Charges			OHD \$37/FTE/mon			\$0	OHD \$37/FTE/mon		\$0
Capital Outlay	Equipment	15-passenger van							
Total Capital Outlay						\$0	\$0		\$0
TOTALS						\$85,949	\$0		\$23,345
						Total =	\$85,949		Total =
									\$23,345

Act 3: Implementation				Act 4: Management				FTE Sum- 14 mos	Cost Sum	Notes
FTE	Months	MCHD Cos	OHD Cost	FTE	Months	MCHD Cost	OHD Cost			
				0.25	14	\$21,614		0.85	\$73,489	
0.55	14	\$36,179						0.90	\$59,203	
0.75	11	\$36,062						0.79	\$48,083	
									(\$13,039)	
10.00		\$137,613							\$137,613	
		(\$75,045)							(\$75,045)	
									\$11,288	
								0.02	\$2,114	
1.14	14	\$134,810	\$0	0.25	14	\$21,614	\$0	2.56	\$243,705	\$243,705
Unit Cost	Unit	MCHD Cos	OHD Cost	Unit Cost	Unit	MCHD Cost	OHD Cost		Cost Sum	
\$5/sample	125 homes; 7/home	\$4,375							\$4,375	
\$5/sample	125 homes; 3/home	\$1,875							\$1,875	
\$10/sample	250 samples	\$2,500							\$2,500	
\$164/person	12 persons	\$1,968							\$1,968	Ehrbar, Morley, 10 CLEARCorps Team members
\$120/person	12 persons	\$1,440							\$1,440	Ehrbar, Morley, 10 CLEARCorps Team members
									\$730	by Marine Environmental
		\$1,500							\$1,500	
MCHD \$158/FTE/mon	1.14 FTE/14 mos	\$2,521		MCHD \$158/FTE/mon	0.25 FTE/14 mos	\$553			\$5,883	
OHD \$141/FTE/mon				OHD \$141/FTE/mon					\$0	
		\$1,000							\$1,000	
MCHD \$13.81/sf/yr	400 sf/6 mos	\$2,762							\$2,762	
\$1200/month	8 mos	\$9,600							\$9,600	
\$250/month	8 mos	\$2,000							\$2,000	
MCHD \$65/FTE/mon	1.14 FTE/14 mos	\$1,038		MCHD \$65/FTE/mon	0.25 FTE/14 mos	\$228			\$2,422	
OHD \$105/FTE/mon				OHD \$105/FTE/mon					\$0	
\$350/home	60 homes	\$21,000							\$21,000	
\$125 ea	4	\$500							\$500	
		(\$2,000)							(\$2,000)	
\$325/person	11 persons	\$3,575							\$3,575	Ehrbar, 10 team members
\$2000 ea	1	\$2,000							\$2,000	
\$1000 ea	1	\$1,000							\$1,000	
\$600 ea	2	\$1,200							\$1,200	
\$75/person	10 persons	\$750							\$750	
		\$3,000							\$3,000	Clients use space while CLEARCorps team is working in their home
		\$1,000							\$1,000	
MCHD \$29/FTE/mon				MCHD \$29/FTE/mon	0.25 FTE/14 mos	\$102			\$617	
	10 pers	\$2,000							\$2,000	Pat Lehne
\$525/person	1 pers	\$525							\$525	Morley
		(\$525)							(\$525)	5/97

\$370/person	1 pers	\$370						\$370	Morley		
		(\$370)						(\$370)	5/97		
\$750/ person	1 pers	\$750						\$750	Ehrbar		
\$325/person	10 pers	\$3,250						\$3,250	10 CLEARCorps Team members		
	10 pers	\$2,002						\$2,002	Marine Environmental		
		\$600						\$600			
1 hr/pers/wk @\$50/hr	15 wks, 10 pers	\$7,500						\$7,500			
\$34/mon	10 mos; 10 pers	\$3,400						\$3,400	for Team Members		
\$0.315/mile, 50m/wk/pers	2 pers; 48 ea weeks	\$1,512	\$0.315/mile, 75/wk	48 wks	\$1,134			\$2,646	Johnson; Ehrbar, Morley		
\$1,150	14 mos	\$1,342	\$1,150	14 mos	\$1,342			\$2,684	Johnson; Team van		
			\$934		\$934			\$934	4/97; Johnson		
					(\$750)			(\$750)			
					(\$184)			(\$184)	5/97		
\$1100/person	1	\$1,100	\$1100/person	1	\$1,100			\$2,200	Johnson, Ehrbar		
		(\$750)			(\$750)			(\$1,500)			
								\$1,371	Johnson; 4/97		
								(\$1,371)	5/97		
								\$5,000			
			\$1000 per event	8/97, 4/98, 7/98	\$3,000			\$3,000	Per event: ads in 4 newspapers @ 250/paper		
\$48/mon	14 mos	\$672						\$672	Team van		
\$0.24/mile, 250m/wk	35 wks	\$2,100						\$2,100	Team van		
MCHD \$38/FTE/mon	1.14 FTE/14 mos	\$606	MCHD \$38/FTE/mon	0.25 FTE/14 mos	\$133			\$1,414			
OHD \$85/FTE/mon			OHD \$85/FTE/mon					\$0			
MCHD \$5/FTE/mon	1.14 FTE/14 mos	\$80	MCHD \$5/FTE/mon	0.25 FTE/14 mos	\$18			\$187			
\$5/mon/pager	4 pagers/11 mos	\$220	\$5/mon/pager	1 pager/14 mos	\$70			\$290	Johnson, Ehrbar, Morley, 2 for team		
	2 phones	\$600		1 phone	\$300			\$900	Johnson, 2 for team		
\$2/day; 22 days/mon	2 phones; 11 mos	\$968	\$2/day; 22 days/mon	1 phone; 14 mos	\$616			\$1,584	Johnson, 2 for team		
MCHD \$62/FTE/mon	1.14 FTE/14 mos	\$990	MCHD \$62/FTE/mon	0.25 FTE/14 mos	\$217			\$2,310			
OHD \$93/FTE/mon			OHD \$93/FTE/mon					\$0			
		\$2,500						\$2,500	Computers donated by MCHD		
								\$0			
		\$96,046	\$0		\$8,063	\$0		\$116,186		\$116,186	
		\$23,086			\$2,968			\$35,989			
		\$0			\$0			\$0			
OHD \$37/FTE/mon		\$0	OHD \$37/FTE/mon		\$0			\$0			
		\$26,622						\$26,622			
		\$26,622	\$0		\$0	\$0		\$26,622			
		\$280,563	\$0		\$32,645	\$0		\$422,502	\$422,502		
		Total =	\$280,563		Total =	\$32,645		\$422,502	Grand Total		

Task 2									Notes
Public Education			FTE	Months	MCHD Cost	OHD Cost	Total Cost		
Personal Services	CLEARCorps (MCHD)	HLHRP Manager - Johnson	0.10	14	\$8,646				
		CLEARCorps Team Supervisor - Ehrbar	0.05	14	\$3,289				
		Home Lead Risk Evaluator - Morley							
	CLEARCorps Team	11 CLEARCorps Team Members							
	Oversight/Evaluation	Principal Evaluator (PDES/MCHD) - Dougherty							
		Env Health Manager (MCHD) - Adams							
		Env Epidemiology Manager (OHD) - Tolentino							
		Research Analyst (OHD) - Leiker							
		Research Analyst (PDES/OHD) - Smith							
Total Personal Services			0.15		\$11,935	\$0	\$11,935		
Materials and Services	Professional Services		Unit Cost	Unit	MCHD Cost	OHD Cost			
		Miscellaneous Services							
		External Rent	MCHD \$158/FTE/mon	14 mos; 0.15 FTE	\$332				
		Utilities	OHD \$141/FTE/mon						
	Office Supplies	Office supplies, duplicating, postage	MCHD \$65/FTE/mon	14 mos; 0.15 FTE	\$137				
			OHD \$105/FTE/mon						
	Operating Supplies								
	Minor Equipment								
	Clothing								
	Other Commodities								
	Education	Employee Continuing Education	MCHD \$29/FTE/mon	14 mos; 0.15 FTE	\$61				
	Local Travel								
	Out-of-Town Travel								
	Miscellaneous								
	Fleet Services								
	Communications	Telephone/FAX/Long distance	MCHD \$38/FTE/mon	14 mos; 0.15 FTE	\$80				
			OHD \$85/FTE/mon						
	Data Processing	Voice Mail Service	MCHD \$5/FTE/mon	14 mos; 0.15 FTE	\$11				
		Computer Services Charge	MCHD \$62/FTE/mon	14 mos; 0.15 FTE	\$130				
		Intra-agency ISS Charges	OHD \$93/FTE/mon						
Total M and S					\$751	\$0	\$751		
MCHD Indirect Costs (10%)					\$1,269		\$1,269		
OHD Indirect Costs (1%)						\$0	\$0		
State Gov't Charges						\$0	\$0		
			OHD \$37/FTE/mon						
Capital Outlay	Equipment								
Total Capital Outlay					\$0	\$0	\$0		
TOTAL For Task					\$13,954	\$0	\$13,954	\$13,954	
							\$13,954		

Task 3			Act 1A: Eval HLHRP: Outreach				Act 1B: Eval HLHRP: Haz Control		
Evaluation			FTE	Months	MCHD Cost	OHD Cost	FTE	Months	MCHD Cost
Personal Services	CLEARCorps (MCHD)	HLHRP Manager - Johnson							
		CLEARCorps Team Supervisor - Ehrbar							
		Home Lead Risk Evaluator - Morley							
	CLEARCorps Team	11 CLEARCorps Team Members							
		Principal Evaluator (PDES/MCHD) - Dougherty	0.05	14	\$5,644		0.15	14	\$16,931
		Env Health Manager (MCHD) - Adams							
		Env Epidemiology Manager (OHD) - Tolentino							
		Research Analyst (PDES/OHD) - Smith	0.05	14		\$3,510		14	
	Data Liason/Entry (PDES/MCHD)	0.20	8	\$5,609		0.30	8	\$8,413	
	Office Assistant (PDES/OHD) - Kinney	0.05	14		\$1,650	0.10	14		
Total Personal Services			0.26	14	\$11,253	\$5,400	0.57	14	\$25,345
Materials and Services	Professional Services	Interviewer/ethnographer	Unit Cost	Unit	MCHD Cost	OHD Cost	Unit Cost	Unit	MCHD Cost
	Miscellaneous Services					\$1,500			
	External Rent		MCHD \$158/FTE/mon	0.16 FTE/14 mos	\$354		MCHD \$158/FTE/mon	0.32 FTE/14 mos	\$708
			OHD \$141/FTE/mon	0.1 FTE/14 mos		\$198	OHD \$141/FTE/mon	0.25 FTE/14 mos	
	Utilities								
	Office Supplies	Office supplies, duplicating, postage	MCHD \$65/FTE/mon	0.16 FTE/14 mos	\$146		MCHD \$65/FTE/mon	0.32 FTE/14 mos	\$291
			OHD \$105/FTE/mon	0.1 FTE/14 mos		\$147	OHD \$105/FTE/mon	0.25 FTE/14 mos	
	Operating Supplies								
	Minor Equipment								
	Clothing								
	Other Commodities	Survey Assessment Instruments			\$300				\$300
		Payment for interview/survey participants							
	Education	Employee Continuing Education	MCHD \$29/FTE/mon	0.16 FTE/14 mos	\$65		MCHD \$29/FTE/mon	0.32 FTE/14 mos	\$130
	Local Travel	Mileage	\$0.315/mile,30m/wk	56 weeks	\$529		\$0.315/mile,30m/wk	56 weeks	\$529
	Out-of-Town Travel	National Conference Meeting							
	Miscellaneous								
	Fleet Services								
	Communications	Telephone/FAX/Long distance	MCHD \$38/FTE/mon	0.16 FTE/14 mos	\$85		MCHD \$38/FTE/mon	0.32 FTE/14 mos	\$170
			OHD \$85/FTE/mon	0.1 FTE/14 mos		\$119	OHD \$85/FTE/mon	0.25 FTE/14 mos	
		Voice Mail Service	MCHD \$5/FTE/mon	0.16 FTE/14 mos	\$11		MCHD \$5/FTE/mon	0.32 FTE/14 mos	\$22
	Data Processing	Computer Services Charge	MCHD \$62/FTE/mon	0.16 FTE/14 mos	\$139		MCHD \$62/FTE/mon	0.32 FTE/14 mos	\$278
	Intra-agency ISS Charges	OHD \$93/FTE/mon	0.1 FTE/14 mos		\$130	OHD \$93/FTE/mon	0.25 FTE/14 mos		
	Software								
Total M and S					\$1,629	\$2,094			\$2,428
MCHD Indirect Costs (10%)					\$1,288				\$2,777
OHD Indirect Costs (1%)						\$75			
State Gov't Charges			OHD \$37/FTE/mon	0.1 FTE/14 mos		\$52	OHD \$37/FTE/mon	0.25 FTE/14 mos	
Capital Outlay	Equipment	Computer							
Total Capital Outlay					\$0	\$0			\$0
TOTALs					\$14,170	\$7,621			\$30,550
					Total =	\$21,791			Total =

Act 2: Eval Public Ed					Act 3: Develop and Maintain Evaluation				FTE Sum - 14 mos	Total Cost	Notes
OHD Cost	FTE	Months	MCHD Cost	OHD Cost	FTE	Months	MCHD Cost	OHD Cost			
		0.08	14	\$9,030		0.07	14	\$7,901	0.35	\$39,508	
\$10,531		0.05	14	\$3,510		0.05	14	\$3,510	0.30	\$21,082	
		0.10	8	\$2,804		0.20	8	\$5,609	0.45	\$22,436	
\$3,780		0.05	14	\$1,890		0.05	14	\$1,890	0.25	\$9,451	
\$14,311		0.24	14	\$11,834		0.28	14	\$13,510	1.35	\$92,455	
OHD Cost	Unit Cost	Unit	MCHD Cost	OHD Cost	Unit Cost	Unit	MCHD Cost	OHD Cost		Cost Sum	
\$3,000				\$2,440						\$6,940	
										\$0	
	MCHD \$158/FTE/mon	0.14 FTE/14 mos	\$310		MCHD \$158/FTE/mon	0.18 FTE/14 mos	\$398	\$598		\$2,368	
\$494	OHD \$141/FTE/mon	0.10 FTE/14 mos		\$198	OHD \$141/FTE/mon	0.10 FTE/14 mos		\$197		\$1,087	
										\$0	
	MCHD \$65/FTE/mon	0.14 FTE/14 mos	\$127		MCHD \$65/FTE/mon	0.18 FTE/14 mos	\$184			\$728	
\$368	OHD \$105/FTE/mon	0.10 FTE/14 mos		\$147	OHD \$105/FTE/mon	0.10 FTE/14 mos		\$147		\$809	
										\$0	
										\$0	
										\$0	
			\$800							\$1,200	
			\$950							\$950	\$5X150 + \$20X10
	MCHD \$29/FTE/mon	0.14 FTE/14 mos	\$57		MCHD \$29/FTE/mon	0.18 FTE/14 mos	\$73			\$325	
	\$0.315/mile	300 miles	\$95		\$0.315/mile/10 mi/week	58 weeks	\$178			\$1,329	
							\$1,500			\$1,500	Dougherty
										\$0	
										\$0	
	MCHD \$38/FTE/mon	0.14 FTE/14 mos	\$74		MCHD \$38/FTE/mon	0.18 FTE/14 mos	\$96			\$425	
\$298	OHD \$85/FTE/mon	0.10 FTE/14 mos		\$119	OHD \$85/FTE/mon	0.10 FTE/14 mos		\$119		\$655	
	MCHD \$5/FTE/mon	0.14 FTE/14 mos	\$10		MCHD \$5/FTE/mon	0.18 FTE/14 mos	\$13			\$56	
	MCHD \$62/FTE/mon	0.14 FTE/14 mos	\$122		MCHD \$62/FTE/mon	0.18 FTE/14 mos	\$156			\$695	
\$326	OHD \$93/FTE/mon	0.10 FTE/14 mos		\$130	OHD \$93/FTE/mon	0.10 FTE/14 mos		\$130		\$716	
							\$ 600			\$600	
\$4,486			\$2,345	\$3,034			\$3,176	\$1,191		\$20,383	\$20,383
			\$1,418				\$1,669			\$7,152	
\$188			\$84				\$66			\$413	
\$130	OHD \$37/FTE/mon	0.10 FTE/14 mos	\$52		OHD \$37/FTE/mon	0.10 FTE/14 mos	\$52			\$286	
								\$ 2,500		\$2,500	
\$0			\$0	\$0			\$0	\$2,500		\$2,500	for Data Entry/Site Liason
\$19,115			\$15,597	\$8,571			\$18,355	\$9,209		\$123,189	\$123,189
\$49,665			Total =	\$24,168			Total =	\$27,564		\$123,189	

Task 4									Notes
Household Dust Lead Study									
Personal Services	CLEARCorps (MCHD)	HLHRP Manager - Johnson CLEARCorps Team Supervisor - Ehrbar Home Lead Risk Evaluator - Morley	FTE	Months	MCHD Cost	OHD Cost	Total Cost		
	CLEARCorps Team	11 CLEARCorps Team Members							
	Oversight/Evaluation/Study	Principal Evaluator (PDES/MCHD) - Dougherty	0.10	14	\$11,288				
		Env Health Manager (MCHD) - Adams							
		Env Epidemiology Manager (OHD) - Tolentino	0.01	14		\$947			
		Research Analyst (OHD) - Leiker	0.05	14		\$3,510			
		Research Analyst (PDES/OHD) - Smith	0.20	14		\$14,041			
		Research Assistant (MCHD) - Rogers	1.00	3	\$15,090				
		Office Assistant (PDES/OHD) - Kinney	0.15	14		\$5,670			
Total Personal Services			0.72	14	\$26,378	\$24,169	\$50,547		
Materials and Services	Professional Services	Study Design	Unit Cost	Unit	MCHD Cost	OHD Cost			
	Miscellaneous Services	Laboratory services - dust testing			\$5,000				
	External Rent		MCHD \$158/FTE/mon	0.31 FTE/14 mos	\$686				
			OHD \$141/FTE/mon	0.41 FTE/14 mos		\$809			
	Utilities								
	Office Supplies	Office supplies, duplicating, postage	MCHD \$65/FTE/mon	0.31 FTE/14 mos	\$282				
			OHD \$105/FTE/mon	0.41 FTE/14 mos		\$603			
	Operating Supplies	for sample collection			\$800				
	Minor Equipment								
	Clothing								
	Other Commodities	payment for participants	\$20/household	150 households	\$3,000				
	Education	Employee Continuing Education	MCHD \$29/FTE/mon	0.31 FTE/14 mos	\$126				
	Local Travel	Mileage	\$0.315/mile, 100m/wk	16 wks	\$504				
	Out-of-Town Travel				\$480				
	Miscellaneous	Blood lead testing			\$5,000				
	Fleet Services								
	Communications	Telephone/FAX/Long distance	MCHD \$38/FTE/mon	0.31/ FTE/14 mos	\$185				
			OHD \$85/FTE/mon	0.41 FTE/14 mos		\$488			
		Voice Mail Service	MCHD \$5/FTE/mon	0.31/ FTE/14 mos	\$22				
	Data Processing	Computer Services Charge	MCHD \$62/FTE/mon	0.31 FTE/14 mos	\$269				
		Intra-agency ISS Charges	OHD \$93/FTE/mon	0.41 FTE/14 mos		\$534			
Total M and S					\$16,334	\$3,434	\$19,768		
MCHD Indirect Costs (10%)					\$4,271		\$4,271		
OHD Indirect Costs (1%)						\$276	\$276		
State Gov't Charges			OHD \$37/FTE/mon	0.41 FTE/14 mos		\$212	\$212		
Capital Outlay	Equipment								
Total Capital Outlay					\$0	\$0	\$0		
TOTAL For Task					\$46,983	\$28,091	\$75,074		\$75,074
							\$75,074		

Task 5									Notes
Oversight, Review, and Planning									
Personal Services	CLEARCorps (MCHD)	HLHRP Manager - Johnson	FTE	Months	MCHD cost	OHD Cost	Total Cost		
		CLEARCorps Team Supervisor - Ehrbar	0.05	14	\$4,323				
		Home Lead Risk Evaluator - Morley	0.05	14	\$3,289				
	CLEARCorps Team	11 CLEARCorps Team Members							
	Oversight/Evaluation	Principal Evaluator (PDES/MCHD) - Dougherty	0.05	14	\$5,644				
		Env Health Manager (MCHD) - Adams	0.03	14	\$2,981				
		Env Epidemiology Manager (OHD) - Tolentino	0.03	14		\$2,841			
		Research Analyst (OHD) - Leiker							
		Research Analyst (PDES/OHD) - Smith							
Total Personal Services			0.21		\$16,236	\$2,841	\$19,078		
Materials and Services			Unit Cost	Unit	MCHD Cost	OHD Cost			
	Professional Services								
	Miscellaneous Services								
	External Rent		MCHD \$158/FTE/mon	0.18 FTE/14 mos	\$398				
			OHD \$141/FTE/mon	0.03 FTE/14 mos		\$59			
	Utilities								
	Office Supplies	Office supplies, duplicating, postage	MCHD \$65/FTE/mon	0.18 FTE/14 mos	\$164				
			OHD \$105/FTE/mon	0.03 FTE/14 mos		\$44			
	Operating Supplies								
	Minor Equipment								
	Clothing								
	Other Commodities								
	Education	Employee Continuing Education	MCHD \$29/FTE/mon	0.18 FTE/14 mos	\$5				
	Local Travel								
	Out-of-Town Travel								
	Miscellaneous								
	Fleet Services								
	Communications	Telephone/FAX/Long distance	MCHD \$38/FTE/mon	0.18 FTE/14 mos	\$96				
			OHD \$85/FTE/mon	0.03 FTE/14 mos		\$36			
		Voice Mail Service	MCHD \$5/FTE/mon	0.18 FTE/14 mos	\$13				
	Data Processing	Computer Services Charge	MCHD \$62/FTE/mon	0.18 FTE/14 mos	\$156				
		Intra-agency ISS Charges	OHD \$93/FTE/mon	0.03 FTE/14 mos		\$39			
Total M and S					\$832	\$178	\$1,010		
MCHD Indirect Costs (10%)					\$1,707		\$1,707		
OHD Indirect Costs (1%)						\$30	\$30		
State Gov't Charges			OHD \$37/FTE/mon	0.03 FTE/14 mos		\$16	\$16		
Capital Outlay	Equipment								
Total Capital Outlay					\$0	\$0	\$0		
TOTAL For Task					\$18,775	\$3,065	\$21,841	\$21,841	
							\$21,841		

Personal Services		Salary	Benefits	Insurance	Total Annual for FY97-98	Total Annual for FY98-99	Total Annual for CY 97	Total Annual for CY 98	FTE - 14 month basis	
CLEARCorps (MCHD)	HLHRP Manager - Johnson	\$58,872	0.1795	\$4,135	\$73,575	\$75,782			1.00	
	CLEARCorps Supervisor - Ehrbar	\$43,954	0.1795	\$4,135	\$55,979	\$57,658			1.00	
	Home Lea J Risk Evaluator - Morley	\$40,319	0.1795	\$4,135	\$51,691	\$54,793			0.79	
	Credit: Grant from Corp for National Service*				(\$13,039)					* 10/97 - 9/98
CLEARCorps Team	11 CLEARCorps Team Members	\$104,885	\$32,928		\$137,613	\$115,057				
	Credit: Grant from Corp for National Service*	(\$60,777)	(\$14,268)		(\$75,045)	(\$75,045)				* 10/97 - 9/98
Oversight/Evaluation/Study	Env Health Manager (MCHD) - Adams	\$68,180	0.1795	\$4,135	\$84,553	\$87,090			0.07	
	Env Epidemiology Manager (OHD) - Tolentino	\$57,228	0.3751				\$78,694	\$82,629	0.04	
	Research Analyst (OHD) - Leiker	\$42,900	0.3751				\$58,992	\$60,762	0.05	
	Research Analyst (PDES/OHD) - Smith	\$42,900	0.3751				\$58,992	\$60,762	0.50	
	Principal Evaluator (PDES/MCHD) - Dougherty	\$74,462	0.29		\$96,056	\$98,938			0.60	
	Research Assistant (MCHD) - Rogers	\$46,792	0.29		\$60,362	\$62,173			0.21	
	Office Assistant (PDES/OHD) - Kinney	\$23,100	0.3751				\$31,765	\$32,718	0.40	
	Data Liason/Entry (PDES/MCHD)	\$23,500	0.29		\$30,315	\$31,224			0.46	

FTE Summary

FTE Summary - 14 month Basis		Task 1		Task 2		Task 3		Task 4		Task 5		Total		Grand Total	
		MCHD	OHD	MCHD	OHD	MCHD	OHD	MCHD	OHD	MCHD	OHD	MCHD	OHD		
CLEARCorps (MCHD)	HLHRP Manager - Johnson	0.85		0.10						0.05		1.00		1.00	
	CLEARCorps Supervisor - Ehrbar	0.90		0.05						0.05		1.00		1.00	
	Home Lead Risk Evaluator - Morley	0.79										0.79		0.79	
CLEARCorps Team	11 CLEARCorps Team Members														
Oversight/Evaluation/Study	Env Health Manager (MCHD) - Adams	0.02								0.05		0.07		0.07	
	Env Epidemiology Manager (OHD) - Tolentino								0.01		0.03		0.04	0.04	
	Research Analyst (OHD) - Leiker								0.05				0.05	0.05	
	Research Analyst (PDES/OHD) - Smith						0.30		0.20				0.50	0.50	
	Principal Evaluator (PDES/MCHD) - Dougherty	0.10				0.35		0.10		0.05		0.60		0.60	
	Research Assistant (MCHD) - Rogers							0.21				0.21		0.21	
	Office Assistant (PDES/OHD) - Kinney						0.25		0.15				0.40	0.40	
	Data Liason/Entry (PDES/MCHD)					0.46						0.46		0.46	
		2.66	0.00	0.15	0.00	0.81	0.55	0.31	0.41	0.20	0.03	4.13	0.99	5.12	Total

EXHIBIT B = RATE SCHEDULE

EXHIBIT B - HOURLY RATE SCHEDULE

HLHR Manager	\$49.05
MCHD Reviewer	\$56.37
CLEARCorps Supervisor	\$37.32
Principal Evaluator	\$64.04
Home Lead Risk Evaluator	\$34.46
CLEARCorps Team	\$8.34
Data Liaison	\$20.21
Research Assistant	\$40.24

Non-personnel expenses directly attributable to the project are included in Exhibit A. These rates shall remain in effect through June 30, 1998. Effective July 1, 1998 and in all future years of the agreement, rates may increase up to 3 percent per year. The actual amount of increase each year shall be subject to agreement between the City and the County.

ORDINANCE No. 171882

*Authorize an Intergovernmental Agreement with Multnomah County Health Department for services related to implementation of the Lead Hazard Reduction Program. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. In August 1995, City Council approved an alternative approach to comply with EPA's Lead and Copper Rule. The alternative approach is a Lead Hazard Reduction Program (LHRP) which includes using limited water treatment for corrosion control and expanding water testing for lead. The alternative approach achieves better health protection from lead exposure, at a lower cost than would be achieved with full water treatment as directed by the Lead and Copper Rule.
2. The Bureau of Water Works developed a LHRP with the Oregon Health Division and Tri-County public health agencies. In December 1996, City Council approved the LHRP.
3. The Bureau of Water Works concluded from its study that drinking water is not a major source of lead exposure in the Portland area. The most significant sources of lead exposure in the Portland metropolitan area are lead-based paint and dust containing lead.
4. The Multnomah County Health Department has specific expertise in lead poisoning prevention issues. The components of the LHRP include reduction of lead exposure from lead-based paint in homes and public education on lead exposure prevention.
5. The Multnomah County Health Department has the availability of CLEARCorps (Community Lead Education and Reduction Corps) services.
6. The cost of these services is not to exceed \$2,656,560 for 5 years. The cost of services for Year 1 is \$656,560. Annually, the Bureau of Water Works will evaluate the program and determine whether to continue the LHRP. When it is decided to continue services from Multnomah County, the Bureau will develop an annual scope of work and budget for the continued implementation of LHRP.

NOW, THEREFORE, The Council directs:

- a. That the Commissioner of Public Works and Auditor are authorized to execute on behalf of the City an Intergovernmental Agreement with Multnomah County Health Department, substantially in accordance with attached Exhibit A. attached to the original only.
- b. The work herein shall be charged to the FY 97-98 Water Fund, Bureau of Water Works, Center Code 18099239, Account 529000. Funding for subsequent years will be requested through the annual budget process.
- c. The Commissioner of Public Works and Auditor are hereby authorized to draw and deliver warrants payable to Multnomah County for services rendered in accordance with the agreement referred herein when demand is presented and approved by proper authorities.

Section 2. The Council declares that an emergency exists because a delay in proceeding with this project will delay implementation of the Lead Hazard Reduction Program; therefore, this Ordinance shall be in force and effect from and after its passage by Council.

Passed by the Council,

DEC 17 1997

Commissioner Sten

MK/ch r:\...cecelia\coiga.wpd
CENTER 18099239

BARBARA CLARK

Auditor of the City of Portland

By

Deputy

Britta Olson

MEETING DATE: DEC 30 1997
AGENDA NO: C-18
ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Resolution: Housing Allowance for Chaplains

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: next available date
AMOUNT OF TIME NEEDED: _____

DEPARTMENT: SHERIFF'S OFFICE DIVISION: _____

CONTACT: Larry Aab TELEPHONE #: 251-2489
BLDG/ROOM #: 313/228

PERSON(S) MAKING PRESENTATION: consent item

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

RESOLUTION IN THE MATTER OF A HOUSING ALLOWANCE
FOR CHAPLAINS SERVING THE COUNTY JAILS.

1/14/98 copies to Larry AAB

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Dan Neece
(OR)
DEPARTMENT
MANAGER:

BOARD OF
COUNTY COMMISSIONERS
97 DEC 15 AM 8:48
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM BRIEFING
STAFF REPORT SUPPLEMENT**

TO: BOARD OF COUNTY COMMISSIONERS

FROM: DAN NOELLE,
Sheriff

TODAY'S DATE: December 11, 1997

REQUESTED PLACEMENT DATE: NEXT AVAILABLE BOARD AGENDA

RE: HOUSING ALLOWANCE FOR CHAPLAINS SERVING THE COUNTY JAILS

- I. Recommendation/Action Requested: Request approval of resolution in the matter of a housing allowance for chaplains serving the County Jails.

- II. Background/Analysis: IRS Code 26, USC 107 (2) allows clergy to exclude from calculation of their gross income the housing allowance paid as a part of their compensation, to the extent used by them to rent or provide a home. This is a traditional allowance in order to allow members of clergy who are not provided a parsonage home to receive the same benefit as those who do. The matter was researched by the KPMG Peat Marwick Accounting firm in 1992 and was determined to be applicable to employed Chaplains of the Sheriff's Office. A requirement of the IRS code is that the governing board makes an official designation of the compensation allowance. In the event of audit, proof of expenses to rent or provide a home is the burden of the individual chaplain.

- III. Financial Impact: None

- IV. Legal Issues: IRS Code 26, USC 107 (2). Issues of application were researched by the accounting firm of KPMG Peat Marwick.

V. Controversial Issues: None Known

VI. Link to Current County Policies: N/A

VII. Citizen Participation: N/A

VIII. Other Government Participation: N/A

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Annual Authorization for Designation)
of a Portion of Compensation as a) RESOLUTION
Housing Allowance for Chaplains Serving) 97-219
Inmates and Employees at the)
Multnomah County Jails)

WHEREAS, the Multnomah County Sheriff's Office employs Joyce Borders and Lewis Kyle as chaplains serving inmates and employees at the County jails; and

WHEREAS, the Sheriff's Office does not provide housing to either chaplain; and

WHEREAS, 26, USC 107(2) allows clergy to exclude from the calculation of their gross income the housing allowance paid as part of their compensation, to the extent used by them to rent or provide a home; now therefore

IT IS HEREBY RESOLVED that Joyce Borders be allowed to designate \$6,000 per annum of her compensation as a housing allowance for calendar year 1998, and that Lewis Kyle be allowed to designate \$8,000 per annum of his compensation as a housing allowance for calendar year 1998, subject to the requirements and limitations of internal revenue law.

DATED this 30 th day of December, 1997.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
MULTNOMAH COUNTY, OREGON


Steve Nemirow, Assistant County Counsel

BUDGET MODIFICATION NO.

MCCF 1

(For Clerk's Use) Meeting Date DEC 30 1997Agenda No. R-2

1. REQUEST FOR PLACEMENT ON THE AGENDA FOR

12-Sep-96

(Date)

DEPARTMENT

NondepartmentalDIVISION MCCF

CONTACT

Jim Clay

TELEPHONE

248-3527

* NAME(S) OF PERSON MAKING PRESENTATION TO BOARD

SUGGESTEDAGENDA TITLE

(to assist in preparing a description for the printed agenda)

Budget Modification MCCF 1 transferring appropriations and adding grant revenue to support the operations cost of the Youth Advisory Board committee reporting to the Multnomah Commission on Children and Families, including the creation of a permanent position.

(Estimated Time Needed on the Agenda) 5 minutes

2. DESCRIPTION OF MODIFICATION

(Explain the changes this Bud Mod makes. What budget does it increase? What do changes accomplish? Where does the money come from? What budget is reduced? Attach additional information if you need more space.)

X

Personnel changes are shown in detail on the attached sheet

The modification transfers Pass Through appropriations from MCCF's budget to the Youth Advisory Board budget, adds contributions from Portland Parks and Recreation, and adds a full-time Staff Assistant that will help create youth involvement in the full range of the MCCF's activities.

3. REVENUE IMPACT

(Explain revenues being changed and reason for the change)

Adds \$2,000 of grant revenue from Portland Parks and Recreation.

97 DEC 23 PM 12:53
BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON

4. CONTINGENCY STATUS

(to be completed by Budget & Quality)

Fund Contingency before this modification

Date

After this modification

Originated By

Date

Department Director

Date

Plan Budget Analyst

Date

Employee Services

Date

Board Approval

Date

MCCF 1

(Compute on a full-year basis even though this action affects only a part of the fiscal year (FY).)

FTE Increase (Decrease)	POSITION TITLE	ANNUALIZED			
		BASE PAY Increase (Decrease)	Increase/(Decrease)		TOTAL Increase (Decrease)
			Fringe	Ins.	
1.0	Staff Assistant	31,641	5,683	5,091	42,414
					0
					0
					0
					0
					0
					0
					0
					0
1.0	TOTAL CHANGE (ANNUALIZED)	31,641	5,683	5,091	42,414

(Calculate costs/savings that will take place this FY; these should explain the actual dollar amounts changed by this BudMod.)

Permanent Positions, Temporary, Overtime, or Premium	Explanation of Change	BASE PAY Increase (Decrease)	CURRENT FY		TOTAL Increase (Decrease)
			Increase/(Decrease)		
			Fringe	Ins.	
					0
Permanent	0.5 FTE Staff Assistant	15,821	2,841	2,545	21,207
Temporary	0.33 FTE Temporary Staff Assistant	9,233	1,583	110	10,926
					0
					0
					0
					0
					0
					0
					0
					0
					0
TOTAL CURRENT FISCAL YEAR CHANGES		25,054	4,424	2,655	32,133

EXPENDITURE												
TRANSACTION EB GM []			TRANSACTION DATE			ACCOUNTING PERIOD				BUDGET FY		
Document				Organi-		Reporting		Current	Revised	Change		
Number	Action	Fund	Agency	zation	Activity	Category	Object	Amount	Amount	Increase (Decrease)	Subtotal	Description
		156	050	9750			5100	0	4,746	4,746		Increase Permanent
		156	050	9750			5200	0	6,094	6,094		Increase Temporary
		156	050	9750			5400	0	1,897	1,897		Increase Fringe
		156	050	9750			5500	0	837	837		Increase Insurance
		156	050	9750			6120	2,000	800	(1,200)		Decrease Printing
		156	050	9750			6230	2,000	987	(1,013)		Decrease Supplies
		156	050	9750			6310	0	1,000	1,000		Increase Training
		156	050	9750			6330	0	300	300		Increase Local Travel
		156	050	9750			6530	0	1,500	1,500		Increase data processing
		156	050	9750			7100	96	700	604		Increase Indirect
		156	050	9750			7150	0	500	500		Increase Distribution
		156	050	9750			7250	0	739	739		Increase Flat Fee
		156	050	9750			7400	0	4,000	4,000		Increase Building Management
		156	050	9750			7560	0	600	600	20,604	24,700
		156	050	9036			5100	184,373	195,447	11,074		Increase Permanent
		156	050	9036			5200	8,200	11,339	3,139		Increase Temporary
		156	050	9036			5400	34,509	37,036	2,527		Increase Fringe
		156	050	9036			5500	23,696	25,515	1,819		Increase Insurance
		156	050	9036			6060	206,861	169,257	(37,604)		Decrease Pass-Thru
		156	050	9036			7100	10,118	10,559	441	(18,604)	Increase Indirect
TOTAL EXPENDITURE CHANGE										2,000	2,000	
REVENUE												
TRANSACTION RB GM []			TRANSACTION DATE			ACCOUNTING PERIOD				BUDGET FY		
Document				Organi-		Reporting		Current	Revised	Change		
Number	Action	Fund	Agency	zation	Activity	Category	Revenue	Amount	Amount	Increase (Decrease)	Subtotal	Description
		156	050	9750			6703	0	2,000	2,000		Grants
									0			
									0			
TOTAL REVENUE CHANGE										2,000	2,000	

memorandum

TO: Board of County Commissioners
FROM: Jim Clay, Director
Multnomah Commission on Children & Families

TODAY'S DATE: December 22, 1997

REQUESTED PLACEMENT DATE: December 30, 1997

SUBJECT: Bud Mod MCCF 1, Creating the Multnomah
County Youth Advisory Board (YAB) Budget

Multnomah Commission on Children & Families

Creating a Chosen Future

Commission Members

Mark Rosenbaum,
Co-Chair
Dan Saltzman,
Co-Chair
Pauline Anderson
Mike Balter
Alcena Boozer
Maureen Casterline
Lee Coleman
Jacki Cottingham
Ruth Ann Dodson
Paul Drews
Barbara Friesen
Steve Fulmer
Muriel Goldman
Leslie Haines
Samuel Henry
Janet Kretzmeier
John Lim
Kay Lowe
Sharon McCluskey
Larry Norvell
Eric Parsons
Lorenzo Poe
Tom Potter
Beverly Stein
James Sanger
Cometta Smith
Luther Sturtevant
Nan Waller
Duncan Wyse

Staff

Jim Clay,
Director
Dianne Iverson
Bonnie Rosatti
Jana Rowley
Chris Tebben

Recommendation / Action Requested:

Approval of the budget modification transferring appropriations and adding additional dedicated revenue to pay for the operations of the Multnomah County Youth Advisory Board (YAB), a standing committee of the Multnomah Commission on Children and Families (MCCF); and authorization of a 0.5 FTE permanent position to staff the YAB and to assist in the MCCF's Take the Time campaign for youth success.

Background / Analysis:

The Multnomah County Youth Advisory Board (YAB) is now in its second year of operation, and is composed of 28 Multnomah County youth from public and private high schools, alternative schools, emancipated youth programs, and other youth programs. YAB's goal is to provide a youth perspective within planning, programs, policies, and projects affecting Multnomah County youth, improving their quality and effectiveness.

YAB involves youth from around the county through four of its committees: Health, Recreation, Public Awareness, and Education. YAB partners with the Multnomah County Library, the Regional Arts & Cultural Council, the Multnomah County Health Department, the Local Public Safety Coordinating Council, the Leaders Roundtable, Portland Parks and Recreation, the Citizens Involvement Committee, the Multnomah Commission on Children and Families, and other Multnomah County organizations.

Each year a YAB ad hoc selection committee chooses members for the upcoming year. Co-chairs are elected by YAB members and approved by the County Chair. Operations are directed by a Coordinating Committee of ten youth, elected by the four other committees.

YAB reports to the MCCF. All of YAB's major decisions and positions are subject to MCCF review prior to any action. YAB staff is supervised by the MCCF Director, and an MCCF member serves as an advisor to YAB. YAB budget is administered by MCCF staff.

This Budget Modification supports 28 uncompensated youth volunteers, providing basic operating expenses, and a full time staff position to be established January 1, 1998. This will provide stability, since all staff support to YAB is now served by a temporary worker.

Financial Impact:

The majority of the funding for the YAB budget (\$18,500) is reprogrammed within the existing MCCF appropriation. The Health Department and the Library have each contributed \$1,000. This modification reflects the addition of \$2,000 from Portland Parks and Recreation.

421 SW 6th Avenue,
Suite 1075
Portland, OR 97204-162
Ph: (503) 248-3897
Fx: (503) 306-5538
mccf.org@co.multnomah.or.
inter-office: 166/1075

Legal Issues:

None

Controversial Issues:

None.

Link to Current County Policies:

The participation and involvement of citizens in planning programs and developing policy that will affect their lives is a core value of Multnomah County. Involving young people in the YAB is a clear example of this value being placed into action.

Citizen Participation:

The funding requested reflects the decisions of the Multnomah County Youth Advisory Board, the Multnomah Commission on Children and Families, and their many partners. There is strong citizen support for this budget and for the results that can be expected from its approval.

Other Government Participation:

To date, Multnomah County and City of Portland agencies have agreed to participate. Others are expected to join at later dates.

MEETING DATE: December 30, 1997
AGENDA NO: R-3
ESTIMATED START TIME: 9:35am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Resolution Declaring Commission District Position No. 1 Vacancy

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: Tuesday, December 30, 1997
AMOUNT OF TIME NEEDED: 10 mins

DEPARTMENT: Non-Departmental DIVISION: Chair Beverly Stein

CONTACT: Carol M. Ford TELEPHONE #: 248-3956
BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: Tom Sponsler

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Resolution Declaring a Vacancy in County Commissioner Position No.1,
Calling an Election for March 10, 1998, and
Setting the Candidate Filing Deadline for January 20, 1998

*1/14/98 copies to Tom Sponsler, Ed Campbell, Carol Ford,
Vicki Ervin, Michael Cox & Dan Saltzman*

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

Beverly Stein

(OR)
DEPARTMENT
MANAGER: _____

BOARD OF
COUNTY COMMISSIONERS
97 DEC 19 PM 4:03
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



DAN SALTZMAN, Multnomah County Commissioner, District One

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

TO: BOARD OF COUNTY COMMISSIONERS
FROM: COMMISSIONER DAN SALTZMAN *Don*
DATE: DECEMBER 16, 1997
RE: RESIGNATION FROM BOARD OF COUNTY COMMISSIONERS

I intend to formally resign at the end of the business day on Friday, January 16, 1998, in order to file for the office of City Commissioner being vacated by Commissioner Gretchen Kafoury.

By giving you my resignation date 30 days in advance, it will allow the Board time to declare the vacancy, call for a March election to be held concurrently with the election in District 3, and set a filing deadline for candidates wishing to run for this seat.

I have asked Tom Sponsler to assist me in filing a Board resolution stating my resignation date and meeting all election law requirements. I will file the resolution to be read at the December 30, 1997 Board meeting.

97 DEC 18 AM 8:22
MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Declaring a Vacancy in County Commissioner)	
District Position No.1, Calling an Election for)	RESOLUTION
March 10, 1998, and Setting the Candidate)	97-
Filing Deadline for January 20, 1998)	

The Board of County Commissioners Finds:

- a. Dan Saltzman, the incumbent of Multnomah County Commission District No. 1, has announced his recognition effective the end of the business day on January 16, 1998. He resigned to file for another elective office. Multnomah County Charter Section 6.50(5) makes filing for another office the same as a resignation.
- b. The Multnomah County Charter and County Code require the Board of Commissioners to declare Commission District No. 1 vacant and call an election to fill this vacancy.
- c. The next available election date to fill this vacancy is March 10, 1998.
- d. The Board of Commissioners also needs to set a deadline for candidates to file for election to District No. 1.

THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS RESOLVES:

1. The elective office of Multnomah County Commissioner District Position No. 1 is declared vacant as of January 17, 1998.
2. An election is called for March 10, 1998, to fill the remainder of the current term of office for Commission District No. 1. The current term for that position ends in January, 2001.
3. This election and election date are certified to the Director of Multnomah County Division of Elections.

4. Candidates for Commission District No. 1 must file for election with the Multnomah County Division of Elections by 5:00 PM on January 20, 1998.

Adopted this _____ day of _____ 1997.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY OREGON

Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Thomas Sponsler
Thomas Sponsler

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Declaring a Vacancy in County Commissioner)	
District Position No.1, Calling an Election for)	RESOLUTION
March 10, 1998, and Setting the Candidate)	97- 220
Filing Deadline for January 20, 1998)	

The Board of County Commissioners Finds:

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- d. The Board of Commissioners also needs to set a deadline for candidates to file for election to District No. 1.

THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS RESOLVES:

1. The elective office of Multnomah County Commissioner District Position No. 1 is declared vacant as of January 17, 1998.
2. An election is called for March 10, 1998, to fill the remainder of the current term of office for Commission District No. 1. The current term for that position ends in January, 2001.
3. This election and election date are certified to the Director of Multnomah County Division of Elections.

4. Candidates for Commission District No. 1 must file for election with the Multnomah County Division of Elections by 5:00 PM on January 20, 1998.

Adopted this 30th day of December, 1997.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY OREGON


Beverly Stein, Chair

REVIEWED:

THOMAS SPONSER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By 
Thomas Sponsler

DEC 30 1997

MEETING DATE: DEC 18 1997

AGENDA #: CR-4

ESTIMATED START TIME: 9:30 AM 9:40 AM

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Amendment to Multnomah County Ordinance 795 Authorizing The County to Convey Foreclosed Property to Nonprofit Organizations for the Purpose of Preserving Open Space.

BOARD BRIEFING:

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: Dec. 18, 1997

AMOUNT OF TIME NEEDED: 5 minutes

DEPARTMENT: Non Dept.

DIVISION: Commissioner Dan Saltzman

CONTACT: Comm. Dan Saltzman/Jason Dimen TELEPHONE #: 248-5220

BLDG/ROOM #: 106/1500-1

PERSON(S) MAKING PRESENTATION: Commissioner Saltzman

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE

Amendment to Multnomah County Ordinance 795 allowing eligible nonprofit organizations to obtain County foreclosed property to preserve as open space, parks, and natural areas.

12/30/97 copies to Co Dan Saltzman, Jason Dimen, John Thomas & Kathy Tuxenberg; 1/14/98 copies to Ordinance Dist.

SIGNATURES REQUIRED: list

ELECTED OFFICIAL: Dan Saltzman

OR

DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions? Call the Board Clerk 248-3277

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 DEC 12 PM 3:26

MEMORANDUM

TO: Board of County Commissioners

FROM: Jason Dimen, Staff Assistant to Commissioner Dan Saltzman

DATE: December 9, 1997

RE: Amending MC Ordinance 795 to Permit the County to Convey County Foreclosed Property to Eligible Nonprofit Organizations for the Purpose of Preserving Open Space

I. Recommendation/Action Requested

Adoption of amendments to Ordinance 795.

II. Background/Analysis

State law requires counties to foreclose ad valorem tax liens on real property if the tax for any year is more than three years delinquent. After foreclosure and expiration of a two year redemption period, the title to property passes to the county. In 1995, the County received 74 foreclosed properties, 42 in 1996, and 41 this year to date. The total number of County foreclosed properties in inventory is over 200. Multnomah County Ordinance 795 outlines the framework for the disposition of County foreclosed properties.

After deeds to foreclosed properties are transferred to the County, DES performs a physical inspection of the properties. If a property is occupied, DES notifies an appropriate social service agency if occupants require assistance. After completing the physical inspections, DES compiles and forwards a list of properties to the Greenspaces Review Committee for a "greenscreen."

Adopted by County Resolution 94-175 (see attached) and established by Ordinance 795, the Greenspaces Review Committee consists currently of 9 members with environmental and/or land use expertise – 7 from governmental agencies and 2 from nonprofit land conservation organizations. The committee screens the foreclosure list to identify properties suitable for preserving or turning into parks, open space, or natural areas.

This amendment incorporates new state law, HB 2447 (see attached), into Ordinance 795. The amendment will allow nonprofit organizations to obtain properties with a greenscreen designation for the purpose of preserving or turning the properties into parks, natural areas, and open spaces (like community gardens). The amendment also inserts into Ordinance 795 criteria used by the Greenspaces Review Committee for evaluating properties. The 1997 State Legislature passed House Bill 2447, amending

state statutes to permit counties to convey properties to nonprofit organizations for open space preservation.

This amendment sets the guidelines by which the County will notify eligible nonprofit organizations of available properties suitable for open space preservation. It authorizes DES to develop and implement a process for notifying agencies of available properties and administering applications. In concept, DES's Assessment and Taxation (A&T) division will administer the notification and application process, convene the Greenspaces Review Committee which will make disposition recommendations, and present applications and recommendations to the Board of County Commissioners for approval or rejection.

In concept, A&T's Tax Exemption section will monitor compliance with the terms of title transfer. Each organization will be required to file a statement of compliance together with a tax exemption application. If the organization fails to comply with the terms of transfer, the property reverts back to the County, as required by state law. The greenspaces preservation program will be administered simultaneously with the Affordable Housing Development Program (AHDP).

The amendment will have a positive impact on communities. It addresses the objective of preserving open space without added burden to local government budgets. It puts a priority on open space preservation at a time of continued growth and density in Multnomah County. The long-term public benefits outweigh the initial cost of administration.

III. Financial Impact

It is anticipated that a .5 FTE with environmental expertise will be needed to administer this program. However, the need for additional staff can be minimized by utilizing current resources and processes, such as notifying public agencies of available foreclosed greenspace property at the same time as AHDP notification.

The County may lose property tax revenues from properties conveyed to the nonprofit organizations. However, those properties are likely "nonperforming", i.e. generating little income for the County due to lack of size, value, or developable uses. No assessment of total taxes lost has been done. Because these properties have been foreclosed, they currently are not generating taxes. Moreover, the long-term financial benefit to the County of having nonprofit organizations manage, maintain, and be liable for these properties is worth more than the cost of lost revenue.

IV. Legal Issues

State law requires title for property to revert back to the County if the recipient organizations fail to use the property for parks, open space or natural areas - as stated in its application under statement of use and purpose. As the owner of last resort, the County, upon reclaiming ownership of property, maybe be liable for cleanup of hazardous materials left by the nonprofit organization. It's unlikely, but possible, that

a nonprofit organization intent on preserving open space would intentionally cause an environmentally hazardous situation. The County may develop a process for seeking legal remedies in recovering the cost of remediation should this situation arise.

V. Controversial Issues

This Greenspaces Preservation Program will compete with the Affordable Housing Program during the disposition process of foreclosed properties. If a community garden and a nonprofit affordable housing organization have both applied for the same property under the greenspace preservation program and AHDP, respectively, the Board will make the final decision about which organization will receive the property.

VI. Link to Current County Policies

This amendment is consistent with the objectives of Resolution 94-71, which acknowledged the need for a greenspaces screen to recognize a property's environmental value. This amendment takes those objectives further by implementing a program in which community nonprofit organizations and the County can work together in preserving open space.

In addition, this amendment is in line with the County's benchmark of increasing the percentage of people who rate their neighborhood livability high. Key indicators of livability are safety and aesthetic quality. By turning parcels of land with potential for blight into community-managed open spaces instead, this amendment will increase the safety and livability of neighborhoods.

VII. Citizen Involvement

A public hearing will be held prior to any decision of transferring property. Several neighborhood association representatives testified before legislative committees to support passage of HB 2447.

VIII. Other Governments

The Greenspaces review committee consists of representatives from municipal and regional governments, in addition to representatives from organizations that advocate for environmental concerns. The program will ease the burden of maintenance and liability of owning foreclosed properties from local governments.

ATTACHMENTS:

- 1) HB 2447
- 2) Fact Sheet on HB2447
- 3) Multnomah County Resolution 94-175

Enrolled
House Bill 2447

Sponsored by Representative RASMUSSEN, Senator BURDICK; Representative BECK (at the request of Multnomah County Commissioner Dan Saltzman)

CHAPTER 00248

AN ACT

Relating to conveyance of certain public lands for perpetual public use; amending ORS 271.330.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 271.330 is amended to read:


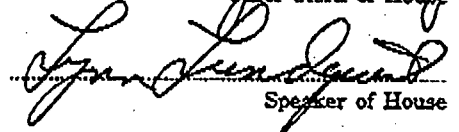
271.330. (1) Any political subdivision is granted express power to relinquish the title to any of its property not needed for public use to any governmental body, providing such property shall be used and continue to be used, for a public purpose by the governmental body in the State of Oregon. These transfers for public purposes may include transfers without consideration of property held by counties as a result of tax foreclosures.

(2) Any political subdivision is granted express power to relinquish the title to any of its property to a nonprofit or municipal corporation for the purpose of providing low income housing, social services or child care. Low income housing includes programs resulting in transfer of property to low income families or individuals. These transfers may include transfers without consideration of property held by counties as a result of tax foreclosures.

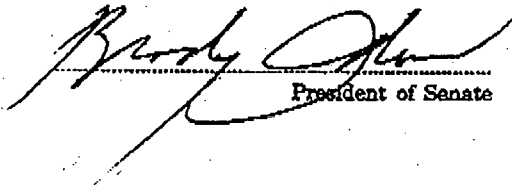
(3) Any political subdivision is granted express power to convey real property to a nonprofit or municipal corporation to be used by the nonprofit or municipal corporation for the creation of open space, parks or natural areas for perpetual public use. The instrument conveying the real property shall include a restriction on the use of the property that limits the uses of the property to those uses described in this subsection. The instrument conveying the property shall also contain a provision for the reversion of the property to the political subdivision if the property is not used in conformance with the restriction. Real property conveyed under this subsection may include real property held by a political subdivision as a result of tax foreclosures.

[(3)] (4) Before any county court or board of county commissioners may transfer, under subsection (1) of this section, any tax foreclosed lands in which the state or a political subdivision has represented delinquent and uncollected taxes, liens or assessments, it shall advertise in a newspaper of general circulation in the county for two successive weeks its intention to so transfer the property. The notice shall state when the county court will hear objections to the transfer and must specifically describe the property intended to be transferred. After the hearing set in the notice is held and objections are heard, it may, in its sound discretion, proceed with the transfer. After the transfer the interests of the state or any political subdivision in the land on account of uncollected taxes, liens or assessments are extinguished, and the county is relieved of the necessity to account for uncollected taxes, liens or assessments.

Passed by House April 3, 1997


Chief Clerk of House

Speaker of House

Passed by Senate May 14, 1997

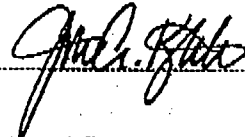

President of Senate

Received by Governor:

2:45 P.M. June 3, 1997

Approved:

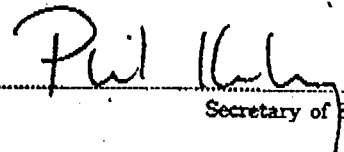
9:56 A.M. JUNE 09, 1997



Governor

Filed in Office of Secretary of State:

11:40 A.M. June 9, 1997



Secretary of State



DAN SALTZMAN, Multnomah County Commissioner, District One

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

Information Regarding HB 2447 and Multnomah County's Green Screen

House Bill 2447 amends ORS 271.330, which governs the disposition of property that comes into county ownership through tax foreclosure. The new law now allows nonprofit land trusts and community garden organizations, the opportunity to request access to these properties before they reach Sheriff's auction. Land trusts will only be able to request the properties as open space, parks or natural areas for perpetual public use. Under the old law, only governments and nonprofit housing development corporations were provided the opportunity to request properties prior to Sheriff auction.

In 1994, Multnomah County Commissioners, by ordinance, established a "green screen" committee for foreclosed properties. The committee evaluates the properties for significant environmental qualities and other criteria such as whether it is in a park deficient area or environmental protection zone.

Given the importance of preserving open space, and at a time when governments are financially-strapped, providing nonprofit land trusts a greater role in establishing parks and community gardens makes sense.

Here's an example of how the new law may work: if citizens support the development of a community garden or local park in their neighborhood, and a foreclosed property has been flagged by the green screen committee as environmentally significant, HB 2447 will allow a local non-profit to obtain title to the property by purchase or donation. The result: the property is preserved for continued public use without government involvement or liability.

The amendments will not affect property owners; it only affects properties that have already completed the tax foreclosure process -- a process that only begins after 7 years of non-payment of taxes.

(over)

Local governments have no requirement to accept a land trust's request. The amendment does not create an obligation for a county to donate the property. That option remains in the hands of the county commission who can best judge the needs of their communities.

HB 2447 will increase opportunities to preserve park and natural areas to improve a community's quality of life. And it does so without increasing public expenditures. This gives us a tool to make better decisions about using public property for the public good.

Ultimately, as more and more responsibilities are transferred from the state and federal level to local governments, HB 2447 will provide needed flexibility and creative alternatives to provide the growing portfolio of services governments are obliged to provide.



DAN SALTZMAN, Multnomah County Commissioner, District One

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

Supplemental Fact Sheet for HB 2447

SUMMARY: Allows political subdivision to convey real property owned by it, including properties held as a result of tax foreclosures, to nonprofit or land trusts for open space, parks or natural areas for perpetual public use.

SPONSOR: Representative Anitra Rassmussen and Senator Ginny Burdick at the request of Multnomah County Commissioner Dan Saltzman.

HB 2447 HAS BEEN ENDORSED BY AOC

ANSWERS TO ENVIRONMENT/ENERGY SUBCOMMITTEE QUESTIONS:

- **Q:** What happens if a property deeded to a non-profit ceases being used for public purpose?
A: As stipulated in HB 2447, properties must be used for the creation of **open space, parks or natural areas for perpetual public use. If the property ceases to be used for this public purpose, the property will revert back to the County.**
- **Q:** What is the definition of "political subdivision"?
A: "Political Subdivision" refers to the boundaries designated in Chapter 201 and 203 of Oregon State Statute which divide the State into Counties. **"Political subdivision" is simply a term of art describing counties.** State Agencies are not political subdivisions.
- **Q:** What happens if a County, upon receipt of an abandoned property that was deeded to a non-profit through the provisions provided by HB 2447, discovers that the property has been environmentally contaminated? Is the County liable for damages?
A: The issue of previous environmental contamination is an important one, touching upon the much larger issue of counties' liability in this area. **As per state law, counties are "owner of last resort," and as such must grapple with this consideration on the full range of properties that come into their ownership.** Currently there is dispute with DEQ about whether Counties are responsible for the cleanup of underground storage tanks - - this liability applies to ALL properties that come into County ownership through the tax foreclosure process. While liability is an important concern generally, HB 2447 by itself will have little or no impact on the issue. It is, however, difficult to contemplate a situation where a non-profit dedicated to the preservation of open space or natural areas would take possession of a property as described and subsequently create an environmental hazard.

• Q: If a tax foreclosed property is deeded to a non-profit won't this result in a loss of tax revenue for the County?

A: Conceivably, although only if the county in question makes an affirmative decision in each case to forgo that revenue. This bill is "permissive" -- it places no requirements upon local government to accept a land trust's request and it creates no obligation for a county to donate the property. That option remains in the hands of the county commission who can best judge the needs of their communities.

Each county could find a number of reasons to take this route. In Multnomah County, for example, we have a large number of foreclosed properties in distressed neighborhoods. **It is our philosophy that we can have a far greater positive impact on the community by turning a property that is a neighborhood blight into owner-occupied housing, or into a community garden or park. In the long run, such quality of life improvements also have the effect of raising the neighborhood's assessed value.** We believe that is a better prospect for the County than hoping to recover back taxes from what is essentially a non-performing property. Local governments are in the best position to evaluate the best use of these properties: this bill gives counties a small -- but potentially effective -- tool to accomplish their local goals.

There are also many properties that come into County ownership that no one wants. For example, there is currently a property in the Cathedral Park area in Multnomah County that has an abandoned gas station on in it. The neighborhood association, became a 501(C)(3) and has made arrangements to raise the monies and services to clean up the site; however, the current statute prohibits the County from deeding this property to the neighborhood. It is just such a scenario that this bill seeks to remedy.

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

In the Matter of Creating a Greenspaces Review)	
Committee and establishing a Greenspace Screen)	R E S O L U T I O N
for evaluating properties available for transfer to)	94-175
governmental and nonprofit agencies)	

WHEREAS, Resolution 94-71 created the Neighborhood Greenspaces Concept Development Committee to develop recommendations for the inclusion of a Greenspaces Screen in the Tax Foreclosure process; and

WHEREAS, the Neighborhood Greenspaces Concept Development Committee met several times in May and June and formally submitted its recommendations regarding the Greenspaces screen to the Tax Title Task Force on July 1, 1994; and

WHEREAS, the Tax Title Task Force included these recommendations in the revised Multnomah County Tax Foreclosure ordinance; and

WHEREAS, the revised Multnomah County Tax Foreclosure Ordinance established a Greenspace Review Committee which is charged with evaluating tax foreclosed properties for significant environmental qualities using criteria approved by the Board of County Commissioners; and

WHEREAS, the Greenspaces Review Committee's recommendations regarding the environmental qualities of each property is intended to be useful to all government jurisdictions and other groups who evaluate properties in the Tax Foreclosure Process,

NOW, THEREFORE, BE IT RESOLVED, That,

1. The Greenspaces Review Committee be made up of members, serving staggered terms of two, three or four years in duration, representing the following: each Park Department within Multnomah County, Community Garden Program (from Portland Parks and other jurisdictions with similar programs), Neighborhood Associations (representatives from jurisdictions within Multnomah County), the Board of County Commissioners, and two representatives of organizations that advocate for environmental concerns.
2. X The Greenspaces Review Committee shall utilize the following factors in a "Greenspaces Screen" to evaluate properties for their greenspace value:
 - a). The Greenspaces Inventory established by Metro
 - b.) The Significant Environmental Concerns Zone established by Multnomah County
 - c.) The Environmental Protections Zone established by the City of Portland

d.) The Environmental Conservation Zone established by the City of Portland

e.) Park Deficiency Area standards (until new criteria can be developed and unless otherwise directed by a local jurisdiction the "National Park and Recreational Association" standards will be used)

f.) A Combined Sewer Overfall area as determined by the City of Portland.

3. The Greenspaces Review Committee shall use the information gathered through the Greenspaces Screen to identify significant environmental qualities and may make recommendations regarding an appropriate public purpose for each property on the list.

4. The Greenspaces Review Committee shall ensure that this information is distributed to interested groups and jurisdictions.

5. The Department of Environmental Services shall provide available materials in the format needed by the Greenspaces Review Committee for the application of the Greenspaces Screen by Metro's Data Resource Center or appropriate agencies.

6. The Greenspaces Review Committee may make recommendations to the Board of County Commissioners regarding specific properties identified as environmentally significant but not selected by government jurisdictions or other groups in accordance with Ordinance 795.

6. The Committee will make future recommendations regarding any changes to the Greenspaces Screen or the review process.

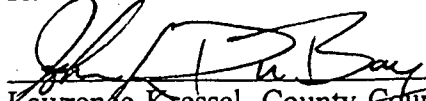
ADOPTED this 22nd day of September 1994.



By: _____

Beverly Stein, Chair
Multnomah County, Oregon

Reviewed:


for Lawrence Kressel, County Counsel
of Multnomah County, Oregon

BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF MULTNOMAH
ORDINANCE ____

An Ordinance amending Ordinance 795 to provide for procedures for conveyance of tax foreclosed property to nonprofit and municipal corporations for the creation of open space, parks or natural areas for perpetual public use.

Multnomah County Ordains as Follows:

SECTION I - FINDINGS

- (A) ORS 271.330 has been amended to permit the County to convey properties, including tax foreclosed properties, to nonprofit and municipal corporations for the creation of open space, parks or natural areas for perpetual public use,
- (B) This Board has previously recognized in Ordinance 795 that some tax foreclosed properties may have present and future value in their natural state and should be conveyed to agencies who can maintain or enhance their value for wildlife habitat, parks, open spaces or other environmental purposes.
- (C) It is to the benefit of the citizens of Multnomah County for the County to entrust municipal corporations and recognized nonprofit organizations with preserving open space, parks, and natural areas within the County,
- (D) It is necessary to establish procedures for evaluation, selection and conveyance of tax foreclosed properties to municipal and nonprofit corporations for these purposes.

SECTION II: REVISIONS TO ORDINANCE 795

Ordinance 795 is amended as follows. New material is in bold, deleted material is in italics and brackets.

SECTION [II] I - DEFINITIONS

For the purposes of this ordinance, unless the context requires otherwise, the following terms are defined as follows:

- (A) "Board" means Board of County Commissioners of Multnomah County, Oregon.
- (B) "Department" means Multnomah County Department of Environmental Services.

- 1 (C) "Director" means the Director of the Multnomah County Department of Environmental
2 Services."
- 3 (D) "Greenspace Committee" means the Greenspace Review Committee.
- 4 (E) "Property" means all property acquired by Multnomah County by foreclosure of delinquent
5 tax liens.
- 6 (F) "Nonprofit housing sponsor" means any government or nonprofit corporation organized under
7 the provisions of ORS Chapter {61}65 for the purpose of undertaking, constructing, or
8 operating a housing project to assist low and lower income families, or authorized by its
9 charter to undertake, construct, or operate such housing projects.
- 10 (G) "Owner" or "former owner" means a property owner or contract purchaser of record at the
11 time a judicial decree of foreclosure was entered as to the affected property.
- 12 (H) "Repurchase agreement" means a contract to sell tax foreclosed property to the former owner
13 prior to foreclosure.
- 14 (I) "Social services agency" means an appropriate social service provider, as designated by the
15 Board of County Commissioners.
- 16 (J) "Tax title fund" means the Multnomah County accounting fund maintained to receive
17 proceeds from the sale of tax foreclosed properties and disburse all lawful expenditures
18 therefrom.
- 19 (K) "Days" means calendar days unless otherwise noted.
- 20 (L) **"Open space" means developed parks with active recreational facilities such as ball**
21 **fields, tennis courts, playgrounds, community gardens, golf courses, cemeteries, or**
22 **vacant lands with the potential for becoming a park or natural area.**
- 23 (M) **"Parks" means publicly or privately owned land designed or utilized for outdoor**
24 **recreation and devoid of man-made structures for habitation.**
- 25 (N) **"Natural area" means a landscape unit composed of plant and animal communities,**
26 **water bodies, soil, and rock; largely devoid of human made structures; maintained and**
27 **manage in such a way as to promote or enhance population of wildlife.**
- 28 (O) **"Open Space Preservation Sponsor" means any government or nonprofit corporation**
29 **organized under the provisions of ORS Chapter 65 for the purpose of preserving and**
30 **actively managing properties as open spaces, parks or natural areas.**
- 31 (P) **"Community Gardens" means public or private land divided into plots for growing**
32 **vegetables, fruits, flowers, native, or ornamental plants. A community garden may also**

1 mean private or public land used for growing or displaying an orchard of small trees,
2 herbs, or dry land plants.

3
4 **SECTION [III] II. PROPERTY ADMINISTRATION AND EVALUATION**

5 (A) The Department shall be responsible for management of the tax title fund and for the
6 inventory, management, maintenance and disposition of all tax foreclosed properties in
7 accordance with state statutes and this ordinance.

8 (B) The Department, in order to assure the fiscal stability of the tax title fund, may identify
9 properties to be sold at public auction and not available for donation to governments or
10 non-profit housing sponsors, **or Open Space Preservation Sponsors.**

11 (C) The Department shall be responsible for a physical inspection of all properties upon
12 conveyance to the County.

13 (D) If any property is occupied, the Department shall notify an appropriate County social
14 services agency if the occupants may require exceptional assistance. The agency shall make
15 an assessment of the circumstances within thirty (30) days of such notification and submit a
16 report to the Department. Upon receipt of a report from a social services agency
17 recommending special assistance, the Department shall suspend efforts to dispose of the
18 property pending further direction from the Board and shall forward a copy of the report to
19 the Board. The Board shall review the case and order appropriate action within thirty (30)
20 days.

21 (E) In the event any request for transfer of property by a governmental entity conflicts with any
22 other request for transfer of property in accordance with this ordinance, the Department
23 shall put the matter on the Board's regular meeting agenda for resolution by the Board.
24

25 **SECTION [IV] III - REPURCHASE QUALIFICATIONS AND CONTRACT REQUIREMENTS**

26 (A) Repurchase Period. Upon receipt of recorded property deeds, the Department shall send
27 notices by certified mail to former owners of tax foreclosed properties. The notices shall advise
28 the recipients:

29 (1) Within thirty (30) days from the date of the notice the owner may:

30 (a) Pay in cash the repurchase price established by the Department under Section
31 [IV] III(C) of this ordinance, or

(b) Complete an application to repurchase the property by repurchase contract.

- (2) If the owner fails to either repurchase in cash or to qualify to repurchase by property contract within the time provided, the Department may dispose of the property as provided in this ordinance.

(B) Repurchase Contract Qualifications. Former owners may repurchase property on contract if the property and the owner meet the following qualifications:

(1) The property must be:

(a) The primary residence of the former owner; or

(b) The primary location of the former owner's business; or

(c) Used as an integral part of a residential treatment or social services program sponsored by the owner, if the owner is a nonprofit organization exempt from federal taxes under IRC 501 (C)(3); and

(2) Any other real property of the owner in Multnomah County has not been foreclosed for non-payment of taxes in the previous ten (10) years, unless such prior foreclosure is either (1) the owner's primary residence if the current foreclosure is the owner's primary business, or (2) the owner's primary business if the current foreclosure is the owner's primary residence; and

(3) The owner has not previously repurchased property by an agreement which has been canceled by the County within the preceding ten (10) years; and

(4) The owner must demonstrate financial ability to meet minimum payment requirements of a contract; and

(5) Improved property must be suitable for occupation, or the owner must demonstrate an ability to make the property suitable for occupation within the period specified by the County.

(C) Repurchase Contract Price

(1) The repurchase price shall be the sum of: all the uncollected taxes as of the date the property was conveyed to the County; an amount equal to taxes which would have accrued after conveyance to the County, including accrued interest and interest which would have accrued after conveyance to the County; penalties; municipal liens; delinquent sewer liens; special assessments; costs of maintenance or nuisance abatement, and administrative expenses which shall include, but not be limited to, title searches, expense of document preparation and recording fees.

- 1 (2) Repurchase contracts shall include provisions for prepayment of real property taxes
2 with any debt service installment payments.

3 (D) Appeal Process For Contract Denials

- 4 (1) The Department may deny any application for repurchase by contract if the applicant
5 fails to submit sufficient evidence to show compliance with contract qualifications in
6 Section ~~{IV}~~ III(B).

- 7 (2) The Director shall give notice of denial in writing to the applicant by regular mail.
8 The notice of denial shall include:

9 (a) A statement of the reason(s) for the denial.

10 (b) Explanation of how the decision of the Director may be appealed
11 to the Board; and

12 (c) Explanation of the actions necessary to request an administrative
13 exception.

- 14 (3) Requests for an administrative exception must be submitted to the Director within
15 fifteen (15) days after the notification of denial was mailed. The Director will make a
16 determination within fifteen (15) days after the request. The Director may grant an
17 administrative exception to the qualification requirements if in the public interest.

- 18 (4) Within fifteen (15) days after a notice of the Director's denial, the applicant may
19 either repurchase the property for cash or appeal the denial to the Board. The appeal
20 shall be filed with the Department and shall recite the facts forming the basis for the
21 appeal and set out the reasons the applicant believes the Board should reverse the
22 Director's decision. The Department shall promptly deliver a copy of the request for
23 appeal together with a copy of the Director's reasons for denial prior to the appeal
24 hearing.

- 25 (5) When an appeal is filed, at the next regular Board meeting at which the matter can be
26 presented, the Board shall schedule a hearing to hear the appeal.

- 27 (6) The Board will determine the disposition of the appeal based on the following:

28 (a) Whether the applicant meets the contract qualifications and requirements
29 stated in Section ~~[IV]~~ III(B);

30 (b) Whether the applicant filed a completed repurchase application within the
31 time required by Section ~~[IV]~~ III(A)(1) of this ordinance;

1 (c) Whether the applicant filed an appeal in the manner required by Section [IV]
2 III(D)(3)(4) of this ordinance;

3 (d) Whether other extenuating circumstances exist.

4 (E) Appeal Process for Contract Cancellation

- 5 (1) If at any time a contract is in default and subject to cancellation, the Director may
6 give notice of default in accordance with the repurchase contract.
- 7 (2) Any contract purchaser may request the Director to grant relief from cancellation by
8 request in writing to the Director within fifteen (15) days after notification of
9 default. The Director will make a determination within fifteen (15) days thereafter
10 whether to modify the contract, grant other appropriate relief or to specify a date the
11 contract will be canceled.
- 12 (3) If the Director denies a request for relief from contract cancellation, the Department
13 shall give the purchaser notice of the reasons therefore in writing by regular mail.
14 The notice shall include information on how the contract may be appealed to the
15 Board of County Commissioners.
- 16 (4) Within fifteen (15) days after the Director's denial, the repurchaser may either pay
17 off the balance of the contract in cash, or appeal the proposed contract cancellation
18 to the Board. The appeal shall be in writing, recite the facts forming the basis for
19 appeal and reflect the reasons the petitioner believes the Board should reverse the
20 Director's decision.
- 21 (5) When an appeal is filed, at the next regular Board meeting at which the matter can
22 be presented, the Board shall schedule a hearing to hear the appeal.
- 23 (6) The Department shall provide the Board a copy of the Director's notice of denial
24 prior to the appeal hearing. At the appeal hearing, the Board may affirm the
25 Director's decision to cancel the contract or fashion other appropriate relief,
26 including reinstatement or modification of the contract.

27
28 SECTION [V] IV - PROCEDURE FOR IDENTIFYING PROPERTIES TO BE DESIGNATED AS
29 HAVING GREENSPACE ENVIRONMENTAL VALUE

- 30 (A) A Greenspace Review Committee is hereby established to review tax foreclosed
31 properties to determine suitability of properties for public use as open space, parks, or
32 natural areas and provide such information to governmental jurisdictions and other

1 interested groups. The committee shall consist of not less than five members to serve at
2 the pleasure of the Board.

3 (B) When the annual comprehensive County deed is recorded for tax foreclosed properties
4 after the expiration of the redemption period, the Department shall provide a list of the
5 properties to the Greenspace Committee. *[The committee shall evaluate the properties,*
6 *using criteria approved by the Board, to determine suitability for park, open space, or*
7 *natural area purposes].* **The Greenspaces Review Committee shall utilize the**
8 **following factors in a “Greenspaces Screen” to evaluate properties for their**
9 **greenspace value:**

10 a) **The Greenspaces Inventory established by Metro**

11 b) **The Significant Environmental Concerns Zone established by Multnomah**
12 **County**

13 c) **The Environmental Protections Zone established by the City of Portland**

14 d) **The Environmental Conservation Zone established by the City of Portland**

15 e) **Park Deficiency Area Standards (until new criteria can be developed and**
16 **unless otherwise directed by a local jurisdiction the “National Park and**
17 **Recreational Association” standards will be used)**

18 f) **The Combined Sewer Overflow area as determined by the City of Portland.**

19 **Within 90 days after receipt of the list, the committee shall furnish the**
20 **Department with a list of properties deemed suitable for parks, open spaces or**
21 **natural areas and shall identify the significant environmental qualities and a**
22 **proposed public purpose for each property on the list.** *{Within 90 days thereafter,*
23 *the committee shall furnish the Department with a list of properties deemed suitable for*
24 *the specified purposes, the significant environmental qualities and make*
25 *recommendations regarding the public purpose for each property on the list.}*

26 (C) The Greenspace Committee's recommendations shall be noted in any notification to
27 governmental entities of properties available for public use transfers under Section *[VII]*
28 **VI** of this ordinance.

29 (D) The Greenspace Committee may make recommendations to the Board at any time
30 regarding properties recommended for public use for park, open space or natural area
31 uses if any such property is not transferred for a public purpose under any provision of
32 this ordinance.

1 SECTION [VI] V - REQUESTING TRANSFER OF TAX FORECLOSED PROPERTY TO
2 GOVERNMENTS FOR NON HOUSING PURPOSES

- 3 (A) As soon as practicable after the properties on the annual comprehensive County Deed have
4 been conveyed to the County, the Department shall mail a list of property available to
5 government units and officially recognized neighborhood associations in Multnomah County
6 with a notice that the properties are eligible for transfer, for non-housing purposes only.
- 7 (B) Properties having characteristics identified under Section [V] IV of this ordinance shall be
8 so identified on the property list.
- 9 (C) A governmental unit may request transfer of listed property within sixty (60) days after
10 notice of property availability was first mailed. All requests shall be on forms provided by
11 the Department and must be authorized by the requesting governing body.
- 12 (D) The Department shall report to the Board all requests for transfer of property by
13 governments. The report shall identify the governmental entity requesting transfer, a
14 description of the property, the amount of, taxes owed when the property was conveyed to
15 the County, all maintenance costs incurred by the County, and the applicant's proposed
16 public use.
- 17 (E) The Board shall schedule a public hearing as soon as practically convenient. The Department
18 shall publish notice of the scheduled public hearing in a newspaper of general circulation in
19 the County for two successive weeks. The notice shall describe the property, state that the
20 Board will accept comments concerning the transfer at the hearing and where a copy of the
21 Department's report can be
22 obtained. A copy of the notice shall be mailed to applicants and other persons requesting
23 such notice.
- 24 (F) At the conclusion of the hearing, the Board may approve the transfers if the Board
25 determines the transfers will serve the public interest. The Board shall also determine
26 whether such transfers are for monetary consideration or no consideration.
- 27 (G) Conveyances of property transferred to governmental entities for a public purpose without
28 consideration, other than housing, shall provide that should the property cease to be used for
29 a public purpose, the title shall revert to the County. This restriction shall not apply to
30 transfers to a governmental body in exchange for payment of the amount of taxes and costs
31 for which the property is liable.

1 (H) For those properties approved by the Board for transfer to governmental entities, transfer of
2 title shall occur within sixty (60) days, or as soon after as practicable. Refusal of the
3 receiving entity to accept title shall void approval of such transfer and shall result in the
4 property being disposed of as provided by law.

5 (I) Property maintenance by Multnomah County shall cease upon transfer of the title to the
6 receiving agency.

7
8 SECTION [VII] VI - PROCEDURE FOR REQUESTING TRANSFER OF TAX FORECLOSED
9 PROPERTY FOR HOUSING PURPOSES

10 (A) An Affordable Housing Review Committee has been established to make recommendations
11 to the Board regarding all disposition of tax foreclosed property for affordable housing under
12 the procedures of Affordable Housing Development Program (AHDP). The Affordable
13 Housing Review Committee members shall be appointed by the Chair and approved by the
14 Board. The committee shall be composed of representatives from: the City of Gresham, the
15 City of Portland, the Community Development Block Grant Urban County Policy Advisory
16 Board, a philanthropic organization, the banking industry, the Citizen Involvement
17 Committee and the Board.

18 (B) Requests for properties for low-income housing will be considered according to procedures
19 established by Multnomah County AHDP and approved by the Board.

20 (C) A list of properties remaining after transfer requests of governmental units, shall be
21 submitted to AHDP.

22 (D) AHDP shall, within thirty (30) days after receipt of the list of available properties, advise the
23 Department which properties will be processed for low income housing development.
24 Within ten (10) days thereafter, AHDP shall mail the list of available properties to
25 governments and other nonprofit housing sponsors in Multnomah County.

26 (E) Written applications by housing sponsors shall be filed with AHDP within forty-five (45)
27 days after notice of property availability was first mailed. All requests shall be on forms
28 provided by AHDP.

29 (F) Within sixty (60) days after receipt of applications for property under AHDP, the Affordable
30 Housing Review Committee will prepare disposition recommendations to the Board.
31 recommendations shall be based on the sponsoring organization's stability and viability, the
32 project plan, financial plan and community support.

- 1 (G) Within seven (7) days after AHDP determines any property will not be transferred to a
2 non-profit housing sponsor, because no applications for the property were received or
3 approved, AHDP shall provide the Department with a list of properties not required for
4 housing development. **If [S]such properties were also not selected by the Greenspace**
5 **Review Committee, they** may be added to the inventory of tax foreclosed properties
6 available for disposition according to law.
- 7 (H) *[Not less than fifteen (15) days after receiving the recommendations from AHDP, the Board*
8 *shall schedule a public hearing to receive public comments concerning the proposed*
9 *property transfers.*
- 10 (I) *The Department shall publish notice of the scheduled hearing in a newspaper of general*
11 *circulation in the County for two successive weeks. The notice shall state the description or*
12 *location of the properties and that the Board will hear comments concerning the transfer at*
13 *the hearing. A copy of the notice shall be mailed to the applicants and applicable*
14 *neighborhood associations and to other persons requesting such notice.*
- 15 (J) *Approval of transfers shall be based upon the degree proposals for transfer are feasible and*
16 *in the public interest. Transfers may be for consideration or for no consideration. Transfers*
17 *in connection with the County Affordable Housing Development Program shall require a*
18 *\$200 transfer fee to offset the cost of administration. The transfer fee may be waived or*
19 *reduced by the Board upon a finding that a waiver or reduction is necessary to relieve the*
20 *applicant from undue hardship and that loss of the fee will not jeopardize efficient*
21 *administration of the program.*
- 22 (K) *For those properties approved by the Board for transfer to non-profit housing entities,*
23 *transfer of title shall occur within sixty (60) days, or as soon after as practicable. Refusal of*
24 *the receiving entity to accept title shall void approval of such transfer and shall result in the*
25 *property being disposed of as provided by law.*
- 26 (L) *Property maintenance by Multnomah County shall cease upon transfer of the title to the*
27 *receiving agency.]*
- 28

29 SECTION *[VIII]* VII - NEHEMIAH HOUSING OPPORTUNITY PROGRAM SUPPORT.

- 30 (A) The rights and obligations of NECDC under this ordinance to review lists of available tax
31 foreclosed properties and to receive properties in the King, Humboldt, Boise and Vernon
32 neighborhoods, in accordance with Resolution 89-167, shall continue so long as NECDC

1 shall sponsor and administer the Nehemiah Housing Opportunity Program (NHOP) contained
2 in Title VI of the Housing and Community Development Act of 1987 and 24 CFR Part 280.

3
4 **SECTION ~~/IX/~~ VIII- REPEAL OF PRIOR ORDINANCES**

5 (A) Ordinances 560, 577, 613, 672, 685, 703, 753, and 769 are hereby repealed. This Ordinance,
6 being necessary for the health, safety, and welfare of the people of Multnomah County, an
7 emergency is declared, and the Ordinance shall take effect upon its execution by the County
8 Chair, pursuant to Section 5.50 of the Charter of Multnomah County.

9
10 **SECTION IX - PROCEDURE FOR REQUESTING TRANSFER OF TAX FORECLOSED**
11 **PROPERTY FOR OPEN SPACE, PARKS OR NATURAL AREAS**

- 12 (A) Requests for properties for open space, parks or natural areas will be considered
13 according to procedures established by the Department in conjunction with Greenspace
14 Review Committee.
- 15 (B) A list of properties remaining after transfer requests of governmental units, shall be
16 submitted to the Greenspace Review Committee.
- 17 (C) The Greenspace Review Committee shall, within thirty (30) days after receipt of the list
18 of available properties, advise the Department which properties meet the Committee's
19 criteria for appropriate use as open spaces, parks or natural areas. Within ten (10)
20 days thereafter, the Department shall mail a notice setting forth the list of available
21 properties to neighborhood associations and nonprofit corporations that have requested
22 the Department to provide such notice together with an application form.
- 23 (D) Written applications by nonprofit corporations shall be filed with the Greenspace
24 Review Committee within forty-five (45) days after notice of property availability was
25 first mailed. All requests shall be on the application forms provided with the notice.
- 26 (E) Within sixty (60) days after receipt of applications, the Greenspace Review Committee
27 will prepare disposition recommendations to the Board. Recommendations shall be
28 based on the sponsoring organization's stability and viability, the project plan, financial
29 plan and community support.
- 30 (F) Within seven (7) days after the Greenspace Review Committee determines any property
31 will not be transferred to an open space preservation sponsor, the Greenspace Review
32 Committee shall provide the Department with a list of properties not required for open

1 space, parks or natural areas. If such properties were also not selected by AHDP, they
2 may be added to the inventory of tax foreclosed properties available for disposition
3 according to law.

4
5 **SECTION X - PROCEDURE FOR DISPOSITION OF REQUESTS FOR TRANSFER OF TAX**
6 **FORECLOSED PROPERTY FOR HOUSING AND FOR OPEN SPACE, PARKS**
7 **OR NATURAL AREAS**

- 8 (A) Not less than fifteen (15) days after receiving the recommendations from the
9 Greenspace Review Committee and AHDP, the Board shall schedule a public hearing to
10 receive public comments concerning the proposed property transfers.
- 11 (B) The Department shall publish notice of the scheduled hearing in a newspaper of
12 general circulation in the County for two successive weeks. The notice shall state the
13 description or location of the properties and that the Board will hear comments
14 concerning the transfer at the hearing. A copy of the notice shall be mailed to the
15 applicants and applicable neighborhood associations and to other persons requesting
16 such notice.
- 17 (C) Approval of transfers shall be based upon the degree proposals for transfer are feasible
18 and in the public interest. Transfers to Non-Profit Housing Sponsors may be for
19 consideration or for no consideration. Transfers in connection with the County
20 Affordable Housing Development Program shall require a \$200 transfer fee to offset the
21 cost of administration. The transfer fee may be waived or reduced by the Board upon a
22 finding that a waiver or reduction is necessary. Transfers to Open Space Preservation
23 Sponsors shall be for consideration.
- 24 (D) For those properties approved for transfer to non-profit housing sponsors or to open
25 space preservation sponsors, the transfer of title shall occur within sixty (60) days, or as
26 soon after as practicable. Refusal of the receiving entity to accept title shall void
27 approval of such transfer.
- 28 (E) A property approved for transfer to an open space preservation entity shall revert back
29 to the County if the receiving entity ceases to use the property for the intended purpose
30 set forth in this ordinance. The Department shall develop and implement a system for
31 monitoring compliance by the receiving open space preservation sponsors with the
32 terms of transfer.

1 (F) Property maintenance by Multnomah County shall cease upon transfer of the title to
2 the receiving entity.
3

4 ADOPTED this ____ day of _____, 1997, being the date of its _____ reading before the
5 Board of County Commissioners of County Commissioners of Multnomah County, Oregon
6

7 BOARD OF COUNTY COMMISSIONERS
8 FOR MULTNOMAH COUNTY, OREGON
9

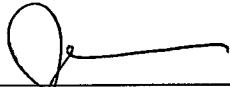
10 By _____

11 Beverly Stein, Chair

12 REVIEWED:

13 THOMAS SPONSLER, COUNTY COUNSEL

14 FOR MULTNOMAH COUNTY, OREGON
15

16 By  _____

17 John Thomas, Assistant County Counsel

Community Development Network of Multnomah County

NON-PROFITS DEVELOPING AFFORDABLE HOUSING AND REVITALIZING NEIGHBORHOODS
2627 NE Martin Luther King Jr. Blvd rm 202, Portland, OR 97212 • Ph 503-335-9884 • Fx 503-335-9862

By Fax
2 pages

December 17, 1997

County Commission Chair Beverly Stein
Commissioner Tanya Collier
Commissioner Gary Hansen
Commissioner Sharron Kelley
Commissioner Dan Saltzman

BOARD OF
COUNTY COMMISSIONERS
97 DEC 18 AM 8 16
MULTNOMAH COUNTY
OREGON

Dear Chair Stein and County Commissioners,

I am writing on behalf of the Community Development Network to comment on the ordinance amending ordinance 795 "to provide for procedures for conveyance of tax foreclosed property to nonprofit and municipal corporations for the creation of open space, parks, or natural areas for perpetual public use." Please forgive my late input on this issue. Commissioner Saltzman forwarded a draft of this ordinance to me some time ago for my input, but it fell off my plate in the race towards strong affordable housing language in Metro's Regional Framework Plan. I am only now getting focused on the county-level again.

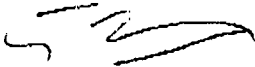
The Community Development Network, as you probably know, is the association of nonprofit housing developers in Multnomah County. We currently have 70 members, 22 of which are nonprofit developers. The rest are affiliate members and include financial institutions, government agencies, architects, insurance companies, and other interested organizations. The Network's mission is to promote and assist community-based nonprofit organizations to create affordable housing, produce jobs, and otherwise address the needs of low and moderate income residents of communities in the City of Portland and Multnomah County.

The current tax-foreclosed properties program in Multnomah County has been an important source of land for my membership in their work developing affordable housing, and with the price of land rising in all of the neighborhoods in which nonprofit developers work, it is becoming increasingly important to find inexpensive land on which to build. The Network's membership is understandably concerned about the impact of the amendment being considered tomorrow on the availability for housing development of the rapidly diminishing supply of tax-foreclosed parcels.

The Network not wish to declare that affordable housing is always the best use for tax-foreclosed properties that the County might have to distribute; certainly in some areas parks are a compelling need and may make a crucial contribution to the livability of the neighborhood. We do want to register our recommendation that whatever system is established to give nonprofits access to these parcels for use as permanently protected open space/parks/natural areas create a way to balance the diverse needs of neighborhoods and look case by case at what the best use for a given parcel might be based on the characteristics of the parcel itself, those of surrounding parcels, and the overall needs of both the local community and the County as a whole.

We would be happy to discuss this matter further with you, and to work with County staff to think through the details of a policy to appropriately balance the diverse possible uses for these lands. We appreciate your attention to this important issue.

Sincerely



Tasha Harmon
Executive Director




OF OREGON

821 SE 14th Avenue
Portland, Oregon 97214-2537
503 230-1221
Fax 503 230-9639

MEMORANDUM

TO: Multnomah County Board of Commissioners

FROM: Russ Hoefflich, Vice President & State Director, 
The Nature Conservancy, Oregon

DATE: December 17, 1997

SUBJECT: Amendment to Multnomah County Ordinance 795

This is in support of the amendment to Multnomah County Ordinance 795, allowing transfer of county foreclosed property to nonprofit organizations for preserving open space.

The Nature Conservancy of Oregon believes that this amendment is a positive step toward prioritizing open spaces in the increasingly dense Multnomah County. The amendment would make more efficient the process of preserving open spaces by having non-profit organizations request foreclosed properties directly from the county.

In addition, because the county has expenses and liability for these properties, non-profits may assume this responsibility by preserving open spaces for community gardens, etc.

As municipalities are faced with limited budgets and increasing pressure from citizens to provide additional urban parks and open spaces, this amendment facilitates a partnership between Multnomah County and non-profit organizations in helping to achieve a common goal.

Finally, I want to highly commend Commissioner Dan Saltzman for his vision and leadership on this important issue.



1 BEFORE THE BOARD OF COUNTY COMMISSIONERS
2 FOR MULTNOMAH COUNTY, OREGON
3 ORDINANCE NO. 895
4

5 An Ordinance amending Ordinance No. 795 to provide for procedures for
6 conveyance of tax foreclosed property to nonprofit and municipal corporations for the
7 creation of open space, parks or natural areas for perpetual public use.

8 Multnomah County ordains as follows:

9 SECTION I - FINDINGS

10 (A) ORS 271.330 has been amended to permit the County to convey properties,
11 including tax foreclosed properties, to nonprofit and municipal corporations for
12 the creation of open space, parks or natural areas for perpetual public use,

13 (B) This Board has previously recognized in Ordinance 795 that some tax
14 foreclosed properties may have present and future value in their natural state
15 and should be conveyed to agencies who can maintain or enhance their value
16 for wildlife habitat, parks, open spaces or other environmental purposes.

17 (C) It is to the benefit of the citizens of Multnomah County for the County to
18 entrust municipal corporations and recognized nonprofit organizations with preserving
19 open space, parks, and natural areas within the County.

20 (D) It is necessary to establish procedures for evaluation, selection and conveyance
21 of tax foreclosed properties to municipal and nonprofit corporations for these
22 purposes.

23 SECTION II: - REVISIONS TO ORDINANCE 795

24 Ordinance 795 is amended as follows. New material is in bold, deleted material is
25 in italics and brackets.

26 SECTION ~~III~~ I - DEFINITIONS

27 For the purposes of this ordinance, unless the context requires otherwise, the
28 following
29 terms are defined as follows:

30 (A) "Board" means Board of County Commissioners of Multnomah County,
31 Oregon.

- 1 (B) "Department" means Multnomah County Department of Environmental
2 Services.
- 3 (C) "Director" means the Director of the Multnomah County Department of
4 Environmental Services."
- 5 (D) "Greenspace Committee" means the Greenspace Review Committee.
- 6 (E) "Property" means all property acquired by Multnomah County by foreclosure
7 of delinquent tax liens.
- 8 (F) "Nonprofit housing sponsor" means any government or nonprofit
9 corporation organized under the provisions of ORS Chapter {61}65 for the
10 purpose of undertaking, constructing, or operating a housing project to assist
11 low and lower income families, or authorized by its charter to undertake,
12 construct, or operate such housing projects.
- 13 (G) "Owner" or "former owner" means a property owner or contract purchaser
14 of record at the time a judicial decree of foreclosure was entered as to the
15 affected property.
- 16 (H) "Repurchase agreement" means a contract to sell tax foreclosed property to
17 the former owner prior to foreclosure.
- 18 (I) "Social services agency" means an appropriate social service provider, as
19 designated by the Board of County Commissioners.
- 20 (J) "Tax title fund" means the Multnomah County accounting fund maintained to
21 receive proceeds from the sale of tax foreclosed properties and disburse all
22 lawful expenditures therefrom.
- 23 (K) "Days" means calendar days unless otherwise noted.
- 24 (L) "Open space" means developed parks with active recreational facilities
25 such as ball fields, tennis courts, playgrounds, community gardens, golf
26 courses, cemeteries, or vacant lands with the potential for becoming a
27 park or natural area.
- 28 (M) "Parks" means publicly or privately owned land designed or utilized for
29 outdoor recreation and devoid of man-made structures for habitation.
- 30 (N) "Natural area" means a landscape unit composed of plant and animal
31 communities, water bodies, soil, and rock; largely devoid of human

1 made structures; maintained and manage in such a way as to promote
2 or enhance population of wildlife.

3 (O) **"Open Space Preservation Sponsor"** means any government or
4 nonprofit corporation organized under the provisions of ORS Chapter
5 65 for the purpose of preserving and actively managing properties as
6 open spaces, parks or natural areas.

7 (P) **"Community Gardens"** means public or private land divided into plots
8 for growing vegetables, fruits, flowers, native, or ornamental plants. A
9 community garden may also mean private or public land used for
10 growing or displaying an orchard of small trees, herbs, or dry land
11 plants.

12 **SECTION [III] II.- PROPERTY ADMINISTRATION AND EVALUATION**

13 (A) The Department shall be responsible for management of the tax title fund
14 and for the inventory, management, maintenance and disposition of all tax
15 foreclosed properties in accordance with state statutes and this ordinance.

16 (B) The Department, in order to assure the fiscal stability of the tax title fund,
17 may identify properties to be sold at public auction and not available for
18 donation to governments or non-profit housing sponsors, or **Open Space**
19 **Preservation Sponsors.**

20 (C) The Department shall be responsible for a physical inspection of all
21 properties upon conveyance to the County.

22 (D) If any property is occupied, the Department shall notify an appropriate
23 County social services agency if the occupants may require exceptional
24 assistance. The agency shall make an assessment of the circumstances within
25 thirty (30) days of such notification and submit a report to the Department.
26 Upon receipt of a report from a social services agency recommending
27 special assistance, the Department shall suspend efforts to dispose of the
28 property pending further direction from the Board and shall forward a copy
29 of the report to the Board. The Board shall review the case and order
30 appropriate action within thirty (30) days.

- 1 (E) In the event any request for transfer of property by a governmental entity
2 conflicts with any other request for transfer of property in accordance with
3 this ordinance, the Department shall put the matter on the Board's regular
4 meeting agenda for resolution by the Board.

5 SECTION [IV] III - REPURCHASE QUALIFICATIONS AND CONTRACT
6 REQUIREMENTS

- 7 (A) Repurchase Period. Upon receipt of recorded property deeds, the
8 Department shall send notices by certified mail to former owners of tax
9 foreclosed properties. The notices shall advise the recipients:

- 10 (1) Within thirty (30) days from the date of the notice the owner may:

11 (a) Pay in cash the repurchase price established by the Department
12 under Section [IV] III(C) of this ordinance, or

13 (b) Complete an application to repurchase the property by
14 repurchase contract.

- 15 (2) If the owner fails to either repurchase in cash or to qualify to repurchase
16 by property contract within the time provided, the Department may
17 dispose of the property as provided in this ordinance.

- 18 (B) Repurchase Contract Qualifications. Former owners may repurchase
19 property on contract if the property and the owner meet the following
20 qualifications:

- 21 (1) The property must be:

22 (a) The primary residence of the former owner; or

23 (b) The primary location of the former owner's business; or

24 (c) Used as an integral part of a residential treatment or social
25 services program sponsored by the owner, if the owner is a nonprofit
26 organization exempt from federal taxes under IRC 501 (C)(3); and

- 27 (2) Any other real property of the owner in Multnomah County has not
28 been foreclosed for non-payment of taxes in the previous ten (10) years,
29 unless such prior foreclosure is either (1) the owner's primary residence if
30 the current foreclosure is the owner's primary business, or (2) the owner's

1 primary business if the current foreclosure is the owner's primary
2 residence; and

3 (3) The owner has not previously repurchased property by an
4 agreement which has been canceled by the County within the preceding ten
5 (10) years; and

6 (4) The owner must demonstrate financial ability to meet minimum
7 payment requirements of a contract; and

8 (5) Improved property must be suitable for occupation, or the owner
9 must demonstrate an ability to make the property suitable for occupation
10 within the period specified by the County.

11 (C) Repurchase Contract Price

12 (1) The repurchase price shall be the sum of: all the uncollected taxes as of
13 the date the property was conveyed to the County; an amount equal to
14 taxes which would have accrued after conveyance to the County,
15 including accrued interest and interest which would have accrued after
16 conveyance to the County; penalties; municipal liens; delinquent sewer
17 liens; special assessments; costs of maintenance or nuisance abatement,
18 and administrative expenses which shall include, but not be limited to,
19 title searches, expense of document preparation and recording fees.

20 (2) Repurchase contracts shall include provisions for prepayment of real
21 property taxes with any debt service installment payments.

22 (D) Appeal Process For Contract Denials

23 (1) The Department may deny any application for repurchase by contract if
24 the applicant fails to submit sufficient evidence to show compliance
25 with contract qualifications in Section ~~IV~~ III(B).

26 (2) The Director shall give notice of denial in writing to the applicant by
27 regular mail. The notice of denial shall include:

28 (a) A statement of the reason(s) for the denial.

29 (b) Explanation of how the decision of the Director may be
30 appealed to the Board; and

1 (c) Explanation of the actions necessary to request an
2 administrative exception.

3 (3) Requests for an administrative exception must be submitted to the
4 Director within fifteen (15) days after the notification of denial was
5 mailed. The Director will make a determination within fifteen (15) days
6 after the request. The Director may grant an administrative exception
7 to the qualification requirements if in the public interest.

8 (4) Within fifteen (15) days after a notice of the Director's denial, the
9 applicant may either repurchase the property for cash or appeal the
10 denial to the Board. The appeal shall be filed with the Department and
11 shall recite the facts forming the basis for the appeal and set out the
12 reasons the applicant believes the Board should reverse the Director's
13 decision. The Department shall promptly deliver a copy of the request
14 for appeal together with a copy of the Director's reasons for denial
15 prior to the appeal hearing.

16 (5) When an appeal is filed, at the next regular Board meeting at which
17 the matter can be presented, the Board shall schedule a hearing to hear
18 the appeal.

19 (6) The Board will determine the disposition of the appeal based on the
20 following:

21 (a) Whether the applicant meets the contract qualifications and
22 requirements stated in Section [IV] III(B);

23 (b) Whether the applicant filed a completed repurchase
24 application within the time required by Section [IV] III(A)(1)
25 of this ordinance;

26 (c) Whether the applicant filed an appeal in the manner required
27 by Section [IV] III(D)(3)(4) of this ordinance;

28 (d) Whether other extenuating circumstances exist.

29 (E) Appeal Process for Contract Cancellation

- (1) If at any time a contract is in default and subject to cancellation, the Director may give notice of default in accordance with the repurchase contract.
- (2) Any contract purchaser may request the Director to grant relief from cancellation by request in writing to the Director within fifteen (15) days after notification of default. The Director will make a determination within fifteen (15) days thereafter whether to modify the contract, grant other appropriate relief or to specify a date the contract will be canceled.
- (3) If the Director denies a request for relief from contract cancellation, the Department shall give the purchaser notice of the reasons therefore in writing by regular mail. The notice shall include information on how the contract may be appealed to the Board of County Commissioners.
- (4) Within fifteen (15) days after the Director's denial, the repurchaser may either pay off the balance of the contract in cash, or appeal the proposed contract cancellation to the Board. The appeal shall be in writing, recite the facts forming the basis for appeal and reflect the reasons the petitioner believes the Board should reverse the Director's decision.
- (5) When an appeal is filed, at the next regular Board meeting at which the matter can be presented, the Board shall schedule a hearing to hear the appeal.
- (6) The Department shall provide the Board a copy of the Director's notice of denial prior to the appeal hearing. At the appeal hearing, the Board may affirm the Director's decision to cancel the contract or fashion other appropriate relief, including reinstatement or modification of the contract.

SECTION [V] IV - PROCEDURE FOR IDENTIFYING PROPERTIES TO BE DESIGNATED AS HAVING GREENSPACE ENVIRONMENTAL VALUE

1 (A) A Greenspace Review Committee is hereby established to review tax
2 foreclosed properties to determine suitability of properties for public use as
3 open space, parks, or natural areas and provide such information to
4 governmental jurisdictions and other interested groups. The committee shall
5 consist of not less than five members to serve at the pleasure of the Board.

6 (B) When the annual comprehensive County deed is recorded for tax foreclosed
7 properties after the expiration of the redemption period, the Department shall
8 provide a list of the properties to the Greenspace Committee. *{The committee*
9 *shall evaluate the properties, using criteria approved by the Board, to*
10 *determine suitability for park, open space, or natural area purposes.}* The
11 Greenspaces Review Committee shall utilize the following factors in a
12 "Greenspaces Screen" to evaluate properties for their greenspace value:

- 13 a) The Greenspaces Inventory established by Metro
- 14 b) The Significant Environmental Concerns Zone established by
- 15 Multnomah County
- 16 c) An environmental protections zone established by a city
- 17 d) An environmental conservation zone established by a city
- 18 e) Park Deficiency Area Standards (until new criteria can be
- 19 developed and unless otherwise directed by a local jurisdiction the
- 20 "National Park and Recreational Association" standards will be
- 21 used)
- 22 f) The Combined Sewer Overflow area as determined by the City of
- 23 Portland.

24 Within 90 days after receipt of the list, the committee shall furnish the
25 Department with a list of properties deemed suitable for parks, open
26 spaces or natural areas and shall identify the significant environmental
27 qualities and a proposed public purpose for each property on the list.
28 *{Within 90 days thereafter, the committee shall furnish the Department with*
29 *a list of properties deemed suitable for the specified purposes, the significant*
30 *environmental qualities and make recommendations regarding the public*
31 *purpose for each property on the list.}*

1 (C)The Greenspace Committee's recommendations shall be noted in any
2 notification to governmental entities of properties available for public use
3 transfers under Section ~~[VII]~~ VI of this ordinance.

4 (D)The Greenspace Committee may make recommendations to the Board at any
5 time regarding properties recommended for public use for park, open space or
6 natural area uses if any such property is not transferred for a public purpose
7 under any provision of this ordinance.

8 SECTION ~~[VI]~~ V - REQUESTING TRANSFER OF TAX FORECLOSED PROPERTY
9 TO GOVERNMENTS FOR NON HOUSING PURPOSES

10 (A) As soon as practicable after the properties on the annual comprehensive
11 County Deed have been conveyed to the County, the Department shall mail a
12 list of property available to government units and officially recognized
13 neighborhood associations in Multnomah County with a notice that the
14 properties are eligible for transfer, for non-housing purposes only.

15 (B) Properties having characteristics identified under Section ~~[V]~~ IV of this
16 ordinance shall be so identified on the property list.

17 (C) A governmental unit may request transfer of listed property within sixty (60)
18 days after notice of property availability was first mailed. All requests shall be
19 on forms provided by the Department and must be authorized by the requesting
20 governing body.

21 (D) The Department shall report to the Board all requests for transfer of property
22 by governments. The report shall identify the governmental entity requesting
23 transfer, a description of the property, the amount of, taxes owed when the
24 property was conveyed to the County, all maintenance costs incurred by the
25 County, and the applicant's proposed public use.

26 (E) The Board shall schedule a public hearing as soon as practically convenient.
27 The Department shall publish notice of the scheduled public hearing in a
28 newspaper of general circulation in the County for two successive weeks. The
29 notice shall describe the property, state that the Board will accept comments
30 concerning the transfer at the hearing and where a copy of the Department's

1 report can be obtained. A copy of the notice shall be mailed to applicants and
2 other persons requesting such notice.

3 (F) At the conclusion of the hearing, the Board may approve the transfers if the
4 Board determines the transfers will serve the public interest. The Board shall
5 also determine whether such transfers are for monetary consideration or no
6 consideration.

7 (G) Conveyances of property transferred to governmental entities for a public
8 purpose without consideration, other than housing, shall provide that should
9 the property cease to be used for a public purpose, the title shall revert to the
10 County. This restriction shall not apply to transfers to a governmental body in
11 exchange for payment of the amount of taxes and costs for which the property
12 is liable.

13 (H) For those properties approved by the Board for transfer to governmental
14 entities, transfer of title shall occur within sixty (60) days, or as soon after as
15 practicable. Refusal of the receiving entity to accept title shall void approval
16 of such transfer and shall result in the property being disposed of as provided
17 by law.

18 (I) Property maintenance by Multnomah County shall cease upon transfer of the
19 title to the receiving agency.

20 SECTION [VII] VI - PROCEDURE FOR REQUESTING TRANSFER OF TAX
21 FORECLOSED PROPERTY FOR HOUSING PURPOSES

22 (A) An Affordable Housing Review Committee has been established to make
23 recommendations to the Board regarding all disposition of tax foreclosed
24 property for affordable housing under the procedures of Affordable Housing
25 Development Program (AHDP). The Affordable Housing Review Committee
26 members shall be appointed by the Chair and approved by the Board. The
27 committee shall be composed of representatives from: the City of Gresham, the
28 City of Portland, the Community Development Block Grant Urban County
29 Policy Advisory Board, a philanthropic organization, the banking industry, the
30 Citizen Involvement Committee and the Board.

1 (B) Requests for properties for low-income housing will be considered according
2 to procedures established by Multnomah County AHDP and approved by the
3 Board.

4 (C) A list of properties remaining after transfer requests of governmental units,
5 shall be submitted to AHDP.

6 (D) AHDP shall, within thirty (30) days after receipt of the list of available
7 properties, advise the Department which properties will be processed for low
8 income housing development. Within ten (10) days thereafter, AHDP shall
9 mail the list of available properties to governments and other nonprofit housing
10 sponsors in Multnomah County.

11 (E) Written applications by housing sponsors shall be filed with AHDP within
12 forty-five (45) days after notice of property availability was first mailed. All
13 requests shall be on forms provided by AHDP.

14 (F) Within sixty (60) days after receipt of applications for property under AHDP,
15 the Affordable Housing Review Committee will prepare disposition
16 recommendations to the Board. recommendations shall be based on the
17 sponsoring organization's stability and viability, the project plan, financial plan
18 and community support.

19 (G) Within seven (7) days after AHDP determines any property will not be
20 transferred to a non-profit housing sponsor, because no applications for the
21 property were received or approved, AHDP shall provide the Department with
22 a list of properties not required for housing development. If *[S]such* properties
23 were also not selected by the Greenspace Review Committee, they may be
24 added to the inventory of tax foreclosed properties available for disposition
25 according to law.

26 (H) *[Not less than fifteen (15) days after receiving the recommendations from*
27 *AHDP, the Board shall schedule a public hearing to receive public comments*
28 *concerning the proposed property transfers.*

29 (I) *The Department shall publish notice of the scheduled hearing in a newspaper*
30 *of general circulation in the County for two successive weeks. The notice shall*
31 *state the description or location of the properties and that the Board will hear*

1 *comments concerning the transfer at the hearing. A copy of the notice shall*
2 *be mailed to the applicants and applicable neighborhood associations and to*
3 *other persons requesting such notice.*

4 (J) *Approval of transfers shall be based upon the degree proposals for transfer*
5 *are feasible and in the public interest. Transfers may be for consideration or*
6 *for no consideration. Transfers in connection with the County Affordable*
7 *Housing Development Program shall require a \$200 transfer fee to offset the*
8 *cost of administration. The transfer fee may be waived or reduced by the*
9 *Board upon a finding that a waiver or reduction is necessary to relieve the*
10 *applicant from undue hardship and that loss of the fee will not jeopardize*
11 *efficient administration of the program.*

12 (K) *For those properties approved by the Board for transfer to non-profit housing*
13 *entities, transfer of title shall occur within sixty (60) days, or as soon after as*
14 *practicable. Refusal of the receiving entity to accept title shall void approval*
15 *of such transfer and shall result in the property being disposed of as provided*
16 *by law.*

17 (L) *Property maintenance by Multnomah County shall cease upon transfer of the*
18 *title to the receiving agency.]*

19 SECTION [VIII] VII - NEHEMIAH HOUSING OPPORTUNITY PROGRAM
20 SUPPORT.

21 (A) The rights and obligations of NECDC under this ordinance to review lists of
22 available tax foreclosed properties and to receive properties in the King,
23 Humboldt, Boise and Vernon neighborhoods, in accordance with Resolution
24 89-167, shall continue so long as NECDC shall sponsor and administer the
25 Nehemiah Housing Opportunity Program (NHOP) contained in Title VI of the
26 Housing and Community Development Act of 1987 and 24 CFR Part 280.

27 SECTION [IX] VIII- REPEAL OF PRIOR ORDINANCES

28 (A) Ordinances 560, 577, 613, 672, 685, 703, 753, and 769 are hereby repealed.
29 This Ordinance, being necessary for the health, safety, and welfare of the
30 people of Multnomah County, an emergency is declared, and the Ordinance

1 shall take effect upon its execution by the County Chair, pursuant to Section
2 5.50 of the Charter of Multnomah County.

3 **SECTION IX - PROCEDURE FOR REQUESTING TRANSFER OF TAX**
4 **FORECLOSED PROPERTY FOR OPEN SPACE, PARKS OR NATURAL AREAS**

5 (A) Requests for properties for open space, parks or natural areas will be
6 considered according to procedures established by the Department in
7 conjunction with Greenspace Review Committee.

8 (B) A list of properties remaining after transfer requests of governmental
9 units, shall be submitted to the Greenspace Review Committee.

10 (C) The Greenspace Review Committee shall, within thirty (30) days after
11 receipt of the list of available properties, advise the Department which
12 properties meet the Committee's criteria for appropriate use as open
13 spaces, parks or natural areas. Within ten (10) days thereafter, the
14 Department shall mail a notice setting forth the list of available properties
15 to neighborhood associations and nonprofit corporations that have
16 requested the Department to provide such notice together with an
17 application form.

18 (D) Written applications by nonprofit corporations shall be filed with the
19 Greenspace Review Committee within forty-five (45) days after notice of
20 property availability was first mailed. All requests shall be on the
21 application forms provided with the notice.

22 (E) Within sixty (60) days after receipt of applications, the Greenspace
23 Review Committee will prepare disposition recommendations to the
24 Board. Recommendations shall be based on the sponsoring organization's
25 stability and viability, the project plan, financial plan and community
26 support.

27 (F) Within seven (7) days after the Greenspace Review Committee
28 determines any property will not be transferred to an open space
29 preservation sponsor, the Greenspace Review Committee shall provide
30 the Department with a list of properties not required for open space,
31 parks or natural areas. If such properties were also not selected by

1 AHDP, they may be added to the inventory of tax foreclosed properties
2 available for disposition according to law.

3 **SECTION X - PROCEDURE FOR DISPOSITION OF REQUESTS FOR**
4 **TRANSFER OF TAX FORECLOSED PROPERTY FOR HOUSING AND FOR**
5 **OPEN SPACE, PARKS OR NATURAL AREAS**

6 (A) Not less than fifteen (15) days after receiving the recommendations from
7 the Greenspace Review Committee and AHDP, the Board shall schedule
8 a public hearing to receive public comments concerning the proposed
9 property transfers.

10 (B) The Department shall publish notice of the scheduled hearing in a
11 newspaper of general circulation in the County for two successive weeks.
12 The notice shall state the description or location of the properties and
13 that the Board will hear comments concerning the transfer at the hearing.
14 A copy of the notice shall be mailed to the applicants and applicable
15 neighborhood associations and to other persons requesting such notice.

16 (C) Approval of transfers shall be based upon the degree proposals for
17 transfer are feasible and in the public interest. Transfers to Non-Profit
18 Housing Sponsors may be for consideration or for no consideration.
19 Transfers in connection with the County Affordable Housing
20 Development Program shall require a \$200 transfer fee to offset the cost
21 of administration. The transfer fee may be waived or reduced by the
22 Board upon a finding that a waiver or reduction is necessary. Transfers
23 to Open Space Preservation Sponsors shall be for consideration.

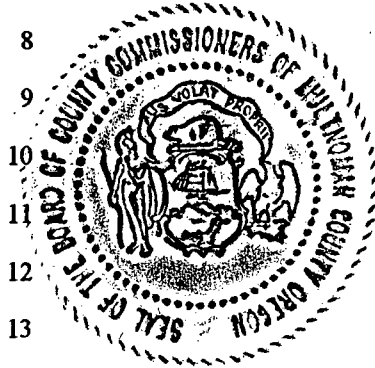
24 (D) For those properties approved for transfer to non-profit housing sponsors
25 or to open space preservation sponsors, the transfer of title shall occur
26 within sixty (60) days, or as soon after as practicable. Refusal of the
27 receiving entity to accept title shall void approval of such transfer.

28 (E) A property approved for transfer to an open space preservation entity
29 shall revert back to the County if the receiving entity ceases to use the
30 property for the intended purpose set forth in this ordinance. The
31 Department shall develop and implement a system for monitoring

1 compliance by the receiving open space preservation sponsors with the
2 terms of transfer.

3 (F) Property maintenance by Multnomah County shall cease upon transfer of
4 the title to the receiving entity.
5

6 ADOPTED this 30th day of December, 1997, being the date of its second reading
7 before the Board of County Commissioners for Multnomah County, Oregon
8



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

14 REVIEWED:

15
16 THOMAS SPONSLER, COUNTY COUNSEL
17 FOR MULTNOMAH COUNTY, OREGON
18

19 
20 John Thomas, Assistant County Counsel
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MEETING DATE: DEC 30 1997
AGENDA NO: R-5
ESTIMATED START TIME: 9:45am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Ordinance Amending Multnomah County Business Income Tax MCC 5.60

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: December 30, 1997
AMOUNT OF TIME NEEDED: 3 to 5 minutes

DEPARTMENT: DSS DIVISION: Finance

CONTACT: Dave Boyer TELEPHONE #: 248-3903
BLDG/ROOM #: 106/1430

PERSON(S) MAKING PRESENTATION: Dave Boyer

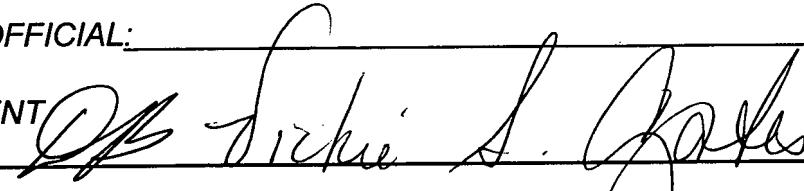
ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Ordinance Amending Multnomah County Business Income Tax MCC 5.60

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT _____
MANAGER: 

BOARD OF
COUNTY COMMISSIONERS
97 DEC 22 PM 2:51
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



MULTNOMAH COUNTY, OREGON

COUNTY COMMISSIONERS		DEPARTMENT OF SUPPORT SERVICES FINANCE DIVISION		
BEVERLY STEIN, CHAIR	DIRECTORS OFFICE	PORTLAND BUILDING	MATERIALS MGMT	FORD BUILDING
DAN SALTZMAN, DISTRICT #1	ACCOUNTS PAYABLE	1120 SW FIFTH AVENUE, SUITE 1430	CONTRACTS	2505 SE 11TH 1ST FLOOR
GARY HANSEN, DISTRICT #2	GENERAL LEDGER	PO BOX 14700	PURCHASING	PORTLAND, OR 97202
VACANT, DISTRICT #3	PAYROLL	PORTLAND, OR 97293-0700		PHONE (503) 248-5111
SHARRON KELLEY, DISTRICT #4	TREASURY	PHONE (503) 248-3312		FAX (503) 248-3252
	LAN ADMINISTRATION	FAX (503) 248-3292		TDD (503) 248-5170

MEMORANDUM

TO: Board of County Commissioners

FROM: Dave Boyer 

DATE: December 22, 1997

REQUESTED PLACEMENT DATE: December 30, 1997

SUBJECT: Ordinance Amending Business Income Tax

I. Recommendation / Action:

Adopt Ordinance that makes technical and housekeeping amendments to the Multnomah County Business Income Tax Code MCC 5.60

II. Background / Analysis:

In June 1993, the Board of County Commissioners adopted a new Business Income Tax Law under MCC 5.60 to achieve code conformity with the City of Portland Business License Law.

Since the adoption of the Business Income Tax, including amendments, Finance and City of Portland staff have discovered instances where code language should be clarified to ease administration and simplify compliance for the business community. This includes

1. Elimination of a burdensome penalty for underpayment of quarterly estimated payments.
2. Add a number of new business entity types have been authorized by the State Legislature. The Business Income Tax Law needs to add references for these entities to ensure understanding and compliance.
3. Update the tie to the Oregon State Statutes imposing taxes on or measured by net income and as of December 31, 1997, and giving staff authority via adoption of administrative rules to connect and /or disconnect from future legislative changes.
4. Clarify the definitions of doing business.

The Finance Division along with the City of Portland's Bureau of Licenses and City Attorney's Office staff have reviewed these changes to ensure code conformity with the City of Portland Business License Law. The City of Portland Council has approved the code changes.

III. Financial Impact:

No significant revenue either plus or minus.

IV. Legal Issues:

None that I am aware of

V. Controversial Issues:

None that I am aware of.

VI. Link to Current County Policy:

Linked to County Policy

VII. Citizen Participation:

The amendments were reviewed by the State and Local Tax Rules and Forms subcommittee and we received no comments.

VIII. Other Government Participation:

These amendments were jointly developed by Multnomah County and the City of Portland staff.

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

3 **ORDINANCE NO. _____**

4 An ordinance amending Multnomah County Business Income Tax MCC 5.60 to incorporate
5 technical and housekeeping changes.

6 (Stricken language in brackets [] is to be deleted; underlined language is new.)

7 **Section I. Findings**

8 A) In June 1993, the Board of County Commissioners adopted a new Business
9 Income Tax Law under MCC 5.60 to achieve code conformity with the City of Portland
10 Business License Law.

11 B) Since the adoption of the Business Income Tax, including amendments, staff has
12 discovered instances where code language should be clarified to ease administration and
13 simplify compliance for the business community. This includes elimination of a burdensome
14 penalty for underpayment of quarterly estimated payments.

15 C) Since the adoption, a number of new business entity types have been authorized
16 by the State Legislature. The Business Income Tax Law needs to add references for these
17 entities to ensure understanding and compliance...

18 D) The Finance Division along with the City of Portland's Bureau of Licenses and
19 City Attorney's Office staff have reviewed these changes to ensure code conformity with the
20 City of Portland Business License Law. The City of Portland Council has approved the code
21 changes.

1 Section II. Amendments to Chapter 5.60.

2 MCC 5.60 is amended as follows:

3 **5.60.020 Conformity to State Income Tax Laws.**

4 The Business Income Tax Law shall be construed in conformity with the laws and
5 regulations of the State of Oregon imposing taxes on or measured by net income. Any
6 reference in this Chapter to the laws of the State of Oregon means the laws of the State of
7 Oregon imposing taxes on or measured by net income as they are amended on or before ~~June~~
8 ~~30, 1993~~ December 31, 1997. The Administrator shall have the authority by administrative
9 rule(s) adopted in accordance with Section 5.60.210, to connect to and/or disconnect from any
10 legislative enactment that deals with income or excise taxation or the definition of income.

11 Should a question arise under the Business Income Tax Law on which this Chapter is
12 silent, the Administrator may look to the laws of the State of Oregon for guidance in resolving
13 the question, provided that the determination under State law is not in conflict with any
14 provision of this Chapter or the State law is otherwise inapplicable.

15 **5.60.~~1030~~220 Presumption of Doing Business.**

16 A person is presumed to be doing business in the County and subject to this Chapter if
17 engaged in any of the following activities:

18 (A) Advertising or otherwise professing to be doing business within the County; or

19 (B) Delivering goods or providing services to customers within the County; or

20 (C) Owning, leasing or renting personal or real property within the County which is
21 used in a trade or business~~[.]~~; or

22 (D) Engaging in any transaction involving the production of income from holding

1 property or the gain from the sale of property, which is not otherwise exempted
2 in this Chapter. Property may be personal, including intangible, or real in
3 nature; or

4 (E) Engaging in any activity in pursuit of gain which is not otherwise exempted in
5 this Chapter.

6 **5.60.100 Definitions.**

7 For the purpose of this Chapter, the terms used in this Chapter shall be defined as
8 provided in this Chapter or in Administrative Rules, adopted under Section 5.60.210 unless the
9 context requires otherwise:

10 (A) *Business* means an enterprise, activity, profession or undertaking of any nature,
11 whether related or unrelated, by a person in the pursuit of profit, gain or the
12 production of income [doing business], including services performed by an
13 individual for remuneration, but does not include wages earned as an employee.

14 (B) *Doing business* means to engage in any activity in pursuit of profit or gain,
15 including but not limited to, any transaction involving the holding, sale, rental
16 or lease of property, the manufacture or sale of goods or the sale or rendering of
17 services other than as an employee. [To do] Doing business includes activities
18 carried on by a person through officers, agents or employees as well as activities
19 carried on by a person on his or her own behalf.

20 (C) *Employee* means any individual who performs services for another individual or
21 organization having the right to control the employee as to the services to be
22 performed and as to the manner of performance.

1 (D) *Person* includes, but is not limited to, a natural person, proprietorship,
2 partnership, limited partnership, family limited partnerships, joint venture,
3 association, cooperative, trust, estate, corporation, personal holding company,
4 limited liability company, limited liability partnership or any other form of
5 organization for doing business.

6 (E) *Taxfiler* means a person doing business in the County and required to file a
7 return under the Business Income Tax Law.

8 (F) *Individual* means a natural person.

9 (G) *Controlling Shareholder* means any person, either alone or together with that
10 person's spouse, parents, and children, who, directly or indirectly, owns more
11 than 5 percent of any class of outstanding stock or securities of the taxfiler. The
12 term "controlling shareholder" may mean the controlling shareholders
13 individually or in the aggregate.

14 (H) *Ownership of Outstanding Stock or Securities* means the incidents of ownership
15 which include the power to vote on the corporation's business affairs or for the
16 directors, officers, operators or other managers of the taxfiler.

17 (I) *Nonbusiness Income* means income not created in the course of the taxfiler's
18 business activities.

19 (J) *Net Operating Loss* means the negative taxable income that may result after the
20 deductions allowed by the Business Income Tax Law in determining net income
21 for the tax year.

22 (K) *Notice* means a written document mailed first class by the Administrator or

1 Division to the last known address of a taxfiler as provided to the Administrator
2 or Division in the latest tax return on file with the Administrator.

3 (L) *Received* means the postmark date affixed by the United States Postal Service if
4 mailed or the date stamp if delivered by hand or sent by facsimile.

5 (M) *Tax Year* means the taxable year of a person for Federal and/or State income tax
6 purposes.

7 (N) *Division* means the Finance Division of Multnomah County, Oregon.

8 (O) *Director* means the Director of the Finance Division.

9 (P) *Administrator* means the Bureau of Licenses, City of Portland, Oregon along
10 with its employees and agents.

11 (Q) *Appeals Board* means the hearings body designated by the Multnomah County
12 Board of Commissioners to review taxfiler appeals from final determinations by
13 the Administrator.

14 **5.60.110. Income Defined.**

15 *Income* means the net income arising from any business, as [required to be] report[ed]
16 able to the State of Oregon for personal income, corporation excise, or income tax purposes,
17 before any allocation or apportionment for operation out of state, or deduction for a net
18 operating loss carry-forward or carry-back.

19 (A) Partnerships, S corporations, limited liability companies, limited liability
20 partnerships, family limited partnerships, estates and trusts, shall be liable for
21 the business tax and not the individual partners, shareholders, members or
22 beneficiaries. The income of these entities [partnerships, S corporations, estates

1 ~~and trusts~~ shall include all income ~~[passing through]~~ received by the entity
2 including ordinary income, interest and dividend income, income from sales of
3 business assets and other income attributable to the ~~[partnership, S corporation,~~
4 ~~estate or trust]~~ entity.

5 (B) If one or more persons are required or elect to report their income to the State
6 of Oregon for corporation excise or income tax purposes or personal income tax
7 purposes in a consolidated, combined or joint return, a single return shall be
8 filed by the person filing such return. In such cases, "income" means the net
9 income of the consolidated, combined or joint ~~[affiliated]~~ group of taxfilers
10 ~~[who are carrying on a single unitary business]~~ before any allocation or
11 apportionment for operation out of the state, or deduction for a net operating
12 loss carry-forward or carry-back.

13 (C) The absence of reporting income to the Internal Revenue Service or the State of
14 Oregon shall not limit the ability of the Administrator to determine the correct
15 income of the taxfiler through examination under Section 5.60.260.

16 **5.60.200 Administration.**

17 The City of Portland, Bureau of Licenses shall be the Administrator of record effective
18 January 1, 1994 and shall have the authority to administer and enforce this Chapter to include,
19 but not limited to, administrative return processing, auditing, determinations, collection of
20 taxes, penalties and interest, protests and appeals that occur on or after January 1, 1994.

21 The Administrator shall have access to and maintain all tax filings and records, under
22 this Chapter, on behalf of the County. The Administrator may, upon request, interpret how

1 the Multnomah County Business Income Tax Law applies, in general or for a certain set of
2 circumstances. Nothing in this Chapter shall preclude the informal disposition of controversy
3 by stipulation or agreed settlement, through correspondence or a conference with the
4 Administrator.

5 **5.60.22[0]5 Ownership of Taxfiler Information.**

6 Multnomah County shall be the sole owner of all filer information under the authority
7 of this chapter. The Director or Director's designee shall have access to all filer information at
8 all times.

9 **5.60.280 Deficiencies and Refunds.**

10 (A) Deficiencies may be assessed and refunds granted any time within the period
11 provided under ORS 314.410, ORS 314.415, and ORS 317.950. The Administrator may by
12 agreement with the taxfiler extend such time periods to the same extent as provided by statute.

13 (B) Notwithstanding subsection (A), if no tax return is filed, the Administrator may
14 determine taxes due under this Chapter at any time based on the best information available to
15 the Administrator. Taxes determined under this subsection shall be assessed and subject to
16 penalties and interest from the date the taxes should have been paid as provided in Section
17 5.60.510 in accordance with Sections 5.60.700 and 5.60.710. The Administrator shall send
18 notice of the determination and assessment to the person doing business in the County.

19 (C) Consistent with ORS 314.410 (3), in cases where no tax return has been filed,
20 there shall be no time limit for a notice of deficiency and/or the assessment of taxes, penalty
21 and interest due.

1 **5.60.400 Exemptions.**

2 (F) Any individual whose only business transactions [in the County] are exclusively
3 limited to the following activities:

4 (1) Sales, exchanges or involuntary conversions of real property not held for
5 sale in the ordinary course of a trade or business, unless the real
6 property is used in the trade or business in connection with the
7 production of income; or

8 (2) The sale of personal property acquired for household or other personal
9 use by the seller; or

10 (3) (a) Interest and dividend income earned from investments if the
11 income is not created in the course of or related to the taxfiler's
12 business activities; or

13 (b) Gains and losses incurred from the sale of assets which are not a
14 part of a trade or business; or

15 (4) The renting or leasing of residential real property, if the beneficial owner
16 of such real property does not rent or lease more than nine dwelling
17 units, at least one of which is within the County.

18 (G) Any person whose only business transactions [in the County] are exclusively
19 limited to the following activities:

20 (1) Raising, harvesting and selling of the person's own crops, or the
21 feeding, breeding, management and sale of the person's own livestock,
22 poultry, furbearing animals or honeybees, or sale of the produce thereof,

1 or any other agricultural, horticultural or animal husbandry activity
2 carried on by any person on said person's own behalf and not for others,
3 or dairying and the sale of dairy products to processors. This exemption
4 shall not apply if, in addition to the farm activities described in this
5 subsection, the person does any processing of the person's own farm
6 products which changes their character or form, or the person's business
7 includes the handling, preparation, storage, processing or marketing of
8 farm products raised or produced by others; or the processing of milk or
9 milk products whether produced by said person or by others for retail or
10 wholesale distribution.

11 (2) Operating within a permanent structure a display space, booth or table
12 for selling or displaying merchandise by an affiliated participant at any
13 trade show, convention, festival, fair, circus, market, flea market,
14 swapmeet or similar event for less than 14 days in any tax year.

15 **5.60.550 Presumptive Tax.**

16 (A) If a person fails to file a return, a rebuttable presumption shall exist that the tax
17 payable amounts to \$500 for every tax year for which a return has not been filed.

18 (B) Nothing in this Section shall prevent the Administrator from assessing, under
19 Section[s] 5.60.280(B) [or 5.60.710(B)] a tax due [in excess of] which is less than or greater
20 than \$500 per tax year.

21 **5.60.600 Income Determinations.**

22 (B) *Partnerships.* In determining income, no deduction shall be allowed for any

1 compensation for services rendered by, or interest paid to, owners of partnerships, limited
2 partnerships, limited liability companies, limited liability partnerships or family limited
3 partnerships. Guaranteed payments to partners or members shall be deemed compensation
4 paid to owners for services rendered. However:

5 (1) For general partners or members, 75 percent of income determined without such
6 deductions shall be allowed as an additional deduction, not to exceed \$50,000
7 per general partner or members.

8 (2) For limited partners or members of LLCs who are deemed limited partners by
9 administrative rule or policy, 75 percent of income determined without such
10 deductions shall be allowed as an additional deduction, not to exceed the lesser
11 of actual compensation and interest paid or \$50,000 per compensated limited
12 partner.

13 (C) *Corporations*. In determining income, no deduction shall be allowed for any
14 compensation for services rendered by, or interest paid to, controlling shareholders of any
15 corporation, including, but not limited to C and S corporations and any other entity electing
16 treatment as a corporation, either C or S. However, 75 percent of the corporation's income,
17 determined without deduction of compensation or interest, shall be allowed as a deduction in
18 addition to any other allowable deductions, not to exceed the lesser of the actual compensation
19 and interest paid or \$50,000 for each controlling shareholder.

20 (1) For purposes of this subsection, to calculate the compensation for services
21 rendered by or interest paid to controlling shareholders that must be added back
22 to income, wages, salaries, fees, or interest paid to all persons meeting the

1 definition of a controlling shareholder, must be included.

2 (2) For purposes of this subsection, in determining the number of controlling
3 shareholders, a controlling shareholder and that person's spouse, parents and
4 children count as one owner, unless such spouse, parent or child individually
5 own more than 5 percent ownership of outstanding stock or securities in their
6 own name. In that case, each spouse, parent or child who owns more than 5
7 percent of stock shall be deemed to be an additional controlling shareholder.

8 (3) For purposes of this subsection, joint ownership of outstanding stock or
9 securities shall not be considered separate ownership.

10 (D) *Estates and Trusts.* In determining income for estates and trusts, income shall be
11 measured before distribution of profits to beneficiaries. No additional deduction shall be
12 allowed.

13 (E) *Nonbusiness Income.* In determining income under this Section, [a deduction]
14 an allocation shall be allowed for nonbusiness income as reported to the State of Oregon.
15 However, income treated as nonbusiness income for State of Oregon tax purposes may not
16 necessarily be defined as nonbusiness income under the Business Income Tax Law. Interest
17 and dividend income, rental income or losses from real and personal business property, and
18 gains or losses on sales of property or investments owned by a trade or business shall be
19 treated as business income for purposes of the Business Income Tax Law. Income derived
20 from non-unitary business functions reported at the State of Oregon level [shall] may be
21 considered nonbusiness income. Non-unitary income will not be recognized at an intrastate
22 level. The taxfiler shall have the burden of showing that income is nonbusiness income.

1 (F) *Taxes Based on or Measured by Net Income.* In determining income, no
2 deduction shall be allowed for taxes based on or measured by net income. No deduction shall
3 be allowed for the federal built-in gains tax.

4 (G) *Ordinary Gain or Loss.* In determining income, gain or loss from the sale,
5 exchange or involuntary conversion of real property or tangible and intangible personal
6 property not exempt under Section 5.60.400(F) shall be included as ordinary gain or loss.

7 (H) *Net Operating Loss.* In determining income, a deduction shall be allowed equal
8 to the aggregate of the net operating losses incurred in prior years, not to exceed 75 percent of
9 the income determined for the current tax year before this deduction but after all other
10 deductions from income allowed by this Section and apportioned for business activity both
11 within and without Multnomah County.

12 (1) When the operations of the taxfiler from doing business both within and without
13 the County result in a net operating loss, such loss shall be apportioned in the
14 same manner as the net income under Section 5.60.610. However, in no case
15 shall a net operating loss be carried forward from any tax year during which the
16 taxfiler conducted no business within the County or the taxfiler was otherwise
17 exempt from tax filing requirements.

18 (2) In computing the net operating loss for any tax year, the net operating loss of a
19 prior tax year shall not be allowed as a deduction.

20 (3) In computing the net operating loss for any tax year, no compensation allowance
21 deduction shall be allowed to increase the net operating loss. "Compensation
22 allowance deduction" is defined as the additional deduction allowed by Section

1 5.60.600 A, B and C.

2 ([3]4) The net operating loss of the earliest tax year available shall be exhausted before
3 a net operating loss from a later tax year may be deducted.

4 ([4]5) The net operating loss in any tax year shall be allowed as a deduction in any of
5 the 5 succeeding tax years until used or expired. Any partial tax year shall be
6 treated the same as a full tax year in determining the appropriate carry-forward
7 period.

8 **5.60.610 Apportionment of Income.**

9 (A) *Business activity* means any of the elements of doing business. However, a
10 person shall not be considered to have engaged in business activities solely by reason of sales
11 of tangible personal property in any state or political subdivision, or solely the solicitation of
12 orders for sales of tangible personal property in any state or political subdivision. Business
13 activities conducted on behalf of a person by independent contractors are not considered
14 business activities by the person in any state or political subdivision.

15 (B) Any taxfiler having income from business activity both within and without the
16 County shall in computing the tax, determine the income apportioned to the County by
17 multiplying the total net income from the taxfiler's business by a fraction, the numerator of
18 which is the total gross income of the taxfiler from business activity in the County during the
19 tax year, and the denominator of which is the total gross income of the taxfiler from business
20 activity everywhere during the tax year.

21 (C) In determining the apportionment of gross income within the County under
22 subsection (B):

1 (1) Sales of tangible personal property shall be deemed to take place in the County
2 if the property is delivered or shipped to a purchaser within the County
3 regardless of the f.o.b. point or other conditions of sale. Sales of tangible
4 personal property shipped from the County to a purchaser located where the
5 taxfiler is not taxable shall not be apportioned to the County.

6 (2) Sales other than sales of tangible personal property shall be deemed to take place
7 in the County, if the income producing activity is performed in the County or
8 the income producing activity is performed both in and outside the County and a
9 greater portion of the income producing activity is performed in the County than
10 outside the County based on costs of performance.

11 (D) Certain industries or incomes shall be subject to specific apportionment and/or
12 allocation methodologies. Such methodologies shall be described in administrative rules
13 adopted in accordance with Section 5.60.210. Industry specific or income specific
14 apportionment methodologies required by Oregon Revised Statutes shall be used in cases
15 where no rule has been adopted by the Administrator regarding the apportionment of such
16 industry or income. In those specific cases where Oregon has directed allocation of income,
17 such income shall be apportioned for purposes of this Chapter, unless allocation is otherwise
18 allowed in this Chapter.

19 ([D]E) If the apportionment provisions of subsection (B) do not fairly represent the
20 extent of the taxfiler's business activity in the County and result in the violation of the
21 taxfiler's rights under the Constitution of this State or the United States, the taxfiler may
22 petition the Administrator to permit the taxfiler to:

1 (1) Utilize the method of allocation and apportionment used by the taxfiler under the
2 applicable laws of the State of Oregon imposing taxes upon or measured by net
3 income; or

4 (2) Utilize any other method to effectuate an equitable apportionment of the
5 taxfiler's income.

6 **5.60.620 Changes to Federal or State Tax Returns.**

7 (A) If a taxfiler's reported net income under applicable Oregon laws imposing a tax
8 on or measured by income is changed by the Federal Internal Revenue Service or the Oregon
9 Department of Revenue, or amended by the taxfiler to correct an error in the original Federal
10 or State return, a report of such change shall be filed with the Administrator within 60 days
11 after the date of the notice of the final determination of change or after an amended return is
12 filed with the Federal or State agencies. The report shall be accompanied by an amended tax
13 return with respect to such income and by any additional tax, penalty, and interest due .

14 (B) The Administrator may assess deficiencies and grant refunds resulting from
15 changes [in] to Federal, [or] State or business income tax returns within the time periods
16 provided for in Section 5.60.280, treating the report of change in Federal, [or] State or
17 business income tax returns as the filing of an amended tax return.

18 (C) The Administrator may assess penalties and interest on the additional tax due as
19 provided in Section 5.60.700(A) and 5.60.710(A) or may refuse to grant a refund of taxes as a
20 result of the amended return if the amended return is not filed with the Administrator within
21 the time limits set forth in subsection (A).

1 **5.60.700 Penalties.**

2 (A) A penalty shall be assessed if a person:

3 (1) (a) Fails to file a tax return or extension request at the time required under
4 Section 5.60.510 (A) or 5.60.620 (A); or

5 (b) Fails to pay a tax when due.

6 (2) The penalty under subsection (A) shall be calculated as:

7 (a) Five percent (0.05) of the total tax liability if the failure is for a period
8 less than four (4) months;

9 (b) An additional penalty of 20 percent (0.20) of the total tax liability if the
10 failure is for a period of four (4) months or more; and

11 (c) An additional penalty of 100 percent (1.00) of the total tax liability of all
12 taxyears if the failure to file is for three (3) or more consecutive tax
13 years.

14 (B) A penalty shall be assessed if a person who has filed an extension request:

15 (1) (a) Fails to file a tax return by the extended due date; or

16 (b) Fails to pay the tax liability by the extended due date.

17 (2) The penalty under subsection (B) shall be calculated as:

18 (a) Five percent (0.05) of the total tax liability if the failure is for a period
19 less than four (4) months; and

20 (b) An additional penalty of 20 percent (0.20) of the total tax liability if the
21 failure is for a period of four (4) months or more.

22 (C) A penalty shall be assessed if a person:

1 (1) (a) Fails to pay at least 90 percent (0.90) of the total tax liability by the
2 original due date; or

3 (b) Fails to pay at least 100 percent (1.00) of the prior year's total tax
4 liability by the original due date;

5 (2) The penalty under subsection (C) shall be calculated as:

6 (a) Five percent (0.05) of the tax underpayment if the failure is for a period
7 less than 4 months; and

8 (b) An additional penalty of 20 percent (0.20) of the tax underpayment if the
9 failure is for a period of four (4) months or more.

10 [(D) A penalty shall be assessed if a person underpays any quarterly estimated tax
11 under Sections 5.60.520 and 5.60.530. The penalty shall be calculated as:

12 (1) Five percent (0.05) of the tax underpayment if the failure is for a period less
13 than four (4) months; and

14 (2) An additional penalty of 20 percent (0.20) of the tax underpayment if the failure
15 is for a period of four (4) months or more.

16 [(E) Notwithstanding subsection (D), there shall be no penalty on any underpayment
17 of the estimated tax if:

18 (1) The total tax liability of the prior tax year was less than \$1,000; or

19 (2) An amount equal to at least 90 percent (0.90) of the total tax liability for the
20 current taxable year was paid in accordance with Section 5.60.530; or

21 (3) An amount equal to at least 100 percent (1.00) of the prior year's total tax
22 liability was paid in accordance with Section 5.60.530.]

1 ~~(F)~~(D) The Administrator may impose a civil penalty of up to \$500 for each of the
2 following violations of the Business Income Tax Law:

- 3 (1) Failure to file any tax return within 90 days of the Administrator's original
4 written notice to file;
- 5 (2) Failure to pay any tax within 90 days of the Administrator's original written
6 notice for payment; or
- 7 (3) Failure to provide documents as required by Section 5.60.260 within 90 days of
8 the Administrator's original written notice to provide documents.

9 ~~(G)~~ E) The Administrator may impose a civil penalty, under subsection ~~[(F)]~~ (D) only
10 if the Administrator gave notice of the potential for assessment of civil penalties for failure to
11 comply or respond in the original written notice.

12 ~~(H)~~ E) The Administrator may waive or reduce any penalty determined under
13 subsections (A) through (D) for good cause, according to and consistent with written policies.

14 **5.60.710 Interest.**

15 (A) Interest shall be collected on any unpaid tax at the rate of .833 percent simple
16 interest per month or fraction thereof (10 percent per annum), computed from the original due
17 date of the tax to the 15th day of the month following the date of payment.

18 (B) (1) Interest shall be collected on any unpaid or underpaid quarterly estimated
19 payment required by Section 5.60.520 and 5.60.530 at the rate of .833 percent simple interest
20 per month or fraction thereof (10 percent per annum), computed from the due date of each
21 quarterly estimated payment to the original due date of the tax return to which the estimated
22 payments apply.

1 (2). Notwithstanding subsection (B) 1., there shall be no interest on underpayment of
2 quarterly estimated payments if:

3 (a) The total tax liability of the prior tax year was less than \$1,000; or

4 (b) An amount equal to at least 90 percent (0.90) of the total tax liability for
5 the current tax year paid in accordance with Section 5.60.530; or

6 (c) An amount equal to at least 100 percent (1.00) of the prior year's total
7 tax liability was paid in accordance with Section 5.60.530.

8 (3) For purposes of subsection (B) 1., the amount of underpayment is determined by
9 comparing the 90 percent of the current total tax liability amount to quarterly estimated
10 payments made prior to the original due date of the tax return.

11 ~~(B)~~ C) If a person fails to file a tax return on the prescribed date, or any extension
12 thereof granted under Section 5.60.510 (B), the Administrator may determine the tax due based
13 on the best information available to the Administrator. If the Administrator determines the tax
14 due under this subsection, the Administrator shall assess appropriate penalties and interest and
15 shall send notice to such person of the determination and assessment.

16 ~~(C)~~ D) For purposes of subsection (A) of this Section, the amount of tax due on
17 the tax return shall be reduced by the amount of any tax payment made on or before the date
18 for payment of the tax in accordance with Section 5.60.510 (A) or 5.60.530 .

19 ~~(D)~~ E) Interest at the rate specified in subsection (A) of this Section shall accrue from
20 the original due date without regard to any extension of the filing date.

21 (F) Any interest amounts properly assessed in accordance with this section may not
22 be waived or reduced by the Administrator, unless specifically provided for by

1 written policy.

2 **5.60.720 Interest on Refunds.**

3 When, under a provision of the Business Income Tax Law, taxfilers are entitled to a
4 refund of a portion or all of a tax paid to the Administrator, they shall receive simple interest
5 on such amount at the rate specified in Section 5.60.710(A), subject to the following:

6 (A) Any overpayments shall be refunded with interest for each month or fraction
7 thereof for a period beginning four (4) months after the due date or the date the tax was paid,
8 whichever is later, to the date of the refund; and

9 (B) Any overpayments of estimated tax shall be refunded with interest for each
10 month or fraction thereof for the period beginning four (4) months after the date the [amended
11 or] final return was filed. [This subsection shall apply to returns that are amended due to a
12 change in the Federal or State of Oregon tax returns.]

13 (C) Any overpayments of taxes that are the result of an amended return being filed
14 shall be refunded with interest for each month or fraction thereof for the period beginning four
15 (4) months after the date the amended return was filed. This subsection shall apply to
16 applications that are amended due to a change to the federal, state or business income tax
17 return.

18
19 **Section III. Effective Date**

20 All amendments in this ordinance are effective for tax years beginning on or after
21 January 1, 1997.

1
2 Adopted this _____ day of January, 1998, being the date of its second reading before
3 the Board of County Commissioners of Multnomah County, Oregon.
4

5 BOARD OF COUNTY COMMISSIONERS
6 FOR MULTNOMAH COUNTY, OREGON
7

8 _____
9 Beverly Stein, Chair

10 REVIEWED:
11 THOMAS SPONSOR, COUNTY COUNSEL
12

13 By Sandra Duffy
14 Sandra Duffy, Assistant County Counsel

15 December 30, 1997

MEETING DATE: DEC 30 1997

AGENDA NO: R-6

(Above Space for Board Clerk's Use Only)

9:50am

AGENDA PLACEMENT FORM

SUBJECT: IGA between the Departments of Juvenile and Adult Community Justice, Children and Family Services and Portland School District #1 and Multnomah Education Service District

BOARD BRIEFING

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: 12/30/97

AMOUNT OF TIME REQUESTED: 3 minutes

DEPARTMENT: Juvenile and Adult Community Justice DIVISION: Juvenile Justice

CONTACT: Debbie Persen TELEPHONE #: 248-3202

BLDG/ROOM#: 311

PERSON(S) MAKING PRESENTATION: Bill Morris/Joanne Fuller

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Intergovernmental Agreement #700478 between the Departments of Juvenile and Adult Community Justice, Community and Family Services and Portland School District #1 and Multnomah Educational Service District to provide funding and program services to operate an alternative school (i.e., Turnaround) which serves up to 100 youth who are not attending traditional schools within Multnomah County due to expulsion, suspension persistent truancy and/or demonstrating serious behavioral problems.

1/14/98 ORIGINALS TO Debbie Persen

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
OR

DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk@248-3277

97 DEC 15 PM 1:38
BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
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DAN SALTZMAN • DISTRICT 1 COMMISSIONER
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TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

MEMORANDUM

TO: Board of County Commissioners

FROM: Elyse Clawson, Director
Department of Juvenile and Adult Community Justice

DATE: December 10, 1997

SUBJECT: Approval of an Intergovernmental Agreement between the Departments of Juvenile and Adult Community Justice and Community and Family Services and Portland School District #1 and Multnomah Education Services District:

I. RECOMMENDATION/ACTION REQUESTED:

The Department of Juvenile and Adult Community Justice recommends the Board's approval of an Intergovernmental Agreement between the Department of Juvenile and Adult Community Justice, the Department of Community and Family Services, Portland School District #1 and Multnomah Education Services District to provide funding and program services to operate an alternative school (i.e., Turnaround) for up to 100 students from the 6th through 12th grade who have been suspended, expelled, or are not attending traditional school programs within Multnomah County for reasons of persistent truancy or other serious behavior problems. This is a retroactive agreement, effective August 22, 1997 through to June 30, 1998. The reason for the retroactivity is due to the length of time spent on contract negotiations and developing roles, responsibilities and terms that are agreeable to all the contracting parties.

II. BACKGROUND/ANALYSIS:

The concept for Turnaround sprung from discussions at Juvenile Justice about the difficulty Juvenile Court Counselors had in placing many of their clients in school programs. Historically, youth on probation have been hard to place and keep in traditional schools and many youth on probation miss all or part of a school year because of their inability to get into alternative schools if they were ineligible for traditional schools. Additionally, two federally-funded Portland Public School programs, PAX, an alternative program for youth expelled for violence or weapons violations and COUNTERACT, a program for youth who had exhibited drug or alcohol use on school premises were at the end of their funding cycle which created a need to develop an alternative resource that could serve this population of youth.

Discussions between Portland Public Schools and Multnomah County Juvenile Justice quickly extended to Multnomah ESD, who had funds for a program for youth returning from the State Juvenile Correctional Facilities, and the Department of Community and Family Services, who

participated with Portland Public Schools in the COUNTERACT program. In a series of meetings, philosophies and strategies were aired, funding and resources pooled, and a collaborative partnership was developed between the partners to create an additional resource for youth who were not able to succeed in traditional school settings.

Turnaround has over 80 students who are referred to the school from PPS, Juvenile Justice and schools from East Multnomah County. The program is designed to develop skills in its students that will allow them to cope in their home schools. Within the context of an academic environment, students are taught behavior management skills through the use of individual and family counseling and pro-social skills that are demonstrated daily by the staff at Turnaround.

III. FINANCIAL IMPACT:

The Department of Juvenile and Adult Community Justice will contribute \$534,933 and the Department of Community and Family Services will contribute \$180,000 towards the operation of Turnaround. The total funding for the program is \$714,933. The distribution of funds is as follows:

- \$279,733 will be paid to Portland Public Schools to fund a program leader, counseling staff, bus aides, service hearing coordinator, and computer/telephone/ supplies; and
- \$435,200 will be paid to Multnomah ESD to fund teachers/substitutes, educational assistants, clerical services, and program costs.

IV. LEGAL ISSUES:

N/A

V. CONTROVERSIAL ISSUES:

N/A

VI. LINK TO CURRENT COUNTY POLICIES:

The Turnaround Program links directly to the County's benchmarks of 1) reducing juvenile crime, and 2) increasing high school completion. This is accomplished by demonstrating and implementing behavioral management and pro-social skills and activities which allow youth to cope as well as maintain them in their home schools and promote and encourage anti-criminal behaviors and attitudes.

VII. CITIZEN PARTICIPATION:

N/A

VIII. OTHER GOVERNMENTAL PARTICIPATION:

The Departments of Juvenile and Adult Community Justice and Community Family Services are working closely and collaboratively with Portland Public Schools and Multnomah ESD in this program.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☐

Contract # 700478

Prior-Approved Contract Boilerplate: ☐ Attached: ☒ Not Attached

Amendment #

CLASS I <input type="checkbox"/> Professional Services under \$50,000 <input type="checkbox"/> Intergovernmental Agreement under \$50,000	CLASS II <input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	CLASS III <input checked="" type="checkbox"/> Intergovernmental Agreement over \$50,000 APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # <u>R-6</u> DATE <u>12/30/97</u> <u>DEB BOGSTAD</u> BOARD CLERK
--	---	--

Department: Juvenile and Adult Community Justice

Date: December 9, 1997

Contract Originator: Bill Morris

Phone: 248-3532

Bldg/Room: 311/DJACJ

Administrative Contact: Debbie Persen

Phone: 248-3202

Bldg/Room: 311/DJACJ

Description of Contract: This Intergovernmental Agreement between Portland School District #1, Multnomah Education Service District and the Departments of Juvenile and Adult Community Justice and Children and Family Services will provide funding and program services to operate an alternative school (i.e., Turnaround) for up to 100 students from the 6th through 12th grade who are referred from PPS, Juvenile Justice and schools from East Multnomah County. The target population served are youth who have been suspended, expelled, or are not attending traditional school programs within Multnomah County for reasons of persistent truancy or other serious behavioral problems.

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

ORS/AR #: (Check all boxes that apply) Contractor is ☐ MBE ☐ WBE ☐ QRF ☒ N/A ☐ None

Original Contract No. (ONLY FOR ORIGINAL RENEWALS)

Contractor Name: <u>Multnomah Education Service District</u> Contractor Name: <u>Portland School District #1</u> Mailing Address and Employer ID #: MESD PPS Alternative Education Grants Accounting Dept PO Box 301039 PO Box 3107 Portland, OR 97294-9039 Portland, OR 97208 ID # 93-6000829 ID# 93-6000830 Effective Date: <u>August 22, 1997</u> Termination Date: <u>June 30, 1998</u> Original Contract Amount: <u>\$714,933</u> Total Amount of Previous Amendments: <u> </u> Amount of Amendment: <u>\$</u> Total Amount of Agreement: <u>\$714,933</u>	Remittance Address (if different), Payment Schedule Terms <input type="checkbox"/> Lump Sum <input type="checkbox"/> Due on Receipt <input type="checkbox"/> Monthly <input type="checkbox"/> Net 30 <input type="checkbox"/> Other <u>Quarterly - Cost Reimbursement</u> <input type="checkbox"/> Requirements contract - Requisition Required Purchase Order No. <u> </u> <input type="checkbox"/> Requirements Not to Exceed \$ <u> </u> Encumber: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
--	--

REQUIRED SIGNATURES:

Department Manager: [Signature]

Date: 12-10-97

Purchasing Manager: [Signature]

Date:

(Class II Contracts Only)

County Counsel: [Signature]

Date: 12/15/97

County Chair/Sheriff: [Signature]

Date: December 30, 1997

Contract Administration: [Signature]

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	100	022	2741			6060		CGFD		\$503,992	
02	156	022	2741			6060		SFLX		\$30,941	
03	156	010	1315			6060		9999L		\$180,000	
If additional space is needed, attach separate page. Write contract # on top of page.											

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

INTERGOVERNMENTAL AGREEMENT

Contract #700478

This cooperative Agreement is made and entered into pursuant to the authority found in ORS 190.010 between the following parties: Multnomah County Department of Juvenile and Adult Community Justice (DJACJ), Portland School District #1 (PPS), Multnomah Education Service District (MESD), and Multnomah County Department of Community and Family Services (DCFS).

PURPOSE

To create and implement an alternative school (i.e., Turnaround) for approximately one hundred (100) students from sixth through twelfth grade who have been suspended, expelled, or are not attending traditional school settings in Multnomah County for reasons of persistent truancy or other serious behavior problems. With the exception of those students for whom East County schools have specifically purchased program slots, all students will be enrolled in Portland Public Schools. Turnaround will be a collaborative project designed to provide an educational setting where youth can learn behavioral skills, within the context of a general education, to succeed in traditional schools. To accomplish this goal, the parties agree to the following terms:

PROGRAM RESPONSIBILITIES

I. PPS PROGRAM RESPONSIBILITIES

- A. PPS will make available the top floor of the facility formerly known as Whitaker Middle School, at NE 53rd and NE Columbia Blvd., for Turnaround. This facility will also house Juvenile Justice Counselors and a day reporting center.
- B. PPS will provide custodial service, utilities (not to include the telephone service for juvenile court not involved in Turnaround or the day reporting center), food service, and telephone installation to the facility.
- C. PPS will provide the Program Leader for Turnaround. The Program Leader will be responsible for the oversight, coordination, and training of the project and staff.
- D. PPS will provide six (6) school counselors to Turnaround to provide support to youth and families and transition services for youth as they return to their home school.
- E. PPS will provide two (2) campus monitors.
- F. PPS will provide three (3) bus aides.
- G. PPS will provide one (1) service learning coordinator.
- H. PPS will provide the computer hardware and software for Project Turnaround.
- I. PPS will provide substitutes for the staff it employs.
- J. PPS will provide administrative oversight and program supervision.

II. MESD PROGRAM RESPONSIBILITIES

- A. MESD will provide six (6) teachers for Turnaround.
- B. MESD will provide six (6) educational assistants.

- C. MESD will provide one (1) secretary.
- D. MESD will provide substitute teachers necessary for Turnaround.
- E. MESD will provide consultant services for special education.
- F. MESD will provide consultant services for academic curriculum.
- G. MESD will provide supervision and evaluation of MESD personnel.

III. DJACJ PROGRAM RESPONSIBILITIES

- A. DJACJ will provide two (2) Juvenile Justice Counselors to participate in the team of professionals working to teach youth behaviors that will allow them to succeed in traditional school settings.
- B. DJACJ will contract with the Oregon Youth Authority (OYA) to permit Flexible Fund money to be applied to work with youth on parole to OYA in Turnaround.
- C. DJACJ will utilize PPS facilities for additional programming staff including juvenile justice skills development unit and contracted day reporting services. DJACJ will provide administrative oversight and program supervision for these staff.

FINANCIAL RESPONSIBILITIES

I. PPS FINANCIAL RESPONSIBILITIES

PPS will contribute \$348,558 to Turnaround to pay for:

- A. Four (4) full-time school counselors;
- B. Substitutes for absent PPS employees;
- C. School bus transportation;
- D. Food services;
- E. Telephone installation;
- F. Staff training; and
- G. Supplies, hardware and software not to exceed \$40,000.

II. MESD FINANCIAL RESPONSIBILITIES

MESD will contribute \$208,000 to Turnaround to pay for:

- A. One (1) special education consultant;
- B. Two (2) full-time teachers;
- C. Up to \$1000 of printing costs;
- D. One (1) half-time (.5) custodian;
- E. Connectivity (cabling);
- F. Substitute teachers; and

- G. One (1) quarter-time (.25) service learning coordinator

III. DJACJ AND DCFS FINANCIAL RESPONSIBILITIES

- A. DJACJ will contribute a total of \$499,933 to Turnaround.
- B. DJACJ will pass through up to \$35,000 to fund services to youth on parole to OYA who attend Project Turnaround.
- C. DCFS will contribute \$180,000 to fund services for youth with drug and alcohol issues.

The above-mentioned contributions by DJACJ and DCFS will be apportioned as follows:

- 1. \$279,733 to PPS to fund the following:
 - a) Program leader;
 - b) Two (2) full-time counselors;
 - c) Three (3) bus aides;
 - d) Service hearing coordinator;
 - e) Computer hardware and software; and
 - f) Up to \$9000 for telephone installation, mileage, and supplies.
- 2. \$435,200 to MESD to fund the following:
 - a) Four (4) teachers;
 - b) Six (6) educational assistants;
 - c) One (1) secretary;
 - d) Substitute teachers; and
 - e) Program costs.

COMPENSATION

DJACJ agrees to pay PPS up to and not to exceed \$279,733 and MESD up to and not to exceed \$435,200 for performance of those services as described in Section III, "DJACJ and DCFS Financial Responsibilities". Payment to PPS and MESD shall be made on a cost reimbursement basis and expenditures billed to DJACJ according to the following payment schedule:

Service Period

August - October 1997
November - December 1997
January - March 1998
April - June 1998

Invoices reflecting the services periods outlined herein are to be sent directly to Bill Morris, Counseling Manager, Juvenile Justice Complex, 1401 NE 68th, Portland, Oregon 97213. DJACJ shall pay PPS and MESD promptly upon receipt of the itemized billings.

MONITORING AND ASSESSMENT

The parties agree to negotiate in good faith to develop an assessment and evaluation process to monitor performance outcomes under this Agreement. This process shall be ready to implement no later than December 1, 1997. A description of the process will be incorporated in this agreement by an amendment.

INDEMNIFICATION AND LIABILITY

- A. Subject to the limitations of the Oregon Torts Claims Act and the Oregon Constitution, COUNTY shall indemnify, defend and hold harmless PPS and MESD, its officers, employees and agents from all claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors or omissions of COUNTY personnel acting pursuant to the terms of this Agreement.
- B. Subject to the limitations of the Oregon Torts Claims Act and the Oregon Constitution, PPS and MESD shall indemnify, defend and hold harmless COUNTY, their officers, employees and agents from all claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors or omissions of PPS and/or MESD personnel acting pursuant to the terms of this Agreement.

CONFIDENTIALITY

Each party hereto that receives confidential information, either in written or verbal form from the other, shall hold that information in the strict confidence required by law applicable to the providing agency and shall not disclose the information for any purpose without prior written approval of that agency. Confidential information includes, but is not limited to, student names, family names and all information relative to student and family. The confidential information shall be used for no other purpose than performing the obligations of this Agreement. In the event that demand for disclosure of documents is received by subpoena or otherwise, the documents, if any, shall be returned to the providing agency and the person making the demand shall be immediately notified. In the event that a subpoena for testimony is received, the providing agency shall immediately be notified of the demand and shall provide instructions and defend against the demand.

CONTRACT MODIFICATION

- A. This Agreement shall be effective August 22, 1997 and shall run through June 30, 1998.
- B. The parties agree that in the event the parties to this Agreement desire to renew this contract after the expiration thereof, they shall notify the other parties within 90 days prior to its expiration.
- C. The parties agree that any party to this Agreement may terminate said Agreement by giving the other party(s), not less than 90 days written notice.

- D. The parties agree that this Agreement may be modified or amended by mutual agreement of the parties. Any modification to this agreement shall be effective only when incorporated herein by written amendments and signed by DJACJ, DCFS, PPS, MESD and approved by the Multnomah County Board of Commissioners.

CONTRACT ADMINISTRATION

- A. DJACJ designates Bill Morris, Counseling Manager, to represent DJACJ in all matters pertaining to the administration of this Agreement.
- B. PPS designates Carol Matarazzo, Grants Management Director, to represent PPS in all matters pertaining to the administration of this Agreement.
- C. MESD designates Dr. Jerry Schiveley, Deputy Superintendent, to represent MESD in all matters pertaining to the administration of this Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly appointed officers on the last date written below.

PORTLAND SCHOOL DISTRICT NO. 1

BY: _____

Date: _____

MULTNOMAH COUNTY, OREGON

BY: 
Beverly Stein, Chair
Board of County Commissioners

Date: December 30, 1997

MULTNOMAH EDUCATION SERVICE DISTRICT

By: _____

Date: _____

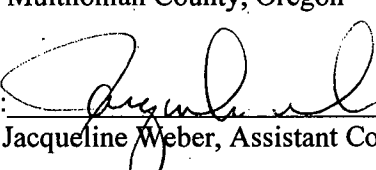
DEPARTMENT OF JUVENILE & ADULT COMMUNITY JUSTICE

By: 
Elyse Clawson, Director

Date: 12-10-97

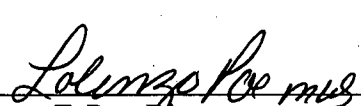
REVIEWED:

Thomas Sponsler, County Counsel
for Multnomah County, Oregon

By: 
Jacqueline Weber, Assistant Counsel

Date: 12/15/97

DEPARTMENT OF COMMUNITY & FAMILY SERVICES

By: 
Lorenzo T. Poe, Director

Date: 12/15/97

**APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS**
AGENDA # R-6 DATE 12/30/97
DEB BOGSTAD
BOARD CLERK

#1

SPEAKER SIGN UP CARDS

DATE

12/30/97

NAME

Dorene Warner

ADDRESS

P.O. Box 11268

Portland 97211

PHONE

284-8642

Franciscan
Enterprise
OF OR.

SPEAKING
TOPIC

ON AGENDA ITEM NUMBER OR
R-7 Strategic Investment

GIVE TO BOARD CLERK

#2

SPEAKER SIGN UP CARDS

DATE 12/30/97

NAME Matt Kirkpatrick

ADDRESS 5515 SE Malden St.
Portland, OR 97206

PHONE 777-6539 Rose CDC

SPEAKING ON AGENDA ITEM NUMBER OR
TOPIC SIP Awards R-7

GIVE TO BOARD CLERK

#3

SPEAKER SIGN UP CARDS

DATE 12-30-97

NAME CHER PIERCE

ADDRESS 523 SE Stark St.

P.O. Box 97214

PHONE 236-3904 Hacienda CDC

SPEAKING ON AGENDA ITEM NUMBER OR
TOPIC R-7

GIVE TO BOARD CLERK

#4

SPEAKER SIGN UP CARDS

DATE 12/30/97

NAME Lucy Shelby

ADDRESS J.D. STEFFCO.

523 SE STARK

PHONE 236 3904

SPEAKING ON AGENDA ITEM NUMBER OR
TOPIC SIP * Portland AND Habilitation

GIVE TO BOARD CLERK

MEETING DATE: DEC 30 1997

AGENDA #: R-7

ESTIMATED START TIME: 9:55 Am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Strategic Investment Program Housing Project Recommendations

BOARD BRIEFING: DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: December 30, 1997

AMOUNT OF TIME NEEDED: 45 minutes

DEPARTMENT: CFSD DIVISION: CYFCADP

CONTACT: Cecile Pitts TELEPHONE #: 248-3044 X83044

BLDG/ROOM #: 166/500

PERSON(S) MAKING PRESENTATION: Cecile Pitts, HC Tupper

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Transmit recommendations to the Board of County Commissioners for the Strategic Investment Program (SIP) housing project funding awards as determined by the SIP application review committee.

12/31/97 Copies to Cecile Pitts,
HC Tupper & John Rakowitz

SIGNATURES REQUIRED:

ELECTED
OFFICIAL: _____
(OR)
DEPARTMENT
MANAGER: [Signature] T. Sack

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 DEC 19 AM 9 40

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the [Phone Number] Board Clerk 248-3277 [Phone Number]



MULTNOMAH COUNTY OREGON

DEPARTMENT OF COMMUNITY & FAMILY SERVICES
COMMUNITY DEVELOPMENT PROGRAM OFFICE (503) 248-3999
421 SW SIXTH AVENUE, SUITE 500
PORTLAND, OREGON 97204-1620
FAX # (503) 248-3332

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: Technical Review Committee for Multnomah County Affordable
Housing Development Program for the Strategic Investment
Housing Fund
VIA: Iris Bell, Division Director
VIA: Lorenzo T Poe Jr, CES Department Director

RE: Recommendation for Use of the Strategic Investment Program
(SIP) Housing Fund

DATE: December 18, 1997

I. Recommendation/action requested:

The Board of County Commissioners is scheduled to conduct a public hearing on December 30 on the recommendations for disposition of the SIP Housing Fund as detailed on the attachments. Following the receipt of testimony and consideration by the Board of Commissioners the Board is requested to approve the award of \$950,000 in SIP funding to nine housing development agencies in Multnomah County for the purpose of increasing the inventory of affordable housing in Multnomah County. The Board is requested to direct program staff to prepare the documentation necessary to carry out this award.

This memo transmits the report from the review committee. The report includes a summary of the applications received by the county including a committee recommendation, also included is a board order to implement the committee recommendation.

II. Background:

Under the Multnomah County SIP, a one time only housing fund of \$1 million was created for the purpose of increasing the inventory of affordable housing countywide. The county SIP agreements provide that the county in consultation with the city of Gresham, the Gresham Community Development Housing Corporation and the countywide Housing and Community Development Commission determine the community program to receive these funds. This partnership worked over the course of

a year to establish policy recommendations for the Board of Commissioners regarding SIP housing funds. Policy recommendations from this body included leveraging requirements, targeting families at 50% of the area median income (AMI) and permanent affordability for projects receiving SIP resources. Another recommendation was that implementation responsibility be assigned to the county committee managing the Affordable Housing Development Program with additional members representing the issues and concerns of Portland and Gresham. The county accepted the recommendations of the SIP partnership and directed the AHDP committee (the "review committee") to move forward with the program. In the fall of 1996 the additional members to the AHDP from Gresham and Portland were appointed by their respective jurisdictions.

In the spring of 1997 the review committee recommended a Request for Proposals package for Board consideration and adoption. The package was adopted and made public at the end of July.

The county received 17 proposals for use of the SIP fund. The proposals covered 21 properties throughout the county. In addition the review committee discussed an alternative use of the funds in the creation of a leveraging account which was detailed by the Housing Authority of Portland at the request of the county. The review committee met weekly throughout the months of October and November preparing its recommendation for award.

Summary of the recommendation: The review committee recommends the award of SIP funds to 9 proposals. The review committee voted unanimously against setting aside funds for the leveraging plan. There was unanimous support for funding the first six proposals. These proposals received recommendation for full award. The last three projects recommended for SIP funds were supported by majority vote and received partial awards.

The recommended projects are located throughout the county. The recommendation results in the increase or preservation of 259 SIP units of housing (affordable to families at or below 50% of the area median which for Multnomah County is an annual income at or below \$ 23,150 for a family of four). An additional 94 units of housing affordable for families at or below 60% of the area median are also created or preserved by these projects. The recommendation leverages \$27 non SIP dollars for every SIP dollar for a total development budget of approximately \$27 million.

The populations served by the recommendation include farm worker families, senior citizens, people with psychiatric and developmental disabilities, and working families with emphasis on large families. The recommended proposals have described plans to bring services appropriate to the populations to be served: meals and service programs for seniors, language and culturally appropriate services for Hispanic families, work force services for working families and special support services for households with special needs.

III. Financial impact: The proposed fund has self funded the administrative tasks for the first year. The recommendation is for the balance of the SIP award which is \$950,000. No general fund allocation was included with this recommendation.

IV. Legal issues: There are no legal issues associated with the recommendation. County legal staff are in the process of creating encumbering documents by which to govern the performance of the applicants with the receipt of the SIP awards.

V. Controversial issues: The recommendation is to fund nine proposals and to NOT fund eight proposals. This is inherently subject to public comment and discussion.

During the review committee deliberation process, the city of Gresham began their housing policy review with the apparent intent to explore home ownership programs as more applicable to some of their neighborhood concerns. The Gresham representatives participated in the committee work and helped the county stay aware of the city direction. Committee staff met with the county Chair to discuss this emerging issue. The Chair directed the committee to complete their review and make recommendation to the Board regarding the 17 viable proposals received in response to the adopted RFP.

VI. Citizen participation: The structural decisions for this program (Request of Proposals, and resulting recommendation) are made in public at the regularly scheduled Board meeting. A member of the citizen involvement committee sits on the review committee. In addition, each applicant was required to take actions to inform the community of the proposed project of the proposal and development plans.

VII. Other government participation: The review committee is comprised of representatives of the cities of Gresham and Portland as well as the county.

Members of the review committee will be present at the Board hearing on this recommendation. Feel free to contact Iris Bell or Cecile Pitts of the Department of Community and Family Services or John Rakowitz of the Strategic Investment Program should you have questions or wish to discuss this recommendation further.

Philanthropic Organization	Angela Allen-Mpyisi Neighborhood Partnership Fund 227-6846	631 SW Morrison, #725 Portland, OR 97205
Banking Industry	James Taylor Albina Community Bank 288-7292	2002 NE MLK Blvd. Portland, OR 97212
County Citizen Involvement Committee	Derry Jackson 735-6979 - Work 283-4388 - Home	9540 N Edison Street Portland, OR 97203
City of Portland	Robert Bole Portland BHCD 823-2353	808 SW 3rd Avenue, #600 Portland, OR 97204 B157/600
City of Gresham	Pete Von Christierson Gresham Community Development 618-2643	1333 NW Eastman Pkwy. Gresham, OR 97030
Commissioner Saltzman	Andrea Jilovec-Jason Dimen 248-5220	1120 SW 5th Ave., #1500 Portland, OR 97204 B106/1500
Commissioner Collier	Don Carlson 248-5126	1120 SW 5th Ave., #1500 Portland, OR 97204 B106/1500
Commissioner Hansen	Pam Arden 289-9475	1120 SW 5th Ave., #1500 Portland, OR 97204 B106/1500
Commissioner Kelley	Carolyn Marks-Bax 248-2738	1120 SW 5th Ave., #1500 Portland, OR 97204 B106/1500
City of Gresham Appointee	Terry McCall Finance Director 618-2372	1333 NW Eastman Pkwy. Gresham, OR 97030
Chair Appointee	John Rakowitz Strategic Investment Program Coordinator	1120 SW 5th Ave., #1400 Portland, OR 97206 B106/1400
Portland Appointee	Ramsey Weit 284-0489	2606 NE 16th Avenue Portland, OR 97212
Staff	HC Tupper - 248-3114 Cecile Pitts - 248-3044	421 SW 6th Ave., #500 Portland, OR 97204 B166/500

Multnomah County
1997 Strategic Investment Program Housing Fund
Recommendation Summary November 1997

APPLICANT	PROJECT NAME (SIP REQUEST)	SIP RECOMMEN DATION	DEVLPMT COST (IN \$000S)	SIP UNITS	COMMENTS (SIP # FOR REVIEW)
1. Housing Authority of Portland	Rockwood Landing (\$150K)	\$150,000	\$ 3,859	36	Farm workers, larger families. (SIP 1)
2. Hacienda CDC	Project adjacent to Clara Vista (\$150K)	\$150,000	\$ 3,255	19	Large families. Clara Vista svs. Addn 8 units at 60% ami*. (SIP 11)
3. ROSE CDC	Woodstock House (\$45K)	\$ 45,000	\$ 299	2	3-2BR units in lease to Network. (SIP 4)
4. Franciscan Enterprise	St Francis (\$ 32K)	\$ 32,000	\$ 280	3	Large families. Work force svs. (SIP 6)
5. Sabin CDC	NE 27 th / Killingsworth (\$ 110K)	\$ 110,000	\$ 659	7	Larger families. Work force svs. (SIP 13)
6. Mt Hood CMHC	Ava II (\$50K)	\$ 50,000	\$ 299	1	1-5 person group home CMHC svs. (SIP 17)
7. Central City Concern	Rosewood Aptments (\$298K)	\$ 185,000	\$ 2,524	21	Persons with aids. Off site svs. All studio units. Addn 14 units at 80% ami*. (SIP 7)
7. Housing Our Families	Alberta Simmons (\$245K)	\$ 114,000	\$ 6,176	74	All one bed room units. Seniors. (SIP 9)
7. Ptlid Habilitation	Five Ptlid Properties (\$ 250K)	\$ 114,000	\$ 9,009	86	Small units seniors and special needs. Addn 87 units at 60% ami*. (SIP 10)
** Jubilee Comm.	Jubilee Centennial Pro (\$ 104K)	\$ 0	\$ 625	9	very low income special needs (SIP 14)
** ROSE CDC	Mt Scott Houses (\$48K)	\$ 0	\$ 325	2	3 bedroom home with room for child care. (SIP 3)
** HAP	Schiller/Liebe (\$ 500K)	\$ 0	\$ 2,529	26	Large units. 2 special needs units. (SIP 2)
** NW Hsg Alternatives	Russelville House (\$ 250K)	\$ 0	\$ 1,061	9	Large units. 2 special needs units. (SIP 8)
** Human Solutns, Inc	Land Acquisition (\$ 350K)	\$ 0	\$ 5,179	51	Land for 51 - 31 family units. (SIP 12)
** CODA	Land Acquisition (\$ 250K)	\$ 0	\$ 3,433	35	Land for A&D free family units. (SIP 5)
** R&R Energy	Burnside Project (\$ 300K)	\$ 0	\$ 2,493	14	Small units, mixed use. (SIP 15)
** R&R Energy	Harold St Project (\$ 200K)	\$ 0	\$ 1,764	9	Small units. (SIP 16)

* AMI = Area median income as provided by the federal Department of Housing and Urban Development. Family of four at 50% ami receives annual income of \$23,150.

** Projects denoted with "**" have not been recommended for award of SIP funds. Their ordering does not reflect a ranking other than "unfunded".

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposed Brief	SIP Funds Requested (Total Cost)	Thresh- hold Criteria	Affordable Housing Solution	Community Neighborhood Support	Organization Capacity	Financial Feasibility	Bonus Geographic	Support Local	Family Size Housing	Leveraging	Comments
Housing Authority of Portland Rockwood Landing New construction of 36 units of housing at 190th and SE Yamhill Target population: farmworker families with family income at 40% AMI	\$150,000 (3,858,574) \$ 4,167 SIP per unit \$107,183 total per unit	Yes	*Solution = location, 31 permanent units; 5 seasonal units; common building laundry room, child's play area *Income Target = 40% AMI *Service Component = job training, services on-site by PIC; EI Programa; OHDC *36 SIP Units	Community Awareness: N.A. notified, On-going work I.D. of and Plans to Meet Community Concerns: meetings, focus groups Community Fit: Design appropriate	Applicant Team = HAP strong Service providers the same Experience of applicant= Similar projects completed sucessfully Readiness =	Use of funds: Reasonable Status of funds: Site is secured 19% of funding is secure	SIP Area Transit Available	Financial Regulatory Planning Group	0 BR= 1 BR= 2 BR= 12 - \$365 3 BR= 16 - \$425 4 BR= 7 - \$470 5 BR= Total:	26 : 1 High	
RECOMMENDATION		Approve project for full funding. Strong design, strong fundraising commitment, high leverage. Strong support services for target populations									

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposed Brief	SIP Funds REQUESTED	THRESH- hold CRITERIA	Affordable Housing SOLUTION	COMMUNITY Neighborhood Support	ORGANIZATION Capacity	FINANCIAL Feasibility	BONUS GEOGRAPHIC	SUPPORT, Local	FAMILY SIZE HOUSING	LEVERAGING	COMMENTS
<p>Housing Authority of Portland</p> <p>Schiller/Liebe Housing Project on SE 92nd between Schiller and Liebe (South of Holgate)</p> <p>Target Population = large families, 14 units at 30% AMI, 12 units at 50% AMI.</p> <p>Two 5-BR units leased by Up and Out for Special Needs persons (10 persons)</p>	<p>\$500,000</p> <p>(2,528,972)</p> <p>\$19,231 SIP per unit</p> <p>\$97,268 total per unit</p>	Yes	<p>*Solution = design includes W/D; play area for children.</p> <p>Integrated special needs units.</p> <p>*Income Target = 50% AMI/14 units at 30% AMI</p> <p>*Service Component = SE works HAP referral relationship</p> <p>* 26 SIP Units</p>	<p>Community Awareness:</p> <p>N.A. notified</p> <p>Supported</p> <p>OSECP Planning Team notified</p> <p>I.D. of and Plan to Meet Community Concerns:</p> <p>Design</p> <p>Community Fit:</p> <p>Higher density compatible with re-zoning.</p> <p>Design similar to neighborhood</p>	<p>Applicant Team:</p> <p>Similar projects completed</p> <p>Experience of Applicant:</p> <p>Readiness to Proceed:</p>	<p>Use of funds: Reasonable</p> <p>Status of funds:</p> <p>Site is secured (7.6% of project cost)</p>	<p>SIP Area</p> <p>Transit Assistance Program</p>	<p>Financial State \$\$ City \$\$</p> <p>City Abatement</p> <p>Regulatory Zoning OSECP</p>	<p>0 BR=</p> <p>1 BR=</p> <p>2 BR= 12 - 291 - 582</p> <p>3 BR= 8 - 337- 673</p> <p>4 BR= 4 - 374- 748</p> <p>5 BR= 2 - 925</p> <p>Total:</p>	5 : 1	
RECOMMENDATION	Not fund this project. Low leverage amount, high request for SIP investment.										

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds REQUESTED	THRESH- hold CRITERIA	Affordable Housing Solution	COMMUNITY Neighborhood SUPPORT	ORGANIZATION CAPACITY	FINANCIAL Feasibility	BONUS GEOGRAPHIC	SUPPORT LOCAL	Family Size HOUSING	LEVERAGING	COMMENTS
ROSE CDC/Mt. Scott Multi-Generational Housing New construction of 2 units: Unit #1 = 3 BR large family at 30% AMI with room for child care service Unit #2 = 6 BR: 3 BR for large family at 50% AMI; 3 BR set aside for in-home AFC service	\$48,000 (324,620) \$ 9,600 - 24,000 SIP per unit \$64,924 - 162,310 total per unit	Yes	*Solution = unit design Neighborhood housing In home income is innovative *Income Target = 30% AMI beneficiary *Service Component = CCNN and OSE Community Project AFC Service * 2 - 5 SIP Units	Community Awareness: Notified neighbors I.D. of and Plan to Meet Community Concerns: On-going Community Fit: Innovative	Applicant Team: Similar proj.s. completed Innovative components Applicant Experience: Readiness:	Use of funds: Reasonable Status of funds: Fee ownership of site. Financing pre- liminary and contingent.	SIP Map Transit	Financial AHDP Regulatory OSECP	0 BR= 1 BR= 2 BR= 3 BR= 1 - \$290 +210 CL 4 BR= 5 BR= 6 BR= 1 - \$586 +540 AFC Total:	7.2 : 1	
RECOMMENDATION	Not fund this project. Applicant found they could not construct two units at this site which affects services and development assumptions.										

SIP 03

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds Requested	Thresh- hold Criteria	Affordable Housing Solution	COMMUNITY Neighborhood Support	ORGANIZATION Capacity	FINANCIAL Feasibility	Bonus Geographic	Support Local	Family Size Housing	LEVERAGING	COMMENTS
ROSE CDC / Woodstock New construction of 2 units: Unit #1 = 3 BR large family at 30% AMI Unit #2 = 6 BR as 3, 2BR suites for Network dual diagnosis smaller families at 50% AMI Target Population = large families at 30% AMI, and small special needs families	\$45,000 (299,125) \$11,250 - 22-500 SIP per unit \$74,750 - 149,563 total per unit	Yes	*Solution = unit design Neighborhood housing Cost: 30% of income Unit #1 30% AMI *Income Target = *Service Component = OSE Community project for family stability Services for network-ing units through management system * 2 - 4 SIP Units	Community Awareness: Notified neighbors Support from N.A. I.D. for and Plan to Meet Commu-nity Concerns: On-going Community Fit: Design	Applicant Team: Applicant Experience: Similar proj.s. completed Innovative components Readiness:	Use of funds: Reasonable Status of funds: Site is secure	SIP Area Transit Available	Financial AHDP Regulatory OSECP	0 BR= 1 BR= 2 BR= 3 BR= 1 - \$293 4 BR= 5 BR= 6 BR= 1 - \$740 Total:	6.6 : 1	
RECOMMENDATION		Approve project for full funding. Innovative project with strong partners.									

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds REQUESTED	THRESH- hold CRITERIA	Affordable Housing Solution	COMMUNITY Neighborhood SUPPORT	ORGANIZATION Capacity	FINANCIAL Feasibility	BONUS GEOGRAPHIC	SUPPORT LOCAL	Family Size HOUSING	LEVERAGING	COMMENTS
<p>CODA / Land acquisition adjacent to CODA facility at SE 182nd</p> <p>New construction of 35 units, alcohol and drug free</p> <p>"Submitted a purchase offer; negotiations are under way"</p> <p>Target Population = CODA and new CODA tenants, alcohol and drug free, 35-45% AMI</p>	<p>\$250,000 (3,432,559)</p> <p>\$7,143 SIP per unit</p> <p>\$18,073 total per unit</p>	Yes	<p>*Solution = Alcohol and drug free houses; central common space; play area for children; adjacent to AFTR</p> <p>*Income Target = 35-45% AMI</p> <p>*Service Component = CODA service package</p> <p>* 35 SIP Units</p>	<p>Community Awareness:</p> <p>Neighborhood Advisory Committee</p> <p>I.D. for and Plan to Meet Community Concerns:</p> <p>On-going</p> <p>Community Fit:</p>	<p>Applicant Team:</p> <p>Applicant Experience:</p> <p>Completed AFTC at 182nd</p> <p>Readiness:</p>	<p>Use of funds:</p> <p>Status of funds: Purchase offer?</p>	<p>SIP Map 3rd Ring</p> <p>Transit Available</p> <p>Will attempt to limit parking</p>	<p>Financial</p> <p>Regulatory</p>	<p>0 BR=</p> <p>1 BR=</p> <p>2 BR= 9</p> <p>3 BR= 24</p> <p>4 BR= 2</p> <p>5 BR=</p> <p>Total:</p>	13 : 1	
RECOMMENDATION		Not fund this project. Project is very preliminary. Considerable developer and consultant fees.									

SIP 05

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds REQUESTED	THRESH- hold CRITERIA	Affordable Housing Solution	COMMUNITY Neighborhood SUPPORT	ORGANIZATION Capacity	FINANCIAL Feasibility	BONUS GEOGRAPHIC	SUPPORT Local	FAMILY SIZE Housing	LEVERAGING	COMMENTS
Franciscan Enterprises New construction of 3 units at 4941 NE 10th Avenue Target Population = large families at 50% AMI	\$32,000 (279,709) \$10,667 SIP per unit \$93,236 total per unit	Yes	*Solution = Large units *Income Target = 50% AMI *Service Component = Neighborhood Network Center Resident Services Mgr * 3 SIP Units	Community Awareness: Letters Volunteer finance commit- ments \$5,000 I.D. for and Plan to Meet Commu- nity Concerns: On-going Community Fit:	Applicant Team: Applicant Experience: Similar new construction projects Neighborhood Network Ctr. currently avail. Start date 4/98 Readiness	Use of funds: Reasonable Status of funds: Site secured. State Housing Trust Fund monies secured.	SIP Map Transit Asst. Program	Financial Fees waived Taxes abated 5,500 Regulatory	0 BR= 1 BR= 2 BR= 3 BR= 2 - \$540 4 BR= 1 - \$600 5 BR= Total:	8.7 : 1	
RECOMMENDATION	Approve this project for full funding. Large family units, connection to the Neighborhood Network Center which provides workforce assistance.										

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds Requested	THRESH- hold CRITERIA	Affordable Housing Solution	COMMUNITY Neighborhood Support	ORGANIZATION Capacity	FINANCIAL Feasibility	BONUS GEOGRAPHIC	SUPPORT LOCAL	FAMILY SIZE HOUSING	LEVERAGING	COMMENTS
Central City Concern Rosewood Apartments Purchase and rehabilitation of 35 units at 48th & Sandy Blvd. Target Population = people living with AIDS; 21 units serving incomes 0-50% AMI; 14 units rent to households at 51-80% AMI (non-SIP) SIP funds requested for cost variance from bids on rehabilitation activity	\$298,459 Amended = \$225,000 (2,523,709) (1,514,309) SIP \$14,212 SIP per unit \$72,106 total per unit	Yes	*Solution = design for community room, gardens, balconies. Very small units. Accessibility design features. Mixed income design. *Income Target = 0 - 50% *Service Component = Delivered off-site through HIV provider network. * 21 SIP Units	Community Awareness: Meetings on- going I.D. for and Plan to Meet Commu- nity Concerns: Work together Community Fit:	Applicant Team: Applicant Experience: Readiness:	Use of funds: Reasonable Status of funds: 41% secure +12% CCC +36% at State E & D	SIP Area Transit Programs Delivered through HIV service provider network	Financial Regulator	O BR= 2*- \$358 1 BR= 2 BR= 3 BR= 4 BR= 5 BR= Total: * SIP units	7.5 : 1 5 : 1 SIP	
RECOMMENDATION	Approve this project for \$185,000 of its requested amount. This request is to assist applicant address cost over runs for Rosewood project. Applicant has conducted value engineering to ascertain reduced amount needed to carry out the project. The number of units focused on the target population of people living with AIDS supports a partial award.										

SIP 07

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds Requested	Thresh- hold Criteria	Affordable Housing Solution	Community Neighborhood Support	Organization Capacity	Financial Feasibility	Bonus Geographic	Support Local	Family Size Housing	LEVERAGING	COMMENTS
<p>Northwest Housing Alternatives Russellville Station</p> <p>New construction of 9 units of housing at SE 105th & Burnside</p> <p>Target Population = large, low income families and 2 special needs individuals, families at 50% AMI, and 2 Fairview residents</p>	<p>\$250,000 (1,061,388)</p> <p>\$27,778 SIP per unit</p> <p>\$117,932 total per unit</p>	Yes	<p>*Solution = 1,000 SF; W/D; 1½ bath. Mix with special needs population</p> <p>*Income Target = 50% plus 2 from Fairview</p> <p>*Service Component = Fairview residents have case management through State of Ore</p> <p>* 9 SIP Units</p>	<p>Community Awareness:</p> <p>Notified N.A. Met with N.A.</p> <p>I.D. for and Plan to Meet Commu- nity Concern:</p> <p>Continue to work with N.A.</p> <p>Community Fit:</p>	<p>Applicant Team:</p> <p>Applicant Experience:</p> <p>Similar projects completed sucessfully</p> <p>Readiness:</p>	<p>Use of funds: Reasonable</p> <p>Status of funds: 11% committed</p>	<p>SIP Area</p> <p>Transit</p> <p>Proximity to MAX line</p> <p>3 free days</p> <p>Info sharing</p>	<p>Financial PDC Fee Waivers</p> <p>Regulatory Road Work</p>	<p>0 BR=</p> <p>1 BR= 1 - \$</p> <p>2 BR=</p> <p>3 BR= 8 - \$669</p> <p>4 BR=</p> <p>5 BR=</p> <p>Total:</p>	4.2 : 1	
RECOMMENDATION		Not fund this proposal. Low leverage, limited service package.									

SIP 08

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposed Brief	SIP Funds REQUESTED	THRESH- hold CRITERIA	Affordable Housing Solution	COMMUNITY Neighborhood Support	ORGANIZATION Capacity	FINANCIAL Feasibility	BONUS GEOGRAPHIC	SUPPORT Local	FAMILY SIZE HOUSING	LEVERAGING	COMMENTS
Housing Our Families Alberta Simmons Plaza Acquire and new construction of 74 units senior housing at SW corner of Dekum and MLK Project is underway funded with federal 202 program. It is unclear what SIP grant would finance. Target population = lower income seniors; 202 program includes rent subsidies to make units affordable to senior households at 30% AMI.	\$245,217 (6,175,808) \$ 3,314 SIP per unit \$83,457 total per unit	Yes	*Solution= small units, laundry room, common areas, library, outside areas, gardens. Cost of housing is 30% of income *Income Target = 30% AMI as required by 202. *Service Component = On-site resident services coordinator; Loaves & Fishes, ARC * 74 SIP Units	Community Awareness: NA notified Meeting with NA I.D. for and Plan to Meet Community Concerns: Meetings and work sessions. Community Fit: Ground floor use. Mixed use.	This project is underway; funded by Dept. of HUD	Use of funds: Reasonable Status of funds: Project is underway; 96% of funding is service	SIP Area Transit Available	Financial Fee Waiver Regulatory	0 BR= 1 BR=73 - \$375 2 BR= 3 BR= 4 BR= 5 BR= Total:	24 : 1	
RECOMMENDATION	Fund proposal at \$114,000. This project is to address cost over runs for the project. The large number of units, strength of the organization, leverage projection and community support all supported a partial award.										

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds Requested	THRESH- hold CRITERIA	Affordable Housing Solution	COMMUNITY Neighborhood SUPPORT	ORGANIZATION Capacity	FINANCIAL Feasibility	BONUS Geographic	SUPPORT Local	Family Size Housing	LEVERAGING	COMMENTS
Portland Habilitation Center Acquire/rehab 5 Portland expiring use projects - total of 173 units. Candalaria 1009 SE 162nd Holgate 4333 SE 104th Marwood 7200 SE Woodstock Minerva 6633-34 N Oberlin Scott Crest 13223 SE Powell Target Population = retain current residents who are 30% AMI with federal subsidy. When subsidies disappear, project commits to 50% (86 units) and 60% (87 units) beneficiary portfolio. Target low income and disabled residents.	\$250,000 (9,009,715) (4,504,858) SIP \$2,907 SIP per unit \$52,079 total per unit		*Solution = Acquire building; maintain tenants; integrate PHC and other new tenants; design based on small family. *Income Target = 50% *Service Component = PHC is expanding into housing and increasing scope of job services for tenants. * 86 SIP Units	Community Awareness: Letter to NA Several letters of support I.D. for and Plan to Meet Community Concerns: Community Fit:	Applicant Team: Applicant Experience: Team capacity New venture Training prog. New initiative Readiness:	Use of funds: Reasonable Application preliminary Expiration date of site control 12/97 Status of funds: Lender required reserve Key Bank letter of interest	SIP Area Transit and PHC business	Financial Tax abatement Fee waiver Regulatory	0 BR= 9 = 405 1 BR=48 = 434 2 BR=24 = 521 3 BR= 7 = 602 4 BR= 5 BR= Total:	18: 1 SIP 36: 1	
RECOMMENDATION	Approve this project at \$114,000. This proposal is to assist in purchase and rehabilitation of five buildings housing 177 very low income families in the County. The high leverage and large number of units, new workforce initiative by applicant supported a partial award.										

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds Requested	Thresh- hold Criteria	Affordable Housing Solution	Community Neighborhood Support	Organization Capacity	Financial Feasibility	Bonus Geographic	Support Local	Family Size Housing	LEVERAGING	Comments
Hacienda CDC Development of 2 apartments on separate properties adjacent to Clara Vista New construction 27 units and commercial space initially projected for social service tenants including Multnomah County Health Clinic Target Population = large family housing, focus on Hispanic cultural issues 12 unit building 15 unit building 10 units at 30% 9 units at 50% Non-SIP units 8 units at 60%	\$50,000 (3,255,420) (2,290,851) SIP \$ 7,895 SIP per unit \$120,571 total per unit	Yes	*Solution = large units Cost = 30% income Clara Vista on-site mgr *Income Target = 50% + 30% AMI (8 non-SIP units at 60%) *Service Component = Clara Vista social service array, including Health and CFS resources, ESL progs * 19 SIP Units	Community Awareness: History of site On-going relationship I.D. for and Plan to Meet Community Concerns: Community Fit: Extension of V ... CV	Applicant Team: Applicant Experience: Hacienda has major single project experience Readiness	Use of funds: Developer - 8% Development - 41% Status of funds: 4% secure	SIP Map Transit Available	Financial BCC - 70,000 PDC - Fee Waivers Tax Abatements Regulatory	0 BR= 1 BR= 2 BR= 3 BR= 13 - 544- 664 4 BR= 14 - 603- 738 5 BR= Total:	12: 1 SIP 17: 1	
RECOMMENDATION		Approve this project for full funding. The high leverage, proximity to services at Villa de Clara Vista, the large units and income targeting were persuasive.									

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds REQUESTED	THRESH- hold CRITERIA	Affordable Housing Solution	COMMUNITY Neighborhood Support	ORGANIZATION Capacity	FINANCIAL Feasibility	BONUS GEOGRAPHIC	Support Local	Family Size Housing	LEVERAGING	COMMENTS
Human Solutions, Inc. Land acquisition at SE 162nd & Burnside New construction of 51 units Target Population = working families at 50% AMI	\$350,000 (5,179,000) \$6,863 SIP per unit \$102,000 total per unit	Yes	*Solution = units designed for family appliances; play area for children; on-site mgr. *Income Target = 50% AMI *Service Component = CAP Agency + Pathways +Partner on E.C. one-stop. * 51 SIP Units	Community Awareness: City Planning No contract yet. I.D. for and Plan to Meet Commu- nity Concerns: Community Fit:	Applicant Team: Option is preliminary Applicant Experience: Ankeny Woods is similar Readiness	Use of funds: Proposal is very preliminary Status of funds: Current option requires trigger 11/18	SIP Area In Gresham East of I-205 Transit Assistance Program	Financial Regulatory	0 BR= 1 BR= 12 - \$375 2 BR= 18 - \$499 3 BR= 13 - \$518 4 BR= 4 5 BR= Total:	14 : 1	
RECOMMENDATION	Not fund this project. This project is very preliminary.										

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
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Applicant Proposal Brief	SIP Funds Requested	THRESH- hold CRITERIA	Affordable Housing Solution	COMMUNITY Neighborhood Support	ORGANIZATION Capacity	FINANCIAL Feasibility	BONUS GEOGRAPHIC	SUPPORT LOCAL	FAMILY SIZE HOUSING	LEVERAGING	COMMENTS
Sabin CDC New construction of 7 units at 27th & NE Killingsworth Target Population = large families at 30% AMI (3 units) and 50% AMI (4 units)	\$110,000 (658,969) \$15,714 SIP per unit \$94/138 total per unit	Yes	*Solution = Design includes W/D; storage; play area for children. *Income Target = 3 units at 30% AMI 4 units at 50% AMI *Service Component = Neighborhood network center. Resident liaison position. * 7 SIP Units	Community Awareness: N.A. notified Support letters I.D. for and Plan to Meet Commu- nity Concerns: On-going Community Fit:	Applicant Team: Applicant Experience: Similar proj.s. completed Service initiative currently operating Readiness:	Use of funds: Status of funds: Site secure 4/98. Enterprise loan taken out.	SIP Map Transit Available	Financial Fee Waiver Tax Exemption Regulatory Zoning	0 BR= 1 BR= 2 BR= 1 - \$313 3 BR= 6 - \$361 - 602 4 BR= 5 BR= Total:	6 : 1	
RECOMMENDATION	Approve this project for full funding. The large families, partnerships with the Neighborhood Network Center workforce services, and community support were persuasive.										

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds Requested	Thresh- hold Criteria	Affordable Housing Solution	Community Neighborhood Support	Organization - Capacity	Financial Feasibility	Bonus Geographic	Support Local	Family Size Housing	LEVERAGING	Comments
Jubilee Communities Jubilee Centennial Project New construction of 9 units of housing at 162nd & Division Target Population = low income families 5 units at 0-30% AMI 2 BR = 5 4 units at 31-50% AMI 2 BR = 3 3 BR = 1 Design includes a Skills Center of 336 S.F.	\$104,000 (624,867) \$11,556 SIP per unit \$64,430 total per unit		*Solution = small units with skills center as common area; furnished units; co- housing model. Cost is high for 0-30% *Income Target = 5 units at 0 - 30% *Service Component = On-site housing Services manager Co-housing model * 9 SIP Units	Community Awareness: Community support from service providers N.A. notified Letter of support I.D. for and Plan to Meet Commu- nity Concerns: Community Fit: Corrected "flag" lot.	Applicant Team: Applicant Experience: Similar project at Portland Permit Office Readiness:	Use of funds: Status of funds: Earnest money on second site 12/97	SIP Area Transit	Financial Fee waivers AHAP Regulatory Density bonus	0 BR= 1 BR= 2 BR= 8 - \$360 - 520 3 BR= 4 BR= 5 BR= Total:	6 : 1	
RECOMMENDATION	Not fund this project.										

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds Requested	THRESH- hold CRITERIA	Affordable Housing Solution	COMMUNITY Neighborhood Support	ORGANIZATION - Capacity	FINANCIAL Feasibility	BONUS GEOGRAPHIC	Support Local	Family Size Housing	LEVERAGING	COMMENTS
R & R Energy Resources Burnside Project Acquired new construction of 30 units of housing at 162nd & Burnside Target Population = working families; SIP units = 5 units - 0-30% AMI 0 BR = 1 203 1 BR = 1 2 BR = 3 9 units - 31-50% AMI 0 BR = 1 365 1 BR = 1 394 2 BR = 7 472 16 units - 51-90% AMI There are also 14 units of commercial/retail	\$300,000 (2,493,138) (976,500) SIP \$21,429 SIP per unit \$69,750 total per unit per narrative		*Solution = design includes W/D, storage, mixed income *Income Target = 5 units at 30% AMI 9 units at 50% AMI *Service Component = On-site manager, available listing of local services * 14 SIP Units 16 non-SIP 14 commercial	Community Awareness: Not contacted yet I.D. for and Plan to Meet Commu- nity Concerns: Make presenta- tion Community Fit:	Applicant Team: Applicant Experience: Readiness:	Use of funds: Status of funds: Equity investment 25%??	SIP Area Transit info available	Financial Tax abatement Regulatory Zoning	0 BR= 2- \$203- 365 1 BR= 2 - \$394 2 BR= 10 - \$472 3 BR= 4 BR= 5 BR= Total:	3.3 : 1 SIP 8.3 : 1	
RECOMMENDATION	Not fund this project. The dearth of support services and low SIP leverage did not support a favorable recommendation.										

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds REQUESTED	THRESH- hold CRITERIA	Affordable Housing Solution	COMMUNITY Neighborhood SUPPORT	ORGANIZATION Capacity	FINANCIAL Feasibility	BONUS GEOGRAPHIC	SUPPORT LOCAL	FAMILY SIZE HOUSING	LEVERAGING	COMMENTS
R & R Energy Resources Harold Street Project Acquire and new construction of 20 units of housing at 122nd & Harold Target Population = working families; SIP eligible; 2 units at 0-30% AMI 7 units at 31-51% AMI Non SIP eligible 11 units over 50% AMI	\$200,000 (1,763,824) (793,721) SIP \$22,222 SIP per unit \$88,191 total per unit		*Solution = design includes W/D, storage, mixed income *Income Target = 2 = 30% 7 = 50% *Service Component = Service listing will be made available to tenants; on-site mgr * 9 SIP Units	Community Awareness: No contact yet I.D. for and Plan to Meet Commu- nity Concerns: Make presenta- tions Community Fit:	Applicant Team: Applicant Experience: Readiness:	Use of funds: Status of funds: Equity investment of 25%?	SIP Area Transit info Available	Financial PDC Regulatory Interpret zoning.	0 BR= 1 BR= 2 BR= 9 - \$264- 472 3 BR= 4 BR= 5 BR= Total:	8.8 : 1 4 : 1 SIP	
RECOMMENDATION	Same										

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM HOUSING FUND
RATING SUMMARY
DATE: 11/26/97

Applicant Proposal Brief	SIP Funds Requested	Thresh- hold Criteria	Affordable Housing Solution	Community Neighborhood Support	Organization Capacity	Financial Feasibility	Bonus Geographic	Support Local	Family Size Housing	Leveraging	Comments
<p>Mt. Hood Community Mental Health Center</p> <p>New construction of a 5-person group home</p> <p>Target Population = low income persons with chronic mental illness</p>	<p>\$50,000 (299,438)</p> <p>\$10,000 - 50,000 per unit</p> <p>\$59,888 - 299,438 total per unit</p>	Yes	<p>*Solution = 5-BR, 3-Bath group home with common areas. Cost is high.</p> <p>*Income Target = 30 - 50% AMI</p> <p>*Service Component = MH CSS program</p> <p>* 1 - 5 SIP Units</p>	<p>Community Awareness:</p> <p>Spoke to some neighbors.</p> <p>I.D. for and Plan to Meet Community Concerns:</p> <p>Plan submitted</p> <p>Community Fit:</p>	<p>Applicant Team:</p> <p>Applicant Experience:</p> <p>Similar projects.</p> <p>Readiness:</p>	<p>Use of funds:</p> <p>Status of funds:</p>	<p>SIP Area</p> <p>Transit Available</p>	<p>Financial</p> <p>Regulatory</p>	<p>O BR=</p> <p>1 BR= 5 - \$240</p> <p>2 BR=</p> <p>3 BR=</p> <p>4 BR=</p> <p>5 BR=</p> <p>Total:</p>	6 : 1	
RECOMMENDATION		Approve this project for full funding.									

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Funding award for County sponsored)	
Strategic Investment Program to:)	
Housing Authority of Portland, ROSE)	
Community Development Corporation,)	
Franciscan Enterprise of Oregon, Inc., Central)	Order
City Concern, Housing Our Families, Portland)	97 -
Habilitation Center, Hacienda Community)	
Development Corporation, Sabin Community)	
Development Corporation, Mt. Hood Community)	
Mental Health Center for Low Income Housing)	
Purposes.)	

WHEREAS, applications for funding low income housing projects were received pursuant to procedures approved by the Board of County Commissioners in a public Meeting on July 3, 1997 and met the conditions set forth set forth in the Multnomah County Strategic Investment Program contract; and

WHEREAS, a public hearing was held before the Board of County Commissioners on December 30, 1997, in which the duly constituted review committee for the Strategic Investment Program presented its recommendation for project funding awards; and

WHEREAS, the Board of County Commissioners, in consultation with the City of Portland, City of Gresham and the Countywide Housing and Community Development Commission, reviewed the proposals and committee funding award recommendations and being fully informed in the matter; now therefore

IT IS HEREBY ORDERED, that the funding awards, (recipients and award amounts are listed and attached as Exhibit A), for low income housing purposes under the auspices of the County Strategic Investment Program, be and hereby are approved; and

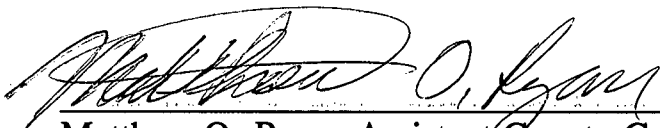
IT IS FURTHER ORDERED, that the Chair be and hereby is authorized to execute all agreements and other documentation required to fund and secure the performance of the Strategic Investment Program recipients.

DATED this 30th day of December, 1997.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:
THOMAS SPONSER, COUNTY COUNSEL
MULTNOMAH COUNTY, OREGON

A handwritten signature in cursive script, appearing to read "Matthew O. Ryan", is written over a horizontal line.

Matthew O. Ryan, Assistant County Counsel

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

Funding Award for County Sponsored)	
Strategic Investment Program to: Housing)	
Authority of Portland, ROSE Community)	O R D E R
Development Corporation, Franciscan)	97-221
Enterprise of Oregon, Inc., Central City)	
Concern, Housing Our Families, Portland)	
Habilitation Center, Hacienda Community)	
Development Corporation, Sabin)	
Community Development Corporation,)	
Mt. Hood Community Mental Health)	
Center for Low Income Housing Purposes)	

WHEREAS, applications for funding low income housing projects were received pursuant to procedures approved by the Board of County Commissioners in a public meeting on July 3, 1997 and met the conditions set forth set forth in the Multnomah County Strategic Investment Program contract; and

WHEREAS, a public hearing was held before the Board of County Commissioners on December 30, 1997, in which the duly constituted review committee for the Strategic Investment Program presented its recommendation for project funding awards; and

WHEREAS, the Board of County Commissioners, in consultation with the City of Portland, City of Gresham and the Countywide Housing and Community Development Commission, reviewed the proposals and committee funding award recommendations and being fully informed in the matter; now therefore

IT IS HEREBY ORDERED that the funding awards, (recipients and award amounts are listed and attached as Exhibit A), for low income housing purposes under the auspices of the County Strategic Investment Program, be and hereby are approved; and

IT IS FURTHER ORDERED that if the funding awards are not committed for the approved projects by January 1, 1999, the Board of County Commissioners will consider reallocating the uncommitted amounts to other programs, including home ownership; and

IT IS FURTHER ORDERED that the Chair be and hereby is authorized to execute all agreements and other documentation required to fund and secure the performance of the Strategic Investment Program recipients.

DATED this 30th day of December, 1997.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
MULTNOMAH COUNTY, OREGON

By

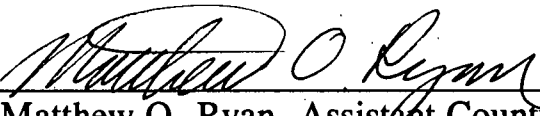

Matthew O. Ryan, Assistant County Counsel

EXHIBIT A

MULTNOMAH COUNTY
1997 STRATEGIC INVESTMENT PROGRAM RECIPIENTS

	<u>Sponsor Name</u>	<u>Project Name</u>	<u>SIP Funds award</u>
1.	Housing Authority of Portland	Rockwood Landing SE 190 th Ave. & SE Yamhill	\$150,000.00
2.	ROSE CDC	Woodstock House	45,000.00
3.	Franciscan Enterprise	7110 SE Woodstock St. Francis Place	32,000.00
4.	Central City Concern	Rose Wood Apartments NE 48 th Ave. & Sandy	185,000.00
5.	Housing Our Families	Alberta Simmons Plaza NE MLK Jr. Blvd. & NE Dekum	114,000.00
6.	Portland Habilitation Center	5 Property Purchase 1009 SE 162 nd Ave. 4333 SE 104 th Ave. 7200 SE Woodstock Blvd. 6633-34 N. Oberlin 13223 SE Powell Blvd.	114,000.00
7.	Hacienda CDC	Villa de Clara Vista addition 6500 NE Killingsworth	150,000.00
8.	Sabin CDC	NE 27 th & Killingsworth Project	110,000.00
9.	Mt. Hood Community Mental Health	Ava House II 97 NW Ava, Gresham	50,000.00
		Total SIP funds awarded	\$ 950,000.00

Meeting Date: DEC 30 1997
Agenda No: R-8
Est. Start Time: 10:40 AM

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Final Order in the Matter of a REMAND Hearing of the Board of County Commissioner's decision on CU 4-95 & MC 1-95.

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

REGULAR MEETING Date Requested: December 30, 1997
 Amt. of Time Needed: 10 minutes

DEPARTMENT: DES **DIVISION:** Transportation & Land Use Planning
CONTACT: Sandra Duffy **TELEPHONE:** 248-3138
 BLDG/ROOM: 412 / 109

PERSON(S) MAKING PRESENTATION: Sandra Duffy / Daniel Kearns

ACTION REQUESTED

☐ Informational Only ☐ Policy Direction ☒ Approval ☐ Other

SUGGESTED AGENDA TITLE

Final Order before the Board of County Commissioners regarding an approval of an expansion of a non-conforming use (dog kennel) from 50 dog capacity to 75 dog capacity on Exclusive Farm Use land.

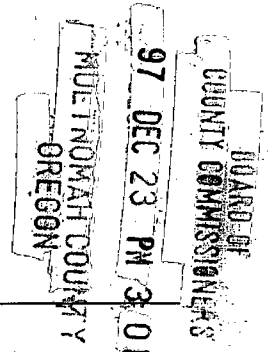
SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: _____

KB Leach & Nicholas





MULTNOMAH COUNTY

CASE NAME : Schillereff Dog Kennel

NUMBER:

CU 4-95 & MC 1-95

1. Applicant Name/Address

Tim & Angella Schillereff
23200 NW Reeder Road
Portland, OR 97231

2. Action Requested by Applicant

Conditional Use approval to (1) expand the existing 50 dog kennel facilities to allow no more than 75 dogs; and (2) alternatively, approve request for the resumption and expansion of a non-conforming use.

3. Planning Staff Recommendation

Denial

4. Hearings Officer Decision

Approval

5. If recommendation and decision are different, why?

Evidence provided at the hearing that was not available at the time of the writing of the Staff report which convinced the Hearings Office that the kennel had been in continuous operation since its establishment in 1952.

ISSUES

(who raised them?)

6. The following issues were raised:

a. Procedure.

Applicant requested that the remand go directly to the Board of County Commissioners and that new proposed findings based on the record be adopted by the Board

Opponent Marquam Farms asked the Board to have the record opened for the taking of additional evidence before a Hearings Officer.

On December 16, 1997, the remand hearing was held before the Board, on the record, with both parties presenting argument.

The Board, after deliberating, asked the staff to marshal the evidence on the nature and extent of the kennel non-conforming use. The matter was continued to December 30, 1997, 11:30 a.m., for consideration of the marshaled evidence, further deliberation and voting on the requested action.

b. Evidence regarding nature and extent of non-confirming use.

Applicant has prepared an excerpt of the record in this case which is offered in support of a finding by the Board that applicant has established a non-confirming use for a 50-dog capacity kennel facility on the subject property.

In summary, the evidence in the record of the nature and extent of this non-confirming use is:

- October 18, 1967 County Business License records stating that the facility was constructed in 1954 and 1955 as a commercial breeding and boarding kennel facility with a capacity of up to 50 dogs. (Tab A of Excerpt of Record).
- March 2, 1989 building permit to remodel the applicants' original kennel facility with a capacity of 50 dogs. (Tab J).
- August 6, 1990 Planning Director's design review decision specifically for the "remodeling of a Kennel for 50 Dogs." The lot layout in the application and decision show the original pre-1958 buildings still intact with a capacity for 50 dogs. (Tab G).
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence, the decision for which specifically says the applicants' kennel has an approved capacity for 50 dogs. (Tab F).
- August 19, 1994 Design review denial maintaining facility at 50 dogs. (Tab H).
- Timeline from 1953-1989 of numbers of dogs in kennel facility showing fluctuating numbers of dogs. (Tab J).
- Affidavits supporting the information in the timeline:

(See Tab J).

George Douglas
Elden E. Persinger
Timothy Schillereff
Norman Crowe
Mildred Meifert
Marguerite Persinger
Neil Rose
Louisa Rose
Mairi Holman

- Letters from:

(See Tab I).

Neil Rose
Pat Baggett
Elden E. Persinger
C. Dondo
George Cashdollar

- Personal testimony before the Hearings Officer at the August 16, 1995 hearing from:

(See Tab B).

Fred Granata
Peter Davis
Kent Meyer
Bruce Cabbellero
Doug Johnston
Patty Larsen
Myron Meifert
Linda Reeder Burns
Tim and Angela Schillereff
Elden D. Persinger
Marguerette Persinger

c. Board options.

(1) Denial of application based on failure to prove that there have been 50 dogs kenneled at the subject property, with no breaks of more than two years, from 1958 to present. This option means that the Board has interpreted the "nature and extent" of a non-conforming use to be purely a numerical "counting of the dogs" over the relevant years.

(2) Approve the application based on a determination that the "nature and extent" of a dog kennel non-conforming use takes into consideration that the very nature of a kennel is to fluctuate in the number of dogs at the facility (like a school, hotel, church, campground, etc.). The approval would be first, a determination that the facility has always had the capacity for 50 dogs and that that use was never abandoned by disuse, demolition or conversion to another use; and, second, the approval would be a determination that the requirements of MCC 11.58.8810 (to expand a non-conforming use) have been met.

(3) The Board could still refer this matter to a Hearings Officer to open the record for more evidence. The applicant has indicated it has no further evidence to submit on the nature and extent of the non-conforming use. The applicant has the burden of proof. The opponent has indicated a desire to submit additional evidence on the issue of actual impact of 75 dogs. applicant asserts that there are not 75 dogs because no approval for 75 dogs has been obtained. The opponent had an opportunity to present evidence in prior hearings on impact, and did so.

Post-It® Fax Note 7671

Date	12/22	# of pages	2
To	Dan Kearns		
From	Eric		
Co./Dept.	WPS		
Phone #	827-4422		
Fax #			

WPS Memorandum

TO: Dan Kearns
 FROM: Eric Eisemann
 SUBJECT: Schillereff - Kennel capacity issues
 DATE: December 22, 1997

Greg Winterowd asked that I research the Schillereff record to determine the 'nature and extent' of the capacity of the dog kennels on the property over time. The record reveals the following:

The County established F-2 (Agricultural) zoning over the property on either April 19, 1955 (opponents) or on July 10, 1958 (Sullivan). The kennels were constructed on this site between the years 1954 and 1955.¹ They were operated as commercial kennels since their construction.² The kennels, as originally constructed, consisted of two buildings, measuring 12' x 58' and 12' x 20'.³ The footprint of these two buildings remained unchanged over time.⁴ The original capacity of the two kennel buildings was 50 dogs, more or less.⁵

¹ All records found in Tab J, Non-conforming Use, unless otherwise noted.

See: County record: "10-18-67". "Addition 12' x 58' 1954 Kennels 12' x 20' - 1955". Rose, May Louise affidavit: "My husband, Donald Rose, assisted Alport in building the kennels this was done in 1954." Vetch letter, Exhibit 8: "Peter Alport built in kennels in the 1950s."

Douglas, George, affidavit: "I personally remember there was a dog kennel on the Schillereff's property well back into the 1950s." Rose, Neil, affidavit: Setting the date of construction at 1953.

² Dondo, Persinger & Cashdollar letters, November 1967: "The kennels have been in the business of boarding and training dogs since the year ("1952", Dondo; "1954", Persinger, and "prior to 1958", Cashdollar.) And many others.

³ County record "10-18-67."

⁴ See: County record: "Aug. 1857 to Dec. 1962". Same Bldg bought from Roy Wallace who had rented it out to breeders for about 5 yrs (+/-)." County record: "Feb. 64 to Feb. 65". "Bldg same as now - alot ^{sic} per lease." County record: "Oct. 65 to Oct. 1966". "Bldg same." County record: "10-18-67". "Corrugated metal. 60 x 15 (+/-) 25' x 15' (+/-). Actual 12' x 20', 12 x 58'."

⁵ See: County record: "Aug. 1957 - Dec. 1962. Evelyn Blitz." "Commercial kennel - up to 50 dogs - boarding breeding & training. Bought as kennels - Bldg were there." County record: "Feb. 64 to Feb. 65. Courtway." "Leased on basis it be a commercial kennel." County record: "Oct. 65 to Oct. 66. Victor Eaton." "15 - 20 dogs, 2 or 3 per run, but more likely one." County record: "10-18-67. Zone F-3, Non-conforming use "Approved". "Use: Boarding and breeding dogs. 30 runs in 60' bldg. 10 runs in 25' bldg. 5' wide. Bought from Evelyn Blitz. Limited to 50 dogs." Affidavit: Norman Crowe. "During the time I visited Eva Blitz's kennel, the kennel was always at or near capacity -- in the neighborhood of 50 dogs." "I remember the kennel owner, Myron Melfert, always operated at or near capacity of about 50 dogs." Affidavit: Pat Baggett. "Every time I visited the property when Eva Blitz owned it (1957 - 1962), she always had 25 dogs or so in the kennels." Affidavit: Mildred Melfert. "During most of the commercial kennel period (1950s through 1968) the kennel runs were often full."

EXCERPT FROM THE RECORD

SCHILLEREFF DOG KENNEL APPLICATION

---NONCONFORMING USE DOCUMENTATION ---

ITEM	TAB
County Business License Records	A
Transcript of the August 16, 1995 Hearings Officer hearing.....	B
Nonconforming Use Documents (affidavits and documents).....	J
1990 CUP decision for Nightwatchman's Residence.....	F
1990 design review approval for kennel addition	G
1994 design review decision denying kennel addition	H
Letters and documents in support of nonconforming use	I

A

DATE 10-18-67

ZONE F-2

NON-CONFORMING ADDITION

ASSESSOR'S RECORD

PRESENT STATUS

LAKE TRAIL KENNELS

Date Built HOUSE

Location REEDER RD. RT 1 BX 120 B

1942

Date Established MOVED IN 9-5-67

Addition 12'x58'

Owner MEIFERT, MYRON JR

1954 KENNELS

Address SAME

12'x20' - 1955

Occupant MEIFERT

WANTS

Use BOARDING & BREEDING DOGS

Description of Use 30 RUNS IN 60' BLDG

10 RUNS IN 25' BLDG - 5' WIDE

BOUGHT FROM EVELYN BUTZ

LIMITED TO 50 DOGS

Description of Buildings and Equipment CORRUGATED

METAL 60'x15' 25'x15'

Number of Employees NONE

Description of Signs ONE SIGN 18"x18" (ILL)

Assumed Name

Number of Employees NONE

Description of Signs ONE SIGN 18"x18" (ILL)

Permit

THY OWN 3 DOGS

PREVIOUS USE

Date From OCT 65 To OCT 1966

Notes

Occupant VICTOR EATON - RENTERS

Description of Use 15 TO 20 DOGS

2-0123 PER

RUN BUT MORE

LIKELY ONE

Description of Equipment BLDG SAME

Number of Employees NONE

Description of Signs SAME AS PRESENT

MAP

PREVIOUS USE

Notes

Date From FEB-64 FEB 65

Occupant COURTWAY

Description of Use HAD DOGS - LEASED
ON BASIS IT BE A COMMERCIAL
KENNEL - ENG. BULLDOGS - BREED
OWN STOCK - 4 TO 5 ADULTS &
8 OR 10 PUPPIES MOST OF TIME

Description of Equipment BLDGS - SAME
AS NOW

NOT USED AS PER LEASE

Number of Employees NONE

Description of Signs NONE

MAP

PREVIOUS USE

Notes

Date From AUG 1957 to DEC 1962

Occupant EVELYN T. BLIZZ

Description of Use COMMERCIAL KENNEL
UP TO 50 DOGS - BOARDING,
BREEDING & TRAINING. BOYS
AS KENNEL - BLDGS WERE HERE

Description of Equipment SAME BLDG
BOUGHT FROM ROY WALLACE, WA
HAD RENTED IT OUT TO BREEDERS
FOR ABOUT 5 YRS (T)

Number of Employees ?

Description of Signs MARQUAM LDKR

KENNELS - SIZE & NUMBER UNKNOWN
4' SIGN IN BASEMENT STORED 27

MAP

66-15-3-2N-16
K. O. N. R.
K. E. & D. R. R.
Rt. 1 Box 120 B Reeder Rd.

DATE 1-28-69

ZONE F-2

-CONFORMING

ASSESSOR'S RECORD

PRESENT STATUS

LAKE TREE KENNELS

Date Built

Location REEDER RD RT 1 BX 120

Date Established SEE ATTACHED

Addition

Owner HENRY H. REEDER (PEIN INV. CO)

Address

Occupant MEIFFERT, MYRON

Use DOG KENNEL

Description of Use PEIN BOUGHT FROM

Personal Prop.
(List Equipment
and Dates)

MEIFFERT. MEIFFERT HAS BEEN
TRAINING & BOARDING DOGS

Description of Buildings and Equipment SEE ATTACHED

Assumed Name

Number of Employees NONE

Description of Signs NONE

Permit 8.471 KENNEL 9015 ALL OF 71-2315

PREVIOUS USE

Date From IN 1970 To

Notes

Occupant

Description of Use

8.471 HENRY PEIN NOW OWNS THIS & TELLS
39.34 A & 71-15-3-2N-2W - HAS TRAILER
WANTS BA FOR WATCHMAN

Board of Adjustment - Approval

Description of Equipment

Number of Employees

Description of Signs

MAP

Exhibit 132

B

PROCEEDINGS BEFORE MULTNOMAH COUNTY HEARINGS OFFICER
AUGUST 16, 1995

HEARINGS OFFICER

Okay, we took a five minute break. Does anybody in the room notice somebody who was here that should be here that has not returned from the break yet? Do we need to wait any longer? Okay. A couple of general matters first. My name is Barry Adamson. I'm the Hearings Officer for today. I've been determining whether or not the applicable Multnomah County . . . Provisions and Comprehensive Plan criteria apply to the applications that are before the County today. I am going to determine whether or not the applicants met the burden of demonstrating compliance with any of the pertinent criteria.

My procedures are . . . tend to fluctuate with the nature of the proceeding and the time that we have. First of all I going to have to tell you that the criteria to the matters to the County are set forth in the Staff Report. The staff report for today's proceedings are I believe in the back of the room. The pertinent criteria from the Zoning Ordinance and the Comprehensive Plan are listed in there. What I'm going to do generally is turn matters over to the staff, after I'm done with my spiel here, for a short presentation and a summary of the application. Following staff I'm going to allow the proponents to offer anything additional into the record. I'm not going to have set times for doing that, but I would ask the proponent take into account his rebuttal time. Following the proponent's comments or additional testimony I going to allow the opponents a fairly equal amount of time to state their views, following which the proponent is going to have a chance for rebuttal. I would caution you that I am fairly familiar with the staff reports in these matters. I would ask if you are going to comment on things not to be repetitive of what has already been in writing in the particular application. When you give your testimony, is that what you're going to give, testimony today, I'll ask you to try and remember. I'll help you if you forget to say who you are and where you live and what your relationship is to the application, what particular issue or issues you want to talk about. Be specific. I want to have people address the particular criteria that are pertinent to the application. And I will remind you of the raise it or waive it rule. If you don't mention it today it's going to be too late. So you will, anybody who wants to say something today will have an opportunity to do that.

The next matter on the agenda is CU 4-95/MC 1-95. It's a conditional use request. It's an alternative request, either a conditional use or an alteration of a non-conforming use. The applicant is Tim and Angela Schillereff. I will tell you that, I'm reading my notes here, I have received one letter, which I will get to in a minute. I got that yesterday, in terms of ex parte contact. That was from an opponent. I have not received anything from the proponent of any other late information pertaining to this. I have read the staff report and I'm familiar with this case. I happened to actually be here last July and sat through that hearing. I have not visited the site. With that in mind I think I'll turn it over to staff now for a description.

MR. HALL

I have some slides of the property, would you like to see them?

This is their property, excuse me sir is that in your way? This is the property located at 23200 NW. Reeder Road. This is looking northeasterly along the Reeder Road frontage. The little small sign that you see there is the sign for the kennel. The County car there is parked in the parking lot next to the dike that surrounds a portion of Sturgeon Lake. The area, all that area north of the end of Sturgeon Lake area, is a game preserve. The applicants' property is located to the right.

This is looking in the opposite direction, along Sauvie Island Road, showing the rural character of the surrounding area. I believe you can see there are just portions of the two residences that are closest to the subject property. They are located, I think, the nearest one is about a thousand feet from the kennel operation.

This was taken from up on the dike itself. The house that you see there to the left, that white house, is the house of the owner of the property. You can see here between the trees there on the right where you can see a portion of another home, and that is a building that was approved in 1990 as a watchman's residence. I'm not sure whether it was 1990 or 1993, I have to look in the book, anyway it was approved as a watchman's residence in conjunction with the kennel operation. The kennel operation itself is located almost in the center of the photo, as you can see it's obscured by the existing vegetation there.

There is a closer up view of the owners residence on the property. Again, this looks easterly and you can see the rural nature of the surrounding area. This is a better view of the watchman's residence. The kennel operation in this case is located to the left in that grove of trees.

This is looking directly into the kennel operation from Sauvie Island Road. As you can see, it's totally fenced with cyclone fence with slats, and again the vegetation virtually obscures what you see from at least this portion of Sauvie Island Road, Reeder Road.

This was taken from the dike across the road again looking into a common access, a common driveway that is shared between the kennel operation and the duck hunting club that's located on the left side of the driveway. The building you see there is a building that was approved as an agricultural accessory building to the duck hunting operation.

Here, we're going down the driveway into the property, again the building I mentioned is located to the left. You can see some of the fences surrounding the kennel there to the right. And here is where the driveway splits off and those are the gates to the duck hunting club.

Here you are looking right into a portion, the central portion of the kennel operation. It's hard to see but there are two Quonset type structures that have existed on the property since the early 50's and have been used for kennel purposes.

Again the duck hunting club road to the east of this property, the ... building I mentioned, and the building to the left of that is the clubhouse for the hunting club.

Here we're looking more into the kennel, again the cyclone slatting obscuring the view from the surrounding area. This is taken of the southerly portion of the property, of the parking lot for the kennel operation. The small portion of the building on the right is the office. The larger portion in the center, that's the highest peak area. It is a kennel addition that was done in 1990, and the lean-to portion of the building is an ag exempt structure that was approved for storage of agricultural equipment.

This is looking in the opposite direction from that parking area, again showing the...limited development and the agricultural character of the surrounding area.

Here we're looking into the kennel. This is a portion of the newer portion. You can see the dog run, and the landscaped interior of the kennel operation.

This is looking the other way into that same portion of the kennel.

This slide was taken on the southwest portion of the property, along Sauvie Island Road. The white house is the owner's house that I mentioned. You can see a portion of the caretakers residence and the newer portion of the kennel. From all outward appearances it looks like an agricultural building associated with many other similar agricultural uses on Sauvie Island. And that's it.

As you mentioned this request involves, actually, two requests. That's an expansion of an existing conditional use and an alteration of a non-conforming use. The staff report relied heavily on the most recent County decision in this matter which is DR 4-94. And with respect to the conditional use portion of the request, that decision found the dog kennel use of this property was not a legal use. Therefore we cannot consider this as an expansion of an existing conditional use, and we evaluated it as a new conditional use for a seventy-five dog kennel.

And the first consideration in a new conditional use on exclusive farm use property is the Oregon Administrative Rule regarding high value soils. The soils of this property are of high value. That rule would not allow new dog kennels on high value soil, so therefore we found no way that we could approve this expansion of this...

With respect to the alteration of a non conforming use, that same decision in DR 4-94 found that this use has lost its non-conforming status... Therefore, since we have no existing non-conforming use at least in the light of that decision, you can find that we have no use to alter it...

So the staff report concludes with respect to both items, that they would deny the request for the expansion of the non-conforming use and the request for the alteration of...and that the alteration of the non-conforming use also be denied.

I'll be glad to answer any questions.

HEARINGS OFFICER

I don't have any for now. I did receive late yesterday, again by fax at 4:30, a letter from the opponents, an opponent, asking me to do certain things. What I'm going to do briefly is, this is his letter,...I'll wait until copies are made.

While the copies are being made I can run through in effect what the gist of the letter is. It requests that I do certain things . . . that the Hearings Officer, some of which are procedural and some of which are substantive . . . only to the appropriate ruling. The first request, the first item in the letter is a request for a set over or a continuance. Mr. Josselson and Mr. Derr, on behalf of Marquam Farms Corporation have asked that I continue this matter until next months calendar, the reason being that they are both out of town. As I say I got this at 4:30 yesterday. I'm not terribly fond of late last minute requests like this for continuances that particularly when there is no what I call application-related reason why the continuance should occur, everybody knows what this decision is all about. There is no statutory right for a continuance under these circumstances, except where ORS 197.763 sub part 4B might apply, but I find that extension doesn't apply in this case to grant the right to a continuance made prior to the time that statute might otherwise result in a continuance. And the letter that I received, doesn't refer, for example, to any new evidence that was received late that might otherwise necessitate a continuance, so I'm going to deny the request for a continuance, but go ahead with the matter today.

The second portion of that initial request is for a, that I hold the record open for twenty-one days. ORS 197.763, sub 6 does say that if a participant requests the record be, remain open, before the hearing today, that this request shall be honored and the record shall remain open for seven days, at least seven days. What I'm going to do is this, in light of this situation to try and be as fair about this as possible under the circumstances. I'm not going to grant the continuance but I am going to say that the proponents are going to have until a week from today, until August 23rd at 4:30, to file anything further in support of the application. The opponents will have until August 30th at 4:30 to file anything further that they want. And then the proponents will have until September 6th at 4:30 to file any rebuttal to whatever the opponents file on August 30th. I anticipate that the rebuttal will be, if any, will be limited solely to whatever the opponents file by August 30th.

The second portion of the letter raises the possibility of a defective notice that the County sent out regarding this hearing. I've read the notice, I've read the one page April 11th application and I've read the February 23rd, what I call long form application, and I find that although there is a bit of an ambiguity there, that there is nothing substantive that is wrong with the notice. The April 11th, I believe, the one page application says the applicants seek a conditional use approval or alternatively an alteration of a non-conforming use for a seventy-five dog kennel. There is a February 23rd long form application submitted by the proponent

which says the application is to allow for expansion of the existing kennel operations, and in turn the notice that the County sent out recites that the applicant requests conditional use approval or approval for alter a non-conforming use to expand capacity at the existing dog kennel facility on this property from a maximum of fifty dogs to seventy-five dogs. Marquam Farms suggested it's not clear whether the request is for approval to expand a lawful 50 dog kennel to 75 dog kennel, or whether the request is for an approval in the first place of a 75 dog kennel where no lawful kennel use presently exists.

First of all I'm going to, I find that the notice was not ambiguous in light of the application materials submitted by the applicant. And particularly in light of the historical events in this case but the notice clearly paraphrases and summarizes the application materials submitted by the applicant. And I also find that, given the ruling last August I believe it was, by Mr. Grillo, which staff summarized a moment ago, there is no reasonable person who can comprehend this application that's predicated on a permitted conditional use. . . .necessarily implies this...original application, I shouldn't say original, an application to recognize it as a conditional use and get it permitted.

I'm going to deny Marquam Farm's request that we set this matter over and put new notice out.

The letter next raises an issue which, and legally...labeled "claim preclusion". In effect, the Marquam Farms says that the August '94 Hearings Officer decision renders this entire proceeding moot, or else dictates a result in this proceeding. My ruling is that's a substantive issue, it's not procedural. I'll deal with that in the decision that I'm going to make. That doesn't really raise a procedural question for now.

The next item mentioned in the letter is the issue of some pending litigation. Apparently there is a pending Multnomah County Circuit Court proceeding against the applicants. They've requested an injunction against an unlawful kennel use. I find that the, oh and Marquam Farms asks that I simply abate or stay this proceeding until that circuit court matter is determined. I don't know the contents of that lawsuit, I just know from what is said here it involves a request for an injunction. I don't know its status, but I do know this, based upon what I see in the file, the opponents themselves, Marquam Farms first objected to the lawfulness of this use in a land use proceeding, particularly the proceeding that took place last summer. And I concluded that they initially objected to the contents of the County proceedings and therefore these proceedings shall continue and in my estimation shall take priority.

I also quite frankly don't understand the relationship between the request for a ...perceived here to be a request here that the use be given a lawful, that it be ... a lawful use. I'm going to deny the request that I stay this matter pending the outcome of the Circuit Court matter.

The final matter mentioned in the letter I got yesterday speaks of the provisions of Oregon Administrative Rule 660-32-120 part 3, which staff summarized a moment ago as precluding

kennels on high value farm land. That raises a substantive issue, not a procedural issue. I'll deal with that in my decision. I'm not going to make any ruling on that particular issue today.

With those procedural issues out of the way, I going to open it up to the proponents who basically will tell us why we are here again.

MR. SULLIVAN

Good morning Mr. Adamson. My name is Ed Sullivan, my office address is 111 S.W. 5th, Suite 3200, Portland, 97204, and today I'm representing the applicants, Tim and Angela Schillereff. Tim and Angela have, for the last six years run the Sauvie Island kennel, and seek to expand and modernize their operations. As you know from reviewing the staff report and the file in this matter, there has been a long-standing dog kennel on this site owned and operated by Tim and Angela and before that, their relatives the Persingers. However the level of operations on this site has fluctuated since zoning was first applied to Sauvie Island in 1958.

In 1989, when Tim and Angela used the same property and the same buildings for a kennel, they set about making improvements and went to the County to see what they needed to do. They approached the planning staff and sought a conditional use permit for their operations. They even brought in a conditional use permit application filled out. County planning staff told Tim and Angela that no conditional use permit was necessary, that their situation came under Multnomah County Code 11.15.2028, sub b and c, which both the planning staff and County Counsel said meant that conditional uses listed in the EFU zone which existed before August 14, 1980 shall be deemed conforming and therefore do not require conditional use approval. On that advice, Tim and Angela did not file their conditional use permit. Instead, and again as advised by the staff, they sought and received design review approval for the structural improvements necessary to bring their kennels into operation. They also received a conditional use permit later that same year for their home as a watchman's residence in conjunction with the kennel use. During these 1990 proceedings the issue of the status of the kennel was raised and disposed of by the Multnomah County Planning Commission, which relied upon both the staff report and staff testimony that a conditional use permit was not needed.

You will hear from both Fred Granata, who represented the Schillereffs during those proceedings and from Eric Eisemann who reviewed the record and has excerpted portions of the record on those points.

HEARINGS OFFICER

I'm going to jump in here while we're . . .

MR. SULLIVAN

Sure.

HEARINGS OFFICER

. . .going through...

MR. SULLIVAN

That's okay.

HEARINGS OFFICER

You said that the status was determined in 1990, was it?

MR. SULLIVAN

Yes.

HEARINGS OFFICER

Okay, you said the status was determined. What in your estimation comprises "status"?

MR. SULLIVAN

You will hear testimony that the Planning Commission in adopting the staff report determined that this was a conditional use, by virtue of the then staff interpretation which was raised to a Planning Commission interpretation of 11.15.2028, sub b and c.

HEARINGS OFFICER

A kennel was determined . . .

MR. SULLIVAN

Yes. Without applying for it, by that interpretation and by the adoption of that interpretation by the Planning Commission, it received the status. We are as a prophylactic measure applying for a conditional use permit in any event. We are also asserting to you that not only do we have non-conforming status, but we also have a conditional use by virtue of those previous proceedings.

HEARINGS OFFICER

Okay, in 1990's particular proceedings, I believe there was a couple of them, maybe more.

MR. SULLIVAN

There were two.

HEARINGS OFFICER

Okay. One was a design review.

MR. SULLIVAN

Yes.

HEARINGS OFFICER

And the other was a conditional use for a watchman's house.

MR. SULLIVAN

That's correct. And I believe this occurred during the design review portion.

HEARINGS OFFICER

Okay.

MR. SULLIVAN

And you will get specific excerpts from the record in Mr. Eisemann's testimony today.

HEARINGS OFFICER

Okay. Fine, now what's your position on whether or not the lawfulness of the conditional use is something on which findings need to be made in the design review process? That's a long question, do you understand what I'm saying?

MR. SULLIVAN

Yes. Let me try to respond to it by saying that in both the design review processes, the 90 and the 94, there were findings made. Those findings are inconsistent. The first said that there was a conditional use there, and a lawful use there. The second, Mr. Grillo's said there was not.

HEARINGS OFFICER

Okay, the first that you're referring to, the design review.

MR. SULLIVAN

The 1990 design review.

HEARINGS OFFICER

Design review proceedings.

MR. SULLIVAN

That's correct.

HEARINGS OFFICER

Which you say, I just want to make sure I understand ...

MR. SULLIVAN

Sure. That's fine.

HEARINGS OFFICER

What I understand you to say is that the design review proceedings from the 1990, even though conditional use was not necessarily applied for.

MR. SULLIVAN

Was not applied for. That's correct.

HEARINGS OFFICER

Not applying for it. It simply assumes to exist.

MR. SULLIVAN

That is correct. And the Planning Commission did make that determination.

HEARINGS OFFICER

Okay. Can they make that determination...

MR. SULLIVAN

Well, no more than Mr. Grillo could have is my first response. And the second response is, if it is a necessary predicate to get to the design review, then they made that determination. And they made it not in the sense that there was a conditional use permit applied for, but by the operation and the interpretation of 11.15.2028, which said that any conditional use listed in the EFU zone which existed before August 14, 1980 is therefore deemed conforming. Staff said that makes it a conditional use. That was the basis for our not applying in the first place.

HEARINGS OFFICER

Okay, now what do you do with, I understand what you're saying,

MR. SULLIVAN

Sure.

HEARINGS OFFICER

How do you deal with Mr. Grillo's...within weeks of the appellant stage that the ordinance you just cited,

MR. SULLIVAN

Yes.

HEARINGS OFFICER

. . .is a use which is permitted, not just listed use.

MR. SULLIVAN

Right. I guess there are a couple of answers and I will probably repeat myself when I get to that portion in my remarks.

HEARINGS OFFICER

I'm sorry for interrupting.

MR. SULLIVAN

No, that's all right. That's all right and, as the spirit moves you, you ought to interrupt me.

HEARINGS OFFICER

I will.

MR. SULLIVAN

The first answer is that Mr. Grillo didn't need to reach that. He could have reached this by saying there was no conditional use permit that has been granted formally by the County, therefore it's impossible for me to deal with the design review. And he could have let that go there. He made some unfortunate ...remarks about the lawfulness of the use which weren't necessary, and which were incorrect in our view.

HEARINGS OFFICER

Would you agree that he found, I've read this decision a number of times . . .

MR. SULLIVAN

Yes, as have I.

HEARINGS OFFICER

I agree I guess with the result because...as of last August no permitted conditional use.

MR. SULLIVAN

That is correct.

HEARINGS OFFICER

And you see that as, tell me why you think this has a conditional use is lawful but not permitted.

MR. SULLIVAN

For two reasons. One is because of the staff's view that was adopted by the Planning Commission during the 1990 proceeding. And the second one is because of the applications which we are making now predicated upon two unappealed decisions, both made in 1990, which establish our non-conforming use and vested right.

HEARINGS OFFICER

Why did Mr. Grillo's decision protect those arguments?

MR. SULLIVAN

It was unfortunate. I think you could read Grillo's decision, except in one place where I think he needed a ..., to say I'm not deciding the validity of the underlying permits, but because I don't have a conditional use granted here, I can't use that as the operative predicate to go for additions to that use, via the design review process.

HEARINGS OFFICER

Okay. Mr. Grillo upheld the 1990 conditional use for the watchman's residence ... in limbo ...connected to... Would you say that.

MR. SULLIVAN

That both unappealed decisions are live decisions for lawful uses.

HEARINGS OFFICER

1990

MR. SULLIVAN

That is correct. And form the basis for our request for an expansion of the non conforming use. That's one of our alternative bases. For asking for the conditional use, we make it on two other bases. One is that the staff and Planning Commission indicated in 1990 that this was a lawful conditional use. I may disagree with that review and that ruling now, by the benefit of hindsight, but that was unappealed as well in 1990. And the second basis for asking for the conditional use is that we can now apply for a new conditional use, notwithstanding the high value crop, because we have some responses to that. But if all else fails we're asking you to grant us a new conditional use permit. So what we've tried to do is to get all of our bases covered in this application tonight.

HEARINGS OFFICER

Do you agree or disagree with...to some part...

MR. SULLIVAN

If 11.15.2028 did not exist, I would agree with it.

HEARINGS OFFICER

Did not exist.

MR. SULLIVAN

Right. That's the one that says that if it was there on August 14, 1980 and is listed as a conditional use in the EFU zone, it shall be deemed conforming. Let me try to respond a little further on that, Mr. Hearings Officer. Besides the usual stuff that, restrictions on land use being in derogation of common law and have to be construed strictly, and there is no limitation which says if there was a lapse in that provision then you'd lose whatever status you had.

HEARINGS OFFICER

I'm not sure I'm following you.

MR. SULLIVAN

Okay.

HEARINGS OFFICER

Maybe, I'm going to jump back here.

MR. SULLIVAN

Go ahead.

HEARINGS OFFICER

Mr. Grillo's, this decision I've read a number of times...I'm not sure I agree or fully disagree with everything he says but I think I'm bound by, I think I find his ...conclusion to be correct. How he got there ...

MR. SULLIVAN

I'm doing

HEARINGS OFFICER

He found that, assuming that if there is no conditional use,...non conforming use issue, he said that assuming you had that non conforming use ,there was that evidentiary gap that compelled me to conclude that the use discontinued, and I think it was 64.

MR. SULLIVAN

That's correct.

HEARINGS OFFICER

Okay. Tell me how, or tell me if, you're trying to leap beyond his findings.

MR. SULLIVAN

I am.

HEARINGS OFFICER

Okay. Tell me how.

MR. SULLIVAN

All right. For a couple of reasons. First of all, the words of the ordinance provision that I just read you does not provide for gaps. It says if it was there in 1980 it's deemed conforming.

HEARINGS OFFICER

Now he also interpreted this provision to mean this is not just listed, but permitted.

MR. SULLIVAN

And I take a stricter view of that which says that it is in the list of uses which are referred to in 2028 as a conditional use, as did staff.

HEARINGS OFFICER

I understand. I may agree with that interpretation, but it's sort of moot because -- tell me why I'm not bound.

MR. SULLIVAN

Because you're not bound by..., this is Administrative law.

HEARINGS OFFICER

Well tell me why...Mr. Grillo's decision, you're relying on a number of instances that are prior,...begins in 1990 that you say weren't appealed or ...

MR. SULLIVAN

Yes.

HEARINGS OFFICER

Well I'm saying that, by that same token, Mr. Grillo's decision unfortunately didn't make it through the appellate process, why doesn't that bind everybody by the same token that the 1990 proceedings would bind everybody.

MR. SULLIVAN

A couple of reasons. The first one is that Mr. Grillo did not have lawfully before him the issue of the underlying validity of the use.

HEARINGS OFFICER

Well now, he had design review procedures.

MR. SULLIVAN

Right.

HEARINGS OFFICER

An appeal from an administrative decision.

MR. SULLIVAN

Correct.

HEARINGS OFFICER

Is it not a precondition to design review that a conditional use be ...

MR. SULLIVAN

No. It could be a non-conforming use, and it could be allowed under this ordinance provision. See what Mr. Grillo did not do is to say that either of the 1990 approvals were invalid. He didn't have to reach that. But he did say that the use was unlawful, which was unfortunate and was dicta and was not necessary to decide that case.

HEARINGS OFFICER

Okay we sort of got to where we are now by my question about the non-conforming use and why I'm not bound by the finding of facts, you say, you disagree with his determination that there was an evidentiary gap in the proceedings...

MR. SULLIVAN

I do not disagree.

HEARINGS OFFICER

Okay, so there was an evidentiary gap that showed that up until 1964, it may have been a non-conforming use, but that because of that gap it discontinues. Do you agree or disagree that the use, assuming it's non-conforming use, discontinues.

MR. SULLIVAN

Except for 2028, I do.

HEARINGS OFFICER

So except for 11.15.2028 (b), (c) . . .

MR. SULLIVAN

C talks about changing uses.

HEARINGS OFFICER

Okay. That the use discontinued and therefore falls under the pertinent provisions of ORS Chapter 215.

MR. SULLIVAN

Yes. I'm also saying that by the grant of these two permits in 1990, of which may or may not under Mr. Grillo's view may have been mistaken, and Mr. Grillo would have redecided. However they were lawfully issued and unappealed. They formed the core of our vested right and our nonconforming use. And that is one of the two applications we are making. Which is to alter a non-conforming use. The other one is the conditional use. We have two bases for that, one is on the ordinance provision that we've just been discussing, 2028 . . .

HEARINGS OFFICER

Okay, let's talk about that issue.

MR. SULLIVAN

Sure.

HEARINGS OFFICER

I'm assuming that you read this ordinance as everybody except Mr. Grillo and Marquam Farms did last year. And you're telling me that I can revisit that notwithstanding the fact that there was a final decision which was not appealed.

MR. SULLIVAN

Yes.

HEARINGS OFFICER

Your authority for me doing that is simply

MR. SULLIVAN

...authority..., I would say that an administrative law, unlike our familiar court made law that we deal with, we are not bound by the normal principles...Just as the County

HEARINGS OFFICER

By the same token however . . .

MR. SULLIVAN

All right, go ahead.

HEARINGS OFFICER

Doesn't that cut against your argument that the 1990 proceedings bind everybody. You're saying in the 1990 proceedings even though didn't result in a permit, recognized it a conditional use and there was an opportunity to appeal and nobody did.

MR. SULLIVAN

There's a big difference between the 1990 proceedings, because permits were issued and can't be revisited. Now the County can change its mind on how the code applies to later proceedings, and that's what they are doing. And if there wereMr. Grillo would have been bound by the 1990 proceedings.

HEARINGS OFFICER

I understood Mr. Grillo's decision, he stated there was no permitted conditional use.

MR. SULLIVAN

And that is correct. And the argument was that it was done by operation of law. That's what the staff said, that's what County Counsel said.

HEARINGS OFFICER

Can that happen? Can you have a conditional use, which in the confines of the County's scheme requires a permit, and yet have a lawful use that was never permitted?

MR. SULLIVAN

I don't know whether it can happen, but that's what the County did.

HEARINGS OFFICER

...local government right from wrong, my question is does that bind everybody...

MR. SULLIVAN

It binds you if you don't appeal.

HEARINGS OFFICER

We're back to this binds you if you don't appeal.

MR. SULLIVAN

That's right.

HEARINGS OFFICER

On the permits

MR. SULLIVAN

They weren't appealed. We got the permits. The permits are lawful.

HEARINGS OFFICER

So you distinguish between the decision to grant permits and a non appeal from that decision binds people, but a non appeal from Mr. Grillo's decision which denied the permits. How come?

MR. SULLIVAN

We can't have the design review under the lights of the 94 appeal. That's why we've come back and asked for a conditional use and the alternative . . .

HEARINGS OFFICER

I perceived your application and I , in light of the objections that were raised yesterday...the notice, I've read the application a number of times. It's reasonably clear to me that the application presumes there is no permitted conditional use and that your application is to get permit for a conditional use, which presupposes that there is no conditional use. Is that a fair reading?

MR. SULLIVAN

We're also saying in these proceedings that we believe that the 1990 proceedings were correct. We made those observations in our long form as a conditional use.

HEARINGS OFFICER

I understand that. I'm just sort of hearing my, I want to make sure I understand this, because one of the questions is, and I have made a ruling, a procedural ruling that the notice was not ambiguous, but I did that based upon my reading that the application is in essence for a conditional use for a seventy-five dog kennel, as opposed to an expansion of an illegal permitted use. Now that's the way I read the application. Do you disagree with my reading?

MR. SULLIVAN

We have made two alternative applications.

HEARINGS OFFICER

Right. One for non-conforming ...

MR. SULLIVAN

Okay. And the other is for a conditional use permit. We are also suggesting to you that as part of the non-conforming use, we have to rely upon proceedings that occurred in 1990, and the lawfulness of the permits that were issued at that time. And the reliance and the interpretation . . .

HEARINGS OFFICER

That's the question. Were those permits, were the design review permits lawful at the time?

MR. SULLIVAN

Yes, if they weren't appealed. Whether they were right or wrong, they are final. And that distinguishes this from the 1994 proceeding where Mr. Grillo or the County continue to change their institutional mind on the interpretation of policies.

HEARINGS OFFICER

Okay. Let me make a note on that. Okay, so the proceedings in '94, you distinguished that they denied approved permit, a lack of appeal does not

MR. SULLIVAN

I said there was no permit issued as a result of it, which would vest the right.

HEARINGS OFFICER

[Request of staff for location of previous decisions]

MR. SULLIVAN

No, no, not at all. I would like and I know Mr. Hall brought them to make sure that the 1990 proceedings, the two of them, are part of this record, including the tapes of the proceedings.

HEARINGS OFFICER

I have a tape.

MR. SULLIVAN

Okay, is that all there would be?

MALE

Yes.

MR. SULLIVAN

Okay, then that tape be made part of this proceeding as well.

As I mentioned between 1990 and '94, Tim and Angela continued to build their business and make improvements on their property in relying and consistent with the 1990 approvals. In 1994 using the same process that staff advised Tim and Angela to use previously, they requested design review approval to add another twenty-five units to their kennel. Staff

recommended approval, but by this time the Hearings Officer denied the use interpreting MCC11.15.2028 b and c in a different way, a way in our view, not justified by it's language, to say that any break in the use for more than a year causes the conditional use to be lost. Because of that break the Hearings Officer said that design review is not the appropriate vehicle for the improvements that Tim and Angela sought. The Hearings Officer did...[comment] on the lawfulness of the underlying use, an issue which was not before him, except in the context of the design review application. That dicta was unfortunate as the Hearings Officer could have left that issue alone and said that the failure to have a written conditional use or to show the non-conformity was the problem, and that a mere request for design review approval in the absence of those permits, could not be granted without one of those other requests, either for a conditional use or a non-conforming use determination being granted.

However the Hearings Officer did say in another part of his decision that he was not authorized to nor did he make any legal observations in the 1990 approvals. Now the Staff, in its report in this case, relies upon the last of the decisions, the 1994 Hearings Officer determination in making its recommendation. Staff appears to say that the dicta in that decision, and the adoption of limitations on uses on some farm land by OAR 615, Chapter 33 was dispositive of both these applications. However the Hearings Officer did say that the door was open for him being convinced otherwise. We don't believe that the Hearings Officers decision is correct for a number of reasons. We would make a number of observations in the context of this case.

First of all as we've discussed in some length today, we believe the two 1990 approvals are beyond appeal and can not be collateral attacked. We believe that those approvals provide the bases for a lawful non-conforming use of vested right for the existing kennel and its improvements.

HEARINGS OFFICER

So you believe...vested right...

MR. SULLIVAN

No.

HEARINGS OFFICER

How could he ...

MR. SULLIVAN

He didn't make an observation on it. I'm not saying that. I'm saying this is our position, these are vested.

HEARINGS OFFICER

I understood you, going through now your version, I think that's in the 1994 decision.

MR. SULLIVAN

All right, and I'll be more careful in saying that you did not make an observation on the vested right status. We note for this case that no new kennel may be established in high value farm land; however expansion of existing kennels may be approved. And that's the basis for our expansion of non-conforming use. We believe that with the Conditions of Approval suggested by the applicant the . . . particularly those relating to noise barriers . . . the impact of the use on neighboring properties would be reduced.

We also believe that the baseline for calculating impacts on the neighborhood relates solely to lawful uses. The principle, and we believe the only objector, and I don't believe they are present here today, in the neighborhood, is a duck club next door, which we believe has unlawful structures and uses on its site. The structure that was applied for, that you saw in Mr. Hall's picture, was taken out as an agricultural barn. It's not being used for that. There is no conditional use for any sort of private recreational facility.

HEARINGS OFFICER

Are you talking about the duck club?

MR. SULLIVAN

That's correct.

HEARINGS OFFICER

Does that have anything to do with...

MR. SULLIVAN

It does when you have to look at its effect on uses in the neighborhood under 215.130 sub 6 through 9.

HEARINGS OFFICER

Okay.

MR. SULLIVAN

Staff finds that, with the exception of two peripheral policies, which we have since addressed in a supplemental report which you'll hear from Mr. Winterowd, that Tim and Angela meet the County's Conditional Use Permit standards and can convert their non-conforming use into a conforming use.

We also suggest to you that the conflict between OAR 660 Chapter 33, and ORS 215 283 Sub 2(m) is apparent. The statutes allow the uses, the OARs do not. We believe that LCDC cannot override the legislature's clear determination that it is for counties and not LCDC to decide on the location of non farm uses in EFU zones.

Now, I've switched our presentation around. There are a number of people here who have come a long way and beyond those of us who are paid to be here want to be able to speak.

HEARINGS OFFICER

Hold on. Hold on. Something has been rattling around in my head.

MR. SULLIVAN

Go ahead.

HEARINGS OFFICER

You say, as a general matter, if there is a denial of a permit and there is no appeal and no ...effect, what then would prevent an applicant such as yourself, from the day after Mr. Grillo denied the permit to apply again... Okay, is it your position that you can reapply the day after ...

MR. SULLIVAN

Unless there is...

HEARINGS OFFICER

So there has to be appropriate issues and your exclusive remedy is to appeal.

MR. SULLIVAN

Or putting a six month or a one year provision against reapplication...

HEARINGS OFFICER

So you can't read then anything out of the fact that your client tried to appeal.

MR. SULLIVAN

I would rather it hadn't happened.

HEARINGS OFFICER

Well, it's unfortunate.

MR. SULLIVAN

That's right

HEARINGS OFFICER

Those...happen.

MR. SULLIVAN

And that's why we're here.

HEARINGS OFFICER

I just want to understand, because what you're telling me is that if a permit is granted everybody has to appeal or that's it. But you're telling me on the other hand that if the permit is denied, you can just reapply the next day as though it's a new day.

MR. SULLIVAN

I'm saying that because once a permit grants and is acted upon, it receives a different status regardless of the rightness or wrongness of the interpretation of the law. On the other hand, if it's denied, there is no vested right. The County retains its ability to redetermine its policy.

HEARINGS OFFICER

...follow that argument. You're going to have to give me ...

MR. SULLIVAN

I'll do some research. You'll get something from us by the time that you decide. As I've said, the Schillereffs and Mr. Winterowd, Mr. Eisemann and myself will wait until the end for any further comments. I would like to have folks in the area testify. That's a little bit out of order.

HEARINGS OFFICER

One more thing.

MR. SULLIVAN

Yes.

HEARINGS OFFICER

...out of order, but we're here.

MR. SULLIVAN

Sure.

HEARINGS OFFICER

You started telling me reasons why Mr. Grillo's decision was wrong....And what I've got written down is that the 1990 permits bind everybody and we missed that fact. What else about his decision is analytically...

MR. SULLIVAN

I think we did, as I said before, I don't think we needed to reach the issue of the design review on anything except the fact that there was no written conditional use permit, and no non-conforming use proved in those proceedings. It didn't need to say that the underlying use was unlawful.

HEARINGS OFFICER

So he only needed to...

MR. SULLIVAN

A predicate, an operative predicate for the design review which was an underlying permit. Now he could also be running the law on the interpretation of 2028, and I've suggested that here. But there are three different

HEARINGS OFFICER

So he didn't, you're saying he didn't need to say it was unlawful.

MR. SULLIVAN

That's correct.

HEARINGS OFFICER

But that doesn't, but the fact that he did, according to your thesis, an appeal doesn't bind anybody.

MR. SULLIVAN

Correct.

HEARINGS OFFICER

Okay, I'm done upsetting you.

MR. SULLIVAN

Thank you very much. No that's all right. And whatever rebuttal time we'll make some observations on the Derr letter which I received this morning.

HEARINGS OFFICER

Okay. Anybody else in favor here?

FRED GRANATA

My name is Fred Granata, spelled G R A N A T A. My address is 700 S.W. Taylor, Suite 401, Portland, Oregon. I represented the applicant in 1993 [sic] concerning the watchman's house. Excuse me, I've got something caught in my throat. I don't know why.

In any case there, I can't add a lot to what has already been said without being duplicative. I can only say that the matter of the use of the property, the conditional use, the prior to 1964 use was thoroughly discussed by Marquam Farms who occupied most of the time at the hearing. And it's not a matter of first impression with them, either in the last hearing before Mr. Grillo or currently. And that's thoroughly hashed out and discussed. And that interpretation as stated in the report was the one adopted at that hearing and on which the eventual decision was predicated

HEARINGS OFFICER

There were two 1990 proceedings.

MR. GRANATA

I only one went to hearing, if I recall.

HEARINGS OFFICER

Okay, in the staff report, I'm looking on page three of the staff report . . .

MR. GRANATA

Mine was the one concerning the watchman's residence.

HEARINGS OFFICER

That would have been the conditional use.

MR. GRANATA

Yes. I believe that was the only one that went to hearing, but I'm not familiar with the other one.

HEARINGS OFFICER

Okay, I guess I've got that file here on that. What I'm interested in, I guess, from you would be something that's not, something that I can't read in there.

MR. GRANATA

Yes.

HEARINGS OFFICER

As opposed to your historical recollection or interpretation.

MR. GRANATA

I'll do my best from five years back.

HEARINGS OFFICER

Go ahead. Let me understand the, the conditional use proceeding in 1990, and I've read the '90 and '94 files but you know, they're sitting here and I ... Other than the watchman's residence, what sort of, was the question of the lawfulness of kennels themselves even debated or was it just the . . .

MR. GRANATA

Yes, it was debated.

HEARINGS OFFICER

It was debated ...

MR. GRANATA

And the report I believe was first . . .

HEARINGS OFFICER

Is that the hearing in which one of the Planning Commission members said is this a lawful use?

MR. GRANATA

In the first place, they described the history of the applicants application, going back to 1990, or '89, when they first filed a request for a conditional use, and how they explained that one was not needed because of their interpretation of the pertinent section cited by Mr. Sullivan, that this use existed previously and . . .

HEARINGS OFFICER

Okay. In your involvement did anybody raise the question, where is the permit for the kennel?

MR. GRANATA

I don't recall.

HEARINGS OFFICER

That was a . . .

MR. GRANATA

You mean the permit, by that . . .

HEARINGS OFFICER

It seems to me . . .

MR. GRANATA

Do you mean a building permit? What permit are you . . .

HEARINGS OFFICER

The conditional use permit for the kennel. If there is, if you've got a proceeding, I believe in 1990 . . .

MR. GRANATA

I believe the kennel was constructed before the zoning even existed.

HEARINGS OFFICER

But did the question come up about where is the permit?

MR. GRANATA

I don't think so, but I must say I don't recall.

HEARINGS OFFICER

Okay.

MR. GRANATA

Going back on my recollection, I don't think, the question was not propounded to me in any case.

HEARINGS OFFICER

Okay.

MR. GRANATA

So unless you have further questions . . .

HEARINGS OFFICER

Well I don't really. To me, that seems to be the beginning of when you were involved...

MR. GRANATA

Yes.

HEARINGS OFFICER

... The question is, was the... conditional use essentially given that everybody assumed the permits were issued. Or was it something that nobody thought about which to me is significantly different issue. If nobody thought about it . .

MR. GRANATA

It was thought about in terms of the historical use of this property.

HEARINGS OFFICER

I understand your testimony. Do you know of the order . . .

MR. GRANATA

And interpretation of the order.

HEARINGS OFFICER

...

MR. GRANATA

Certainly it was, the issue as such, the interpretation was part of a larger debatable issue brought out by Mr. Maring as I recall.

HEARINGS OFFICER

Did you assume those were valid conditional use permits...

MR. GRANATA

I assumed when I entered the hearing, yes sir.

HEARINGS OFFICER

And why was that?

MR. GRANATA

Because the issue was not joined at that time. No one was challenging us in respect of the validity of the use. We were concerned primarily with things such as design review. And the issue was then raised at the hearing for the first time, in my memory. And I had to familiarize myself with it as I was sitting there.

HEARINGS OFFICER

Okay.

MR. GRANATA

Thanks.

HEARINGS OFFICER

Thank you.

MR. GRANATA

And I believe ...my staff if I recall, explaining why this was a . . .

HEARINGS OFFICER

I remember something came up.

MR. GRANATA

I don't think Mr. Maring of Marquam Farms raised the issue, which is a rather sophisticated one, I believe it came up through staff.

HEARINGS OFFICER

That's what I recall. Thank you. Anybody else wish to speak? Now's your chance. You're speaking in favor now, is that what you're doing?

MR. DAVIS

Yes.

HEARINGS OFFICER

Let me remind you that I'm very familiar with the staff report and my cautionary reminder at the onset, so what I'd like you to do is to very specifically to, we've got sort of procedural substantive issues here.

MR. DAVIS

Okay.

HEARINGS OFFICER

If you're going to speak on substantive issues, the criteria issues, be very specific as to what criteria. If it's procedural issues be as specific as you can about that, too.

MR. DAVIS

Procedural issues I wouldn't attempt to get into. My name is Peter Davis. I'm a veterinarian, a Sauvie Island resident. I would like to speak as a resident.

HEARINGS OFFICER

Okay. What's your address?

MR. DAVIS

14213 NW. Charleton Road. I speak as an Island resident and as a person concerned with, very concerned with land use and development. As a small animal veterinarian boarding facility, as a wildlife rehabilitator and as a duck hunter, I have watched this kennel from the beginning.

HEARINGS OFFICER

Beginning when?

MR. DAVIS

From the beginning of Tim and Angela Schillereffs' involvement. I have been extremely impressed with animal service, but the quality of the service and the quality of the care. With the way this, as you can see that picture, the way this facility fits into the surrounding landscape, and in fact pretty well disappears into the surrounding landscape. It's a very small portion of land and is scarcely visible. And I know that the surrounding neighbors, except for the...noise, this sort of thing. The quality of the facility, as far as any regulations are concerned, they have always been first class. My association, as far as medical care and this sort of thing, Angela has always been first class. The opinion that I get from my clients who go there, everybody is extremely satisfied with the continued operation of the facility.

As a general philosophy I am extremely opposed to development or expansion. It's not an agricultural use. I find that this is really an appropriate use of the existing use on the

property. As a duck hunter and wildlife rehabilitator that the concern that this would somehow effectively surround a duck club, ... number of times during the duck season, have been able to look out the window of the kennel and see a flock of geese within shotgun range of the building... Dogs barking notwithstanding, vehicles coming and going, whatever, the geese are easily within the shotgun range of the facility and they are not bothered in the least. A duck club that hunts its property seven days out of the week, week in and week out during the duck season...because they never allow the birds to...and after a while those birds are going to show up there. If the duck hunting is being impacted, it's not being impacted by the presence of the kennel. It's being impacted by, really more than anything, the duck hunter.

HEARINGS OFFICER

Do you work for the other kennels in the area?

MR. DAVIS

Yes. Tim and Angela's business has taken off astronomically compared to anything you would have expected. And the quality of their care is as good or better as any I've ever...

HEARINGS OFFICER

Okay. Thank you.

KENT MEYER

My name is Kent Meyer, I live at 19544 NW. Sauvie Island Road, Portland Oregon.

HEARINGS OFFICER

Is it Kent or Ken?

MR. MEYER

Kent. K E N T. M E Y E R. My property is probably seven miles from where Sauvie Island Kennel is.

[end of side one tape 2]

[side two is blank through the end]

tape three

MALE

As I said, I'm not a personal friend of either Tim or Angela Schillereffs or either of their families. I know them both. Tim Schillereff went to school with one of my sons, that's the reason I know him. I know of the kennel because he worked, prior to owning his own kennel, he worked for one of the kennels on the Island where I used to board one of our pet dogs. And I knew Tim was there and I heard that Tim had started a kennel some seven or eight years ago, and I was sort of proud. Because I think whenever a young person ventures out to give up the weekly paycheck in pursuit of the American dream. I think they deserve some credit.

I've written a letter which I'd like to read and then make several comments if that would be permissible.

HEARINGS OFFICER

Sure.

MR. MEYER

It's to Multnomah County Planning Commission, regarding the case. Dear Sir, Please use this letter as my recommendation for the approval of the above application to increase the size of Sauvie Island Kennels. Tim and Angela Schillereff have operated Sauvie Island Kennels for the past eight years, and a kennel has been on the property since the early 1950's. Marquam Lake Farms, which owns the property adjacent to Sauvie Island Kennel, is opposing the expansion and operation of the kennel. This group is composed of lawyers, doctors, professionals and businessmen who do not reside on Sauvie Island. Their only connection to Sauvie Island is they operate a duck and goose hunting club. Marquam Lake Farms hunt their lake every day of this hunting season. This type of operation of a duck and goose club will ruin a duck lake in a very short time. I'm personally familiar with the owners of six duck lakes and duck clubs on Sauvie Island and none of those individuals who allow those who hunt their lake or rent their lake, hunt more than two to three days per week. Even the Oregon State Fish and Wildlife only allows hunting on their land three days per week. Marquam Lake Farms apparently has no regard for the proper wildlife management. Their only aim appears to be to kill as many ducks and geese as quickly as they can, and then when their lakes are hunted out, look for someone else to blame.

Our family has resided on Sauvie Island for 36 years. We own collectively 163 acres. For all of these thirty six years we have rented a portion of our property to Mr. Ed Minoggie, who operates Minoggie Kennels and has the capacity to board and train approximately 60 to 70 dogs. On our 163 acres we have two lakes, the largest encompasses approximately two and a half acres. We do not hunt ducks or geese on this lake, as it is located in the front of our property and is used primarily for scenic value. However, this lake is located approximately 150 to 175 feet from Minoggie Kennels. At any time during the winter, fall or part of the spring season there are from fifty to two hundred wild ducks or geese on the lakes and surrounding area. In addition there are ten to twelve deer that continuously feed and move around our lake, our neighbors property, into the Wapito Park across the road. The operation

of a dog kennel in no way effects the wildlife close by. I would urge your support of the application to enlarge the kennel.

HEARINGS OFFICER

And would you leave that.

MR. MEYER

There it is.

HEARINGS OFFICER

Okay.

MR. MEYER

I think what bothers me more than anything else, and it may not be legally right, is we've got Marquam Lake farms that's owned by, I find in here in the application, thirty people. They are trying to stop the Schillereffs out of business.

HEARINGS OFFICER

Now wait a minute, let's be specific on the criteria here because otherwise it's just going to . .

MR. MEYER

Okay, I understand. But that's what they are trying to do. They are trying to put them out of business by appeals. I'm a small businessman. I started my own business fifteen years ago. I know what it take to do it. I know the seventeen, eighteen hour days. I know all the problems of meeting the payroll and doing all the things that the Schillereffs have to do. And they have the Marquam Lake Farms after them. They are filing law suits on them, they are appealing all and anything they can to drive them out of business because they are trying to blame that the dogs bother their duck hunting. And I think it's unfair and I don't know whether you can consider that, I'm not saying that you have to consider that. But I think it's a travesty with what's being done. Because if somebody decides to come after me and my business and wants to do it bad enough and put up the money, they can drive me out of business just with legal fees, and a hundred dollars here for this assessment, and so much for each page of transcript, and on and on and on. And they'll run you right out of business. And that's what they are trying to do. I think it's a real shame. The Schillereffs have been there for a long time. There has been a kennel there for as long as I can remember. There's kennels all over the Island, I can think of at least five people that have kennels right now, and another five who train dogs on their property for sale to private individuals.

HEARINGS OFFICER

I understand what you're saying, let me just tell you that I'm, I'm not telling you I'm not sympathetic but I'm not sure ...

MR. MEYER

Sure.

HEARINGS OFFICER

Because regardless of what Marquam Farms has done, it's the Hearings Officers decision of last August that has sort of gotten us to this point.

MR. MEYER

Sure.

HEARINGS OFFICER

So the decision and not so much, the Hearings Officer might not have agreed with Marquam Farms, we might not be saying all this,

MR. MEYER

I understand.

HEARINGS OFFICER

It's not going to affect me.

MR. MEYER

I understand. Okay. I do think it's very important that being as much as Sauvie Island Kennels has been there, and very honestly I have to tell you this is the first time I've seen this application and read through it, thirty-one pages very quickly this morning, but it just appears that if you want to be fair about something, you have to take into consideration that they were there. What's gone on with the County I don't know, cause you hear all kinds of stories. But I actually feel that they should be there and my main concern was to be here today to tell you that we do have a kennel on our property and have had, it's been there for forty-one years, and it absolutely does not bother the wildlife. There is no, we have geese and ducks on our lake all year round.

HEARINGS OFFICER

Don't tell us your kennel's not permitted.

MR. MEYER

It's not my kennel, I don't own the kennel, thank God, I just own the property. Okay? Thank you very much.

BRUCE CAVELLRO

I'm Bruce Cabbellero. I live at 12408 NW Alderview, that's off of Highway 30, close to Sauvie Island. I sent you a letter.

HEARINGS OFFICER

Is it dated September 1st...?

MR. CAVELLERO

Yes and . . .

HEARINGS OFFICER

Hold on a second... staff report, I said in the onset I haven't received anything, and I hadn't directly. This is, however there is a letter from you, it's already in the file here. Just so everybody knows. Okay.

MR. CAVELLERO

Well, what I wanted to say, I'm friends with Angela and Tim. I've used their facilities also and I feel that for as long as I can remember there has been a, it seems to me there was a kennel on this site. We need facilities like this, and this seems to be a good location because it already exists. And I feel that should really be taken into consideration. And also I'm a duck hunter, I've hunted Sauvie Island and Scappoose for quite a few years and I have hunted in Scappoose with an adjacent property to Brown's Kennels and I have not ever noticed any problem with the wildlife or waterfowl coming in because of dogs barking and being in the kennel there. Also I have, I hunt in the vicinity, and have hunted in the vicinity of Schillereffs kennels and I don't feel that is a legitimate concern of noise of animals contributing to bad hunting on the adjacent property.

Basically I think the County should, I would like to see the County take into consideration that there has been kennel there and it has been existing, and to look at it on that in your decision on this permit.

HEARINGS OFFICER

Okay.

MR. CAVELLERO

Thank you.

HEARINGS OFFICER

Thank you.

DOUG JOHNSTON

Hello.

HEARINGS OFFICER

Hi.

MR. JOHNSTON

I'm Doug Johnston. I'm a customer and a friend of Sauvie Island Kennels. I am president of the Cascade Hunter Club and since I need to pay my bills, I'm also the Director of General Services for Clark County.

HEARINGS OFFICER

What is your address.

MR. JOHNSTON

My address is 4508 NW. 127th Street, Vancouver Washington. After listening to Mr. Sullivan and yourself thread your way through the ORS's and the code and the administrative code, I don't want to get into any depth there. However one of the reasons I, this application seems to be denied is a lack of proof for a one year period, after thirty-three years of continuous use on the non-conforming, based on the DR94-4. Granted the Multnomah County Code ORS, requires the burden of proof to fall on the applicants, but given the preponderance of documentation that was provided over thirty three years continuous use, failure to find documentation for one year back in 1962, I feel is an unreasonable demand on the part of the County.

HEARINGS OFFICER

Were you...early 60's?

MR. JOHNSTON

No I was not.

HEARINGS OFFICER

Unfortunately it's, you're free to say what you want now within certain limits. But I want it to be helpful and fruitful...It wasn't my decision last year, there was an evidentiary gap there and I don't...now

MR. JOHNSTON

No.

HEARINGS OFFICER

Okay.

MR. JOHNSTON

I feel though that the evidentiary gap, that long ago and that short of period is an unreasonable demand.

Secondly, given the history of Multnomah County's actions, based on the actions I've seen, my...across the river. I think I'd be very hesitant to exercise my right to be wrong at this point. I think the Board of Commissioners would support that.

And finally, and in a more philosophical approach, and I'll try to be brief, Sauvie Island and kennels of their type support responsible pet ownership. This is a stated goal of the Multnomah County Commissioners, it obviously helps them reduce costs for animal control, keeps the livability of Portland in a better light. Sauvie Island Kennels are part of the solution, not part of the problem. Portland needs more facilities like this. And I would hope, given the reasonableness of all three of these items, that you as a hearing examiner would feel that you have the latitude to use that reasonableness, as I believe the Board would, in finding in favor of the Schillereffs. Thanks for listening.

HEARINGS OFFICER

Thank you for your comments. Anybody else in favor, now is the time, it's an open mike.

PATTY LARSEN

My name is Patty Larsen, I live at 17929 NW. St. Helens Road. I am close personal friends with the Persingers. I consider Tim and Angela friends and I use their dog kennel. I have kind of a statement but I also have some observations that came to me while you were discussing all of the legalities of this case. And since this is my one chance to say it, I want to say it.

HEARINGS OFFICER

Okay.

MS. LARSEN

I'm just outraged that a nearly impossible burden of proof for the past life of the kennel is required by the applicant, when income tax records that could prove use are only required to be kept seven years, that many of the owners who could speak for the operations are deceased and that the applicable law...

HEARINGS OFFICER

Did you use the . . .

MS. LARSEN

No, I used . . .

(laughter)

Okay, again, how there can be any question of whether the Schillereffs have a vested interest in this property is beyond me. Even according to retirement plan laws, three years is a limit of time for necessary, to be given a vested interest. By relying on the County's interest they have put a lot money, not to mention their sweat effort into their place. And besides that, they have been damaged by their reliance on the County's decision. Nobody knows better than I do the mental and emotional damage that comes from a case like this. They have been damaged.

And in addition, speak to the noise. Last year Mr. Persinger was in the hospital and I spent the night with Mrs. Persinger, we were up most of the night. We slept some of the night. The dogs did not bark continuously and they didn't keep it up all night. And when I go to pick up my dog, yes, the dogs bark, when we walk out there Tim blows his whistle and addresses the dogs and they are quiet. They are well mannered even though they are not all his dogs. Okay.

This kennel is an asset to the Portland community, it's clean, it's attractive. It's located in an area that does not interfere with nearby home owners. It's used by many, many people as a community resource. Although I live in a rural area and I have a place for my dog, but I have

a dog that requires medical attention two times a day. If I want to go anywhere overnight, I have to make special arrangements for this dog. And I know that when I take my dog to Angela that my dog receives the best care possible. She wouldn't survive in a small box at a veterinarians because her medical condition requires her to be able to move around in a large dog run like the kennels have.

Further, the Schillereffs have been an asset to the Sauvie Island community. They take part in community activities and neighborhood organizations. I feel, and you should be charged to work with, Multnomah County needs to work with the Schillereffs to come up with a workable solution to allow them to continue in a service business that is needed and wanted, in a place that's been their home and their workplace with the Countys blessings, for six years. Thank you.

HEARINGS OFFICER

Any other proponents, anybody wishing to speak in favor?

MR. MEIFERT

My name is Myron Meifert.

HEARINGS OFFICER

How do you spell the last name?

MR. MEIFERT

M E I F E R T. I live at 52745 Honeyman Road in Scappoose Oregon. I used to own that kennel in 1966...grandfather...and before me, Evelyn Blitz had dogs and operated it. And before her, I'm not sure of the dates but, a guy named Scotty owned it. . . .

HEARINGS OFFICER

Okay, so you owned it in '66 you say?

MR. MEIFERT

Later part of '66 for 2 or 3 years, yeah...

HEARINGS OFFICER

You owned it as an active kennel?

MR. MEIFFERT

Yes.

HEARINGS OFFICER

How Many dogs did you run?

MR. MEIFFERT

Up to about 50.

HEARINGS OFFICER

Because of the ownership, what I'm interested in details about the status of the kennel in the '60s.

MR. MEIFERT

It was grandfathered, it wasn't required for a particular license. The only license was for a sign on the road.

HEARINGS OFFICER

Who told you that?

MR. MEIFERT

My attorney, Paul Reeder. That was all that was required.

HEARINGS OFFICER

So you went to the County?

MR. MEIFERT

That was all that was required was for a sign.

HEARINGS OFFICER

So you have a permit for a sign? For what year?

MR. MEIFERT

That was '66 or '67, something like that.

HEARINGS OFFICER

How long did you own it?

MR. MEIFERT

I'm not sure exactly, about 3 years.

HEARINGS OFFICER

So you sold the kennel?

MR. MEIFERT

to ...in about 1969. Something like that.

HEARINGS OFFICER

Did you own the real property too? Or did you just operate the kennels?

MR. MEIFERT

No, I owned the property...

HEARINGS OFFICER

Okay, I just wanted to break in and get that.

MR. MEIFERT

Well that was mainly what I wanted to say, the kennel was operated, it was operated prior to me by Evelyn Blitz. Like I say a guy named Scotty ran it before her. It was built by Roy Wallace and another gentleman out on Deer Island.

HEARINGS OFFICER

I'm listening to you as I do this.... say what you want.

MR. MEIFERT

That's basically it, and as far as my working relationship, I had a good relationship with the neighbors who had the duck club at that time... So that's it.

HEARINGS OFFICER

Okay, thank you.

LINDA REEDER BURNS

My name is Linda Reeder Burns. I currently reside at 23815 NW. ...Road. I have lived on the island all of my life, my family is the Reeder family. My grandfather has duck hunting clubs on Hershey Lake and Sauvie Island Lake since the early 1900s. I grew up around duck hunting and duck hunting management. At that time my grandfather was very conservationist and even though he was a hunter we only allowed people to hunt Monday, Wednesday and Friday, or Saturday, Sunday and Wednesday at that time. Because of bird management.

HEARINGS OFFICER

Where do you live?

MS. FERN

I now live about half a mile from Tim and Angela. I know them as neighbors because we're friends because of living next to them. They are responsible and courteous neighbors. They are responsive to anything that does happen at the kennel. Unless the wind is blowing just right on a quiet day I do not hear the dogs barking. If they do it is for a very limited period of time.

And one point that should be made in their behalf, as far as being part of the community and very involved in the community, is they play an asset and a role that they are across from that wildlife area parking lot that you showed in the slides. People are coming to Sauvie Island by the thousands, every year. It is encouraged by Portland and Multnomah County for people to recreate out on Sauvie Island. In doing so they bring animals to Sauvie Island, and all of us who reside out there currently find stray animals at our doorstep on many occasion. Tim and Angie having the kennel in the location that they are provide an asset to all of us who find animals, as well as those who lose animals, to be able to contact them to find their ...dog or to find a home for the animal. Tim and Angie will shelter those animals to make sure that those animals are not out on the wildlife that you noticed in that parking lot scene. Right across from it there is the lake and the wildlife area, and should those animals run wild...a lot more harm to the wildlife than what Marquam Farms is saying the dog kennel will do.

My husband is also a hunter and he hunts across the street from where Marquam Farms is. We observe their mismanagement and hunting seven days a week. It does upset the birds in their flying place but it does not affect them from the dog kennel. It is a direct result of shooting at birds seven days a week. When they are not allowed to lay in the fields, or not allowed to eat, and anytime you keep chasing them out of somewhere they are not going to return. So it's more poor management on the duck lake part, than any distraction that a dog kennel has in this area.

HEARINGS OFFICER

Thank you. Anybody else speaking in favor?

TIM SCHILLEREFF

I'm Angela Schillereff. This is my husband Tim. Also Elden and Marguerette Persinger are here.

ANGELA SCHILLEREFF

It's hard for me to understand this, I'm sorry (crying).

HEARINGS OFFICER

It's hard for me too.

MS. SCHILLEREFF

I have a stack of stuff here. I feel that there has to be something in here that says we're right.

HEARINGS OFFICER

Well we, the posture of it now is that you're applying for recognition on the conditional use. There are certain County requirements that apply to conditional uses. And if, there is the criteria which apply and I'm sure that you can document the criteria that apply. There is the procedural stuff that you may not be able to alter now, but that's something Mr. Sullivan and I can work out. So what I would focus on if I were you is what you need to do to convince me that the current criteria are fulfilled.

MS. SCHILLEREFF

I can address anything you want me to in the capacity that I have the knowledge to answer.

HEARINGS OFFICER

Well it's not so much what I want you to relate, I've read, I've read the application...I've read the staff report. If you want to add something to that, clarify something that you think is a little fuzzy, this is the time.

MS. SCHILLEREFF

I came prepared to talk about impacts because . . .

HEARINGS OFFICER

Okay.

MS. SCHILLEREFF

But I don't know if I need to. What I want to say, and I have with me here as part of the pile, Tim and I feel like some of the previous speakers have as part of the community. And we want to give back what they've given to us. And I've gone around, I can't physically talk to everybody, a lot of people are on vacation, a lot of people work during the day. And I physically went around the Island and I got over a hundred signatures from people and not one person opposed us. I never heard anyone say we were bad. (crying)

HEARINGS OFFICER

Okay, I'll . . .

MS. SCHILLEREFF

What I'm trying to say is

HEARINGS OFFICER

I'll put these in the record as exhibits.

MS. SCHILLEREFF

Those are all people that live and own property on the Island. I didn't, I could have had all my customers sign, the people that come from town or Vancouver, or from all parts of the State. Our business does not only affect the local community that we live in, but we have clients that fly their dogs to us for my husband's expertise, from Canada, from California and Arizona and all parts of the country. We're trying to do something good, we're not trying to hurt people, and the only person that has ever given us a single bit of grief is ...Marquam Farms. We want to work with people, we don't want to hurt people and . . .

TIM SCHILLEREFF

If I could just interject. I want you to understand that I don't know exactly how many houses there are out on Sauvie Island but getting over a hundred signatures in the week's time that you had, there is probably only like two hundred, two hundred and fifty houses on the Island, and like she's said we haven't had any objection to it. And I also want you to understand that I do train a lot of Marquam Farms...dogs. I've trained them for years, I know a lot of the guys in the club and I don't have any personal problem with any of the guys at the club. I don't know why we are where we are today. I just don't understand. We've complied with everything we've done up there, we've gotten permits for, we've applied for them and now we're the fall guy. And I just don't know how much longer we have to keep fighting. Obviously it has taken a toll on my life.

MS. SCHILLEREFF

All I can say is that everything that we've tried to do for all the properties concerned, we've tried to do everything right...permit, we talked to Bob and Mark Hess and staff here has been so cooperative, and they say this is what you need to do. Give us a hoop. We'll jump through the hoop. That's what we've been trying to do. Now there's no hoops, and we're still trying to jump. And that's why we're trying to do whatever we need to do, because we have everything on line, that's our life there. We did a lot of the work ourselves, we didn't hire people to build the buildings, we built them.

MR. SCHILLEREFF

One other thing that I'd like to say too, Myron Meifert, my uncle who spoke earlier, he knows the history of the kennel as well as anybody, how much do we have to dig up? Myron mentioned that there was a Scotty, the guy that operated the kennel. Nobody is for certain on those dates, okay Scott, this man is probably deceased. How could anybody you know, dig up this evidence. We're, apparently we were supposed to have the burden of proof, how is that? I'm not even as old as that. I can't come up with that kind of evidence. I mean, where do you draw the line? Do you understand what I'm saying?

HEARINGS OFFICER

Oh, I understand what you're saying. A lot of it is sort of water under the bridge. But you know, I will, I'll let you tell me anything you can about, for what it's worth, I'll let you tell me anything you can about the, what occurred in the 60's, early 60's, mid 60's

MR. SCHILLEREFF

All I know is . . .

HEARINGS OFFICER

Go ahead and do it. I'm not representing that I can do a lot with that at this point. That's something I'm going to decide. You know this is your chance so go ahead and tell me anything you know about this.

MS. SCHILLEREFF

I want you to read this letter from . . .

MR. SCHILLEREFF

No you go ahead. But again, you know, I wasn't even alive at that time but I do know that this Scotty person before Evelyn Blitz got the kennel, Evelyn Blitz owned it from Blitz

Weinhard. Okay, before that time I can't give you dates on it, like I said I wasn't around, but before that time Scotty had operated it and I had heard that he had bulldogs out there. Throughout this time I've had customers come out to the kennel and give me little bits and pieces of history. I don't even know these people who dragged them in here.

MS. SCHILLEREFF

I not sure, a concern I have is that you said you received no letters but then you recall receiving a letter from Mr. Cavellero.

HEARINGS OFFICER

No. What I received . . .

MS. SCHILLEREFF

Or was that in the record?

HEARINGS OFFICER

Okay, here's, it is, I'll explain exactly what happened. I got faxed to me yesterday one letter which I went over at the beginning of the hearing.

MS. SCHILLEREFF

Right.

HEARINGS OFFICER

I have the County's file here, and as I'm sitting here looking through it there is...file, there is a letter from a Mr. Rodney ..., dated the 12th...Mr. Cavellero dated the 13th, and there is a letter from a Jim Charlton dated the 12th. It's addressed to me here and I never received it until I got the file. So that's...then I looked at the dates and I was concerned that it post dated the date that the staff report was available. And they do, so I think what I'm going to do, there appears to be three. I guess these are already in the file. What...that was my only comment there, as I open the file up here they are there on top...I should like to tell you...

MS. SCHILLEREFF

Right.

HEARINGS OFFICER

I didn't know they were here until today.

MS. SCHILLEREFF

Well, there are more letters that we hand carried here. And one of the letters I'd like to read is from our next door neighbor, Evy Vetsch. Her and her husband, Richard and Evelyn Vetsch own and operate Vetsch Dairy. And I'll just read their letter real briefly. They've been on the Island a long time and they could tell you a lot of history. She says, "We are owners and operators of Vetsch Dairy located just south of the Schillereffs kennel and the Marquam Farms Corporate Duck Club. The duck club, and the duck club has been at this location since 1949. In the 1950's the dog kennels were built and established by Peter Alphot, (it's A L P H O R T). And the first manager that we can remember was a Scotchman by the name of Mr. Rose. Later Mr. Blitz purchased the property and also operated a dog kennel. Since that time it's always been known as the kennels and operated as such. The Marquam Farms duck club owners knew the kennel was there when they bought their property. We can see no reason that the Schillereffs use of their property as a kennel be terminated and forced to give up the means of making a living. The new plans for the kennel sound like it will make even less of an impact on the ducks, geese and neighbors. Certainly much less than the Marquam Farms duck club does with their trap shooting and wildlife hunting all year long. We recommend that the Planning Commission approve the Schillereffs' property as a non-conforming use as a kennel. As farmers the only option we can see for the use of this small acreage and the use of their present buildings as an exclusive farm use would be to operate a pig farm. In our opinion a good place to board dogs is needed much more. Very sincerely, Richard and Evelyn Vetsch."

Our planner has the original and you can see this is a copy.

HEARINGS OFFICER

It's just one page?

MS. SCHILLEREFF

Yes, it's just one page. They have a wealth of information because they've been living on the Island since the late 1940's. And operating that dairy. And I would feel that if they had a lot of concerns about a kennel that they would be opposed to it. And they are wholeheartedly for us. They know Tim and I are good people just trying to do a good thing. Do you have another one? Oh, okay, there is other letters in the record too that illustrate the fact that we have a lot of people that enjoy the kennel and enjoy wildlife and enjoy duck hunting on the Island. And see it as complimentary uses, and that's the only reason we're talking about duck hunting so much is because that's the only rational we can see that Marquam would oppose us.

MR. SCHILLEREFF

That's why we are sitting here today is because of pressure from the duck club, people who don't even live on Sauvie Island.

HEARINGS OFFICER

While I've got you here let me ask you this. You no doubt read the Hearings Officers decision last August and there was a core finding in there that, there was nothing basically, there was a void between December of '62 and February of '64, so that's just a little bit over a year period.

MS. SCHILLEREFF

I was going to say I don't understand

HEARINGS OFFICER

Well, what if anything can you tell me about that period of time? I mean he didn't, he didn't find that it wasn't used as a kennel. What he, what he concluded was that there was nothing in the record that said what was going on there.

MS. SCHILLEREFF

Right. What that whole basis was, was on this sheet of paper that was hand-written from the County that talksed about the different uses. Tax uses, it was actually the assessors record and present status, and it was talking about the different uses. And there were different owners, and not all of them were even noted as such. I don't know how often, I'm not a, my business is dogs, not talking legal things.

HEARINGS OFFICER

Dogs are easier.

MS. SCHILLEREFF

Yeah.

HEARINGS OFFICER

That's for sure.

MS. SCHILLEREFF

And they love you.

MR. SCHILLEREFF

Could I just ask one thing? What is it . . .

HEARINGS OFFICER

You're not going to tell me the white mice joke are you?

MR. SCHILLEREFF

What is it that we're looking for? Are we looking for, are the kennels there or who operated them? Is that what you're looking for? Because those kennels had to be there for a reason. I mean they were used.

HEARINGS OFFICER

Tell me about that.

MR. SCHILLEREFF

There were kennels there in 1989 when I got there. Those kennels, it's obvious that they have been there since the '50s, by the year of the building.

MS. SCHILLEREFF

If you could see the buildings you'd see the older section are the original buildings.

MR. SCHILLEREFF

We have neighbors who say that they were there. I don't know what else we have to . . .

HEARINGS OFFICER

Well, the law is sort of goofy about this, but what it requires is, for a non-conforming use, I'm sure Mr. Sullivan can explain this to you in depth, ad nauseum. One of the issues last year was, even assuming there was no permitted conditional use, if it's been there since time began it can stay there, under certain circumstances. But, what happens is up to, I've got the record and I'm assuming what you've got in your hand is part of that record, but between December '62 when the Blitz operated the kennel and February '64 when Cortway (Pein) operated the kennel, there is no information in the record concerning the existence and scope of the use. And then he said the County record is silent during this period. So it's not that somebody is saying it wasn't there.

MS. SCHILLEREFF

Right.

HEARINGS OFFICER

What we're saying is we don't know. But the law requires that we account for that period in order to say

MS. SCHILLEREFF

Who is to say if during that period of time the kennels weren't be remodeled, but there were dogs there. Just because there is no record and the people are dead that, the record I show here, Mrs. Blitz is dead and the next occupant was Cortway, they are both deceased. We can't ask them, well who was in between you and how many animals did they have there. And I don't know that this would really help anyway because then Myron Meifert came after them, and he's documented in here as such too. And everything was made out here. It shows that they have the run and he bought it from Evelyn Blitz and he was limited to fifty dogs, and the type of the buildings is a corrugated metal building.

HEARINGS OFFICER

Okay what figure are your reading from?

MS. SCHILLEREFF

This is what County staff gave us.

HEARINGS OFFICER

May I have a copy of that?

MS. SCHILLEREFF

You have a copy of this. That's my copy.

HEARINGS OFFICER

County staff gave this to you?

MS. SCHILLEREFF

Yes.

HEARINGS OFFICER

Do you know whether this was part of an earlier record in last years proceedings?

MS. SCHILLEREFF

I don't know.

MR. SCHILLEREFF

I saw the one when I originally came down to apply for the conditional use permit. That is what the County showed me.

MS. SCHILLEREFF

But it's handwritten all at the same time.

HEARINGS OFFICER

Well, okay, for what it's worth I'm, is this your only copy?

MS. SCHILLEREFF

Yes.

HEARINGS OFFICER

Well I want to make it an exhibit. Cxan we get a copy of that.

MS. SCHILLEREFF

All I'm trying to say is see that's someone's handwriting from ledger cards, I don't know how, I don't know how County, I mean that's the County's business how they keep track of things. But if it was transcribed from one card to another card that's an explanation why there is a gap. Maybe the cards stuck together and he didn't write it down. Maybe it was remodeled. Everyone's dead at, I wasn't even born yet.

HEARINGS OFFICER

Unfortunately the law doesn't deal with maybes very well.

MR. SCHILLEREFF

How can the law account for these people saying that the kennel wasn't there. How can they account for that? That's really all we have to go on.

HEARINGS OFFICER

That's what I'm looking for. What I'm looking for is somebody to tell me that between December '62 and February '64, there was a kennel there in operation in roughly the same format as it was before and immediately after those times.

MS. SCHILLEREFF

Well I guess the hard part I have is trying to, you're saying that there is a gap here, but then we introduced someone here that was here after that gap and it was a proven use. He could tell you that he had the use there, and it's documented there on that same sheet, the paper I gave you.

HEARINGS OFFICER

I understand what you're telling me. What I'm telling you

MS. SCHILLEREFF

But why wasn't he, then why wasn't that use discontinued when he was there? You see, if that gap was a problem why wasn't that addressed back in '66 when Mr. Meifert got there?

HEARINGS OFFICER

Well, nobody raised it until last year. Now, in any event, we're getting, what will be extremely helpful to me is

MS. SCHILLEREFF

I guess the bottom line for me if I could, the one thing that I can relay for my husband and I, we've put our blood, sweat and tears into that place. Everything that we've ever wanted to do, it's kind of been our dream to have our own business and to be successful at that and I found we were.

MR. SCHILLEREFF

I just want to say one more thing, probably if anybody does know about the existence of that kennel it would be my uncle Red, and his 90th birthday is tomorrow. I really don't want to put him into this. And we did the same thing, when we were under Mr. Grillo and I felt that our decision swayed on that. I don't feel it's right to put him into this. This is stressful.

HEARINGS OFFICER

Well, the decision is yours and I am really interested in what happened in that time period, and all I can tell you, when it says, when this decision says the record is

MR. SCHILLEREFF

Well he was there, he knows that. That's all he, nobody is going to give you a record.

HEARINGS OFFICER

Maybe we ought to finish it off with this comment.

MR. SCHILLEREFF

Okay.

HEARINGS OFFICER

When he says the record is silent during this period, I can't do anything except be bound by that silence. I can't add anything. I can't surmise anything so if it's a mystery to you why we can't leap that chasm, it's just that I can't do it. And Mr. Grillo couldn't do it. And we've come to that point and if there is nothing there, there is nothing in the record. And that's sort of, that's the problem we've got. And that's why I'm interested in hearing if there is, you know, somebody can say, yeah, there was a kennel in operation during that time, it's only about a year period.

MR. SCHILLEREFF

That's all you're looking for him to say is that there was a kennel in operation during that time.

HEARINGS OFFICER

Well, somebody to say it. There is nothing, so far nobody has said anything.

MR. SCHILLEREFF

Okay, I'll sit with my uncle then and he'll talk about it. You'll have to speak loud if you have a question, he's real hard of hearing.

HEARINGS OFFICER

Okay. Can you give us your name?

MR. SCHILLEREFF

Tell them your name and your address.

MR. PERSINGER

Elden D. Persinger, 23200 NW Reeder Road.

HEARINGS OFFICER

What I'll do is, given the circumstances, you can ask him the pertinent question okay, rather than him having to deal with me. So you know what the pertinent questions are. If I have any questions I'll jump in.

MR. SCHILLEREFF

What they want to know is the history of the kennels. Were there always dogs in the kennels. And from what year did the kennel start?

MR. PERSINGER

Theres been dogs there, 3, 4, 5, dogs all the time.

HEARINGS OFFICER

When did you? What I would like to find out is his relationship with the kennels, when.

MR. SCHILLEREFF

How were you associated with the kennel, did you know these people that operated the kennel. Did you know the Scotchman?

MR. PERSINGER

Yes.

HEARINGS OFFICER

What time period?

MR. SCHILLEREFF

What, do you have any idea what year that was. Like '50, '55? Do you have any recollection of the year.

MR. PERSINGER

Not at that time

MR. SCHILLEREFF

Did you know Roy Wallace?

MR. PERSINGER

I met him.

MR. SCHILLEREFF

You farmed the property for him, is that what you did?

HEARINGS OFFICER

Okay, what would be really helpful is if he can recall what was going on in the early '60's, specifically '62 to '64.

MR. SCHILLEREFF

Do you remember when Blitz had the kennel? Do you remember Evelyn Blitz?

MR. PERSINGER

Yes.

MR. SCHILLEREFF

And the years that she was there, like from '62 to '64. Was that when she was there?

MR. PERSINGER

Longer than that.

HEARINGS OFFICER

Miss Blitz owned the kennel, she ran the kennel before 1962?

[end of tape three side one]

How many dogs were out there in the 50's or 60's?

MR. SCHILLEREFF

How many dogs would you say were out there in the late fifties, early sixties?

MR. PERSINGER

It was full.

HEARINGS OFFICER

What does that mean?

MR. SCHILLEREFF

At that time there was 32 kennels out there, they are the ones that made it...

HEARINGS OFFICER

32 kennel in the period of the 60's?

MR. SCHILLEREFF

There was 32 kennels in what years? What year was that?

MR. PERSINGER

I don't remember.

HEARINGS OFFICER

Does he know who Cortway (Pein) is?

MR. SCHILLEREFF

Did you know who Cortway (Pein) was? Bull dog guy?

MR. PERSINGER

He was a dog trainer.

HEARINGS OFFICER

I missed that, what did he say?

MR. SCHILLEREFFS

He was a dog trainer.

HEARINGS OFFICER

Was he familiar with Cortway (Pein)? Was it Mr. Pein...I was just looking at the decision, who was Pein, who is Pein . . .

MR. SCHILLEREFF

Do you know what Pein was, was it a person or? I don't.

HEARINGS OFFICER

Ask him if he remembers any transition in ownership between Blitz and Pein.

MR. SCHILLEREFF

Do you know any change at all in ownership between Blitz and Courtway?

MR. PERSINGER

...

MR. SCHILLEREFF

I'm not sure he understands.

HEARINGS OFFICER

I'm just interested in his recollection of the early 60's. Unfortunately you know, I can't make it any more specific.

MR. SCHILLEREFF

He's the bull dog guy.

MR. PERSINGER

Oh yeah...

MR. SCHILLEREFF

That's the Scotchman.

MR. PERSINGER

I was there during hunting season, see, I shot where Marquam Farms is now. For, well Pein had it, Dondo had it. It was built in '50. The barn in '50.

MR. SCHILLEREFF

Dondo was the adjoining neighbor.

HEARINGS OFFICER

Okay, was he hunting there in the '60's?

MR. SCHILLEREFF

Yes he just said he had hunted it since the 50s.

HEARINGS OFFICER

From what period?

MR. PERSINGER

Till about . . .

MR. SCHILLEREFF

He has an honorary membership, supposedly for life, from Marquam Farms, because of the works he's done for them.

HEARINGS OFFICER

But was he hunting there in the '60's?

MR. SCHILLEREFF

Yes. I know that for a fact.

MR. PERSINGER

Yes.

HEARINGS OFFICER

I need to know if he remembers a kennel being there in the early sixties.

MR. PERSINGER

Yes.

HEARINGS OFFICER

And what size?

MR. PERSINGER

I remember it when...

MR. SCHILLEREFF

What size was the kennel there?

MR. PERSINGER

It was as large as it is now.

MR. SCHILLEREFF

So, thirty-two kennels.

MR. PERSHINGER

That's right. When it started, let's see, he had I think about...show dogs...

HEARINGS OFFICER

Okay, well that's somewhat helpful. If you can get more specific fine, if not that's what we can do.

MR. SCHILLEREFF

Well I really don't know what else he can say.

HEARINGS OFFICER

Yeah.

MR. SCHILLEREFF

Because he's saying he saw it.

HEARINGS OFFICER

I know it's a long time ago.

MR. SCHILLEREFF

What year did you start hunting the duck club? Do you remember that?

FEMALE

About 1948.

MR. SCHILLEREFF

Okay, were you out there all the years, from 1948 until now duck hunting?

FEMALE

Yes.

HEARINGS OFFICER

Now wait, we want your name in the record.

MARGUERETTE PERSINGER

I'm Marguerette Persinger. Same address as Elden.

HEARINGS OFFICER

Okay. Well have a seat here. Why don't you pull the microphone over. Tell me what you know about the period between December '62 and February '64, and I know you probably can't remember those exact times.

MRS. PERSINGER

I know he hunted, and I took care of the moorage while he was hunting. I remember it well.

HEARINGS OFFICER

In those years? Is it that you can remember that time span or was this some time ago?

MRS. PERSINGER

He bought the moorage in 1948 and I don't know if he started hunting in '48 or '50, but he hunted every year after that. And not only that, he took care of the duck club, he took care of the land, he saw that it was tilled, it was planted.

HEARINGS OFFICER

Okay, were you ever in a position where you saw the kennel?

MRS. PERSINGER

Oh yeah, I saw the kennels.

HEARINGS OFFICER

Did you see them? You tell me who Blitz was.

MRS. PERSINGER

Well, Evelyn Blitz, I remember when she was running the kennel and she wasn't too happy about duck hunters being around there. She didn't particularly like to have Red hunting over there, but he hunted just the same.

HEARINGS OFFICER

Okay, now tell me who Pein is.

MRS. PERSINGER

I don't know that.

HEARINGS OFFICER

As you're coming to the time when Blitz ceased to operate the kennel.

MRS. PERSINGER

Well she sold it to, Myron bought it from Blitz I think.

HEARINGS OFFICER

When was that?

MRS. PERSINGER

When was it?

MALE

19... Courtway was the scotchman...

MRS. PERSINGER

Yeah, well I heard about it.

MALE

...

HEARINGS OFFICER

Okay, I guess what's helpful to me is did you see the kennels in this critical time period between December '62 and February '64?

MRS. PERSINGER

I certainly did.

HEARINGS OFFICER

How many were there? How many dogs would it hold?

MRS. PERSINGER

Well I didn't count them. I didn't know at the time but they tell me was 32.

HEARINGS OFFICER

Who told you it was 32?

MRS. PERSINGER

Myron.

HEARINGS OFFICER

So you saw the kennels.

MRS. PERSINGER

Yes.

HEARINGS OFFICER

And it wasn't because you were using them, it was because you were assisting duck hunters.

MRS. PERSINGER

Because Red was hunting there and he enjoyed the hunting and I was over there from time to time and after Pein* bought it from Dondo I was over there a lot.

HEARINGS OFFICER

Okay. Well unless you can be more specific, and I understand...so that's all I'm interested in. If that's it, that's it and that's fine.

MRS. PERSINGER

Well, the kennels were there in '62.

HEARINGS OFFICER

You saw them there.

MRS. PERSINGER

They were there much before that.

HEARINGS OFFICER

Well, all right, everybody agrees on that.

MRS. PERSINGER

And they were called Lone Tree Kennel. Lake Tree Kennel or Lone Tree Kennel, something like that.

HEARINGS OFFICER

Okay, well thank you. We're going to take about a fifteen minute break here. It's five till one on that clock. Let's reconvene at ten after.

[Recess]

Okay, we're back on record. Could I get the spelling of your last name while you're here?

MRS. PERSINGER

P E R S I N G E R. S I N G E R.

HEARINGS OFFICER

Oh, I did it right okay. Okay we're back on the record. Mrs. Persinger do you have any additional comments that

MRS. PERSINGER

Yeah, I think there is a couple of points that I want to make clear. One is, did you know the Scotchman?

MR. PERSINGER

Yes.

MRS. PERSINGER

Okay, tell him about him.

HEARINGS OFFICER

Tell me who the Scotchman is.

MRS. PERSINGER

He wanted to know when it was that you knew him, he said I was there when the Scotchman got pinched for hunting on the reserve...find out.

HEARINGS OFFICER

Who is the Scotchman?

MR. PERSINGER

He's the owner, the owner of the kennel. Either owner or he leased. Maybe he leased.

MRS. PERSINGER

Right. He want's his last name. Did you ever hear his last name?

MR. PERSINGER

No, oh wait a minute.

MRS. PERSINGER

Was it Pein?

MR. HALL

Could staff interfere? You have a letter in your file from... who indicates the Scots last name was Rose.

HEARINGS OFFICER

Oh, okay. That's one of the exhibits...

MR. SCHILLEREFF

One thing that I might say is I've never in all the time that I've been there I've heard a lot of different people...I never heard of Courtway or whatever... I've never heard of that. And the other thing is two, that kind of conflicted here is that it looks, it appears to us that Evelyn Blitz ran that kennel between '62 and '64, the time in question, not the Scotsman. Roy Wallace built that kennel, but he never did operate the kennel. Roy Wallace's kennel was out on Deer Island. And from the time Roy Wallace built that kennel he leased it to the Scotsman, but that was not in the time in question. Evelyn Blitz ran that kennel during that time. Is that right?

MR. PERSINGER

Right.

MR. SCHILLEREFF

So I don't . . .

HEARINGS OFFICER

Was that during the early '60's?

MR. SCHILLEREFF

During, yes . . .

MR. PERSINGER

There was another guy, I don't know what his name was, before Evelyn.

HEARINGS OFFICER

Well, we may have a problem between ownership and operation.

MR. SCHILLEREFF

Yeah, and that's true too because there may have been people running the kennel, although people may have owned it; there may have been different people running it. There is no way to find that out.

HEARINGS OFFICER

Okay, so what's the significance of the Scotsman? Why is he significant?

MR. SCHILLEREFF

The Scotsman is the one who originally ran that kennel from day one. Roy Wallace built it. Roy Wallace put it there.

HEARINGS OFFICER

Well the Scotsman ran it until . . .

MR. SCHILLEREFF

He rented the kennel and ran it until probably I would say 1960. Now that's a guess, but the time in question Evelyn Blitz ran it, between 1962 and '64.

MR. PERSINGER

...

MR. SCHILLEREFF

Well between the time in question.

MR. PERSINGER

Oh, yeah.

HEARINGS OFFICER

That's sort of repetitive for what the prior record seems to show... there's a fourteen month gap That's why I am. I know its really hard at this late date.

MR. SCHILLEREFF

Right.

MRS. PERSINGER

I want to ask him one more question.

HEARINGS OFFICER

Okay.

MRS. PERSINGER

All the time that you were hunting there, the kennel was there, were there dogs in the kennel?

MR. PERSINGER

Not the first year.

MR. SCHILLEREFF

You were there.

MR. PERSINGER

Yeah, I was there, 1950.

MR. SCHILLEREFF

Right.

MRS. PERSINGER

Were you there?

MR. SCHILLEREFF

The kennel was put there in about '54.

MR. PERSINGER

...built the barn in 1950, a pole shed.

HEARINGS OFFICER

Okay, so I understand that the kennels were always there.

MR. PERSINGER

The kennel was there then if I'm not . . .

HEARINGS OFFICER

But when did you last hunt there?

MR. PERSINGER

...

MR. SCHILLEREFF

When did you last hunt there?

MR. PERSINGER

About five years ago.

HEARINGS OFFICER

Five years ago?

MR. PERSINGER

When Marquam Farms traded men, they traded me too.

MRS. PERSINGER

And then their hunting went down hill and they blamed it on the dog kennel. But all the people that know, know the reason they had good hunting was because Red run the farm for them.

MR. PERSINGER

Well, here's the thing. I hunted down there when the Scotchman was there, and there was another young fellow had that, well I never got his name.

MR. SCHILLEREFF

That was probably just an operator, not the owner. The Scotsman is the one that owned the ...kennel.

MR. PERSINGER

Well...

HEARINGS OFFICER

Well, I don't want to cut you off but I think we sort of beat this one to death here.

MRS. PERSINGER

One more thing. He wanted to know if the kennel was there in '62, was there dogs in the kennel, was somebody running the dogs...

MR. PERSINGER

It was full...

HEARINGS OFFICER

Okay, thank you.

ERIC EISEMANN

Good afternoon.

HEARINGS OFFICER

Hi. Good afternoon. It is after noon.

ERIC EISEMANN

My name is Eric Eisemann. I work for Winterowd Planning Services.

HEARINGS OFFICER

How do you spell your last name?

MR. EISEMANN

My last name is spelled E I S E M A N N . I work for Winterowd Planning Services, 700 N. Hayden Island Drive. Suite number 385, Portland, 97217.

What I'd like to address is something that we touched on at the very beginning of the hearing. And I'd like to focus my comments very narrowly on that. And what I would like to try to accomplish for you is to show you and for the record that conditional use permit 23-90 and its relationship to the Hearings Officers decision, in DR 9-94, have a direct bearing on this case. And that they do provide an avenue to solve this case favorably for Tim and Angela Schillereff.

In DR 9-94 the Hearings Officer denied design review, and again this is not a design review application that is before us, this is a conditional use. It's a different type of an animal. But he denied design review without prejudice. And specifically the Hearings Officer said that if the Schillereffs were able to obtain a conditional use permit or otherwise establish the use as a lawful use, his decision in 9-94 should no way prejudice such an action. And that's found on page seven of the Hearings Officers decision.

HEARINGS OFFICER

Okay.

MR. EISEMANN

In addition, staff in its report on page ten, also indicates that if it is determined that the Planning Commission decision in CU 23-90 is valid, then we can consider this as a legally established dog kennel.

HEARINGS OFFICER

Where are you on page ten?

MR. EISEMANN

I'm on the second full paragraph, the sentence that begins: Therefore, unless the Hearings Officers decision in DR 4-94 is validated or it is determined that the Planning Commissions decision on CU 23-90 is valid, this application must be considered as requested...

What I'd like to do is demonstrate that in CU 23-90 the validity was established by looking at the record. By looking at the actual testimony. I've reviewed the tapes very carefully. I'd like to present some of the relevant sections of that here for your information.

As the Hearings Officer said in application DR 4-94. The Commission reviewed and approved, excuse me, let me back up. The Commission reviewed and approved a conditional use permit for the Schillereffs' application to place a watchman's residence next to the kennel area. In reviewing DR 4-94 the Hearings Officer properly found that because CU 23-90 was not appealed beyond the Planning Commission, in quote, is therefore a final decision, not subject to collateral attack. That's on page 8 of the Hearings Officers opinion. In fact, the Hearings Officer lacked, acknowledged that he, quote, lacked authority in this proceeding to determine the validity of 23-90. Again, this is the Hearings Officers decision DR 4-94 page 10. Therefore, the conclusions by the Hearings Officers admission in 1994 of 23-90 are fully in effect today.

Now what did 23-90 accomplish? And that's why we need to look at the testimony that was established. 23-90 represents the Schillereffs' application to establish a conditional use for a watchman's residence on the kennel property. Their application was approved in 1990, subject to conditions. Tim and Angela have met all of the applicable conditions, one of which is continuation and licensing of the primary use, the kennel. Now at the 1990 hearing, for Conditional Use 23-90, the public hearing before the Planning Commission, an opponent to that application, the Conditional Use application for the watchman's residence, Mr. John Maring, who identified himself as representing Marquam Farms, rose in opposition to the application. At that hearing in 1990, among other things, Mr. Maring raised the issue as to whether the underlying kennel use was a lawful non-conforming use. That's on Side A of the tapes of that hearing. In fact, what Mr. Maring did suggest, and he did raise at that time, is why there had never been a hearing on the underlying use of the property.

HEARINGS OFFICER

Who asked that?

MR. EISEMANN

Mr. Maring asked that question on side A of the tape. The staff at the end of the tapes on side B, after the record was closed and during the discussion of the Commissioners, the staff answered that question, why was there not a hearing on the underlying use? The answer, which I'll tell you in a moment, is that there wasn't a requirement for one, because of operation of .2028. So at the close of the public testimony . . .

HEARINGS OFFICER

Were you there?

MR. EISEMANN

No, I was not. Like I said, I reviewed the tapes.

HEARINGS OFFICER

You've listened to the tapes. Does anybody mention the word permit?

MR. EISEMANN

No.

HEARINGS OFFICER

That strikes me as odd. that no one said: Where is the permit?

MR. EISEMANN

Mr. Maring did say why hasn't anybody held a hearing on the underlying use.

HEARINGS OFFICER

And the response was?

MR. EISEMANN

Well, I can jump ahead, but the response, to quote staff from that hearing is that: there hasn't been a hearing, Commissioner Fry asked of staff, and the only reason there hasn't been a hearing on Mr. Maring question, is that when it was originally established, meaning the kennel, there was no requirement for a hearing? Staff Planner Hess. That's right there is no requirement for a hearing.

Okay, I'd like to take a little bit more time and just talk about that staff answer, because I find it fairly illuminating.

HEARINGS OFFICER

Now, what if staff were wrong?

MR. EISEMANN

Because the Commission adopted the Staff Report, adopted staff findings, closed the hearing. The hearing was reported to the Board and was acknowledged and was never appealed.

HEARINGS OFFICER

Did the Commission make a finding that there was a lawfully established Conditional Use or was it just an assumption?

MR. EISEMANN

I can't answer that. Commissioner Fry, questioning Mark Hess, the Planner, at that meeting at the close of public testimony

HEARINGS OFFICER

Well now, hold, okay. Again, I interrupt you only because I'll do that as things occur to me...Did the findings talk about it, because as we all know, at least land use lawyers and appellate lawyers, that what was said preceeding a decision doesn't really impact the resulting decision if there is a conflict or something is said and left out of a written decision...so I want to know what's in the written decision that deals with what we are talking about.

MR. EISEMANN

I have to answer that in two ways.

HEARINGS OFFICER

Okay.

MR. EISEMANN

The staff report, as staff testified at the hearing, was based upon their understanding of the County Code at that time, and the representation by the County Counsel as to what the effect of .2028 was. The staff then wrote its report based upon their understanding. The Commission then adopted staffs report. The second part of the answer to your question is that Commissioner Fry asked this question, quote, So basically, he's talking to Mr. Mark Hess, quote, basically your finding is that this is established as a conditional use, not a non-conforming use. End quote. Hess interrupted, That's correct. Staff testified, in effect that their report which underlies this whole issue, is based upon their assumption that there is a conditional use established on this property. The Commission then went on, later on, to adopt the staff report and the underlying in what I view assumptions on that report.

HEARINGS OFFICER

All right.

EISEMANN

Just to sort of, we've gotten to the highlight that I wanted to make, but I'll just finish up real briefly on this. Staff reported, this is the history of that decision, which is also on the tape. Staff reported that there had been discussion amongst the staff and between the staff and counsel as to whether the underlying use was a non-conforming use or a conditional use. Staff reported in the record that County Counsel advised and staff adopted as its position that .2028(b) operated to elevate the kennel, a lawful prior pre existing use, to a conforming conditional use status. Quote from Mr. Hess is that: At that conference, the pre-application conference, there was the interpretation of the pre-existing non-conforming use exemptions with EFU, which said that uses that are now called conditional in EFU, excuse me ...which says that uses that are now called conditional in EFU but which were non-conforming before are now conforming conditional uses. And I, insert now Mark Hess saying, have an opinion from my County Counsel which tells me that a conditional use, once it's been established by way of construction or building or whatever, that that use continues forever. And, so one of the staff members, Mr. Hall, who is my superior, took that interpretation. I took a different interpretation and he prevailed. End of quote. Again Mr. Hess is outlying the basis for his staff report.

Four years later in DR 4-94, Hearings Officer Grillo reached a different conclusion as to the legal effect of .2028(b), but that was as to a different application all together, an application for a design review, not an application for a conditional use permit. So once the underlying use was lawfully established as a conditional use the staff concluded on advice of the counsel, the conditions of that use, the conditional use could not be terminated as a result of this continuance.

HEARINGS OFFICER

You know for me to accept that argument, I have to accept the proposition that you can have a lawfully, in the language of 2028(b) a legally established conditional use doesn't require a permit...

MR. EISEMANN

That was the opinion at the time.

HEARINGS OFFICER

Now tell me how you can do that. How can you have a legally established conditional use with no permit when the ordinances plainly require you to have a permit to have a conditional use?

MR. EISEMANN

The answer to that is in the words of staff planner at the time, Mark Hess. Because Commissioner, I think it was Commissioner Fry again was asking this question, why, in response to Mr. Maring's question, why wasn't there a hearing on this thing, getting to your point, where is the permit. And the quote is, from planner Hess, is that, well excuse me, Commissioner Fry says, quote, And the only reason that there hasn't been a hearing, is that when it was originally established there was no requirement for a permit. And the answer is yes, that's correct. The reason is that Mark Hess is relying upon an interpretation of County Counsel of .2028(b) that says that a conditional use can be deemed a conforming conditional use. And that there there is no process in the County Code for procedure. There's no procedure that has been set up for that to happen.

HEARINGS OFFICER

Let me ask you this, and tell me if its outside your real or comfort level here, let's assume that in 1958 there is a club, I can't remember the exact date...on a particular day, yesterday, I'm running a kennel, today the County passes a zoning ordinance that makes kennels a conditional use, do I have a legally established use today even though I haven't applied for a permit.

MR. EISEMANN

I think there's a parallel in .2028(b) right now and that is if because you're hypothetical doesn't establish a process, it simply says we deem it by operation of the statue...to be a conditional use, therefore it is.

HEARINGS OFFICER

Okay, well the only logical impediment to that argument that I can see at some point in the future is that, if the County adopts a Zoning Ordinance in 1958 that says kennels are a conditional use, regardless of where they are, and if on that day I have a kennel that's been there and it's of course a type of permitted conditional use, but I don't have a permit for it, you say I don't need a permit on today zoning occurs... if its a legally established conditional use today, without a permit that I would never need to get a permit. That's the logical extension of what you're saying and that's the problem. So tell me why I shouldn't be concerned with it.

MR. EISEMANN

I think it was a good observation on your part and it's parallel to exactly what the Planning Commission members were wrestling with on November 6th, 1990. Listen to the tape. There is a question from a Planning Commission member, and I don't know the name,...I suspect it was Commissioner Smith, I'm not sure, which raised the question, Isn't there a way for us to

determine this ...conditional use if it discontinues. Isn't there some other way we can get a handle on this if what you're saying is true. And staff's response was that: We thought about that, right now there is no way but we're looking into the possibility of amending the County Code, when they do that I think someone said within the next year to address that problem but at present there is no mechanism.

HEARINGS OFFICER

You said these discussions all took place in the tape of the 1990 hearing?

MR. EISEMANN

That's correct. On my tape recorder, I would encourage you to look at side B, tape length 375 - to 500. Well, it's my point

HEARINGS OFFICER

Did anybody transcribe that tape?

MR. EISEMANN

I did, for my own use.

MR. HALL

I've got the tape.

HEARINGS OFFICER

Okay. ...

MR. EISEMANN

No, that's fine. That's okay. So again, back to the question that you were just asking me, and we seem to be cracking kernels again, it was the staff's opinion, in the final opinion that was reflected in the staff report in the public testimony and adopted by the Planning Commission that the kennel was quote, A well established operation. That's on page 8 of the CU decision of 1990. In fact, both staff and Mr. Maring agreed at that hearing that the kennels, although they agreed in separate conversations, that the kennel was established some time during the 1950's. That's on side A. Whether the use was intermittent or continuous was immaterial once the validity of the use was established, per the advice of County Counsel. And so once established, the use could not be discontinued by operation of law. As I said earlier Commissioner Fry raised the question explicitly, which had been introduced by Mr. Maring from Marquam Farms, about the illegality of the underlying use. And again, let me

remind to, Mr. Fry, Commissioner Fry's comment or question was, quote, So basically, according to Mark Hess, your finding is that this is established as a conditional use, not a non-conforming use. Mark Hess, correct. Fry, and the only reason that there hasn't been a hearing is that when it was originally established there was no requirement for a hearing? Hess: correct. Fry: okay, that in my mind solves the problem. End of quote. Side B, about 400 on the tape.

HEARINGS OFFICER

Okay, well I'm going to have to listen to this tape but I understand you to put most of your eggs in a basket . . . or remains valid. And what I hear you saying is if that decision is valid and all this is sort of academic.

MR. EISEMANN

Yes, in some ways that's what I'm saying. I'm saying 23-90 is valid. Hearings Officer Grillo acknowledges that, because he said that he did not have the authority to overturn that. And in fact he did not.

HEARINGS OFFICER

Okay. 23-90 did not seek conditional use designation for the kennel.

MR. EISEMANN

Initially the application was filed for a conditional use permit. Staff, for a underlying conditional use, staff turned and said because you're trying to expand a well established underlying use, you don't want to go for a conditional use application. And, in fact that's what they did. Staff then interpreted 2028(b) to say that it had been deemed a conforming use. That's what Mark Hess based his staff report upon, and that report was adopted by the Planning Commission, and that finding...Therefore an answer to your question is yes all of those things are true. What we're trying to do though is to show that Hearings Officer Grillo and staff are both recognizing that there is a way to solve this problem. If there is a way, one of the ways is to establish that the non-conforming use was not discontinued, and I believe that the person or persons have done that now at this hearing. The second way is to show that there is another lawful use, 23-90 establishes the use lawful. And, that use runs indefinitely. So from our point of view, in approving the conditional use permit for the watchman's residence, the Planning Commission addressed the issue of validity that was raised by the opponent and decided that issue once and for all. And, therefore that has not been challenged, we now have a way to establish a permitted use.

HEARINGS OFFICER

I understand all that. Staggering.

MR. EISEMANN

Staggering. Thank you.

HEARINGS OFFICER

Thank you.

GREG WINTEROWD

My name is Greg Winterowd. I am the President of Winterowd Planning Services. I have a great deal to do with these staff reports, with the application sent in to you. Our address is 700 N. Hayden Island Drive, Portland, 97217.

I'd like to take a moment to qualify myself. For the record I have been planning in Oregon for twenty years. I've been Planning Director for six years. I worked at LCDC reviewing plans for five years. I've been in private practice for about four years now. I worked the City of Ashland also. I have processed and prepared hundreds of conditional use permits in my life and while at the State of Oregon and in my private practice I've reviewed virtually every code in the State of Oregon.

What the County did, I'd like to first begin to amplify what Ed has talked about. What the County is clearly trying to do in adding a section deals with basically legitimizing pre-existing conditional uses. If they wanted to avoid exactly the kind of procedure that we're going through today, having to go through and ask people what they remember twenty years ago, because it's at best a torturous process. They wanted to legitimize a whole series of pre-existing conditional uses without having to go through a new conditional use permit. An example that comes readily to mind is churches. Churches are universally allowed in low density residential, medium density residential zones, agricultural zones as conditional uses.

HEARINGS OFFICER

Okay. Let's stop right here. I understand that you are of the opinion that .2028(b), when it talks about listed uses so long as a conditional use is listed they don't have to get a permit for it?

MR. WINTEROWD

Exactly. And that's an unusual provision, but also a provision that I wrote into a code for a city in the State of Washington, this year, exactly to deal with this problem. With all respect to the County I wrote it more artfully, because there is a contradictory section, says you got to go get a permit, for what that means.

HEARINGS OFFICER

There's a section in here...

MR. WINTEROWD

That's right. And so, and I think LUBA has looked . . .

HEARINGS OFFICER

How do you read those two together?

MR. WINTEROWD

When they contradict, that's unfortunate.

HEARINGS OFFICER

...maybe they are read together.

MR. WINTEROWD

If they are read together, one says you have to go through the permit process that you've talked about, the other says you don't. The other says you just exist and that's fine, as if you were a permitted outright use. If they don't conflict in your mind that's great. Let's say they do conflict in your mind, you still have the authority to say we have conflicting provisions. We can interpret them in a way that

HEARINGS OFFICER

It's this word legally that gets me. Conditional uses versus legal uses. If it's been established...to get to where you want to go, and I'm not saying...legally...

MR. WINTEROWD

If I may . . .

HEARINGS OFFICER

What's your view. . . legally...

MR. WINTEROWD

Legally, at the time this kennel was established in the early '50's, it was legally established. What the provision .2028 gets rid of, is it gets rid of the requirement to show that it was used continuously. It takes us completely out of the realm of non-conforming use law, that's what its specific intent was to do.

HEARINGS OFFICER

...

MR. WINTEROWD

Because I've written ordinances like that and I've also talked with Bob Hall.

HEARINGS OFFICER

I say that semi-seriously.

MR. WINTEROWD

I say that as someone who has looked at a lot of codes over the years, and why else would it be there? And also the meaning of it, the only possible meaning it can have is that it gives you automatic legal status for previously existing uses that are listed as conditional uses. Take an analogy, permitted outright uses, the Code changes. In the old days they site a church as a conditional use, they change the code and make it a permitted use.

HEARINGS OFFICER

I understand what you're saying. I understand both sides of the argument totally. It's just . .

MR. WINTEROWD

The question in my mind, what else could it be?

HEARINGS OFFICER

...

MR. WINTEROWD

Which means it would have no effect at all. It would be absolutely meaningless. You created a null step with this interpretation. And we're not arguing that interpretation of '94, but we are arguing it in 1990. Do you see what I'm saying, why I said a null step.

HEARINGS OFFICER

Well yeah.

MR. WINTEROWD

Okay. So to me this is again using

HEARINGS OFFICER

Hearings Officers would like to feel their decisions have some finality.

MR. WINTEROWD

And, in that sense too...we've talked a lot about this. If somehow the effect of Grillo's, Hearings Officer Grillo's decision had some lasting judicial effect, then clearly by the same terms that...might apply to Grillo's. It certainly applied in 1990...Commission. But you can't have it both ways. You can't say that my decision is final in 1994, but the 1990 decision which clearly addresses the same issues, same...as Mr. Maring objected.

HEARINGS OFFICER

Well I think Mr. Grillo's decision said that the watchman's residence is not salable.

MR. WINTEROWD

Yes. And I would argue this one through planning logic, which is not law, but how can you possibly

HEARINGS OFFICER

They are unrelated you know.

MR. WINTEROWD

I won't argue that point, but how could you possibly have an accessory use when there is no primary use. That's basic planning.

HEARINGS OFFICER

I know. I understand that...

MR. WINTEROWD

So it seems, we'll leave that issue where it sits.

Now what I'd like to do is spend some time addressing impacts which were...law. What I'd like to do is hand to you something that's already in the record, it's in the application. Just a map of the existing plans and the opposed plans. The application was put together with the Schillereffs with the clear intention of minimizing or to the point of insignificance, any possible impact on any neighborhood.

We did, as required by law, create an impact area based on possible sounds and we have documentation on how far sound from the kennel, dogs barking... how far away it is. We drew the impact line based on that. We surveyed every surrounding property, crops grown, the agricultural methods as required by law. As the record shows the people who actually do farm in the area, all not some, but all support this application. Barking dogs has no adverse impact on surrounding property. We've established that the Schillereffs are excellent managers of dog kennels, the dogs don't escape to chase somebody's chickens or cows. They are retained in the facility. We established that contrary, and I emphasize contrary to what the Marings were arguing, is that this kennel has no adverse effect, in fact on their hunting operation. And that's why we had, that was the only argument that they really had, was somehow we're putting them out of business by having a dog kennel. And yet expert after expert, veterinarian, hunters, managers of other dog kennels on the island say the dogs don't scare away the ducks. What scares away the ducks is overuse of the facility.

If you look for specific design improvements that we're making to the kennel, where once there was open areas that faced to the East, Southeast toward the Marring property there are no open spaces. There is now a ...closed solid wall separating the dogs from the, look at the proposed site plan. The solid wall separating where the dogs are maintained and held from the adjoining property. There is also, they are more covered by roofs, the facility will be integrated so you don't have to take dogs in and out of one side to another, so that dogs are not exposed to sights and sounds that might cause them to bark. The 75 dogs versus 50 dogs, which I think has been more than mitigated, that increase, by the fact that when people drive into the facility, that's when dogs bark. If the dogs cannot see the people driving in and don't watch them getting out their cars, they are much more likely to bark. And this is based on Tim's and Angela's comments to me, and I believe that they know what they are talking about. The tree cover is all being retained. Additional landscaping is being installed so that the use is virtually invisible from the outside. The parking lot is being arranged in a manner that means the people don't have to stop, get out of their car, ask what's going on, park,...two opportunities. Now the dogs will bark, now they'll be directed to where to go, they'll have plenty of back up space. There will be one single entrance to the facility which minimizes dogs contact with people which is what causes them to bark. Everything that we have done in this facility we believe minimizes the impacts on the Marquam operation. And we believe there are no impacts on agricultural lands.

It's chiefly interesting that we are not proposing to take one square foot of agricultural land out of production to make this operation work. It is simply redesigning the project on where it is currently built. The irony is that the administrative rule that the Marquams relied so heavily

on, that says you can't do a new conditional use, which we don't believe we need a new conditional use. That Administrative Rule is intended to preserve agricultural land, this use has no impact on agricultural land, not a square foot of agricultural land. I'd also note that the record of 1990, Mr. Maring in his testimony said the land couldn't be farmed. I think they are clearly talking out of both sides of their mouths, when you're talking about preservation of ag land and the added impact of this on preservation of ag land which will have no impact. And everyone here has acknowledged that today including the staff report.

We went through every policy in the Comprehensive Plan.

HEARINGS OFFICER

Okay, hold on a second. On that point, on page eleven of the staff report, there are two...pages 22 and 40 that said the applicant provided no . . .

end of tape three

What you are saying on that...page 4 of the supplemental report...

MR. WINTEROWD

They are only marginally applicable in my judgment. They didn't apply in staffs...We also note for the record that for every conditional use standard, staff agrees...analysis and believes that we adequately addressed the criteria. In particular, there are no adverse effects on agriculture, we are minimizing or reducing impacts on surrounding properties. And that this use is very valuable to the County...especially. For example, if you don't have kennels in Sauvie Island, in the country, close to UGB where people live, where do you have them? You either have them farther out or you have them in areas that are much more likely to adversely effect the people who live around them. So we think that...applicable approval criteria.

HEARINGS OFFICER

Let me ask you this. Non-conforming use issues, assuming that you...

MR. WINTEROWD

Okay, ORS 215.130(7) Any use described in subsection 5, which is non-conforming use, may not be resumed after a period of interruption. What Phil Grillo said was there must be a period of interruption. You can't call it... you can't call it anything else. Unless the resumed use conforms with the requirements of the Zoning Ordinances or regulations applicable at the time of the resumption.

HEARINGS OFFICER

Can you in your opinion revive a lost non-conforming use...

MR. WINTEROWD

Normally, no.

HEARINGS OFFICER

Can you issue a permit?

MR. WINTEROWD

Normally you would have to pick some form of County authorization to do so, which in our position in 1990 we had repeated County authorizations that basically said this use now exists in some form or another. Normally you'd have to go through a special process which we're attempting to do now to clarify the issue, to show that you resumed your non-conforming use...

HEARINGS OFFICER

Can you ever resume I guess a non-conforming use or doesn't it really have to become something else?

MR. WINTEROWD

We argue I think two... One is certainly did not resume non-conforming use or as a previously approved conditional use...

HEARINGS OFFICER

I'll agree with you there. Okay. Anything else?

MR. WINTEROWD

We did, in this proposal address criteria in the code...expansion of an existing non-conforming use which are different from those for a conditional use. And we believe that we have demonstrated well, and no evidence exists to my knowledge which contravenes our testimony that...also. They basically say do we have no greater impact on expansion on surrounding properties...Does the Hearings Officer have any questions about any of the facts we presented?

HEARINGS OFFICER

Nothing comes to mind...

MR. SULLIVAN

...

HEARINGS OFFICER

Okay, anybody want to speak in opposition? Well I guess we don't need any rebuttal then. I have not received since the new information has come in, any request from anyone to continue the matter. I'm not going to for that reason. The hearing will be closed according to the time frame that I set up in the outset. I'm going to give the proponents until next Wednesday to submit anything further. I'm going to permit the opponents two weeks to respond to both matters submitted today and anything within the next week and then proponents will have until I believe it will be September 6th, three weeks from today to respond to whatever the opponents submit. I really don't want to see anything new, last minute stuff nobody thought of, and I will have a written decision within ten days from September 6th.

DOCUMENTATION OF SAUVIE ISLAND KENNEL'S NONCONFORMING USE

Time Period	Number of Dogs	Source of Information
1953-1955	50-60	Neil Rose, whose father Donald Rose helped build the kennel and ran it for two years.
1953-1955	50-60	May Louise Rose, who assisted her husband in operating the kennel for two years and who lived on the property during that time.
1953-1955	50-60	Dr. Joseph McFarland, friend of Neil Rose since 1953 and Sauvie Island resident.
1955 - present	always been 3, 4, 5 dogs	Red Persinger (in 1995)
1950s - present	unknown, but continuously used as a kennel	George Douglas, a Planning Commissioner in 1990.
1952 - present	unknown, but continuously used as a kennel	C. Dondo (in 1967)
1954 - present	unknown, but continuously used as a kennel	Red Persinger (in 1967)
late 1950s - 1969	unknown, but kennel usually full; at least four dogs always boarded	Mildred Meifert, whose son owned kennel from 1969 to 1973, remembers Evelyn Blitz's tenure as kennel owner.
1958 - 1969	at least 25, continuously	Pat Baggett remembers Evelyn Blitz had at least 25 dogs continuously in the kennels.
1958 - 1967	unknown, but in continuous use	George Cashdollar (in 1967)
1961-1965	about 50	Norman Crowe says Evelyn Blitz operated a kennel with about 50 dogs, the kennel's capacity.
1964 - present	continuous use as a kennel	Norman Crowe says kennel in continuous use during these years.
1966 - 1969	continuous use, about 50	Myron Meifert
1968 - 1976	unknown, but always several dogs present	Mairi Holman, daughter of Donald Rose (the kennel's first operator) and former island resident.
1969	about 50	Norman Crowe remembering Myron Meifert's operating the kennel.
1969 - 1973	10 kennels open; at least four dogs	Mildred Meifert describing kennel operation during Pein's ownership.
1969 - 1973	at least six	Pat Baggett remembers the Peins had at least six dog continuously boarded.
1969 - 1973	owner's three dogs; boarded friends' dogs; at least four dogs	Marguerite Persinger
1970 - 1973	owner's three dogs and Red's two dogs; at least five dogs	Red Persinger (in 1994)
1973 - 1989	owner's three dogs; boarded friends' dogs; at least four dogs	Mildred Meifert
1973 - 1989	owner's three dogs; boarded friends' dogs; at least four to six dogs	Marguerite Persinger
1973 - 1989	between three and ten	Pat Baggett remembers the Persingers always had several dogs boarded.

Tab J

Zoning 8
July 10
1958

Peter Alport, owner ^①
of NORM THOMPSON, INC
purchased this property -
in 1954 / ~~1955~~ - I believe
he purchased it from the
couple who had the
Truck farm to the immediate
East. They were Italian.
But I cannot recall the
name my father Donald
Rose assisted Alport
in building the kennels
and in positioning the
"heights home" in position
this was done in the
Spring of 1954. My dad
immediately rented the property
from Alport, we moved
in May of 1954, I was
in the 7th High School

Mrs. Done →

Lulu
Maggie's House →

in Hillsboro, & my brother⁽²⁾
died me there Dec
Morning until June
and graduation
I then attended Seaport
high school, my sister
Mairi Holman I attended
Savies Island School
until the summer
of 1955, when we
moved to Felida
Workington. My father
purchased property at
Alport, then sold the
property to someone
else - I do not know
who - But I do know
the kennel was here
prior to May 1954.

Alport died in the
early / mid sixties -
his son Mark Alport
is / was a stock broker
in Portland -

Dr. Joseph McFarland
who resides in Vancouver
can attest to these facts

NEIL ROSE
10517 NE 50th AVE
VANCOUVER -
360-694-7321
office PDX 223-1061 -

MAIRI HOLMAN -

MAY ROSE (my mother)
(86 yrs old)
360-573-2449

Mairi →
my
mother

as
none →
wife of
Donald
Rose

AFFIDAVIT OF GEORGE DOUGLAS

STATE OF OREGON)
) ss.
County of Multnomah)

I, George Douglas, being first duly sworn, depose and say:

1. I have been a resident of Sauvie Island for nearly 50 years and am very familiar with many of the people, families and businesses which have been on the Island during my time here. I am acquainted with Tim and Angela Schillereff. I am neither a business associate nor a close family member of theirs.

2. I personally remember there was a dog kennel on the Schillereff's property well back into the 1950's. I believe the kennel has been in continuous use since the 1950s. I particularly remember Mrs. Blitz who operated a kennel there from the late 1950's until she sold the property to Myron Meifert. During that time there were always many dogs at the kennel.

3. I served as a member of the Multnomah County Planning Commission. I was a member of the Commission and was present at the public hearing on November 6, 1990 when CU 23-90 was brought before the County Planning Commission. I voted in favor of the Schillereffs' request for conditional use approval.

4. When I voted to approve the conditional use permit for the watchman's residence in 1990, my intention was that the permit would be good for both the residence and the dog kennel from then on. I thought the conditional use permit for the residence would validate the dog kennel as well. I thought we were approving a residence and that we were laying to rest any

future concerns about the legality of the kennel. I was certain, in 1990, that I was voting to create a permanent right to a dog kennel.

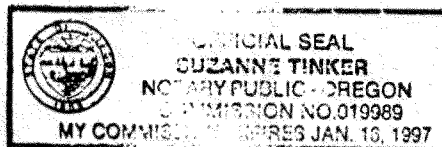
DATED this 23 day of August, 1995.

George Douglas
George Douglas

Subscribed and sworn to before me this 23 day of August, 1995.

Suzanne Tinker
Notary Public for the State of Oregon
My Commission Expires: 1/16/97

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To Whom it may concern:

I know that the Lake Tree Kennels,
of Rt 1, Box 120B on Sauer Island, Portland, Oregon,
have been in the business of boarding
and training dogs since the year
of 1952.

Yours truly,
E. Lando
Rt 1 Box 113BB

RECEIVED

DEC 1 1967

Multnomah County Planning Comm.

Nov 27, 1967

To whom it may concern:

I have known the Lake Tree
Kennels to have been in business; of
Boarding & training dogs since the
year of 1954 located at Rt 1 Box 120 B
on Sawies Island, Portland Oregon 97231

Yours Truly,

Elden E Persinger
Rt 1 Box 70 Portland, Oregon

RECEIVED

DEC 1 1967

Multnomah County Planning Comm.

AFFIDAVIT OF ELDEN E. PERSINGER

State of Oregon)
County of Multnomah) ss:

I, Elden E. Persinger, being first duly sworn, depose and say:

1. My wife, Marguerite Persinger, and I owned the Sauvie Island Kennel property from 1973 until recently, when we sold it to Tim and Angela Schillereff. From 1970 to 1973, the place was owned by Henry and Irene Pein, both now deceased. They purchased the kennel from Myron Meifert. They also owned some of the adjoining property currently owned by Marquam Farms Corporation.

2. I knew Henry and Irene Pein while they owned the kennel; in fact, my wife and I often spent weekends on the place with the Peins. At the time, I owned and operated Red's Moorage at the foot of the Sauvie Island Bridge (it is now known as Larson's Moorage).

3. Myron Meifert had operated the kennel commercially as Lake Tree Kennels. The Peins did not operate the kennel commercially, but they kept their own three dogs (Sam, Betsy and Pat) on the place. In addition, as favors for their friends, they boarded dogs without charging any money. Marguerite and I had three dogs (Duke, Toby and Charlie). We kept Charlie at the moorage. The Peins regularly boarded Duke and Toby in the kennels on their place. Therefore, just considering our dogs and theirs, the Peins kept four to five dogs on the place on a regular basis during the years they owned it.

4. Henry preceded his wife in death. Irene Pein sold the property to us in early 1973. We sold Red's Moorage and brought all three of our dogs with us to the kennel property. We also kept dogs for friends and relatives at no charge. Our friend, Bill Warrington, and his son Michael boarded their dogs, which they named for brands of beer (for example, Oly and Henry) for weeks or even months at a time, generally during the summer, but also at other times of the year. We never charged the Warringtons, but they did give us another dog, Bud, who still lives with us.

5. In addition, Frank Meifert, a relative of mine, frequently left his dogs (Tuck and Mitzi) with us. He had several dogs name Tuck over the years. In other words, although we never operated the kennel commercially, we did operate the kennel continuously for our own dogs and as a courtesy to friends and relatives from 1973 until my great-nephew Tim Schillereff and his wife Angela took over operation of the kennel. We regularly cared for 4-5 dogs at the kennel.

Elden E. Persinger
Elden E. Persinger

Sworn to and subscribed before me on this 27th day of July, 1994.



Janice K. Reader
Notary Public for Oregon

My Commission Expires: May 2, 1997

STATE OF OREGON)
) ss.
County of Multnomah)

My first memories of the property that Angela and I now operate Sauvie Island Kennels on is in the year 1973. My great-uncle Elden Persinger aka Red Persinger owned the kennel property. My grandfather and I would come and visit Uncle Red and train dogs together during the off times of hunting season. This occurred every year until my grandfather's death in 1992.

When the kennels were owned by the Persingers, there were always dogs in the kennels. In addition to Uncle Red's dogs, there were always 3-10 other dogs, not counting the litters of puppies. I remember looking at the litter of puppies, and trying to pick the best one for our friends.

I also remember the summer trapshoots in which 75-100 people would attend, all their family and friends. These occurred during the years that the Persingers owned the property. I recall the bird dogs barking at the shooting and Uncle Red would quiet them down.

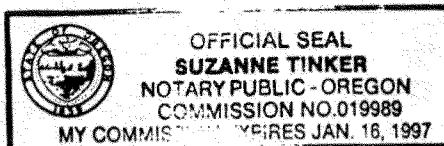
In the winter months, I would come visit Uncle Red and Aunt Marguerette at the kennels and ride snowmobiles on the property. On these occasions I saw many dogs, 3-7, in addition to Uncle Red's dogs in the kennels, usually dogs owned by their friends who were out of town.

As long as I can remember, there have been dogs in the kennel. In fact, in the late 1970's and early 1980's the Marquam Lake duck club was managed by Bill Warrenton, who boarded several of his dogs, and his son's dogs in the kennel while he was in Canada for the summer. I still board Bill Warrenton's dogs today. He owns a black Lab currently, and his son has a Brittany in which we take care of when they go out of town.

Timothy Schillereff

Sworn to and subscribed before me on this 23 day of August, 1995.

Suzanne G. Baker
Notary Public for Oregon



AFFIDAVIT OF NORMAN CROWE

STATE OF OREGON)
) ss.
County of Multnomah)

I, Norman Crowe, being first duly sworn, depose and say:

1. I have been a resident of Sauvie Island since 1964. Prior to that time I worked on the Island training dogs for Mr. Norm Brown from the early 1950s until 1961 when Mr. Brown ended his kennel operation.

2. I remember Eva Blitz owned a commercial dog kennel on the property now owned by Tim and Angela Schillereff. Mr. Brown would regularly send his overflow boarders to Eva Blitz' for boarding. That was common practice among all the kennel operators on the Island.

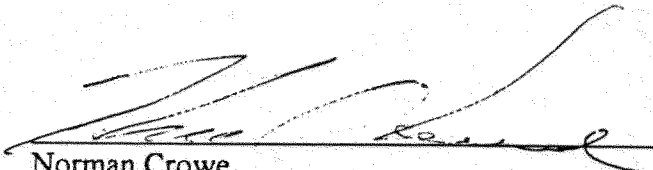
3. In 1961 I bought a miniature poodle from Eva Blitz. I took the poodle to Eve's several times a year for grooming up until the poodle died in 1965. During the times I visited Eva Blitz's kennel, the kennel was always operating at capacity or near capacity -- in the neighborhood of 50 dogs.

4. I remember the kennel owned by Myron Meifert always operated at near capacity of about 50 dogs.


5. After Meifert sold the property, I recall the Peins and Persingers as owners of the land and kennel. I travel the island roads regularly and am very familiar with that property. Since 1964 through the present, I cannot recall a time when there were not barking dogs in the kennel every year. To the best of my knowledge, not a year has gone by when there were not four or

more dogs boarding in the kennel the entire time I have been on the island. During the past 40 or so years, I cannot recall a time when there were not dogs boarding or living at that kennel.

DATED this 23 day of August, 1995.


Norman Crowe

Subscribed and sworn to before me this 23 day of August, 1995.

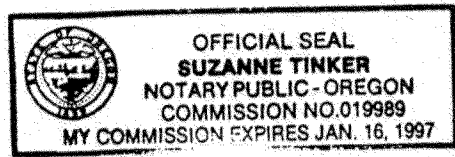

Notary Public for the State of Oregon
My Commission Expires: 1/16/97

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LAN

JAN 16, 1997



AFFIDAVIT OF MILDRED MEIFERT

STATE OF OREGON)
) ss.
County of Multnomah)

I, Mildred Meifert, being first duly sworn, depose and say:

1. I have been a resident of Sauvie Island for nearly ^{31 2/3} 50 years and am familiar with the Sauvie Island Kennel, having observed the land regularly and frequently for the last 45 years.

2. I remember that Eva Blitz once owned the property now owned by Tim and Angela Schillereff. Eva Blitz owned the property and operated a dog kennel on the property from the late 1950s until she sold the land and kennel to my son, Myron Meifert in 1969.

3. I remember that from the late 1950s through approximately 1969, the property was continuously operated as a commercial dog kennel. The commercial dog kennel was operated by either Eva Blitz or a tenant of Eva Blitz.

4. During most of the commercial kennel period the kennel runs were often full. I cannot recall any time during that period when there were fewer than four adult dogs boarded at the kennel.

5. I am personal friends of Red and Marguerite Persinger and have visited them on their property many times. I recall that between the time Myron Meifert sold the property until the Persingers bought the property, approximately 1969 to 1973, the land was owned by the Pein family. The Peins also owned the neighboring property now held by the Marquam Duck Club. The Peins left at least 10 kennel runs open and occasionally boarded dogs. I believe that Red Persinger sometimes kept his dogs there during hunting season. I do not recall a single year during that period when there were not at least four dogs staying on the property.

6. I recall that from the time Red Persinger bought the property in 1973 until 1989, the Persingers had three of their own dogs on the property and often boarded other dogs in the

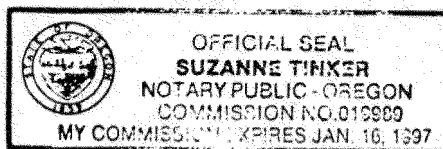
kennels as personal favors to their friends. I remember that the Persingers always had four or more dogs staying in the kennels at some point each and every year even though they were not operating a commercial kennel.

DATED this 23 day of August, 1995.

Mildred Meifert
Mildred Meifert

Subscribed and sworn to before me this 23 day of August, 1995.

Suzanne Tinker
Notary Public for the State of Oregon
My Commission Expires: Jan 16, 1997



AFFIDAVIT OF MARGUERITE PERSINGER

STATE OF OREGON)
) ss.
County of Multnomah)

I, Marguerite Persinger, being first duly sworn, depose and say:

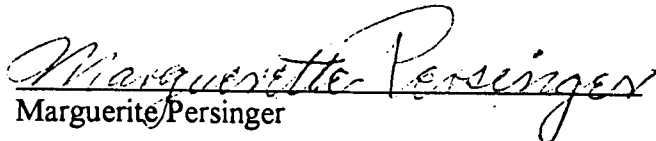
1. My husband Eldon "Red" Persinger, and I owned Sauvie Island Kennel from 1973 until recently when we sold it to Tim and Angela Schillereff.

2. My husband and I kept three dogs on our own on that property the entire time we lived there. In addition, every year we kept other dogs on the property as favors to hunters and friends, such as Bill Warrenton. Bill Warrenton owned two to three dogs.

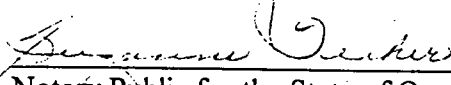
3. At a minimum there were always four to six adult dogs living or boarded on our property each year from 1973 until the time we sold the property and kennel.

4. Prior to purchasing our property in 1973, my husband and I visited the property and kennel when it was owned by the Peins. We visited the Peins every year they owned that kennel property. The Peins owned three dogs. In addition to their dogs, the Peins commonly kept dogs owned by hunters each and every year. I cannot recall a year when there were not at least four or more adult dogs living or boarding on the Pein's property.

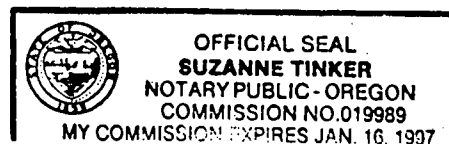
Dated this 23 day of August, 1995.


Marguerite Persinger

Subscribed and sworn to before me this 23 day of August, 1995.


Notary Public for the State of Oregon
My Commission Expires: 1/16/97

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August 22, 1995

Mr. Robert Hall
Multnomah County Planning Department
2115 SE Morrison St.
Portland, OR 97214

RE: Schillereff case: CU 4-96 & MC1-95,23

Dear Mr. Hall:

My name is Mrs. Pat Baggett. I reside at 18120 NW Sauvie Island Road. I have personal knowledge of the following facts:

1. I first met Evelyn Blitz in 1946 when she was married to Bill Blitz. I remember when Evelyn Blitz moved to the property now owned by Tim and Angella Schillereff. My mother and father were dog trainers, and I remember going to the opening of Evelyn's Blitz's kennel. That was about 1958.
2. I remember that Evelyn used to hold social gatherings (picnics, holiday parties, etc.) on her property every year she owned the land, including when she leased the kennel operation to others. I attended these events every year, from the time Evelyn Blitz bought the property until the time she sold the property to Myron Meifert.
3. Every time I visited the property when Evelyn Blitz owned it, she always had 25 dogs or so in the kennels.
4. I recall the Peins ownership of the property and kennel. At the time I thought they were running dogs on the old Blitz place and on the place now owned by the Duck Club. The Peins always let hunters use the old Blitz place. I visited the Peins several times every year they lived on the Blitz place. The Peins never ever shut down the kennel. There were always at least 6 dogs in those kennels every year they owned the Blitz place.
5. I know Red & Marguerite Persinger very well. I have visited them on their property every year since they bought their land from the Peins in 1973. Every year since they owned the property I attended a picnic, turkey shoot or other social events on their land. Red and Marguerite always had between 3 to 10 dogs in their kennels every time I visited them. I can not remember a time when they did not have several dogs in the kennels.

Please enter this letter into the public record.

Thank you.

Respectfully,

Pat Baggett

AFFIDAVIT OF ELDEN E. PERSINGER

State of Oregon)
County of Multnomah) ss:

I, Elden E. Persinger, being first duly sworn, depose and say:

1. My wife, Marguerite Persinger, and I owned the Sauvie Island Kennel property from 1973 until recently, when we sold it to Tim and Angela Schillereff. From 1970 to 1973, the place was owned by Henry and Irene Pein, both now deceased. They purchased the kennel from Myron Meifert. They also owned some of the adjoining property currently owned by Marquam Farms Corporation.

2. I knew Henry and Irene Pein while they owned the kennel; in fact, my wife and I often spent weekends on the place with the Peins. At the time, I owned and operated Red's Moorage at the foot of the Sauvie Island Bridge (it is now known as Larson's Moorage).

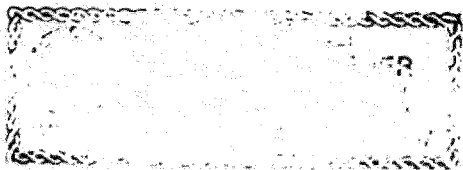
3. Myron Meifert had operated the kennel commercially as Lake Tree Kennels. The Peins did not operate the kennel commercially, but they kept their own three dogs (Sam, Betsy and Pat) on the place. In addition, as favors for their friends, they boarded dogs without charging any money. Marguerite and I had three dogs (Duke, Toby and Charlie). We kept Charlie at the moorage. The Peins regularly boarded Duke and Toby in the kennels on their place. Therefore, just considering our dogs and theirs, the Peins kept four to five dogs on the place on a regular basis during the years they owned it.

4. Henry preceded his wife in death. Irene Pein sold the property to us in early 1973. We sold Red's Moorage and brought all three of our dogs with us to the kennel property. We also kept dogs for friends and relatives at no charge. Our friend, Bill Warrington, and his son Michael boarded their dogs, which they named for brands of beer (for example, Oly and Henry) for weeks or even months at a time, generally during the summer, but also at other times of the year. We never charged the Warringtons, but they did give us another dog, Bud, who still lives with us.

5. In addition, Frank Meifert, a relative of mine, frequently left his dogs (Tuck and Mitzi) with us. He had several dogs name Tuck over the years. In other words, although we never operated the kennel commercially, we did operate the kennel continuously for our own dogs and as a courtesy to friends and relatives from 1973 until my great-nephew Tim Schillereff and his wife Angela took over operation of the kennel. We regularly cared for 4-5 dogs at the kennel.

E Elden E. Persinger
Elden E. Persinger

Sworn to and subscribed before me on this 27th day of July, 1994.



Janice K. Reader
Notary Public for Oregon

My Commission Expires: May 2, 1997

5000 20/11/67

To Whom it may concern:

I know that the Lake Tree Kennels,
of Rt 1, Box 120B on Sauris Island, Portland, Oregon,
have been in the business of boarding
and training dogs since the year
of 1952.

Yours truly,

E. E. E. E.

Rt 1 Box 113BB

RECEIVED

DEC 1 1967

Multnomah County Planning Comm.

Nov 27, 1967

To whom it may concern:

I have known the Lake Tree
Kennels to have been in business; of
Boarding & training dogs. since the
year of 1954 located at Rt 1 Box 120 B
on Sawies Island, Portland Oregon 97231

Yours Truly,

Elden E Persinger
Rt 1 Box 70 Portland, Oregon

RECEIVED

DEC 1 1967

Multnomah County Planning Comm.

November 28, 1967

To whom it may concern:

I have known the Lake Tree
Kennels to have been in business,
of boarding and training dogs,
prior to 1958 located at Rt 1 Box 1201
on Sawies Island, Portland
Oregon 97231.

Yours truly,
George Cashdollar
Gillman Rd.

RECEIVED

DEC 1 1967

Multnomah County Planning Comm.

PREVIOUS USE

Notes

Date From FEB-64 - FEB 65Occupant COURTWAYDescription of Use HAD DOGS - LEASED
ON BASIS IT BE A COMMERCIAL
KENNEL - ENG. BULLDOGS - BRED
OWN STOCK - 4 TO 5 ADULTS &
8 OR 10 PUPPIES MOST OF FINEDescription of Equipment BLDGS - SAME
AS NOW
NOT USED AS PER LEASENumber of Employees NONEDescription of Signs NONE

MAP

PREVIOUS USE

Notes

Date From AUG 1957 to DEC 1962Occupant EVELYN T. BLITZDescription of Use COMMERCIAL KENNEL
UP TO 50 DOGS - BOARDING,
BREEDING & TRAINING. BOUGHT
AS KENNEL - BLDGS WERE HEREDescription of Equipment SAME BLDG
BOUGHT FROM ROY WALLACE, WHO
HAD RENTED IT OUT TO BREEDERS
FOR ABOUT 5 YRS (±)Number of Employees ?Description of Signs MARQUAN LDKR
KENNELS - SIZE & NUMBER UNKNOWN

AP

DATE 10-18-67

ZONE F-2

NON-CONFORMING APPROVED

ASSESSOR'S RECORD

Date Built HOUSE
942

Addition 12'x58'
1954 KENNALLS

12'x20' - 1955

~~Personal Prop.~~
(List Equipment
and Dates)

Assumed Name

Permit

~~PREVIOUS USE~~

Notes

2.0123 PER
RUN BUT MORE
LIKELY ONE

PRESENT STATUS

Location LAKE IRRE KENNALLS
REEDER RD. RT 1 BX 120 B

Date Established MOVED IN 9-5-67

Owner MEIFERT, MYRON JR

Address SAME

Occupant MEIFERT

Use BOARDING & BREEDING DOGS

Description of Use 30 RUNS IN 60' BLDG
10 RUNS IN 25' BLDG - 5' WIDE

BOUGHT FROM BUSBYN BLDG

LIMITED TO 50 DOGS

Description of Buildings and Equipment CORRUSATE
ANAL 60'x15(I) 25'x15(I)

Number of Employees NONE

Description of Signs ONE SIGN 18"x18" (ILLEG)

THY OWN 3 DOGS

Date From OCT 65 To OCT 1966

Occupant VICTOR EATON - RENTERS

Description of Use 15 TO 20 DOGS

Description of Equipment BLDG SAME

Number of Employees NONE

Description of Signs SAME AS PRESENT

MAP

DATE 1-28-69

ZONE

15-2

NON-CONFORMING

15-2N-1W K-47103-0150

ASSESSOR'S RECORD

PRESENT STATUS

LAKE TREE KENNELS

Year Built

Location

REEDER RD RT 1 BX 120 L

Date Established

SEE ATTACHED

Addition

Owner

HENRY H. PEIN (PEIN INU. CO)

Address

Occupant

MAIFFERT, MYRON

Use

DOG KENNEL

Description of Use

PEIN BOUGHT FROM

MAIFFERT. MAIFFERT HAS BEEN TRAINING & BOARDING DOGS

Personal Prop.
(List Equipment
and Dates)

Description of Buildings and Equipment

SEE ATTACH

Assumed Name

Number of Employees

NONE

Description of Signs

NONE

Permit

8.4.71 KENNEL 9015 ALL OF 71-2305

PREVIOUS USE

IN 1970

Date From

To

Notes

Occupant

Description of Use

8.4.71 HARRY PEIN NOW OWNS THIS & TELLS
39.34 A & 7C 15-3-2N-2W - HAS TRAILER
WANTS BA FOR WATCHMAN

Board of Adjustment

Approval

Description of Equipment

1000 sq ft

Number of Employees

Description of Signs

MAP

AFFIDAVIT OF NEIL ROSE

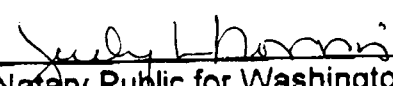
State of Washington)
) ss:
County of Clark)

I, Neil Rose, being first duly sworn, depose and say:

1. I believe that Peter Alport, one time owner of Norm Thompson, Inc., purchased the property now known as Sauvie Island Kennel in 1953.
2. I remember my father, Donald Rose, helped Mr. Alport build the original dog kennels on the property and place the older "heights home" in position during May 1953. My father leased the property from Mr. Alport and we moved into the "heights home" in May of 1953.
3. My father operated the kennel for two years. We had between 50 and 60 dogs present at all times, including Labradors, pointers, short hairs, springer spaniels, and Chesapeake Bay retrievers. I was a student in junior high and high school during those years, and clearly remember these events. My family remained on the property until the summer of 1955, when we moved off the island.
4. When we moved from the island, my father turned the kennel operation over to Roy Wallace, who ran it for several years and kept about as many dogs as my father did.
5. I have visited the island every year since my family moved away. As long as I was in school, I returned to the island to visit friends. I am a pilot, and I used to fly over the island and especially enjoyed flying over the kennel where I used to live. When my two sons were younger, I took them to the island to fish and bird watch. During my visits I have stopped to observe the kennel, and there have always been at least several dogs there.


Neil Rose

Sworn to and subscribed before me on the 21st day of November, 1995.


Notary Public for Washington

My Commission Expires 10-1-99

AFFIDAVIT OF MAY LOUISA ROSE

State of Washington)
) ss:
County of Clark)

I, May Louisa Rose, being first duly sworn, depose and say:

1. I believe that Peter Alport, one time owner of Norm Thompson, Inc., purchased the property now known as Sauvie Island Kennel in 1953.

2. I remember my husband, Donald Rose, helped Mr. Alport build the original dog kennels on the property and place the older "heights home" in position during May 1953. My husband leased the property from Mr. Alport and we moved into the "heights home" in May of 1953. Red and Marguerite Persinger now live in this house.

3. My husband operated the kennel for two years, and I helped him out sometimes. We had between 50 and 60 dogs present at all times, including Labradors, pointers, short hairs, springer spaniels, and Chesapeake Bay retrievers. My family remained on the property until the summer of 1955, when we moved off the island.

4. When we moved from the island, my husband turned the kennel over to another operator, who ran it for several years and kept about as many dogs as my husband did.

May L. Rose
May Louisa Rose

Sworn to and subscribed before me on the 21 day of November, 1995.

Judy L. Harris
Notary Public for Washington

My Commission Expires 10-1-99

AFFIDAVIT OF MAIRI HOLMAN

State of Oregon)
) ss:
County of Multnomah)

I, Mairi Holman, being first duly sworn, depose and say:

1. I believe that Peter Alport, one time owner of Norm Thompson, Inc., purchased the property now known as Sauvie Island Kennel in 1953.

2. I remember my father, Donald Rose, helped Mr. Alport build the original dog kennels and place the house on the property during May 1953. My father leased the property from Mr. Alport and we moved into the residence in May of 1953.

3. My father operated the kennel for two years. My family lived on the property until the summer of 1955, when we moved off the island.

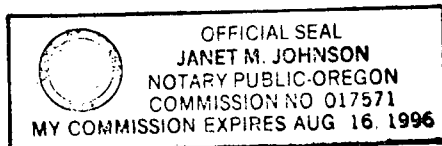
4. Since that time, I have visited the island on numerous occasions. When my children were young, during the years 1968 to 1976, we visited several times a year because my family enjoyed Sunday drives to the island. We always went by the kennel, because I used to live there. I remember that during those years there were always dogs in the kennel, jumping up against the fence, and that the kennel sign was always in place.

5. On my other visits to the island over the years, I have always gone by the kennel, and there have always been several dogs there.

Mairi Holman
Mairi Holman

Sworn to and subscribed before me on the 21st day of November, 1995.

Janet M. Johnson
Notary Public for Oregon
My Commission Expires 8/16/96.



REQUEST FOR A CONDITIONAL USE PERMIT

not
Approved
per [illegible]
Feb 54

Reference
MCC 11.15.2028
B and C

DR 9A-07-02.

ed; and

other right-of-way;

- (c) Which satisfies the minimum lot size requirements of MCC .2016, or

- (2) *Substandard Parcel* refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2016; and

(2) A parcel of land:

- (a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;

- (3) *Same Ownership* refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.

- (b) Which satisfied all applicable laws when the parcel was created;

- (C) A Lot of Record which has less than the front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

- (c) Does not meet the minimum lot size requirements of MCC .2016; and

[Amended 1990, Ord. 643 § 2]

11.15.2020 Lot Size for Conditional Uses

- (d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or

- (A) The minimum lot size for a conditional use permitted pursuant to MCC .2012(A) and (B)(2) shall be based upon:

(3) A group of contiguous parcels of land:

- (1) The site size needs of the proposed use;

- (a) For which deeds or other instruments creating the parcels were recorded with the Department of General Services, or were in recordable form prior to February 20, 1990;

- (2) The nature of the proposed use in relation to its impact on nearby properties; and

- (b) Which satisfied all applicable laws when the parcels were created;

- (3) Consideration of the purposes of this district.

- (c) Which individually do not meet the minimum lot size requirements of MCC .2016, but, when considered in combination, comply as nearly as possible with a minimum lot size of nineteen acres, without creating any new lot line; and

- (B) Except as otherwise provided by MCC .2018, no sale or conveyance of any portion of a lot, for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

- (d) Which are held under the same ownership.

11.15.2022 Off-Street Parking and Loading

Off-street parking and loading shall be as required by MCC .6100 through .6148.

(B) For the purposes of this subsection:

11.15.2024 Signs.

Signs, pursuant to the provisions of MCC 11.15.7902-.7982. [Amended 1986, Ord 543 § 2]

- (1) *Contiguous* refers to parcels of land which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels separated only by an alley, street or

11.15.2026 Access

Any lot in this district shall abut a street, or shall

have other access determined by the Hearings Officer to be safe and convenient for pedestrians and for passenger and emergency vehicles.

11.15.2028 Exemptions from Non-Conforming Use Provisions

- (A) A single family dwelling not in conjunction with farm use, legally established prior to August 14, 1980, shall be deemed conforming and not subject to the provisions of MCC .8805.

(B) Conditional uses listed in subpart MCC .2012 legally established prior to August 14, 1980, shall be deemed conforming and not subject to the provisions of MCC .8804, provided, however, that any change of use shall be subject to approval pursuant to the provisions of MCC .2012.

(C) The term "change of use", as used in this Section means the change from one conditional use listed in MCC .2012 to another such conditional use.

- (1) The cost of plan preparation; or
- (2) The value of the land.

- (C) The value of actual construction commenced prior to February 20, 1990 shall be \$1,000 or more, for each \$20,000 of the total estimated value of the proposed improvements as calculated under the Uniform Building Code.

[Amended 1990, Ord. 643 § 2]

The Persinger Kennel is therefore a Conforming CU - therefore does not expire per October 8, 1990 opinion from John DuBay.

11.15.2030 Right To Complete Single Family Dwelling

A single family dwelling, uncompleted prior to August 14, 1980, but which meets the tests stated in this subsection, may be completed although not listed as a primary use in this district.

- (A) Actual construction shall have commenced prior to February 20, 1990, under a sanitation, building or other development permit applicable to the lot. "Actual construction" means:

- (1) Placement of construction materials in a permanent position;
- (2) Site excavation or grading;
- (3) Demolition or removal of an existing structure;
- (4) The value of purchased building materials; or
- (5) Installation of water, sanitation or power systems.

- (B) Actual construction shall not include:

MEMORANDUM

TO: Mark Hess
Planning

FROM: John L. DuBay
Chief Assistant
County Counsel

DATE: October 8, 1990

SUBJECT: CUP termination

I agree with you that the zoning code provides no way to terminate CUPs because of non use where the permit sets no expiration date.

However, nothing prevents an amendment to the zoning code to establish a procedure to terminate permits not being used for the permitted use, even permits issued before the amendment. MCC 11.15.7135(A) could be amended to add "non-use for the permitted purpose for ___ months" to the list of reasons for termination. Alternatively, a new provision could be added to establish a shorter termination period than provided in .7135.



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

Decision

This Report consists of a Recommended Decision, Findings of Fact, and Conclusions

November 6, 1990

CU 23-90, #22 and #23

Conditional Use Request
(Watchman's Residence for Dog Kennel)

Applicant requests conditional use approval to add a watchman's residence to an existing dog kennel. Tim and Angela Schillereff (the kennel operators) request approval to place an 1800 square foot manufactured house on the site in order to oversee the security and well-being of the dogs housed in the kennel and provide security for the kennel buildings and equipment.

Location: 23200 NW Reeder Road.

Legal: Tax Lot '15', Section 3, 2N-1W, 1990 Assessor's Map

Site Size: 9.41 Acres

Size Requested: Same

Property Owner: EE and MF Persinger
23200 NW Reeder Road, 97231

Applicant: Tim and Angela Schillereff
18149 NW Sauvie Island Road, 97231

Comprehensive Plan: Exclusive Farm Use

Present Zoning: EFU, Exclusive Farm Use District

PLANNING COMMISSION

DECISION: Approve, subject to conditions, the requested watchman's residence based on the following Findings and Conclusions.

_____	Notices
8	Decision Notices
mailed on	11-14-90
by	M.B.

CU 23-90

11

MUA-20

SEC

CS FF

EFU
FF

N.W. Cor.
H.J. McIntire

(5)
Sec. 34

MUA-20

SEC

CS

FF

MUA-20

EFU

MUA-20

SEC

CS

FF

EFU
FF

EFU

LE 7-77

Govt Lot 6

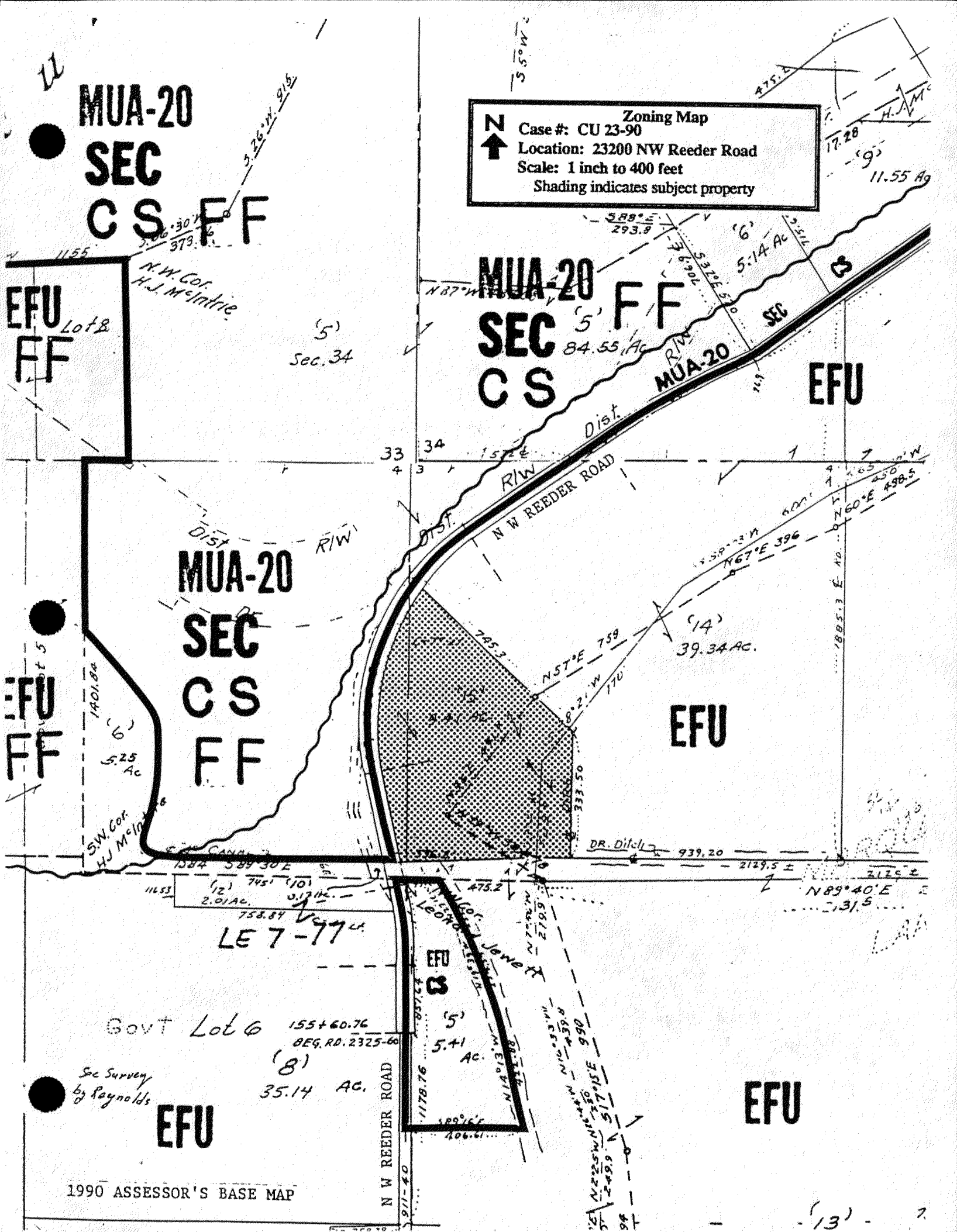
(8)
35.14 AC.

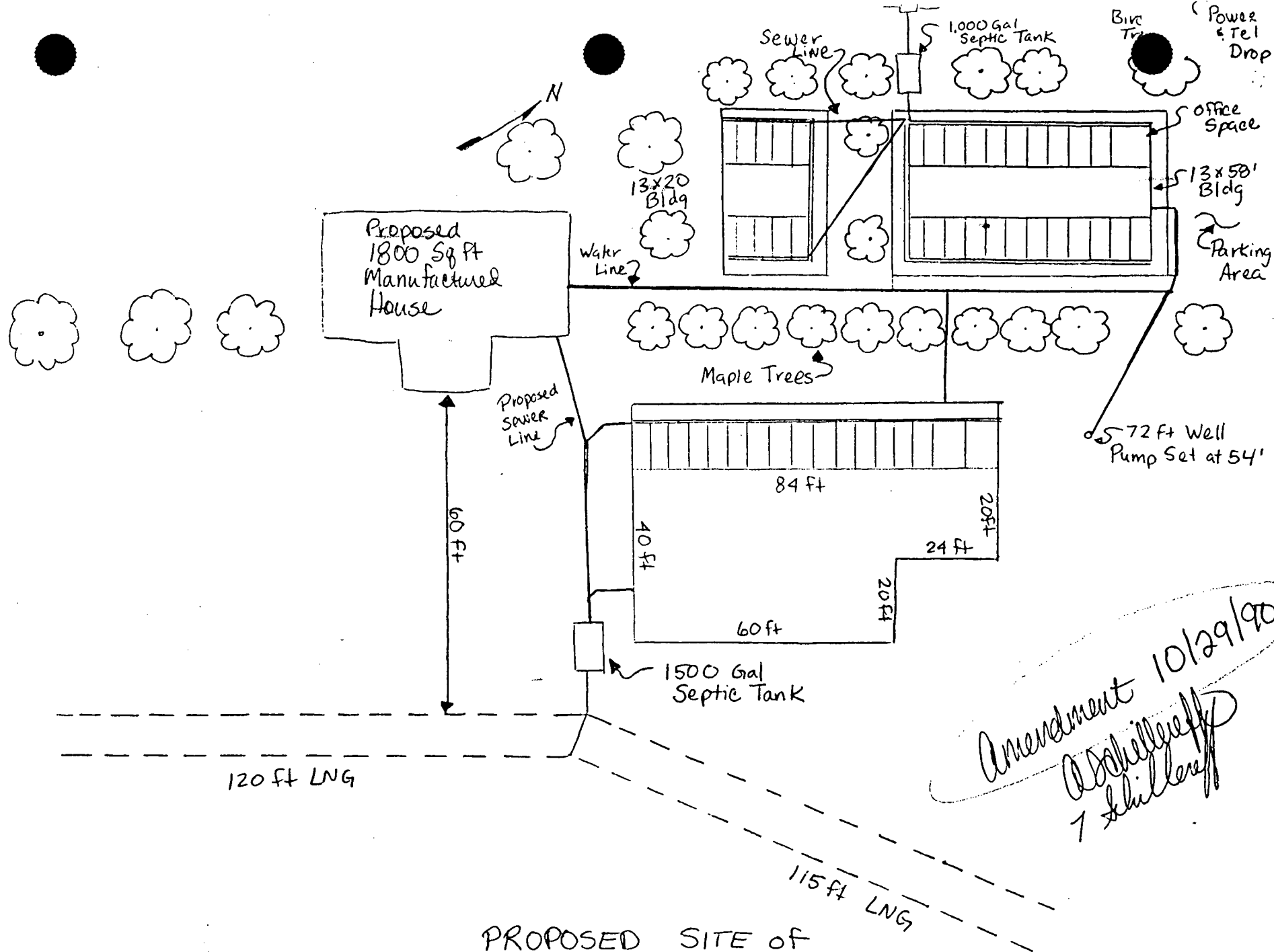
EFU

EFU

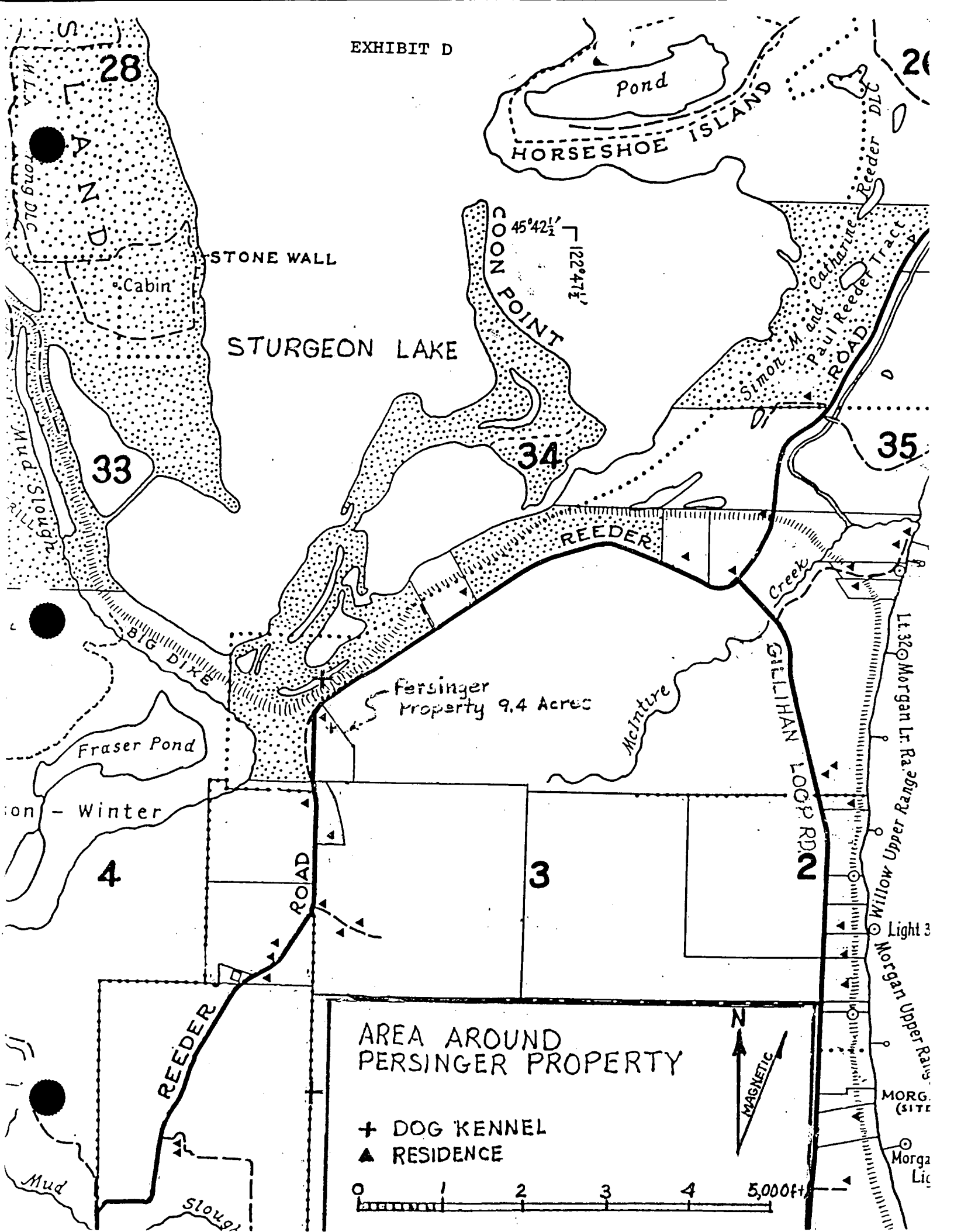
EFU

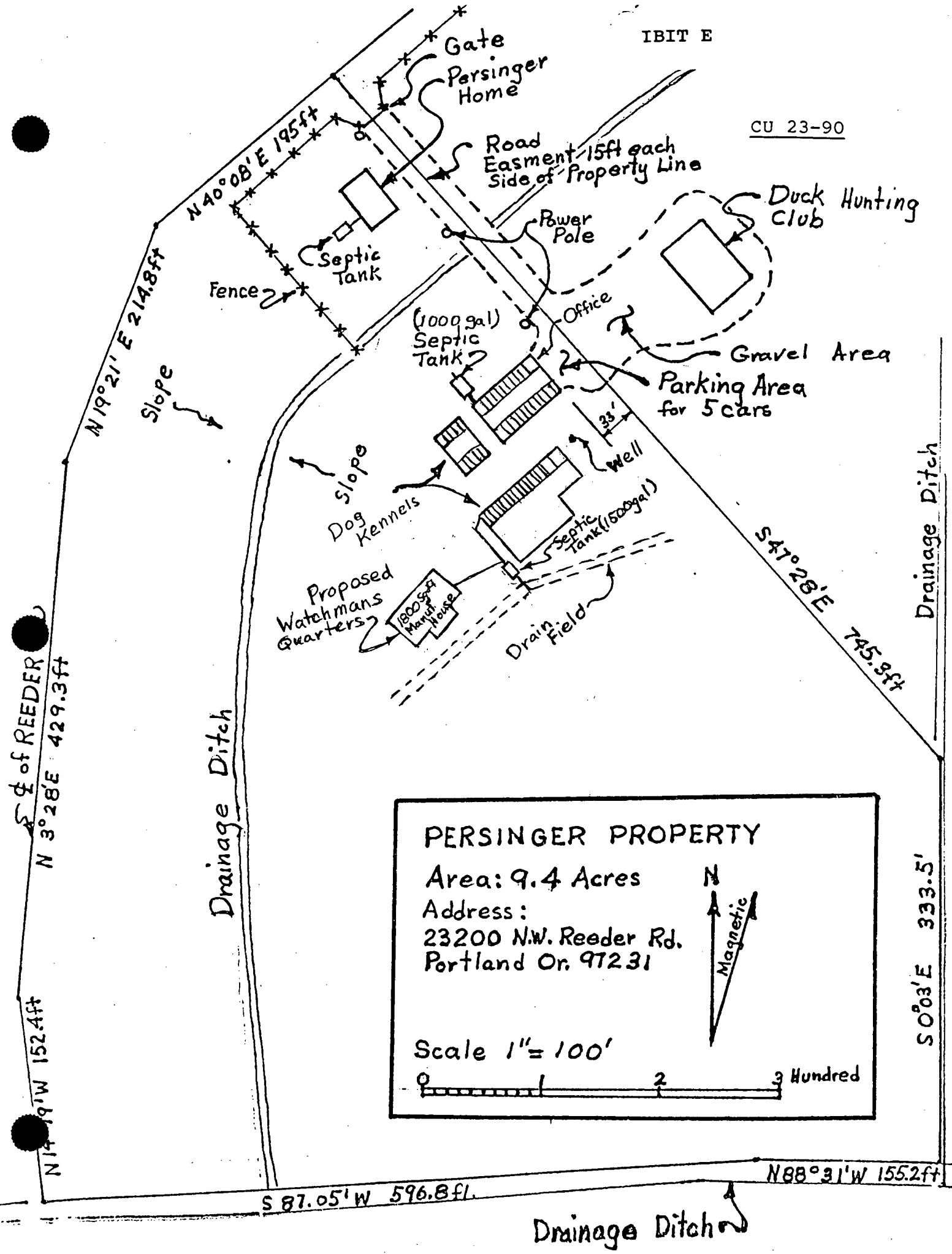
Zoning Map
Case #: CU 23-90
Location: 23200 NW Reeder Road
Scale: 1 inch to 400 feet
Shading indicates subject property





PROPOSED SITE OF
WATCHMAN'S QUARTERS
Scale 1" = 30'-0"





IBIT E

CU 23-90

Gate
Persinger
Home

Road
Easment 15ft each
Side of Property Line

Power
Pole

Duck Hunting
Club

Septic
Tank

Fence 2

(1000 gal)
Septic
Tank

Office

Gravel Area

Parking Area
for 5 cars

Slope

Slope

Dog
Kennels

Proposed
Watchmans
Quarters

1800 sq ft
Barn

Well

Septic Tank (1500 gal)

Drain Field

Drainage Ditch

Drainage Ditch

PERSINGER PROPERTY

Area: 9.4 Acres

Address:

23200 N.W. Reeder Rd.
Portland Or. 97231



Scale 1" = 100'

0 1 2 3 Hundred

S 0° 03' E 333.5'

Drainage Ditch

Conditions of Approval

1. Obtain Design Review approval prior to issuance of a placement permit for the new house. Complete Design Review requirements prior to occupancy of the house.
2. Obtain permits and install the subsurface disposal system prior to occupancy of the residence.
3. This approval terminates — and one of the two residences shall be removed from the property — if the property ceases to be licensed and used as a kennel, or within six (6) months after the Persingers' life estate interests cease, whichever occurs first.
4. The watchman's residence shall be placed as shown on the applicant's revised site plan, dated October 29, 1990.

Findings of Fact:

1. Proposal Summary:

The applicant requests permission to add a watchman's residence to an existing kennel facility at 23200 NW Reeder Road. The house would be an 1800 square foot manufactured home. Applicant provides the following description of the request.

"Detailed Request Description:

The use of this watchman residence will be of the nature of overseeing the security and well-being of the kennel operation during and after business hours. Since we are a breeding, boarding and training kennel, we feel the use is necessary for three reasons:

First, as a professional breeder of English Pointers, we plan in our breeding program to have three litters of pups a year. With a watchman residence nearby we could check on our litters and dogs throughout the day and night. For example, last October, one of our pregnant brood bitches was having severe labor difficulties, requiring us to be with her throughout her delivery. Having the watchman residence close by the whelping areas would enable us to keep an eye on such things.

Second, as a professional boarding kennel, we receive pets of all sizes and all ages for our care. Some require medication, and even medical attention during their stay with us. Thus, the watchman residence would allow us to oversee the boarding operation in the best manner possible.

Third, as a professional trainer, we frequently take training dogs and their owners to outside training grounds in the course of their learning. For example, in training retrievers one must teach the dog to swim and to retrieve from the water. We have brought our dogs down to the West End game management area to work in the lakes and ponds there. Therefore, when the trainer is gone training during business hours, the watchman would oversee the kennel operation (answer the phone, help customers, care of animals, clean their pens, and maintain the security of the premises.)"

2. Site and Vicinity Information:

The 9.41 acre site is within an EFU district on Sauvie Island. The property fronts onto NW Reeder Road. The "Sauvie Island Kennels" facility license authorizes boarding of up to 50 dogs; this request (for the residence) would not increase the capacity of the kennel. An existing residence on the site was built in 1942. It houses Mr. and Mrs. Persinger, the property owners since 1973. The Schillereffs –the kennel owner/operators – are leasing the property, with an option to purchase. The lease/option contract provides that Mr. or Mrs. Persinger may reside in the existing house for the rest of their lives.)*

Surrounding properties are primarily agricultural or natural in character. A duck hunting club operates on a 39-acre property east and north of the Persinger's site. The club site contains a barn and a small parking area. Most of the duck club's site is open crop land with some wetland/riparian wooded areas in low areas and along drainageways.

Properties to the south and southwest are generally flat, open field and crop lands with scattered farm houses and barns. A few large trees are located near the houses and along stream bank–riparian corridors.

The Sturgeon Lake Wildlife Refuge property to the northwest (across Reeder Road) is owned by the Oregon Department of Fish and Wildlife. The refuge is a several thousand acre natural area characterized by wetlands, a large shallow lake, and riparian woods. A grass covered dike separates the refuge from Reeder Road and the subject site.

3. Zoning and Comprehensive Plan Designations.

The plan designation of the site is Agriculture. The zoning is EFU, Exclusive Farm Use.

4. Ordinance Considerations:

Conditional uses allowed in EFU areas are specified in MCC 11.15.2012. Sub-section (B)(11) specifies "*Dog Kennels*", and MCC .2014(E) provides for structures or uses *customarily* accessory to a dog kennel. Such uses may be permitted when found to satisfy *Conditional Use Approval Criteria* in MCC .7105 – .7640.

Applicant requests that the Commission determine a watchman's residence is a customarily provided accessory use for a kennel.

"We feel the watchman residence is of the nature in which its 'uses or structures incidental and accessory to the uses permitted under MCC .2012 (B)(II).' Cited from the Exclusive Farm Use section page 3-5. With the provision (E) 'Other structures or uses customarily incidental to any use permitted or approved in this district' allowing for a structure such as a watchman residence to be permitted in this manner."

The following section presents findings regarding the proposed Conditional Use; the applicable standard is in ***bold italics***, applicant's responses are presented first in *italics*, followed by staff comments.

A. Conditional Use Criteria (MCC .7120)

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

"A watchman residence to oversee the security and well-being of all the kennel animals and the kennel buildings and equipment is an accessory use to the well-established kennel operation. Therefore such an expansion would be consistent with the character of the land."

In looking at a few of the other kennel operations on and around Sauvie Island, you can see that they too, have a watchman residence for the business. Here is a list of several:

On Sauvie Island-

Blackthorn Kennels- now inactive, yet had a watchman residence when it was an active kennel operation.

Charlton Kennels- active with a watchman res.

Minoggie Kennels- active with a watchman res.

Outside Sauvie Island-

Green Acres Kennels- active with a watchman res.

Meifert Kennels- active with a watchman res.

Rock Creek Kennels- active with a watchman res.

Twin Willows Kennels- active with several watchman residences.

You can see the need is consistent throughout the Portland area, not only for Sauvie Island.

The following describes similar uses on the adjacent properties:

The area adjacent to the northeast is owned and operated by Marquam Farms, Inc., a multi-partner hunting club, used exclusively for the hunting of ducks and geese during the waterfowl season, and the maintenance of such. (Please see Exhibit C and D.) Both the duck hunting club and the kennel operations would benefit from a watchman's residence to oversee the security of the properties and buildings. This would be a compatible use to the duck club.

The area adjacent to the northwest is owned and operated by the Oregon Department of Fish and Wildlife. It is part of the Sturgeon Lake wildlife refuge area on Sauvie Island. (Please see Exhibit C.)

The area adjacent to the south is rural farmland, the property line is bounded by a drainage ditch. Our neighbors to the south operate a dairy farm and also maintain several watchman residences to oversee their operations. Therefore this would be a compatible use as well."

Staff Comment: Applicant's above findings demonstrate that watchman's residences are *customarily* provided in conjunction with kennel operations. The addition of a watchman's house to an existing kennel is not inconsistent with nearby agricultural lands, wildlife conservation lands, or rural residential uses.

A(2) *Will not adversely affect natural resources;*

"There are no unforeseen adverse affects on the natural resources."

Staff Comment: Condition #2 requires installation of a subsurface disposal system for the new residence. This will insure against any potential adverse effects to water quality. No other natural resource effects from the watchman's residence have been identified.

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

"The use is consistent with the farm and forest uses in the area and thereby will not conflict. The watchman residence is an accessory use to the established kennel operation."

Staff Comment: Staff concurs that the proposal's effects on farm or forest uses in the area are negligible.

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

"Current public services such as electricity, telephone and etc... are already programmed."

Staff Comments:

a. Water Supply.

The site is supplied water through a private well.

b. Sewage Disposal.

Sewage would be disposed through an on-site septic system. Condition #2 requires installation of a sub-surface disposal system for the house.

A(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;*

Staff Comment: The site is not identified as a big game habitat area in the Comprehensive Plan or by the Oregon Department of Fish and Wildlife.

A(6) *Will not create hazardous conditions;*

"There are no unforeseen hazardous conditions."

Staff Comment: This and surrounding properties on this part of Sauvie Island are protected from flood hazards by a dike structure maintained by the U.S. Army Corps of Engineers. The site is not designated a Flood Hazard or Flood Fringe area by the County.

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

The following policies of the County's Comprehensive Plan are found applicable to this request: Policy 9 (Agricultural Lands), Policy 13 (Air, Water and Noise Quality), Policy 14 (Development Limitations). ↙

a. Policy 9 – Agricultural Lands.

"The Comprehensive Plan wishes to maintain the agricultural uses or conditional uses in the EFU areas as permitted in ORS 215.213. The watchman residence would exist to better facilitate the existing conditional use, our dog kennel, and would not adversely affect the natural resources in the surrounding areas."

Staff Comment: Based on findings above in finding 4.-A(1)], a watchman's residence is a customarily provided accessory use to a dog kennel. Kennels

are allowed as within agricultural areas. Therefore the proposal does not conflict with this policy.

b. Policy 13 – Air, Water, and Noise Quality.

The expansion of the conditional use to include a watchman's residence will not adversely affect the air or water quality, and will reduce the noise levels in the surrounding area by:

- 1. The placement of the watchman residence on the site as to reduce the noise level disruptions from the kennel, acting as a buffer.*
- 2. Further adding more landscaping and trees surrounding the watchman residence to lessen noise generation to levels compatible with surrounding land uses.*
- 3. Perimeter fencing with the additional vinyl slats and more landscaping in the immediate kennel courtyard would also lessen noise generation.*
- 4. Pertaining water and air quality, there are no unforeseen affects from the expansion to include a watchman residence.*

Staff Comment: Policy 13 seeks to minimize negative air, water and noise quality impacts from new developments. It states that “*...If the proposed use is a noise generator, the following shall be incorporated into the site plan:*

- 1. Building placement on the site in an area having minimal noise level disruptions,*
- 2. Landscaping or other techniques to lessen noise generation to levels compatible with surrounding land uses.*
- 3. Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.”*

The placement of a watchman's residence would not likely generate significant noise increases; however, the proposal responds to this criteria by placing the watchman's residence southwest of the “kennel court”, where it would block the existing noise generating use (barking dogs). The house location helps shield the closest neighboring residences from the kennel. The closest houses are approximately 500-feet southwest and 600-feet south of the proposed watchman's house. This policy is also addressed through Design Review requirements (Condition #1). Design Review typically requires landscape plantings to buffer noise generating uses from neighboring residences.

b. Policy 14 - Development Limitations.

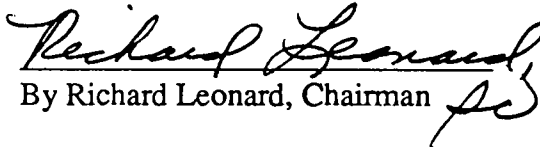
"There are no unforeseen developmental limitations for this proposed watchman residence. (ie; Slopes do not exceed 20%, nor is there a potential for soil erosion on this site.)"

Staff Comments: Staff concurs. Reference comments above in finding 4.-A(6) regarding flood hazards.

Conclusions:

1. The proposed watchman's residence for the existing kennel satisfies Conditional Use approval criteria.
2. Conditions of approval are imposed to assure compliance with applicable Design Review provisions, and with sub-surface system requirements for the new residence.

Signed November 6, 1990


By Richard Leonard, Chairman

Filed With the Clerk of the Board on November 15, 1990

Appeal to the Board of County Commissioners

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:30 PM. on Monday, November 26 1990 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, November 27, 1990 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

NAME	FERSINGER, ELDEN E & MARGUERETTE F	PROP	23200 NW REEDER RD PORTLAND, OR	97231
YR-AQ	73	BK/PG	0906/1445	STATUS
1471	23200 NW REEDER RD			PARTIAL REAPPRAISAL - APPR
	PORTLAND, OREGON	97231	YR APPR	84 VCHR # ACTION 828072
MAP	32N1W CENSUS TRACT 071.00		VCHR #	DIVISION
ANNEX	SID		TAT RES	DEF CANCEL 081182

----- LEGAL DESCRIPTION -----
 ADD SECTION 03 2 N 1 W LOT BLOCK
 TL# 15 9.41 ACRES

----- LAND AND IMPROVEMENT CHARACTERISTICS ----- *** 07/10/89 ***
 RATIO CODE 546 6 APPR DISTRICT AREA 9.41 A ZONING EFU
 CLASS 4 ONE STORY W/ BSMT % IMP GOOD NEIGHBORHOOD 230
 USE DWG SGL YR BUILT 1942 BDRMS 3 STORIES 1.0
 LIVING AREA 816 ARCH RESIDENCE CONS

BUILDING PERMIT
CENSUS DATA
TH81

09:39:16 03/02/89

E OF WORK:

ALT X TEN IMP REPAIR ADD CONV DEMO TEMP FILL MOVE
OWNER PRIVATE X GOVERNMENT/PUBLIC
LAND USE COUNT MAP 3-2N-2 ZONE EFU COMP PLAN EFU SITE SIZE 409899 SF
USE BEFORE PERMIT (FOR USE CATEGORIES PRESS PF12)
USE CODE 510
IF CONV THEN CURRENT # OF RES UNITS OR NON-RESIDENTIAL SQ.FT.
USE AFTER PERMIT RESIDENTIAL RESIDENTIAL/NON-RESIDENTIAL
USE CODE 510 CHANGE IN UNITS CHANGE IN SQ. FT.
USE CODE CHANGE IN UNITS CHANGE IN SQ. FT.
PREVIOUS LAND USE CASES

CU

VZ

REQUIRED LAND USE APPROVALS

ZONING COMMENTS: THE DOG KENNEL USE AND STRUCTURES PRE-DATE THE ZONING ORDINANCE; THE USE IS A CONFORMING CONDITIONAL USE WHICH MAY BE REMODELED AS PROPOSED; LIMITED TO 50 DOGS MAX; DR IS WAIVED DUE TO MINOR NATURE
PF1 PERMIT APPL PF4 APPLICATION MENU PF6 FEE CODE MENU PF8 CAVEATS PF16 TAX
PF3 SUPPLEMENT PF5 ASSIGN PLAN CHECK PF7 APPROVALS PF9 NOTES PRMTA002

T.C. '15' Section 3 - 2N - 1W

BUILDING PERMIT APPLICATION
TH81

09:39:46 03/02/89

STR NO 23200 DIR NW NAME REEDER TYPE RD BLDG FLR
BETWEEN AND
LOT BLK ADDITION
TAX LOT 015 SECTION 03 TOWN/RANGE 971 OCCUP GRP
TAX ACCT R971030150 CONST TYPE
MAP 3-2N-2 ZONE EFU COMP PLAN EFU FIRE EXT DETECTION
JOB NAME UNINCORPORATED MULTNOMAH COUNTY Y
DESCRIPTION *2W REMODEL EXISTING DOG KENNEL BUILDING ADD RUNS INTERIOR PARTITI
ONS. ETC.
PRELIM MEETING WITH
PLANS SPECS CALCS SOILS RPTS
ADDITIONAL PERMITS REQUIRED FOR PLUM ELEC MECH
OWNER ELDEN PERSINGER
QWNR ADDR 23200 NW REEDER RD CITY, ST PORTLAND, OREGON DATE 03/02/89
BUILDER ZIP 97231
APPLICANT TIM SCHILLEREFF PHONE 289-4854 LIC #
APPL ADDR CITY, ST ZIP
PF2 CENSUS DATA PF4 APPLICATION MENU PF6 FEE CODE MENU PF8 CAVEATS PF16 TAX
PF3 SUPPLEMENT PF5 ASSIGN PLAN CHECK PF7 APPROVALS PF9 NOTES PRMTA001

GENERAL APPLICATION FORM

7546 11



MULTNOMAH
COUNTY

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
LAND DEVELOPMENT SECTION

2115 S.E. MORRISON ST.
PORTLAND, OREGON 97214
(503) 248-3043

PROPERTY ADDRESS 23200 NW Reeder Road, Portland, Oregon 97231

LEGAL DESCRIPTION Please see attached Deed with the legal description.

Tax Lot 15, 9.41 Ac, NW 1/4 SEC 03, T2N, R1W

SITE SIZE 9.41 Acres on Sauvie Island, Oregon

PROPERTY OWNER/DEED HOLDER Elden E. Persinger and Margurette F. Persinger

ADDRESS 23200 NW Reeder Rd, Portland PHONE 621-3249

CITY Portland, OR ZIP 97231

APPLICANT Tim and Angela Schillereff 621-3204 (w)

ADDRESS 18149 NW Sauvie Island Road PHONE 6213646

CITY Portland, OR ZIP 97231

FOR STAFF USE ONLY

CASE NUMBER:

CU-23-90

ASSOCIATED CASES:

DR-90-07-02

INTERNAL PROCESSING

ACCEPTED FOR PRE-APP:

21 SEP 90

BY Chris G. Egan

PRE-APP:

PA 40-90

DATE AND TIME:

27 SEP 90, 10:40A

ACCEPTED FOR DECISION:

9/28/90

BY:

M. Hen

HEARING DATE:

11/5/90

DECISION FILED:

DECISIONS/S.R. BY:

ACCEPTED FOR APPEAL:

BY:

DATE OF HEARING:

DESCRIPTION

COMP. PLAN DESIG:

Rural

COMMUNITY:

Sauvie Isl

ZONING DISTRICT:

EEJ

ZONING MAP NO:

22 & 23

QUARTER SECTION NO:

N/A

TO BE COMPLETED BY APPLICANT ONLY IN THE PRESENCE OF A NOTARY PUBLIC

STATE OF OREGON
COUNTY OF MULTNOMAH

I, Angela Schillereff

EACH BEING FIRST DULY SWORN, DEPOSE AND SAY THAT I AM (ONE OF) THE APPLICANT(S) IN THE FOREGOING APPLICATION AND THAT THE SAME IS TRUE AS I VERILY BELIEVE.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 19th DAY OF September, 19 90

NOTARY Judy R. Green

MY COMMISSION EXPIRES 8-28-92

GENERAL DESCRIPTION OF APPLICATION: (To Be Filled In By Applicant and Reviewed by Staff)

Expand existing kennel to include a
watchmans residence.



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING
AND DEVELOPMENT
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

BOARD OF COUNTY COMMISSIONERS
GLADYS McCOY • CHAIR OF THE BOARD
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER
GRETCHEN KAFOURY • DISTRICT 2 COMMISSIONER
RICK BAUMAN • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

Notice of Planning Director Decision

Design Review Case No. 90-07-02

August 6, 1990

The Planning Director has approved **remodeling plans for an existing 50-dog kennel ; no additional dogs are authorized by this permit.** The kennel is located at 23200 NW Reeder Road. | *

You have received notice of this decision because our records indicate you own property near the project site.

The approved plans include relocating some of the dog runs to an existing pole building on the property. Conditions of approval have been imposed regarding landscaping and saving existing trees, and requiring sight obscuring fencing around the dog runs.

This decision will become effective ten days from the above date, unless an appeal is filed. An appeal requires a \$150.00 fee and must state the specific legal grounds on which it is based. Contact the County Planning Division at 248-3043 if you have questions regarding the project design or to obtain appeal forms or information.

5 notices mailed

8-06-90

M.B.



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING
AND DEVELOPMENT
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

BOARD OF COUNTY COMMISSIONERS
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RICK BAUMAN • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

Tim Schillereff
23200 NW Reeder Road
Gresham, Oregon 97030

FINAL DESIGN REVIEW

Decision Date: August 6, 1990

Design Review #90-07-02

Reviewer: Mark R. Hess

Date Plans Received: July 13, 1990

The final design plans submitted for **remodeling a Kennel for 50 Dogs** have been reviewed. The following applies to your plans:




DESIGN REVIEW COMPLETED WITH CONDITIONS

Based on review of submitted drawings, site visits by staff and analysis of applicable criteria, the final Design Review plans conform with the Design Review provisions of MCC .7805-.7865 if the following conditions are applied:

1. Construct building and install site improvements and landscaping as illustrated and specified on approved plans dated 8/6/90.
2. Landscaping and site improvements shall be completed and approved by Design Review Staff prior to occupancy or final approvals for the remodeled kennel facilities.
3. Disturbed areas associated with construction shall be replanted.
4. Retain the existing Birch trees north and west of the kennels and between the new pole building and the existing kennels.
5. The perimeter fencing for all the runs shall include vinyl or aluminum slats (slats are not required between runs) or other approved means to meet the "...constructed of...opaque material" requirement of MCC 11.15.7230(B).

IN THE MATTER OF DR 90-07-02

MULTNOMAH COUNTY DIVISION OF PLANNING AND DEVELOPMENT


Mark R. Hess, Planner

This decision shall become final in 10 days (August 16, 1990) unless an appeal of the decision is filed pursuant to MCC 11.15.8290. An appeal requires a \$150.00 fee and must state the specific legal grounds on which it is based. Contact the County Planning Division at 248-3043 for appeal forms and information.

TAKE ONE LARGE (DOUBLE)
RUNS AND DIVIDE IN TWO.
(IN BLDG. 2)

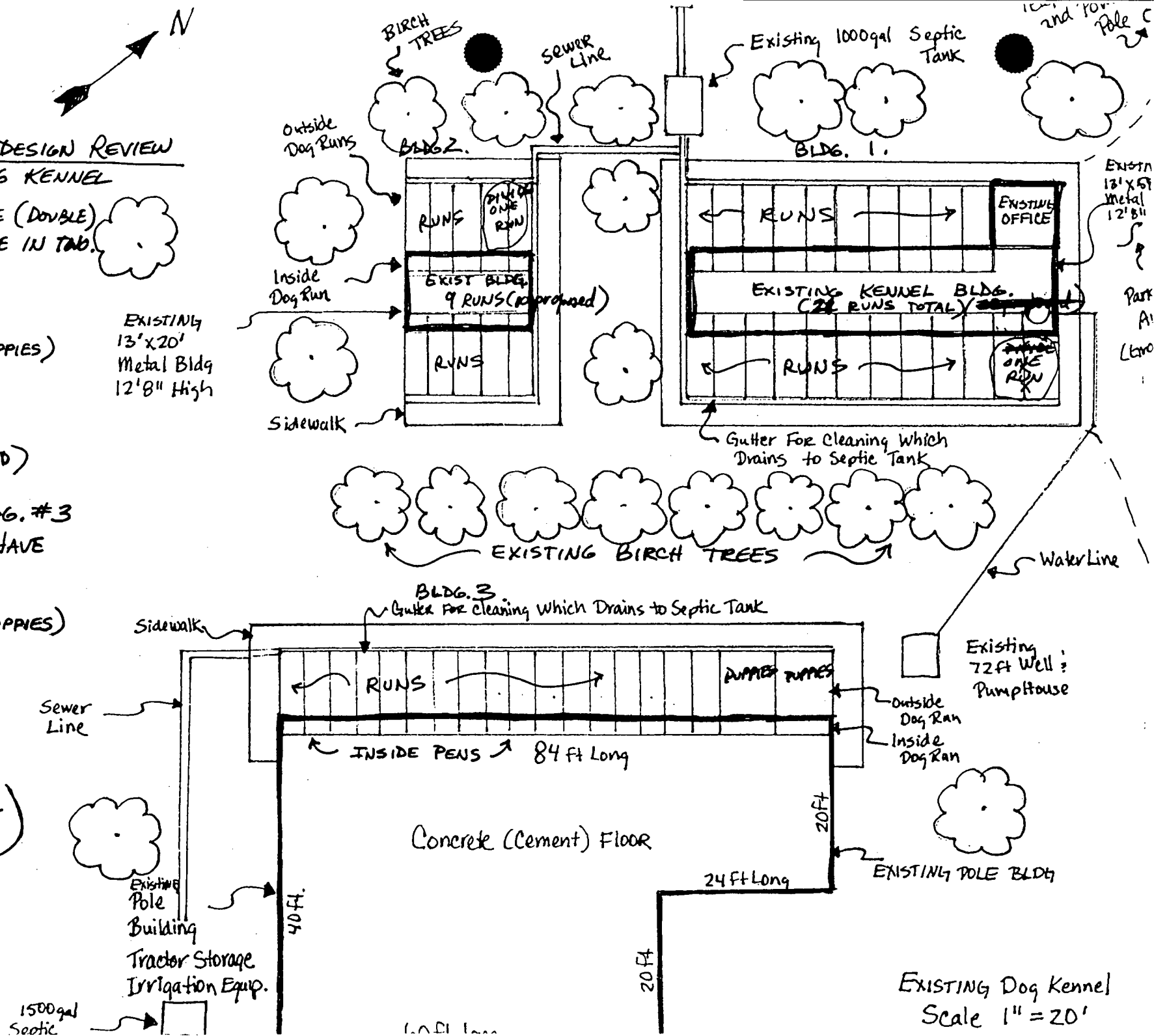
BLDG. 1, HAS -
21 RUNS
(ONE FOR PUPPIES)

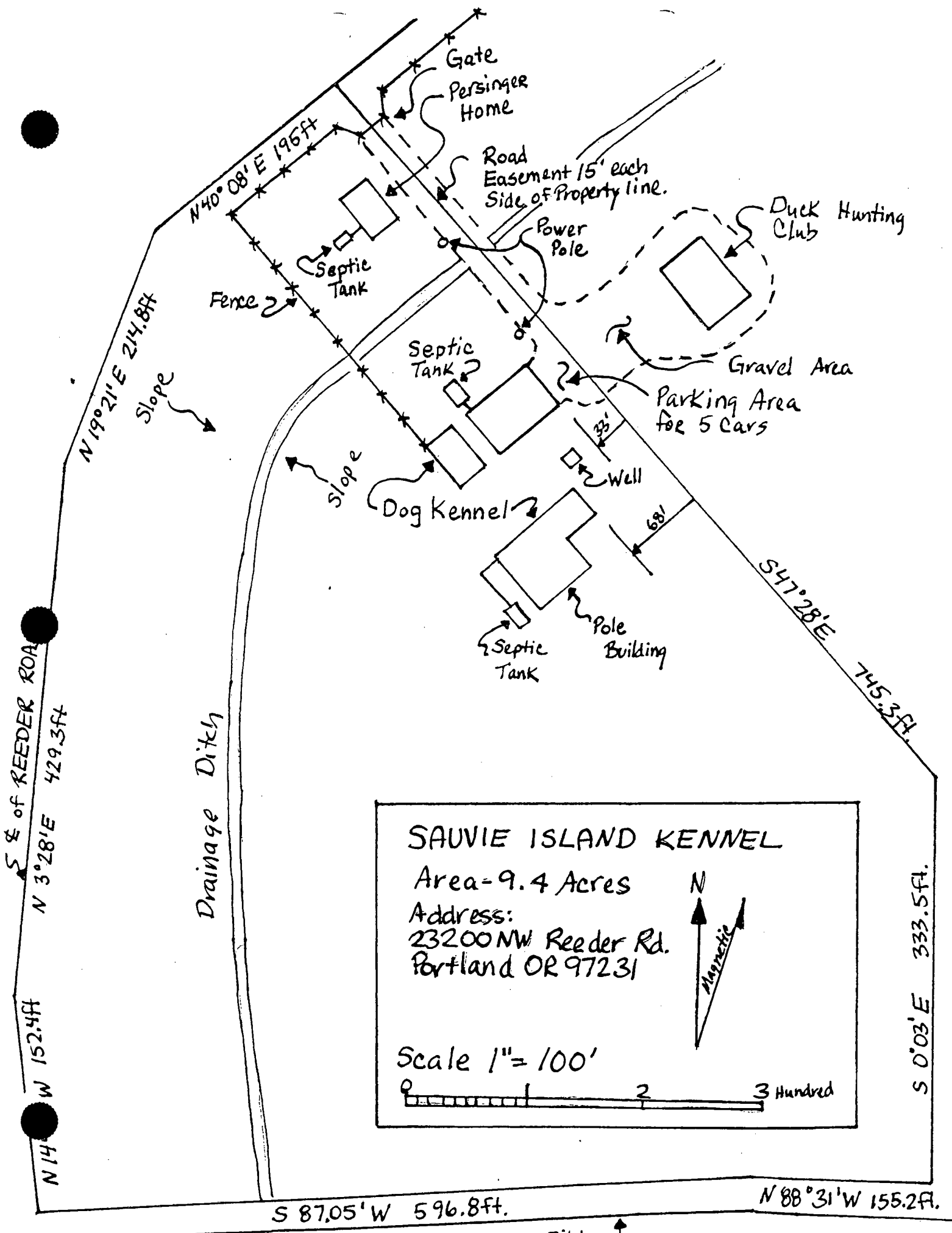
BLDG 2. HAS -
9 RUNS
(10 PROPOSED)

ADD RUNS TO BLDG. #3
BLDG 3. WILL HAVE
19 RUNS
(TWO FOR PUPPIES)

TOTAL RUNS

50 RUNS
(3 may be for puppies)





DR 90-07-02.

DESIGN REVIEW APPLICATION

Department of Environmental Services
Division of Planning and Development
2115 S.E. Morrison St.
Portland, Oregon 97214

(503) 248-3043



Property Location & Description

Street Address 23200 NW Reeder rd
Legal Description Dog Kennel (Commercial)
Community Sauvie Island
Zoning EFU
Site Size 9.4 acres

Property Owner

Name Elden E. Persinger
Address 23200 NW Reeder rd.
Phone 503 621-3249
Owner's Authorization _____

Contact Person

Name Tim Schilleroff
Address 23200 NW Reeder rd.
Phone 503 621-3204

Project Description

Project Title Commercial Dog Kennel
Proposed Use Boarding & training dogs
Square Footage Of Landscaping _____
Square Footage of Landscaping in Parking Lot(s) _____

If Residential

Number of Units _____
Number of Units with Three or more Bedrooms _____
Square Footage of Useable Outdoor Space _____
Square Footage of Private Outdoor Space _____

Staff Use Only

Design Review #

90-07-02

Fee

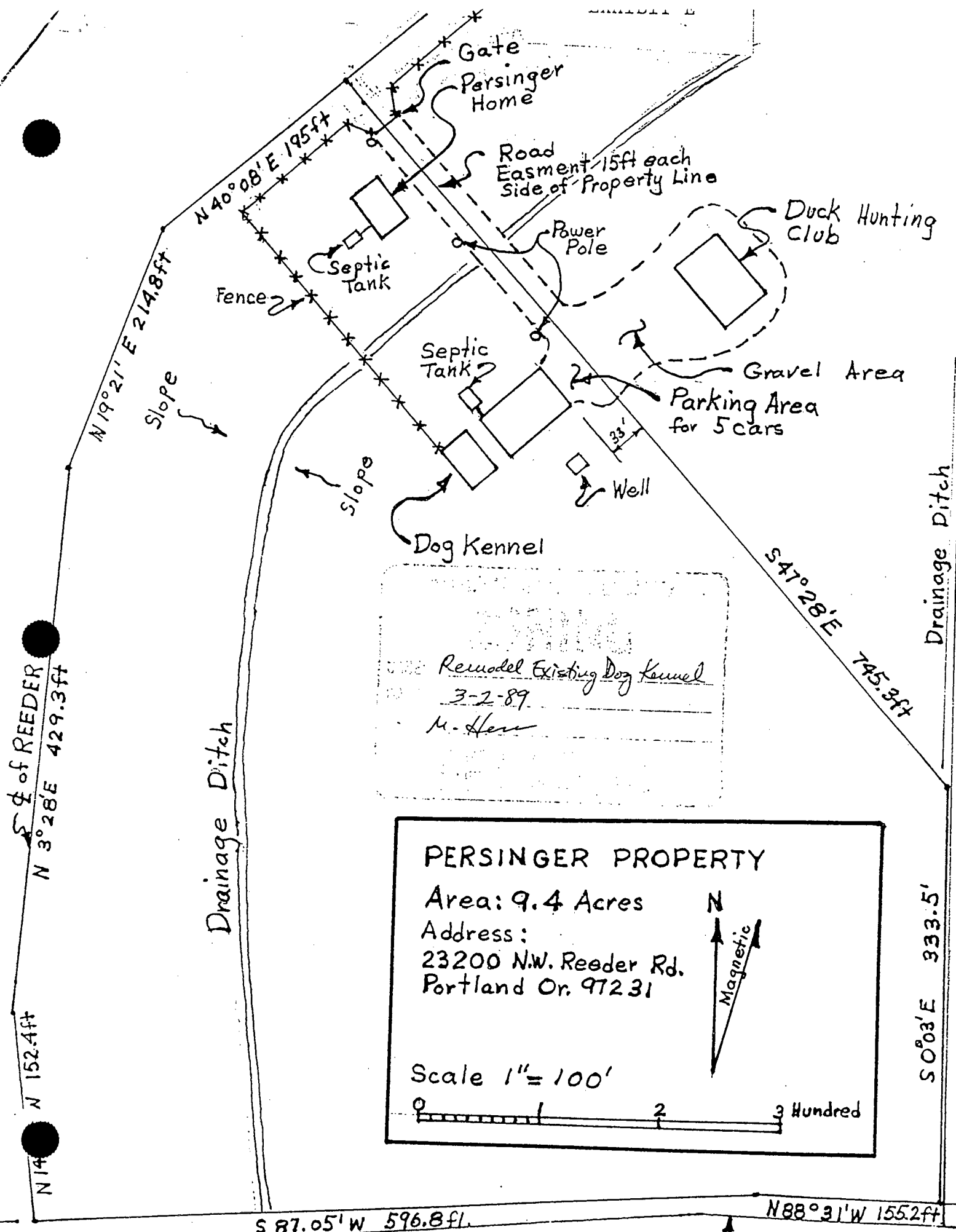
\$175.00

Accepted

Date 7/13/90

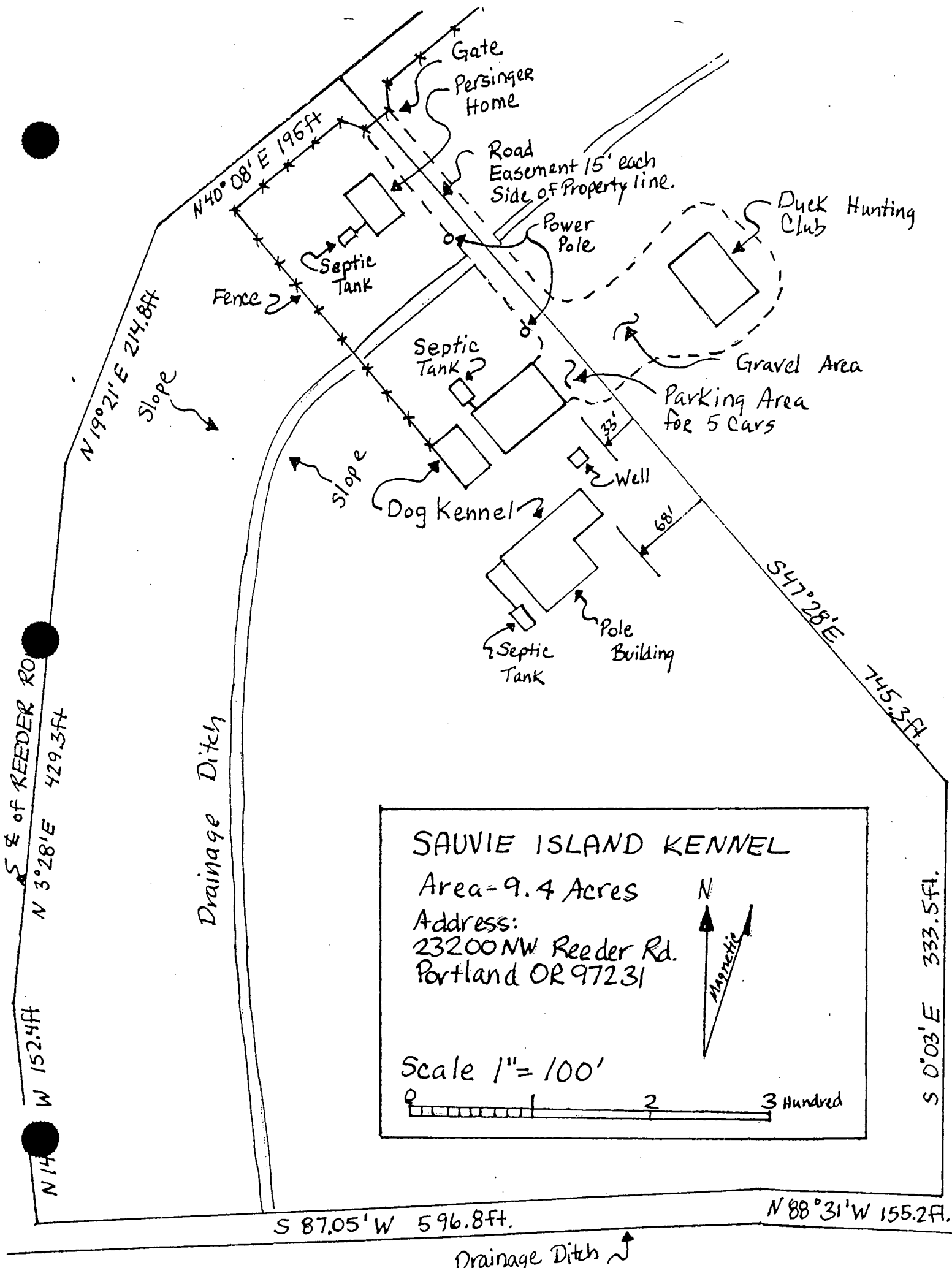
By M. Hen

Associated Cases



PERSINGER PROPERTY
Area: 9.4 Acres
Address:
23200 N.W. Reeder Rd.
Portland Or. 97231
Scale 1" = 100'
0 1 2 3 Hundred





SAUVIE ISLAND KENNEL

Area-9.4 Acres

Address:
23200 NW Reeder Rd.
Portland OR 97231

Scale 1"= 100'

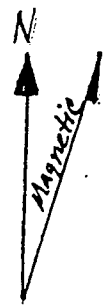


EXHIBIT B

February 24, 1989

Tim Schillereff
7218 N Wayland Avenue
Portland, OR 97203

Dear Tim,

We, the owners of said property in Exhibit A, street address known as 23200 NW Reeder Road, do hereby authorize you, Tim Schillereff dba Sauvie Island Dog School, to apply for a conditional use permit for the dog kennel located on our property.

With the approval of such a permit, we authorize you to perform such actions necessary for the operation of the business of a dog kennel, in addition to your current business, Sauvie Island Dog School.

Sincerely,

Elden E. Persinger
Elden E. Persinger

Marguerette F. Persinger
Marguerette F. Persinger

I concur with the above authorization.

Tim Schillereff
Tim Schillereff, dba Sauvie Island Dog School

DR 90-07-02

C 21 23-90

ST. JOHNS VETERINARY CLINIC
4818 N. LOMBARD
PORTLAND, OR 97203
503-289-4996

November 5, 1990

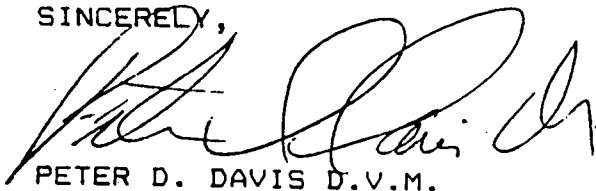
TO WHOM THIS MAY CONCERN:

I WOULD LIKE TO GO ON RECORD AS FAVORING A DECISION ALLOWING TIM AND ANGELA SCHILLEREFF TO BUILD A HOME ADJACENT TO THEIR SAUVIE ISLAND KENNEL. AS A RULE, I AM NOT IN FAVOR OF MORE HOUSING ON SAUVIE ISLAND, SINCE ADDING HOUSES ENHANCES NEITHER THE RURAL NATURE OF THE ISLAND NOR THE WILDLIFE HABITAT. HOWEVER, IN THIS CASE, A HOUSE SHOULD FIT IN WELL WITH THE EXISTING BOARDING AND DOG TRAINING FACILITY.

THERE ARE SEVERAL BENEFITS GAINED BY HAVING THE OWNERS LIVE ADJACENT TO THE KENNEL. IT WILL ALLOW THEM TO MORE CLOSELY MONITOR THE ANIMALS AT THEIR FACILITY. BARKING DOGS CAN BE CHECKED ON, NOISE PROBLEMS CONTROLLED, MEDICAL EMERGENCIES ATTENDED TO, ETC. IT IS MY OPINION THAT THE ANIMALS WILL BENEFIT THROUGH CLOSER OBSERVATION AND MORE IMMEDIATE ATTENTION TO ANY MEDICAL PROBLEMS IF THE OWNERS LIVE AT THE FACILITY. THIS WILL ALSO ALLOW THEM TO BETTER MONITOR AND CONTROL ANY BARKING OR OTHER NOISE PROBLEMS THAT OCCUR, WHICH SHOULD PLEASE THE ADJACENT NEIGHBORS.

FOR ALL OF THE ABOVE REASONS I AM IN FAVOR OF ALLOWING TIM AND ANGELA SCHILLEREFF TO BUILD A HOME ADJACENT TO SAUVIE ISLAND KENNEL. I SAY THIS BOTH AS A VETERINARIAN CONCERNED ABOUT THE CARE GIVEN TO ANIMALS AT THEIR KENNEL, AND AS AN ISLAND RESIDENT CONCERNED ABOUT MAINTAINING THE QUALITY OF OUR SAUVIE ISLAND LIFE.

SINCERELY,



PETER D. DAVIS D.V.M.



Planning and Development
2115 S.E. Morrison St.
Portland, Oregon 97215
(503) 248-3043

File in case
DR 4-94

Pre-Application Conference Notes

Staff: Hue

Date: 2/2/94

PA # 6-94

Property Location: 23200 NW Reeder Road

Legal Description: T.L. 15'; Section 3, ZN-1W

Request: Expansion of dog kennel

Applicant: Tim & Angela Schillereff

Address: 23202 NW Reeder Road

Zoning: EFU Comprehensive Plan: Ag.

Closing Date: _____ Hearing Date: _____

Fees: _____

Action fees: \$ _____

Sign fees: _____

Total: \$ _____

The Staff suggests addressing the following issues or items to improve your application:

Conservation with John DeLong
determined that the case exists without
limitation & may be expanded per
MCC 11.15.2028(B). Will require Design
Review with notice.

(over)

PA 6-94 - Shillereff's Dog Kennel expansion

Soils: 45 - Savie silt loam, protected (subclass 11w,
28 - Hoag silty clay loam, protected
subclass 11w.

This use pre-dated zoning. It is a conditional use recognized by zone & exempted from the non-conforming use provisions of the Code. No Approval Authority has ever placed a size limitation on a Conditional Use Permit (none has ever been issued). Expansion is not a change of use.



Department of Environmental Services
Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214 (503) 248-3043

**DECISION
OF THE HEARINGS OFFICER**

This decision consists of Findings and Conclusions

August 19, 1994

Concerning an appeal by Marquam Farms Corporation from an Administrative Decision, approving final design review for an expansion of the Sauvie Island Kennel, operated by the applicants, Tim and Angela Schillereff.

DR 4-94 Appeal of An Administrative Decision

Location: 23200 NW Reeder Road

Legal: Tax Lot '15', Section 3,2N-1W, 1990 Assessor's Map

Site Size: 9.41 acres

Property Owner: EE and MF Persinger
23200 NW Reeder Road, 97231

Applicant: Tim and Angela Schillereff
23202 NW Reeder Road
Portland, Oregon 97231

Comprehensive Plan: Agricultural Land

Present Zoning: EFU, Exclusive Farm Use District

Hearings Officer

Decision: Marquam Farm's Inc.'s appeal of the Administrative Decision approving Final Design Review in DR 4-94 is Granted. The Applicant's request for Final Design Review is Denied without Prejudice.

FINDINGS AND CONCLUSIONS

A. BACKGROUND

1. Applicant's Proposal:

The applicants, Tim and Angela Schillereff, operators of the Sauvie Island Kennels since 1989, request approval to demolish two existing kennel buildings and replace them with one, larger structure, designed to house 55 dogs. The other existing kennel structure would remain and would house up to 20 dogs. Overall, the applicant is requesting an expansion of the kennel from its existing license parameter of 50 dogs, to up to 75 dogs.

MUA-20

SEC

CS FF

EFU
FF

N.W. Cor.
H.J. McIntire

(5)
Sec. 34

MUA-20

SEC

CS

FF

84.55 AC

MUA-20

SEC

EFU

MUA-20

SEC

CS

FF

EFU
FF

1401.84

(6)
5.25 AC

S.W. Cor.
H.J. McIntire

Dist. R/W

Dist. R/W

33

34

N.W. REEDER ROAD

N 57° E 759

(15)
9.41 AC

EFU

(14)
39.34 AC

DR. Dist. 939.20

Govt Lot 6

155+60.76

BEG. RD. 2325-60

(8)

35.14 AC

EFU

EFU

(5)

5.41 AC

N W REEDER ROAD

EFU



Zoning Map

Case #: DR 4-94

Location: 23200 NW Reeder Road

Scale: 1 inch to 400 feet (approx)

Shading indicates subject property

SZM 23; Sec 3, T2N, R1W, WM.

17.28

(9)

11.55 A

389° E 293.9

(6)

5:14 AC

3

33

34

1

2

3

4

5

6

1401.84

(6)
5.25 AC

S.W. Cor.
H.J. McIntire

Dist. R/W

Dist. R/W

33

34

N.W. REEDER ROAD

N 57° E 759

(15)
9.41 AC

EFU

(14)
39.34 AC

DR. Dist. 939.20

Govt Lot 6

155+60.76

BEG. RD. 2325-60

(8)

35.14 AC

EFU

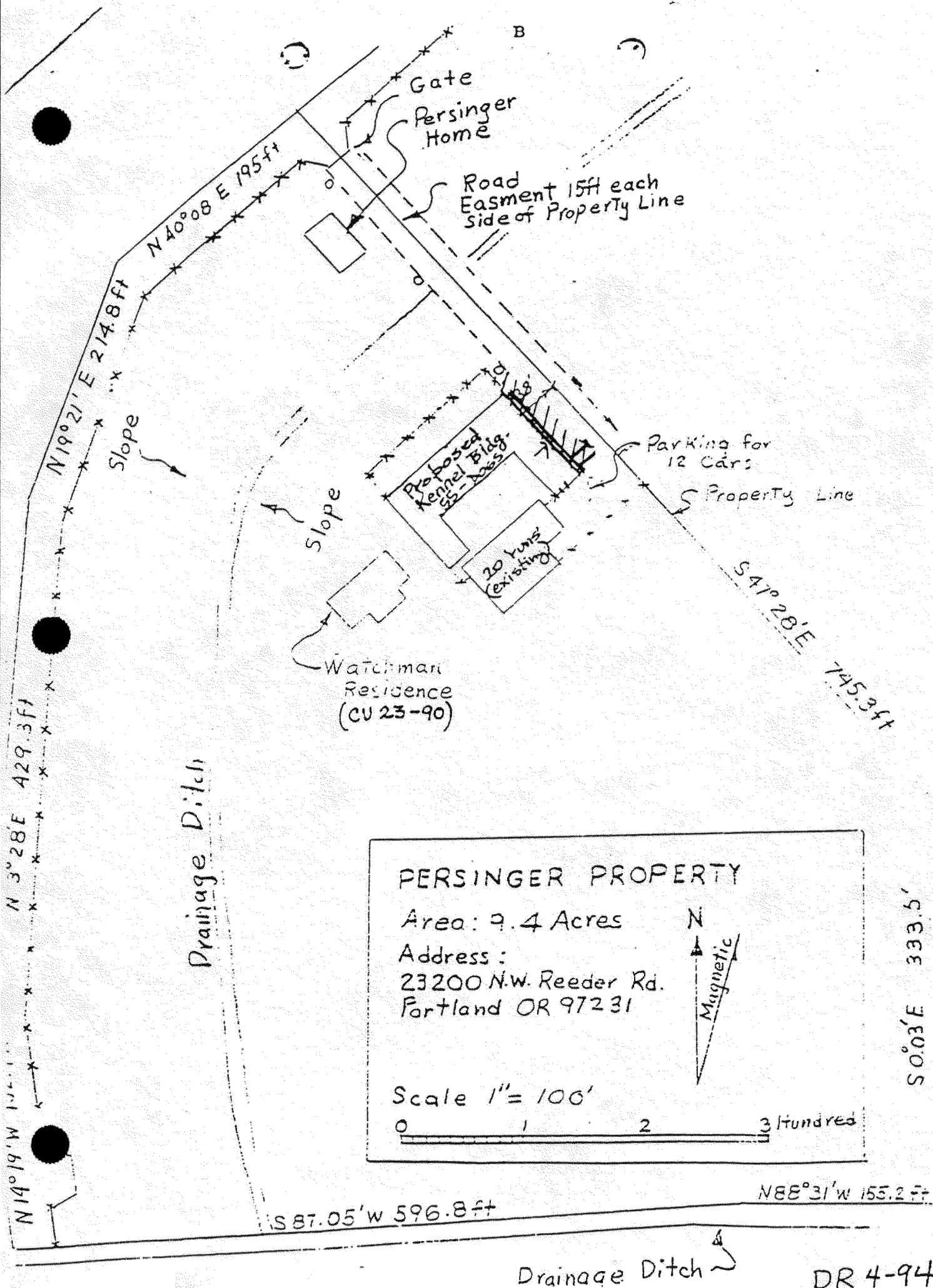
EFU

(5)

5.41 AC

N W REEDER ROAD

EFU



DR 4-94

2. Site and Vicinity Characteristics:

The 9.41 acre site is located in an EFU district on Sauvie Island. The property fronts on NW Reeder Road. Surrounding properties are primarily agricultural or open space in character.

The Sturgeon Lake Wildlife Refuge property lies to the northwest, across Reeder Road. This refuge is owned by the Oregon Department of Fish and Wildlife. The refuge is several thousand acres in size and serves as an important stop on the Pacific Flyway. It is also the home to many species of animals, and serves as an important local and regional recreational and open space resource.

Properties to the south and southwest contain agricultural uses with scattered farm houses and barns.

A duck hunting club operates on a 39-acre parcel east and north of the kennel site. The duck hunting club is owned by the appellant corporation, Marquam Farms Corp..

3. Land Use History

On August 6, 1990, the Planning Director approved Final Design Review (DR 90-07-02), authorizing remodeling plans for an existing 50-dog kennel.) *

On November 6, 1990, the Planning Commission approved a conditional use request for a watchman's residence for the dog kennel.

Both of the above mentioned approvals were issued to the present applicants, Tim and Angela Schillereff.

On or about January 10, 1994, the Schillereff's submitted a letter to the county planning department requesting a conditional use permit to expand and remodel the existing kennel. This request was consistent with a previous request made by Tim Schillereff in his February 24, 1989, letter to the county where he requested a conditional use permit for the kennel. It is of some note that Mr. Schillereff in his February 24, 1989 letter stated that:

"Please note that this request is pertaining to an existing kennel site, in other words, the buildings and structures are intact. However, the permits have lapsed for over 15 years, therefore a new request is now being sent."

In both 1989, and in 1994, the county advised the Schillereff's that a conditional use permit would not be necessary, and that the respective expansions could be accomplished through design review. In the file pertaining to DR 90-07-02 (the initial remodel for 50 dogs), a notation appears beside a copy of code section 11.15.2028, indicating that pursuant to this section "The Persinger Kennel is therefore a conforming CU [conditional use] therefore (sic) does not expire per October 8, 1990 opinion from John DuBay.". Also, in the file pertaining to this case (DR-4-94), it is apparent that the county based its administrative decision to approve the kennel expansion through Design Review (as opposed to through a conditional use process as originally requested by the applicant) on staff's legal interpretation that MCC 11.15.2028 (B) results in the kennel being a "pre-existing) *

conforming conditional use, permitted to continue in the EFU District, and which may expand on its original lot without a CU hearing." (See staff report and notice of public hearing for DR 4-94).

The outcome of this case turns on whether or not staff's interpretation of MCC 11.15.2028 (B), is correct. If staff's interpretation of MCC 11.15.2028 (B) is wrong, and if the use is not otherwise a lawful use in the EFU zone, then the Hearings Officer lacks authority to approve this Design Review request, unless or until the underlying kennel use receives appropriate land use approval to make it a lawful use in the zone. See MCC 11.15.2006.

4 . Relevant Approval Criteria

Design review is governed by the criteria in MCC 11.15.7850.

MCC 11.15.2008 lists the uses permitted in the EFU zone. Dog kennels are not permitted uses in the EFU zone. The statutory corollary to this code provision is ORS 215.283(1). This statutory provision guides the county's ability to interpret its own ordinance with regard to its EFU provisions. The county cannot interpret its ordinance in a manner that provides less protection to EFU lands, or in a way that allows other uses outright in the EFU zone which are not listed in the statute.

MCC 11.15.2010 lists the relevant conditional uses permitted by the county in its EFU zone. Dog kennels are listed as conditional uses in this zone. The statutory corollary to this code provision is ORS 215.283(2).

MCC 11.15.0010 defines a kennel as follows: "Kennel-Any lot or premises on which four or more dogs, more than six months of age, are kept."

MCC 11.15.2028 lists the exemptions from Non-conforming Use Provisions.

MCC 11.15.8805 and .8810 are the county's existing non-conforming use provisions. The statutory corollary to these provisions are found in ORS 215.130.

B. ANALYSIS

1. Lawfulness of the Existing Kennel

a. Status Under MCC 11.15.2028(B)

As noted above, the staff and the applicant have argued that MCC 11.15.2028(B) should be interpreted to mean that so long as the dog kennel was listed as conditional use in subpart .2012 prior to August 14, 1980, and since the kennel was lawfully established by any means, prior to the enactment of zoning in the county, then, under .2028(B), the kennel becomes a lawful permitted use in the EFU zone. The appellant disagrees with the applicant's and staff's interpretations. The applicant's interpretation is set out in the their various submissions.

The Hearings Officer finds that .2028(B) cannot be interpreted in the manner suggested by the applicant and the staff, without directly conflicting with ORS 215.283. Under the statutory scheme,

permitted uses and conditional uses are a static list. After 1958, when zoning was first applied in this area of the county, kennels were never allowed as outright permitted uses. Kennels were listed as conditional uses in the agricultural zone, but this particular kennel never received a conditional use permit. Therefore, the only way in which this particular kennel could have been lawful in 1958, when zoning came into effect, was if the use was a lawfully established non-conforming use.

The state statute that governs non-conforming uses does not permit a use that may have been a lawful non-conforming use to become an outright permitted use, simply because it was listed by the county as a conditional use prior to some arbitrary date. Under the statutory scheme, the only way a non-conforming use can expand is to satisfy the provisions of ORS 215.130, and any other relevant county ordinances not in conflict with the statutory scheme. Under the statutory scheme, in EFU zones, non-conforming uses never become conforming uses, unless the local ordinances and the state statutes governing exclusive farm uses are both amended to allow such uses outright, or unless both the local ordinance and the statute eventually list such uses as conditional uses, and if the governing body of the county, or its designate, actually issues an approval for such a use. Therefore, the only way that .2028(B) can be construed in such a way so as not to be in conflict with the statutory scheme, is to interpret the ordinance to mean that the kennel use must not only have been listed as a conditional use, but it must have been legally established as such, prior to August 14, 1980 (i.e. it must have actually obtained a conditional use permit).

In this case, the county issued Design Review approval for the kennel in 1990. However, the county did not issue a conditional use permit for the kennel operation itself. Since the county did not issue a conditional use permit for the kennel prior to August 14, 1980, the applicant cannot take advantage of whatever benefit MCC 11.15.2028(B) might confer. Therefore, the kennel did not become a lawful use pursuant to .2028(B), because it never received a conditional use permit. Under the statutory scheme, MCC.2028(B) cannot be read in such a way so as to elevate a non-conforming use to a permitted use in the EFU zone. The fact that the use was listed as a conditional use prior to August 14, 1990, is irrelevant under the statutory scheme, because the use did not actually obtain a conditional use permit. Therefore, since the kennel has never passed muster under the statutory scheme, which ultimately governs all uses permitted in exclusive farm use zones, it cannot be considered to have been a lawful use in the EFU zone, unless it was lawfully established as a non-conforming use, and if its status as such was maintained over time.

b . Non-Conforming Use Status

A considerable amount of evidence was received concerning the non-conforming use status of the kennel. Before the factual findings on this issue are discussed, the applicable law needs to be set out.

In Oregon, non-conforming uses are governed by state statutes and by local ordinances. ORS 215.130 provides that a "lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance may be continued." That same statute provides that a non-conforming use "may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of the zoning ordinances or regulations applicable at the time of the proposed resumption." MCC 11.15.8805(B) currently provides that: "If a non-conforming use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms with the requirements of this code at the time of the proposed resumption."

The proponent of non-conforming use status has the burden of proving both that the use was "lawfully established", and must also establish the level or scope of the use that existed at the time the use became non-conforming. See Warner v Clackamas County, 25 Or LUBA 82 (1993). The code defines a "kennel" as "any lot or premises on which four or more dogs, more than six months of age, are kept." Therefore, in order to be a "kennel", four or more adult dogs must be kept on the site. If less than four adult dogs are kept, for the "discontinuance" period, the non-conforming use expires.

As noted above, a non-conforming use can be lost if it is discontinued for the "discontinuance" period. Also, a partial discontinuance can occur during the life of the non-conforming use. In such a situation, "factors such as intermittency and infrequency are relevant to the scope of the [nonconforming] use, not its existence." See Warner v. Clackamas County, 111 Or. App. 11, 824 P2d 423 (1992). See Also Rhine v. City of Portland, 120 Or. App. 308, P2d 874 (1993).

Based upon all the evidence and testimony in the record the Hearings Officer makes the following findings with regard to the status of the kennel as a non-conforming use:

1. County records indicate that from 1952 to August 1957, Roy Wallace had a kennel on the site. From August 1957 to December 1962, Evelyn Blitz operated the kennel, then known as Marquam Lake Kennel.
2. On April 19, 1955, the county enacted its first zoning ordinance. The ordinance was applied to the Northwest portion of the county, including this site, on July 10, 1958.
3. On July 10, 1958, the county placed this site in its F-2 zoning district. F-2 zoning did not permit kennels as allowed uses.
4. The kennel was lawfully established prior to July 10, 1958, when the county's first zoning code was amended. It was lawfully established because prior to July 10, 1958, the county did not restrict the use of this property. Prior to July 10, 1958, the county did not require zoning or other land use permits to be issued for the kennel. Therefore, the evidence in the record demonstrates that the Marquam Lake Kennel, operated by Evelyn Blitz became a lawful non-conforming use on July 10, 1958.
5. The level of the use that existed on July 10, 1958, is difficult to precisely determine. The best evidence is a county record which indicates that between August 1957 and December 1962, the use consisted of a "commercial kennel [of] up to 50 dogs-boarding breeding and training.....". This county record is corroborated by other evidence in the record, particularly the "Brief history of Sauvie Island Kennels" (history), submitted by the applicant. This history is particularly helpful in that it describes the level and type of improvements constructed by the original owner, Roy Wallace, which were still in existence on July 10, 1958, when Mrs. Blitz operated the kennel. In short, the best evidence indicates that on July 10, 1958, the kennel consisted of a set of refurbished Army buildings which were moved to the site and located on concrete pads. Outside dogs runs were constructed with concrete bases, and a sloped drainage system connected the runs to a drainage system. A set of chain link fence dividers separated individual dog runs. The kennel operation was in active commercial use between 1952 and 1962, during the tenure of Mr. Wallace, and later, Mrs. Blitz. The best evidence indicates that on July 10, 1958, the active commercial operation housed up to 50 dogs. (Note: The code definition of the term "kennel" does not require that any commercial

activity occur. It merely requires that 5 or more dogs, aged six months or older, be kept on the premises. The Hearings Officer's reference to commercial activity is merely a reflection of what the evidence indicated.)

6. Between December, 1962, when Blitz operated the kennel, and February 1964, when Courtway operated the kennel, there is no information in the record concerning the existence and scope of the use. The county record is silent during this period. The applicant in their "history", does not mention the Courtway operation, and their discussion of Blitz's use of the property during this time period in the early 1960's is vague, and conclusory at best. During this period of time, the applicant's "history" is not based on any direct knowledge. The Persinger affidavit does not include this time period and is therefore of no help either. This lack of evidence does not meet the legal standard for "substantial evidence". Therefore, the Hearings Officer concludes that between December 1962 and February 1964, the applicant has not carried its burden of proof regarding the continued operation of the kennel.

7. Since the applicant has not provided substantial evidence in the record that the kennel use was maintained between the time period mentioned above, (December 1962 through February 1964), the Hearings Officer cannot find the kennel was in operation during that time (i.e. that 4 or more adult dogs were kept on the site). Therefore, the Hearings Officer must conclude that the kennel use, as that term is defined by the code, was discontinued between December 1962 and February 1964.

8. On November 15, 1962, the county adopted a new zoning ordinance (Ordinance #100). Section 8.23 of the 1962 code provided that: "If a non-conforming use is abandoned or discontinued for any reason for more than one year, it shall not be re-established unless specifically approved by the Planning Commission.". In other words, the "discontinuance" period in 1962 was 1 year, rather than 2 years as it is now. Therefore, under the then applicable law, since the non-conforming kennel use was discontinued for more than one year, (from December 1962 to February 1964), the non-conforming status of the kennel expired. Specifically, the non-conforming use status of the kennel expired on or about January 1, 1964, one year and one day after the use was discontinued in December of 1962.

9. Since the Hearings Officer finds that the non-conforming status of the kennel expired on or about January 1, 1964, the subsequent history of the kennel is not material. Under the law that was applicable in 1964, once a non-conforming use expires, either by discontinuation or abandonment, the use could not re-establish its non-conforming status, unless specifically approved by the Planning Commission. See MCC 8.23 (circa 1962). Under the current county code, once a non-conforming use is abandoned or discontinued, the use cannot be re-established unless the resumed use conforms with the requirements of the code at the time of the resumption. See MCC .11.15.8805(B).

2. Estoppel

In the Applicant's brief, submitted July 27, 1994, the Schillereff's raise the affirmative defense of estoppel. The defense of estoppel seeks to prevent a party, in this case the county and the appellant, from re-raising an issue that was previously decided in a different case involving the same parties. The applicable law with regard to the estoppel defense in land use proceedings is set out in Schoppert v. Clackamas County 23 Or LUBA 138 (1992), and Clackamas County v. Emmert, 14 Or App 493, 513 P2d 532 (1973). In those cases, it was established that in order for the petitioner to

establish estoppel, the petitioner must show (1) the county made a false representation with knowledge of the facts, (2) petitioner was ignorant of the truth, (3) the county intended that petitioner act upon the false representation, and (4) petitioner in fact acted upon the false representation.

The Hearings Officer finds the applicant's have not met their burden of proof concerning the estoppel defense. Based upon the evidence in the record, the only misrepresentation made by the county was a mistake of law, not fact. The fact that certain members of the planning staff advised the applicant and the Planning Commission that they considered the kennel to be a "conforming conditional use" under MCC 11.15.2028, and that the applicant and Planning Commission relied on this mistake, does not amount to the type of false factual representation required to establish estoppel. In short, mistake of the law is no defense. See Coos County v. State of Oregon, 303 Or 173, 743 P2d 1348 (1987).

Furthermore, the evidence in the record demonstrates that the applicant's themselves, on more than one occasion, doubted the continuing legality of the prior kennel use. The record shows that the applicants initially requested a conditional use permit for the remodelling and expansion of the kennel in both 1989 and in 1994. The 1989 request was accompanied by a February 24, 1989 letter from Mr. Schillereff, which stated:

"Enclosed you will find the following request for a conditional use permit for a dog kennel on Sauvie Island, Oregon.

"Please note that his request is pertaining to an existing kennel site, in other words, the buildings and structures are intact. However, the permits have lapsed for over 15 years, therefore a new request is now being sent."

This letter of February 24, 1989 demonstrates that the applicant either had knowledge or at least suspected that the prior kennel use had "lapsed". Therefore, the second element of the estoppel defense has not been met because the evidence indicates that applicant was not ignorant of the law. Furthermore, even if the second element of the defense had been met, the misrepresentation that was made by the county was as mistake of law, not a factual misrepresentation. Estoppel cannot be established based upon a mistake of law; the misrepresentation must be one of an existing material fact. The applicant has not demonstrated that the county made a misrepresentation of an existing material fact. Therefore, the estoppel defense has not been established.

C. CONCLUSION

Because the Hearings Officer finds that the kennel use is currently not a lawful use in the zone, the appeal of Marquam Farms Inc. is granted, and the Administrative Decision granting Final Design Review in DR 4-94, is reversed. Because the use has been found to be unlawful at the present time, a request for Design Review for such a use cannot be granted. However, if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore, the applicant's request for Design Review is denied, without prejudice.

The Hearings Officer expressly declines to reach any of the other issues raised by the appellant in their May 6, 1994 Notice of Appeal. Specifically, the Hearings Officer lacks authority to determine whether the use is a public nuisance, or whether the 1990 permit for the watchman's

residence was obtained by fraud. Also, the Hearings Officer lacks authority in this proceeding to determine whether or not the 1990 conditional use permit for the watchman's residence (CU 23-90) is still valid. CU 23-90 was not appealed beyond the planning commission and it is therefore a final decision, which cannot be collaterally attacked in this proceeding. Depending upon the final outcome of this particular case, the County may choose to examine the continued validity of CU 23-90, in a separate appropriate action.

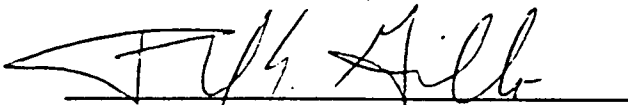
As to the defense of estoppel, the mistaken legal interpretation provided by the county staff to the applicant does not, upon careful examination of the law and the facts, rise to the kind of mistake that results in a successful estoppel defense against the county in this case. Furthermore, the evidence indicates that as early as 1989, when the applicant was initially seeking county permits for the kennel remodeling and expansion, Mr. Schillereff stated that he believed that a conditional use permit would be required because whatever other rights may have existed for the kennel use had previously lapsed. It should be noted that even if Mr. Schillereff had not made this statement in his 1989 letter concerning the need for a conditional use permit and the "lapse" of the prior use, the estoppel defense still could not have been maintained against the county, based upon the theory that the county took prior action based upon a mistake in law. Estoppel will not lie against a local government based upon a mistake of law, because the county has a continuing obligation to the public to apply the law correctly.

In conclusion, the Hearings Officer finds that although the kennel was lawfully established prior to the enactment of zoning in 1958, and therefore became a lawful non-conforming use on July 10, 1958, the kennel lost its non-conforming use status on or about January 1, 1964, because the applicant has not provided substantial evidence that the site was being used as a kennel during the period from December 1962 through February 1964. Because there is a lack of substantial evidence in the record concerning the continued operation of kennel during this period of time, the Hearings Officer concludes that the then applicable one year period of discontinuance ran, and the kennel's non-conforming use rights therefore expired on or about January 1, 1964. Once the kennel lost its non-conforming use rights, it could no longer expand through the Design Review process, because the use itself was no longer lawful. As a result of the determination that the kennel use is not presently lawful, the Hearings Officer concludes that he does not have authority to grant Design Review for this use at this time.

D. DECISION

The appeal of the Administrative Decision approving Final Design Review for DR-4-94 is granted. The applicant's request for Final Design Review is denied, without prejudice.

It is so Ordered this 19th day of August, 1994.



Phillip E. Grillo
Hearings Officer

In the matter of DR 4-94:

Signed by the Hearings Officer: August 1994
[date]

Decision mailed to parties: September 1, 1994
[date]

Submitted to Clerk of the Board: September 2, 1994
[date]

Last day to Appeal to the Board: 4:30, Monday, September 12, 1994

Decision Reported to the Board 1:30 p.m., Tuesday, September 13, 1994
[date]

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" form and a fee of \$300.00 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).

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.



Sauvie Island Grange

Number 840

August 15, 1995

Barry Adamson
County Hearings Officer
Multnomah County
2115 SE Morrison St, Room 111
Portland, OR 97214

RE: Conditional use approval for Sauvie Island Kennels (Tim and Angela Schillereff) 23200 NW Reeder Rd.

Dear Sir,

I am writing this letter on behalf of the Sauvie Island Grange #840 consisting of 363 members. We the members of Sauvie Island Grange are in support of the dog kennel expansion at 23200 NW Reeder Road. Tim and Angela Schillereff are active members of the community and have proven to Sauvie Island residents and grange members to be responsible neighbors and business owners.

Tim and Angela have invested much of themselves in their business and not just monetarily. They have continuously made improvements to the property since they took over in 1989. These improvements were made with future investment in mind and at that time with the approval of the county. We feel that these prior approvals be given the consideration they deserve. If the county can years later change zoning, or change their minds as to the decisions they have made in the past on zoning, we all could be at your mercy. It is a real shame that good honest people such as the Schillereffs have had to go through this ordeal due to inconsistency on the County's part.

Sauvie Island currently has three kennels operating on Sauvie Island. One of them just received permits to remodel his kennel. All of these kennels have been on the island for over 35 years. They are well respected by the dog industry as well as island residents. All of these kennels are located by duck clubs, however how can it be that only the Schillereff's kennel will harm the wildlife?

Tim and Angela's expansion should be considered a positive attempt on their part to eliminate any sound that may come from the dogs barking. By having new insulated buildings and covered runs the sound and noise reduction to the neighborhood would be significant. Their kennel is already well maintained and clean however, the remodel can only improve the quality of service that the Schillereff's provide to the dogs and their owners some of which are members of the Marquam Lake Duck Club.

We the members of the Sauvie Island Grange hope that you will support Tim and Angela in their expansion. This is clearly not a new kennel and the time period that is missing in 1962 is insignificant to everyone other than Marquam Farms and the county. Unfortunately for the Schillereff's some of the island's older pioneer residents who could help provide the missing information have passed away in the past year. We as a grange recommend that you visit the sight to see the commitment that the Schillereff's have made to Sauvie Island and their business.

Fraternally yours,

Linda Burns
Secretary,
Sauvie Island Grange #840

RECEIVED
AUG 21 1995

Multnomah County
Permits Section

August 15, 1995

Barry Adamson
County Hearings Officer
Multnomah County
2115 SE Morrison St., Room 111
Portland, OR 97214

Dear Sir,

I am writing to you regarding the expansion request for Tim and Angela Schillereff dba Sauvie Island Kennels.

Our home is located 1/2 mile Northwest of the kennel. We have lived here for four years, however we have both lived on the Island for over 30 years. We have enjoyed being neighbors with Tim and Angela. They are extremely considerate and conscientious neighbors as well as business owners. They are well liked and respected in the community.

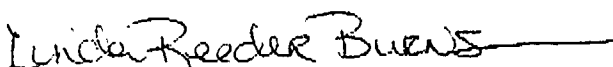
Having lived on the island for the majority of our lives, we have been aware of the kennel's existence the whole time. That property has always been referred to as the "kennel". When Tim and Angela purchased the kennel, the improvements were noticeable immediately. They were done first rate with much thought and effort on their part. The improvements continue to this day. This clearly shows the dedication and responsibility to their business and their long term goals.

When the Schillereff's shared with us their plans to remodel/expand we were excited for them. Their new business had surely gotten off on the right foot and they were expecting only the best to come. They were continuing in their efforts to improve the facility and conditions for the dogs while taking in the neighbors and the dog barking situation. We seldom hear the dogs barking at present except occasionally when the wind conditions are just right and a disturbance at the kennel sets off the dogs. Angela shared with us that the way the expansion is designed the dogs would be shielded from being able to see the parking lot and visitors. This is sometimes the cause of the disturbance and eliminating their view as well as constructing more sound proof buildings with covered runs could only improve the noise conditions for their neighbors.

Many residents and visitors to the island rely on the support the kennel gives to help lost dogs and owners find one another. Hundreds of thousand of people visit Sauvie Island each year. Many of these people bring their pets with them to the island. On many occasions these pets are either left or lost. Stray dogs roaming the wilderness are a major concern of the duck club. Tim and Angela's dogs do not escape and in the event this could happen their dogs are well trained. Lost dogs with no supervision are a potential problem to the wildlife. Tim and Angela have in the past taken these strays dogs in hoping to reunite them with their owners. They provide a resource for Island residents as well as lost pet owners. They should be commended for their efforts to help anyone or any living thing that is in need of their help.

I hope that you will find in favor of the expansion and give them the Conditional Use approval they require to continue with their business. Tim and Angela are good people who run a good business and definitely know how to be good neighbors.

Sincerely,


Linda Reeder-Burns
23815 NW Reeder Road
Portland, OR 97231

RECEIVED
AUG 21 1995

Multnomah County

August 15, 1995

Multnomah County Planning Division
Department of Environmental Services
2115 S.E. Morrison St.
Portland, Or 97214

Regarding: Case CU 4-95 and MC 1-95
Sauvie Island Kennels, Tim and Angela Shillereff

Dear Sirs,

Please use this letter as my recommendation for the approval of the above application to increase the size of Sauvie Island Kennels.

Tim and Angela Shillereff have operated Sauvie Island Kennels for the past eight years and a kennel has been on the property since the early 1950's. Marquam Lake Farms (which owns the property adjacent to Sauvie Island Kennels) is opposing the expansion and operation of the kennel. This group is composed of lawyers, doctors, professionals and businessmen who DO NOT reside on Sauvie Island. Their only connection to Sauvie Island is to operate a Duck and Goose hunting club. Marquam Lake Farms hunt the lake every day of the hunting season. This type of operation of a Duck and Goose club will ruin a duck lake in a very short time.

I am personally familiar with the owners of six duck clubs and duck lakes on Sauvie Island and none of those individuals will allow those who hunt their lakes or rent their lakes, to hunt ducks and geese more than 2 to 3 days per week. Even the Oregon State Fish & Wildlife only allows hunting on their land 3 days per week. Marquam Lake Farms apparently has no regard for proper wildlife management. Their only aim appears to be to kill as many ducks and geese as quickly as possible and then when their lakes are "hunted out" to look for someone else to blame.

Our family has resided on Sauvie Island for the last 36 years. We own 163 acres. For all of these 36 years, we have rented a portion of our property to Mr. Ed Minoggie who has operated Minoggie Kennels which has the capacity to board and train 60 to 70 dogs. On our 163 acres we have 2 lakes, the largest encompasses approximately 2 1/2 acres. We do not hunt ducks or geese on this lake as it is located in the front part of our property and is used for scenic value. However, it is located approximately 150' to 175' from the Minoggie Kennels. At any time during the fall, winter and part of

the spring seasons, there are from 25 to 200 wild ducks or geese on the lake and surrounding area. In addition, there are 10 to 12 deer that continuously feed and move around our lake, our neighbors property into the Wopato Park across the road. The operation of the dog kennel in no way effects the wildlife close by.

I urge you to support the application to enlarge the kennel operation of Sauvie Island Kennel.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kent Meyer".

Kent Meyer
19544 N.W. Suavie Island Rd.
Portland, Oregon 97231

SAUVIE ISLAND KENNEL PETITION

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WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. <u>Elinor D. Wiley</u>	<u>Elinor D. Wiley</u>	<u>13801 NW Chastain Rd</u>	<u>8/14/13</u>
2. <u>Dawn M. Loren</u>	<u>Karen M. Loren</u>	<u>15227 NW Gilman Rd</u>	<u>8/14/13</u>
3. <u>Charles Meyer</u>	<u>Charles Meyer</u>	<u>19544 NW SI Rd</u>	<u>8/14/13</u>
4. <u>Robert Wiley Jr.</u>	<u>Robert Wiley Jr.</u>	<u>13835 NW Chastain Rd</u>	<u>8/14/13</u>
5. <u>Karlyn Jane Brunner</u>	<u>Karlyn Jane Brunner</u>	<u>14214 N.W. Charleston Rd</u>	<u>Port 9723</u>
6. <u>Marquess E. Peruniger</u>	<u>Eldon E. Peruniger</u>	<u>23200 NW Pease Rd</u>	<u>Portland 97237</u>
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____
10. _____	_____	_____	_____

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<u>PRINTED NAME</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>DATE</u>
1. <u>Gail Murray</u>	<u>Gail Murray</u>	<u>17236 NW Lucy Reeder Rd.</u>	<u>8-14-95</u>
2. <u>MARY Anne WOLFE</u>	<u>Mary Anne Wolfe</u>	<u>14037 NW Jellula Kn</u>	
3. <u>Zilpha Allison</u>	<u>Zilpha Allison</u>	<u>33801 NW Reeder Rd</u>	
4. <u>Millie Lerch</u>	<u>Millie Lerch</u>	<u>22205 NW Gilman Rd</u>	
5. <u>Anita M. Bender</u>	<u>Anita M. Bender</u>	<u>19757 N.W. Sauvie Is. Rd.</u>	<u>8-14-95</u>
6. _____	_____	_____	_____
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____
10. _____	_____	_____	_____

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PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. <u>Betty Brown</u>	<u>Betty E. Brown</u>	<u>18655 N.W. Sauvie Rd.</u>	<u>8-13-95</u>
2. <u>James B. Vann</u>	<u>James B. Vann</u>	<u>21005 N.W. Sauvie 1st Rd</u>	
3. <u>ROBERT C. HECKMAN</u>	<u>Robert C. Heckman</u>	<u>17414 N.W. Lucy Reed Rd</u>	
4. <u>RONALD J. MURPHY</u>	<u>Rona J. Murphy</u>	<u>17236 NW Lucy Reed</u>	<u>8-14-95</u>
5. <u>Pamela J. HANSEN</u>	<u>Pamela J. Hansen</u>	<u>17235 NW Lucy Reed</u>	<u>8-14-95</u>
6. <u>Donna J. Churchill</u>	<u>Donna J. Churchill</u>	<u>17345 N.W. Lucy Reed</u>	<u>8-14-95</u>
7. <u>Christine HOFFART</u>	<u>Christine Hoffart</u>	<u>17335 NW Lucy Reed</u>	<u>8-14-95</u>
8. <u>RICHARD L. PARKER</u>	<u>Richard L. Parker</u>	<u>18520 NW Sauvie Rd</u>	<u>8-14-95</u>
9. <u>TIM BOYER</u>	<u>Tim Boyer</u>	<u>17235 NW Lucy Reed Rd</u>	<u>8-14-95</u>
10. <u>Marilyn Parker</u>	<u>Marilyn Parker</u>	<u>18520 N.W. Sauvie Rd</u>	<u>8-14-95</u>

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PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. MARY A. DOUGLAS	<i>Mary A. Douglas</i>	15105 N.W. SAUVIE IS. RD. PORTLAND, OR 97231	8/8/95
2. GEORGE E. DOUGLAS	<i>George E. Douglas</i>	15105 N.W. SAUVIE IS. RD. PORTLAND, OR 97231	8/8/95
3. TERRY M. HOFFART	<i>Terry M. Hoffart</i>	17335 NW Lucy Reeder Rd	8/9/95
4. LESLIE J. DOUGLAS	<i>Leslie J. Douglas</i>	12954 NW HOWELL	8-9-95
5. <i>Dorothy J. Rick</i>	DOROTHY J. RICK	18319 N.W. Reeder	8/14-95
6. LEONARD L. SMITH	<i>Leonard L. Smith</i>	18319 NW Reeder Rd	8/14/95
7. <i>Laurence Laxson</i>	<i>Laurence Laxson</i>	18325 NW Reeder Rd	8/14/95
8. SHIRLEY C. LARSON	<i>Shirley C. Larson</i>	18325 NW Reeder Rd	8/14/95
9. <i>Robert W. Wiley</i>	<i>Robert W. Wiley</i>	P.O. Box 408 Oceanside, OR 97134	
10. <i>Louis F. Larsen</i>	<i>Louis F. Larsen</i>	15227 NW Adeline Rd	8/14/95

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1. <u>Rita Jean Fears</u>	<u>Rita J. Fears</u>	<u>18143 NW Reeder</u>	<u>8/9/95</u>
2. <u>Clyde D. Fears</u>	<u>Clyde D. Fears</u>	<u>18143 NW Reeder Rd</u>	<u>8/9/95</u>
3. <u>Dale Johnston</u>	<u>Dale Johnston</u>	<u>19941 NW Reeder</u>	<u>8-9-95</u>
4. <u>DONALD E. ANDERSON</u>	<u>Donald E. Anderson</u>	<u>22005 NW Gillihan</u>	<u>8/9/95</u>
5. <u>Kathleen M ANDERSON</u>	<u>Kathleen M Anderson</u>	<u>22005 NW Gillihan</u>	<u>8/9/95</u>
6. <u>Linda M Reeder Buens</u>	<u>Linda Reeder Buens</u>	<u>23815 NW Reeder Rd</u>	<u>8/9/95</u>
7. <u>RYAN W Buens</u>	<u>Ryan W Buens</u>	<u>23815 NW Reeder Rd</u>	<u>8/9/95</u>
8. <u>GAINOR RIKER</u>	<u>Gainor Riker</u>	<u>14019 N.W. Gillihan Rd</u>	<u>8/9/95</u>
9. <u>JOE DREILING</u>	<u>Joe Dreiling</u>	<u>14019 N.W. Gillihan Rd</u>	<u>8/9/95</u>
10. <u>NORMAN SHARP</u>	<u>Norman Sharp</u>	<u>20230 NW. SAUVIE IS. Rd.</u>	<u>8-14-95</u>

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1. Gordon K. Wolfe MARY ANNE WOLFE	<i>[Signature]</i>	14037 NW GILLHAM	8-9-95
2. Mary Anne Wolfe	<i>[Signature]</i>	14037 NW Gillham	8-9-95
3. Richard T. Walton	RICHARD T. WALTON	15910 N.W. Gillham Road	8-9-95
4. LYNNE M. BARNE	Lynne M. Barnes	16140 N.W. Gillham	8-9-95
5. JANICE K. REEDER	Janice K. Reeder	26214 NW Reeder Rd	8-9-95
6. ROBERT J. REICH	<i>[Signature]</i>	26048 NW. REEDER RD.	8-9-95
7. JAMES E. REEDER	James E. Reeder	26214 N.W. Reeder Rd	8-9-95
8. MARIE L. COLASURDO	Marie L. Colasurdo	26504 NW Reeder Rd	8-9-95
9. A. J. Colasurdo	A. J. Colasurdo	26504 NW Reeder Rd	8-9-95
10. JOHN. BRUNNER	John Brunner	14214 NW Gillham Rd 97231	8-14-95

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<u>PRINTED NAME</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>DATE</u>
1. <u>Rebecca Brush</u>	<u>Rebecca Brush</u>	<u>26610 NW Reeder</u>	<u>8/9/95</u>
2. <u>TIM C. BRUGH</u>	<u>TROY C. BRUGH</u>	<u>26610 NW REEDER</u>	<u>8/9/95</u>
3. <u>John M. HANSELMAN</u>	<u>John M. Hanselman</u>	<u>27731 NW Reeder Rd.</u>	<u>8-9-95</u>
4. <u>P. Hanselman</u>	<u>P. Hanselman</u>	<u>27731 NW Reeder</u>	<u>8/9/95</u>
5. <u>Evelyn S. Vetsch</u>	<u>Evelyn S. Vetsch</u>	<u>22670 NW Reeder Road</u>	<u>Aug. 10/95</u>
6. <u>Richard W Vetsch</u>	<u>Richard W Vetsch</u>	<u>22670 NW Reeder Rd</u>	
7. <u>Robert R. Vetsch</u>	<u>Robert R. Vetsch</u>	<u>22700 NW Reeder Rd</u>	
8. <u>Don J Posvar</u>	<u>Don J Posvar</u>	<u>22656 NW Reeder Rd</u>	
9. <u>Christeen A Eger</u>	<u>Christeen A Eger</u>	<u>19430 NW Reeder Rd</u>	
10. <u>Gerry P Allard</u>	<u>Gerry P. Allard</u>	<u>19521 NW Reeder Rd</u>	

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. JOHN STEVENS	<i>John Stevens</i>	15942 N.W. Lucy Reeder Rd.	8-8-95
2. JACQUELINE STEVENS	<i>John Stevens</i>	15942 W.W. Lucy Reeder Rd	8-8-95
3. Margaret Stevens	<i>Margaret Stevens</i>	15700 N.W. Lucy Reeder Rd	8-8-95
4. David Fazio	<i>David Fazio</i>	16415 N.W. Lucy Reeder Rd	8-8-95
5. Kristi FAZIO	<i>Kristi Fazio</i>	16415 NW Lucy Reeder Rd	8-8-95
6. Cynthia L Sharp	<i>Cynthia L Sharp</i>	20230 NW Sauvie Island Rd.	8-8-95
7. Patricia Jean Todd	<i>Patricia Jean Todd</i>	1836 NE Grand Ave	8-8-95
8. GERALD Sc Hill REFFS	<i>Gerald Schillereffs</i>	18200 N.W. Sauvie Rd.	8-8-95
9. Jan A. Charlton	<i>Jan A. Charlton</i>	13825 N.W. Charlton Rd	8-9-95
10. ELEANOR CHARLTON	<i>Eleanor Charlton</i>	13825 N.W. Charlton Rd	8-9-95

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

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PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. Anne K. JONES	<i>Anne K. Jones</i>	15140 N.W. Burlington Ct.	8/8/95
2. JESLIE FORKNER	<i>Jessie Forkner</i>	19240 NW Gulliver	8/8/95
3. <i>Anne Ryan</i>	<i>Jim Regan</i>	15120 N.W. Burlington Ct.	8/8/95
4. <i>John Dinger</i>	<i>Beverly Burger</i>	15115 NW Burlington	8/8/95
5. LORA CRESWICK	<i>Lora Creswick</i>	15203 NW Burlington Ct.	8-9-95
6. Polly C.F. Holbrook	<i>Polly Holbrook</i>	15200 NW Burlington Ct.	8-9-95 97231
7. VIRGINIA M. Lammers	<i>Virginia M. Lammers</i>	18600 N.W. Sauvie Isl. Rd.	97231
8. John W. BEZLEY	<i>John W. Bezley</i>	18640 N.W. SAUVIE IS	97231
9. GREGORY GRAETTER	<i>Gregory Graetter</i>	20905 NW SAUVIE IS	97231
10. Erma Dufour	<i>Erma Dufour</i>	18830 NW Sauvie	97231

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

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PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. Kari D Eager	Kari Eager	16525 NW Gillihan Rd	8/15/95
2. Sarah Meredith	Sarah Meredith	16144 NW Gillihan	8/15/95
3. Kendra Laignor	Kendra Laignor	16453 NW Gillihan	8-15-95
4. Robert M. Schick	Robert M. Schick	16205 NW Gillihan	8-15-95
5. Matt Laignor	Matt Laignor	16453 NW Gillihan	
6. Bob Eager	Bob Eager	16525 NW Gillihan Rd	
7. Mark B Tate	Mark B Tate	2714 NW Redmond St	8-15-95
8. James Raynor	James Raynor	16530 NW Gillihan Rd	
9. Sheila Raynor	Sheila Raynor	16530 NW Gillihan	8-15-95
10. Mary Houle	Mary Houle	16600 NW Gillihan	8-15-95
11. John M Houle	John Houle	16600 NW Gillihan	8-15-95

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

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PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. ELIZABETH R ANDERSON	<i>Elizabeth R Anderson</i>	21445 NW Guelston Rd	8-14-95
2. Helen Cholick	<i>Helen Cholick</i>	21238 N.W. Seine Dr. Rd Portland OR 97231	
3. DANE KUNKER	<i>Dane Kunker</i>	20801 NW REEDER RD	8-15-95
4. DALE R BURGER	<i>Dale R Burger</i>	18105 NW SAUVIE IS RD	
5. June Parker	<i>June Parker</i>	18015 N.W. Sauvie Is Rd.	
6. Dale R. Burger	<i>Dale R. Burger</i>	18105 NW Reeder Rd.	
7. Bonnie L. Burger	<i>Bonnie Burger</i>	18105 NW Reeder Rd.	
8. Giki Gager	<i>Giki Gager</i>	19818 NW Sauvie Is Rd Portland OR	8-15-95
9. Dennis Grande	<i>Dennis Grande</i>	13743 N.W. Chualton Rd	97231
10. Nancy Grande	<i>Nancy Grande</i>	13743 NW Chualton Rd	97231

August 14, 1995

Scott Peneble, Planning Director
Multnomah County Planning and Development
2115 SE Morrison
Portland, OR 97214

Dear Mr. Peneble:

This is a letter in support of the expansion of Sauvie Island Kennels.

My wife and I are active in the sport of dogs. I am a Veterinarian by occupation, but I enjoy training dogs for competitive field trials and for hunting. My wife is a certified American Kennel Club conformation judge. Together, we have been breeding, raising, showing and trialing Brittanys for over 15 years.

We started out just showing dogs, but over the years realized the importance of the duality of the Brittany and decided to become involved in the trialing of dogs. After using a professional handler for several years, I finally became involved personally with the handling of my own dogs. I have placed an Amateur Field Championship on our primary stud dog, but only through the knowledge and support of Tim Schillereff. I have spent many weekends with Tim training dogs and can personally attest that Tim knows how to train dogs and to make them happy to perform at their best.

We have been using Sauvie Island Kennels for nearly 3 years. We usually have at least one dog being boarded and under Tim's training for 6 months each year. When we travel on vacation for 2 weeks each summer, we have no concern in leaving our entire kennel of 8-10 dogs with the Schillereff's. The kennel is well-managed and we have recommended several others on the quality of care the dogs receive while being boarded.

I have arrived at the kennels several times early in the mornings to train with Tim on the Island. When you drive up, some of the dogs bark, but the ducks and geese in the pasture ignore the dogs barking. Birds are smart and realize that the dogs barking is not a threat. However, overhunting an area, as is done on the adjacent property, soon makes the birds wise and causes them to look for some place else to rest and graze. If there are complaints of reduced numbers of birds, it is not due to barking dogs.

Sauvie Island Kennels has been around since the 1950's and since the Schillereff's have taken management, the kennel is a first class operation. Multnomah and adjacent counties need good quality kennel care. The population of the tri-county area is growing rapidly and with the human influx is also a dog population. People need to have some place to board their dogs and feel secure that their "family members" will be treated with great care. We drive from Benton county to board our dogs at this facility.

Sauvie Island Kennels should be allowed not only to continue to operate, but should be allowed to expand their facilities to accommodate the potential growth in the area. The Schillereff's land use request should be approved.

Sincerely,



H. N. Engel, DVM, PhD
Professor
College of Veterinary Medicine
Oregon State University
Corvallis, OR 97331

VEISCH, WILLY
22670 N.W. Reeder Road
Aug. 1995

EXHIBIT

8

To the Multnomah Co Planning Commission
Regarding Case File CV4-95 MC 1-95, #23

Dear Multnomah Co Commissioners,

We are owners and operators of Vetsch Dairy located just South of the Schillereff's Kennels and the Marquam Farms Corp. Duck Club and have been at this location since 1949. In the 1950's the dog kennels were built and established by Peter Alpkert and the first manager that we can remember was a Scotchman by the name of Mr. Rose. Later Evelyn Blitz purchased the property and also operated a dog kennel. Since that time it has always been known as the dog kennels and operated as such off and on.

The Marquam Farms Duck Club owners knew the kennel was there when they bought their property. We can see no reason that the Schillereff's use of their property as a kennel be terminated and forced to give up their means of making a living. The new plans for the kennel sound like it will make even less of an impact on the ducks, geese and neighbors. Certainly, much less than the Marquam Farms Duck Club does with their trap shooting and wildlife hunting all year long.

We recommend that the planning commission approve the Schillereff's property as a non conforming use as a kennel. As farmers the only option we can see for use of this small acreage and the use of the present buildings as exclusive farm use would be to operate a pig farm. In our opinion a good place to board dogs is needed much more.

Sincerely,

Richard W + Evelyn Vetsch
22670 NW Reeder Rd. Portland, Oregon 97231

8/95

To Multnomah County Planning and Development,

We represent the largest farm market on Sauvie Island, the Pumpkin Patch, and we farm about 2.5 miles from Sauvie Island Kennels. The Pumpkin Patch grows about forty different crops on 400 acres here in the island.

We find it necessary for you to understand how incomprehensible it is to think that the use of dog kennels are incompatible with agricultural uses. For years, animals have been raised for personal as well as business purposes here on the island, right along side the agricultural practices that take place year around. Together, these two ventures have made good use of and have conserved the land for decades.

Just as it would be absurd to farm in the city, it, too, is absurd to think that dog kennels don't belong in the "country" on Sauvie Island. There is no better place for either than here on the island.

In consideration that the kennel has operated since the 1950's without problems, why should its requests not be granted when it in fact does no harm to Multnomah County's stated policy of agricultural land preservation? The Schillereff's daily preserve the land on which they live. They are good people, great neighbors, and concerned about the environment. Their proposed changes to the kennels prove this.

In light of the above information, we here at the Pumpkin Patch on Sauvie Island urge the county to approve the Schillereff's request.

Sincerely,
Kari Egger

partner and co-owner
of the Pumpkin Patch

The Charlton Kennels and Farm

SAUVIES ISLAND
13825 N.W. CHARLTON ROAD
PORTLAND, OREGON 97231
TELEPHONE (503) 621-3675

EXHIBIT

10

August 12, 1995

Mr. Barry Adamson
Department of Environmental Services
Division of Planning and Development
2115 S. E. Morrison Street
Portland, Oregon 97214

Dear Mr. Adamson:

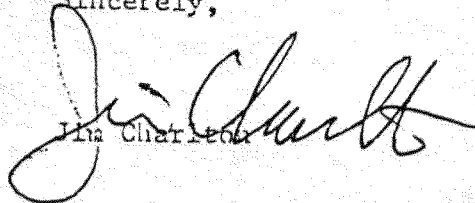
Re: Case File CU 4-95 & MC 1-95
Applicants, Tim and Angela Schillereff

We have managed a 64-run dog boarding facility here on our family farm for the past 29 years. We own approximately 150 acres and for three generations have operated one of the most, if not the most successful duck hunting clubs on Sauvie Island. We find absolutely no conflict between our kennel operation and duck hunting.

Marquam Lake Farms shoots almost every day of the season and any wildlife manager will tell you that you cannot put that much pressure on waterfowl and expect decent hunting. Most of the private clubs in our area hunt only two and one half days a week, Wednesday, Saturday until noon and Sunday. Speaking for three generations of duck club owners, it takes only about three years to ruin a good hunting lake by overshooting it and four to five years to bring it back.

While the Sauvie Island Kennel is a competitor, they are also our neighbors and friends who run a good operation. Therefore, I recommend they be allowed to increase their capacity from 50 to 75 runs.

Sincerely,


Jim Charlton

EXHIBIT



MULTNOMAH COUNTY ANIMAL CONTROL
1700 W. Columbia River Hwy.
Troutdale, OR 97060

248-3066

FACILITY LICENSE NO. 108 Expires: 8/98 Fee: \$300.00

Number of Cats Number of Dogs 45/50 Number of Exotics

Business Name Sauvie Island Kennel Phone

Name of Owner Tim/Angela Schillereff Phone 621-3204

Address 23200 N.W. Reeder Rd City Portland Zip 97231

CONDITION OF APPROVAL:


David R. Flagler, DIRECTOR

Ordinance No. 8.10.110(G) states this license must be conspicuously displayed on the facility premises.

A/C-103, Rev. 6/94

ALDO ROSSI
3701 NE 122nd Avenue
Portland, OR 97230



August 12, 1995

Mr. Scott Premble
Planning Director
Multnomah County Planning & Development Commission
2115 SE Morrison Street
Portland, OR 97214

Subject: SAUVIE ISLAND KENNELS

Dear Mr. Premble:

For many years, I have been a duck hunter on Sauvie Island. I belong to Jim Charlton's Duck Club and in the past have boarded my dogs at Charlton Kennels located on the same piece of property. In those past years, Tim Schillereff was a dog-trainer for Jim Charlton and trained my hunting dogs for me.

Since Tim Schillereff now has his own kennel, I continue to take my dogs for training and boarding to Tim's kennel, which is known as *Sauvie Island Kennels*. I understand there is a question regarding whether a kennel and a duck club are compatible and you also question the existence of *Sauvie Island Kennels*.

I do not understand why Jim Charlton is able to make a good living with both a kennel and hunting club on his place side by side for 50 years and you should question the existence of *Sauvie Island Kennels* because of Marquam Farms Duck Club. What is the difference?

Tim Schillereff is a quiet, hard-working, very polite and respectful gentleman. He minds his own business and only wants to make a living at something he does so well. I am a 75-year old businessman and feel a person with Tim Schillereff's integrity should not be denied doing a job he does so successfully. I also understand Tim trains hunting dogs for some of the members of Marquam Farms, such as my friend, Eric Hoffman.

Please read this letter into your records and give it some consideration. We urge you to APPROVE the Schillereff land use application coming up on Wednesday, August 16, 1995.

Respectfully,

Aldo Rossi
Aldo Rossi

RECEIVED
AUG 14 1995

i. Multnomah County
Permits Section

August 13, 1995

ATTN: BARRY ADAMSON, HEARINGS OFFICER
DIVISION OF PLANNING AND DEVELOPMENT
2115 SE MORRISON ST
PORTLAND OR 97214

Re: Land Use Request by Tim & Angela Schillereff; Sauvie
Island Kennel, 23200 NW Reeder Rd., Portland, OR

Dear Mr. Adamson:

My name is Bruce Cavallero. I am 43 years old and have lived in Linnton all of my life. Linnton is approximately 2 miles from Sauvie Island and I've spent a great deal of time on Sauvie Island. I've duck hunted on the Island since I was 11 years old. For 10 years I also hunted in Scapoose around the old Brown Kennel on Dike Road, and found that the dogs kenneled there never disrupted my hunting in any way. Even though their barking was quite audible, it never prevented the ducks from working into the duck lake. I've also hunted at Vetch's Dairy which borders the Sauvie Island Kennel. The dogs boarded there never impacted my hunting at all. I currently hunt across the road from the Sauvie Island Kennel, at the R.W. Burns property, and have never experienced any problems with noise from the kennel disturbing or otherwise deterring the ducks from coming in.

Tim and Angela run an excellent kennel. I have boarded and had my dog trained at their kennel. I feel it would be very beneficial to the area for them to expand. Angela and Tim are very hard-working people and are a great asset to the community. I feel that any complaints about noise from their kennel interfering with duck hunting is unwarranted and just plain absurd. Sauvie Island is a place for dog kennels as well as duck hunting. As long as I can remember, there have always been three dog kennels on Sauvie Island: Minogue, Charleton, and Sauvie Island. My family owns the Linnton Feed Store and when I worked at the store I delivered lots of feed all over the Island so I'm well aware of its history.

I feel that the expansion of the Sauvie Island Kennel would be of benefit to everyone in the community as well as for anyone else who would wish to board their dog at a clean, well-run establishment operated by caring, competent people. I urge that the Schillereff's land use request be approved.

Sincerely,

Bruce Cavallero
Bruce Cavallero
12408 NW Alderview Dr.
Portland, OR 97231
286-5989

RECEIVED
AUG 15 1995

Multnomah County
Permits Section



Multi Services, Inc.

providing a complete range of services
to commercial and residential buildings

5200 s.w. macadam ave., suite 160 • portland • or 97201

222-7073

February 23, 1995

RECEIVED
FEB 27 1995

Multnomah County
Zoning Division

Mr. Scott Preamble
Multnomah County Planning Director
Division of Planning and Development
2115 S.E. Morrison
Portland, OR 97214

Dear Mr. Preamble:


I am writing to you regarding Sauvie Island Kennels located at 23200 N.W. Reeder Road on Sauvie Island. I understand that Marquam Farms has taken issue with not only the proposed expansion of the kennels but the kennel as it exists. I am and have been a member of the Marquam Farms Corporation for the past eight years and an active duck hunter on the island for thirty years. Quite honestly I do not understand what the problem is. This particular piece of property has been used as a dog kennel off and on for many years. I have used the existing kennel for training my hunting dogs and boarding them during the hunting season. My family enjoys our trips out to our duck club even during the off-season, as they enjoy seeing the dogs at the kennel and Tim and Angela are very generous to us.

I personally appreciate the fact that I have a place to train and board my dogs right next to my duck hunting club. I know of several members of Marquam Farms that have had their dogs trained there and boarded there. The two uses compliment each other and I for one appreciate it.

Tim and Angela have worked very hard to make their kennels one of the best in Oregon and have been successful in operating a top class kennel. I know there are members of Marquam Farms who take issue with the kennel's existence, but I wanted you to know that there are also members who appreciate having this amenity available to us.

If you wish any further information, feel free to contact me.

Sincerely,



David L. Stephens
President

DLS:lglfs

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 MARQUAM FARMS CORPORATION,)

5)

6 Petitioner,)

7)

8 vs.)

9)

10 MULTNOMAH COUNTY,)

11)

12 Respondent,)

13)

14 and)

15)

16 TIM SCHILLEREFF and ANGELA)

17 SCHILLEREFF,)

18)

19 Intervenors-Respondent.)

20

LUBA No. 95-254

ORDER ON COSTS

21 Petitioner, the prevailing party in this appeal, filed a
22 cost bill requesting award of the cost of its filing fee, in the
23 amount of \$50. Petitioner also request return of its \$150
24 deposit for costs.

25 Respondent and intervenors-respondent do not object to
26 petitioner's cost bill.

27 Petitioner is awarded the cost of its filing fee, in the
28 amount of \$50, to be paid by respondent and intervenors-
29 respondent. The Board shall return petitioner's \$150 deposit
30 for costs.

31 Dated this 4th day of November, 1997.
32
33
34
35

36 *Virginia L. Gustafson*
37 Virginia L. Gustafson
38 Chief Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Order on Costs for LUBA No. 95-254, on November 4, 1997, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Lawrence R. Derr
Josselson, Potter & Roberts
53 SW Yamhill Street
Portland, OR 97204

Sandra N. Duffy
Chief Assistant County Counsel
Suite 1530
1120 SW Fifth Avenue
Portland, OR 97204

Edward J. Sullivan
Preston Gates & Ellis
Suite 3200
111 SW Fifth Avenue
Portland, OR 97204-3688

Dated this 4th day of November, 1997.

D. Renee Young
D. Renee Young
Administrative Specialist

RECEIVED
NOV 05 1997
COUNTY COUNSEL FOR
MULTNOMAH COUNTY, OR

224-97

al matter, post-conviction cases are "criminal" in nature and that appellate costs are not recoverable in criminal proceedings. Whatever the arguable merits of petitioner's minor premise that appellate costs are not taxable in criminal matters, petitioner's argument rests on a false major premise: Except as specified by statute, *see* ORS 138.650, post-conviction proceedings are civil, not criminal, in character. *See Kumar v. Schiedler*, 128 Or.App. 572, 577, 876 P.2d 808 (1994) (De Muniz, J., concurring) ("Post-conviction is a civil proceeding[.]").

[5] Petitioner attempts to avoid the generally civil nature of post-conviction proceedings by invoking ORS 138.650, which provides that, in post-conviction proceedings,

"[t]he manner of taking the appeal and the scope of review by the Court of Appeals and the Supreme Court shall be the same as that provided by law for appeals in criminal actions, except that:

"(1) The trial court may provide that the transcript contain only such evidence as may be material to the decision of the appeal; and

"(2) With respect to ORS 138.081(1), if petitioner appeals, petitioner shall cause the notice of appeal to be served on the attorney for defendant, and, if defendant appeals, defendant shall cause the notice of appeal to be served on the attorney for petitioner or, if petitioner has no attorney of record, on petitioner." (Emphasis supplied.)

[356] Petitioner argues that "the manner of taking the appeal" encompasses the taxation of appellate costs and disbursements. We disagree. As used in this context, as an appellate term of art, the "manner of taking the appeal" refers to the procedures for filing

and prosecution of an appeal. *See, e.g.,* ORS 138.081.³

Petitioner has not identified, and we have not found, any statute that so qualifies ORS 20.190 and ORS 20.310(1) as to limit or bar the state's recovery of printing costs or a prevailing party fee in appeals in post-conviction proceedings. Accordingly, the state is entitled, in this appeal, to recover printing costs of \$102.50 and a prevailing party fee of \$100.

Statement of costs and disbursements denied with respect to appearance fee; otherwise allowed.



147 Or.App. 368

¹³⁶⁸MARQUAM FARMS CORPORATION,
Respondent,

v.

MULTNOMAH COUNTY, Tim Schillereff
and Angela Schillereff, Petitioners.

LUBA No. 95-254; CA A95801.

Court of Appeals of Oregon.

Argued and Submitted Feb. 19, 1997.

Decided April 16, 1997.

Landowners and county sought judicial review of decision of Land Use Board of Appeals (LUBA) that remanded for further findings county's decision granting application to increase permissible number of dogs at kennel. The Court of Appeals, Deits, P.J.,

"(b) On the trial court reporter if a transcript is required in connection with the appeal; and

"(c) On the clerk of the trial court.

"(2)(a) The original of the notice shall be filed with the clerk of the court to which the appeal is made.

"(b) Proof of service of the notice of appeal shall be indorsed on or affixed to the original filed with the Court of Appeals."

held that: (factual find tion of court. ute.

Affirm

1. Zoning

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2. Zoning

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1. The Sch jointly in opinion,

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Cite as 936 P.2d 990 (Or.App. 1997)

held that: (1) county failed to make requisite factual findings, and (2) county's interpretation of county ordinance violated state statute.

Affirmed.

1. Zoning and Planning ⇐86

Rules making it impermissible to establishes new kennel uses on high-value farmland, and allowing counties to issue kennel-related permits only in connection with existing facilities, are within Land Conservation and Development Commission's (LCDC) authority and do not violate statute allowing counties to permit dog kennels in exclusive farm use (EFU) zones without specifying whether they are new uses or continuations, enlargements, or changes of existing ones. ORS 215.283(2), 215.304; Or.Admin.R. 660-33-120, 660-33-130.

2. Zoning and Planning ⇐321

County ordinance providing that conditional uses legally established prior to certain date would be deemed conforming did not either define or regulate nonconforming uses; rather, role of nonconforming uses in ordinance was simply that of a condition precedent to conversion of pre-existing nonconforming uses that, after their conversion, were subject to conditional use regulations in county's legislation. Multnomah County, Or., Code § 11.15.2028(B).

3. Counties ⇐24

Although counties may adopt certain legislation that refines or amplifies statutory provisions, county legislation must be consistent with state statute.

4. Zoning and Planning ⇐331

In considering application to expand number of dogs permitted at kennel, county did not satisfy requirements of statute providing that alteration of nonconforming use could be permitted to reasonably continue the use, by finding only that some kennel use had endured on land since passage of zoning legislation disallowing prior commercial kennel use; county had to ascertain actual past

1. The Schillereffs and the county have appeared jointly in this court. In the balance of this opinion, we will refer to them jointly, in their

and present scope of use and compare them with effects of proposed enlarged future use. ORS 215.130(5, 9).

5. Zoning and Planning ⇐321

Under county ordinance providing that conditional uses legally established prior to certain date would be deemed conforming, kennel could not be permitted in area zoned for exclusive farm use unless county found that use would not force significant change in farm or forest practices on surrounding lands and would not significantly increase cost of accepted farm or forest practices. ORS 215.283(2), 215.296(1); Multnomah County, Or., Code § 11.15.2028(B).

Edward J. Sullivan argued the cause, Portland, for petitioners. With him on the brief were Sandra N. Duffy, Chief Deputy County Counsel for Multnomah County, Daniel Kearns and Preston Gates and Ellis.

Lawrence R. Derr argued the cause, Portland, for respondent. With him on the brief was Josselson, Potter & Roberts.

Before DEITS, P.J., and De MUNIZ and HASELTON, JJ.

DEITS, Presiding Judge.

In 1995, petitioners Schillereff applied to petitioner Multnomah County for "conditional use approval, or, alternatively, an alteration of a non-conforming use," to allow the Schillereffs to enlarge a kennel use on high-value farmland in an exclusive farm use (EFU) zone. The applicants sought to increase the use from its ostensible existing level of 50 dogs to 75.¹ The county treated the filing as three separate applications, respectively for (1) an "initial" (i.e., new) conditional use permit, (2) an expansion of an existing conditional use, and (3) an expansion of a nonconforming use. The county hearings officer approved all three variations, and, on respondent's appeal, the county governing body effectively adopted the hearings officer's opinion and approved the expanded

capacity as parties, as "petitioners." Where differentiation is necessary, we will call them the "applicants" and the "county," respectively.

use. Respondent appealed to LUBA. LUBA disagreed with the county's disposition of each application and remanded the decision to the county. Petitioners seek review, and we affirm.

The applicants acquired the affected property and began operating a commercial kennel on it in 1989. Their various predecessors had at times operated a commercial kennel on the property and, apparently, were doing so in the mid-1950s, when the county enacted zoning legislation disallowing the kennel use. Thereafter, the continuity and exact extent of the use varied considerably, as the property was transferred among the various owners. As LUBA explained, the "parties appear to agree that prior to 1989 there had not been a commercial kennel on the property for at least 15 to 20 years." However, under relevant county legislation, a facility with as few as four adult dogs is defined as a "kennel"; hence, the county's designation could apply to kennel uses that, depending on the specific nature of the use, could fall well short of commercial or other quantitative levels that might nevertheless be relevant to the determination of the nature and extent of the use.

evidence? ¹³⁷¹The evidence here was in conflict as to how many dogs occupied the property at various times between the enactment of restrictive zoning and the present. There was some evidence that only the owner's own dog or dogs inhabited the facility at some times, and there was even evidence that periods elapsed when no kennel activity was occurring on the property. However, the applicants presented evidence to the effect that there was a minimum of at least four dogs on the property at all relevant times. The county found that "some degree of kennel operations has persisted unabated from 1952 forward." However, it made no findings concerning the level of kennel activity at the time that the restrictive legislation became effective or at any subsequent time.

2. The applicants attempted to apply for a conditional use permit in conjunction with the kennel remodeling but were advised by county personnel, apparently on the basis of section 2028(B), that a conditional use permit was unnecessary. No argument based on estoppel, vested rights or related principles is made to us.

It is important to emphasize that the design review approval is not the equivalent of a condi-

In 1977, the county enacted what is now Multnomah County Code (MCC) 11.15.2028(B) (section 2028(B)). As amended in 1980, it provides:

"Conditional uses listed in subpart MCC.2012 legally established prior to August 14, 1980, shall be deemed conforming and not subject to the provision of MCC.880(5), provided however, that any change of use shall be subject to approval pursuant to the provisions of MCC.2012."

same use

Section .2012 of the code contains a list of uses that "may be permitted when approved by the [county] pursuant to the county conditional use procedures." Kennel uses were added to that list in 1986. Section .880(5) prohibits the resumption of a nonconforming use that has been discontinued or abandoned for a two-year period, unless the use meets applicable code requirements at the time of its proposed resumption.

In 1990, the applicants sought design review approval from the county for "remodeling a kennel for 50 dogs" and also sought a conditional use permit for a watchman's residence. Both applications were approved by the planning commission, and neither decision was appealed.² In ¹³⁷²1994, the applicants again sought a design review approval from the county, this time to increase the kennel from a 50-dog to a 75-dog capacity. As described by LUBA, the county hearings officer concluded in 1994 that, notwithstanding the 1990 decisions, he could not approve the applicants' request because the applicants could not demonstrate that the underlying 50-dog use was authorized either by a "valid conditional use permit" or as the product or byproduct of a "valid, nonconforming use [existing] in 1980, which could become a 'conforming conditional use' under [section 2028]." The hearings officer denied the 1994

tional use permit, either in terms of the procedures or the substantive criteria that must be satisfied in order to obtain it. We also emphasize that the 1990 design review concerned the augmentation of the kennel's capacity to 50 dogs; conversely, in the main, the present decisions involve applications to increase a use from 50 dogs to 75.

Seeking Permit Design Review Approval?

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application "without prejudice." His decision was not appealed.

The next year, the applicants tendered the present applications to the county. The county found that *some* kennel use had continued on the property from 1952 through the present and, therefore, the applicants had established the existence of a nonconforming use on which the requested expansion of a *commercial* use could be predicated. The county further determined that the applicants enjoyed a conditional use for the 50-dog kennel by virtue of section 2028(B), and therefore also qualified for the requested expansion, as an enlargement of an existing conditional use, on that basis. In so determining, the county hearings officer and, in turn, the governing body made the following interpretation of section 2028(B):

"I therefore conclude that the most probable and reasonable meaning to be accorded 2028(B) is this: It purports to apply to a use that, but for the absence of a conditional use permit, *would be* a true conditional use. The resulting use comprises a 'conforming' conditional use or what might be described as a '2028(B)' use. Such a 'conforming' conditional use may be curtailed or discontinued and resumed in the same manner as a true conditional use, unburdened by notions of 'abandonment' or 'discontinuance' normally associated with non-conforming uses.

"That interpretation also resolves a profound dilemma for a use that had, for example, been a non-conforming use and later became a 'listed' conditional use. A pre-existing use just that suddenly becomes a 'listed' conditional use can scarcely be described as a 'nonconforming use.' * * * MCC 11.15.2028(B) renders that species of use a 'conforming' conditional use without the need to apply for a conditional use permit in order to maintain a use that, but for the absence of a permit, is *already* a conditional use.

* * * * *

"MCC 11.15.0010's definition of 'non-conforming use,' for instance, describes a use 'which does *not* conform with the use regulations of the district in which it is located.' Obviously, a 'non-conforming use' that sud-

denly attains a new status as a 'listed' conditional use falls outside that definition. Even if the definition of 'non-conforming use' said '*did not conform*' instead of '*does not conform*,' it would defy logic or reason to describe a 'listed'-but-never-formally-approved conditional use as a 'nonconforming' use." (Emphasis in original.)

Finally, the county concluded that, independently of the preceding grounds for the expansion of an existing use, the applicants had "fulfilled all of the applicable conditional use criteria" in the county's land use legislation and qualified for an "*initial*" conditional use permit to operate a 75-dog facility.

Respondent appealed the county's decisions to LUBA, which rejected the county's analysis and conclusions concerning each of the alternative applications that it granted. With respect to the expansion of the putative nonconforming use, LUBA reasoned that the county had failed to make necessary findings regarding the initial scope of the use at the time that it became nonconforming and had also not adequately defined the extent of the nonconforming use that continued to exist thereafter. LUBA accepted the county's finding that there was *some* ongoing kennel use throughout the 40-year period as being supported by substantial evidence. However, it noted that the county

"apparently concluded, without analysis, that since [the applicants had] established the continued existence of a kennel, i.e., at least 4 adult dogs on the property since the 1950's, they had somehow established a nonconforming use to operate and expand a 50-dog kennel. Such a conclusion is not legally justified." (Footnote omitted.)

¹³⁷See ORS 215.130(5), (9). Accordingly, LUBA remanded the nonconforming use expansion issue for further county findings and evaluation concerning the "level of intensity" of the use at the time it became nonconforming and at subsequent times to the present.

LUBA also concluded that the granting of the "*initial*" conditional use permit for a 75-dog facility was erroneous, because it was contrary to OAR 660-33-120 and OAR 660-33-130, the pertinent state administrative rules promulgated by the Land Conservation and Development Commission (LCDC).

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LUBA explained that kennels are expressly prohibited on high-value farmland by OAR 660-33-120. Although OAR 660-33-130(18) allows "[e]xisting facilities [to] be maintained, enhanced or expanded, subject to other requirements of law," LUBA reasoned that the initial permit was not for an existing use.

Next, LUBA turned to the county's conclusion that the application could be granted as an expansion of an existing conditional use established pursuant to section 2028(B). LUBA first rejected petitioners' arguments positing that the county's 1990 decisions had already resolved the pertinent issues. LUBA concluded that those decisions contained no interpretation of section 2028(B). LUBA then addressed petitioners' argument that they enjoyed the necessary underlying conditional use under the county's interpretation of section 2028(B) in the present decision, and that LUBA was required to defer to that interpretation by ORS 197.829 and *Clark v. Jackson County*, 313 Or. 508, 836 P.2d 710 (1992). After observing that it found the substance of the county's interpretation somewhat obscure, LUBA said:

"With regard to the county's explicit interpretation in its 1995 decision, as we read the hearings officer's analysis, he concludes that a nonconforming use can become permitted outright as a 'conforming conditional use' if the use is listed in the county's code as being a conditional use. It is unclear to us whether the county's explicit interpretation of .2028 allows abandoned nonconforming uses to 'spring' back into existence as permitted uses when those uses are listed as conditional uses, or whether it interprets .2028 to permit only valid existing nonconforming uses to become 'conforming conditional uses.'

¹³⁷⁵ * * * * *

"As we understand the narrowest interpretation of .2028(B) that the county could have made in this decision, kennels in existence in 1986 are legislatively established as permitted uses (conforming conditional uses) without a showing of compliance with

3. We understand the point of LUBA's holding, and the target of petitioners' argument, to be that the county's interpretation of its own conditional use legislation, under which it granted the initial

the ORS 215.296 farm impact standards. Such a showing is required for dog kennels to be established as permitted uses under ORS 215.283(2). To the extent the interpretation also allows abandoned nonconforming uses to 'spring' back, the interpretation also violates OAR 660-33-120, which prohibits new kennels on high-value farm land." (Footnote omitted.)

Consequently, LUBA remanded the decision to the county for it "to interpret .2028 in a manner consistent with ORS 215.283 and OAR 660-33-120."

Petitioners seek our review and assign error to each of the bases for LUBA's remand. We first consider their contention that LUBA was incorrect in holding that state law precluded the granting of an "initial" conditional use permit, i.e., one authorizing a 75-dog kennel as a "new" use, without reference to any underlying nonconforming use or permitted conditional use status under section 2028(B).³

Petitioners do not appear to dispute that, by their terms, OAR 660-33-120 and OAR 660-33-130 make it impermissible to establish new kennel uses on high-value farmland and allow counties to issue kennel-related permits only in connection with existing facilities. They contend, however, that the rules are contrary to ORS 215.283(2)(m), which allows counties to permit dog kennels in EFU zones, without specifying whether they are new uses or continuations, enlargements or changes of existing ones. Petitioners therefore reason that the rules are invalid and cannot be given effect here. They rely on *Lane County v. LCDC*, 188 Or.App. 635, 910 P.2d 414, on recons. 140 Or.App. 368, 914 P.2d 1114, rev. allowed 324 Or. 305, 925 P.2d 908 (1996), where we invalidated parts of ¹³⁷⁶OAR 660-33-120 and OAR 660-33-130 as conflicting with ORS 215.213.

ORS 215.213 pertains to nonfarm and ancillary farm uses in EFU zones in the counties—Lane and Washington—that have adopted "marginal lands" provisions. ORS 215.283 applies to uses in counties, like the

permit, was inconsistent with the two state administrative rules, OAR 660-33-120 and OAR 660-33-130, and was therefore reversible under OAR 197.829(1)(d).

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county here, that have not adopted marginal lands provisions. ORS 215.213 and ORS 215.283 are similar in many respects, but there are some distinct differences between the two. See *Nichols v. Clackamas County*, 146 Or.App. 25, 932 P.2d 1185 (1997). In our opinion on reconsideration in *Lane County*, we emphasized that our holding there related only to the validity of the rules under ORS 215.213 and in the "marginal lands" counties that are subject to that statute. We expressly left open the question of whether the rules conflict with any other statute. 140 Or.App. at 370-71, 914 P.2d 1114.

Petitioners' contention here is arguably similar to certain reasoning that led to the conclusion in *Lane County* that the rules are not consistent with ORS 215.213. See 138 Or.App. at 638 and n. 2, 910 P.2d 414. However, petitioners' effort to transport that reasoning to ORS 215.283 does not succeed. Both ORS 215.213 and ORS 215.283 relate to permissible uses in EFU zones generally. Neither deals with uses on high-value farmland specifically. As we explained in *Lane County*, the promulgation of LCDC's original high-value farmland rules (the predecessors to those involved in this case) preceded the legislature's 1993 adoption of certain statutes that do relate specifically to uses on—and LCDC rules regulating uses on—high-value farmland. *Id.* at 638-39, 910 P.2d 414.

As we observed in *Lane County*, the 1993 statutes rejected some of the other agricultural land categories established by the LCDC rules, but the legislature "recognized . . . the high-value farmland category. ORS 215.304(1); ORS 215.710." *Id.* We emphasized in particular in *Lane County*, *id.*, that ORS 215.304(3), one of the 1993 statutes, precludes the implementation or enforcement of or the giving of legal effect to

"[a]ny portion of a rule inconsistent with the provisions of ORS 197.247 (1991 edition), 215.213, 215.214 (1991 Edition),

4. The legislature's intention that the high-value farmland rules be subordinated only to the pre-existing statutes relating to marginal lands is further illustrated by the fact that the list of statutes in ORS 215.304(3) also includes former ORS 215.288, ORS 215.317 and ORS 215.327. Further, ORS 215.316 *et seq.* establish a general pattern in which the regulation of marginal lands

215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991 Edition) or 215.705 to 215.780 * * *." (Emphasis supplied.)

That critical point in our analysis in *Lane County* also constitutes the critical difference between *Lane County* and this case: ORS 215.304 expressly prohibits the implementation of LCDC high-value farmland rules insofar as they conflict with the general EFU use provisions of ORS 215.213, but it contains no prohibition against the implementation of the rules insofar as they affect the operation of ORS 215.283 or the uses generally allowed by that statute.

That distinction made no difference in *Lane County*, because ORS 215.304, one of the high-value farmland provisions, *itself* requires the LCDC rules to be consistent with ORS 215.213. However, because ORS 215.304 does not require that the rules be consistent with ORS 215.283, the general statute involved here, the distinction is decisive in this case. Given that ORS 215.213 and ORS 215.283 are both concerned generally with permissible uses in EFU zones, the fact that ORS 215.304 expressly requires LCDC's high-value farmland rules to be consistent with ORS 215.213, but contains no requirement of consistency with ORS 215.283, clearly means that the legislature intended for the rules to operate independently of ORS 215.283 in counties where that statute rather than ORS 215.213 is applicable.

Our distinction between these statutes is not a word game, nor is there any likelihood that the difference in treatment is the result of a legislative omission. The state legislature may and has chosen to regulate uses on agricultural lands differently in marginal lands and non-marginal lands counties. Indeed, that is the reason why the *largely* similar ORS 215.213 and ORS 215.283 both exist.

and high-value farmland are treated separately and differently.

The 1993 legislation eliminated the option for counties to adopt marginal lands provisions, but allowed counties that had already adopted such provisions to continue to apply them. ORS 215.316; see *Lane County*, 138 Or.App. at 639, 910 P.2d 414.

[1] ¹³⁷⁸ We hold that the limitations that OAR 660-33-120 and OAR 660-33-130 place on uses on high-value farmland are within LCDC's authority under ORS 215.304, and are not subject to and therefore cannot violate ORS 215.283(2).⁵ It follows that LUBA did not err in remanding the county's approval of the "initial" conditional use permit, which purports to allow a new use that the rules prohibit.

We turn to petitioners' assignments that respectively challenge LUBA's remands of the county's allowance of the expansion of the nonconforming use and of the "section 2028(B) conditional use." Petitioners argue, correctly, that they were entitled to file three applications for the same use, as alternatives to one another that need not necessarily be consistent with each other. The initial problem with petitioners' position, however, is that their arguments regarding the two theories in question treat them as being interrelated in ways that we do not think they are.

For example, petitioners argue that, rather than applying "general principles of nonconforming use law," LUBA should have treated section 2028(B) as controlling on the *nonconforming use issue*, and should have deferred to the county's interpretation of that local provision pursuant to ORS 197.829(1)(a)-(c) and *Clark*. Beginning with that premise, petitioners develop a complex defense of the county's decision allowing the expansion of the nonconforming use, in which section 2028 and "traditional" nonconforming use concepts are intertwined. The essence of petitioners' argument is that, (1) regardless of any diminutions in the use that may have occurred between 1952 and 1990, the commercial-level kennel use was "resumed" under section 2028(B) through the two 1990 decisions; and (2) whatever the requirements of "general" nonconforming use law may be regarding continuity and extent as prerequisites to an alteration or expansion of a nonconforming use, section 2028 contains no similar requirements. Accordingly, petitioners conclude, LUBA was ¹³⁷⁹ wrong in holding that further

definition of the extent of the original and continuing nonconforming use was a necessary precursor to the consideration or allowance of its expansion.

Petitioners rely on *deBardelaben v. Tillamook County*, 142 Or.App. 319, 922 P.2d 683 (1996), where we held that LUBA erred in basing its reversal of a county decision allowing a variance on general principles of variance law rather than examining the county's interpretation of the specific variance provisions in its own ordinance and applying the deferential *Clark* review standard to that interpretation. After quoting the pertinent language in *deBardelaben*, petitioners assert:

"Simply exchange the word[s] 'nonconforming uses' for the word 'variance' in the above quote from the *deBardelaben* decision, and one sees LUBA's error in this case. LUBA remanded the county's approval of an expansion of the Schillereffs' nonconforming kennel operation for fact finding as to the 'nature and extent' of the dog kennel use over the years since its beginning in 1952. This notion is central to traditional nonconforming use law *but has nothing to do with MCC 11.15.2028(B) or the resumption of the Schillereffs' nonconforming use*. . . . MCC 11.15.2028(B) establishes a less restrictive standard than traditional nonconforming use law." (Emphasis petitioners'; footnote omitted.)

[2] Petitioners' attempt to analogize this case to *deBardelaben*, and their argument as a whole, fails for two reasons. First, in contrast to the variance provisions in *deBardelaben*, section 2028(B) does not and cannot be interpreted to say anything that either defines nonconforming uses or regulates them. Rather, the role of nonconforming uses in the section is simply that of a condition precedent to the operative provisions, i.e., the "conversion" of pre-existing nonconforming uses to conditional uses that, after their conversion, are subject to the conditional use regulations in the county's legislation.

5. In its present posture, this case directly involves only the asserted inconsistency of the rules with ORS 215.283(2) generally and with paragraph (m) of that subsection specifically. We neither hold nor imply a view about whether

LCDC's high-value farmland rules are subject to ORS 215.283(1). Compare *Brentmar v. Jackson County*, 321 Or. 481, 900 P.2d 1030 (1995); but see *Nichols v. Clackamas County*, 146 Or.App. 25, 34, 932 P.2d 1185 (1997).

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To the extent that the county has interpreted the section in the manner that petitioners assert, the interpretation cannot survive even under the less than stringent "clearly wrong" test that inheres in *Clark*. See, e.g., *Goose Hollow Foothills League v. City of Portland*, 117 Or.App. 211, 217, 843 P.2d 992 (1992) (explaining test). Far from ^[330]defining or regulating nonconforming uses, section 2028(B) provides that certain existing nonconforming uses are metamorphasized into a different kind of use to which the county's nonconforming use regulations do not apply.

[3] Second, and also unlike the variances involved in *deBardelaben*, nonconforming uses are substantively regulated by a state statute, ORS 215.130. Although counties may adopt certain legislation that refines or amplifies the statutory provisions, see *Bither v. Baker Rock Crushing*, 249 Or. 640, 438 P.2d 988, 440 P.2d 368 (1968), county legislation must be consistent with the state statute.

Moreover, because a state statute is involved, our scope of review of the present assignment of error differs from the one that applied to the previous assignment. ORS 197.829(1)(d) provides that a local government's interpretation of local land use legislation is reversible by LUBA, or implicitly by an appellate court reviewing LUBA's decision, if the interpretation is "contrary to a [state] statute, land use goal or rule that the [local legislation] implements." We have held that, in the case of the statewide goals or rules, the inquiry under ORS 197.829(1)(d) is limited to whether the local interpretation of the local provisions is inconsistent with the state provisions. *Friends of Neabeack Hill v. City of Philomath*, 139 Or.App. 39, 911 P.2d 350, rev. den. 323 Or. 136, 916 P.2d 311 (1996). However, because relevant state statutes retain their independent applicability to local land use decisions after the local legislation has been acknowledged under ORS 197.251, while generally speaking the statewide goals and rules do not, we have also held that local land use decisions as a

whole, rather than only the interpretations of local legislation that the decisions may contain, are reviewable for statutory compliance in appeals from the decisions to LUBA and us even after the local land use legislation has been acknowledged. *Forster v. Polk County*, 115 Or.App. 475, 839 P.2d 241 (1992), and authorities there cited; see also *Friends of Neabeack Hill*, 139 Or.App. at 46 n. 3, 911 P.2d 350. Accordingly, even if section 2028(B) were pertinent to the nonconforming use expansion issue by its terms, neither the local provision itself nor the county's interpretation of it could provide a basis for affirming the county's decision if the decision is contrary to ORS 215.130.

[4] ^[331]For largely the reasons expressed by LUBA, we conclude that the county's present decision on the nonconforming use issue does not satisfy ORS 215.130. Without further findings by the county to particularize the nature and extent of the original and continuing nonconforming use, in the face of evidence that the use has historically receded from commercial to fairly minimal levels, the requested expansion cannot be justified under ORS 215.130(5) and (9). Subsection (5) provides that an "[a]lteration of any such [nonconforming] use may be permitted to reasonably continue the use." Subsection (9) defines "alteration" to include a "change in use of no greater adverse impact to the neighborhood." Whether the requested expansion meets that statutory standard cannot be ascertained unless the actual past and present scope of the use is identified and can be compared with the extent and effects of the proposed enlarged future use. Moreover, it cannot be known what is necessary and, therefore, permissible to "continue the use" in the absence of a prior determination regarding the nature and scope of the original and present use that have acquired and retain nonconforming status. The statutory test cannot be applied or passed on the basis of the county's present unquantified finding that some kennel use has endured throughout the 40-year period.⁶ We hold that

sections (5) and (9). That question, too, is before the county on remand.

In the present posture of the case, we cannot now decide whether the findings the county has

6. The additional facts that the county must find may also affect the sufficiency of the applicants' showing under ORS 215.130(7), as well as sub-

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0 P.2d 1030 (1995); but
County, 146 Or.App. 25,

remanded

LUBA was correct in remanding the county's allowance of the application to expand a nonconforming use.

In their remaining assignment, petitioners contend that LUBA erred by remanding the county's granting of the application to expand the 50-dog kennel that putatively exists as a conditional use under section 2028(B). As in the previous assignment, the principal question here is whether the county was correct in concluding that a validly recognizable underlying 50-dog use existed, upon which the requested expansion could be predicated. In this assignment, ¹³³²however, the specific question is whether that use was a conditional use established pursuant to section 2028(B) rather than a nonconforming use.

Some of petitioners' arguments in this connection nevertheless resemble their previous arguments regarding the expansion of the nonconforming use, and share the premise that the nonconforming use and the section 2028(B) issues are interrelated in ways that are mutually supportive of petitioners' positions on the respective issues.⁷ As we have indicated, we disagree with that premise. Indeed, to the extent there is a relationship, LUBA's and our remand on the nonconforming use issue, in itself, requires that the

made, if supplemented by the required additional ones, could suffice to establish compliance with the statute. However, if we correctly understand petitioners to argue that the existing findings are sufficient to demonstrate compliance in themselves, we disagree with them.

7. Again, for example, petitioners contend that the earlier nonconforming commercial kennel use was "resumed" pursuant to section 2028(B) through the 1990 proceedings. If that were a correct understanding of those proceedings, it would be open to serious doubt whether the 1990 decisions, or section 2028(B) itself, are consistent with the limitations that ORS 215.130(7) places on the resumption of discontinued nonconforming uses. However, we again disagree with petitioners' reading of section 2028(B). The section cannot be understood as simultaneously establishing the conditional use and revitalizing the nonconforming use that is a condition precedent to the establishment of the conditional use. The 1990 decisions that petitioners say resumed the nonconforming use were made 10 years after the date on which the section requires a nonconforming or other "legally established" use to have existed in order for a conditional use to come into being. In any event, the section does

section 2028(B) issue also be remanded to the county: The establishment of a conditional use under section 2028(B) is dependent on the existence of the nonconforming use which the county's decision has not satisfactorily defined.

However, as described earlier, the basis for LUBA's remand on the section 2028(B) issue was different from and broader than the one noted in the preceding paragraph. ORS 215.296(1) permits counties to approve uses under ORS 215.283(2) "only where the local governing body or its designee finds that the use will not:

"(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

"(B) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."

[5] ¹³³³LUBA concluded that the county's decision violates that state statute by interpreting and applying section 2028(B) in a way that allows a use subject to ORS 215.283(2) to achieve permitted status without being tested against the standards that ORS 215.296(1) requires it to satisfy.⁸ We

not deal with the creation—or resumption—of nonconforming uses but requires their *antecedent* existence. Section 2028(B) is a savings clause of sorts, but it does not purport to revive the dead.

8. The terminology here can be confusing. Although section 2028(B) refers to "converted" former nonconforming uses as "conditional" ones, the section as the county interpreted it would confer that new status upon them without a conditional use permit requirement. Accordingly, the newly denominated "conditional" uses would *actually* be "permitted," whatever section 2028(B) may call them.

LUBA explained why there is a significant difference between that permitted status and the nonconforming status that the use ostensibly enjoyed before its "conversion" under section 2028(B):

"Permitted use status, as opposed to nonconforming use status, is not without legal effect. As a permitted use, the operation of a kennel could be altered or abandoned and resumed without addressing the nonconforming use limitations of ORS 215.130."

Although LUBA's observation is phrased sub-junctively, it is far from an academic point. A

FAULCONER v. WILLIAMS

Cite as 936 P.2d 999 (Or.App. 1997)

Or. 999

agree with LUBA, and we reject petitioners' arguments that challenge LUBA's reasoning directly.

We have considered petitioners' other arguments and conclude that they do not require discussion.

Affirmed.



147 Or.App. 389

1999 Jay FAULCONER and Sheila Faulconer, husband and wife, Appellants,

v.

Billie J. WILLIAMS; John C. Mackey and Jeanne L. Mackey; Robert D. Webb and Carolyn L. Webb; Randy L. Bahler and Donna J. Bahler; Kenneth J. Stevenson and Joanne Stevenson; Jerry L. Lasater and Dawn Lasater; Elmer C. Williams and Marie E. Williams; and Michael A. Revelle and Sandra A. Revelle, Respondents.

95-10169; CA A93542.

Court of Appeals of Oregon.

Argued and Submitted Jan. 15, 1997.

Decided April 16, 1997.

Current owners of servient estate brought action to quiet title, on theory that roadway easement had been extinguished either by abandonment or by adverse possession. The Circuit Court, Benton County, Robert S. Gardner, J., entered judgment in favor of defendants, and plaintiffs appealed. The Court of Appeals, Riggs, P.J., held that: (1) defendants' nonuse of easement, due solely to their mistake as to location of roadway, did not result in abandonment of easement; (2) easement was extinguished by adverse possession of plaintiffs' predecessor in interest; and (3) easement was not recreated, at least not in favor of owners of dominant

would accomplish precisely what LUBA describes.

We do not understand petitioners to argue that the 1990 decisions, or either of them, are preclusive or dispositive in any other way or for any other reason. Before LUBA, petitioners advanced an argument to the effect that the applicants had acquired a vested right to the 50-dog use through the 1990 decisions. Petitioners have chosen not to repeat that argument to us.

case could be made that the combined success of the various arguments that petitioners make here

also be remanded to the ment of a conditional 8(B) is dependent on aconforming use which has not satisfactorily

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rvation is phrased sub- a an academic point. A



DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 S.E. Morrison Street
Portland, Oregon 97214 (503) 248-3043

HEARINGS OFFICER DECISION

This Decision consists of Conditions, Findings of Fact, and Conclusions

September 15, 1995

CU 4-95 and MC 1-95, #23

Conditional Use Request

(Conditional Use and Alteration of a Non-Conforming Use)

Applicant requests "conditional use approval, or, alternatively, an alteration of a non-conforming use, for a 75-dog kennel"

Location: 23200 N.W. Reeder Road

Legal: Tax Lot 15 / Section 3, T2N, R1W

Pertinent Site Size: 9.41 acres

Applicant: Tim & Angella Schillereff
23200 N.W. Reeder Road
Portland, Oregon 97231

Property Owner: <same as applicant>

Comprehensive Plan/Zoning: Exclusive Farm Use/EFU

HEARINGS OFFICER DECISION:

Approved, with conditions set forth below, Applicant's request for conditional use approval to (1) operate and maintain a dog kennel facility in an EFU district, and (2) expand the existing 50-dog kennel facilities to allow no more than 75 dogs, based upon the following "Findings" and "Conclusions" with respect to conditional use approval.

Alternatively, Approved, with conditions set forth below, Applicant's alternate request for the resumption and expansion of a non-conforming use, based upon the following "Findings" and "Conclusions" with respect to non-conforming use approval.

CONDITIONS OF APPROVAL:

1. Approval of the conditional use shall expire two years from the date of Board final order unless substantial construction has taken place in accordance with MCC 11.15.7110(C).
2. Prior to the commencement of any site development or the issuance of any building permit, Applicant shall comply with, and fulfill, applicable Design Review standards and criteria with respect to all construction, landscaping, fencing, paving, and all other improvements.
3. The kennel capacity shall not exceed 75 dogs.

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I. ANALYSIS OF THE PROPOSAL

A. PROPOSAL SUMMARY

On April 11, 1995, Tim and Angella Schillereff ("APPLICANT") filed an application worded as follows:

"Applicants seek [1] conditional use approval, or, alternatively, [2] an alteration of a non-conforming use, for a 75-dog kennel. . . ." (Enumeration added.)

In a February 23, 1995, narrative, Applicant declared:

- ◆ "The [Applicant] seek[s] land use approval for a 75-dog kennel." (February 23, 1995, "SAUVIE ISLAND KENNELS LAND USE APPLICATION," at 3.)
- ◆ "The purpose of this application is to allow the *expansion* of the existing kennel operation on the property." (February 23, 1995, "SAUVIE ISLAND KENNELS LAND USE APPLICATION," at 4 [emphasis added].)
- ◆ "In this case, [Applicant is] applying to *modify* a 'conforming conditional use' [.]" (February 23, 1995, "SAUVIE ISLAND KENNELS LAND USE APPLICATION," at 13 [emphasis added].)

In an August 16, 1995, supplemental report, Applicant declared:

- ◆ "The applicant *presently* holds a lawful conditional use approval for a 50-dog kennel on their property." (August 16, 1995, "SAUVIE ISLAND KENNELS SUPPLEMENTAL LAND USE REPORT," at 1 [emphasis added].)

In an August 23, 1995, a supplemental memorandum Applicant declared:

- ◆ "In the instant proceedings, the [Applicant] request[s] conditional use approval of their kennel so they may have [1] formal recognition of their operation by the County *and* [2] a total of 75 kennel runs." ("APPLICANT'S SUPPLEMENTAL MEMORANDUM," at 2 [emphasis and enumeration added].)

Applicant's approval request raises a mind-numbing array of issues and questions, although the peculiar chronology of land use proceedings has contributed substantially to the complexity of the issues.

At the outset, I perceive some ambivalence in Applicant's descriptions of the scope of the conditional use approval request. The various descriptions could encompass:

- ◆ a request for conditional use approval for the expansion of the kennel facilities from 50 to 75 dogs, in which case Applicant would need to demonstrate a pre-existing conditional use — which, under the circumstances, could only derive from MCC 11.15.2028(B); *or*
- ◆ a request for pro forma conditional use approval of a 75-dog kennel facility employing only the conditional use criteria in MCC 11.15.7105, *et seq.*
- ◆ a combination of both of the above, *viz*, a request for conditional use approval for a long-standing use, upon which a further request to expand the conditional use would be based.

In any event, I assume from Applicant's detailed discussion of the various conditional use criteria and issues *in conjunction with* the non-conforming use criteria and issues, that Applicant anticipates the following chronology with respect to the substantive "use" issues:

- ◆ If I conclude that Applicant has a "conforming" conditional use pursuant to MCC 11.15.2028(B), and I conclude that any expansion or modification of an *existing* conditional use *does* require additional conditional use approval, then I must evaluate the current approval request

in order to determine whether Applicant fulfills the conditional use criteria with respect to the additional 25-dog capacity.^[1]

- ◆ If I conclude that Applicant has a “conforming” conditional use pursuant to MCC 11.15.2028(B), and I conclude that any expansion or modification of an *existing* conditional use would *not* require additional conditional use approval, then I will make a declaration to that effect. In that event, I can go no further because the present application would comprise a request for conditional use approval that would be unnecessary under those circumstances; only Design Review approval would be required.
- ◆ If I conclude that Applicant lacks a “conforming” conditional use pursuant to MCC 11.15.2028(B), then I will need to determine whether Applicant can now seek conditional use approval for a pre-existing use that does indeed comprise a “listed” conditional use.
- ◆ If I conclude that, notwithstanding the use’s status as a “listed” conditional use, Applicant does not or cannot fulfill all of the conditional use criteria, then I must determine whether Applicant possesses a valid, enduring non-conforming use.
- ◆ If I conclude that Applicant possesses a valid, enduring non-conforming use (by reason of continuity or vested right), then I must determine whether Applicant fulfills the criteria that control any alteration or expansion of that use.

¹ As I explain in the discussion beginning at page 63, the conditional use provisions in MCC 11.15.7105, *et seq.*, do not plainly resolve whether an *expansion* of a use that might *already* be a conditional use (via a prior approval or via the “conforming” conditional use provisions in MCC 11.15.2028(B)) must *again* proceed with conditional use approval.

- ◆ If I conclude that Applicant does not possess a valid, enduring non-conforming use, then I must finally determine whether Applicant fulfills the criteria that control any resumption of such a use.^[2]

B. SITE AND VICINITY DESCRIPTIONS

Applicant maintains dog kennel facilities on Sauvie Island situated on roughly 9½ acres in an EFU district. Approximately six acres comprise horse pasture, and Applicant raises some horses. Although composed of agricultural land, the property presents farming difficulties arising from its shape, inadequate drainage, and limited access.

The property contains an existing 50-dog kennel, which Applicant has operated for approximately six years as "Sauvie Island Kennels." According to Applicant,

"Sauvie Island Kennel[s] is considered by many to be one of the premiere [sic] boarding, training and breeding kennel operations in the Portland/Vancouver metropolitan area."

Nothing in the lengthy historical record seems to dispute that characterization.

Applicant seeks authority to upgrade the facility in order to house up to 75 dogs, and to replace the two older kennel buildings with one large building that would

² I conclude that, because MCC 11.15.8805(B) provides that a discontinued use may be "re-established" if it "conforms with the requirements of this code at the time of the proposed resumption," and because Applicant's kennel facilities do indeed qualify as a "conditional use" listed in MCC 11.15.2012(B)(11), I find nothing in the Zoning Ordinance that would preclude the "re-establishment" of a discontinued use via a request for conditional use approval under the peculiar circumstances of this case.

In fact, if Applicant fulfills the criteria for the belated recognition of a conditional use, the resumption issue disappears. On the other hand, if Applicant cannot, in the words of MCC 11.15.8805(B), prove "conform[ance] with the requirements of this code," and if those requirements now mandate the conditional use process (which indeed they do; see MCC 11.15.2012(B)), then the resumption similarly disappears.

incorporate state-of-the-art construction techniques and amenities for kennel operations. The new building would then be connected to an existing third building, resulting in a kennel facility of one continuous design, as opposed to disparate, unconnected units.

The property contains two residences: a kennel-related "watchman's" residence occupied by Applicant — which the County approved in 1990 (CU 23-90) — and an older residence occupied by Elden and Marguerite Persinger, the former owners. The Persingers purchased the property in 1973, and still reside there pursuant to an agreement between Applicant and themselves. Applicant entered into a lease/purchase agreement with the Persingers in 1989, and that agreement allows the Persingers to reside on the property for the remainder of their lives.

Surrounding properties comprise agricultural or open space uses. A duck hunting club (Marquam Farms) operates on a 39-acre parcel to the east and north of the subject property. To the west and south lie open fields and crop lands with scattered farm houses and accessory structures, plus a large dairy farm. The several-thousand-acre Sturgeon Lake Wildlife Refuge owned by the Oregon Department of Fish and Wildlife lies to the northwest, separated from both the subject property and N.W. Reeder Road by a grass-covered dike.

As least as of 1990, the island contained (and appears to still contain) two other active kennels.

C. COMPREHENSIVE PLAN AND ZONING ORDINANCE CONSIDERATIONS

The Comprehensive Plan designates the site as "Exclusive Farm Use," and it lies within an EFU zoning district.

D. LAND USE BACKGROUND / HISTORY

(1). GENERAL

The current kennel operation uses two of the original buildings that the original kennel owner (Wallace) constructed when kennel operations first began on Sauvie Island at this location in 1952. The existing kennel facility comprised the first such facility on Sauvie Island; at least three other kennels followed, two of which remain active.

At some point in the 1960s, the kennel facility became known as "Lake Tree Kennels." From the original "Wallace" operation, the kennel facility proceeded through a number of owners/operators in the 1960s and 1970s, which the record identifies (by last name of the owner/operator) as Blitz, Courtway, Eaton, Meifert, Pein, Persinger.

(2). 1989 PROCEEDINGS

In 1989, Applicant filed an application for a conditional use permit, apparently to remodel the dog kennel operations, but did not seek approval to increase the number of allowed dogs.

Applicant's cover letter to the County recited:

"Please note that this request is pertaining to an *existing* kennel site, in other words, the buildings and structures are intact. However, *permits have lapsed* for over 15 years, therefore a new request is now being sent."

The application does not otherwise identify or describe what "permits" might have "lapsed."

Although the historical record suggests that at least two kinds of "permits" might apply (or have applied) to the kennel facilities (*viz*, land use permits and animal control permits for commercial kennel operations), I can find nothing in the record

from 1989 forward to confirm that Applicant understood or intended the reference to "permits" to mean *land use* permits. Indeed, no entity had ever issued a land use (*viz*, conditional use) permit before that time, thus the reference to "permits" in a technical sense could only have meant animal control permits. Applicant's February 23, 1995, application narrative confirms that the reference to "permits" in the 1989 application meant the permits necessary to operate "commercial" kennel facilities. ("SAUVIE ISLAND KENNELS LAND USE APPLICATION", February 23, 1995, at 5.)³

In any event, the County informed Applicant that it considered a conditional use permit to be unnecessary or not required at that juncture. No one questions this historical fact. On the front page of Applicant's narrative appears the following notation: "Not req'd per B. Hall Feb. '89." The County ultimately approved a proposed remodeling of the kennel facilities, and issued a corresponding building permit. No one appealed that decision.

In reliance on the County's approval the Applicant then entered into a five-year lease/purchase agreement with the Persingers. The Applicant spent considerable sums remodeling the kennel facilities and began operations as "Sauvie Island Kennels."

(3). 1990 PROCEEDINGS

In 1990, Applicant (again) sought conditional use approval for additional remodeling of the kennel facilities, but (again) did not seek approval to increase the number of allowed dogs.

The County (again) informed Applicant that it considered a conditional use permit to be unnecessary under the circumstances. No one questions this historical fact. The County informed Applicant that it needed only to proceed with the Design

³ A "kennel" need not qualify as a *commercial* operation. See MCC 11.15.0010 (definition of "kennel"). The hearings officer's decision in DR 4-94 recites that Applicant's reference to "lapsed" permits "demonstrates that the applicant either had knowledge or at least suspected that the prior kennel *use* had 'lapsed.'" (DECISION at 7 [emphasis added].) To the extent that the hearings officer's reference to "kennel use" meant "*commercial* kennel use," then the reference would be correct. To the extent that it meant "*non-conforming* kennel use," it would be an assumption not otherwise supported by the record.

Review process, and the County subsequently issued the desired remodeling permit in August, 1990, after the Applicant completed the requisite Design Review proceedings. (See DR 90-07-02.)

In the County's file in DR 90-07-02, there appears a copy of the page in the County's Zoning Ordinance that contained MCC 11.15.2028(B), which then (as now) provided, in pertinent part:

"Conditional uses *listed* in subpart MCC [11.15].2012 *legally established* prior to August 14, 1980, *shall be deemed conforming* and not subject to the [non-conforming use] provisions of MCC [11.15].8804 [*sic*; '.8805']" (Emphasis added.)^[4]

On that same page, and directly adjacent to MCC 11.15.2028(B), there appears someone's handwritten notation — in red ink — that reads as follows:

"The Persinger Kennel is therefore a Conforming CU — therefore does not expire per October 8, 1990, opinion from John DuBay [chief Assistant County Counsel for land use matters at the time]."

It seems reasonably apparent that the reference to "CU" in that handwritten passage presumably means "conditional use."

The record also contains Mr. DuBay's October 8, 1990, memorandum on the same subject, which declares, in pertinent part:

"I agree with you that the zoning code provides no way to terminate CUPs^[5] because of non[-]use where the permit sets no expiration date."

However, the historical record sheds no light on the question why Mr. DuBay's opinion *post-dates* the 1990 Design Review permit approval by two months. In

⁴ At the time (as now), "dog kennels" comprised a conditional use "listed" in MCC 11.15.2012(B)(11).

⁵ Nothing in the memorandum suggests what the "P" stands for in the term "CUP." I have inferred from the remainder of the 1990 file that it likely stands for "Permit."

any event, the existence of a "conditional use" formed a condition precedent to Design Review. (See MCC 11.15.7820.)

Also in 1990, Applicant sought separate conditional use approval to expand kennel operations in order to construct or maintain a "watchman's residence" on the property, as an "accessory" use related to an existing conditional use, *viz*, the kennel facilities. (See CU 23-90.)

During a November, 1990, Planning Commission hearing on this particular request, a neighboring property owner (Marquam Farms) urged that the kennel facilities comprised an "illegal" operation because the facilities had apparently been "abandoned" in 1971. At that hearing, the Planning Commission wondered how (or whether) it could approve the watchman's residence if the underlying use was not legal or authorized. Staff at the hearing described the history of prior kennel approvals and opined that the County considered the kennel operation to be authorized as a "'conforming' conditional use" pursuant to MCC 11.15.2028(B).

The Planning Commission thereafter approved a conditional use permit for the watchman's residence in November, 1990, for all practical purposes interpreting MCC 11.15.2082(B) in a manner that rendered the existing kennel operations a "legally established" — and thus a "conforming" — use upon which the Planning Commission could then predicate the approval of an "accessory" use.

No one appealed that decision. The Applicant thereafter added a third building and a perimeter fence to the kennel facility, and constructed a watchman's residence.

(4). 1994 PROCEEDINGS

(a). Application / Initial Decision

In 1994, Applicant sought conditional use approval for an "expansion of an existing approved conditional use of the dog kennel." (Undated letter received by the

County with the application on 1-10-94.) Applicant sought to demolish two existing kennel buildings and replace them with one or more structures designed to house 75 dogs. At the time, Applicant housed up to 50 dogs.

The County (again) informed Applicant that it considered a conditional use permit to be unnecessary or not required. No one questions this historical fact. Staff apparently again contacted John DuBay about the matter, and Mr. DuBay reiterated his 1980 opinion, *viz*, the kennel comprised a

“use that existed without limitation, could be expanded per MCC 11.15.2028(B), and that only Design Review with notice would be required.” (10-6-94 memo from Bob Hall to Scott Pemble.)

The County thereafter informed Applicant that it needed only to proceed with the Design Review process. (See DR 4-94.)

In April, 1994, the County issued its “Administrative Decision” approving Applicant’s Design Review Plan:

“... [Applicant] propose[s] to demolish two exiting kennel buildings and replace them with one, larger structure, designed to house 55 adult dogs. An existing kennel building for 20 adult dogs would remain. The facility is licensed to board up to 50 dogs; the proposed expansion would increase the kennel size to 75 dogs. . . .” (April, 1994, ADMINISTRATIVE DECISION at 1.)

After Applicant received administrative Design Review Plan approval in April, 1994, but before anyone had appealed, Applicant exercised the purchase option on the property and bought it from the Persingers.

(b). Opponents' Appeal

A number of persons — who for convenience will simply be identified as "Marquam Farms" — then appealed the Planning Director's administrative Design Review approval. Marquam Farms urged, among other things, that:

- ◆ "The dog kennel . . . was not operated for one or more periods exceeding one year apiece^[6] after the property on which the kennel is situated was zoned. Dog kennels have not been permitted uses on Applicants' property since zoning was applied. Accordingly, use of the dog kennel was 'interrupted' and 'abandoned' and its nonconforming use status no longer exists under both Oregon state law and the Multnomah County Code." (§ 1, "Grounds For Reversal," May 6, 1994, "NOTICE OF APPEAL" [emphasis added])
- ◆ "Assuming the dog kennel was a nonconforming use, . . . an application for Final Design Review Plan is the wrong way to seek its expansion or alteration. State law and the county code establish standards and procedures for alterations/ expansions of nonconforming uses, none of which was sought, satisfied, or applied in DR 4-94." (§ 3, "Grounds For Reversal," May 6, 1994, "NOTICE OF APPEAL.")

The record contains nothing to suggest that Marquam Farms' NOTICE OF APPEAL itself specifically challenged the manner in which the County had previously interpreted MCC 11.15.2028(B) to allow the kennel facility as a conditional use. Indeed, the May, 1994, NOTICE OF APPEAL contained no mention of MCC 11.15.2028(B). Marquam Farms did, however, submit, a written memorandum dated July 27, 1994, that discussed MCC 11.15.2028(B) in detail. Ultimately, I find nothing in the record to suggest that the discrepancy between the issues raised within the NOTICE OF APPEAL itself and the appellants' written arguments made any difference to anyone in the course of the 1994 proceedings.

⁶ Until 1990, the County's non-conforming use ordinance codified a *one-year* period for determining "abandonment" or "discontinuance" issues. The ordinance now codifies a two-year period. See MCC 11.15.8805(B).

(c). Planning Director's Interpretation of MCC 11.15.2028(B)

At a July, 1994, hearing on that appeal, the hearings officer concluded that he would first resolve the question whether the kennel operations comprised a lawful conditional use in the first place — a question that the Design Review process itself makes jurisdictional and thus determinative. (See MCC 11.15.7820 ["The provisions of MCC .7805 through .7865 shall apply to all *conditional* . . . uses in any district[.]"] (Emphasis added.))

To foster the resolution of that question, the hearings officer requested an interpretation of MCC 11.15.2028(B) from the County. In a July 29, 1994, memorandum, the County's Planning Director interpreted MCC 11.15.2028(B) as follows:

"[I]f the use was [1] *legally established* prior to August 14, 1980[,] *and* [2] *was not abandoned or discontinued* for any reason for more than one year . . . , then the provisions of § 2028[B] apply. . . ." (Emphasis and enumeration added.)

As so construed, the Planning Director appended the "abandoned"/"discontinued" phraseology to MCC 11.15.2028(B) and, in effect, added a condition that the ordinance provision does not make explicit. The Planning Director's interpretation would mean that a species of "'conforming' conditional use"⁷ could lapse by reason of nonuse for a prescribed period of time.

Accordingly, the Planning Director further concluded that

"[the kennel operation] *was an established non[-]conforming use which lost its legal status in 1971* because it was not used as a Kennel for more than one year Therefore, it was *not* a legally established use as of August 14, 1980." (Emphasis added.)

⁷ MCC 11.15.2028(B) makes a very plain connection between "conditional uses" and "conforming" uses. Thus, the phrase "'conforming' conditional use" succinctly describes the type of use that results from an application of that provision.

(d). Hearings Officer's Decision

In his August 19, 1994, decision (the "DECISION"), the hearings officer concluded that his authority to proceed with the Design Review appeal depended at the outset on the question whether the underlying use comprised a lawful "conditional" use:

"The outcome of this turns on whether or not staff's interpretation of MCC 11.15.2028(B) is correct. If staff's interpretation of MCC 11.15.2028(B) is wrong, and if the use is not otherwise a lawful use in the EFU zone, then the Hearings Officer *lacks authority to approve the Design Review request, unless or until the underlying kennel use receives appropriate land use approval* to make it a lawful use in the zone." (DECISION at 3 [emphasis added].)

Although the hearings officer's decision does not specifically describe the Applicant's interpretation of MCC 11.15.2028(B), in a July 28, 1994, memorandum (denominated "APPLICANT'S BRIEF") Applicant interpreted that provision as follows:

"Applicants believe that this provision means precisely what it says: if (1) a use such as a kennel is listed in MCC 11.15.2012; and (2) the use was legally established prior to August 14, 1980, it is as if the county gave the use a conditional use permit on the day it was established. The use is expressly deemed 'conforming,' and the right to continue the use is not lost by abandonment." (APPLICANT'S BRIEF at 1.)

Under that interpretation of MCC 11.15.2028(B), Applicant declared that "[t]here is no question of determining whether the use was continuously as a maintained 'nonconforming use'" (APPLICANT'S BRIEF at 1-2), distinguishing between the "lawful-at-the-time-of-zoning-enactment" provision in the non-conforming use pro-

vision in ORS 215.130(5)^[8] and the “lawful-*at-some-prior-point-in-time*” language in MCC 11.15.2028(B).

Applicant also concluded that, if MCC 11.15.2028(B) were to be construed as requiring the existence of a conditional use *permit* in order to be “legally established,” the provision would be superfluous. (APPLICANT’S BRIEF at 3–4.) Applicant did not, however, examine the question whether MCC 11.15.2028(B) itself might conflict with ORS 215.130(5) or the separate “nonfarm use” provisions in ORS 215.283.

Ultimately, the hearings officer concluded that “[11.15].2028(B) cannot be interpreted in the manner suggested by the applicant and the staff, without directly conflicting with ORS 215.283.” (DECISION at 3.)^[9] More specifically, he concluded that

⁸ ORS 215.130(5) provides, in pertinent part:

“The lawful use of any building, structure or land *at the time of the enactment or amendment* of any zoning ordinance or regulation may be continued. . . .” (Emphasis added.)

⁹ For reference, ORS 215.283 — which applies in counties that have *not* adopted “marginal lands” provisions (*cf.* ORS 215.213) — provides, in pertinent part:

“(2) The following nonfarm uses *may be established*, subject to the approval of the governing body or its designate in any area zoned for exclusive farm use subject to ORS 215.296:

“(m) *Dog kennels* not described in subsection (1)(j) of this section.” (Emphasis added.)

The legislature’s 1995 amendments to ORS 215.283 via SB 834 (*see* 1995 Or Laws, ch 528, § 2) did not amend any portion of ORS 215.283 that has any bearing here.

“... the only way that [MCC 11.15].2028(B) can be construed in such a way so as not to be in conflict with the statutory scheme [in ORS 215.283] is to interpret the ordinance to mean that [1] the kennel use must not only have been *listed* as a conditional use, but [2] it must have been *legally established as such, prior to August 14, 1980* (i.e., it must have *actually obtained a conditional use permit*).” (DECISION at 4 [emphasis and enumeration added].)

Because no operator of the kennel facility had ever obtained a conditional use “permit” before August 14, 1980, the hearings officer concluded that “the applicant cannot take advantage of whatever benefit MCC 11.15.2028(B) might confer.” (DECISION at 4.) The hearings officer did not, however, describe or examine what “benefit” .2028(B) *does* purport to confer.



The hearings officer separately concluded that an additional inquiry into the kennel’s status in 1958 must be made in order to resolve the separate question whether the kennel operation nevertheless comprised a valid “non-conforming” use. He did not, however, explain why issues of non-conforming use bore any relationship to Design Review issues.^[10]

“... [T]he *only way* in which this particular kennel could have been lawful in 1958, when zoning came into effect, was if the use was a *lawfully established non-conforming use* [at that time].” (DECISION at 4 [emphasis added].)

The hearings officer rendered findings with respect to the following chronology:

- ♦ From 1952 to August, 1957, the “Wallace” kennel operated on the premises. (DECISION at 5.)

¹⁰ As I read the Design Review provisions in MCC 11.15.7805, *et seq.*, neither the re-sumption nor the alteration of a non-conforming use *plainly* invokes Design Review. (See MCC 11.15.7820 [listing the kinds of uses].)

- ♦ From August, 1957, to December, 1962, the "Blitz" kennel operated on the premises. (*Id.*)
- ♦ There exists nothing in the record to determine what occurred during the period from December, 1962, to February, 1964. (*Id.*)

Because the County's zoning ordinance first applied to the property as of July 10, 1958, the kennel facilities became a valid non-conforming use on that date. (DECISION at 5.) However, because the hearings officer viewed the record as silent with respect to the period from December, 1962, to February, 1964, he concluded that there existed no "substantial evidence" of continuous kennel usage during that period. (DECISION at 6.)

The County's non-conforming use ordinance during that era declared that the cessation of a non-conforming use for more than one year constituted, in effect, an "abandonment" or "discontinuance" of the use. Thus, the hearings officer concluded that

"the non-conforming use status of the kennel expired on or about January 1, 1964, one year and one day after the use was discontinued in December, 1962." (DECISION at 6.)

Therefore, a discontinued "use" could not be re-established as a legal use unless and until first it demonstrated compliance with the County's Zoning Ordinance in some other proceeding. (DECISION at 6.)

The hearings officer thus concluded that, as of August, 1994, the then-existing kennel use did *not* comprise a "lawful" use, and that the absence of a "lawful" use deprived him of any authority to sustain Design Review approval. (DECISION at 7-8.) But he also concluded that that determination was "without prejudice" to some subsequent determination that a kennel use would either be permitted or otherwise declared legal. (DECISION at 7.)



Thus, as compared and contrasted, the County and hearings officer construed MCC 11.15.2028(B) as follows:

PLANNING DIRECTOR'S INTERPRETATION	HEARINGS OFFICER'S INTERPRETATION	DR 4-94 APPELLANTS' INTERPRETATION
"Conditional uses listed in subpart MCC [11.15].2012 [that were] [1] <i>legally established</i> prior to August 14, 1980[,] and [2] <i>not abandoned or discontinued for any reason for more than one year</i> , shall be deemed conforming and not subject to the provisions of MCC [11.15].8804 [sic; '.8805'] . . ." (Emphasis added.)	"Conditional uses listed in subpart MCC [11.15].2012 [that were] [1] <i>legally established</i> prior to August 14, 1980[,] and [2] <i>legally established as a 'listed' use prior to August 14, 1980, by obtaining a conditional use permit</i> , shall be deemed conforming and not subject to the provisions of MCC [11.15].8804 [sic; '.8805'] . . ." (Emphasis added.)	"Conditional uses <i>listed</i> in subpart MCC [11.15].2012 <i>before August 14, 1980</i> , [that were] <i>legally established by virtue of a permit issued</i> prior to August 14, 1980, shall be deemed conforming and not subject to the provisions of MCC [11.15].8804 [sic; '.8805'] . . ." (Emphasis added.)

The County (via the Planning Director's interpretation), the opponents, and the hearings officer all added interpretive clauses to MCC 11.15.2028(B) that each viewed as implicit within the language in that provision.

Applicant attempted to appeal the hearings officer's decision, but the appeal apparently arrived sometime after the 4:30 p.m. deadline on that last day on which it could be filed. As a result, the County's denial of Applicant's 1994 Design Review application became final.

(5). 1995 PROCEEDINGS

After the adverse hearings officer's decision and the resultant denial of the 1994 Design Review application in DR 4-94, on April 11, 1995, Applicant filed another application, worded as follows:

"Applicants seek conditional use approval, or, alternatively, an alteration of a non-conforming use, for a 75-dog kennel.

..."

The matter came before me on August 16, 1995. Numerous proponents testified in favor of the application; no one testified in opposition at that hearing. I discuss the pertinent criteria and findings in detail *infra*.

II. PROCEDURAL ISSUES

By letter dated August 15, 1995, Marquam Farms Corporation — owner of adjacent property — submitted a letter that addressed five discrete subjects. Some of the subjects comprised preliminary procedural matters upon which I made rulings at the beginning of the August 16 hearing.

Marquam Farms' August 15, 1995, letter raised the following issues.

A. REQUEST FOR SETOVER OR CONTINUANCE

The attorneys for Marquam Farms requested either a setover or a continuance of the scheduled August 16 hearing. They requested a setover because of the unavailability of two of their attorneys on that date. Alternatively, they requested that I hold the record open for twenty-one days for purposes of making "any appropriate response."

Because:

- ♦ the request for the setover comprised a veritable last-minute request that, in my opinion, lacked a sufficient explanation why the request had not been made sooner,^[11]

¹¹ For instance, I received the faxed letter at approximately 4:40 p.m. on August 15, the afternoon before the scheduled hearing. The fax had apparently been transmitted to me at 3:23 p.m. on that same date.

- ♦ the attorneys' unavailability did not otherwise prevent them from preparing and submitting written comments or arguments, and
- ♦ ORS 197.763(4)(b) grants no right to a continuance *except* under circumstances and conditions that did not exist as of the August 15 letter,^[12]

I ruled during the August 16 hearing that there would be no setover under the circumstances.

However, ORS 197.763(6) does grant any "participant" — which, by virtue of its August 15, 1995, letter I deem Marquam Farms to be — the right to request that the record remain open for at least seven days.^[13] I therefore ruled that the record would remain open according to the following schedule:

- ♦ on or before August 23 at 4:30 p.m., any proponent of the application would be allowed to offer any additional evidence or further materials in support of the proposal;
- ♦ on or before August 30 at 4:30 p.m., any opponent of the application would be allowed to offer evidence or further materials in opposition to the proposal; and

¹² ORS 197.763(4)(b) provides, in pertinent part:

"... If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing. ..."

Marquam Farms did not predicate its pre-hearing request for a setover on the presence of "additional documents or evidence."

¹³ ORS 197.763(6) provides, in pertinent part:

"*Unless* there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. ..." (Emphasis added.)

- ♦ on or before September 6 at 4:30 p.m., any proponent of the application would be allowed to offer any rebuttal evidence or materials directly related to any evidence or materials that an opponent had filed on or before the August 30 deadline.

Thus, Marquam Farms would have an additional 14 days beyond the August 16, 1995, hearing within which to offer additional evidence or materials.

B. CLARITY OR ADEQUACY OF NOTICE

Marquam Farms' August 15, 1995, letter also challenged the clarity or adequacy of the hearing notice, and requested that I "make a preliminary determination [at the August 16, 1995, hearing] regarding the scope of the *application*." (Emphasis added.) I instead made a determination regarding the scope or adequacy of the *hearing notice*.

I perceive a substantive distinction between (1) a hearing notice that fails in some material fashion to adequately paraphrase or describe an application or the controlling criteria, and (2) a hearing notice that adequately paraphrases or summarizes an application that may itself contain some ambiguity. ORS 197.763(3) — incorporated by the general notice requirement in 215.416(5) — requires that the hearing notice:

"(a) Explain the nature of the application and the proposed use or uses which could be authorized; [and]

"(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue [.]"

In its August 15, 1995, letter, Marquam Farms suggested that it was "not clear" whether the approval request comprised an approval to expand an allegedly lawful 50-dog kennel to a 75-dog kennel, or whether the request comprised an approval of a 75-dog kennel when no "lawful kennel use presently exists." It urged that the matter be re-noticed for hearing, although it offered no reason why anyone might be prejudiced if that did not occur.

I have cited Applicant's various characterizations of the pending conditional use request *supra* beginning at page 7. The County's hearing notice recited that

"Applicant requests Conditional Use approval, or approval to alter a Non-Conforming Use, to expand the capacity of the existing dog kennel facility on this property from a maximum of 50 dogs to 75 dogs."

I concluded at the August 16 hearing that, notwithstanding some minimal degree of grammatical differences, the County's notice of hearing fairly paraphrased the substance of the application as required by ORS 197.763(3). Whether the *application itself* might have been more clearly articulated remains inconsequential for purposes of assessing the adequacy of the *hearing notice*; the notice can scarcely be held to higher standards of clarity than the application.

Thus, as of the August 16, 1995, hearing I found the County's hearing notice to be neither fatally ambiguous nor prejudicial to any interested party, and I denied Marquam Farms' request that the hearing be re-noticed to cure any grammatical flaw (if any) that, in my opinion, did not and could not affect substantial rights of any interested party.



By a related letter dated September 6, 1995, Marquam Farms objected to my resolution of the "notice" issue during the August 16, 1995, hearing, complaining that I "ruled that matters *outside* of the notice permitted the scope of the hearing to include a new request for a conditional use for a 75 dog kennel." (Emphasis added.)¹⁴

Assuming that Marquam Farms' September 6, 1995, letter fulfills the criteria for post-hearing submittals that I established at the August 16, 1995, hearing, I cannot help but observe that:

¹⁴ Neither Marquam Farms nor any other interested party appeared at the August 16, 1995, hearing to challenge, or otherwise inquire about, the adequacy of the hearing notice.

- ◆ The resolution of Marquam Farms' initial objection as to the clarity of the hearing notice can scarcely be resolved without a review of, and comparison with, the application and Applicant's phraseology. I thus conclude that Marquam Farms' request for clarification invited just such a comparison and, accordingly, that Marquam Farms invited reference to matters "outside" of the notice in order to ascertain whether the notice proved fatally ambiguous.
- ◆ Marquam Farms itself specifically cited the Applicant's "application form" in its August 15, 1995, letter, following which Marquam Farms remarked that "from *this* [viz, the application form] it is not clear" what Applicant's request comprises. I thus conclude that Marquam Farms *itself* initially cited "matters outside of the notice" as an indispensable component of its request that I interpret the clarity of the hearing notice.
- ◆ Neither in its August 15, 1995, letter nor its September 6, 1995, letter has Marquam Farms suggested any reason why it has been misled or confused by Applicant's most recent approval request. Because Marquam Farms had adequate time and opportunity to formulate some reason why, given its participation in DR 4-94, a re-worded notice would rectify some prejudicial misunderstanding, and because I cannot conceive that a reasonable person in Marquam Farms' position could be materially misled by the wording of the hearing notice, I conclude that the hearing notice did not prejudice Marquam Farms in such a manner that it could not effectively participate here.
- ◆ Marquam Farms' September 6, 1995, letter contradicts the August 15, 1995, letter in a manner that suggests the absence of any lingering uncertainty. The earlier letter maintains that "it is *not clear* whether the request is for approval to expand an allegedly lawful 50 dog kennel to a 75 dog kennel, or whether the request is for approval of a 75 dog kennel where no lawful kennel presently exist" (emphasis added), while the most recent letter declares that the hearing notice was "*clearly* limited to expansion of a kennel from 50 to 75 dogs" (emphasis added). In other words, what was apparently "not clear" on August 15 had become "clear[]" by September 6. In that light, I conclude that Marquam Farms has relinquished the objection in its August 15 letter.

C. ISSUE AND CLAIM PRECLUSION

Marquam Farms also asserted in its August 15, 1995, letter that

"[t]o the extent that the applicants rely on either an existing conditional use permit or an existing non-conforming use for a 50 dog kennel, both issue and claim preclusion (formerly commonly referred to as collateral estoppel and *res judicata*) prevent the County from reopening those issues to overturn the previous [August, 1994] decision of the Hearings Officer [in DR 4-94]."

Because that issue implicated substantive rather than procedural issues, I determined that those issues would be addressed on the merits within this decision.

D. PENDING LITIGATION

Marquam Farms also suggested in its August 15, 1995, letter that the pendency of certain litigation in Multnomah County Circuit Court should preempt the pending land use proceedings. Because Marquam Farms itself had initially challenged the kennel operations within the context of *both* the 1990 *and* 1994 County land use proceedings, I concluded that it had already accorded the land use process a priority status in its challenges to the kennel operations.

I therefore concluded that, not only would I not abate the pending land use proceedings pending the completion of litigation, but I believed the contrary result should obtain, *viz*, any pending litigation should await a final determination as to Applicant's quest for conditional use or non-conforming use status.

E. PRECEDENTIAL IMPACT OF OAR 660-33-120

Finally, Marquam Farms urged in its August 15, 1995, letter that, notwithstanding any merit to Applicant's proposal, the 1994 promulgation of OAR 660-33-120 would prohibit kennel facilities in any event.

Because I determined that this particular subject, like the subject of "issue and claim preclusion" mentioned above, implicated substantive rather than procedural issues, I would address it on the merits within this decision.

III. APPLICABLE CRITERIA — CONDITIONAL USE

The following criteria apply to the proposed development:

A. EXCLUSIVE FARM ZONE USES [ORS 215.283]

As of Applicant's 1995 application, ORS 215.283 provided, in pertinent part:

* * * * *

"(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designate in any area zoned for exclusive farm use subject to ORS 215.296:

* * * * *

"(m) Dog kennels not described in subsection (1)(j) of this section."

The Applicant's kennel facilities comprise kennels "not described in subsection (1)(j)," viz, non-greyhound kennels.

The 1995 legislature's recent amendment to ORS 215.283 via SB 834 (*see* 1995 Or Laws, ch. 528, § 2) not only created an unrelated provision but could have no effect on the pending application in any event.

**B. STANDARDS FOR APPROVAL OF EXCLUSIVE FARM ZONE USES
[ORS 215.296]**

ORS 215.296 provides, in pertinent part:

"(1) A use allowed under ORS . . . 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:

"(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

"(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

*** * * * ***

"(10) Nothing in this section shall prevent a local governing body approving a use allowed under ORS . . . 215.283(2) from establishing standards in addition to those set forth in subsection (1) of this section or from imposing conditions to insure conformance with such additional standards."

C. LCDC "AGRICULTURAL LAND" ADMINISTRATIVE RULES
[OAR 660-33-120/660-33-130]

In June, 1994, LCDC promulgated OAR 660-33-120, which provides, in pertinent part:

"The specific development and uses listed in the following table are permitted in the areas that qualify for the designation pursuant to this division. . . . The abbreviations used within the schedule shall have the following meanings:

"A Use may be allowed. . . .

"R Use may be approved, after required review. . . .

"* Use not permitted.

"# Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-33-130. . . .

<u>HV</u> <u>Farm</u>	<u>All</u> <u>Other</u>	<u>USES</u>
...
*18	R5	Dog kennels."

OAR 660-33-130, likewise effective in June, 1994, additionally provides, in pertinent part:

"The following standards apply to uses listed in OAR 660-33-120 where the corresponding section number is shown on the chart for a specific use under consideration. . . .

"(18) Existing facilities may be maintained, enhanced or expanded, subject to other requirements of law. . . ."

**D. EFU CONDITIONAL USES
[MCC 11.15.2012(B)]**

MCC 11.15.2012(B) provides:

"The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7015 to .7140:

"(11) Dog kennels."

MCC 11.15.0010 defines "kennel" as

"[a]ny lot or premises on which four or more dogs, more than six months of age, are kept."

**E. CONDITIONAL USE — GENERAL APPROVAL CRITERIA
[MCC 11.15.7120(A)]**

MCC 11.15.7120(A) — implicated via MCC 11.15.2012(B), above — sets forth general conditional use approval criteria:

"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,^[15] 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;
- "(2) Will not adversely affect natural resources;
- "(3) Will not conflict with farm or forest uses in the area;
- "(4) Will not require public services other than those existing or programmed for the area;
- "(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;
- "(6) Will not create hazardous conditions; and
- "(7) Will satisfy the applicable policies of the Comprehensive Plan."

F. CONDITIONAL USE — SPECIFIC EFU APPROVAL CRITERIA [MCC 11.15.7122]

In addition to the general conditional use approval criteria in MCC 11.15.7120, MCC 11.15.7122 additionally provides:

¹⁵ The "Exclusive Farm Use" provisions in MCC 11.15.2002–11.15.2030 do not contain separate approval criteria for conditional uses. MCC 11.15.2012(B) specifically cites the general approval criteria in MCC 11.15.7105–11.15.7140 as controlling.

"(A) In addition to the criteria of MCC .7120, an applicant for a Conditional Use listed in MCC .2102(B) must demonstrate that the use:

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

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

"* * * *"

With one exception, this provision duplicates the language in ORS 215.296(1), quoted above; the ordinance renders the criteria in subparagraphs .7122(A)(1) and (2) *conjunctive*, while ORS 215.296 makes the counterpart provisions in subparagraphs (1)(a) and (b) *disjunctive*.

G. ANIMAL KEEPING — CONDITIONAL USE APPROVAL CRITERIA [MCC 11.15.7205-.7240]

In addition to all of the above conditional use criteria, MCC 11.15.7205-.7240 provide additional criteria.

MCC 11.15.7205 provides, in pertinent part:

"Dog kennels . . . may be permitted only upon the approval of the approval authority as a conditional use."

MCC 11.15.7210 provides:

"These uses shall be permitted only in the following areas and only where they will not conflict with the surrounding property uses:

"(A) In CFU, F-2, MUA-20, MUF, and RR districts or those areas of similar low population density.

"(B) C-3 or C-2 commercial districts.

"(C) Manufacturing districts."

MCC 11.15.7215 bears the caption "Minimum Site Size Requirements" and provides, in full:

"(A) Area: Two acres.

"(B) Width: Two hundred fifty feet.

"(C) Depth: Two hundred fifty feet."

MCC 11.15.7220 provides:

"These uses shall be located no closer than one hundred feet to any lot line, in or adjacent to an F, R, or A district."

MCC 11.15.7230 provides:

"(A) All kennels, runs or pens shall be constructed of masonry or such other opaque material as shall provide for cleanliness, ease of maintenance, and sound and noise control.

- "(B) All kennels, runs and other facilities shall be designed, constructed, and located on the site in a manner that will minimize the adverse effects upon the surrounding properties. Among the factors that shall be considered are the relationship of the use to the topography, natural and planted horticultural screening, the direction and intensity of the prevailing winds, the relationship and location of residences and public facilities on nearby properties, and other similar factors.**
- "(C) The owner or operator of a use approved under this section shall maintain the premises in a clean, orderly and sanitary condition at all times.**
...
- "(D) A separate housing facility, pen or kennel space may be required for each dog over six months of age kept on the premises over twenty-four hours."**

Finally, MCC 11.15.7240 provides an exemption for certain facilities:

"Animal facilities for which Animal Control Facility licenses were issued prior to October 31, 1985[,] shall be exempted from the provisions of MCC .7205-.7235 unless:

- "(A) There is an increase in the number of animals in the facility, or**
- "(B) The use is discontinued for a period of more than two years."**

H. COMPREHENSIVE PLAN PROVISIONS [POLICIES 9, 13, 22, 37, 38, AND 40]

The Staff Report identifies Comprehensive Plan Policies 9, 13, 22, 37, 38, and 40 as applicable. (Staff Report at 5 and 11.) I will discuss the pertinent provisions of those policies *infra* in the "Findings" portion of the conditional use discussion.

IV. PRECLUSION ISSUES — CONDITIONAL USE

Before proceeding to the substantive "conditional use" issues, a labyrinthine array of preliminary issues that I broadly categorize as "preclusion" issues need to be addressed and resolved. With one exception, these comprise issues that could effectively derail Applicant's approval request *apart from* the question whether the request itself fulfills the pertinent conditional use or non-conforming use criteria in the Zoning Ordinance. Marquam Farms' August 15, 1995, letter raises some of these issues.

The lone exception comprises the question whether *Marquam Farms itself* ought to be precluded from raising challenges that it unsuccessfully asserted in 1990 but did not appeal at that time.

Thus, I need to traverse the bewildering land use history surrounding the kennel facilities and resolve the following key questions:

- ◆ Is the hearings officer's August, 1994, decision in DR 4-94 binding on Applicant, such that I am now precluded from revisiting many of the legal and factual issues that the parties debated in 1994?
- ◆ What, if any, precedential or preclusive weight ought I accord the County's sequential determinations in 1989 and 1990 that the kennel facilities did *not* require "conditional use" approval?
- ◆ What, if any, precedential or preclusive effect do the 1989 and 1990 *approvals* — as opposed to *denials* — have on subsequent proceedings involving the kennel facilities?

- ♦ What, if any, precedential or preclusive effect do I accord the fact that the Applicant successfully and appropriately obtained conditional use approval in 1990 — an approval now beyond challenge — for a “watchman’s residence” as an accessory use to the kennel facilities?
- ♦ Is the current approval request sufficiently identical to the Design Review request in 4-94 that, all else aside, there exists no practical or logical reason to allow Applicant to plow the same furrow again?
- ♦ What, if any, precedential or preclusive effect do I accord the fact that Marquam Farms (1) *actively participated* in the 1990 proceedings in CU 23-90, (2) *raised* a “legality-of-use” issue in 1990 that later resurfaced in Marquam Farms’ 1994 Design Review appeal, and (3) *opted to not appeal* the adverse resolution of the “legality-of-use” issue in 1990?

As I explain below, I conclude that none of the above procedural questions foreclose consideration of the merits of Applicant’s current request for approval.

A. BECAUSE IT *DENIED* A REQUESTED APPROVAL, THE HEARINGS OFFICER’S 1994 DECISION DOES NOT PRECLUDE A RECONSIDERATION OF EITHER LEGAL OR FACTUAL “CONDITIONAL USE” ISSUES

Alone among the series of decisions and approvals that Applicant has sought and obtained since 1989, the hearings officer’s 1994 decision in DR 4-94 *denied* a requested approval, *viz*, Design Review approval. The fact that that decision “granted” an *appeal* of Design Review approval neither cloaks nor alters the fact that, unlike the decisions in 1989 (building permit), DR 90-07-02 (design review), and CU 23-90 (conditional use), no rights vested by reason of any approval.

The County’s Zoning Ordinance does not prohibit the resubmittal of an application that might have been the subject of an earlier denial. Unless accompanied by some affirmative adjudication of rights or interests, or unless made the subject of an appeal to the Land Use Board of Appeals (or beyond) in which a declaration as to the

existence or nonexistence of legal rights or interests occurs within that appellate context, the *denial* of a requested approval achieves nothing more the maintenance of the *status quo*.

Indeed, the hearings officer's 1994 decision concludes with the observation that

"... *if* the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review *should not prejudice such later action*, if any. Therefore, the applicant's request for Design Review is denied, *without prejudice*." (August 19, 1994, DECISION at 7 [emphasis added].)

When the County later placed the hearings officer's decision on the Board's September 13, 1994, acknowledgment agenda, it retained and incorporated the "without prejudice" language.

I therefore conclude that, because of the circumstances (*viz*, a denial of a request for approval followed by a subsequent resubmittal of a different nature), and because neither statute nor ordinance requires that the prior *denial* of a land use application binds the applicant in future proceedings, I am, in effect, writing on a slate unfettered and unconfined by the 1994 hearings officer's decision. *See Furler v. Curry County*, 27 Or LUBA 497, 506 (1994); *Reeder v. Clackamas County*, 20 Or LUBA 238, 242-44 (1990); and *S & J Builders v. City of Tigard*, 14 Or LUBA 708, 711-12 (1986).

B. THERE EXISTS NO PURE "IDENTITY OF ISSUES" SUCH THAT "CLAIM PRECLUSION" OR "ISSUE PRECLUSION" MIGHT OTHERWISE APPLY

In its August 15, 1995, letter, Marquam Farms suggested that

"both issue and claim preclusion (formerly commonly referred to as collateral estoppel and *res judicata*) prevent the County from reopening those issues to overturn the previous [August, 1994] decision of the Hearings Officer."

I conclude that, for three reasons, I am not bound by the hearings officer's legal conclusions in DR 4-94.

(1). "CLAIM PRECLUSION" AND "ISSUE PRECLUSION" SERVE
NO PURPOSE IN THIS PARTICULAR PROCEEDING

The 1994 proceedings in DR 4-94 resulted in the *denial* of an approval request, leaving the *status quo* unaffected and vesting no rights. I can find no statute or provision in the County's Zoning Ordinance — and Marquam Farms cites none — that precludes the resubmittal of an approval request under the circumstances that accompany Applicant's request.

Given the fact that someone in Applicant's position can typically reapply for the same or similar approvals after a prescribed period of time, I can find no authority for imposing the litigation-derived doctrines urged by Marquam Farms, nor has anyone cited any. See, for instance, *Nelson v. Clackamas County*, 19 Or LUBA 131, 140 (1990) (recognizing this principle).

(2). WITHIN AN ADMINISTRATIVE CONTEXT, I CANNOT BESTOW *STARE DECISIS* STATUS UPON A PRIOR INTERPRETATION OF A LOCAL ENACTMENT THAT MISINTERPRETS THE ENACTMENT

As I discuss in detail *infra* beginning at page 50, I conclude that the hearings officer's decision in DR 4-94 misinterpreted .2028(B). In effect, that decision renders .2028(B) superfluous and devoid of purpose.

By holding that, before .2028(B) takes effect,

"the kennel use must not only have been listed as a conditional use, but it must have been legally established as such, prior to August 14, 1980 (i.e. *it must have actually obtained a conditional use permit*)" (August 19, 1994, DECISION at 4 [emphasis added]),

the 1994 decision rendered .2028(B) entirely unnecessary; if a use that might otherwise qualify as a ".2028(B)" use had "actually obtained a conditional use permit" in the first place, then the existing use would *already* be "conforming" and would benefit in no respect from a provision such as .2028(B).

Stated differently, because the primary effects of .2028(B) comprise (1) the announcement that the antecedent use "shall be deemed *conforming*" as a *conditional* use, and (2) the declaration that the referent "conforming" conditional use "shall . . . not [be] subject to the [non-conforming use] provisions of MCC .880[5]," the drafters of .2028(B) could only have envisioned the creation or recognition of a species of "use" *other than* a conditional use for which a permit already existed. If not, then the drafters of .2028(B) simply recited the obvious.

Within the administrative context, until such time as LUBA or the courts adopt an interpretation of .2028(B) — and of all of the mirror-image provisions that I have catalogued in the footnote on page 51 — that *either* overturns the Planning Commission's implicit interpretation in the 1990 proceedings in CU 23-90 *or* conforms to the hearings officer's 1994 decision in DR 4-94, I cannot adhere to an interpretation of .2028(B) that effectively renders that provision mere surplusage and thus devoid of significance.

(3). THE ISSUES IN DR 4-94 AND THIS PROCEEDING, AND
THE MANNER IN WHICH THE ISSUES AROSE IN DR 4-94,
DO NOT SQUARELY ALIGN

Even assuming for purposes of argument that concepts such as "issue preclusion" or "claim preclusion" might obtain in a land use proceeding on the basis of the proceeding's administrative characteristics (*see, generally, Fisher Broadcasting, Inc. v. Dept. of Rev.*, 321 Or 341, 355-59, ___ P2d ___ (1995); *Chavez v. Boise Cascade Corp.*, 307 Or 632, 635, 772 P2d 409 (1989); and *North Clackamas School Dist. v. White*, 305

C. THE COUNTY'S SEQUENTIAL, UNIFORM DETERMINATIONS IN 1989 AND 1990 THAT APPLICANT'S KENNEL FACILITIES DID *NOT* REQUIRE "CONDITIONAL USE" APPROVAL CONNOTES IMPLICIT INTERPRETATIONS OF MCC 11.15.2028(B) IN A MANNER THAT LONG AGO RESOLVED THE ISSUE

One cannot examine the chronology underlying Applicant's land use efforts from 1989 to date and remain unaffected by both the persistence and uniformity of the County's determinations and the accompanying representations that Applicant needed no "conditional use" approval in order to maintain and operate the kennel facilities.

An historical tour of the County's cumulative interpretations of the Zoning Ordinance in 1990 alone serves to underscore the precedential impact of those interpretive efforts.

(1). 1990 CONDITIONAL USE PROCEEDINGS

When Applicant sought conditional use approval of a "watchman's residence" in 1990 in CU 23-90, MCC 11.15.2014(E) authorized "uses . . . incidental and accessory to *the uses permitted under MCC .2008 through .2012*," and included, among other things, "[o]ther structures or uses customarily incidental to *any use permitted or approved* in this district."

Thus, it necessarily became a condition precedent to approval — whether implicit or otherwise — that the Planning Commission determine and conclude that there existed a dominant "use[] permitted under MCC .2008 through .2012" or "any [dominant] use permitted or approved" with the EFU district — *viz*, the kennel facilities themselves.

The Planning Commission appears to have done just that. The record contains the tape of the November 6, 1990, Planning Commission hearing, and the tape confirms the following events:

- ◆ The Planning Commission — apparently prodded to do so in some degree by Marquam Farms — inquired whether the underlying kennel use comprised the prerequisite legally-established conditional use, whether by permit or by virtue of MCC 11.15.2028(B).
- ◆ Staff informed the Planning Commission that it (staff) interpreted .2028(B) to render the kennel facilities a “‘conforming’ conditional use.”
- ◆ Staff informed the Planning Commission that it (staff) interpreted .2028(B) to created a species of conditional use that, unlike a *non*-conforming use, could *not* be terminated by abandonment or discontinuance.
- ◆ Staff informed the Planning Commission that a “.2028(B)” conditional use did not require any conditional use approval via the conditional use process in MCC 11.15.7105, *et seq.*, because .2028(B) *itself* grants conditional use status.

Thus, the pivotal question appears to have percolated to the surface during the November 6, 1990, hearing in such an indelible manner that I must conclude that the Planning Commission (1) became fully cognizant of the issue and (2) necessarily — albeit impliedly — rendered an appealable interpretation of .2028(B) in the manner now advocated by Applicant.

I note that Marquam Farms' argument on the appeal in DR 4-94 mirrored that “implied-yet-indispensable” analysis. In the appeal in DR 4-94, Marquam Farms necessarily argued that the hearings officer lacked the authority to sustain the Planning Director's administrative Design Review approval because the Design Review mechanism requires, as an *implied* condition precedent, the pre-existence of either a “conditional” or “community” use (*see* MCC 11.15.7820) — which, according to Marquam Farms, did not actually exist. Although the Planning Director's administrative Design Review approval in DR 4-94 did not *expressly* find the pre-existence of the requisite “conditional” or “community” use, it *implicitly* made that finding. Marquam Farms then challenged that *implicit* finding, according it the same force and effect as an *explicit* finding.

(2). 1990 DESIGN REVIEW PROCEEDINGS

When the County informed Applicant in 1990 that it only needed Design Review approval for remodeling (*see* DR 90-07-02), the "FINAL DESIGN REVIEW" dated August 6, 1990, specifically incorporated a condition derived from MCC 11.15.7230, which, in turn, would not otherwise have applied at all *unless* the County had first determined that the requisite condition precedent in MCC 11.15.7820 — *viz*, a conditional use — existed.

Thus, it necessarily became a condition precedent to approval — whether implicit or otherwise — that the Planning Director determine and conclude that there existed the requisite "conditional use" approval, without which any Design Review approval would be for naught.

(3). THE COUNTY ITSELF HAS "INTERPRETED" MCC 11.15.2028(B) IN DISPOSITIVE FASHION

Although I agree in principle with the hearings officer's 1994 conclusion that local governments' generally ought not be bound by mistakes of law (August 19, 1994, DECISION at 7 and 8), I cannot so easily dismiss the County's consistent characterizations of Applicant's kennel facility — and the effect of the controlling ordinances — as mere "mistakes" or "staff" misinterpretations upon which the "County" inadvertently relied.

Rather, I view such consistent, *ad seriatim* opinions as the functional equivalent of an *interpretation* of the County's Zoning Ordinance upon which persons such as Applicant might rely, and with respect to which persons such as Marquam Farms and others remain bound until the Board itself adopts a contrary interpretation of .2028(B) or until LUBA or the courts undertake to do that.

The separate — and quite different — question whether independent appellate tribunals such as LUBA, the Court of Appeals, or the Supreme Court might similarly be bound by the County's uniform, historical interpretations of its land use enactments

in Applicant's 1989 and 1990 land use proceedings has no bearing here.^[17] Even assuming for purposes of argument that there exists a difference between (1) a Board of County Commissioners' "acknowledgment" of a Planning Commission or hearings officer approval in the absence of an appeal to the Board,^[18] and (2) a Board of County Commissioners' determination of an appeal in accordance with MCC 11.15.8270-.8280 (see *McKenzie v. Multnomah County*, 131 Or App 177, 179 n. 1, 884 P2d 868 (1994) [appeal to Board implicates the *Clark/Gage* criteria]), the question whether the County's prior unappealed staff and Planning Commission approvals in 1989 and 1990 ought to be accorded precedential status *within future County proceedings* as interpretations of a local enactment does not implicate the type of analysis that resulted in *Gage v. City of Portland*, and *Derry v. Douglas County*, *supra*. Had the 1989 and 1990 proceedings resulted in *denials*, my conclusion might be different.

¹⁷ Compare, for instance, *Clark v. Jackson County*, 313 Or 508, 515-18, 836 P2d 710 (1992), and *Smith v. Clackamas County*, 313 Or 519, 524-28, 836 P2d 716 (1992) (LUBA and the courts shall generally defer to a local government's interpretations of land use enactments), with *Gage v. City of Portland*, 319 Or 308, 315-17, 877 P2d 1187 (1994) (LUBA and the courts owe no "deference" to interpretations of land use enactments by a hearings officer); and *Derry v. Douglas County*, 132 Or App 386, 389-90, 888 P2d 588 (1985) (LUBA and the courts owe no "deference" to interpretations of land use enactments by a Planning Commission).

¹⁸ MCC 11.15.8255 provides that

"[t]he written decision of the Planning Commission or the Hearings Officer shall be submitted to the Clerk of the Board by the Planning Director not later than ten days after the decision is announced. The Clerk shall summarize each decision on the agenda for the next Board meeting on planning and zoning matters for which notice can be given under the Charter."

The record reflects that the November 6, 1990, Planning Commission approval of CU 23-90 appeared on the Board of County Commissioners' November 27, 1990, "acknowledgment" agenda. The time for appealing the Planning Commission's decision expired on November 26, 1990; no one appealed.

The record does not contain any similar Board consideration of any of the other 1989 or 1990 approvals. Although MCC 11.15.7865 and 11.15.8290 provide for an appeal to a hearings officer from the Planning Director's administrative Design Review approval, nothing in MCC 11.15.7805-.7870 appears to require the submittal of an *unappealed* approval to the Board in the manner otherwise required for Planning Commission or hearings officer decisions.

A local government need not specifically describe its decisions as "interpretive" of local enactments before persons such as Applicant can reasonably rely upon those decisions as reflective of approved constructions of those enactments. The more a local government consistently renders a particular interpretation of a local enactment within similar or identical circumstances, the less likely it becomes that the rest of us can look back and conclude that on each occasion the local government inadvertently made a "mistake of law," or that "staff" necessarily erred in misconstruing a provision.

Thus, when, as here, a local government — whether acting through staff, the Planning Commission, or a hearings officer — repeatedly interprets and implements its ordinances under circumstances in which interested parties (1) *could have* appealed those interpretations within the context of an *approval* but (2) elected to *not* appeal (*see* the following topic for more on that subject), I find it difficult to accept the argument that the consistency of the interpretations can never take the shape of an *interpretation*, but must remain relegated to a "mistake of law."

D. MARQUAM FARMS' FAILURE TO APPEAL THE 1990
DECISION THAT SPECIFICALLY REJECTED THE IDENTICAL
"LEGALITY-OF-USE" ARGUMENT THAT IT NOW
MAKES PRECLUDES IT FROM RELITIGATING THAT
ISSUE

In Marquam Farms' September 6, 1995, letter, it objected to any consideration of conditional use or non-conforming use issues in *this* proceeding because "those contentions were fully aired and decided in the unappealed Hearings Officer decision in DR 4-94." The correlative question becomes whether, according to that same reasoning, Marquam Farms' current objections via its August 15, 1995, and September 16, 1995, letters likewise come too late.

As I explain beginning at page 44, *supra*, I view the Planning Commission's 1990 decision in CU 23-90 as conclusively — albeit implicitly — resolving the question whether the kennel facilities comprised a "conforming" conditional use pursuant to MCC 11.15.2028(B). The record reflects that Marquam Farms (1) actively participated in the 1990 proceedings, (2) raised a "legality-of-use" issue that later resurfaced in DR 4-94, and (3) elected to not appeal the adverse resolution of that issue in the 1990 proceedings.

In *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), the Supreme Court recently rendered a poignant comment about belated efforts to raise issues in land use proceedings. With but a minor modification, that comment seems fitting here as well. Specifically, the Court championed the Court of Appeals' earlier observation that

“‘[a] party who did not raise an issue in an earlier proceeding because he chose not to participate in it should be as precluded from later raising the issue as a party who did participate but neglected to raise the issue.’” 313 Or at 153 n. 2, quoting from *Mill Creek Glen Protection Assoc. v. Umatilla Co.*, 88 Or App 522, 527, 746 P2d 728 (1987).

Paraphrased only slightly, that comment from *Beck* might well read: “A party who did not *pursue* an issue that it had raised in an earlier proceeding because it chose not to *appeal* the underlying decision should be as precluded from later raising the issue as a party who *did appeal* the underlying decision but *neglected to raise the issue* in the appeal.” As so paraphrased, that conclusion would not be a particularly novel proposition.

Indeed, in *Beck* the Supreme Court resolved the question whether, in a land use proceeding in which a party prevails on one or more issues but loses on one or more issues, that party might purposely refrain from pursuing an appeal with respect to the issues on which that party did not prevail, and then later appeal those same issues within the context of an appeal from a later decision. In land use proceedings, that scenario occurs (or used to occur) with some frequency: *viz*, an opponent of a proposed development appeals an underlying decision and wins some issues while losing others; content with a partial victory in round one, the opponent returns for round two; the opponent loses round two and appeals again. *Beck* makes it plain that the “lost” issues that the opponent chose to not pursue further in round one cannot form any part of an appeal of round two.^[19]

¹⁹ For reasons perhaps peculiar to the land use process, *Beck* would not apply to a land use *proponent* (*viz*, the applicant) when that proponent *fails* to obtain favorable approval and re-submits the same application after the passage of some prescribed period of time. In that event, *Beck* would also not preclude any *opponent* from raising issues in the later proceedings that had not been raised earlier. That scenario would allow, for instance, the parties to debate matters anew *vis-a-vis* the 1994 proceedings, but not the 1990 proceedings in CU 23-90.

Land use proceedings also frequently involve another scenario: an opponent of a proposed development raises a particular issue at the primary decision-making level but loses; rather than risk an unsuccessful appeal of the issue to the governing body (or higher), the opponent does not pursue any appellate resolution and simply allows the decision to become final. In 1990, Marquam Farms apparently did precisely that in CU 23-90. It (1) challenged the lawfulness of Applicant's kennel facilities (*see* tape of November 6, 1990, Planning Commission hearing), (2) received (or precipitated) a specific interpretation of MCC 11.15.2028(B) in response to that challenge, and, after the Planning Commission necessarily determined that the kennel facilities comprised what might be termed a ".2028(B) use," (3) elected to not pursue the matter further. It would not strain logic to apply *Beck's* reasoning to that scenario as well.

Thus, I conclude that — to paraphrase Marquam Farms' September 6, 1995, letter — Marquam Farms' "contentions [about the legality of the kennel facilities] were fully aired and decided in the unappealed [Planning Commission] decision in [CU 90-23]." Marquam Farms' resurrection of issues that could have been appealed to the Board (or beyond) in 1990 comes too late. Unlike the hearings officer's rejection of the Applicant's arguments in DR 4-94, the Planning Commission's rejection of Marquam Farms' arguments in CU 23-90 was *not* "without prejudice." I again emphasize the distinction between proceedings resulting in *approvals* and proceedings resulting in *denials*.

V. DO THE KENNEL FACILITIES ALREADY COMPRISE A ".2028(B)" USE?

Before resolving the question whether Applicant has fulfilled the various "conditional use" criteria in MCC 11.15.7105, *et seq.*, another preliminary question must first be answered: Do the existing kennel facilities comprise what might be termed a "conforming" conditional use, or what might also be labeled a ".2028(B) use"?

If so, then Applicant need not attempt to obtain retroactive conditional use approval for the kennel facilities themselves. If not, then the conditional use process for an *expansion* of use will be for naught and Applicant instead must fulfill the criteria in MCC 11.15.7105, *et seq.*, as if it were establishing the use for the first time.

Unfortunately, the language in .2028(B) engenders an interpretive quagmire into which everyone involved with Applicant's various land use proceedings has fallen

at one time or another. Marquam Farms earlier branded .2082(B)'s interpretation difficulties a proverbial "tar baby," and I concur. (See Marquam Farms' July 27, 1994, Memorandum in DR 4-94, at 2.) Nevertheless, unlike Marquam Farms' plea in 1994 that .2028(B) be left alone, I conclude that .2028(B) — its "tar baby" characteristics notwithstanding — stands squarely in the center of the path toward a resolution of Applicant's approval request, and that I do not know what direction that path takes until I confront .2028(B) directly.

MCC 11.15.2028(B) provides that

"[c]onditional uses listed in subpart MCC [11.15].2012 legally established prior to August 14, 1980, shall be deemed conforming and not subject to the provisions of MCC [11.15].8804 [sic; '.8805'] . . ." (Emphasis added.)

Virtually identical language appears in a host of provisions in the Zoning Ordinance.^[20]

"Dog kennels" certainly comprise a conditional use presently "listed" in MCC 11.15.2012(B)(11),^[21] and Applicant's facilities certainly comprise a "kennel" as defined in MCC 11.15.0010. Beyond those two certainties, everyone's understanding of what that language *means* and what it *does* seems to diverge.

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The same or similar language appears in, for example:

- ♦ MCC 11.15.2070(A) (CFU);
- ♦ MCC 11.15.2108 (F-2);
- ♦ MCC 11.15.2150 (MUA-20);
- ♦ MCC 11.15.2190 (MUF);
- ♦ MCC 11.15.2230 (RR);
- ♦ MCC 11.15.2270 (RC);
- ♦ MCC 11.15.2368 (UF-20 and UF-10);
- ♦ MCC 11.15.2488(A) (LR-40, LR-30, LR-20, LR-10, LR-7.5, LR-7, and LR-5);
- ♦ MCC 11.15.2718(A) (MR-4, MR-3, HR-2, and HR-1);
- ♦ MCC 11.15.5055 (LM, GM, HM);
- ♦ MCC 11.15.6062 (LF); and
- ♦ MCC 11.15.7040 (CS).

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That "listing" apparently occurred in 1986. However, I do not perceive that fact to have any consequence with respect to the meaning or scope of .2028(B).

There exist two methods of interpreting .2028(B): either (1) parse its individual clauses in chronological order and construe each (*see* topics A and B, below), or (2) determine the most logical reason why the provision arose in the first place (*viz*, the goal or purpose underlying .2028(B)) and disregard linguistic imperfections along the way (*see* topic C, below).

As I discussed earlier in this decision, after reviewing and re-reviewing the hearings officer's 1994 decision in DR 4-94, I have (somewhat reluctantly) concluded that the 1994 decision simply misinterprets .2028(B). Notwithstanding all of the various arguments that might be advanced in favor of *stare decisis* with respect to hearings officers' decisions, I simply cannot follow an interpretation of .2028(B) that, in effect, renders that provision superfluous.

A. DO THE APPLICANT'S KENNELS COMPRISE A "LISTED USE" AT ALL?

Applicant interprets .2028(B) to mean that the existing kennel facilities comprise a "conditional use listed" in MCC 11.15.2012, regardless of whether or not .2028(B) might implicitly confine those "listed" uses to those in effect on August 14, 1980. That interpretation in turn depends upon the conclusion that .2028(B) comprises an elastic provision that protects "listed" conditional uses that the County had not even "listed" as conditional uses within an EFU district as of August 14, 1980. In other words, .2028(B)'s reference to "listed" uses includes all conditional uses "listed" in MCC 11.15.2012 at any point in time from August 14, 1980, forward — until changed by amendatory legislation.

Conversely, Marquam Farms — which, by virtue of its August 15, 1995, letter has incorporated the debate from the 1994 proceedings in DR 4-94 — reads .2028(B) as necessarily meaning that Applicant's kennel facilities could not pass muster as a "listed" conditional use in the first place because the County had not even "listed" kennels as a conditional use in an EFU district as of August 14, 1980. In other words, Marquam Farms' interpretation renders .2028(B) a provision that recognizes no use "listed" after August 14, 1980 — in effect creating two classes of "listed" uses.

The parties bolster their respective interpretations by citing different historical enactments, but neither discusses those cited by the other. Marquam Farms says that "[d]og kennels were not added to the list of EFU-zone conditional uses (MCC

.2012) until the enactment of Ordinance No. 509 on *May 17, 1986*." (July 27, 1994, Memorandum ["MARQUAM MEMORANDUM"] at 11, n. 2 [emphasis added].) But Applicant points out that "Multnomah County Ordinance No. 100, which went into effect on *November 15, 1962*, provided in section 7.5401(A) . . . that kennels were a conditional use 'in F-2 districts or those areas of similar low population density.'" (Applicant's July 28, 1994, Brief ["APPLICANT'S BRIEF"] at 2 [emphasis added].)

Given that the "F-2" designation that attains significance in Applicant's argument comprised the predecessor of the current "EFU" designation (*see* Ordinance No. 148, § 3 [redesignating the "F-2" district as "EFU-38"]), the available chronology supplied by the parties leaves me somewhat baffled. To confuse matters further, when the County enacted Ordinance No. 148 in September, 1977, § 3.103.3 thereof established the predecessor of the conditional use provisions in current MCC 11.15.2012(B), but no longer mentioned "kennels" as a conditional use.

I conclude that the legislative chronology — assuming that it can be translated into a cogent proposition — has scant significance at this point. Notwithstanding the fact that kennels could not have comprised a "listed" conditional use until May 17, 1986, for purposes of .2028(B) Applicant's kennel *now* comprises a "[c]onditional use[]" listed in subpart MCC [11.15].2012" if only because I would have to insert additional language or conditions into the provision, or surmise some non-explicit connotation, in order to disagree with Applicant's interpretation. My interpretation also renders .2028(B) an elastic provision that does not otherwise segregate conditional uses according to "listing" dates.

However, given the greater uncertainties with the remainder of the language in .2028(B) (below), I am not confident that this particular debate makes any difference.

B. WERE THE KENNELS "*LEGALLY ESTABLISHED* PRIOR TO AUGUST 14, 1980"?

As the Court of Appeals recently observed in *Von Lubken v. Hood River County*, 133 Or App 286, 288, ___ P2d ___ (1995), it is indeed possible to construct, operate, maintain, and otherwise "establish" a conditional use within an EFU district (a golf course) while proponents and opponents endure a five-year debate within LUBA and the Court of Appeals as to the legality and finality of the local government's ap-

proval in the first place. If ultimately successful, it would be equally possible for the parties in *Von Lubken* to urge at least two different dates upon which the use in question had been "legally established." Given that possibility, the question whether phrases such as "legally established" mean anything in particular cannot be answered with the ease suggested by Applicant and Marquam Farms.

(1). DOES THE TERM "*LEGALLY ESTABLISHED*" DIFFERENTIATE USES THAT WERE "*ILLEGALLY ESTABLISHED*" ?

I approach the meaning of the term "legally established" by asking whether it purports to distinguish its converse. Can it be said that Applicant's kennel facilities represent a conditional use "*illegally* established" prior to August 14, 1980? In other words, can there be an "illegal" *conditional* use? If not, then the differentiation in .2028(B) resulting from the term "legally" would be irrelevant insofar as it purported to draw a line between "legal" and "illegal" conditional uses.

Either the County employed the term "legally" for a particular reason, *viz*, in order to differentiate between "*legally*" established conditional uses and "*illegally*" established conditional uses, or it simply created a two-word phrase when one would have sufficed. Because I can think of no circumstances in which a particular use might be described as an "illegal" conditional use (as opposed to some other kind of use), I conclude that .2028(B) simply asks whether a particular had been "established" at its inception in a legal manner, and that the reference to "legally" does not signify other types of conditional use. Otherwise, the phrase "legally established" suggests that the converse exists, which, in the context of a conditional use, would yield an oxymoron.

However, I do not necessarily read the reference to "legally" out of .2028(B) altogether; rather, I interpret the term "legally" to refer to the *origins* of the use that .2028(B) then makes "conforming," regardless of whether that use comprised a "conditional" use when first established or something else. I conclude that Applicant's kennel facilities were long ago "established" in a legal manner, albeit not necessarily as a conditional use for which a permit had been given.

(2). DOES THE TERM "*LEGALLY ESTABLISHED*" NECESSARILY INCORPORATE NOTIONS OF "ABANDONMENT" OR "DISCONTINUANCE," AS THOUGH IT PERTAINED SOLELY TO PRE-EXISTING NON-CONFORMING USES?

Applicant — and staff as well in 1989 and 1990 — maintains that, as long as a "listed" conditional use has been "legally established" *at any point prior to August 14, 1980*, notions of "abandonment" or "discontinuance" become irrelevant. (APPLICANT'S BRIEF at 1-2.) Applicant reasons that the language in .2028(B)

"differs markedly from the language for determining whether a use is a nonconforming use: 'lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation' (ORS 215.130(5))." (APPLICANT'S BRIEF at 2 [underscore in original].)

Marquam Farms, on the other hand, declares that .2028(B) comprises "a 'grandfather' clause; not a resurrection clause. It cannot be used to restore to life rights which were extinguished (for reasons unrelated to the Code amendments) before the effective date of MCC .2028(B)." (MARQUAM MEMORANDUM at 8.) It fears that .2028(B) would otherwise allow a resumption of various conflicting uses that had long since ceased to exist within an EFU district, although I suspect that the conflicting uses would no longer be "listed" among the conditional uses allowed in the district under MCC 11.15.2012, and thus could not be "resurrected" anyway.

Both arguments make sense, although for different reasons:

- ◆ Applicant focuses solely on a language differential that does indeed reflect a material deviation from the nonconforming use provisions in ORS 215.130(5), yet offers nothing to determine whether that differential might have been intended or merely inadvertent. Moreover, Applicant suggests no rationale why .2028(B) ought to be read to ignore or minimize the possibility of long-since-discontinued uses being brought back to life.

- ♦ Marquam Farms focuses solely on the prospect of a “crazy patchwork of historical uses” that .2028(B) might condone if continuity of use were not implicit in .2028(B)’s language, although, as I note above, it seems equally logical to assume that obviously contradictory uses would no longer comprise “[c]onditional uses *listed* in subpart MCC [11.15].2012 [.]”

There exists yet a third consideration that neither party mentions: To accept Marquam Farms’ argument that the use in question must have been continuous until August 14, 1980 (which necessarily suggests a focus solely on non-conforming uses), the interpreter must be able to construct a rationale for the provision’s existence in the first place; that is, what purpose does the provision serve if it achieves nothing more than a name change of pre-existing *non-conforming* uses to “*conforming*” uses and correlatively grants enhanced protection for those uses (*viz*, “not subject to the provisions of MCC .880[5]”)? None.

In other words, in the interpretive scenario advocated by Marquam Farms, .2028(B) achieves *precisely* what Marquam Farms says it *cannot* achieve: it “*improves* the status of a [non-conforming] use that, even before amendment of the code, was not consistent with zoning.” (MARQUAM MEMORANDUM at 5 [emphasis in original].)

Put differently, if Marquam Farms is correct in its premise that .2028(B) can only apply to a pre-existing “legally established” non-conforming use, then I agree with the hearings officer’s decision in DR 4–94 that ORS 215.130 prohibits the conversion of a non-conforming use to a “conforming conditional use,” which, in turn, seems to strongly suggest that .2028(B) has as its target “use” something *other than* a “legally established” non-conforming use. In other words, *either* .2028(B) impermissibly conflicts with ORS 215.130 — in which case I must necessarily presume that the drafters of .2028(B) purposefully crafted an enactment that flouts state law — *or* it envisions the provision as implicating some other situation entirely — in which case it serves to explain why the language in .2028(B) cannot easily be reconciled with traditional notions of “non-conforming” uses or “conditional” uses.

Because Marquam Farms’ interpretation does not yield a rationale that adequately explains the purpose for the provision in the first place, and because in the interpretive scenario advocated by Marquam Farms .2028(B) does *precisely* what Marquam Farms says it *cannot* do, I cannot accept it. Linguistics alone does not a law make. At least Applicant’s contrary interpretation implies a purpose for the provision, *viz*, to render uses such as Applicant’s kennel facilities a “conforming” conditional use as of the date it appears “listed” in MCC 11.15.2012.

I therefore conclude that .2028(B) does not necessarily operate solely on "non-conforming" uses. For that reason, I further conclude that, at least for purposes of this case, a literal reading of the language in .2028(B) does not plainly suggest that the phrase "legally established prior to August 14, 1980" means that the use must, in addition to having been "legally established" at some point in time, have been "legally established *and continually maintained*" prior to August 14, 1980.

(3). THERE EXISTS NO SUBSTANTIAL EVIDENCE OF "ABANDONMENT" OR "DISCONTINUANCE" IN ANY EVENT

Finally, as I explain in detail in the non-conforming use portion of this decision, I conclude that there exists no "substantial evidence" of "abandonment" or "discontinuance" of kennel facilities on the property since their establishment in the early 1950s. Thus, even if Marquam Farms' interpretation of .2028(B) proves correct and that provision requires a continuity of use until August 14, 1980, the debate becomes moot.

C. WHAT OVERALL PURPOSE DOES .2028(B) SERVE?

The other method of resolving the meaning or scope of .2028(B) rests upon a determination of the purpose for which the County might have enacted that language in the first place.

(1). THE "LITERAL" APPROACH

Applicant suggests that .2028(B) means

"precisely what it says: if (1) a use such as a kennel is listed in MCC 11.15.2012; and (2) the use was legally established prior to August 14, 1980, it is as if the county gave the use a conditional use permit *on the day it was established.*"
(APPLICANT'S BRIEF at 1 [emphasis added].)

But Applicant does not identify what date the kennel facilities might be deemed to have "established." If there exists more than one possible date (and I can think of a couple), then the "literal" approach proves not very helpful.

It would be more correct from the "literal" perspective to declare that a "use" becomes a "conforming conditional use" (*viz*, a ".2028(B) use") on the *later* of (1) August 14, 1980, or (2) the date the "use" appears listed among the various conditional uses in MCC 11.15.2012.

Thus, because Applicant's "literal" interpretation implicates some uncertainty as to the timing component, I cannot accept it as conclusive.

(2). THE "SAVING GRACE" APPROACH

Marquam Farms suggests that .2028(B) serves to protect a previously-authorized conditional use — *viz*, a use with a permit — from the various restrictions that otherwise burden *non*-conforming uses in the event that the County subsequently re-vamps its conditional use provisions in such a fashion that the previously-authorized conditional use becomes, in effect, a non-conforming use. (MARQUAM MEMORANDUM at 4 [preserving the use's right to be "expanded, enlarged, or intensified"].)

However, that interpretation does not explain .2028(B)'s explicit correlation to MCC 11.15.8805, which does *not* insulate any .2028(B) use from the "alteration" criteria in MCC 11.15.8810. In other words, the protection-of-use that assumes significance in Marquam Farms' hypothesis does not really exist.

Moreover, Marquam Farms' interpretation must also account for the possibility that, instead of merely restructuring the criteria under which a conditional use operates (as in the example on page 4 of its July, 1994, memorandum), the County might very well *eliminate* the use itself from among the list of conditional uses. In that event,

nothing about .2028(B) serves to explain why the County would want to protect *unlisted* conditional uses.

Finally, Marquam Farms' interpretation would appear to render .2028(B) duplicative of the "pre-existing use" provisions in MCC 11.15.7610 and .7615, which I find susceptible to the very interpretation that Marquam Farms offers as a justification for .2028(B), *viz*, protection of "delisted" uses:

"A use *conforming* to the provisions of this Chapter prior to July 26, 1979, *but not thereby listed* in the applicable district as [1] a primary use, [2] a use permitted under prescribed conditions or [3] a conditional use, is subject to the provisions of MCC .7615 through .7640" MCC 11.15.7610 (emphasis and enumeration added).

"... [E]xpansion, change in construction or enlargement of a use *described in MCC .7610* shall be permitted [.]" MCC 11.15.7615 (emphasis added).

See also MCC 11.15.7620 (allowing restoration of a ".7610" use) and 11.15.7625 (allowing a "change" of a ".7610" use).

(3). THE "SIGNIFICANCE-OF-THE-EXEMPTION-*VIS-A-VIS*-11.15.8805" APPROACH

No one discusses the significance of .2028(B) in terms of MCC 11.15.8805, which is, after all, specifically mentioned in .2028(B).

A dominant effect of MCC 11.15.2028(B) lies in its exemption from the non-conforming use criterion in MCC 11.15.8805. MCC 11.15.8805 sets forth three limitations:

- ◆ Any "restoration" or "replacement" shall be allowed only for prescribed reasons. (.8805(A).)

- ♦ Any "non-conforming structure or use" that suffers abandonment or discontinuance "for more than two years" cannot be resumed unless the "resumed use conforms with the requirements of this code at the time of the proposed resumption." (.8805(B).)
- ♦ Any "non-conforming structure or use may be maintained with ordinary care." (.8805(C).)

However, .2028(B) plainly leaves its referents subject to the "alteration" provisions in MCC 11.15.8810. Why?

Because .2028(B) contains an express reference to "conforming," and because MCC 11.15.8805(B) contains a correlative reference to a resumption of an abandoned or discontinued as long as the resumed use "conforms" with pertinent Zoning Code requirements, I find it logical to construe .2028(B) as establishing a presumption that any "resumed" use that, at the time of resumption, (1) comprises a use that appears "listed" in MCC 11.15.2012 *and* (2) had been "legally" established at any point prior to August 14, 1980, automatically "conforms with the requirements of this code at the time of the proposed resumption."

In other words, the use may very well have been "abandoned" or "discontinued," but its resumption shall be treated as the resumption of a *conditional use* instead of a non-conforming use. Any "alteration" of the use would, however, still be subject to MCC 11.15.8810.

Thus, when the County added "dog kennels" to its list of .2012(B) conditional uses in 1986, any question of "abandonment" or "discontinuance" became, in effect, a moot point as long as the use after 1986 did not comprise any "alteration" of use. That interpretation would accord a .2028(B) use the same treatment as would otherwise be afforded any other conditional use for which a permit had been granted but which might have been discontinued; as long as the use remains listed as an authorized conditional use within, for instance, MCC 11.15.2012, discontinuance has no impact or effect on a *conditional use*.

(4). THE "QUASI-CONDITIONAL USE" (OR "WHAT ELSE COULD IT MEAN?") APPROACH

Applicant also suggests that .2028(B) has as its intended purpose

"to make the uses conforming if they are listed as conditional uses, regardless of whether they have actually obtained conditional use permits." (APPLICANT'S BRIEF at 3 [underscore in original].)

Under this interpretation, .2028(B) grants "quasi"-conditional use status to any use that, "but for" the absence of the required permit, *would be* a true (*viz*, allowed) "conditional" use. That interpretation of .2028(B) would not apply to just any "use," a fact that placates Marquam Farms' concern that .2028(B) would otherwise *enhance* or *improve* the status of a true non-conforming use.

An apparent flaw in this interpretation lies in the fact that, until a pre-existing use actually appears *listed* as a conditional use (in, for instance, MCC 11.15.2012), it could only be a non-conforming use, in which case it would not fulfill the "but for" test of the preceding paragraph until such time as it became a "listed" conditional use.

In response, Applicant correctly observes that, if .2028(B) does *not* achieve the suggested purpose (and if Marquam Farms' hypothesis proves correct), the only remaining category of uses to which .2028(B) might apply would be conditional uses for which a permit *already* existed, and that

"interpreting MCC 11.15.2028(B) to apply only to uses covered by prior conditional use permits *would essentially read the provision out of the code*. . . . [I]f a use is already covered by a conditional use permit, the right to continue that use is [*already*] governed by the permit and MCC 11.15.7105 to 11.15.7135." (APPLICANT'S BRIEF at 3-4.)

I agree.

MCC 11.15.2028(B) makes no sense — and becomes utterly superfluous — if it can only apply to conditional uses for which a prior permit has been granted. It *only*

makes sense if it purports to apply to a use that, "but for" the absence of a conditional use permit, *would be* a true conditional use.

For that reason, I reject Marquam Farms' argument that .2028(B) only applies to conditional uses for which a prior permit has been issued. (See MARQUAM MEMORANDUM at 3-4 and 6-7.) If Applicant's kennel facilities *had* a conditional use permit, the debate about whether .2028(B) confers "quasi"-conditional use status would never occur.

Because I cannot construe .2028(B) to be superfluous and thus unnecessary, I am left with giving it the meaning that Applicant suggests: .2028(B) "makes the uses conforming [conditional uses] if they are listed as conditional uses [within MCC 11.15.2012], regardless of whether they have actually obtained conditional use permits." As so construed, .2028(B) alleviates a logical — if not legal — defect in the status of a use that had perhaps been non-conforming (or even a "delisted" conditional use) at some point in time, but later became a "listed" conditional use. After being "listed" as a conditional use, a pre-existing use — whether established by permit approval or otherwise — could scarcely be described as a "non-conforming" use. MCC 11.15.2028(B) resolves that conundrum.

(5). SUMMARY OF PROBABLE MEANINGS

None of the above outcome-based interpretations explain the meaning of .2028(B) with certainty. Unfortunately, the only alternatives comprise declarations that .2028(B): (1) has no discernible purpose, (2) runs afoul of ORS 215.130 in some unspecified fashion, or (3) remains hopelessly ambiguous. Because I conclude that none of those alternatives comprises the *only* reasonable alternative, I cannot in this case accept an alternative that would effectively obliterate a local enactment.

I therefore conclude that the most probable and reasonable meaning to be accorded .2028(B) is this: It purports to apply to a use that, but for the absence of a conditional use permit, *would be* a true conditional use. The resulting use comprises a "conforming" conditional use or what might be described as a ".2028(B)" use. Such a "conforming" conditional use may be curtailed or discontinued and resumed in the same manner as a true conditional use, unburdened by notions of "abandonment" or "discontinuance" normally associated with *non*-conforming uses.

That interpretation also resolves a profound dilemma for a use that had, for example, been a non-conforming use and later became a "listed" conditional use. A pre-existing use that suddenly becomes a "listed" conditional use can scarcely be described as a "non-conforming" use.^[22] MCC 11.15.2028(B) renders that species of use a "conforming" conditional use without the need to apply for a conditional use permit in order to maintain a use that, but for the absence of a permit, is *already* a conditional use.

VI. DOES THE CONDITIONAL USE PROCESS APPLY AT ALL TO AN *EXISTING* "CONDITIONAL USE"?

Applicant has proceeded upon the assumption that the modification and expansion of the kennel facilities would constitute an alteration or modification of an existing conditional use (*viz*, a ".2028(B) use") for which a conditional use permit would be necessary.

However, I find the Zoning Ordinance less than clear under the circumstances with respect to the following question: Must an applicant who *already has* a conditional use — via .2028(B) or otherwise — proceed with conditional use approval each time a change is sought with respect to components of the "use" apart from the "use" itself?

The following conditional use provisions within MCC 11.515.7105, *et seq.*, seem to suggest different results:

- ♦ MCC 11.15.7110(B) recites that the conditional use criteria control any "*modification*" of a conditional use, but otherwise provides no indication of what the term "modification" encompasses.

²² MCC 11.15.0010's definition of "non-conforming use," for instance, describes a use "which does *not* conform with the use regulations of the district in which it is located." Obviously, a "non-conforming use" that suddenly attains a new status as a "listed" *conditional* use falls outside that definition. Even if the definition of "non-conforming use" said "*did* not conform" instead of "*does* not conform," it would defy logic or reason to describe a "listed"—but-never-formally-approved conditional use as a "nonconforming" use.

- ♦ MCC 11.15.7110(D) recites that “[a]ny *change of use*” shall be subject to approval, but does not purport to define “change of use” as encompassing a change in the amount of activity associated with a listed “conditional” use, in other words, no change in “use.”
- ♦ MCC 11.15.7110(D) also recites that “[a]ny . . . *modification of limitations or conditions*” shall be subject to conditional use approval, but does not specify the source of any such “limitations or conditions” (*viz.*, in a prior conditional use permit, or some other approval).
- ♦ MCC 11.15.7130 prescribes a conditional use permit “for each conditional use approved, *before development* of the use,” but says nothing about the expansion of an existing conditional use that does not involve an altogether new “use.” Applicant does not propose to “develop” a listed conditional use; “develop” presupposes previous non-existence.

First of all, I do not construe the “before-development-of-the-use” language in MCC 11.15.7130 as requiring a conditional use permit in order to expand or modify components of an *existing* conditional “use” that has already been “developed.”

Nor do I construe the “change-of-use” language in MCC 11.15.7110(D) as requiring a conditional use permit in order to expand or modify components of an *existing* conditional “use.” Applicant proposes to retain the same “use,” as identified within the conditional use provisions in MCC 11.15.2012(B)(11). By comparison, although the “‘conforming’ conditional use” provisions in MCC 11.15.2028 — as well as the host of similar provisions cited in the footnote at page 51 — require that any “change of use” must be governed by the applicable conditional use criteria (*see* .2028(B)), they then define “change of use” as meaning only a change “*from* one conditional use listed in MCC 11.15.2012 *to another* such conditional use” (*see* .2028(C)). Applicant, however, proposes no change to another conditional use.

The reference to “limitations or conditions” in MCC 11.15.7110(D) seemed, upon an initial reading, to be broad enough to include the August 6, 1990, “FINAL DESIGN REVIEW” approval for “50 Dogs” and the accompanying comment in the August 6, 1990, “NOTICE OF PLANNING DIRECTOR DECISION” in 90-07-02 that “no additional dogs are authorized by this permit.” However, I note that the phrase “limitations or conditions” initially appears in the first sentence in MCC 11.15.7110(D) *only in connection with a conditional use permit*. Thus, the identical reference in the second sentence of MCC 11.15.7110(D) to a “modification” of those same “limitations or condi-

tions" relates back to the first sentence simply as a matter of internal consistency, which, in turn, suggests that "limitations or conditions" contained in, for instance, a Design Review approval would *not* trigger the conditional use approval process. I therefore interpret MCC 11.15.7110(D)'s reference to "limitations or conditions" to mean *only* those "limitations or conditions" that appear in a prior *conditional use permit*; no other interpretation would make grammatical or contextual sense, especially in a two-sentence provision.

I therefore conclude that, because the "conditions" in the 1990 Design Review approval did not occur within the context of a conditional use permit (as the first sentence of MCC 11.15.7110(D) otherwise suggests), Applicant's request to increase the kennel capacity from 50 to 75 dogs does *not* implicate a prior "limitation[]" or condition[]" as to the amount of dogs allowed, and therefore does *not* require conditional use approval for that increase — as long as Applicant at least has an existing conditional use, via the "'conforming' conditional use" provisions in .2028(B) or otherwise.

VII. FINDINGS — CONDITIONAL USE

In the event that I am incorrect in my interpretation of .2028(B), or am incorrect in my conclusion that nothing about DR 4-94 has any preclusive effect under the circumstances, or am incorrect in my conclusion that nothing in MCC 11.15.7105, *et seq.*, requires a conditional use permit in this particular case, I have considered all of the pertinent conditional use criteria as well.

Because of the peculiar — if not unique — circumstances of this approval request, I have considered the conditional use criteria for two purposes. *First*, I have considered and resolved the question whether Applicant fulfills the conditional use criteria with respect to the existing kennel facilities as if those facilities did not yet exist. *Second*, I have considered and resolved the question whether Applicant fulfills the conditional use criteria with respect to an *expansion* of kennel capacity.

The distinction between the two purposes that I describe in the preceding paragraph appear minimal in the context of the differences between the existing 50-dog kennel facilities and the proposed 75-dog kennel facilities. However, from a procedural perspective the distinction proves significant. A 45-year-old "use" that comprises a "listed-but-unapproved" conditional use ought to be accorded conditional use

status, if it is to attain any status at all. Furthermore, as I read the non-conforming use language in MCC 11.15.8805(B),^[23] any *resumption* of what might otherwise be a "discontinued" non-conforming use would necessarily utilize the conditional use criteria if, as here, that use comprised a "listed" conditional use within the zoning district. I can think of no other criteria within the meaning of MCC 11.15.8805(B) that would control the resumption of such a non-conforming use under the circumstances.

Thus, as I observed earlier, because MCC 11.15.8805(B) provides that a discontinued use may be "re-established" if it "conforms with the requirements of this code at the time of the proposed resumption," and because Applicant's kennel facilities do indeed qualify as a "conditional use" listed in MCC 11.15.2012(B)(11), I find nothing in the Zoning Ordinance that would preclude the "re-establishment" of a discontinued use via a request for conditional use approval under the peculiar circumstances of this case. If Applicant fulfills the criteria for the belated recognition of a conditional use, the resumption issue actually disappears. On the other hand, if Applicant cannot, in the words of MCC 11.15.8805(B), prove "conform[ance] with the requirements of this code," and if those requirements now mandate the conditional use process, then the resumption issue similarly disappears.

A. ORS 215.283

ORS 215.283(2) provides, in pertinent part, that

"[t]he following nonfarm uses may be established, subject to the approval of the governing body or its designate in any area zoned for exclusive farm use subject to ORS 215.296:

* * * * *

²³ MCC 11.15.8805(B) provides, in pertinent part:

"If a non-conforming structure or use is abandoned or discontinued for any reason for more than two years, it shall not be re-established *unless the resumed use conforms with the requirements of this code* at the time of the proposed resumption."
(Emphasis added.)

"(m) Dog kennels not described in subsection (1)(j) of this section."

I find that ORS 215.283(2)(m) describes Applicant's kennel facilities.

B. ORS 215.296 / MCC 11.15.7122

ORS 215.296 provides, in pertinent part:

"(1) A use allowed under ORS . . . 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:

"(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; *or*

"(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use." (Emphasis added.)

MCC 11.15.7122 similarly provides:

"(A) In addition to the criteria of MCC .7120, an applicant for a Conditional Use listed in MCC .2102(B) must demonstrate that the use:

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

"(2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use." (Emphasis added.)

The County's conjunctive provision represents a permissible narrowing of the approval criteria in ORS 215.296(1). See ORS 215.296(10).

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

"Erring on the side of conservatism," Applicant has identified an "impact" area comprising a 1,500-foot area surrounding the kennels. The only "impact" identified in the record would be the noise generated by the barking of the dogs. Applicant's noise study reflects that

- ◆ Within the kennel itself, the noise generated by the dogs' barking could approach (or slightly exceed) that comparable to "a jet flying overhead."
- ◆ Thirty feet outside the kennel, at the Marquam Farms property line, the noise generated by the dogs slightly exceeded the ambient noise level at that particular location.
- ◆ Five hundred feet from the kennel, the noise generated by the dogs almost paralleled the ambient noise level at that particular location, and measured less than the noise generated by geese flying overhead.
- ◆ 1,500 from the kennel, Applicant predicts any kennel-generated noise to be "marginally audible."

Applicant identifies but one commercial farming operation within the 1,500 "impact area": the Vetsch dairy farm. Nothing in the Zoning Ordinance defines "surrounding" or "adjacent." I conclude that, under the circumstances and for purposes of this, Applicant's chosen "impact area" adequately determines the extent of the "surrounding lands" that MCC 11.15.7122(A)(1) requires the Applicant to address.

The record contains no evidence of "forest practices" on surrounding lands "devoted" to a "forest use." Accordingly, the "forest" component of this criterion could

not possibly apply, and I find that the kennel facilities could not force any "significant" change in accepted forest practices on surrounding lands devoted to forest use.

- (2). **"Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use"**

The record identifies the Vetsch dairy as the only farming operation on "surrounding" land, as I have applied that term for purposes of this case in the previous section.

Because, as I noted in the previous section, Mr. and Mrs. Vetsch submitted a letter dated August 11, 1995, in which they laud the existing kennel operations and urge approval of Applicant's proposal, I conclude that any suggestion that an expanding kennel operation would increase the cost of dairy operations would be incongruous with that letter. I thus find that the kennel facilities will not "significantly" increase the cost of accepted farming practices on surrounding lands devoted to farm use.

The record contains no evidence of "forest practices" on surrounding lands "devoted" to a "forest use." Accordingly, the "forest" component of this criterion could not possibly apply, and I find that the kennel facilities could not "significantly" increase the cost of accepted forest practices on surrounding lands devoted to forest use.

C. OAR 660-33-120/ 660-33-130

- (1). **OAR 660-33-120 AND 660-33-130 EXPRESSLY ALLOW "EXISTING" KENNEL USES TO CONTINUE, AND TO BE "MAINTAINED, ENHANCED OR EXPANDED"**

In June, 1994, LCDC promulgated OAR 660-33-120 and 660-33-130, the pertinent text of which appears beginning on page 32, *supra*. Those rules declare two things:

- ◆ According to OAR 660-33-120, dog kennels comprise a "use not permitted" within an EFU district comprised of "high-value farmland."
- ◆ According to OAR 660-33-130, "[e]xisting facilities [located within 'high-value farmland'] may be maintained, enhanced or expanded [.]"

Staff reports that Applicant's kennel facilities comprise "high-value farmland," and Applicant does not suggest otherwise.

Because (1) OAR 660-33-130 specifically declares that "[e]xisting facilities may be maintained, enhanced or expanded," and (2) neither OAR 660-33-120 nor OAR 660-33-120 mentions, infers, or intimates some unspoken meaning for the term "existing," I conclude that Applicant's kennel facilities comprise an "existing" use for purposes of OAR 660-33-120 and 660-33-130. I do not, in other words, subscribe to the metaphysical anomaly that Applicant's kennel facilities can be described as the *converse* of "existing."

Furthermore, because neither OAR 660-33-120 nor OAR 660-33-130 purports to make distinctions between conditional uses and non-conforming uses, and because OAR 660-33-120 in particular appears concerned with the establishment of *new* uses that heretofore have never previously existed in any form, I additionally conclude that OAR 660-33-120 and 660-33-130 expressly allow Applicant's kennel facilities to continue, and to be "maintained, enhanced or expanded [.]"

Staff concluded that OAR 660-33-120/660-33-130 would alone prevent any approval of Applicant's request. (STAFF REPORT at 10 ["OAR 660-33-110 [sic] does not allow dog kennels on High Value Farmland."].) Yet OAR 660-33-130 *specifically allows* dog kennels, as long as they comprise "existing" kennels. Staff did not suggest or conclude that Applicant's kennels comprise something *other than* "existing" kennels, nor, as I read OAR 660-33-130, could it.

Thus, I conclude that neither OAR 660-33-120 nor 660-33-130 have any preclusive effect under the peculiar circumstances of this case. Rather, they prohibit only the development of *new* uses that, by obvious implication, never previously existed. This interpretation also allows the rules to co-exist with state law (see the following topic).

(2). TO THE EXTENT THAT OAR 660-33-120 AND 660-33-130
DIFFER WITH STATE LAW, STATE LAW CONTROLS

Applicant also asserts that OAR 660-33-120 and 660-33-130 clash with state law. In the event that I am incorrect in my conclusion that neither of those rules purports to preclude the continued operation or expansion of "existing" kennel facilities, I will address that alternative challenge to the preclusive effect of those rules.

The discussion in this topic assumes that OAR 660-33-120 and 660-33-130 together ban any local government approval of kennel facilities that lack any prior approval. Because of the unusual circumstances surrounding Applicant's approval request, I need to further assume that those rules also prohibit any attempt to obtain local government approval for *either* (1) a conditional use that has existed for many years but which never obtained a conditional use permit, *or* (2) the resumption of a non-conforming use by the fulfillment of the requisite standards, per MCC 11.15.8805(B).

ORS 215.283(2) provides in pertinent part:

"The following nonfarm uses *may be established*, subject to the approval of the governing body or its designate in any area zoned for exclusive farm use . . . :

"* * * * *

"(m) *Dog kennels* not described in subsection (1)(j) of this section." (Emphasis added.)

Applicant's kennel facilities comprise those described — and allowed with County approval — by ORS 215.283(2)(m). [The County has reproduced the provisions of ORS 215.283(2)(m) within MCC 11.15.2012(B)(11).]

I will assume for purposes of this discussion that the rules would preclude local governments from granting conditional use (or other) permits to any kennel operations even in instances in which, as here, a local government ordinance allows (1) "conforming" conditional uses with respect to which permits have not been granted, and (2) the resumption of non-conforming uses by the fulfillment of prescribed standards. If so, then ORS 215.283(2)(m) and OAR 660-33-120/ 660-33-130 run head-

long into each other; the former allows kennels to be approved in EFU districts, while the latter does not.

Staff concluded that OAR 660-33-120/660-33-130 would alone prevent any approval of Applicant's request. (STAFF REPORT at 10.) Staff did not, however, examine the impact of ORS 215.283(2)(m), except to report that

- ♦ the County's present Zoning Ordinance mirrors ORS 215.283(2)(m) but has not yet been amended to incorporate OAR 660-33-120/660-33-130, and
- ♦ County Counsel had advised staff that "until the [Zoning Ordinance] is amended to include the OAR provisions, the OAR provisions must be considered in the review of any application for proposed uses within the Exclusive Farm District." (STAFF REPORT at 10.)

LCDC's promulgation of OAR 660-33-120/660-33-130 has rendered staff's task more difficult than it ought to be, and puts staff in the position of asserting the preclusive effect of administrative rules that, in my opinion, conflict with a higher authority: state law. Because of the hierarchy of land use laws, staff cannot simply ignore OAR 660-33-120/660-33-130, notwithstanding the apparent conflict between uses that state law plainly allow in ORS 215.283 and uses that OAR 660-33-120/660-33-130 purport to prohibit.

I conclude that LCDC lacks the authority to enact an administrative rule that purports to delimit or extinguish the types and availability of uses otherwise allowed by statute. No state agency has the authority to diminish statutory rights by administrative fiat. See *Cook v. Workers' Compensation Department*, 306 Or 134, 138-39, 758 P2d 854 (1988), and *Miller v. Employment Division*, 290 Or 285, 289, 620 P2d 1377 (1980); see also *Fisher Broadcasting, Inc. v. Dept. of Rev.*, 321 Or 341, 355-59, ___ P2d ___ (1995) (state agency cannot create an administrative rule at odds with statute). Although the 1995 legislature had the opportunity to amend ORS 215.283 to recognize the limitations in OAR 660-33-120/660-33-130, and in fact did amend ORS 215.283 in a manner not relevant here (see 1995 Or Laws, ch. 528, § 2 [amending subsection (1)]), it nevertheless left subsection (2) intact.

Just as LCDC lacks the authority to alter the various Goals by promulgating conflicting administrative rules (see *1000 Friends of Oregon v. LCDC (Lane Co.)*, 305 Or 384, 399-402, 752 P2d 271 (1988)), and just as LCDC similarly lacks the authority to acknowledge a local government's comprehensive plan in a fashion that would alter

any of the various Goals (see *1000 Friends of Oregon v. LCDL (Lane Co., supra*, 305 Or at 396-97; and *1000 Friends of Oregon v. Wasco County Court*, 299 Or 344, 369, 703 P2d 207 (1985)), LCDL's authority does not extend to the promulgation of administrative rules that purport to modify statutes.

If the question were instead whether LCDL might require local governments to "enact more restrictive *criteria* than ORS 215.283 imposes *for permitting the uses described* in that statute" (see *Brentmar v. Jackson County*, 130 Or App 438, 441, 882 P2d 1117 (1994), *review allowed* 320 Or 453 (1994); see also *Kenagy v. Benton County*, 112 Or App 17, 20 n. 2, 826 P2d 1047 (1992), and *Von Lubken v. Hood River County*, 104 Or App 683, 687, 803 P2d 750 (1990), *adhered to on reconsideration* 106 Or App 226, 806 P2d 727, *rev den* 311 OR 349 (1991)), the issue would disappear. I would analogize from the discussions in *Brentmar*, *Kenagy*, and *Von Lubken*, *supra*, that LCDL might well be able to promulgate "restrictive criteria." But OAR 660-33-120/660-33-130 together do not purport to merely implement "more restrictive criteria" for "permitting" the statutory uses; they purport to *eliminate* the uses altogether.

D. MCC 11.15.2012(B)

MCC 11.15.2012(B) requires the fulfillment of the conditional use criteria in MCC 11.15.7015-.7140 for the development of "dog kennels," among other listed conditional uses. Applicant's facilities comprise a "kennel" as defined in MCC 11.15.0010.

Applicant has specifically addressed the conditional use criteria in MCC 11.15.7015-.7140 in the approval request. I discuss those criteria in the following section.

E. MCC 11.15.7120(A)

(1). "CONSISTENT WITH THE CHARACTER OF THE AREA"

Sauvie Island encompasses a combination of agricultural and rural/recreational uses, the latter of which include private hunting facilities and kennels. Dog kennels have historically been a part of Sauvie Island for almost half a century, and at least two long-standing kennels remain active on the island.

Applicant's kennel facilities both serve and exemplify the island's rural/recreational uses, and serve as a logical place to board and train hunting dogs, which, in turn, have long been used for hunting on the island. Some farmers maintain "duck ponds" on their property as a private hunting reserve, and dog kennels function as a natural adjunct to that sort of activity. The other dog kennels have in the past maintained hunting facilities in conjunction with, and in direct proximity to, the kennel operations. Some members of Marquam Farms board and train their dogs at Applicant's kennel facilities.

Applicant has documented abundant and, with the exception of Marquam Farms, seemingly unanimous support among Sauvie Island residents and others who actively participate in various activities on the island. No one else suggests that a dog kennel would be significantly inconsistent with the area's agricultural and rural/recreational attributes. Indeed, two other active kennels have co-existed with island uses for quite some time.

In prior years, Marquam Farms has voiced concern about the impact that the dogs might have on its hunting facilities,^[24] and has also raised a number of complaints about historical difficulties concerning the noise generated by dogs barking at night and Applicant's observation of property boundaries and other problems associated with the close proximity of the kennels. As I read the record, it seems that, of all

²⁴ Marquam Farms has participated in this proceeding only via its August 15, 1995, and September 6, 1995, letters. The August letter suggested that the proceedings in DR 4-94 ought to preclude the necessity for further hearings. Although Marquam Farms asserted in DR 4-94 that Applicant's dog kennels would adversely impact its hunting operations, it has not specifically re-incorporated or raised that issue here. I will, however, treat Marquam Farms' August 15, 1995, letter liberally and proceed as if Marquam Farms had actually voiced the same compatibility issues once again.

the hunting operations on the island, Marquam Farms seemingly stands alone in its complaints about potential adverse impacts and conflicts caused by Applicant's kennel facilities (or, for that matter, nay other kennel facilities on the island). I also observe that most of the complaints arose in recent years after Applicant successfully obtained various land use approvals in 1989 and 1990 (twice). In any event, I do not find that those sorts of complaints have much bearing on the question whether the kennel facilities remain consistent with the character of the area.

Finally, the record offers a number of observations by people who purport to be knowledgeable about hunting in general — and about Marquam Farms' hunting operation in particular — who conclude that any adverse effects suffered by Marquam Farms over the years resulted only from what can be summarized as "overhunting," rather than the presence of dog kennels on adjacent property. Not only has no other proprietor of a private hunting facility voiced similar complaints of an inherent conflict with kennels, but both of the other kennel operators maintain duck hunting facilities on the same property — without any apparent problem.

Applicant contends that more dogs will not necessarily translate into more noise. Applicant proposes improvements to the kennel facilities (*viz*, soundproofing, enclosed runs, wall along shared access, redesigned parking lot) which have been designed specifically to reduce and minimize noise generated by barking dogs. Applicant's noise test results seem to confirm that, even without the improvements, the noise levels at different points on the property do not vastly exceed other environmental noise levels.

I find that kennel facilities have long been a part of the Sauvie Island environment, form a natural adjunct to the hunting activities on the island, and conform to the agricultural and rural/ recreational activities on the island. I therefore find, in addition, that Applicant's kennel facilities will be, and have long been, consistent with the character of the area.

(2). "WILL NOT ADVERSELY AFFECT NATURAL RESOURCES"

The property contains no inventoried natural resource site, and the closest such resource site would be the Sturgeon Lake Wildlife Refuge across Reeder Road. However, because Applicant does not allow dogs to run loose on the property, and

because Applicant's property is fenced in any event, I find it improbable that the kennel facilities could have any impact on the Sturgeon Lake wildlife refuge, let alone "adversely affect" it.

I therefore find that the kennel facilities will not adversely affect any natural resources.

(3). "WILL NOT CONFLICT WITH FARM OR FOREST USES IN THE AREA"

Because MCC 11.15.7122(A) prescribes more extensive criteria for the operation of Applicant's dog kennels in the EFU district, and because I have already found that the kennel facilities fulfill the criteria in MCC 11.15.7122(A), *supra*, I further find, based upon the discussion and findings in connection with .7122(A), that Applicant's kennel facilities will not conflict with farm uses in the area.

No "forest" uses exist in the area, thus I also find that Applicant's kennel facilities cannot conflict with forest uses in the area.

(4). "WILL NOT REQUIRE PUBLIC SERVICES OTHER THAN THOSE EXISTING OR PROGRAMMED FOR THE AREA"

Applicant proposes nothing that will require additional public services, and the service provider forms in the record confirm that existing services will be adequate.

I therefore find that Applicant's kennel facilities will not require public services other than those existing or programmed for the area.

(5). "WILL BE LOCATED OUTSIDE A BIG GAME WINTER HABITAT AREA"

No big game winter habitat area exists on or near the property. I therefore find that Applicant's kennel facilities will be located, and has long been located, outside a big game winter habitat area.

(6). "WILL NOT CREATE HAZARDOUS CONDITIONS"

Dogs themselves do not comprise "hazardous conditions," and nothing else about Applicant's kennel facilities create the likelihood of generating any such conditions. All dog owners must present proof of current vaccinations before admittance to the kennel. The dogs remain kenneled and do not run at-large. Applicant processes all waste material on-site according to prescribed DEQ criteria.

I therefore find that Applicant's kennel facilities will not create hazardous conditions.

(7). "WILL SATISFY THE APPLICABLE POLICIES OF THE COMPREHENSIVE PLAN"

I address this particular criterion separately below. Because I conclude that Applicant's kennel facilities fulfill pertinent plan policies, I therefore find for purposes of this criterion that the facilities will, and do, satisfy the applicable policies of the comprehensive plan.

F. MCC 11.15.7205-.7240

(1). LOCATION REQUIREMENTS

Applicant's kennel facilities will be located within an area of "low population density" similar to that in districts such as F-2 — the district's zoning designation prior to the EFU-38 redesignation. Sauvie Island has long represented an area of historically low population density.

I therefore find that Applicant's kennel facilities fulfill the locational requirements in .7210(A).

(2). MINIMUM SITE SIZE REQUIREMENTS

The site comprises more than nine acres, and the drawings depict a width ranging from 333 feet in the rear of the property to more than 900 feet along Reeder Road, and a depth ranging from 390 feet to 1,800 feet.

I therefore find that Applicant's kennel facilities, both existing and as expanded, fulfill the minimum site size requirements in .7215.

(3). MINIMUM SETBACK REQUIREMENTS

The property does not lie in or adjacent to an F, R, or A district. Thus, the one-hundred-foot minimum setback requirements in .7220 do not apply.

(4). OTHER REQUIREMENTS

Applicant has constructed the kennels, runs, and pens of concrete block, with chain-link fencing dividers and concrete floors. The roofing is opaque. I therefore find that Applicant's kennel facilities fulfill the requirements of .7230(A).

Applicant proposes to remodel the existing kennel facilities within a single, continuous, enclosed building, which will provide "optimal sound control" and thus minimize the noise impact on adjacent and surrounding properties. The dogs will be able to move from the individual pens without entering the open courtyard. They will also have their view of neighboring activities obstructed, which, in turn, will reduce barking. The trees and landscaping surrounding the existing kennel facilities will be retained, as will the trees and landscaping within the courtyard. Prevailing winds from the northwest will carry sounds and smells toward the open land to the southeast of the kennel facilities. The nearest residence lies 1,000 feet distant. Although Marquam Farms has in the past lodged complaints about the noise of barking dogs, I note that, not only did the kennel facilities apparently *precede* the hunting operations on Marquam Farms' property, but Applicant proposes to design and construct any expansion so as to do precisely what .7230 requires, *viz*, "minimize" — as opposed to eliminate — adverse impacts. I therefore find that Applicant's kennel facilities fulfill the requirements of .7230(B).

Twice daily, Applicant disinfects the dog areas, feeding pans, water pails, and public areas. Applicant also inspects each dog twice daily. Multnomah County Animal Control regularly inspects the kennel facilities. Testimony from others reflects that Applicant maintains a well-respected, highly-professional kennel operation of considerable quality. I therefore find that Applicant's kennel facilities fulfill the requirements of .7230(C).

Applicant's proposal will allow all dogs at the kennel facilities to be kept in separate housing facilities. I therefore find that Applicant's kennel facilities fulfill the requirements of .7230(D).

Although .7240 allows an exemption from .7205-.7235 for kennels "for which Animal Control Facility licenses were issued prior to October 31, 1985," Applicant does not suggest — and the record does not otherwise confirm — that the exemption provision applies.

G. COMPREHENSIVE PLAN PROVISIONS

(1). POLICY 9 — AGRICULTURAL LAND

Policy 9 ("Agricultural Land") recites, among other things, that it serves to

"restrict the use of these [agricultural] lands to exclusive agricultural and other uses, consistent with state law, recognizing that the intent is to preserve the best agricultural lands from inappropriate and incompatible development."

Although Policy 9 does not require specific findings, I find that Applicant's kennel facilities comprise an "other use[], consistent with state law," within the meaning of Policy 9. The kennel facilities will not inhibit or impede the use of any agricultural land, nor will they withdraw any land from agricultural use.

(2). POLICY 13 — AIR, WATER AND NOISE QUALITY

Policy 13 ("Air, Water and Noise Quality") requires, prior to approval,

"a statement from the appropriate agency that all standards can be met with respect to air quality, water quality, and noise levels. . . ."

The kennel facilities create no air emissions, and all waste products from the facilities are handled on-site in an approved septic system. Thus, the kennel operations will have no adverse impact on "healthful air quality levels in the regional airshed" or "healthful ground and surface water resources."

Finally, I find that Applicant's kennel facilities will, as designed, either "prevent or reduce excessive sound levels," while simultaneously balancing the needs of adjacent and surrounding properties. For instance:

- ◆ Applicant proposes to construct a solid wall for the full length of the kennel along the shared access with the Marquam Farms property. The dogs will be unable to see vehicles as they drive past on the shared driveway, which, in turn, will reduce the dogs' propensity to bark at passing cars *etc.*
- ◆ Applicant proposes to completely cover the kennels with an insulated roof, in contrast to the partial exposure that currently exists. The insulated roof will reduce noise transmission from within the kennel.
- ◆ Applicant proposes to redesign the manner in which dogs will be moved from one building to another for grooming, bathing, and exercise; these activities are currently visible and audible to dogs in the kennel, which, in turn, causes them to bark.
- ◆ Applicant proposes to redesign the parking area, allowing owners to exit their vehicles and pick up dogs out of sight of the dogs, which, in turn, will eliminate one cause of barking.

(3). POLICY 22 — ENERGY CONSERVATION

Policy 22 ("Energy Conservation") provides that

"[t]he County shall require a finding prior to the approval of . . . 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 [*sic*; 'climatic'] conditions to advantage.
- "E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources."

I have duly "considered" each of the designated criteria, and I conclude that only "A" applies under the circumstances. Applicant has designed the proposed kennel facilities to reduce energy consumption, because the new kennel structures will be enclosed from the elements and insulated.

(4). POLICY 37 — UTILITIES

Policy 37 ("Utilities") requires a pre-approval finding that the water, sanitation, drainage and communication facilities are available as follows:

"WATER AND DISPOSAL SYSTEM"

- "A. The proposed use can be connected to a public sewer and water system, both or 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 on the site; 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."

Applicant has an adequate private water supply system and the kennel facilities have an existing, adequate and approved septic system. I find that Applicant's kennel facilities fulfill paragraph "D" of this Policy, which renders "A," "B," and "C" moot.

Applicant handles all storm water runoff on-site, and does not come in contact with any waste material generated by the kennel operations; all runoff from kennel floors goes directly into the septic system. I find that Applicant's kennel facilities fulfill paragraphs "F" and "G" of this Policy, which renders "E" moot.

The existing electrical and telephone service appears adequate to continue to handle the kennel's needs, even after an expansion. I find that Applicant's kennel facilities fulfill paragraphs "H" and "I" of this Policy.

(5). POLICY 38 — FACILITIES

Policy 38 ("Facilities") requires a pre-approval finding 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 [*sic*] on the proposal.

"POLICE PROTECTION

- "D. The proposal can receive adequate police protection in accordance with the standards of the jurisdiction providing police protection."

The various service provider forms confirm that Applicant's kennel facilities will be adequately served by water for firefighting purposes and by the Sheriff for police protection. The school district will have an opportunity to comment on Applicant's proposal. I find that Applicant's kennel facilities fulfill paragraphs "A" through "D" of this Policy.

(6). POLICY 40 — DEVELOPMENT REQUIREMENTS

Policy 40 ("Development Requirements") requires a pre-approval finding 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."

I conclude that none of these criteria are "appropriate" because they have no application to the specific proposal.

VIII. CONCLUSIONS — CONDITIONAL USE

With respect to the conditional use issues, I conclude as follows:

- ♦ Nothing about the hearings officer's decision in DR 4-94 precludes me from considering and resolving the various conditional use issues raised in this 1995 approval request.
- ♦ Marquam Farms' failure to appeal the Planning Commission's 1990 *approval* in CU 23-90, in which the Planning Commission addressed and rejected the "legality-of-use" issues that Marquam Farms has now raised in both the 1994 and 1995 proceedings, and in which the Planning Commission interpreted MCC 11.15.2028(B) in a manner adverse to Marquam Farms, precludes Marquam Farms from now revisiting the interpretive question.

- ◆ The County's sequential interpretations and consistent applications of MCC 11.15.2028(B) in the 1989 and 1990 proceedings — each of which *approved* proposals and thus vested certain rights — constitutes implicit interpretations of MCC 11.15.2028(B) which I accord deference, notwithstanding the fact that no party appealed those interpretations to the Board.
- ◆ Applicant's kennel facilities already comprise a "‘conforming’ conditional use" pursuant to MCC 11.15.2028(B). That provision purports to apply to a "listed" conditional use that, but for the absence of a conditional use permit, would be an approved conditional use. Any other reading or interpretation of .2028(B) either requires that additional language be added to it or renders it superfluous and of no purpose.
- ◆ Unless otherwise the subject of "limitations or conditions" imposed by a prior conditional use approval, nothing in the conditional use provisions in MCC 11.15.7105, *et seq.*, plainly requires that an applicant must seek additional conditional use approval in order to modify or alter components of an existing conditional use that do not otherwise comprise any change in the "use" itself.
- ◆ Alternatively, Applicant has fulfilled all of the applicable conditional use criteria in MCC 11.15.7105, *et seq.*, MCC 11.15.7122, MCC 11.15.7205, *et seq.*, and the pertinent Comprehensive Plan policies with respect to both of the following: (1) the initial establishment of a conditional use approval for a dog kennel, and (2) the expansion of an existing conditional use — whether arising from .2028(B) or from the previous clause — to allow an increase from a 50-dog kennel facility to a 75-dog kennel facility.
- ◆ Nothing in OAR 660-33-120 or 660-33-130 precludes or prohibits conditional use approval for an "existing" kennel under the circumstances. If those rules did purport to do so, they would clash with ORS 215.283, which allows the establishment of dog kennels in EFU districts.

IX. PRECLUSION ISSUE — NON-CONFORMING USE

As I discussed earlier in the conditional use part of this decision, Marquam Farms' August 15, 1995, letter urged, among other things, that the hearings officer's August 19, 1994, decision in DR 4-94 precludes any revisitation of issues already examined in that decision. Among other things, the hearings officer addressed the non-conforming use issue in some detail, and discerned a gap in kennel use between December, 1962, and February, 1964. (DECISION at 6.)

Thus, I need to resolve the question whether the hearings officer's August, 1994, decision binds Applicant, such that I am now precluded from revisiting the evidentiary and legal arguments that the parties debated in 1994 with respect to the non-conforming use issues.

I conclude that:

- ♦ because of the specified conditions precedent to the Design Review mechanism in the Zoning Ordinance, the hearings officer lacked the authority in DR 4-94 to venture beyond the question whether the kennel facilities comprised a "conditional use" at that time.
- ♦ the only evidentiary "gap" in the record comprises an unexplained gap in the County's intermittent inspection records, a flaw that renders those records something considerably less than "substantial evidence" of the sort described in, for instance, *1000 Friends of Oregon v. LCDR (Lane Co.)*, 305 Or 384, 402-04, 752 P2d 271 (1988), and *Younger v. City of Portland*, 305 Or 346, 356-57, 752 P2d 262 (1988).
- ♦ because the decision in DR 4-94 resulted in the *denial* of an approval request, that denial attains no preclusive effect for the same reasons discussed in the conditional use portion of this decision, beginning at page 39, *supra*.

A. THE HEARINGS OFFICER LACKED THE AUTHORITY TO PROCEED BEYOND THE JURISDICTIONAL QUESTION IN THE DESIGN REVIEW PROCEEDINGS IN DR 4-94, AND TO DETERMINE NON-CONFORMING USE ISSUES

Because DR 4-94 comprised a "Design Review" proceeding prescribed by MCC 11.15.7805, *et seq.*, the only non-substantive, procedural question that could be raised in any appeal from the Planning Director's administrative decision would comprise the inquiry whether Applicant fulfilled the condition precedent to Design Review in MCC 11.15.7820:

"The provisions of MCC .7805 through .7865 shall apply to all [1] *conditional* and [2] *community service* uses in any district *and to* [3] [a list of seven categories of other uses not pertinent here]." (MCC 11.15.7820 [emphasis and enumeration added].)

All other issues would necessarily implicate the *substantive* Design Review criteria.

At the outset of his opinion, the hearings officer addressed the "jurisdictional" question whether he

"lacks authority to approve this Design Review request, unless or until the underlying kennel use receives appropriate land use approval to make it a lawful use in the zone." (DECISION at 3.)

Because Design Review would, by its terms, apply to, among other things, a "*conditional*" use and not necessarily to a "*non-conforming*" use (*see* MCC 11.15.7820),^[25] the hearings officer's inquiry would necessarily entail the question whether Applicant's kennel facilities comprised the former use. Although the hearings officer in DR 4-94 indeed answered that question (DECISION at 3-4), he also answered

²⁵ If there exist any other portions of the Zoning Ordinance that subjects non-conforming uses to Design Review, no one has cited it.

the separate question whether the kennel facilities comprised a non-conforming use. (DECISION at 4-6.)

As I noted earlier in the discussion of that decision, the hearings officer did not explain why or how issues of non-conforming use attained significance once he made the determination that there existed no underlying conditional use for purposes of Design Review. However, as I read and construe MCC 11.15.7805, *et seq.*, the hearings officer did not have the jurisdictional authority under MCC 11.15.7820 to make that sort of determination within the context of an appeal from the Planning Director's administrative Design Review determination, and the parties themselves could not grant him that authority.

Applicant raised this "jurisdictional" issue at the August 16, 1995, hearing in the context of whether the hearings officer's opinion comprised *dictum* on the issue of non-conforming use. I agree with Applicant that the hearings officer's decision in 4-94 purports to resolve factual and legal issues with respect the question of non-conforming use that nothing in MCC 11.15.7805, *et seq.*, gives him the authority to decide.

I thus conclude that the portion of the hearings officer's decision in DR 4-94 that purported to resolve questions of fact with respect to non-conforming use could not be binding. As surplusage, the non-conforming use discussion in DR 4-94 does not preclude a revisitation of that issue. *See Reeves v. Washington County*, 24 Or LUBA 483, 493 (1993).

B. THERE EXISTS NO EVIDENTIARY GAP IN KENNEL USAGE

I have independently examined the record with respect to the chronology of kennel usage. I conclude that reality differs from the findings in the decision in DR 4-94.

The record in this case (which includes all earlier land use proceedings) documents that the kennel facilities proceeded through a number of owner/operators: Wallace, Blitz, Courtway, Eaton, Meifert, Pein, Persinger, and now the Schillereffs. Unfortunately, at this late date the documentation of kennel operations proves somewhat skimpy. The record yields different methods of determining whether kennel operations have been continuous since the Wallace operations began in 1952.

A number of opponents testified in similar affidavits in the proceedings in DR 4-94 that: (1) they never saw any "recognizable" kennel structures on the property before 1990, (2) they never perceived any kennel use on the property before 1990, and (3) they never saw more than one dog on the property until 1990. Marquam Farms also offered excerpts from County records that, according to them, do not reflect descriptions of the existence or degree of kennel usage during the following time periods:

- ◆ December, 1962, to February, 1964;
- ◆ February, 1965, to October, 1965;
- ◆ October, 1966, to September, 1967; and
- ◆ 1971 to the present.

Marquam Farms relies upon County inspection reports in 1967 and 1969 that contain the following:

<u>Date Of Record</u>	<u>Information In Various Labeled Blanks In Record</u>
10-18-67	<p>"Zone": F-2 "Non-conforming": "Approved" "Owner": Meifert ("Lake Tree Kennels") "Occupant": Meifert "Date Established": "Moved in 9-5-67" "Use": Dog kennel Additional information:</p> <ul style="list-style-type: none"> ◆ Use "limited to 50 dogs" ◆ "Occupant" from 10-65 to 10-66: "Eaton," who maintained "15 to 20 dogs" ◆ "Occupant" from 2-64 to 2-65: "Courtway," who maintained four to five dogs ◆ "Occupant" from 8-57 to 12-62: "Blitz," who maintained "up to 50 dogs" ◆ Occupant before Blitz: "Wallace," who maintained kennels "for about 5 yrs" before Blitz
1-28-69	<p>"Zone": F-2 "Non-conforming": Left blank "Owner": Pein ("Lake Tree Kennels") "Occupant": Meifert "Date Established": Nothing helpful "Use": Dog kennel</p>

Additional Information:

- ◆ contains the following notation:

"8-4-71 Kennel gone all of 71 - 2 dogs in 1970"

Thus, the County's two reports do *not* account for the following time periods:

- ◆ December, 1962, to February, 1964
- ◆ February, 1965, to October, 1965
- ◆ October, 1966, to September, 1967
- ◆ October, 1967, to January, 1969
- ◆ January, 1969, to date

The question becomes whether I can surmise from the record that the County's two inspection reports are themselves so complete and inherently trustworthy that I might conclude that any "gaps" in kennel operations can be inferred from corresponding "gaps" in the reports. If there were any evidence in the record that might shed some light on the frequency of the inspection reports or the methodology underlying the facts detailed in the reports, I might be able to conclude that the reports themselves comprise a complete and accurate chronology. However, there exists no such confirming evidence. For example, nothing in the record allows me to conclude that the two inspection reports purport to account for *all* of the time periods for which the reports themselves reflect a gap. The extremely intermittent characteristics of the proffered inspection reports irretrievably deprives them of any reliability for time periods not mentioned.

Thus, although I conclude that the County's various inspection reports comprise "substantial evidence" as to the existence of kennel operations during the *reported* times, I find that they do *not* comprise "substantial evidence" sufficient for me to infer that there existed no kennel operations during "gap" times.

Applicant, on the other hand, relies upon an unbroken chain of owners/operators, each of whom maintained some level of kennel operations:

- ◆ Wallace, beginning in 1952 and ending with the transfer to Blitz in 1957;
- ◆ Blitz, beginning in 1957 and ending with the transfer to Meifert in 1966;

- ♦ Meifert, beginning in 1966 and ending with the transfer to the Peins in 1970;
- ♦ Peins, beginning in 1970 and ending with the transfer to the Persingers in 1973;
- ♦ Persingers, beginning in 1973 and ending with the transfer to the Schillereffs in 1989;
- ♦ Schillereffs beginning in 1989 and continuing to date.

All of the listed owners/operators maintained *some* degree of kennel operations.

In addition, the record contains:

- ♦ a November 27, 1967, letter from Elden Persinger received by the Planning Commission on December 1, 1967 (for unknown purposes) that declares that "I have known the Lake Tree Kennels to have been in [the] business of boarding & training dogs *since the year of 1954* ...";
- ♦ a November 27, 1967, letter from C. Dondo received by the Planning Commission on December 1, 1967 (again for unknown purposes), that declares that Lake Tree Kennels "have been in the business of boarding and training dogs *since the year of 1952.*"
- ♦ an affidavit dated August 23, 1995, from George Douglas, who has resided on Sauvie Island for nearly 50 years, and who "particularly remember[s] Mrs. Blitz who operated a kennel there from the late 1950s until she sold the property to Myron Meifert [in 1966]. During that time there were always many dogs at the kennel."
- ♦ an affidavit dated August 23, 1995, from Timothy Schillereff who recites that, as a youngster, he occasionally visited the kennel operations maintained by the Persingers — to whom he is related — and that he recalls "there were always dogs in the kennels," numbering more than four and up to at least ten.

- ◆ an affidavit dated August 23, 1995, from Norman Crowe, who began working on Sauvie Island in the early 1950s and who has lived there since 1964, who recites that he particularly remembers the Blitz kennel operations during the early and mid-1960s, which he describes as "always operating at capacity or near capacity -- in the neighborhood of 50 dogs," and who further recites that he has traveled the island roads regularly since 1964 and "cannot recall a time when there were not barking dogs in the kennel every years."
- ◆ an affidavit dated August 23, 1995, from Mildred Meifert — mother of previous kennel operator Myron Meifert — who has resided on Sauvie Island for over thirty years and who recites that she, too, recalls the Blitz kennel operations from the late 1950s until the transfer to her son in 1969, and that the property continuously maintained kennel operations with at least four and often more dogs, and, in addition, she recalls the Pein kennel operations during the early 1970s, which maintained at least 10 kennel runs and consistently boarded dogs.
- ◆ an affidavit dated August 23, 1995, from Marguerite Persinger, who owned the kennel operation with her husband from 1973 to 1989, who recites that the maintained no fewer than "four to six adult dogs living or boarded on our property each year from 1973 until the time we sold the property and kennel," and who further recites that she annually visited the Pein kennel operations from 1970 to 1973 and recalls no fewer than four — and sometimes more — dogs at the kennel facilities during those years.
- ◆ an affidavit dated July 27, 1994, from Elden Persinger, who owned the kennel facilities from 1973 to 1989, and who recites that he knew the Peins and their kennel operations during the early 1970s and that the Peins routinely kenneled no fewer than four or five dogs, and who further recites that from 1973 to 1989 the Persinger kennel operation "regularly cared for 4-5 dogs at the kennel."

- ◆ a letter dated August 22, 1995, from Pat Baggett who regularly visited the Blitz kennel operations and who recites that every time she visited the Blitz kennels those facilities "always had 25 dogs or so in the kennels," and who further recites that the Peins "never shut done [*sic*] the kennel" when they owned it in the early 1970s and that the Peins routinely kenneled at least six dogs, and who finally recites that the Persinger kennel operations "always had between 3 to 10 dogs in their kennels" each time she visited them during their ownership from 1973 to 1989.

Finally, Mr. and Mrs. Persinger testified at the August 16, 1995, hearing that some degree of kennel operations had been present throughout the 1950s and 1960s, and in particular in the early 1960s during a period that the 1994 hearings officer's decision in DR 4-94 identifies as lacking in evidence. Although neither the Persingers nor the Peins maintained what the record describes as "commercial" kennels,^[26] both owners maintained their own dogs in the kennel facilities and "regularly" boarded other dogs for friends or acquaintances. I note that the recent testimony mirrors Mr. Persinger's November, 1967, letter that I describe just above.

Thus, the apparent gaps (or "discontinuances") from December, 1962, to February, 1964, from February, 1965, to October, 1965, and from October, 1966, to September, 1967, that Marquam Farms infers from the County's 1967 and 1969 inspection records disappear. Indeed, the two 1967 letters described above eliminated those gaps as a matter of record within the proceedings in DR 4-94, but the hearings officer made no mention of that.

I find, therefore, that:

- ◆ Nothing upon which Marquam Farms relies for this issue comprises "substantial evidence" in the sense that I deem it sufficiently reliable or complete to conclude that all "gaps" in the County's inspection records necessarily mean that no kennel facilities existed during those "gaps."

²⁶ Nothing in the County's definition of "kennel" refers to "commercial" facilities; rather, "kennel" comprises "[a]ny lot or premises on which *four or more dogs, more than six months of age, are kept.*" (MCC 11.15.0010 [emphasis added].)

- ◆ Although less satisfactory than other means of demonstrating continuity of use, the unbroken succession of owners/operators from 1952 to date — each of whom operated and maintained kennel facilities of some sort — coupled with the absence of affirmative evidence that any of those same individuals subsequently discontinued or abandoned the very facilities that each was known for maintaining, comprises “substantial evidence” that *some* degree of kennel operations has persisted unabated from 1952 forward.
- ◆ The November, 1967, letters to the Planning Commission, *supra*, which attest to continued kennel use from 1952 and 1954, respectively, through 1967 — thus plugging the evidentiary gap cited in the 1994 hearings officer’s decision — coupled with Mr. Persinger’s recent testimony 28 years later that kennel operations have always been present to some extent, comprise “substantial evidence” that kennel operations endured continuously, and certainly during the “gap” periods that Marquam Farms has urged.
- ◆ The proliferation of 1995 affidavits from people who have lived or worked on the island for a number of years, and who were each personally familiar with various owners from the 1950s forward, comprise “substantial evidence” that kennel operations in an amount consistent with the definition of “kennel” in MCC 11.15.0010 endured without abatement or discontinuance from the 1950s to now. The fact that not all of the owners/operators maintained what might be described as “commercial” kennel facilities remains, as the hearings officer also noted in DR 4-94, entirely beside the point.

I thus reject Marquam Farms’ assertions that no recognizable kennel facilities existed, or could be seen, on the property until approximately 1989 or 1990. Given the proliferation of non-partisan testimony in the record about the existence of *some* degree of kennel operations on the property from 1952 forward, I simply cannot accept declarations that there existed no kennel operations on the property before 1989 or 1990. If the intent of the various Marquam Farms affidavits is to comment on the existence and location of particular buildings or structures, as opposed to the presence of kennel operations, that would be altogether different matter, but it would also be entirely irrelevant to the question.

C. BECAUSE IT *DENIED* A REQUESTED APPROVAL, THE HEARINGS OFFICER'S 1994 DECISION DOES NOT PRECLUDE A RECONSIDERATION OF EITHER LEGAL OR FACTUAL "NON-CONFORMING USE" ISSUES

As I discussed earlier, the hearings officer's 1994 decision in 4-94 *denied* a requested approval, *viz*, Design Review approval. No rights vested, and the *denial* of the requested approval in 1994 achieved nothing more the maintenance of the *status quo*.

The County's Zoning Ordinance does not prohibit the resubmittal of an application that might have been the subject of an earlier denial. Indeed, the hearings officer's 1994 decision concludes with the observation that

"... *if* the applicant is able to ... establish the use as a lawful use, this denial of Design Review *should not prejudice such later action*, if any. Therefore, the applicant's request for Design Review is denied, *without prejudice*." (August 19, 1994, DECISION at 7 [emphasis added].)

I therefore conclude that, because of the peculiar circumstances (*viz*, a denial of a request for approval followed by a subsequent resubmittal of a different nature), and because neither statute nor ordinance requires that the prior *denial* of a land use application bind the applicant in future proceedings, I am not bound by the non-conforming use aspects of the hearings officer's decision in DR 4-94. See *Furter v. Curry County*, *supra*, 27 Or LUBA at 506; *Reeder v. Clackamas County*, *supra*, 20 Or LUBA at 242-44; and *S & J Builders v. City of Tigard*, *supra*, 14 Or LUBA at 711-12.

D. "CLAIM PRECLUSION" AND "ISSUE PRECLUSION"
SERVE NO PURPOSE WITHIN THIS PROCEEDING

The 1994 proceedings in DR 4-94 resulted in the *denial* of an approval request, leaving the *status quo* unaffected and vesting no rights. I can find no statute or provision in the County's Zoning Ordinance — and Marquam Farms cites none — that

precludes the resubmittal of an approval request under the circumstances that accompany Applicant's request.

Given the fact that someone in Applicant's position can typically reapply for the same or similar approvals after a prescribed period of time, I can find no authority for imposing the litigation-derived doctrines urged by Marquam Farms, nor has anyone cited any. See, for instance, *Nelson v. Clackamas County*, *supra*, 19 Or LUBA at 140 (recognizing this principle).

X. APPLICABLE CRITERIA — NON-CONFORMING USE

A. ALTERATION / RESUMPTION OF A NON-CONFORMING USE [ORS 215.130]

ORS 215.130 provides, in pertinent part:

**** * * * ***

"(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted to reasonably continue the use. . . .

**** * * * ***

"(7) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

**** * * * ***

"(9) As used in this section, 'alteration' of a nonconforming use includes:

"(a) A change in the use of no greater adverse impact to the neighborhood; and

"(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood."

B. OAR 660-33-120 AND 660-33-130

The provisions of OAR 660-33-120 and 660-33-130 appear beginning at page 32, *supra*.

**C. RESTORATION, REPLACEMENT, OR ABANDONMENT OF
A NON-CONFORMING USE
[MCC 11.15.8805]**

MCC 11.15.8805 provides, in pertinent part:

"* * * * *

"(B) If a non-conforming structure or use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms with the requirements of this code at the time of the proposed resumption.

**D. ALTERATION OF A NON-CONFORMING USE
[MCC 11.15.8810]**

MCC 11.15.8810 provides, in pertinent part:

*** * * * ***

- "(C) An alteration as defined in [ORS 215.130(9)] may
- be permitted to reasonably continue the use.**

*** * * * ***

- "(E) An alteration of a non-conforming use may be
permitted if the alteration will affect the sur-
rounding area to a lesser negative extent than the
current use, considering:**

- "(1) The character and history of the use and of
development in the surrounding area;**
- "(2) The comparable degree of noise, vibration,
dust, odor, fumes, glare or smoke detecta-
ble at the property line;**
- "(3) The comparative numbers and kinds of
vehicular trips to the site;**
- "(4) The comparative amount and nature of
outside storage, loading and parking;**
- "(5) The comparative visual appearance;**
- "(6) The comparative hours of operation;**
- "(7) The comparative effect on existing vegeta-
tion;**
- "(8) The comparative effect on water drainage;**

"(9) The degree of service or other benefit to the area; and

"(10) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area."

E. VESTED RIGHT

Clackamas County v. Holmes, 265 Or 193, 508 P2d 190 (1973), declared the following criteria to apply to a determination whether a "vested right" exists to continue to develop a project suddenly rendered illegal by an unanticipated zone change:

- ♦ the *substantiality* of expenditures, which the courts sometimes (but do not necessarily) measure by a "ratio" test that compares expenditures actually to the total projected cost of a project (265 Or at 197);
- ♦ the *good faith* of the landowner (265 Or at 198);
- ♦ whether the landowner had *actual notice* of any proposed zoning changes before commencing development or spending funds (265 Or at 198);
- ♦ the *type of expenditures*, that is, whether the expenditures were directly, but not necessarily exclusively, related to the proposed development (265 Or at 198);
- ♦ the *kind of project*, that is, its desirability in terms of meeting the existing or proposed needs of the area (265 Or at 198);^[27]

²⁷ Within the confines of "vested right" rubric, the term "kind of project" obviously does not mean whether the project qualifies as a permitted or allowed use for zoning purposes; if it did, the question of "vested right" would be moot.

- ♦ the *location of the project*, that is, the extent to which the project might be ideally suited for the site (265 Or at 198);
- ♦ the project's *ultimate cost* (265 Or at 198);
- ♦ whether the landowner's acts arose beyond a mere *contemplated use*, that is, whether an objective commitment to a particular, identifiable use or development had occurred (265 Or at 198); and
- ♦ whether the landowner continuously advanced the development at all times, or whether *abandonment* had occurred at any point (265 Or at 201).

XI. FINDINGS — NON-CONFORMING USE

A. OAR 660-33-120 AND 660-33-130

As I discuss in detail *supra* beginning at page 32, OAR 660-33-130(18) specifically provides that "[e]xisting facilities may be maintained, enhanced, or expanded, subject to other requirements of law."

By getting to this point, I have already determined that Applicant's kennel facilities comprise an "existing" use, the alteration of which remains unimpacted by OAR 660-33-120 or 660-33-130. Any other conclusion would run afoul of ORS 215.130(7), which specifically allows the resumption of a non-conforming use if it "conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption."

B. MCC 11.15.8810

(1). "A change in the use of no greater adverse impact on the neighborhood"

Although Applicant proposes to expand the capacity of the kennel facilities from 50 to 75 dogs, Applicant correlatively proposes a redesign of the kennel facilities so that noise levels will be reduced from current levels.

I therefore find that the increased kennel capacity will have no greater adverse impact on the neighborhood, and that the evidence suggests a lesser impact.

(2). "A change in the structure or physical improvements of no greater adverse impact on the neighborhood"

Although Applicant proposes to expand the capacity of the kennel facilities from 50 to 75 dogs, Applicant correlatively proposes a redesign of the kennel facilities so that all of the kennel structures will be consolidated within one larger facility. As I understand Applicant's proposal, the new facility will effectively replace, rather than add to, the existing facilities.

I therefore find that the redesigned kennel facilities will have no greater adverse impact on the neighborhood, and that the evidence suggests a lesser impact than the existing configuration.

(3). "The character and history of the use and of development in the surrounding area"

Both the character and history of the kennel facilities, and other pertinent locational information, appears in detail earlier in this decision. It would serve no purpose to repeat it here.

Based upon that information, I find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the character and history of the use and of development in the surrounding area. Indeed, I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area, such that the term "lesser negative extent" has any significance here.

(4). "The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line"

I have discussed the noise issue earlier in the context of the EFU approval criteria and the Comprehensive Plan Policy 13, and it would serve no purpose to repeat those discussions here.

I find that issues pertaining to "dust," "fumes," "glare," or "smoke" have no material bearing on Applicant's proposal. Based upon a prior discussion of the manner in which Applicant disposes of waste on-site, I find that issues pertaining to "odor" have been effectively negated altogether.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line. Indeed, I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area, such that the term "lesser negative extent" has any significance here.

(5). "The comparative numbers and kinds of vehicular trips to the site"

Concededly, Applicant's proposal might result in a 50% increase in vehicular trips to the kennel facilities. Applicant projects the average daily trips to be 6.3 in 1995, 7.5 in 1996, and 8.4 in 1997.

However, given the projected trip data and the historical data with respect to the average number of daily trips in the past three years (*viz*, 4.2 in 1992, 5.1 in 1993, and 5.6 in 1994), and also given the fact that there exists an inverse relationship between the peak kennel season (March through September) and peak hunting season (October through January), I find that, with respect to the surrounding area, the vehicular traffic will be almost *de minimis*, and that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area in the first place, such that the term "lesser negative extent" has any significance here.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative numbers and kinds of vehicular trips to the site.

Finally (and alternatively), I also interpret MCC 11.15.8810(E) to depict something *other than* a conjunctive list of mandatory requirements, each of which must be fulfilled. I instead construe the listed factors to represent guidelines in determining whether, when considered *as a whole*, the proposal will "affect the surrounding area to a lesser negative extent than the current use." One of more of the listed factors may, under that interpretation, indeed have a greater impact than previously. See, by analogy, *Union Oil Co. v. Board of Co. Comm. of Clack. Co.*, 81 Or App 1, 5-6, 724 P2d 341 (1986) (nine "vested rights" criteria not to be treated as independently or singularly dispositive).

(6). "The comparative amount and nature of outside storage, loading and parking"

Applicant maintains no outdoor storage, and has no plans to do so in the future.

Because Applicant proposes to redesign the parking area in such a manner as to reduce, for example, the barking that results when the dogs see the arrival of cars and the congestion associated with customers' automobiles in the office area, I find that the redesign parking area will reduce noise and congestion associated with customer traffic.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative amount and nature of outside storage, loading, and parking. Indeed, I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area, such that the term "lesser negative extent" has any significance here.

(7). "The comparative visual appearance"

The redesigned, state-of-the-art kennel building will improve upon the long-standing quonset hut facilities. The parking area will be redesigned, and Applicant proposes new landscaping and fencing.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative visual appearance.

(8). "The comparative hours of operation"

Although Applicant's hours of operation will not change, this criterion has no significant bearing on uses in the surrounding area.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative hours of operation, because I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area in the first place, such that the term "lesser negative extent" has any significance here.

(9). "The comparative effect on existing vegetation"

Applicant will provide some new landscaping, which will also benefit the adjacent Marquam Farms to some extent.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative effect on existing vegetation. Indeed, I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area in the first place, such that the term "lesser negative extent" has any significance here.

(10). "The comparative effect on water drainage"

Impervious surface area will increase because of the enclosed kennel. However, because Applicant handles all water drainage on-site, I find that there will be no increase in off-site water drainage.

I also find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative effect on

water drainage, because I further find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area in the first place, such that the term "lesser negative extent" has any significance here.

Finally (and alternatively), I also interpret MCC 11.15.8810(E) to depict something *other than* a conjunctive list of mandatory requirements, each of which must be fulfilled. I instead construe the listed factors to represent guidelines in determining whether, when considered *as a whole*, the proposal will "affect the surrounding area to a lesser negative extent than the current use." One of more of the listed factors may, under that interpretation, indeed have a greater impact than previously.

(11). "The degree of service or other benefit to the area"

Applicant envisions that the degree of service and benefit to the island and its users will actually increase. Because I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area in the first place with respect to the degree of service or other benefit to the area, I conclude that the term "lesser negative extent" has no significance here.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the degree of service or other benefit to the area.

Finally (and alternatively), I also interpret MCC 11.15.8810(E) to depict something *other than* a conjunctive list of mandatory requirements, each of which must be fulfilled. I instead construe the listed factors to represent guidelines in determining whether, when considered *as a whole*, the proposal will "affect the surrounding area to a lesser negative extent than the current use." One of more of the listed factors may, under that interpretation, indeed have a greater impact than previously.

(12). "Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area"

Other than Marquam Farms, no one has voiced any objection to the existing kennel operations or to any proposed expansion. Marquam Farms has historically confined the bulk of its objections to noise issues, all of which will be diminished and minimized by any redesign of the kennel operations. I discern no other material factors in the record that have given rise to "conflicts or incompatibility with the character or needs of the area."

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to "other factors."

C. VESTED RIGHT

Applicant additionally asserts a "vested right to the nonconforming use." (February 23, 1995, "SAUVIE ISLAND KENNELS LAND USE APPLICATION" at 11.) This particular argument only has relevance as a "last resort" argument, that is, if Applicant can fulfill neither the conditional use criteria nor the non-conforming use that I have discussed above. Thus, everything in this particular discussion assumes that Applicant has exhausted all other means of establishing the right to continue the operation of the kennel facilities.

There exists a pivotal differentiation between

- ♦ a right to continue development that, when complete, will result in a non-conforming use, according to the criteria in *Clackamas Co. v. Holmes*, 265 Or 193, 197-201, 508 P2d 190 (1973) (discussing the factors underlying a "vested" right to continue and finish a development and actually *begin* a use), and

- ♦ a right to resume a use that may have been abandoned or discontinued after having been in place for some period of time. See, for instance, the discussion in *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1981).

In *Polk County v. Martin*, the Court described the seminal “vested rights” decision in *Clackamas Co. v. Holmes* as

“concern[ing] the degree of development which must exist *before an owner of partially developed property can be said to have established a ‘lawful use’ of property* under the statutes, so as to use the property as intended even though the use would not be permitted under the zoning law *which became effective while the property was being improved.*” *Polk County v. Martin, supra*, 292 Or at 80 (emphasis added).

I can find no authority for the proposition that a discontinued non-conforming use — and by using the term “discontinued” I infer nothing contrary to the findings and conclusions that I have already reached in this decision — can be resurrected under the circumstances here by using “vested right” as a vehicle. Even assuming that Applicant may have spent substantial sums to purchase and remodel the kennel facilities, that factor would only be pertinent if, after Applicant had begun making those expenditures, the County had downzoned the property in such a manner that kennels were no longer allowed. That is not what has happened. Indeed, one of the *Holmes* factors requires an inquiry into whether the proponent “had notice of any proposed zoning or amendatory zoning before starting his improvements [.]” 265 Or at 198. Applicant’s 1994 approval request did not get derailed because of any mid-stream zoning; instead, it became untracked just as effectively as if LUBA, the Court of Appeals, or the Supreme Court had rendered the ruling that the hearings officer instead rendered in DR 4-94.

Thus, I reject the argument that Applicant has a “vested right to complete the work sanctioned by DR 90-07-02 and CU 23-90.” (See Applicant’s February 23, 1995, “SAUVIE ISLAND KENNELS LAND USE APPLICATION” at 11.) Even assuming for purposes of argument that Applicant has not yet completed the “work sanctioned” by DR 90-07-02 and CU 23-90, that “work” would not result in the *creation* of a “use” in the manner envisioned by *Clackamas Co. v. Holmes*; the “use” itself evolved long ago.

XII. CONCLUSIONS — NON-CONFORMING USE

As an alternative to my conclusions in the conditional use portion of this decision, I conclude as follows:

- ◆ Nothing about the hearings officer's decision in DR 4-94 precludes me from considering and resolving the various non-conforming use issues raised in this 1995 approval request.
- ◆ Applicant has demonstrated to a reasonable, objective certainty that the kennel facilities have been in continuous operation as a "kennel" defined in MCC 11.15.0010 since at least 1952, and that, despite fluctuations in what might be described as "commercial" usage, nevertheless has endured without any abandonment or discontinuance since that time.
- ◆ Nothing in OAR 660-33-120 or 660-33-130 precludes or prohibits the resumption of a non-conforming use with respect to an "existing" kennel under the unique circumstances of this case. If those rules did purport to do so, they would clash with ORS 215.130(7), which allows the resumption of a use in conformity with local government enactments.
- ◆ Applicant has fulfilled the criteria in MCC 11.15.8810 with respect to the "alteration" of a non-conforming use.
- ◆ Alternatively, Applicant has fulfilled the criteria mentioned in MCC 11.5.8805(B) — which, under the circumstances of this proceeding, I find to be the conditional use criteria discussed earlier in this decision — with respect to the "resumption" of any discontinued non-conforming use.

DATED this 15 day of September, 1995.


BARRY L. ADAMSON, Hearings Officer



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December 15, 1997

Sandra Duffy, Esq.
Multnomah County Counsel's Office
P. O. Box 849
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SENT VIA FAX TO 248-3377

Re: Schillereff Remand Hearing

Dear Sandra:

Thank you for forwarding to me a copy of Larry Derr's December 11, 1997 letter regarding this remand proceeding. With Ed Sullivan on sabbatical leave, I am working double duty and would have hoped for a little more lead time to respond to the issues Larry raises. In any event, my clients, Tim and Angela Schillereff, feared that Marquam Farms would again barrage the Board with procedural objections and delays in an attempt to prolong the process, and I see their concerns may not have been far wrong.

My basic response is that the Board of County Commissioners determines the procedure of this remand proceeding, and it can and should address the remand by not reopening the record but by adopting new findings which address LUBA's remand order. The draft proposed findings I supplied you and planning staff address all of the issues identified by LUBA and provide a complete and understandable interpretation of the relevant code provisions. The Board should only grant Mr. Derr's request if it feels it needs more evidence to decide the matter. Contrary to Mr. Derr's assertion, I believe the Board understood the nature of this matter and the evidence in the record when it unanimously approved this application the first time. I trust, the Board can master the issues and evidence once again, assuming it is able to remain focused procedurally.

By way of a specific response to Mr. Derr's objections, the record compiled during the original proceeding amply documents the nature and extent of the Schillereffs' nonconforming dog kennel by way of County land use decisions and other documents, letters, affidavits and testimony presented at the hearing. All of that evidence is analyzed in the draft proposed findings I submitted, along with the two operative MCC provisions. Moreover, the record and my findings are well organized to assist the Board in tracing the nature and extent of dog kennel use on the property. There is no need for more evidence on these issues.

Mr. Derr incorrectly claims my clients already have 75 dogs in their kennel. As you know, even though the County approved the Schillereffs' design review application for the

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Sandra Duffy, Esq.
December 15, 1997
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expansion to 75 dogs, it has not issued building permits. My clients have respected the County's position while the Marquam Farms appeal proceeds and have limited business to 50 dogs - the number of dogs approved by Multnomah County in 4 separate land use decisions since 1989. Thus, I doubt the evidence Mr. Derr speaks of would be of much value when addressing the potential impact of 75 dogs. And, lest the Board forget, one of the primary reasons for this application is so that the Schillereffs can modernize and enclose the kennels and runs. This will prevent the sound of dogs barking from being heard beyond the property line and will keep boarded dogs isolated from other kennel activities thus substantially limiting or eliminating the barking in the first place.

In summary, there is no reason to reopen the record except to delay the proceeding. The Board should, however, address the issue at the beginning of Tuesday's hearing. As you will recall, Mr. Derr asked for a *de novo* hearing at the Board level during the original proceeding yet failed to introduce any new evidence at the hearing. I fear a repeat performance and would recommend that the Board keep tight control of the proceeding. Again, thank you for allowing me the opportunity to respond to Mr. Derr's letter.

Sincerely,



Daniel H. Kearns

cc: Tim and Angela Schillereff
Greg Winterowd
Larry Derr, Esq. (by fax to 228-0171)

DEC-11-97 THU 17:45

TEL: JOSSELSO POTTET ROBERTS FAX NO. 503 228 0111

LAW OFFICES OF
JOSSELSO, POTTER & ROBERTS
 82 S.W. YAMHILL STREET
 PORTLAND, OREGON 97204
 TELEPHONE (503) 228-4455
 FACSIMILE (503) 228-0111

December 11, 1997

BY FAX 248-3377

Sandra Duffy
 Multnomah County Counsel
 P O Box 849
 Portland, OR 97209

Re: Schilleroff Remand Hearing

Dear Sandy:

Post-It™ brand fax transmittal memo 787		# of pages > 2
To <i>San Kears</i>	From <i>S Duffy</i>	
Co.	Co.	
Dept.	Phone #	
Fax # <i>248-9085</i>	Fax # <i>248-3138</i>	

Please call Sandy

I was out of town when the hearing notice arrived and have not been able to catch up to you this week after my return to discuss the hearing procedure.

The notice is unclear whether the Board will conduct its hearing on the record or admit new evidence. Bob Hall told me he thought the intent was to not open the record to new evidence, but only to consider proposed new findings submitted by the applicant. Have you received proposed findings? If so, will you please fax me a copy?

I told Bob that it makes the most sense for the Board to remand the matter to a Hearings Officer because of the procedural and factual complexity of the case. Then, if a party dislikes the result, they still have the option to appeal the decision to the Board.

Here are the issues that we see need to be addressed.

First is the question of the nature of the non-conforming use. That should be decided on the record because there could not be any new evidence bearing on the history of use. However, the possible conclusions from the record evidence range from determining that there is insufficient evidence of an unbroken maintenance of four or more dogs to determining from the evidence a specific number of dogs equal to or greater than four that were always in residence during the relevant years. I question whether the Board wants to do that sort of in-depth review of the record in the first instance rather than having a hearings officer do it.

Second, if a determination is made that a non-conforming use exists and the exact nature and extent of the use is defined, a decision must be made about the impact of expanding from that level to the proposed 50 dogs. Since the starting point level for the analysis was not determined in the previous decision, the conclusion about the effect of expansion must be

LAWRENCE R. DEAR
 OF COUNSEL

DEC-11-97 THU 17:48

TEL:

JOSSELSON POTTER ROBERTS

FAX NO. 503 228 0171

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JOSSELSON, POTTER & ROBERTS

December 11, 1997

Page 2

revisited. In the period since the last decision the Schillereff's have made changes authorized by the decision including adding the additional dogs.

Since the additional dogs are already on the property, it is no longer necessary to speculate about the impact on surrounding property. The impacts have occurred and the evidence is available. It is evidence that was unavailable in the previous proceedings and must be admitted now, if the decision making process reaches this level. That kind of evidence cannot be presented in a 20 minute hearing. Again, a hearings officer is the preferred method of receiving this kind of evidence, with an appeal to the Board if necessary.

Because all of these procedural issues need to be resolved, and can only be resolved ultimately by the Board, the December 16 meeting should be used only for the purpose of establishing the procedure. Our recommendation is a remand to a hearing officer. If the Board instead chooses to retain the matter before itself, it needs to inform the parties of the way it intends to work through these issues.

Please call as soon as you receive this letter. Ask that I be interrupted from whatever I am doing, and if out of the office, have them use my beeper to locate me.

Very truly yours,


Lawrence R. Darr

12/16/97
DAN KEARNS
SUBMITAL

We specifically note the applicants' kennel operation has buildings and facilities to board 50 dogs and that the record contains focused testimony that 50 dogs have frequently been boarded at the kennel since 1958. We find that the kennel business has a periodic nature that results in a variation in the number of dogs boarded over the course of seasons and years. We find, however, that the basic facilities for 50 dogs has been in place on the property and used throughout the course of that period. On that basis, we find that the 50-dog kennel that existed in 1958 has never been abandoned or discontinued, but, instead has persisted continuously until the present. Granted, there have not been 50 dogs boarded at the kennel continuously throughout that time, but we do not interpret our ordinance to require that kind of continuous use. It is sufficient that the owners of the kennel, including these applicants, have continuously maintained the facilities for a maximum occupancy of 50 dogs since 1958 and have, in fact, frequently housed that maximum number of animals. On that basis, the applicants have maintained their right to a nonconforming use of 50 dogs until the present.

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12/16/97
LAWRENCE DERR
SUBMITTAL

December 16, 1997

Board of County Commissioners
Multnomah County
1120 SW 5th Avenue, Room 1500
Portland, OR 97204

Re: Schillereff Remand Hearing
Case File No. CU 4-95 and MC 1-95

Dear County Commissioners:

The Land Use Board of Appeals determined that the decision of the Board approving an increased kennel operation from 50 to 75 dogs was unlawful. The decision was remanded for the County to examine three matters and make findings consistent with the law.

First, the County must determine the present nature and extent of the nonconforming kennel use, if any exists. The Court of Appeals, in affirming LUBA's actions, made it clear that the inquiry may lead to the conclusion that the nonconforming use has been interrupted or abandoned and no longer exists.

Second, if the evidence supports some level of nonconforming use, then the requested expansion must be reexamined as an expansion from that level, not from a 50 dog kennel.

Third, the County was given the opportunity to adopt an interpretation of MCC 11.15.2028(B) that is consistent with the law.

Because the record is lengthy and contains conflicting evidence on the subject of the extent of the kennel operation over the last 40 years, Marquam Farms suggests that the Board send the case back to a Hearings Officer for an evaluation of the facts relating to the first two items. The Hearings Officer can also provide an interpretation for the third item. If either party is dissatisfied with the result, an appeal would be available to this Board.

APPLICANT'S FINDINGS

The Applicants have proposed a Board order and findings in support of a second approval of a 75-dog kennel operation. Those findings the applicants made and lost before

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Multnomah County

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LUBA and the Court of Appeals. This Board cannot in good conscience approve those findings. Doing so would be grossly unfair to the members of Marquam Farms. The resultant appeal and second remand would only add to the delay and expense experienced by both parties.

In the discussion below, we compare the key assertions of the proposed findings with the holdings from the LUBA and Court of Appeals decisions.

Expansion of Nonconforming Use - MCC 11.15.8810

Proposed Findings, page 3, II.C. "We find that, on its face, MCC 11.15.8810 does not require an evaluation of the nature or extent of the underlying nonconforming use. We interpret MCC 11.15.8810 as requiring only that an applicant start with a lawful nonconforming use which can then be modified, including in some cases an expansion."

Proposed Findings, page 3, III.A. "In so doing, we interpret MCC 11.15.8810 as not requiring any detailed discussion about the nature or extent of the underlying nonconforming use, except for a discussion establishing that the use is a lawful nonconforming use."

Both LUBA and the Court of Appeals stated clearly and unequivocally that a nonconforming use expansion cannot be evaluated until the exact nature and scope of the nonconforming use is established. They held that the prior County decision was defective for failing to do this.

LUBA said:

"However, the hearings officer made no attempt to define the scope of the continued use. Rather, he apparently concluded, without analysis, that since intervenors established the continued existence of a kennel, *i.e.*, at least 4 adult dogs on the property since the 1950's, they had somehow established a nonconforming use to operate and expand a 50-dog kennel. Such a conclusion is not legally justified." *Marquam Farms Corporation v. Multnomah County*, 32 OR LUBA 513, 520 (1996)

"The county must determine the level of intensity of the use that has continued uninterrupted since the use became nonconforming. This requires an evaluation both of the threshold question of the level of intensity existing when

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the use became nonconforming, and the level of intensity that has continued, uninterrupted, since that time. The county has done neither of these required evaluations." *Marquam LUBA, supra* 520.

The Court of Appeals concurred.

"For largely the reasons expressed by LUBA, we conclude that the county's present decision on the nonconforming use issue does not satisfy ORS 215.130. Without further findings by the county to particularize the nature and extent of the original and continuing nonconforming use, in the face of evidence that the use has historically receded from commercial to fairly minimal levels, the requested expansion cannot be justified under ORS 215.130(5) and (9). Subsection (5) provides that an '[a]lteration of any such [nonconforming] use may be permitted to reasonably continue the use.' Subsection (9) defines 'alteration' to include a 'change in use of no greater adverse impact to the neighborhood.' Whether the requested expansion meets that statutory standard cannot be ascertained unless the actual past and present scope of the use is identified and can be compared with the extent and effects of the proposed enlarged future use. Moreover, it cannot be known what is necessary and therefore, permissible to '*continue the use*' in the absence of a prior determination regarding the nature and scope of the *original and present* use that have acquired and retain nonconforming status. The statutory test cannot be applied or passed on the basis of the county's present unquantified findings that *some* kennel use has endured through-out the 40-year period.⁶" *Marquam Farms Corporation v. Multnomah County*, 147 Or App 368,381 (1997).

In footnote 6, the Court of Appeals observed that the factual inquiry could lead to the conclusion under ORS 215.130(7) that the nonconforming use had fallen below the four dog level and no longer exists.

"The additional facts that the county must find *may* also affect the sufficiency of the applicants' showing under ORS 215.130(7), as well as subsections (5) and (9). That question, too, is before the county on remand."

"In the present posture of the case, we cannot now decide whether the findings the county has made, *if* supplemented by the required additional ones, could suffice to establish compliance with the statute. However, if we correctly understand petitioners to argue that the existing findings are sufficient to

Board of County Commissioners
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demonstrate compliance in themselves, we disagree with them." *Marquam*, CA *supra*, footnote 6.

The Court of Appeals also explained that both the nonconforming use expansion evaluation and the interpretation of MCC 11.15.2028(B) involve application of a state statute, ORS 215.130, so that the County's interpretation receives no deference and local decisions must comply with the statute notwithstanding the existence of alleged contrary but acknowledged ordinance provisions. *Marquam*, CA *supra* 380.

Proposed Findings, page 4, III.A.1. Although the applicants assert through their proposed findings that the County need not determine the nature and scope of the nonconforming use, they also claim that the County has made the determination in prior, binding decisions.

The applicants made and lost this argument before LUBA and did not pursue it before the Court of Appeals. And, if they had not raised the issue on the appeal, they would not be entitled to do so now for the first time.

Here is what LUBA said:

"To the extent respondents argue that one or both of the 1990 decisions somehow 'vested' certain nonconforming use rights in intervenors, we reject that argument. Neither of the 1990 decisions addressed intervenors' nonconforming use rights directly, or through an application of .2028. Rather, in 1990 the county merely approved a design review for a 50-dog kennel and a conditional use for a watchman's residence."

"While that 1990 decision cannot now be revisited, neither can the county rely on that decision to demonstrate the existence of nonconforming use rights to intervenors' current kennel operations." *Marquam* LUBA, *supra* 519.

It is notable that the evidence cited by applicants in this section of the findings is not evidence that a 50-dog kennel operated on the property without interruption from the time the use became nonconforming to the present. In fact, the most that the applicants' evidence claims is that through the latter part of the 1970s and through the 1980s the only full time dog on the property was that of the owners and there were occasional visits from friend's dogs. The maximum number asserted during this period at any time was four to five dogs. The Marquam Farms members who frequented the property from 1983 until the new kennel opened

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in 1989 or 1990 provided sworn affidavits that the only dog they ever saw on the property during that period was the single owner's dog.

In the face of this conflicting evidence and the fact that the applicants bear the burden of proof to show the exact number of dogs that occupied the property at all times, the Board cannot justify a finding that even four dogs were regular residents of the property at all times until the opening of the new kennel.

If the Board chooses to accept the vague and imprecise testimony provided by the applicants over the sworn statements of the Marquam members, the best case for the applicants supported by that evidence is that by the 1980s, the "kennel" use consisted of the owner's dog full time and occasional visits by up to three other dogs. That then is the baseline against which the proposed 75 dog commercial kennel operation must be judged when applying ORS 215.130 and the twelve factors of MCC11.15.8810.

THIS BOARD CANNOT FIND FROM THIS RECORD THAT A 75 DOG COMMERCIAL KENNEL OPERATION WILL HAVE A LESSER NEGATIVE IMPACT ON THE MARQUAM FARMS DUCK HUNTING THAN A SINGLE DOG PLUS OCCASIONAL VISITS FROM UP TO THREE ADDITIONAL DOGS.

Expansion of an Existing, Lawful Conditional Use - MCC 11.15.2028(B)

Proposed Findings, page 11, III.B. "This code provision provide (sic) a basis for approval of the applicants' request for a 75-unit dog kennel completely independent and apart from MCC 11.15.8810 and one which does not depend upon traditional notions of nonconforming use theory based on state law, i.e., ORS 215.130 and appellate cases decided under that statute."

The starting point for the application of MCC 11.15.2028(B) is the existence of a lawful nonconforming use. The Court of Appeals explained it this way:

"... section 2028(B) does not and cannot be interpreted to say anything that either defines nonconforming uses or regulates them. Rather, the role of nonconforming uses in the section is simply that of a condition precedent to the operative provisions, *i.e.*, the 'conversion' of preexisting nonconforming uses to conditional uses that, *after* their conversion, are subject to the conditional use regulations in the county's legislation. To the extent that the county has interpreted the section in

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the manner that petitioners assert, the interpretation cannot survive even under the less than stringent ;'clearly wrong' test that inheres in [citations omitted]." *Marquam, CA supra* 379.

More important than the failure to acknowledge the role of the nonconforming use determination is the omission from the applicants' proposed findings of the requirements of ORS 215.296. That statute sets forth the farm impact standards that must be met to authorize a kennel use under ORS 215.283(2). Unless MCC 11.15.2028(B) is read to require that the use has previously satisfied those requirements, the section would operate in violation of the statute and be unenforceable. That is why the previous hearings officer in his 1994 decision held that the only way a use could obtain the benefits of .2028(B) is if it had received a conditional use permit. Because OAR 660-33-120 and 130 prohibit new kennels on this high value farmland, the permit must have been obtained before the adoption of those LCDC rules.

The Court of Appeals summarized the matter as follows:

"LUBA concluded that the county's decision violates that state statute by interpreting and applying section 2028(B) in a way that allows a use subject to ORS 215.283(2) to achieve permitted status without being tested against the standards that ORS 215.296(1) requires it to satisfy. We agree with LUBA, and we reject petitioners' arguments that challenge LUBA's reasoning directly." *Marquam, CA supra* 383.

CONCLUSION

The applicants do not have a lawfully preexisting nonconforming 50-dog kennel. The evidence in the record, fairly interpreted, shows that the kennel use was abandoned for a period of nearly 20 years from the early 1970s to the late 1980s. Most generously interpreted in favor of the applicants, the evidence supports a kennel consisting of one owner's dog and occasional visits from up to three additional dogs. That is the baseline for evaluating an expansion to a 75-dog commercial kennel. Based on traffic alone, the negative impacts of the expanded kennel will be greater, not lesser than the nonconforming use.

The applicants do not have a lawful conditional use for a 50-dog kennel. Any interpretation of MCC 11.15.2028(B) that asserts that they do is unlawful under ORS 215.283(2) and other state farm use laws.

JOSSELYN, POTTER & ROBERTS

Board of County Commissioners

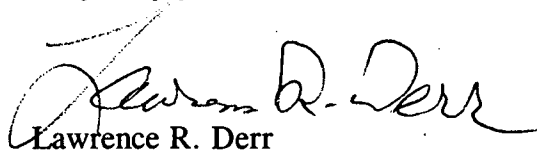
Multnomah County

December 16, 1997

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The request for expansion of the kennel must be denied under either alternative basis.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence R. Derr", is written over a horizontal line. The signature is fluid and cursive, with the first name "Lawrence" and the last name "Derr" being clearly legible despite the stylized script. The signature is positioned above the printed name "Lawrence R. Derr".

Lawrence R. Derr

LRD:lb

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

In the matter of the application by Tim and
Angela Schillereff for the alteration of an
existing nonconforming dog kennel use to allow
up to 75 dogs.)

On remand from LUBA - LUBA No. 95-254)
County File No. CU4-95, ~~MC095~~ *MC 1-95*)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW and
FINAL ORDER**

The Board of Commissioners for Multnomah County hereby approves the applicants' request for an alteration of their existing, lawful, nonconforming ~~50-unit dog kennel~~ with a capacity for 50 dogs to expand the kennel capacity to accommodate 75 dogs pursuant to MCC 11.15.8810. ~~As an independent, alternate basis for our decision we approve the applicants' request for a CUP to expand their existing lawful conditional use 50-unit dog kennel to accommodate 75 dogs pursuant to MCC 11.15.2028(B) and 11.15.7105, et seq.~~

The Multnomah County Board of Commissioners finds as follows:

I. PROCEDURE AND PROCEDURAL HISTORY:

This matter originally came before us in the form of the following three alternative applications to allow the applicants' proposed 75-unit dog kennel:

- A. Authorization pursuant to MCC 11.15.8810 to allow the alteration of the applicants' existing nonconforming 50-unit dog kennel to a 75-unit dog kennel;
- B. A conditional use permit pursuant to MCC 11.15.2028(B) to expand the applicants' existing, conforming 50-unit dog kennel to a 75-unit dog kennel; and
- C. A Conditional Use Permit to allow a new 75-unit dog kennel on high value farm land.

The applicants initially took a 3-part alternative approach due to ambiguities in the Multnomah County Code (MCC) as to the status of the applicants' existing 50-unit nonconforming kennel operation and uncertainty as to the avenues in the MCC for obtaining an increase in use to 75 units. In our original decision, we approved all three of the alternative applications based on the 110-page findings of fact and conclusions of law written by the Hearings Officer.

The opponent, Marquam Farms, appealed to LUBA, which remanded the decision back to this Board in a December 5, 1996 Final Opinion and Order for further consideration of the "nature and extent" of the applicants' existing kennel operation. We and the applicants appealed LUBA's decision to the Court of Appeals, which affirmed LUBA. Thus, this matter comes before us on remand from LUBA for further consideration of the nature and extent of the applicants' existing nonconforming kennel use.

This matter was duly noticed and a public hearing was held before the Board of County Commissioners on December 16, 1997 (the "remand hearing"). That hearing was continued to allow staff to provide an excerpt of the record identifying the evidence in the record that supports the applicants' nonconforming use arguments. The hearing was reconvened December 30, 1997 for decision. Because we find the evidentiary record is adequate and compliance with LUBA's remand order does not require the evidentiary record to be re-opened, we did not allow the introduction of new factual evidence at the remand hearing. In this remand proceeding, the applicants' representative was allowed to make summary legal arguments, based on the existing record, as was a representative from Marquam Farms. No other party has standing in this remand proceeding; thus, after these summary arguments, we closed the public testimony portion of the hearing, deliberated and voted to approve the applicants' request.

II. CONTROLLING LAW:

We note at the onset, the applicants' original set of 3 alternative requests, coupled with the Hearings Officer's lengthy decision addressing all issues raised by all parties, created~~contributed~~ a certain amount of confusion on the part of LUBA and the Court of Appeals as to what the applicants had requested and what this Board had approved. On remand, the applicants have endeavored to simplify and make more clear their request and we too simplify our decision.

A. New Dog Kennel on High Value Farm Land: LUBA and the Court of Appeals eliminated the applicant's third alternative approach to this application, *i.e.*, establishment of a new 75-unit dog kennel on high value farm-land. OAR 660-33-120 prohibits the "establishment" of a new dog kennel on high value farmland, but allows local governments to approve the expansion of an existing dog kennel on high value farm-land. According to the Supreme Court's decision in *Lane County v. DLCD*, 325 Or 569 (1997), this rule is valid and prohibits our consideration of the applicants' third request in this matter, but specifically authorizes the expansion of an existing dog kennel on high value farmland under MCC 11.15.8810. Thus, in this remand decision, the applicants' have abandoned, and we do not address, any request to establish a new dog kennel on high value farmland.

B. MCC 11.15.2028(B): In its remand order, LUBA expressed strong reservations about the validity of MCC 11.15.2028(B) and our interpretation of this code provision that converts a nonconforming use into a lawful, conforming conditional use by operation of law ~~and~~ without a separate permit. This was the applicants' second alternative basis which we approved. ~~It was in the context of addressing this provision that LUBA remanded our decision for further~~

~~discussion and fact finding on the "nature and extent" of the applicants' previously existing kennel operation. In this decision, we address LUBA's direction on remand and provide a more clear interpretation of this code provision in the context of this application. However, the primary focus of our decision relates to the applicants' first alternative basis pertaining to the alteration of an existing nonconforming use pursuant to MCC 11.15.8810. The applicants have withdrawn this aspect of their application, and for that reason we do not address §.2028 further.~~

C. **MCC 11.15.8810:** This code provision allows the alteration, including an expansion, of any existing nonconforming use so long as the alteration will affect the surrounding area to a lesser negative extent, considering certain criteria. This was the applicants' first basis for their application, which we approved. We find that, on its face, § MCC 11.15.8810 does not require an evaluation of the nature or extent of the underlying nonconforming use. We interpret § MCC 11.15.8810 as requiring only that an applicant start with a lawful nonconforming use which can then be modified, including in some cases an expansion. Under our interpretation, an evaluation of a request made pursuant to § MCC 11.15.8810 requires only that we determine that a lawful nonconforming use exists and then that the 12 alteration criteria in § MCC 11.15.8810(A)&(E) are met. MCC 11.58.8810, which allows alteration of a nonconforming use, does not require an applicant to each time re-prove the nature and extent of the underlying nonconforming use. We find that once an applicant has proven to the county its entitlement to a nonconforming use in some prior proceeding at a particular level of intensity, we are entitled to rely upon that prior showing as a conclusive determination that the nonconforming use exists and allows us to proceed with the request to modify that lawfully existing nonconforming use. We begin our Findings and Decision with a discussion of this aspect of the applicants' application.

III. FINDINGS AND DECISION:

This decision addresses only the requirements of § .8810 and the remand orders of LUBA and the Court of Appeals. In particular, LUBA remanded our earlier decision for a more complete discussion of the nature and extent of the applicants' nonconforming dog kennel operation. We do not read the remand orders to require us to reopen the record to accept more evidence or that we necessarily must quantify the nature and extent of the applicants' nonconforming by using numbers dogs. As noted above, we do not interpret § .8810 to require the applicants to re-prove entitlement to their underlying nonconforming use; however, LUBA's remand order anticipates that level of explanation in our findings on remand, and so we provide it here. We find the applicants have established two bases for their right to a nonconforming dog kennel with a capacity for 50 dogs and those bases are discussed in the first two subsections. The third subsection addresses the criteria in § .8810 for expanding that lawful nonconforming use.

A. The Applicants' have proved their right to an existing lawful nonconforming dog kennel use with capacity for 50 dogs:

We specifically note the applicants' kennel operation has buildings and facilities with capacity to board 50 dogs and that the record contains focused testimony that 50 dogs have frequently been boarded at the kennel since 1958. We find that the kennel business has a periodic nature that results in a variation in the number of dogs boarded over the course of seasons and years. This is similar to nonconforming schools, hotels, churches, campgrounds and similar facilities which have a basic set of facilities with a particular capacity, but the actual number of occupants varies over time.

When interpreting § .8810 in the context of nonconforming dog kennels, as with nonconforming hotels, schools, churches and campgrounds, we do not quantify the extent of the nonconforming use by counting the number of occupants over time and then using the low-point as the ceiling for the use's extent. For purposes of compliance with § .8810 we focus on the capacity of the nonconforming kennel, hotel, school, church or campground and use that as the measure of the extent of the nonconforming use right over time. If the operator abandons the use or evidences the intention to abandon, we then conclude the use has lapsed, and the right is terminated. But, when the basic facility and capacity have been actively maintained continuously over time and occasionally filled to that capacity, we will conclude the "use" has persisted throughout and the nonconforming use right has been maintained. Just because the number of dogs, students, hotel guests, parishioners or campers fluctuates over time, we do not measure or limit the extent of the nonconforming use right by the number of occupants, which in virtually all cases would be zero at some point during every year. This interpretation of MCC .8810 and state law is modeled on the Oregon Supreme Court's decision in *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1997).

Consistent with this interpretation, we find that all of the basic facilities for boarding 50 dogs have been in place on the applicants' property since before 1958 and used throughout the course of that period. This is supported by the County's business license records for this kennel, and the sworn affidavits, documents and live testimony presented at the August 16, 1996 hearing before the hearings officer.¹ In this regard, we are particularly persuaded by the testimony of the dog kennel's original owners Red and Marguerette Persinger before the hearings officer.² This

¹ This includes the following evidence in the record:

- The 1967 and other County Business License records indicating the kennel on this property has had capacity for 50 dogs since 1954.
- Affidavits of George Douglas, Elden E. Persinger, Timothy Schillereff, Norman Crowe, Mildred Meifert, Marguerite Persinger, Neil Rose, Louisa Rose, Mairi Holman.
- Letters from Neil Rose, Pat Baggett, Elden E. Persinger, C. Dondo, and George Cashdollar.
- Personal testimony before the Hearings Officer at the August 16, 1995 hearing from Fred Granata, Peter Davis, Kent Meyer, Bruce Cabbellero, Doug Johnston, Patty Larsen, Myron Meifert, Linda Reeder Burns, Tim and Angela Schillereff, Elden D. Persinger, and Marguerette Persinger.

We specifically agree with and adopt as our own the Hearings Officer's conclusions with regard to this evidence found at pages 91 through 95 of his September 15, 1995 decision.

² Representatives of Marquam Farms have objected that none of the testimony presented on behalf of the applicants before the hearings officer is credible. We disagree. Not only is much of this evidence given under oath,

evidence shows that the kennel facility on the applicants' property has maintained a capacity for 50 dogs throughout this period and frequently 50 dogs were actually kenneled at the facility. Moreover, the following County land use approvals for modifications to this kennel operation provide further proof that the capacity of the kennel facility has been maintained at 50 dogs since before 1958:

- March 2, 1989 building permit to remodel the applicants' original kennel facility with a capacity of 50 dogs.
- August 6, 1990 Planning Director's design review decision specifically for the "remodeling of a Kennel for 50 Dogs." The lot layout in the application and decision show the original pre-1958 buildings still intact with a capacity for 50 dogs.
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence, the decision for which specifically says the applicants' kennel has an approved capacity for 50 dogs.
- March 7, 1996 Planning Director's design review decision approving the remodel of the applicants' kennel with a stated existing capacity of 50 dogs.

The applicants and their predecessors maintained the kennel buildings, dog runs and other facilities with a capacity of 50 dogs since before 1958. On that basis, we find that the kennel facilities with a capacity for 50 dogs which existed in 1958 has never been abandoned or discontinued, but, instead has been actively maintained and used continuously until the present. Granted, there have not been 50 dogs boarded at the kennel throughout that entire time, but we do not interpret our ordinance to require that kind of continuous use, nor did the Supreme Court require it of the aggregate pit in the *Martin* case. It is sufficient that the owners of the kennel, including these applicants, have continuously maintained the facilities for a maximum occupancy of 50 dogs since 1958 and have, in fact, frequently housed that number of animals. On that basis, the applicants and their predecessors have actively maintained until the present the right to a nonconforming kennel facility with a capacity for 50 dogs.

B. The Applicants' have a vested right to a dog kennel use with a capacity for 50 dogs by virtue of the County's prior approvals, representations made to the applicants by the County that such a right exists, and the applicants' detrimental reliance upon those representations:

but the majority of it is very specific and detailed, especially that of the Persingers, who owned and lived on the property for from 1973 until the applicants purchased it in 1989. We also note that no representative from Marquam Farms attended the August 16, 1996 hearings officer hearing, despite direct mail notice. Therefore, we reject Marquam Farms' opinions about the credibility of this testimony. Moreover, the testimony that Marquam Farms submitted in the 1994 design review proceeding and had incorporated into this record is from duck hunters that were on the Marquam Farms property, at most, a few days each year. When compared with the detailed evidence about day-to-day activities submitted in support of the applicants', we are not persuaded by the evidence provided by Marquam Farms and do not find it credible.

In addition to the evidence in this record to support the applicants' claim that their kennel has maintained a capacity for 50 dogs since before 1958, we are persuaded by previous County land use decisions that are premised upon, and therefore confirm, the fact that the applicants' have a right to a nonconforming dog kennel with capacity for 50 dogs. In particular, each of the following unappealed land use approvals by Multnomah County is legally premised upon the fact of this nonconforming use:

- March 2, 1989 building permit to remodel the applicants' original kennel building. As part of that process, County Staff specifically informed that a separate conditional use permit was not required for the use because it was nonconforming.
- August 6, 1990 Planning Director's design review decision approving a remodeling of the applicants' existing 50-unit dog kennel.
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence for the applicants' existing 50-unit dog kennel, including a determination by the Chief Assistant County Counsel and an acknowledgment by the planning commission that the applicants had a right to the existing nonconforming 50-unit dog kennel.
- March 7, 1996 Planning Director's design review decision approving the applicants' remodel of the existing 50-unit kennel and the design for an additional 25 kennel units.

Each of the design review approvals specifically stated that the capacity of the applicants' kennel was 50 dogs.³ Marquam Farms received notice of each of these applications, and in each had the opportunity to refute the stated kennel capacity of 50 dogs. Yet, Marquam Farms failed to appeal any of these design review decisions, including the underlying 50-dog kennel capacity. Moreover, in each of these applications, County Counsel and planning staff advised the applicants' they did not need to make a separate application to establish the underlying kennel use.⁴ The applicants' justifiably relied upon that specific direction from County staff and upon the County's approval and proceeded to invest in and maintain their kennel facilities.⁵

³ We acknowledge that only some portions, but by no means all, of the records for these prior proceedings are now before us. However, there is no requirement in state law or the MCC that requires us to first review the entire record of these prior decisions before acknowledging what these decisions approve.

⁴ That acknowledgment was first explicitly stated in the October 8, 1990 opinion of Chief Assistant County Counsel John DuBay that the applicants' had a lawfully existing nonconforming use predating restrictive zoning. We accept and agree with that determination.

⁵ Under our interpretation of MCC .8810, we find that, not only do the applicants' have a vested right to the nonconforming use they claim based on prior County approvals and advice of staff, but that we are estopped from concluding at this late date that the right does not in fact exist.

With regard to the November 1990 conditional use, the permit approved was for a use accessory to the applicants' 50 dog kennel. The application for an accessory night watchman's residence could only be accepted and considered by Multnomah County if the underlying use existed, i.e., a dog kennel with a capacity for 50 dogs. Again, Marquam Farms had notice of this application; its representatives participated in the planning commission hearing, yet Marquam Farms did not appeal. We find that Marquam Farms' failure to appeal the County's decisions and the applicants' reliance on those same decisions has vested the applicants' right to a nonconforming kennel use with a capacity for 50 dogs. We are estopped from concluding otherwise in this application even if we were inclined to do so (which we are not).

Our acknowledgment of the applicants' right in this regard is also supported by the staff's position taken in 1994 when the applicants had applied for design review to expand their dog kennel from 50 to 75 units. At that time, planning staff again verified the applicants' legal right to a nonconforming 50-unit dog kennel with the same Chief Assistant County Counsel, who again opined that the applicants' nonconforming use right was valid and need not be re-proven in the context of the 1994 design review application. On that basis, the applicants were advised to not submit any separate application or evidence to prove their existing nonconforming use right to a 50-unit kennel. This advice is memorialized in staff's February 2, 1994 Pre-application Conference Notes. Because the record in the applicants' 1994 design review application did not include this evidence, which staff specifically advised the applicants to not include, the Hearings Officer denied the application without prejudice.⁶

Our decision approving the applicants' request for a 75-unit dog kennel is based on 2 alternative bases: MCC 11.15.8810 and MCC 11.15.2028(B). The first basis is the more simple and straight forward, and we address it as follows:

A. MCC 11.15.8810—Alteration of an Existing, Lawful Nonconforming Use:
We interpret MCC 11.15.8810 to allow the expansion of an existing nonconforming use so long as the criteria in MCC 11.15.8810(E) are met. In this case, we find these standards are met, based on the detailed discussion that follows. In so doing, we interpret MCC 11.15.8810 as not requiring any detailed discussion about the nature or extent of the underlying nonconforming use, except for a discussion establishing that the use is a lawful nonconforming use.

We specifically reject any suggestion that, in this application, the applicants must prove anew the elements necessary to establish the underlying nonconforming use as though they were applying for a nonconforming use. As discussed below, the fact that the applicants have an existing, lawful, nonconforming 50-unit kennel operation was established through a series of unappealed county decisions over the past 7 years. We decline Marquam Farms' invitation to

⁶ We place emphasis on the 1994 Hearings Officer's decision which made no particular determination about the applicants' nonconforming use claim, but instead said "if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore the applicant's request for Design Review is denied without prejudice." The future confirmation of the applicants' nonconforming use right anticipated by the Hearings Officer in 1994 is set forth in this decision.

readdress the fact of that right or the evidence that would normally be required to establish the applicants' nonconforming use. This proceeding is controlled by MCC 11.15.8810, which assumes the underlying nonconforming use right already exists and has been legally acknowledged.

~~1. The Applicants have an existing, lawful, nonconforming 50-unit dog kennel:~~

~~We find the applicants' request is based on their existing right to a lawful, nonconforming 50-unit dog kennel. The applicants' right to this use is documented in the record through the chronology supplied by the applicants along with corroborating affidavits and testimony before the Hearings Officer.⁷ The dog kennel on the applicants' property predates restrictive zoning, which was first applied on July 10, 1958. The applicants' entitlement to the use is also supported by the following series of unappealed land use decisions by Multnomah County:~~

- ~~• March 2, 1989 building permit to remodel the applicants' original kennel building. As part of that process, County Staff specifically informed that a separate conditional use permit was not required for the use because it was nonconforming.~~
- ~~• August 6, 1990 Planning Director's design review decision approving a remodeling of the applicants' existing 50-unit dog kennel.~~
- ~~• November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence for the applicants' existing 50-unit dog kennel, including a determination by the Chief Assistant County Counsel and an acknowledgment by the planning commission that the applicants had a right to the existing nonconforming 50-unit dog kennel.~~
- ~~• March 7, 1996 Planning Director's design review decision approving the applicants' remodel of the existing 50-unit kennel and the design for an additional 25 kennel units.~~

⁷ This includes the following evidence in the record:

- ~~• xxBusiness License indicating the kennel has a capacity of 50 dogs.~~
- ~~• Affidavits of George Douglas, Elden E. Persinger, Timothy Schillereff, Norman Crowe, Mildred Meifert, Marguerite Persinger, Neil Rose, Louisa Rose, Mairi Holman.~~
- ~~• Letters from Neil Rose, Pat Baggett, Elden E. Persinger, C. Dondo, and George Cashdollar.~~
- ~~• Personal testimony before the Hearings Officer at the August 16, 1995 hearing from Fred Granata, Peter Davis, Kent Meyer, Bruce Cabbellero, Doug Johnston, Patty Larsen, Myron Meifert, Linda Reeder Burns, Tim and Angela Schillereff, Elden D. Persinger, and Marguerette Persinger.~~

We specifically agree with and adopt as our own the Hearings Officer's conclusions with regard to this evidence found at pages 91 through 95 of his September 15, 1995 decision.

~~We conclude that all of these unappealed approvals acknowledged and confirmed the applicants' right to a lawful nonconforming 50-unit dog kennel.⁸ That acknowledgment was first explicitly stated in the October 8, 1990 opinion of Chief Assistant County Counsel John DuBay that the applicants' had a lawfully existing nonconforming use predating restrictive zoning. We accept and agree with that determination, but even if we did not, both of the 1990 decisions were premised on and included this County Counsel opinion and neither was appealed.~~

~~Our acknowledgment of the applicants' right in this regard is further supported by the staff's position taken in 1994 when the applicants had applied for design review to expand their dog kennel from 50 to 75 units. At that time planning staff verified the applicants' legal right to a nonconforming 50-unit dog kennel with the same Chief Assistant County Counsel, who again opined that the applicants' nonconforming use right was valid and need not be proven in the context of the 1994 design review application. On that basis, the applicants were advised to not submit any separate application or evidence to prove their existing nonconforming use right to a 50-unit kennel. This advice is memorialized in the February 2, 1994 Pre-application Conference Notes by staff. Because the record in the applicants' 1994 design review application did not include this evidence, which staff specifically advised the applicants to not include, the Hearings Officer denied the application without prejudice. The Hearings Officer determined that at least some evidence should have been submitted to support the applicants' entitlement to the underlying nonconforming use.⁹~~

We now have the full record before us; whereas, that does not appear to have been the case with the Hearings Officer in 1994. In light of the evidence in this record, we find the applicants' have had a right to a nonconforming 50-dog kennel ~~since the time restrictive zoning was first imposed~~. We find that, had the Hearings Officer before him the record which we do today, he would have had sufficient evidence of the applicants' nonconforming use right to approve the design review request. Regardless of the validity of that supposition, we find that today the applicants have established that their nonconforming use right to a 50-unit dog kennel with a capacity for 50 dogs is preexisting, that the county acknowledged that fact in 1990 on 4 occasions since 1989, and that acknowledgment none of those decisions was w~~ere~~not ~~even~~ by Marquam Farms despite its participation in those proceedings. On this basis, we now proceed to analyze the criteria of § MCC 11.15.8810(E) and address the applicants' request to expand their lawfully existing nonconforming 50-unit dog kennel to 75 units.

⁸ We acknowledge that only some portions, but by no means all, of the records for these prior proceedings are now before us. However, there is no requirement in state law or the MCC that requires us to first review the entire record of these prior decisions before acknowledging what these decisions approve.

⁹ We place emphasis on the 1994 Hearings Officer's decision which made no particular determination about the applicants' nonconforming use claim, but instead said "if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore the applicant's request for Design Review is denied without prejudice." The future confirmation of the applicants' nonconforming use right anticipated by the Hearings Officer in 1994 is set forth in this decision.

2C. The Applicants have demonstrated compliance with the criteria in § MCC 11.15.8810 to allow expansion of the capacity of their dog kennel from 50 to 75 dogs:

MCC 11.15.8810(A)&(E) provide 12 criteria that must be met before an alteration, such as the one proposed here, can be approved and specifically require findings on each of the following.

- (A)(1): A change in the use of no greater adverse impact on the neighborhood.
- (A)(2): A change in the structure of physical improvements of no greater adverse impact on the neighborhood.
- (E): An alteration of a non-conforming use may be permitted if the alteration will affect the surrounding area to a lesser negative extent than the current use, considering:
 - (1) The character and history of the use and of development in the surrounding area.
 - (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.
 - (3) The comparative numbers and kinds of vehicular trips to the site.
 - (4) The comparative amount and nature of outside storage, loading and parking.
 - (5) The comparative visual appearance.
 - (6) The comparative hours of operation.
 - (7) The comparative effect on existing vegetation.
 - (8) The comparative effect on water drainage.
 - (9) The degree of service or other benefit to the area, and
 - (10) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

We address each criterion below separately. But first, we specifically find that § MCC 11.15.8810(E) does not necessarily preclude an increase in the number of kennel units, and that an increase from 50 to 75 can meet this standard of a reduction in negative impacts. In particular, we find the applicants' specific proposal includes a redesign of kennel operation that,

when taken as a whole, will achieve a reduction in overall negative impacts from that of the current 50 units.

1a. A change in the use of no greater adverse impact on the neighborhood.

The primary impact from this proposal, and the one which Marquam Farms complains of, is noise. We find this proposal and the design features it entails will result in an overall reduction in noise from this dog kennel operation. The specific design features that will bring about this degree of protectiveness is explained in detail in subsection "d" below.

2b. A change in the structure of physical improvements of no greater adverse impact on the neighborhood.

The physical improvements that will accompany the applicants' increase from 50 to 75 dogs will reduce the operation's overall impact on the neighborhood, which in this case is limited to the Marquam Farms hunt club. The specific ways in which this will happen are described in detail in the subsections that follow.

3e. The character and history of the use and of development in the surrounding area.

As already noted, the starting point for our inquiry is the applicants' lawful, existing, nonconforming 50-unit dog kennel. The history of use at this 9.4 acre site is characterized by a commercial dog kennel with a capacity for 50 dogs. The property is too small to be productively or economically put to a farm use. We define the "surrounding" area to be the area likely to be impacted by this proposed use. We find that a circle with a radius of 1,500 feet exceeds the distance likely to experience impacts from this proposed kennel operation. For purposes of the criteria in § MCC 11.15.8810(E), we address potential impacts within this area.¹⁰

The surrounding area is rural and sparsely developed (only 3 residences within a quarter mile radius). The kennel complements recreational use of the island for hunting since hunting dogs are frequently boarded and trained at the kennel. The nearest residence is approximately 800 feet from the kennel, separated by Reeder Road and a 15-foot dike covered with an expansive blackberry bramble. The following improvements are not part of the current kennel operation, but are proposed by the applicants in this proposal: insulated roof, walls, parking and circulation. With these improvements, we find that barking dogs will not be audible at the nearest residence, and this conclusion is supported by the sound study conducted by the applicants and included in the record.¹¹

¹⁰ In addition to the findings set forth herein, we also expressly accept and adopt as our own the compatibility analysis submitted by the applicant at pages 13-14 and 26 of their application narrative.

¹¹ The noise study (conducted by Rose City Sound in 1990) is attached to the applicants' narrative as Attachment E. We accept this study and its conclusions as credible expert testimony on the subject of noise impacts.

The only commercial farming operation with a 1,500 foot radius is a dairy operation which reports no adverse impacts to date from the current 50-dog kennel operation or any of the other dog kennels on this property. We find that, with the proposed improvements, this farm will not experience any impacts from the proposed use in the future.

The only possible impact identified in the record is with Marquam Farms - the hunt club that abuts the subject site. Marquam Farms shares a common access easement with the applicants' kennel. We find that any dog barking problems previously experienced by Marquam Farms will no longer exist because of the proposed redesign. The applicants propose a new configuration that prevents dogs housed in the kennels from seeing hunters arriving and leaving Marquam Farms. With the new design, the dogs will no longer bark at arriving and departing hunters, thus the proposal, when taken as a whole, will reduce the impacts presently experienced by Marquam Farms from 50 dogs.

4d. The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.

With regard to noise, the applicants have submitted a credible, expert sound study that demonstrates that barking dog noise, even with the addition of 25 more dogs, will be reduced.¹² In particular, the following design features will collectively reduce the noise below what is currently experienced with 50 dog kennel:

- A 100' solid wall for the full length of the shared accessway that blocks the kennels' view of hunters entering and leaving the Marquam Farms hunt club,
- Kennels covered with an insulated roof to prevent sound transmission,
- A parking lot design that allows dogs to be taken to grooming, bathing, exercise and living facilities without being heard or seen by dogs in the kennel,
- A circulation design that allows dog owners to pick-up and leave-off dogs out of sight and sound of the kennels, thus not disturbing dogs housed in the kennels.

We find these measures will be adequate to prevent and, in fact, reduce noise impacts on all properties within the impact area. In light of the fact that the applicable zoning allows all of the surrounding properties to have up to 3 adult dogs with absolutely no mechanism to prevent any impacts, we find the applicants' proposal will prevent noise impacts.

With regard to dust, we find that the applicants' driveway is graveled and there is no evidence of dust from traffic on the driveway. Based on this record, we find that dust is not a factor that could adversely impact properties in the impact area. To the extent that dust from the

¹² In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicant at pages 26-28 of their application narrative.

gravel driveway could be construed to be a problem, we find that conventional tillage agricultural operations produce far more dust than could be produced from the applicants' driveway.

With regard to odor, we find no evidence of odor complaints in the record before us. Moreover, the applicants have installed an on-site septic system sufficient to handle all septic waste from a 75-unit dog kennel. Consequently, we find that odor from the proposed 75-unit kennel operation will not be a problem.

We find there will be no vibration, glare or smoke impacts from this proposed use. In summary, we conclude that the proposed alteration to expand the kennel to 75 dogs will affect the surrounding area to a lesser negative extent than the current 50-unit kennel considering noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line. Thus, we find that, pursuant to § MCC 11.15.8810(E)(2), the alteration will have a reduced negative effect when compared to the current operation.

5e. The comparative numbers and kinds of vehicular trips to the site.

We find that, with an increase from 50 to 75 kennels, vehicular traffic will necessarily increase; however, with the proposed modifications to the kennel's design, we find that the negative impacts from traffic will be less.¹³ The traffic benefits from the proposal are primarily from improved parking and circulation at the site - and issue discussed in the next subsection. Moreover, we find, based on evidence in the record, that none of the transportation facilities serving the applicants' kennel are near capacity, and thus there will be no capacity or safety impact from the proposed expansion. We also find to be persuasive the fact that the peak dog boarding season (summer) does not overlap with the peak in duck club use at Marquam Farms (fall and winter). Accordingly, we find, pursuant to § MCC 11.15.8810(E)(3), the alteration will have a reduced negative effect when compared to the current operation.

6f. The comparative amount and nature of outside storage, loading and parking.

There is no outside storage associated with the current or proposed configuration, thus outside storage is not an issue. The proposal will improve the site's parking by adding wheel stops, thus maintaining better parking organization and by screening the parking and loading areas from dog kennels, thus limiting disturbance to boarded dogs. Also, the new parking configuration will prevent customer cars from blocking the access shared with Marquam Farms because of the proposed single office, replacing the current 2 offices, the location of circulation signs and the better organization of parking spaces marked with wheel stops. With these improvements, we find that, pursuant to § MCC 11.15.8810(E)(4), the alteration will have a reduced negative effect when compared to the current operation.

¹³ In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicants at pages 28-30 of their application narrative.

7g. The comparative visual appearance.

We find that the proposed improvements to the kennel will improve its visual appearance for the following reasons:

- The old Quonset huts on the property will be replaced with a new, state of the art kennel building.
- The parking lot will be provided with wheel stops and signs to ensure that customer vehicles are parked in an orderly fashion.
- New landscaping and fencing will be installed as proposed which will enhance the appearance of the kennel and grounds.

With these improvements, we find that the expanded kennel will have a better visual appearance than does the present 50-dog operation. Accordingly, we find that, pursuant to § MCC 11.15.8810(E)(5), the alteration will have a reduced negative effect when compared to the current operation.

8h. The comparative hours of operation.

The hours of operation with the proposed expansion will not change; thus, § MCC 11.15.8810(E)(6) is not a factor.

9i. The comparative effect on existing vegetation.

With the proposed expansion of use to 75 dogs, the applicants propose new landscaping which will benefit and lessen the impacts to Marquam Farms. In particular, Marquam Farms will benefit from landscaping separating the parallel parking area from the northeast wall of the new kennel building. With this improvement, we find that, pursuant to § MCC 11.15.8810(E)(7), the alteration will have a reduced negative effect when compared to the current operation.

10j. The comparative effect on water drainage.

The proposed alteration will increase slightly the impervious area and thus the runoff from the site. However given the site's 9.4-acre size, we find that the site's overall drainage will not be affected by the proposed expansion. As noted previously, the water quality of the runoff will not be negatively impacted by the use because of the septic system planned to serve the expanded operation. For these reasons, we find § MCC 11.15.8810(E)(6) is not a factor.

11k. The degree of service or other benefit to the area.

We find the alteration proposed by the applicants will benefit the surrounding area because of the substantial improvements in design, facilities and operations it represents. The only complaints received in this matter were from Marquam Farms, and we find that the

proposed alteration, when taken as a whole, will not only eliminate those impacts that currently exist, but will benefit Marquam Farms. The expansion will allow the applicants to serve more of the dogs owned by hunt club members as well as dogs owned by other Sauvie Island residents. The proposal will reduce noise, improve the overall appearance of the property and buildings and improve parking and circulation. All of these improvements, and the increased capacity, stand to benefit the surrounding area. Thus, pursuant to § MCC 11.15.8810(E)(9), the alteration will have a reduced negative effect when compared to the current operation

12. Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

As noted previously, we find the present use has no measurable impact on surrounding resource uses or its neighbors, with the possible exception of Marquam Farms. With the proposed expansion, those few impacts will be substantially reduced or eliminated. The applicants' proposal is designed specifically to reduce impacts with Marquam Farms and provide a better standard of service to current and future customers. We believe the insulated and completely contained building design, the solid wall along the shared access way, the improved circulation measures and landscaping will make this kennel more compatible with Marquam Farms and the other properties within the surrounding area. We find these measures, taken as a whole will reduce the overall conflicts with surrounding uses, to the extent they exist at all, and will make the use in its altered form more compatible with its neighbors as required by § MCC 11.15.8810(E)(10).

~~B. MCC 11.15.2028(B) Expansion of an Existing, Lawful Conditional Use:~~
~~The second alternative basis for approval which remains after LUBA's remand order is MCC 11.15.2028(B). This code provision provide a basis for approval of the applicants' request for a 75-unit dog kennel completely independent and apart from MCC 11.15.8810 and one which does not depend upon traditional notions of nonconforming use theory based on state law, i.e., ORS 215.130 and appellate cases decided under that statute.~~

~~In its review of our first decision in this matter, LUBA concluded the applicants had established a nonconforming use right, but, without much exploration of the extremely large record, summarily concluded that the extent of that use was a 4-dog kennel. As we explain in the previous section, the extent of the nonconforming use which we address in this decision, and which the evidence in the record supports, is 50 dogs. However, in response to questions raised by LUBA in its decision regarding MCC 11.15.2028(B), we provide the following interpretation of that section and an explanation of how it too supports our finding of 50 dogs as the starting point.~~

~~1. Under MCC 11.15.2028(B) the applicants have a lawful conditional use right to a 50-unit dog kennel:~~

~~MCC 11.15.2028(B) pertains to uses that were lawful when first established and in existence at the time restrictive zoning was first applied. In our original decision in this matter,~~

we did not focus on this provision, and LUBA indicated that a fuller explanation and interpretation was called for. Specifically, MCC 11.15.2028(B) provides that:

~~"Conditional uses listed in subpart MCC .2012 [the conditional use section] legally established prior to August 14, 1980, shall be deemed conforming and not subject to the provisions of MCC .8804 [the nonconforming use section], provided, however, that any change of use shall be subject to approval pursuant to the provisions of MCC .2012."~~

As an aside, we interpret this code provision consistently with the state law that controls nonconforming uses, but with the proviso that, under its terms, a lawful, existing nonconforming use may become transformed into a conditional use. LUBA and the Court of Appeals appeared to interpret our original decision to allow the resurrection of lapsed nonconforming uses as fully allowed conditional uses under this code provision. This was not our intent. In order to gain protection under MCC 11.15.2028(B) and conversion into a conforming use according to its terms, an applicant must prove all of the following:

- ~~(1) The use was lawful when established,~~
- ~~(2) The use was in continuous existence up to and including August 14, 1980,~~
- ~~(3) The use is listed as a conditional use in the underlying zoning district, and~~
- ~~(4) The use has been continuously in operation since August 14, 1980, at least at some level of intensity, until the present.~~

We find all of these elements to be present in this case.

As explained in the first sections of this decision, the record clearly demonstrates that a dog kennel lawfully existed at the subject site and has operated since before the time of restrictive zoning. With little review of the evidentiary record, LUBA noted the applicants' nonconforming use right to 4 dogs. Thus the first two elements of MCC 11.15.2028(B), are met. The third element is also met because dog kennels are listed as being conditionally allowed in the County's EFU zone. See MCC 11.15.2012(B)(11). According to the plain language of MCC 11.15.2028(B), the dog kennel operation on the applicants' property became a lawful conditional use on August 14, 1980 with no affirmative or formal action by the County nor an application by the then property owners. MCC 11.15.2028(B) does not require any specific proceeding or permit for a use that has met the requirements of that section to be deemed a lawful conditional use and we reject any suggestion that a formal conditional use permit is required under MCC 11.15.2028(B).

An important part of our interpretation rests upon the use being listed as a conditional use in the underlying zone and the fact that the use lawfully existed on August 14, 1980. In light of those facts, we do not understand what an additional formal conditional use proceeding or permit would add. The use existed and it was lawful at least on August 14, 1980. MCC 11.15.2028(B) requires that use be deemed a lawful conditional use, and we give literal effect to that requirement. For the purposes of this proceeding, however, the question remaining is the

~~fourth element, i.e., has the use been maintained at least at some level of intensity since August 14, 1980 in order to maintain the conditional use status.~~

~~With regard to the fourth element, MCC 11.15.2028(B) is not a nonconforming use regulation, and we specifically find that our interpretation of this provision is not controlled by traditional notions of nonconforming use law, ORS 215.130 or appellate decisions interpreting that statute. We find that once a use, such as the applicants' dog kennel, has attained the status of a legal conditional use on August 14, 1980, it may vary in intensity or extent without any particular limitations except there can be no lapses. Thus, no particular approval or permit was required for the applicants' to maintain their conditional use status, so long as there were no lapses in the use between August 14, 1980 and now. The record shows no such lapses, but a continuous, uninterrupted use dog kennel use throughout that period.¹⁴ Thus, we find the fourth element to be met, and the applicants have a lawful conditional use right to a 50 dog kennel, which may be expanded pursuant to the conditional use permit criteria in MCC 11.15.7105, *et seq.*~~

~~The interpretation we articulate today is consistent with the interpretation County planning staff and the County Counsel have followed with regard to these applicants in prior decisions, including the following:~~

- ~~• March 1989 building permit to remodel the applicants' original kennel building,~~
- ~~• August 1990 design review decision approving a remodel of the applicants' 50-unit dog kennel, and~~
- ~~• November 1990 conditional use permit for the night watchman's residence.~~

~~Based on this interpretation, the applicants were specifically told to not bother applying for any sort of nonconforming use status or conditional use permit confirming that their 50-unit dog kennel was already a lawful conditional use. Pursuant to our interpretation of MCC 11.15.2028(B), as set forth in our decision today, that prior advice was proper, lawful and supported by the plain language of MCC 11.15.2028(B), which has been acknowledged by LCDC as being consistent with applicable state law.~~

- ~~2. The applicant's lawful conditional use right to a 50 dog kennel can be expanded to 75 dogs because the conditional use permit standards in MCC 11.15.7105, *et seq.* are met:~~

~~Having established that the applicants have a lawful right to a 50-unit conditional use dog kennel coming into this proceeding, they may now apply to expand that use to 75 dogs by meeting the standards for conditional uses in MCC 11.15.7105, *et seq.* We find, as did the Hearings Officer in 1995, that the applicants have demonstrated compliance with those~~

¹⁴ However, had a lapse occurred, the applicants would simply have had to apply for a new conditional use permit to reactivate the use. The use would not be illegal, it would merely require a new permit.

standards.¹⁵ ~~Our conclusion in this regard is based upon the facts and conclusions asserted by the applicants' at pages 13 through 25 of their application narrative, which we adopt as our own in support of this decision. Thus, the applicants have begun with a lawful conditional use right to a 50 unit dog kennel pursuant to MCC 11.15.2028(B) and have demonstrated compliance with the approval standards necessary to expand that use to a 75 unit dog kennel under MCC 11.15.7105, et seq.~~

IV. CONCLUSION:

Based on the foregoing findings of fact and conclusions of law, we hereby approve the applicants' request for an alteration of their existing, lawful, nonconforming 50-unit dog kennel to expand to accommodate 75 dogs. ~~As an independent, alternate basis for our decision we approve the applicants' request for a CUP to expand their existing lawful conditional use 50 unit dog kennel to accommodate 75 dogs.~~

IT IS SO ORDERED this ____ day of December, 1997.

Chair of the Board of Commissioners

Attest: _____

AYES: _____

NAYS: _____

J:\DHK\33536-00.003\BOCCFIND.DOC

¹⁵ We specifically agree with, and adopt as our own, the Hearings Officer's conclusions with regard to the applicants' compliance with the standards for modifying conditional uses in MCC 11.15.7105, *et seq.*, found at pages 85 and 86 of his September 15, 1995 decision.

LAW OFFICES OF
JOSSELYN, POTTER & ROBERTS
53 S.W. YAMHILL STREET
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December 29, 1997

Board of County Commissioners
Multnomah County
1120 SW 5th Avenue, Room 1500
Portland, OR 97204

97 DEC 29 PM 4:27
MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS

Re: Schillereff Remand Hearing
Case File No. CU 4-95 and <C 1-95

Dear Commissioners:

At your last meeting concerning these applications, you directed your staff to prepare an analysis, based on the record, of the nature and extent of a nonconforming kennel use, if any exists, on the applicants' property. Your staff did not do that. Instead, the staff forwarded to you a brief memo from the applicant addressing only the "capacity" of the kennel¹ and revised findings prepared by the applicant. The proposed findings and the staff summary of them contain factual errors. The proposed findings and the staff's proposed action options are clearly wrong legally. The proposed options are each addressed below.

Board Option 1

"Denial of application based on failure to prove that there have been 50 dogs kenneled at the subject property, with no breaks of more than two years, from 1958 to present. This option means that the Board has interpreted the 'nature and extent' of a non-conforming use to be purely a numerical 'counting of the dogs' over the relevant years."

This is as close as the staff gets to acknowledging the law of nonconforming use, which

¹I assume that all of the items attached to the memo and to your agenda materials are taken from the existing record, but reserve an objection if any of them are not in the record. I have not had time since receiving the material to determine whether everything is in the record.

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Multnomah County
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is that the use may only continue at the lowest level of intensity to which it has dropped over time. That is not the same as simply counting the dogs. It involves examining the entire use. The number of dogs kenned is only one element, though a very important one. The County cannot determine whether a proposed expansion of a nonconforming use will have the same or lesser adverse impact until it determines the starting point nature and extent of the use. You cannot measure change without both a starting point and an ending point.

The reference to a two year break from 1958 to the present is erroneous. Until recently, the County Code specified that a one year period of interruption is deemed abandonment.

Absence of a nonconforming use for 50 dogs does not itself require denial. If the use dropped below 4 dogs for a period of more than one year, then the NCU was lost. At a level of 4 or more dogs, it simply dropped to that level. There is evidence in the record that the use was lost. But even if you ignore that evidence and accept the best case the applicants' can make, they have only shown a use involving noncommercial kenneling of 4-6 dogs on a noncontinuous basis.² That is the level of activity against which the proposed 75 dog commercial operation must be judged.

Board Option 2

Approve the application based on the assumption that the "capacity" of the kennel established the nature and extent of the use and the finding that the kennel has always had a 50 dog "capacity".

This approach looks only to the structures and improvements utilized in conjunction with the use. The structures and improvements are not the use. A pole barn (such as found on

²The Findings assert that the evidence from Red and Marguerette Persinger is most persuasive for the period of their ownership from 1973 to 1989. Red's 1994 affidavit states: "In other words, although we never operated the kennel commercially, we did operate the kennel continuously for our own dogs and as a courtesy to friends and relatives from 1973 until my great-nephew Tim Schillereff and his wife Angela took over operation of the kennel. We regularly cared for 4-5 dogs at the kennel." Marguerette's 1995 affidavit states: "At a minimum there were always four to six adult dogs living or boarded on our property each year from 1973 until the time we sold the property and kennel."

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this property) may house a farm use, a use accessory to a dwelling, a manufacturing use, kennel runs and many other uses. The zoning code regulates both structures and uses. Either may be permitted, be lawfully nonconforming or be illegal. The nonconforming kennel use cannot be defined only by the capacity of the kennel.

To the extent that capacity is one, but only one, factor in determining the nature and extent of the use, the County must further identify what it means by capacity. The March 2, 1989 document referred to in the staff memo and Findings does not prove an existing 50 dog capacity. It says "limited to 50 dogs". The August 6, 1990 design review decision does not show pre-1958 buildings with a capacity for 50 dogs. The included drawings prepared by the applicants show 30 existing dog runs and propose to add 19 additional ones in the pole barn and divide one existing run to make a new total of 50.

The analogy to the rock quarry considered in *Polk County v. Martin* is misapplied. The case does not say that a nonconforming rock quarry can operate at any level of intensity even though in the past it has operated only occasionally. The holding of the case is that the occasional use defines the nature and extent of the nonconforming quarry use and limits the future use to that level. We are not aware of any case that holds that if a property supports physical improvements capable of a certain capacity of use, then those improvements may be used in the future to their full capacity in connection with a nonconforming, regardless of the history of use in the past. That conclusion, asserted in the Findings and the staff memo, is contrary to the holding in *Polk County* and other nonconforming use cases.

Vested Right and Estoppel

The staff memo does not mention the second basis for approval asserted in the Findings. That is that the applicants have acquired a vested right to operate a 50 dog kennel and the County is estopped to deny that right. This argument was raised before LUBA by the County and the applicants and was rejected by LUBA. Neither the County or the applicants pursued the argument in their unsuccessful appeal to the Court of Appeals. The County cannot revive this argument on remand.

Board Option 3

Remand to the Hearings Officer to open the record for more evidence.

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Marquam Farms continues to believe that the County will be best served by a remand to a Hearings Officer for a thorough review of the record and a new decision on the facts and applicable law. That does not necessarily mean reopening the record.

With respect to the nature and extent of the nonconforming use, there is no need or reason to reopen the record. The Hearings Officer may choose to accept additional evidence concerning history of impacts since the last hearing, but that would be up to the discretion of the Hearings Officer.

Additional Option

Based on the record and the law, the County should deny the application for either of the following reasons:

1. The nonconforming kennel use was lost because there have been periods of one year or more during which fewer than 4 dogs lived or were regularly boarded on the property, or
2. The nonconforming kennel use is currently only for 4-6 dogs including several owner's dogs and occasional, non-commercial visits from other dogs, and the proposed expansion to a 75 dog commercial kennel will have greater adverse impact on surrounding property than the lawful level of use.

JOSSELYN, POTTER & ROBERTS

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Conclusion

The Board should either remand the applications to a Hearings Officer or deny them. The proposed Findings, Conclusion and Order are erroneous in fact and law and are in direct conflict with the clear direction to the County from LUBA and the Court of Appeals on remand.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence R. Derr", written in a cursive style.

Lawrence R. Derr

LRD:lb

cc: Sandra N. Duffy
Dan Kearns
Client

Chair Stein
12/30/97

We specifically note the applicants' kennel operation has buildings and facilities to board 50 dogs and that the record contains focused testimony that 50 dogs have frequently been boarded at the kennel since 1958. We find that the kennel business has a periodic nature that results in a variation in the number of dogs boarded over the course of seasons and years. We find, however, that the basic facilities for 50 dogs has been in place on the property and used throughout the course of that period. On that basis, we find that the 50-dog kennel that existed in 1958 has never been abandoned or discontinued, but, instead has persisted continuously until the present. Granted, there have not been 50 dogs boarded at the kennel continuously throughout that time, but we do not interpret our ordinance to require that kind of continuous use. It is sufficient that the owners of the kennel, including these applicants, have continuously maintained the facilities for a maximum occupancy of 50 dogs since 1958 and have, in fact, frequently housed that maximum number of animals. On that basis, the applicants have maintained their right to a nonconforming use of 50 dogs until the present.

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

In the matter of the application by Tim and)
Angela Schillereff for the alteration of an)
existing nonconforming dog kennel use to)
allow up to 75 dogs.)

On remand from LUBA - LUBA No. 95-254)
County File No. CU4-95, MC1-95.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW and
FINAL ORDER**

The Board of Commissioners for Multnomah County hereby approves the applicants' request for an alteration of their existing, lawful, nonconforming dog kennel with a capacity for 50 dogs to expand the kennel capacity to accommodate 75 dogs pursuant to MCC 11.15.8810.

The Multnomah County Board of Commissioners finds as follows:

I. PROCEDURE AND PROCEDURAL HISTORY:

This matter originally came before us in the form of the following three alternative applications to allow the applicants' proposed 75-unit dog kennel:

- A. Authorization pursuant to MCC 11.15.8810 to allow the alteration of the applicants' existing nonconforming 50-unit dog kennel to a 75-unit dog kennel;
- B. A conditional use permit pursuant to MCC 11.15.2028(B) to expand the applicants' existing, conforming 50-unit dog kennel to a 75-unit dog kennel; and
- C. A Conditional Use Permit to allow a new 75-unit dog kennel on high value farm land.

The applicants initially took a 3-part alternative approach due to ambiguities in the Multnomah County Code (MCC) as to the status of the applicants' existing 50-unit nonconforming kennel operation and uncertainty as to the avenues in the MCC for obtaining an increase in use to 75 units. In our original decision, we approved all three of the alternative applications based on the 110-page findings of fact and conclusions of law written by the Hearings Officer.

The opponent, Marquam Farms, appealed to LUBA, which remanded the decision back to this Board in a December 5, 1996 Final Opinion and Order for further consideration of the "nature and extent" of the applicants' existing kennel operation. We and the applicants appealed LUBA's decision to the Court of Appeals, which affirmed LUBA. Thus, this matter comes

before us on remand from LUBA for further consideration of the nature and extent of the applicants' existing nonconforming kennel use.

This matter was duly noticed and a public hearing was held before the Board of County Commissioners on December 16, 1997 (the "remand hearing"). That hearing was continued to allow staff to provide an excerpt of the record identifying the evidence in the record that supports the applicants' nonconforming use arguments. The hearing was reconvened December 30, 1997 for decision. Because we find the evidentiary record is adequate and compliance with LUBA's remand order does not require the evidentiary record to be re-opened, we did not allow the introduction of new factual evidence at the remand hearing. In this remand proceeding, the applicants' representative was allowed to make summary legal arguments, based on the existing record, as was a representative from Marquam Farms. No other party has standing in this remand proceeding; thus, after these summary arguments, we closed the public testimony portion of the hearing, deliberated and voted to approve the applicants' request.

II. CONTROLLING LAW:

We note at the onset, the applicants' original set of 3 alternative requests, coupled with the Hearings Officer's lengthy decision addressing all issues raised by all parties, created a certain amount of confusion on the part of LUBA and the Court of Appeals as to what the applicants had requested and what this Board had approved. On remand, the applicants have endeavored to simplify and make more clear their request and we too simplify our decision.

A. New Dog Kennel on High Value Farm Land: LUBA and the Court of Appeals eliminated the applicant's third alternative approach to this application, *i.e.*, establishment of a new 75-unit dog kennel on high value farmland. OAR 660-33-120 prohibits the "establishment" of a new dog kennel on high value farmland, but allows local governments to approve the expansion of an existing dog kennel on high value farmland. According to the Supreme Court's decision in *Lane County v. DLCD*, 325 Or 569 (1997), this rule is valid and prohibits our consideration of the applicants' third request in this matter, but specifically authorizes the expansion of an existing dog kennel on high value farmland under MCC 11.15.8810. Thus, in this remand decision, the applicants' have abandoned, and we do not address, any request to establish a new dog kennel on high value farmland.

B. MCC 11.15.2028(B): In its remand order, LUBA expressed strong reservations about the validity of MCC 11.15.2028(B) and our interpretation of this code provision that converts a nonconforming use into a lawful, conforming conditional use by operation of law without a separate permit. This was the applicants' second alternative basis which we approved. The applicants have withdrawn this aspect of their application, and for that reason we do not address MCC .2028 further.

C. MCC 11.15.8810: This code provision allows the alteration, including an expansion, of any existing nonconforming use so long as the alteration will affect the surrounding area to a lesser negative extent, considering certain criteria. This was the applicants'

first basis for their application, which we approved. We find that, on its face, MCC .8810 does not require an evaluation of the nature or extent of the underlying nonconforming use. We interpret MCC .8810 as requiring only that an applicant start with a lawful nonconforming use which can then be modified, including in some cases an expansion. Under our interpretation, an evaluation of a request made pursuant to MCC .8810 requires only that we determine that a lawful nonconforming use exists and then that the 12 alteration criteria in MCC .8810(A)&(E) are met. MCC 11.58.8810, which allows alteration of a nonconforming use, does not require an applicant to each time re-prove the nature and extent of the underlying nonconforming use. We find that once an applicant has proven to the county its entitlement to a nonconforming use in some prior proceeding at a particular level of intensity, we are entitled to rely upon that prior showing as a conclusive determination that the nonconforming use exists and allows us to proceed with the request to modify that lawfully existing nonconforming use. We begin our Findings and Decision with a discussion of this aspect of the applicants' application.

III. FINDINGS AND DECISION:

This decision addresses only the requirements of MCC .8810 and the remand orders of LUBA and the Court of Appeals. In particular, LUBA remanded our earlier decision for a more complete discussion of the nature and extent of the applicants' nonconforming dog kennel operation. We do not read the remand orders to require us to reopen the record to accept more evidence or that we necessarily must quantify the nature and extent of the applicants' nonconforming by using numbers dogs. As noted above, we do not interpret MCC .8810 to require the applicants to re-prove entitlement to their underlying nonconforming use; however, LUBA's remand order anticipates that level of explanation in our findings on remand, and so we provide it here. We find the applicants have established two bases for their right to a nonconforming dog kennel with a capacity for 50 dogs and those bases are discussed in the first two subsections. The third subsection addresses the criteria in MCC .8810 for expanding that lawful nonconforming use.

A. The Applicants' have proved their right to an existing lawful nonconforming dog kennel use with capacity for 50 dogs:

We specifically note the applicants' kennel operation has buildings and facilities with capacity to board 50 dogs and that the record contains focused testimony that 50 dogs have frequently been boarded at the kennel since 1958. We find that the kennel business has a periodic nature that results in a variation in the number of dogs boarded over the course of seasons and years. This is similar to nonconforming schools, hotels, churches, campgrounds and similar facilities which have a basic set of facilities with a particular capacity, but the actual number of occupants varies over time.

When interpreting MCC .8810 in the context of nonconforming dog kennels, as with nonconforming hotels, schools, churches and campgrounds, we do not quantify the extent of the nonconforming use by counting the number of occupants over time and then using the low-point as the ceiling for the use's extent. For purposes of compliance with MCC .8810 we focus on the

capacity of the nonconforming kennel, hotel, school, church or campground facility and use the facility capacity as the measure of the extent of the nonconforming use right over time. If the operator abandons the use or evidences the intention to abandon, we then conclude the use has lapsed, and the right is terminated. But, when the basic facility and capacity have been actively maintained continuously over time and occasionally filled to that capacity, we will conclude the "use" has persisted throughout and that the nonconforming use right has been maintained. Just because the number of dogs, students, hotel guests, parishioners or campers fluctuates over time, we do not measure or limit the extent of the nonconforming use right by the number of occupants, which in virtually all cases would be zero at some point during every year. This interpretation of MCC .8810 and state law is modeled on the Oregon Supreme Court's decision in *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1997).

Consistent with this interpretation, we find that all of the basic facilities for boarding 50 dogs have been in place on the applicants' property since before 1958, actively maintained and used throughout the course of that period. This is supported by the County's business license records for this kennel, and the sworn affidavits, documents and live testimony presented at the August 16, 1996 hearing before the hearings officer.¹ In this regard, we are particularly persuaded by the testimony of the dog kennel's original owners Red and Marguerette Persinger before the hearings officer.² This evidence shows that the kennel facility on the applicants' property has been maintained with a capacity for 50 dogs throughout this period and frequently 50 dogs actually were kenneled at the facility. The following County records and land use approvals for this kennel operation provide further proof that the capacity of the kennel facility has been maintained at 50 dogs since before 1958:

¹ This includes the following evidence in the record:

- The 1967 and other County Business License records indicating the kennel on this property has had capacity for 50 dogs since 1954.
- Affidavits of George Douglas, Elden E. Persinger, Timothy Schillereff, Norman Crowe, Mildred Meifert, Marguerite Persinger, Neil Rose, Louisa Rose, Mairi Holman.
- Letters from Neil Rose, Pat Baggett, Elden E. Persinger, C. Dondo, and George Cashdollar.
- Personal testimony before the Hearings Officer at the August 16, 1995 hearing from Fred Granata, Peter Davis, Kent Meyer, Bruce Cabbellero, Doug Johnston, Patty Larsen, Myron Meifert, Linda Reeder Burns, Tim and Angela Schillereff, Elden D. Persinger, and Marguerette Persinger.

We specifically agree with and adopt as our own the Hearings Officer's conclusions with regard to this evidence found at pages 91 through 95 of his September 15, 1995 decision.

² Representatives of Marquam Farms have objected that none of the testimony presented on behalf of the applicants before the hearings officer is credible. We disagree. Not only is much of this evidence given under oath, but the majority of it is very specific and detailed, especially that of the Persingers, who owned and lived on the property for from 1973 until the applicants purchased it in 1989. We also note that no representative from Marquam Farms attended the August 16, 1996 hearings officer hearing, despite direct mail notice. Therefore, we reject Marquam Farms' opinions about the credibility of this testimony. Moreover, the testimony that Marquam Farms submitted in the 1994 design review proceeding and had incorporated into this record is from duck hunters that were on the Marquam Farms property, at most, a few days each year. When compared with the detailed evidence about day-to-day activities submitted in support of the applicants', we are not persuaded by the evidence provided by Marquam Farms and do not find it credible.

- October 18, 1967 County Business License records stating that the facility was constructed in 1954 and 1955 as a commercial breeding and boarding kennel facility with a capacity of up to 50 dogs.
- March 2, 1989 building permit to remodel the applicants' original kennel facility with a capacity of 50 dogs.
- August 6, 1990 Planning Director's design review decision specifically for the "remodeling of a Kennel for 50 Dogs." The lot layout in the application and decision show the original pre-1958 buildings still intact with a capacity for 50 dogs.
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence, the decision for which specifically says the applicants' kennel has an approved capacity for 50 dogs.
- March 7, 1996 Planning Director's design review decision approving the remodel of the applicants' kennel with a stated existing capacity of 50 dogs.

The applicants and their predecessors have actively maintained the kennel buildings, dog runs and other facilities with a capacity of 50 dogs since before 1958. On that basis, we find that the kennel facilities with a capacity for 50 dogs which existed in 1958 has never been abandoned or discontinued, but, instead has been actively maintained and used continuously until the present. Granted, there have not been 50 dogs boarded at the kennel throughout that entire time, but we do not interpret our ordinance to require that kind of continuous use, nor did the Supreme Court require it of the aggregate pit in the *Martin* case. It is sufficient that the owners of the kennel, including these applicants, have continuously maintained the facilities for a maximum occupancy of 50 dogs since 1958 and have, in fact, frequently housed that number of animals. On that basis, the applicants and their predecessors have actively maintained until the present the right to a nonconforming kennel facility with a capacity for 50 dogs.

B. The Applicants' have a vested right to a nonconforming dog kennel with a capacity for 50 dogs by virtue of the County's prior approvals, representations made to the applicants by the County that such a right exists, and the applicants' detrimental reliance upon those representations:

In addition to the evidence in this record to support the applicants' claim that their kennel has maintained a capacity for 50 dogs since before 1958, we are persuaded by previous County land use decisions that are premised upon, and therefore confirm, the fact that the applicants' have a right to a nonconforming dog kennel with capacity for 50 dogs. In particular, each of the following unappealed land use approvals by Multnomah County is legally premised upon the fact of this nonconforming use:

- March 2, 1989 building permit to remodel the applicants' original kennel building. As part of that process, County Staff specifically informed that a separate conditional use permit was not required for the use because it was nonconforming.
- August 6, 1990 Planning Director's design review decision approving a remodeling of the applicants' existing 50-unit dog kennel.
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence for the applicants' existing 50-unit dog kennel, including a determination by the Chief Assistant County Counsel and an acknowledgment by the planning commission that the applicants had a right to the existing nonconforming 50-unit dog kennel.
- March 7, 1996 Planning Director's design review decision approving the applicants' remodel of the existing 50-unit kennel and the design for an additional 25 kennel units.

Each of the design review approvals specifically stated that the capacity of the applicants' kennel was 50 dogs.³ Marquam Farms received notice of each of these applications, and in each had the opportunity to refute the stated kennel capacity of 50 dogs. Yet, Marquam Farms failed to appeal any of these design review decisions, including the underlying kennel use with a 50-dog capacity. Moreover, in each of these applications, County Counsel and planning staff advised the applicants' they did not need to make a separate application to establish the underlying kennel use.⁴ The applicants' justifiably relied upon that specific direction from County staff and upon the County's approval and continued to invest in and maintain their kennel facilities.⁵

With regard to the November 1990 conditional use, the permit approved was for a use accessory to the applicants' 50 dog kennel. The application for an accessory night watchman's residence, as a matter of law, could only be accepted and considered by Multnomah County if the underlying use existed, *i.e.*, a dog kennel with a capacity for 50 dogs. We find that the Planning Commission's November 6, 1990 approval necessarily included an approval or ratification of the applicants' nonconforming kennel use and its capacity of 50 dogs. Again, Marquam Farms had

³ We acknowledge that only some portions, but by no means all, of the records for these prior proceedings are now before us. However, there is no requirement in state law or the MCC that requires us to first review the entire record of these prior decisions before acknowledging what these decisions approve.

⁴ That acknowledgment was first explicitly stated in the October 8, 1990 opinion of Chief Assistant County Counsel John DuBay that the applicants' had a lawfully existing nonconforming use predating restrictive zoning. We accept and agree with that determination.

⁵ Under our interpretation of MCC .8810, we find that, not only do the applicants' have a vested right to the nonconforming use they claim based on prior County approvals and advice of staff, but that we are estopped from concluding at this late date that the right does not in fact exist.

notice of this application; its representatives participated in the planning commission hearing, yet Marquam Farms did not appeal. We find that Marquam Farms' failure to appeal the County's 1990 conditional use permit is a critical omission that bars further litigation or dispute of the nonconforming use issue in this or any other proceeding. To preserve its right to dispute the nonconforming use status of the applicants' kennel, Marquam Farms was required to have appealed that decision to this Board. As things now stand, the Planning Commission's and the other unappealed decisions and the applicants' reliance on those same decisions have now vested the applicants' right to a nonconforming kennel use with a capacity for 50 dogs. We are now estopped from concluding otherwise in this application even if we were inclined to do so (which we are not).

Our acknowledgment of the applicants' right in this regard is also supported by the staff's position taken in 1994 when the applicants had applied for design review to expand their dog kennel from 50 to 75 units. At that time, planning staff again verified the applicants' legal right to a nonconforming 50-unit dog kennel with the same Chief Assistant County Counsel, who again opined that the applicants' nonconforming use right was valid and need not be re-proven in the context of the 1994 design review application. On that basis, the applicants were advised to not submit any separate application or evidence to prove their existing nonconforming use right to a 50-unit kennel. This advice is memorialized in staff's February 2, 1994 Pre-application Conference Notes. Because the record in the applicants' 1994 design review application did not include this evidence, which staff specifically advised the applicants to not include, the Hearings Officer denied the application without prejudice.⁶

We now have the full record before us; whereas, that does not appear to have been the case with the Hearings Officer in 1994. In light of the evidence in this record, we find the applicants' have had a right to a nonconforming 50-dog kennel. We find that, had the Hearings Officer before him the record which we do today, he would have had sufficient evidence of the applicants' nonconforming use right to approve the design review request. Regardless of the validity of that supposition, we find that today the applicants have established that their nonconforming use right to a kennel with a capacity for 50 dogs, that the county acknowledged that fact on 4 occasions since 1989, and that none of those decisions were appealed by Marquam Farms despite its participation in those proceedings. On this basis, we now proceed to analyze the criteria of MCC .8810(E) and address the applicants' request to expand their lawfully existing nonconforming 50-unit dog kennel to 75 units.

C. The Applicants have demonstrated compliance with the criteria in MCC .8810 to allow expansion of the capacity of their dog kennel from 50 to 75 dogs:

⁶ We place emphasis on the 1994 Hearings Officer's decision which made no particular determination about the applicants' nonconforming use claim, but instead said "if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore the applicant's request for Design Review is denied without prejudice." The future confirmation of the applicants' nonconforming use right anticipated by the Hearings Officer in 1994 is set forth in this decision.

MCC 11.15.8810(A)&(E) provide 12 criteria that must be met before an alteration, such as the one proposed here, can be approved and specifically require findings on each of the following.

- (A)(1): A change in the use of no greater adverse impact on the neighborhood.
- (A)(2): A change in the structure of physical improvements of no greater adverse impact on the neighborhood.
- (E): An alteration of a non-conforming use may be permitted if the alteration will affect the surrounding area to a lesser negative extent than the current use, considering:
 - (1) The character and history of the use and of development in the surrounding area.
 - (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.
 - (3) The comparative numbers and kinds of vehicular trips to the site.
 - (4) The comparative amount and nature of outside storage, loading and parking.
 - (5) The comparative visual appearance.
 - (6) The comparative hours of operation.
 - (7) The comparative effect on existing vegetation.
 - (8) The comparative effect on water drainage.
 - (9) The degree of service or other benefit to the area, and
 - (10) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

We address each criterion below separately. But first, we specifically find that MCC .8810(E) does not necessarily preclude an increase in the number of kennel units, and that an increase from 50 to 75 can meet this standard of a reduction in negative impacts. In particular, we find the applicants' specific proposal includes a redesign of kennel operation that, when taken as a whole, will achieve a reduction in overall negative impacts from that of the current 50 units.

1. A change in the use of no greater adverse impact on the neighborhood.

The primary impact from this proposal, and the one which Marquam Farms complains of, is noise. We find this proposal and the design features it entails will result in an overall reduction in noise from this dog kennel operation. The specific design features that will bring about this degree of protectiveness is explained in detail in subsection "d" below.

2. A change in the structure of physical improvements of no greater adverse impact on the neighborhood.

The physical improvements that will accompany the applicants' increase from 50 to 75 dogs will reduce the operation's overall impact on the neighborhood, which in this case is limited to the Marquam Farms hunt club. The specific ways in which this will happen are described in detail in the subsections that follow.

3. The character and history of the use and of development in the surrounding area.

As already noted, the starting point for our inquiry is the applicants' lawful, existing, nonconforming 50-unit dog kennel. The history of use at this 9.4 acre site is characterized by a commercial dog kennel with a capacity for 50 dogs. The property is too small to be productively or economically put to a farm use. We define the "surrounding" area to be the area likely to be impacted by this proposed use. We find that a circle with a radius of 1,500 feet exceeds the distance likely to experience impacts from this proposed kennel operation. For purposes of the criteria in MCC .8810(E), we address potential impacts within this area.⁷

The surrounding area is rural and sparsely developed (only 3 residences within a quarter mile radius). The kennel complements recreational use of the island for hunting since hunting dogs are frequently boarded and trained at the kennel. The nearest residence is approximately 800 feet from the kennel, separated by Reeder Road and a 15-foot dike covered with an expansive blackberry bramble. The following improvements are not part of the current kennel operation, but are proposed by the applicants in this proposal: insulated roof, walls, parking and circulation. With these improvements, we find that barking dogs will not be audible at the nearest residence, and this conclusion is supported by the sound study conducted by the applicants and included in the record.⁸

The only commercial farming operation with a 1,500 foot radius is a dairy operation which reports no adverse impacts to date from the current 50-dog kennel operation or any of the other dog kennels on this property. We find that, with the proposed improvements, this farm will not experience any impacts from the proposed use in the future.

⁷ In addition to the findings set forth herein, we also expressly accept and adopt as our own the compatibility analysis submitted by the applicant at pages 13-14 and 26 of their application narrative.

⁸ The noise study (conducted by Rose City Sound in 1990) is attached to the applicants' narrative as Attachment E. We accept this study and its conclusions as credible expert testimony on the subject of noise impacts.

The only possible impact identified in the record is with Marquam Farms - the hunt club that abuts the subject site. Marquam Farms shares a common access easement with the applicants' kennel. We find that any dog barking problems previously experienced by Marquam Farms will no longer exist because of the proposed redesign. The applicants propose a new configuration that prevents dogs housed in the kennels from seeing hunters arriving and leaving Marquam Farms. With the new design, the dogs will no longer bark at arriving and departing hunters, thus the proposal, when taken as a whole, will reduce the impacts presently experienced by Marquam Farms from 50 dogs.

4. The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.

With regard to noise, the applicants have submitted a credible, expert sound study that demonstrates that barking dog noise, even with the addition of 25 more dogs, will be reduced.⁹ In particular, the following design features will collectively reduce the noise below what is currently experienced with 50 dog kennel:

- A 100' solid wall for the full length of the shared accessway that blocks the kennels' view of hunters entering and leaving the Marquam Farms hunt club,
- Kennels covered with an insulated roof to prevent sound transmission,
- A parking lot design that allows dogs to be taken to grooming, bathing, exercise and living facilities without being heard or seen by dogs in the kennel,
- A circulation design that allows dog owners to pick-up and leave-off dogs out of sight and sound of the kennels, thus not disturbing dogs housed in the kennels.

We find these measures will be adequate to prevent and, in fact, reduce noise impacts on all properties within the impact area. In light of the fact that the applicable zoning allows all of the surrounding properties to have up to 3 adult dogs with absolutely no mechanism to prevent any impacts, we find the applicants' proposal will prevent noise impacts.

With regard to dust, we find that the applicants' driveway is graveled and there is no evidence of dust from traffic on the driveway. Based on this record, we find that dust is not a factor that could adversely impact properties in the impact area. To the extent that dust from the gravel driveway could be construed to be a problem, we find that conventional tillage agricultural operations produce far more dust than could be produced from the applicants' driveway.

⁹ In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicant at pages 26-28 of their application narrative.

With regard to odor, we find no evidence of odor complaints in the record before us. Moreover, the applicants have installed an on-site septic system sufficient to handle all septic waste from a 75-unit dog kennel. Consequently, we find that odor from the proposed 75-unit kennel operation will not be a problem.

We find there will be no vibration, glare or smoke impacts from this proposed use. In summary, we conclude that the proposed alteration to expand the kennel to 75 dogs will affect the surrounding area to a lesser negative extent than the current 50-unit kennel considering noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line. Thus, we find that, pursuant to MCC .8810(E)(2), the alteration will have a reduced negative effect when compared to the current operation.

5. The comparative numbers and kinds of vehicular trips to the site.

We find that, with an increase from 50 to 75 kennels, vehicular traffic will necessarily increase; however, with the proposed modifications to the kennel's design, we find that the negative impacts from traffic will be less.¹⁰ The traffic benefits from the proposal are primarily from improved parking and circulation at the site - and issue discussed in the next subsection. Moreover, we find, based on evidence in the record, that none of the transportation facilities serving the applicants' kennel are near capacity, and thus there will be no capacity or safety impact from the proposed expansion. We also find to be persuasive the fact that the peak dog boarding season (summer) does not overlap with the peak in duck club use at Marquam Farms (fall and winter). Accordingly, we find, pursuant to MCC .8810(E)(3), the alteration will have a reduced negative effect when compared to the current operation.

6. The comparative amount and nature of outside storage, loading and parking.

There is no outside storage associated with the current or proposed configuration, thus outside storage is not an issue. The proposal will improve the site's parking by adding wheel stops, thus maintaining better parking organization and by screening the parking and loading areas from dog kennels, thus limiting disturbance to boarded dogs. Also, the new parking configuration will prevent customer cars from blocking the access shared with Marquam Farms because of the proposed single office, replacing the current 2 offices, the location of circulation signs and the better organization of parking spaces marked with wheel stops. With these improvements, we find that, pursuant to MCC .8810(E)(4), the alteration will have a reduced negative effect when compared to the current operation.

7. The comparative visual appearance.

We find that the proposed improvements to the kennel will improve its visual appearance for the following reasons:

¹⁰ In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicants at pages 28-30 of their application narrative.

- The old Quonset huts on the property will be replaced with a new, state of the art kennel building.
- The parking lot will be provided with wheel stops and signs to ensure that customer vehicles are parked in an orderly fashion.
- New landscaping and fencing will be installed as proposed which will enhance the appearance of the kennel and grounds.

With these improvements, we find that the expanded kennel will have a better visual appearance than does the present 50-dog operation. Accordingly, we find that, pursuant to MCC .8810(E)(5), the alteration will have a reduced negative effect when compared to the current operation.

8. The comparative hours of operation.

The hours of operation with the proposed expansion will not change; thus, MCC .8810(E)(6) is not a factor.

9. The comparative effect on existing vegetation.

With the proposed expansion of use to 75 dogs, the applicants propose new landscaping which will benefit and lessen the impacts to Marquam Farms. In particular, Marquam Farms will benefit from landscaping separating the parallel parking area from the northeast wall of the new kennel building. With this improvement, we find that, pursuant to MCC .8810(E)(7), the alteration will have a reduced negative effect when compared to the current operation.

10. The comparative effect on water drainage.

The proposed alteration will increase slightly the impervious area and thus the runoff from the site. However given the site's 9.4-acre size, we find that the site's overall drainage will not be affected by the proposed expansion. As noted previously, the water quality of the runoff will not be negatively impacted by the use because of the septic system planned to serve the expanded operation. For these reasons, we find MCC .8810(E)(6) is not a factor.

11. The degree of service or other benefit to the area.

We find the alteration proposed by the applicants will benefit the surrounding area because of the substantial improvements in design, facilities and operations it represents. The only complaints received in this matter were from Marquam Farms, and we find that the proposed alteration, when taken as a whole, will not only eliminate those impacts that currently exist, but will benefit Marquam Farms. The expansion will allow the applicants to serve more of the dogs owned by hunt club members as well as dogs owned by other Sauvie Island residents. The proposal will reduce noise, improve the overall appearance of the property and buildings and

improve parking and circulation. All of these improvements, and the increased capacity, stand to benefit the surrounding area. Thus, pursuant to MCC .8810(E)(9), the alteration will have a reduced negative effect when compared to the current operation

12. Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

As noted previously, we find the present use has no measurable impact on surrounding resource uses or its neighbors, with the possible exception of Marquam Farms. With the proposed expansion, those few impacts will be substantially reduced or eliminated. The applicants' proposal is designed specifically to reduce impacts with Marquam Farms and provide a better standard of service to current and future customers. We believe the insulated and completely contained building design, the solid wall along the shared access way, the improved circulation measures and landscaping will make this kennel more compatible with Marquam Farms and the other properties within the surrounding area. We find these measures, taken as a whole will reduce the overall conflicts with surrounding uses, to the extent they exist at all, and will make the use in its altered form more compatible with its neighbors as required by MCC .8810(E)(10).

IV. CONCLUSION:

Based on the foregoing findings of fact and conclusions of law, we hereby approve the applicants' request for an alteration of their existing, lawful, nonconforming dog kennel with a capacity for 50 dogs to expand the kennel capacity to accommodate 75 dogs.

IT IS SO ORDERED this ____ day of December, 1997.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
for Multnomah County, Oregon

By: Sandra Duffy
Sandra Duffy, Chief Assistant County Counsel

J:\DHK\33536-00.003\BOCCFIND.DOC

#1

SPEAKER SIGN UP CARDS

DATE 12/30/97

NAME Sue Klobertanz

ADDRESS City of Portland

1120 SW 5th #1313
Portland, Or 97201

PHONE 823-6881

SPEAKING ON AGENDA ITEM NUMBER OR
TOPIC R-9 Sheltered Market

GIVE TO BOARD CLERK Program

#2

SPEAKER SIGN UP CARDS

DATE 12-30-97

NAME

BRUCE WATTS

ADDRESS

5913 NE MALLORY AVE

PORTLAND, OR 97211

PHONE

286-2188 Coalition of
BLACK MEN

SPEAKING ON AGENDA ITEM NUMBER OR
TOPIC

8-9

GIVE TO BOARD CLERK

#3

SPEAKER SIGN UP CARDS

DATE Dec 30TH 1997

NAME

James E. Cason

ADDRESS

4134 N. Vancouver Ave Suite 303A
Portland, Oregon 97217

PHONE

(503) 288-7881 BLACK Contractors

ALLIANCE

SPEAKING ON AGENDA ITEM NUMBER OR
TOPIC R-9

GIVE TO BOARD CLERK

#4

SPEAKER SIGN UP CARDS

DATE 12-30-97

NAME

CINDY CATTO, AGC

ADDRESS

9450 SW 30th Ave

Wilsonville, OR 97070

PHONE

682-3363

Association of

General Contractors

SPEAKING
TOPIC

ON AGENDA ITEM NUMBER OR

R-9

GIVE TO BOARD CLERK

#5

SPEAKER SIGN UP CARDS

DATE 12-30-97

NAME Bessie McCallen

ADDRESS 15565 S.W. Sierra Ct
Beaverton, OR 97007

PHONE 524-6581 - Small Construction Business

SPEAKING ON AGENDA ITEM NUMBER OR
TOPIC R-9

GIVE TO BOARD CLERK

MEETING DATE: DEC 30 1997
AGENDA NO: R-9
ESTIMATED START TIME: 10:50 Am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Ordinance Adopting a Sheltered Market Program for Multnomah County

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: December 30, 1997
AMOUNT OF TIME NEEDED: 45 minutes

DEPARTMENT: DSS DIVISION: Finance

CONTACT: Jerry Walker/John Thomas TELEPHONE #: John 83138 Jerry 26699
BLDG/ROOM #: 106/1500

PERSON(S) MAKING PRESENTATION: Jerry Walker or John Thomas

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Ordinance Adopting a Sheltered Market Program for Multnomah County

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT

MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES.

Any Questions: Call the Board Clerk @ 248-3277

97 DEC 30 PM 12:55
CLERK OF BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY, OREGON

DEPARTMENT OF SUPPORT SERVICES

COUNTY COMMISSIONERS

BEVERLY STEIN, CHAIR
DAN SALTZMAN, DISTRICT #1
GARY HANSEN, DISTRICT #2
VACANT, DISTRICT #3
SHARRON KELLEY, DISTRICT #4

FINANCE DIVISION

DIRECTORS OFFICE
ACCOUNTS PAYABLE
GENERAL LEDGER
PAYROLL
TREASURY
LAN ADMINISTRATION

PORTLAND BUILDING
1120 SW FIFTH AVENUE, SUITE 1430
PO BOX 14700
PORTLAND, OR 97283-0700
PHONE (503) 248-3312
FAX (503) 248-3282

MATERIALS MGMT
CONTRACTS
PURCHASING

FORD BUILDING
2505 SE 11TH 1ST FLOOR
PORTLAND, OR 97202
PHONE (503) 248-5111
FAX (503) 248-3252
TDD (503) 248-5170

MEMORANDUM

TO: Board of County Commissioners

FROM: John Thomas
Jerry Walker

DATE: December 23, 1997

REQUESTED PLACEMENT DATE: December 30, 1997

SUBJECT: Ordinance Adopting a Sheltered Market Program

I. Recommendation / Action:

Adopt Ordinance creating a Sheltered Market Program and making technical amendments to the Public Contract Review Board Rules.

II. Background / Analysis:

The Findings Section in the Ordinance gives more detailed information on the background and analysis.

The Disparity Study found that from July 1, 1991 to June 30, 1994, 90 public works contracts were awarded by the County. However, only five (5) of those contracts (5.56%) were awarded to non-Caucasian prime contracting firms. The Disparity Study findings documented the existence of approximately 221 available minority construction firms interested in doing business with the County and other public agencies in the metropolitan area, or 11.67 % of the total number of available firms.

The Study also found that from July 1, 1991 to June 30, 1994, only 1 of 90 public works contracts (1.11%) was awarded to Caucasian Female firms although there were approximately 218 available Caucasian Female firms interested in doing business with the County and other public agencies in the metropolitan area, or 11.51% of the total number of available firms.

The Disparity Study found that from July 1, 1991 to June 30, 1994, 84 out of 90 contracts were awarded to Caucasian male prime contractors.

The Study identified that many barriers to participation in public contracting at a subcontractor and prime level exist, leading to statistically significant disparities between the numbers of available minority and women-owned construction firms and the actual utilization of such firms by the County and other public agencies operating in the metropolitan area. For that reason, among others, the Study concluded that a Sheltered Market Program would "correct the documented disparity and build the capacity of minority and women owned business to bid as primes." Statistics for the past two years indicate no progress.

Multnomah County has a compelling governmental interest to ensure that all citizens of the County have an equal opportunity to participate in County contracting. The Sheltered Market Program, directly aimed at fostering the technical training and growth of minority, women-owned and emerging small businesses as prime contractors, is one method by which the County can create and maintain a level playing field for all contractors in the County.

The Sheltered Market Program is a narrowly tailored remedy to address the disparity found by the Study. Formal construction contracts between the informal purchasing limit of \$50,000 and the sum of \$200,000 to be awarded by the County will be considered for this program. Certain contracts may be inappropriate for the program because of the specialized nature of the work.

The County's program is consistent with, but broader than, actions taken by the State of Oregon. ORS 279.053 permits the County to engage in bidding and contracting practices designed to accomplish affirmative action for disadvantaged or minority groups, which is defined to include programs to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability. In carrying out such a policy, ORS 279.053 permits local governments to limit or eliminate competitive bidding on contracts of \$50,000 or less.

Although the Sheltered Market Program will assist in remedying the underutilization of minority and women-owned businesses identified in the Disparity Study, that study also highlighted that many of the burdens and problems faced by minority and women-owned companies were also serious obstacles to the business development and participation of emerging small businesses generally. Therefore, it is appropriate to include emerging small businesses, certified as such by the State of Oregon, into the Sheltered Market Program. That addition will foster additional competition within the Sheltered Market and lead to reduced prices on County contracts.

Creation of the Sheltered Market Program and exemption of certain County contracts from full competitive bidding is consistent with requirements of ORS 279.015, which requires that exemption of a class of contracts such as the one contemplated be unlikely to establish favoritism or substantially diminish competition and additionally result in substantial cost savings.

This program is based on the premise that increased competition through development of additional minority, women-owned and emerging small businesses as a result of the Sheltered Market Program will lead to more bids and lower prices on County projects.

In order to maximize cost savings, the County will focus on the capability and expertise of firms who apply to participate in the Sheltered Market Program and thereafter ensure that contracts eligible for inclusion within the program match up with the talents of those who participate.

This exemption will not establish favoritism in the award of such contracts or substantially diminish competition. A project estimate will be established by the County for each project selected for the program.

Generally firms will be in the program for a period of three years, after which they will graduate and provide additional competition on other County contracts. Finally, not all County contracts will be included within the program.

The proposed amendments provide that the program will be reviewed annually to determine if participation of minority, women, and emerging small businesses bidding on County contracts is increasing and whether there is an increase in the total number of bidders on County contracts generally, and whether the bids more closely approximate the county's contract estimates.

Finally, this ordinance also corrects an error in Division 60 in which one section referenced another that had been deleted by prior amendments and adds a section in Division 10 that requires annual review of the County's informal sheltered market program.

III. Financial Impact:

No significant impacts either plus or minus.

IV. Legal Issues:

Court decisions require that race and gender neutral programs be initiated first in any attempt to remedy past discrimination and that programs that are race and gender conscious be narrowly tailored to the discrimination that has been found. This program meets those requirements. Annual review of this program will allow adjustments to be made to the program to assure that it continues to meet legal requirements and is effective at accomplishing the goal of increasing participation by minority, women and emerging small businesses in County contract opportunities.

Amendments to ORS Chapter 279 in the most recent legislature mandate that all exemptions from the competitive bidding process be approved at a public hearing. The public hearing will take place on December 30 at which time all who are in favor of or opposed to this exemption will be allowed to speak. In compliance with the new statutory requirements, notice of this hearing was published on December 15, 1997 and proposed findings have been available for review by the public since that date. These procedures comply with the new statutory requirements.

V. Controversial Issues:

There are many diverse views both for and against any program that is attempting to remedy the underutilization of minority, women-owned and emerging small businesses.

VI. Link to Current County Policy:

Linked to County Policy

VII. Citizen Participation:

The Mayor's Fair Contracting Forum, Associated General Contractors (AGC), and Black Contractors Alliance (BCA) have all been involved with developing and reviewing this program. Representatives from AGC and BCA have been invited to attend all County disparity implementation team meetings at which the program was developed. Members of these organizations intend to testify at the Board Meeting.

VIII. Other Government Participation:

This program was jointly developed by Multnomah County and the City of Portland staff. The City adopted a program substantially similar to this program in August, 1997. Implementation of the City and County programs will begin at approximately the same time. Parts of the program, including the application process and selection of contractors for the program, will be administered by the City based on program guidelines and policies jointly developed by City and County staff.

This is one of several programs in which the City and County participate together to implement Disparity Study recommendations.



MULTNOMAH COUNTY OREGON

BEVERLY STEIN
COUNTY CHAIR

EMPLOYEE SERVICES
FINANCE
LABOR RELATIONS
PLANNING & BUDGET
RISK MANAGEMENT

(503) 248-5015
(503) 248-3312
(503) 248-5135
(503) 248-3883
(503) 248-3797

(503) 248-5170 TDD

PORTLAND BUILDING
1120 S.W. FIFTH, 14TH FLOOR
P.O. BOX 14700
PORTLAND, OREGON 97214

PURCHASING, CONTRACTS
& CENTRAL STORES

(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

TO: Chair Beverly Stein and the Board of County Commissioners

FROM: Jerry Walker, Contracts Administrator
Department of Support Services *JW*

DATE: 23 December 1997

RE: SHELTERED MARKET PROGRAM

I have been asked to review statistical information compiled from databases containing details of the County's public works contracting activity from July, 1995 through April, 1997. The analysis of that information reveals the following:

A review of all public works bid information for contracts in the size range of the proposed exemption (\$50,000 to \$200,000) for the period July, 1995 through April, 1997 shows that when three or more bids were received, the low bid was below the high estimate for the project 39% of the time; when two or fewer bids were received, the low bid was below the high estimate only 24% of the time. Additionally, the average number of bids received on contracts where the bid was below the high estimate was 2.70 while the average number of bids where the bid was above the high estimate was 2.0.

I also reviewed information on all prime contracts awarded during the period July, 1995 through September, 1997. The analysis indicates of the 48 prime contracts awarded, only one was awarded to an African-American-owned business, one to a woman-owned business and none to an Hispanic-owned business. While four contracts were awarded to Asian-owned businesses, three of those were awarded to the same contractor. Forty-two of the 48 prime contracts were awarded to Caucasian male owned firms.

This analysis supports the conclusion that the more bids received, the more competitive the prices are. One of the goals of the sheltered market is to increase the number of competitive contractors in our market place. In that vein, the program could be considered a viable long-range strategy to increase competition and attain better pricing on County construction projects.



OFFICE MEMORANDUM . . . DEPARTMENT OF ENVIRONMENTAL SERVICES

TO: Chair Beverly Stein and the Board of County Commissioners
FROM: Larry F. Nicholas, P.E., Director of Environmental Services
DATE: December 12, 1997
SUBJECT: Sheltered Market Program

Following up on a request by John Thomas, Assistant County Counsel, attached for your consideration is a memorandum on the subject prepared by Chuck Henley, County Engineer..

Encl.

CH/S1298.MEMO(2)

BOARD OF
COUNTY COMMISSIONERS
97 DEC 15 PM 4:02
MULTNOMAH COUNTY
OREGON



OFFICE MEMORANDUM . . . DEPARTMENT OF ENVIRONMENTAL SERVICES

TO: Larry F. Nicholas, P.E., Director of Environmental Services
FROM: *W.E.* Chuck Henley, P.E., County Engineer
DATE: December 12, 1997
SUBJECT: Sheltered Market Program

The Board is considering approval of a new purchasing program called the Sheltered Market. One objective of the program is to foster competition in the construction market by increasing the supply and availability of qualified bidders. I would like to offer my perspective to the Board as a person who is familiar with the benefits of competition in public bidding. In addition, I offer some quantitative information that shows a positive relationship between price and competitiveness.

First, however, I would like to relate my qualifications. I have been involved with the development and construction of public improvements in Multnomah County for 18 years. During this time, I have had experience with at least 100 competitive public bids to solicit construction materials and services.

For each competitive bid, we prepare an engineer's estimate, which is our expectation of the market price to construct the public improvement. The engineer's estimate reflects information about current prices in the local construction market. When a low bid price is higher than we expect, it usually is the result of too few bids received. My hypothesis is that bidders anticipate their competition and adjust their bids accordingly.

Attached is a simple analysis, labeled EXHIBIT 'A', which supports this hypothesis. It shows the actual results of our formal construction bids. The results show that when we receive only one bid per bid advertisement, there is a fifty-percent chance we will reject it because of excess price relative to the expected price established by the engineer's estimate. When we receive two or fewer bids, there is a twenty-one-percent chance we will reject the bids because of the low bid's excess price relative to the expected price. However, when we receive three or more bids, we award a contract to the low bidder because the price compares favorably with the expected price.¹

What is the relevance of my hypothesis to the Sheltered Market Program? One purpose of the program is to increase the supply and availability of qualified bidders bidding on county public improvements. Holding other market variables constant, the greater the number of qualified bidders in the market, then the higher the probability that the county (and other public agencies) will receive competitively priced bids. The more competitive the low bid price, the more reasonable the cost of public improvements. Thus, the more competition in the market the more likely the county can construct public improvements at least cost.

Encl.
c: John Thomas

CHJS1298.MEMO(1)

¹ Results during the period from January 1, 1994 to October 31, 1997; See Exhibit 'A'

Exhibit 'A' -Summary

Multnomah County DES Transportation and Land Use Planning Division
Formal Construction Contract Bids
from January 1, 1994 to October 1, 1997

Crosstabulation of Bids Received vs. Bid Result		Bid Result	
Number of Bids Received		Rejected all bids	Accepted a bid
1		50.00%	50.00%
2		21.43%	78.57%
3		0.00%	100.00%
4		0.00%	100.00%
5		0.00%	100.00%
6		0.00%	100.00%
Grand Total		9.26%	90.74%

Multnomah County DES Transportation and Land Use Planning Division

Formal Construction Contract Bids

from January 1, 1994 to October 1, 1997

Ads	Year	Project Name	Facility	Contract Purpose	Type of Work	Bids Received	Engineer's Estimate	Lowest Responsible	Bid Result
								Bid Amount	
1	1997	Morrison and Burnside	Bridge	Emergency Repair	Structure	3	\$195,540	\$214,465	Accepted a bid
1	1997	Broadway	Bridge	Maintenance	Guardrail, Structure	3	\$194,998	\$294,884	Accepted a bid
1	1997	Reed	Road	Emergency Repair	Grading, Paving, Drainage	4	\$91,360	\$78,158	Accepted a bid
1	1997	Scholls Ferry	Road	Emergency Repair	Structure, Drainage	3	\$604,593	\$517,458	Accepted a bid
1	1997	Asphalt Overlay 97-1	Road	Maintenance	Paving	5	\$143,305	\$136,347	Accepted a bid
1	1997	Asphalt Overlay 97-3	Road	Maintenance	Paving	2	\$185,170	\$156,930	Accepted a bid
1	1997	Asphalt Overlay	Road	Maintenance	Paving	3	\$105,060	\$107,393	Accepted a bid
1	1997	Asphalt Overlay 97-4 Sump Replacement	Road	Maintenance	Paving	2	\$204,523	\$196,649	Accepted a bid
1	1997	on Various Roads	Road	Maintenance	Drainage	2	\$193,050	\$184,975	Accepted a bid
1	1997	Halsey at 201st	Road	Safety	Signal, Paving, Drainage	3	\$173,600	\$171,000	Accepted a bid
1	1996	Sauvie Island	Bridge	Maintenance	Structure	2	\$404,270	\$576,694	Rejected all bids
1	1996	Sauvie Island Bridge	Bridge	Maintenance	Structure	3	\$612,270	\$640,752	Accepted a bid
1	1996	Sidewalks	Road	Auxiliary	Paving	3	\$105,815	\$119,910	Accepted a bid
1	1996	Thompson	Road	Emergency Repair	Structures	4	\$298,978	\$330,735	Accepted a bid
1	1996	Logie Trail	Road	Emergency Repair	Grading, Paving, Drainage	3	\$79,287	\$63,380	Accepted a bid
1	1996	Gordon Creek	Road	Emergency Repair	Grading, Paving, Structure	3	\$609,187	\$503,040	Accepted a bid
1	1996	Bell	Road	Emergency Repair	Grading, Paving, Drainage	2	\$85,570	\$96,025	Accepted a bid
1	1996	Columbia River Highway	Road	Emergency Repair	Drainage	4	\$59,100	\$71,450	Accepted a bid
1	1996	Asphalt Overlay 95-3	Road	Maintenance	Paving	3	\$216,575	\$223,918	Accepted a bid
1	1996	Asphalt Overlay 96-3	Road	Maintenance	Paving	2	\$231,310	\$213,911	Accepted a bid
1	1996	Asphalt Overlay 96-1	Road	Maintenance	Paving	2	\$282,898	\$251,576	Accepted a bid
1	1996	Asphalt Overlay 96-2	Road	Maintenance	Paving	3	\$302,125	\$258,150	Accepted a bid
1	1996	Halsey and 223rd	Road	Reconstruction	Grading, Paving, Drainage, Structure, Landscaping, Utilities	4	\$3,372,944	\$2,887,661	Accepted a bid

Multnomah County DES Transportation and Land Use Planning Division

Formal Construction Contract Bids

from January 1, 1994 to October 1, 1997

Ads	Year	Project Name	Facility	Contract Purpose	Type of Work	Bids Received	Engineer's Estimate	Lowest Responsible Bid Amount	Bid Result
1	1996	Glisan	Road	Reconstruction	Grading, Paving, Drainage, Landscaping, Utilities	2	\$2,898,420	\$2,797,849	Accepted a bid
1	1996	Cherry Park	Road	Reconstruction	Grading, Paving, Signal, Utilities, Landscaping	4	\$818,723	\$729,366	Accepted a bid
1	1995	Sellwood	Bridge	Maintenance	Paving	1	\$79,470	\$64,995	Accepted a bid
1	1995	Sidewalks	Road	Auxiliary	Paving	3	\$97,828	\$83,280	Accepted a bid
1	1995	202nd	Road	Auxiliary	Grading, Paving	1	\$74,650	\$84,435	Accepted a bid
1	1995	181st	Road	Maintenance	Paving	4	\$823,560	\$770,085	Accepted a bid
1	1995	Asphalt Overlay 95-1	Road	Maintenance	Paving	3	\$293,975	\$326,550	Accepted a bid
1	1995	Asphalt Overlay 95-2	Road	Maintenance	Paving	3	\$235,980	\$227,975	Accepted a bid
1	1995	Asphalt Overlay 95-3	Road	Maintenance	Paving	2	\$189,640	\$235,200	Rejected all bids
1	1995	Asphalt Overlay 95-4	Road	Maintenance	Paving	3	\$114,310	\$121,112	Accepted a bid
1	1995	182nd and 282nd	Road	Maintenance	Drainage	1	\$34,065	\$56,515	Rejected all bids
1	1995	182nd and 282nd	Road	Maintenance	Drainage	3	\$40,465	\$38,170	Accepted a bid
1	1995	Halsey and 223rd	Road	Reconstruction	Structure	1	\$426,168	\$554,880	Rejected all bids
1	1995	Stark and 162nd	Road	Safety	Signal	2	\$179,681	\$193,475	Accepted a bid
1	1994	Morrison	Bridge	Maintenance	Structure	3	\$2,321,582	\$1,559,415	Accepted a bid
1	1994	Broadway	Bridge	Maintenance	Paving, Structure	2	\$400,064	\$276,628	Accepted a bid
1	1994	Burnside	Bridge	Maintenance	Structure	2	\$108,979	\$91,182	Accepted a bid
1	1994	Sidewalks	Road	Auxiliary	Paving	5	\$107,686	\$103,103	Accepted a bid
1	1994	Wood Village Waterline	Road	Construction	Utilities	5	\$35,640	\$37,414	Accepted a bid
1	1994	Asphalt Overlay 94-1	Road	Maintenance	Paving	5	\$204,038	\$181,187	Accepted a bid
1	1994	Asphalt Overlay 94-2	Road	Maintenance	Paving	4	\$220,343	\$197,902	Accepted a bid
1	1994	Asphalt Overlay 94-3	Road	Maintenance	Paving	4	\$208,440	\$192,507	Accepted a bid
1	1994	Asphalt Overlay 94-4	Road	Maintenance	Paving	4	\$220,450	\$214,800	Accepted a bid
1	1994	Asphalt Overlay 94-5	Road	Maintenance	Paving	3	\$123,300	\$120,128	Accepted a bid
1	1994	Marine Drive	Road	Maintenance	Paving	6	\$397,380	\$252,655	Accepted a bid
1	1994	49th	Road	Maintenance	Drainage	4	\$23,205	\$22,405	Accepted a bid

Multnomah County DES Transportation and Land Use Planning Division

Formal Construction Contract Bids

from January 1, 1994 to October 1, 1997

Ads	Year	Project Name	Facility	Contract Purpose	Type of Work	Bids Received	Engineer's Estimate	Lowest Responsible Bid Amount	Bid Result
		Columbia River Highway,			Grading, Paving, Drainage,				
1	1994	Phase II	Road	Reconstruction	Utilities, Landscaping	3	\$624,667	\$604,341	Accepted a bid
1	1994	Walters	Road	Reconstruction	Grading, Paving, Drainage	5	\$99,305	\$97,902	Accepted a bid
		Columbia River Highway,			Grading, Paving, Drainage,				
1	1994	Phase I Rebid	Road	Reconstruction	Utilities, Landscaping	2	\$428,271	\$395,387	Accepted a bid
1	1994	Gordon Creek	Road	Safety	Guardrail, Drainage	3	\$218,408	\$207,869	Accepted a bid
		Columbia River Highway,			Grading, Paving, Drainage,				
1	1993	Phase I	Road	Reconstruction	Utilities, Landscaping	2	\$639,580	\$742,828	Rejected all bids

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON
ACTING AS THE PUBLIC CONTRACT REVIEW BOARD
ORDINANCE NO. _____

An ordinance relating to the creation of a Sheltered Market Program and making certain technical corrections to the Public Contract Review Board Rules.

Multnomah County ordains as follows:

Section 1. Purpose

The purpose of this ordinance is to establish a Sheltered Market Program for Multnomah County public works contracts and to make certain technical corrections to the Public Contract Review Board Rules.

Section 2. Findings:

The Multnomah County Board of Commissioners, acting as the Public Contract Review Board having reviewed the Oregon Regional Disparity Study and Multnomah County contracting data and staff reports, hereby finds:

A. The Sheltered Market Program established herein is intended to rectify the disparity found to exist in the awarding of Multnomah County public works contracts to prime contractors. The Disparity Study found that from July 1, 1991 to June 30, 1994, 90 public works contracts were awarded by the County, worth \$32,879,358. However, only five (5) of those contracts (5.56%) were awarded to non-Caucasian prime contracting firms. Of the five (5) contracts awarded, four (4) contracts were awarded to Asian-American prime contractors. The other contract was awarded to a Hispanic American prime contractor. No contracts were awarded to African-American or Native American prime contractors. The five contracts awarded represented only \$670,130 or two percent (2%) of the contract dollars awarded.

B. The above utilization data is to be contrasted with Disparity Study findings which documented the existence of approximately 221 available minority construction firms

interested in doing business with the County and other public agencies in the metropolitan area, or 11.67 % of the total number of available firms.

C. The Study also found that from July 1, 1991 to June 30, 1994, only 1 of 90 public works contracts (1.11%) was awarded to Caucasian Female firms although there were approximately 218 available Caucasian Female firms interested in doing business with the County and other public agencies in the metropolitan area, or 11.51% of the total number of available firms.

D. The Disparity Study found that from July 1, 1991 to June 30, 1994, 84 out of 90 contracts were awarded to Caucasian male prime contractors.

E. The Study identified that many barriers to participation in public contracting at a subcontractor and prime level exist, leading to statistically significant disparities between the numbers of available minority and women-owned construction firms and the actual utilization of such firms by the County and other public agencies operating in the metropolitan area. Further, the Study documented that substantial portions of the dollars or contracts going to minority or women-owned firms were captured by an even smaller number of individual companies. Thus, participation in Multnomah County contracting by minority and women-owned companies was not diverse or representative. For that reason, among others, the Study concluded that a Sheltered Market Program would "correct the documented disparity and build the capacity of minority and women owned business to bid as primes."

F. Statistics for the past two years indicate no progress. For the period July, 1995 through September, 1997, of 48 prime contracts awarded, only one prime contract was awarded to an African American owned business, one to a woman owned business and none to a Hispanic owned business. While four prime contracts were awarded to Asian owned businesses, three were awarded to the same contractor. Forty-two of 48 prime contracts were awarded to Caucasian male firms.

G. Multnomah County has a compelling governmental interest to ensure that all citizens of the County have an equal opportunity to participate in County contracting. The Sheltered Market Program, directly aimed at fostering the technical training and growth of minority, women-owned and emerging small businesses as prime contractors, is one method by which the County can create and maintain a level playing field for all contractors in the County.

H. The Sheltered Market Program is a narrowly tailored remedy to address the disparity found by the Study. Formal construction contracts between the informal purchasing limit of \$50,000 and the sum of \$200,000 to be awarded by the County will be considered for this program. Certain contracts may be inappropriate for the program because of the specialized nature of the work. It is estimated that contracts in the program will represent less than 2% of the County's total capital budget for 1997-98. It is estimated that between 10 and 20 construction contracts will be awarded annually in this program. The contract size proposed for this program does not exceed the capacity of firms eligible to

participate. Moreover, it leaves the remaining contracting dollars on competitively bid contracts fully open to all bidders, including minority and women owned businesses and emerging small businesses.

I. The County's program is consistent with, but broader than, actions taken by the State of Oregon. ORS 279.053 permits the County to engage in bidding and contracting practices designed to accomplish affirmative action for disadvantaged or minority groups, which is defined to include programs to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability. In carrying out such a policy, ORS 279.053 permits local governments to limit or eliminate competitive bidding on contracts of \$50,000 or less.

J. Although the Sheltered Market Program will assist in remedying the underutilization of minority and women-owned businesses identified in the Disparity Study, that study also highlighted that many of the burdens and problems faced by minority and women-owned companies were also serious obstacles to the business development and participation of emerging small businesses generally. Therefore, it is appropriate to include emerging small businesses, certified as such by the State of Oregon, into the Sheltered Market Program. That addition will foster additional competition within the Sheltered Market and lead to reduced prices on County contracts.

K. Creation of the Sheltered Market Program and exemption of certain County contracts from full competitive bidding is consistent with requirements of ORS 279.015, which requires that exemption of a class of contracts such as the one contemplated be unlikely to establish favoritism or substantially diminish competition and additionally result in substantial cost savings.

L. This program is based on the premise that increased competition through development of additional minority, women-owned and emerging small businesses as a result of the Sheltered Market Program will lead to more bids and lower prices on County projects. This is confirmed not only by the expert opinion of experienced County employees but by statistical analysis of bids on past County contracts. An analysis of contracts awarded between July, 1995 and April, 1997 reveals that where three or more bids were received, the low bid was below the high estimate for the project 39% of the time; when two or fewer bids were received, the low bid was below the high estimate only 24% of the time. Additionally, the average number of bids received on contracts where the bid was below the high estimate was 2.70 while the average number of bids where the bid was above the high estimate was 2.0. This suggests that the increased number of bidders causes increased competition and invites bidders to find ways to reduce their prices

M. Analysis of all public works bids for contracts in the size range of the proposed exemption (\$50,000 to \$200,000) for the period July 1995 through April 1997 shows that only 29% of such contracts received three or more bids while 71% were awarded based on two or fewer bids. As established by the memorandum of Chuck Henley, when a low bid comes in higher than the estimated cost, this is generally because too few bids were

received. The experience in transportation contracts shows that when only one bid is received, that bid is rejected as being too high 50 % of the time. When only two bids are received all bids are rejected 21% of the time, but when 3 or more bids are received, the bid is awarded because the low bid compares favorably with the expected price. Thus fewer bids translates not only into higher construction costs but also increased bidding costs as many projects are required to be advertised more than once to obtain an acceptable price. Increasing the number of viable construction firms able to bid on County contracts will help to increase competition and thus reduce the cost of contracts and advertising and bidding costs.

N. In order to maximize cost savings, the County will focus on the capability and expertise of firms who apply to participate in the Sheltered Market Program and thereafter ensure that contracts eligible for inclusion within the program match up with the skills of those who participate. Cost savings will also occur because the County will not have to formally advertise contracts in the Sheltered Market Program, but can distribute proposed projects to Sheltered Market members for bid.

O. This exemption will not establish favoritism in the award of such contracts or substantially diminish competition. A project estimate will be established by the County for each project selected for the program. Firms that participate in the Sheltered Market Program will compete for the contracts that are available, sealed bids will be solicited from those firms, and contracts will be awarded to the firm submitting the lowest responsible and responsive bid. If no bids are received which are within competitive limits in reference to the engineer's estimate, the project may be reopened for full competitive bidding.

P. Participation in the program is not indefinite. Unless extraordinary circumstances exist, firms will be in the program for a period of three years, after which they will graduate and provide additional competition on other County contracts.

Q. Nor is the program itself indefinite. The proposed amendments provide that the program will be reviewed annually to determine if participation of minority, women, and emerging small businesses bidding on County contracts is increasing and whether there is an increase in the total number of bidders on County contracts generally, and whether the bids more closely approximate the County's project estimates. The analysis will include review of the factors set out Section 4 of HB 2910 as well as other appropriate factors.

R. In summary, the Sheltered Market Program will ultimately enhance competition in the Portland marketplace.

S. These findings have been made available for public review and comment pursuant to the requirements of ORS 279.015(3).

Section III. Amendment: Adoption of Rule

MCC 2.20.250 (B) is amended to read:

The Multnomah County Public Contract Review Board Administrative Rules Dated February 27, 1997 and amended by Ordinance _____ dated _____, are hereby adopted and replace those rules previously promulgated by the Board.

Dated this _____ day of _____, 1998 being the date of its second reading before the Board of County Commissioners.

Board of County Commissioners
For Multnomah County, Oregon
Acting as the Public Contract
Review Board

By _____
Beverly Stein, Chair

REVIEWED:
Thomas Sponsler, County Counsel
for Multnomah County, Oregon

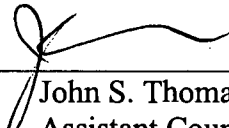
By  _____
John S. Thomas
Assistant County Counsel

Exhibit A

NOTE: Amendments appear in Division 10 and Division 60 only. New material is highlighted, deleted material is in italics and brackets.

Division 10 is amended as follows:

Section 10.120 is amended to add a new Section (5) as follows:

- (5) The Purchasing Manager shall prepare a report to the Board of County Commissioners on an annual basis which provides an evaluation of the procedures for obtaining quotes in this Section. The annual report shall include a recommendation whether the program should be continued. If the Purchasing Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

Division 60 is amended as follows:

60.000 AFFIRMATIVE ACTION IN PUBLIC CONTRACTS

60.010 Purpose

- (1) The purpose of this Chapter is to establish procedures to assure that Multnomah County contractors and vendors provide adequate opportunities for minority individuals, women, and MBE, WBE and ESB contractors and subcontractors to participate and compete for business and employment opportunities provided through contracts with Multnomah County, State of Oregon.

60.015 Affirmative Action Contracts

- (1) Public contracts may be awarded pursuant to a specific Affirmative Action plan. This rule sets forth the Multnomah County Affirmative Action Plan.

60.030 Policy

- (1) It is the intent of Multnomah County to provide opportunities for all segments of the business population to participate in the Multnomah County Purchasing Program. In order to assure opportunity, every County contract and/or subcontract for construction, maintenance, or services shall include provisions barring discrimination against or differential treatment of MBE's, WBE's and ESB's. *[in contracting for business entities described in AR 60.020 (1) and (5)]*.
- (2) For all contracts designated by the Purchasing Manager, bid specifications shall require compliance with a "good faith effort" program.

60.031 Good Faith Effort Program

- (1) The activities described in ORS 200.045 are standards for good faith efforts to provide equitable opportunities for MBEs, WBEs, and ESBs to participate in subcontract opportunities created through Multnomah County contracts.
- (2) The Purchasing Manager shall implement a good faith effort program utilizing the standards described in ORS 200.045 that are determined to be effective to achieve the purpose of this section together with such other standards as are appropriate to such a program. Bid or proposal specifications for contracts requiring good faith effort shall state the requirements necessary to show that a good faith effort has been made and shall require documentation of such effort. The Purchasing Manager shall cooperate with other municipal and state agencies to design, to the maximum extent possible, a program that is uniform between agencies.

60.032 Evaluation of Good Faith Effort

- (1) The Purchasing Manager or his/her designee shall determine if the bid complies with bid specifications for good faith effort.
- (2) Failure of bidder to submit good faith effort documentation required by the bid specifications shall be determined "non-responsive" to the bid specifications. Non-responsive bids will be rejected by the Multnomah county Purchasing Manager.

60.040 Requirement for Certification as Equal Employment Opportunity Employer

- (1) No vendor shall furnish goods or services to the County in any year, whether by single contract or multiple contracts, for an amount in excess of the limit set for formal bids in AR 10.010 unless such vendor is certified as an Equal Employment Opportunity Employer. No County agency shall enter into a contract by which a vendor shall exceed such limitation unless the vendor is, at the time of such contract, certified by the Purchasing Manager as an EEO Employer.

60.041 Certification Procedure/Appeal

- (1) Vendors furnishing goods and services to the County in excess of the limits set forth in AR 60.040 shall apply for and obtain EEO certification from the City of Portland as an EEO employer. The Purchasing Manager shall maintain a list of certified vendors based upon City of Portland certification. A vendor may appeal from a decision to deny certification or revoke certification in accordance with the procedure prescribed in AR 40.090 for denial or revocation of prequalification.

60.050 Workforce Requirements in Construction Contracts

- (1) For all contracts designated by the Purchasing Manager as being appropriate for such a program, the Purchasing Manager shall establish specifications to be included in the bid specifications which require for such contracts that contractors make reasonable efforts to increase apprenticeship training and work opportunities for women and minority individuals, and, to ensure that their workforce reflects the diversity of Multnomah County and is reasonably consistent with the availability of qualified women and minority individuals. The specifications shall state the requirements necessary to show

that a reasonable effort has been made, shall require documentation of such effort, and shall provide for remedies to the County for failure to comply with any of the specified requirements.

60.060 Sheltered Market Program

- (1) There is hereby established a Sheltered Market Program for MBE, WBE and ESB contractors performing public works contracts for Multnomah County. The purpose of the program is to provide prime contracting experience for small contractors in order to increase the number of contractors available to bid on Multnomah County public works projects, and to increase participation of MBE, WBE, and ESB contractors acting as prime contractors on county public works projects to ensure uniform access to public contracting dollars and to improve opportunities for minorities and women acting as business owners in the regional construction industry.
- (2) Contractors shall be selected for participation in the Sheltered Market Program based on an application developed by the Purchasing Manager. Criteria for selection shall include the following:
 - (a) Contractor shall be a state certified MBE, WBE or ESB.
 - (b) Contractor shall have prior experience performing construction work and shall be currently in business doing construction work.
 - (c) Contractor shall have gross receipts for the calendar year prior to the application of less than \$1,000,000 or if gross receipts for that year are greater than \$1,000,000, then the average gross receipts for the three calendar years prior to the application shall be less than \$1,000,000. The Purchasing Manager shall have the discretion to waive this requirement if waiver will advance the purposes of the program and if all other criteria are met.
 - (d) Contractor shall have reported that contractor has experienced barriers in the conduct of contractor's business based on race, gender or size of the business.

The Purchasing Manager may develop additional criteria for selection of contractors for participation in the program which further the purpose of the program.
- (3) A contractor may appeal from a decision to deny participation in the program to the Public Contract Review Board in accordance with the procedure prescribed in AR 40.090.
- (4) Contracts to be included in the Sheltered Market Program shall be selected by the Purchasing Manager from projects estimated at the time of bidding to result in a contract in excess of \$50,000 and less than \$200,000. The Purchasing Manager may include in the program additional contracts up to \$250,000 if inclusion will further the purposes of the program. In the selection of contracts to be included in the program, the Purchasing Manager shall consider the number of contractors in the program which have the

qualifications and the capacity to perform the work. If necessary to assure that all Sheltered Market contractors have an opportunity to participate, contracts may be offered for bid to only selected contractors within the Sheltered Market Program.

- (5) Contracts selected for inclusion in the Sheltered Market Program shall be offered for bid only to contractors admitted to the Sheltered Market Program. Except as provided in subsection (6) below, the contract shall be awarded to the lowest responsive responsible bidder among those bidding.
- (6) For each project selected for the Sheltered Market Program, the project manager for the program shall forward to the Purchasing Manager a cost estimate for the project. If the lowest responsive responsible bid is more than the cost estimate, the Purchasing Manager shall have the option to award the contract, re-bid the project within the Sheltered Market Program, or open the bidding on the project to all bidders. If bidding is opened to all bidders, the contract shall then be awarded to the lowest responsive responsible bid from among all bids received.
- (7) The Purchasing Manager shall promulgate rules setting forth conditions for continued participation in the program., and for graduation from the program. Participation in the Program shall be limited to three years absent extraordinary circumstances.
- (8) The Purchasing Manager shall prepare a report to the Board of County Commissioners on an annual basis which provides an evaluation of the program, including information on the subjects set forth in Section 4 of HB 2910. The annual report shall include a recommendation whether the program should be continued. If the Purchasing Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

BOGSTAD Deborah L

From: THOMAS John S
Sent: Monday, December 29, 1997 1:59 PM
To: STEIN Beverly E; SALTZMAN Dan R; HANSEN Gary D; KELLEY Sharron E
Cc: BOGSTAD Deborah L; SPONSLER Thomas
Subject: R-9 Sheltered Market Ordinance

The agenda for tomorrow shows in error that the board will adjourn and reconvene as the PCRB to consider R-9, the Sheltered Market Ordinance. The ordinance will in fact be considered by the Board of County Commissioners. This change is a technical matter and does not affect the substance of the ordinance.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. _____

An ordinance relating to the creation of a Sheltered Market Program and making certain technical corrections to the Public Contract Review Board Rules.

Multnomah County ordains as follows:

Section 1. Purpose

The purpose of this ordinance is to establish a Sheltered Market Program for Multnomah County public works contracts and to make certain technical corrections to the Public Contract Review Board Rules.

Section 2. Findings:

The Multnomah County Board of Commissioners having reviewed the Oregon Regional Disparity Study and Multnomah County contracting data and staff reports, hereby finds:

A. The Sheltered Market Program established herein is intended to rectify the disparity found to exist in the awarding of Multnomah County public works contracts to prime contractors. The Disparity Study found that from July 1, 1991 to June 30, 1994, 90 public works contracts were awarded by the County, worth \$32,879,358. However, only five (5) of those contracts (5.56%) were awarded to non-Caucasian prime contracting firms. Of the five (5) contracts awarded, four (4) contracts were awarded to Asian-American prime contractors. The other contract was awarded to a Hispanic American prime contractor. No contracts were awarded to African-American or Native American prime contractors. The five contracts awarded represented only \$670,130 or two percent (2%) of the contract dollars awarded.

B. The above utilization data is to be contrasted with Disparity Study findings which documented the existence of approximately 221 available minority construction firms interested in doing business with the County and other public agencies in the metropolitan area, or 11.67 % of the total number of available firms.

C. The Study also found that from July 1, 1991 to June 30, 1994, only 1 of 90 public works contracts (1.11%) was awarded to Caucasian Female firms although there were approximately 218 available Caucasian Female firms interested in doing business with the County and other public agencies in the metropolitan area, or 11.51% of the total number

of available firms.

D. The Disparity Study found that from July 1, 1991 to June 30, 1994, 84 out of 90 contracts were awarded to Caucasian male prime contractors.

E. The Study identified that many barriers to participation in public contracting at a subcontractor and prime level exist, leading to statistically significant disparities between the numbers of available minority and women-owned construction firms and the actual utilization of such firms by the County and other public agencies operating in the metropolitan area. Further, the Study documented that substantial portions of the dollars or contracts going to minority or women-owned firms were captured by an even smaller number of individual companies. Thus, participation in Multnomah County contracting by minority and women-owned companies was not diverse or representative. For that reason, among others, the Study concluded that a Sheltered Market Program would "correct the documented disparity and build the capacity of minority and women owned business to bid as primes."

F. Statistics for the past two years indicate no progress. For the period July, 1995 through September, 1997, of 48 prime contracts awarded, only one prime contract was awarded to an African American owned business, one to a woman owned business and none to a Hispanic owned business. While four prime contracts were awarded to Asian owned businesses, three were awarded to the same contractor. Forty-two of 48 prime contracts were awarded to Caucasian male firms.

G. Multnomah County has a compelling governmental interest to ensure that all citizens of the County have an equal opportunity to participate in County contracting. The Sheltered Market Program, directly aimed at fostering the technical training and growth of minority, women-owned and emerging small businesses as prime contractors, is one method by which the County can create and maintain a level playing field for all contractors in the County.

H. The Sheltered Market Program is a narrowly tailored remedy to address the disparity found by the Study. Formal construction contracts between the informal purchasing limit of \$50,000 and the sum of \$200,000 to be awarded by the County will be considered for this program. Certain contracts may be inappropriate for the program because of the specialized nature of the work. It is estimated that contracts in the program will represent less than 2% of the County's total capital budget for 1997-98. It is estimated that between 10 and 20 construction contracts will be awarded annually in this program. The contract size proposed for this program does not exceed the capacity of firms eligible to participate. Moreover, it leaves the remaining contracting dollars on competitively bid contracts fully open to all bidders, including minority and women owned businesses and emerging small businesses.

I. The County's program is consistent with, but broader than, actions taken by the State of Oregon. ORS 279.053 permits the County to engage in bidding and contracting

practices designed to accomplish affirmative action for disadvantaged or minority groups, which is defined to include programs to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability. In carrying out such a policy, ORS 279.053 permits local governments to limit or eliminate competitive bidding on contracts of \$50,000 or less.

J. Although the Sheltered Market Program will assist in remedying the underutilization of minority and women-owned businesses identified in the Disparity Study, that study also highlighted that many of the burdens and problems faced by minority and women-owned companies were also serious obstacles to the business development and participation of emerging small businesses generally. Therefore, it is appropriate to include emerging small businesses, certified as such by the State of Oregon, into the Sheltered Market Program. That addition will foster additional competition within the Sheltered Market and lead to reduced prices on County contracts.

K. Creation of the Sheltered Market Program and exemption of certain County contracts from full competitive bidding is consistent with requirements of ORS 279.015, which requires that exemption of a class of contracts such as the one contemplated be unlikely to establish favoritism or substantially diminish competition and additionally result in substantial cost savings.

L. This program is based on the premise that increased competition through development of additional minority, women-owned and emerging small businesses as a result of the Sheltered Market Program will lead to more bids and lower prices on County projects. This is confirmed not only by the expert opinion of experienced County employees but by statistical analysis of bids on past County contracts. An analysis of contracts awarded between July, 1995 and April, 1997 reveals that where three or more bids were received, the low bid was below the high estimate for the project 39% of the time; when two or fewer bids were received, the low bid was below the high estimate only 24% of the time. Additionally, the average number of bids received on contracts where the bid was below the high estimate was 2.70 while the average number of bids where the bid was above the high estimate was 2.0. This suggests that the increased number of bidders causes increased competition and invites bidders to find ways to reduce their prices

M. Analysis of all public works bids for contracts in the size range of the proposed exemption (\$50,000 to \$200,000) for the period July 1995 through April 1997 shows that only 29% of such contracts received three or more bids while 71% were awarded based on two or fewer bids. As established by the memorandum of Chuck Henley, when a low bid comes in higher than the estimated cost, this is generally because too few bids were received. The experience in transportation contracts shows that when only one bid is received, that bid is rejected as being too high 50 % of the time. When only two bids are received all bids are rejected 21% of the time, but when 3 or more bids are received, the bid is awarded because the low bid compares favorably with the expected price. Thus fewer bids translates not only into higher construction costs but also increased bidding

costs as many projects are required to be advertised more than once to obtain an acceptable price. Increasing the number of viable construction firms able to bid on County contracts will help to increase competition and thus reduce the cost of contracts and advertising and bidding costs.

N. In order to maximize cost savings, the County will focus on the capability and expertise of firms who apply to participate in the Sheltered Market Program and thereafter ensure that contracts eligible for inclusion within the program match up with the skills of those who participate. Cost savings will also occur because the County will not have to formally advertise contracts in the Sheltered Market Program, but can distribute proposed projects to Sheltered Market members for bid.

O. This exemption will not establish favoritism in the award of such contracts or substantially diminish competition. A project estimate will be established by the County for each project selected for the program. Firms that participate in the Sheltered Market Program will compete for the contracts that are available, sealed bids will be solicited from those firms, and contracts will be awarded to the firm submitting the lowest responsible and responsive bid. If no bids are received which are within competitive limits in reference to the engineer's estimate, the project may be reopened for full competitive bidding.

P. Participation in the program is not indefinite. Unless extraordinary circumstances exist, firms will be in the program for a period of three years, after which they will graduate and provide additional competition on other County contracts.

Q. Nor is the program itself indefinite. The proposed amendments provide that the program will be reviewed annually to determine if participation of minority, women, and emerging small businesses bidding on County contracts is increasing and whether there is an increase in the total number of bidders on County contracts generally, and whether the bids more closely approximate the County's project estimates. The analysis will include review of the factors set out Section 4 of HB 2910 as well as other appropriate factors.

R. In summary, the Sheltered Market Program will ultimately enhance competition in the Portland marketplace.

S. These findings have been made available for public review and comment pursuant to the requirements of ORS 279.015(3).

Section III. Amendment: Adoption of Rule

MCC 2.20.250 (B) is amended to read:

The Multnomah County Public Contract Review Board Administrative Rules dated February 27, 1997 and amended by Ordinance No. _____ dated January _____, 1998, are hereby adopted and replace those rules previously promulgated by the Board.


Dated this _____ day of January, 1998 being the date of its second reading before the Multnomah County Board of Commissioners.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

By _____
Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By  _____
John S. Thomas, Assistant County Counsel

revised 12/29/97

EXHIBIT A

NOTE: Amendments appear in Division 10 and Division 60 only. New materials highlighted, deleted material is in italics and brackets.

Division 10 is amended as follows:

Section 10.120 is amended to add a new Section (5) as follows:

- (5) The Purchasing Manager shall prepare a report to the Board of County Commissioners on an annual basis which provides an evaluation of the procedures for obtaining quotes in this Section. The annual report shall include a recommendation whether the program should be continued. If the Purchasing Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

Division 60 is amended as follows:

60.000 AFFIRMATIVE ACTION IN PUBLIC CONTRACTS

60.010 Purpose

- (1) The purpose of this Chapter is to establish procedures to assure that Multnomah County contractors and vendors provide adequate opportunities for minority individuals, women, and MBE, WBE and ESB contractors and subcontractors to participate and compete for business and employment opportunities provided through contracts with Multnomah County, State of Oregon.

60.015 Affirmative Action Contracts

- (1) Public contracts may be awarded pursuant to a specific Affirmative Action plan. This rule sets forth the Multnomah County Affirmative Action Plan.

60.030 Policy

- (1) It is the intent of Multnomah County to provide opportunities for all segments of the business population to participate in the Multnomah County Purchasing Program. In order to assure opportunity, every County contract and/or subcontract for construction, maintenance, or services shall include provisions barring discrimination against or differential treatment of MBE's, WBE's and ESB's. *[in contracting for business entities described in AR 60.020 (1) and (5)].*
- (2) For all contracts designated by the Purchasing Manager, bid specifications shall require compliance with a "good faith effort" program.

60.031 Good Faith Effort Program

- (1) The activities described in ORS 200.045 are standards for good faith efforts to provide equitable opportunities for MBEs, WBEs, and ESBs to participate in subcontract opportunities created through Multnomah County contracts.
- (2) The Purchasing Manager shall implement a good faith effort program utilizing the standards described in ORS 200.045 that are determined to be effective to achieve the purpose of this section together with such other standards as are appropriate to such a program. Bid or proposal specifications for contracts requiring good faith effort shall state the requirements necessary to show that a good faith effort has been made and shall require documentation of such effort. The Purchasing Manager shall cooperate with other municipal and state agencies to design, to the maximum extent possible, a program that is uniform between agencies.

60.032 Evaluation of Good Faith Effort

- (1) The Purchasing Manager or his/her designee shall determine if the bid complies with bid specifications for good faith effort.
- (2) Failure of bidder to submit good faith effort documentation required by the bid specifications shall be determined "non-responsive" to the bid specifications. Non-responsive bids will be rejected by the Multnomah county Purchasing Manager.

60.040 Requirement for Certification as Equal Employment Opportunity Employer

- (1) No vendor shall furnish goods or services to the County in any year, whether by single contract or multiple contracts, for an amount in excess of the limit set for formal bids in AR 10.010 unless such vendor is certified as an Equal Employment Opportunity Employer. No County agency shall enter into a contract by which a vendor shall exceed such limitation unless the vendor is, at the time of such contract, certified by the Purchasing Manager as an EEO Employer.

60.041 Certification Procedure/Appeal

- (1) Vendors furnishing goods and services to the County in excess of the limits set forth in AR 60.040 shall apply for and obtain EEO certification from the City of Portland as an EEO employer. The Purchasing Manager shall maintain a list of certified vendors based upon City of Portland certification. A vendor may appeal from a decision to deny certification or revoke certification in accordance with the procedure prescribed in AR 40.090 for denial or revocation of prequalification.

60.050 Workforce Requirements in Construction Contracts

- (1) For all contracts designated by the Purchasing Manager as being appropriate for such a program, the Purchasing Manager shall establish specifications to be included in the bid specifications which require for such contracts that contractors make reasonable efforts to increase apprenticeship training and work opportunities for women and minority individuals, and, to ensure that their workforce reflects the diversity of Multnomah County and is reasonably consistent with the availability of qualified women and minority

individuals. The specifications shall state the requirements necessary to show that a reasonable effort has been made, shall require documentation of such effort, and shall provide for remedies to the County for failure to comply with any of the specified requirements.

60.060 Sheltered Market Program

(1) There is hereby established a Sheltered Market Program for MBE, WBE and ESB contractors performing public works contracts for Multnomah County. The purpose of the program is to provide prime contracting experience for small contractors in order to increase the number of contractors available to bid on Multnomah County public works projects, and to increase participation of MBE, WBE, and ESB contractors acting as prime contractors on county public works projects to ensure uniform access to public contracting dollars and to improve opportunities for minorities and women acting as business owners in the regional construction industry.

(2) Contractors shall be selected for participation in the Sheltered Market Program based on an application developed by the Purchasing Manager. Criteria for selection shall include the following:

(a) Contractor shall be a state certified MBE, WBE or ESB

(b) Contractor shall have prior experience performing construction work and shall be currently in business doing construction work.

(c) Contractor shall have gross receipts for the calendar year prior to the application of less than \$1,000,000 or if gross receipts for that year are greater than \$1,000,000, then the average gross receipts for the three calendar years prior to the application shall be less than \$1,000,000. The Purchasing Manager shall have the discretion to waive this requirement if waiver will advance the purposes of the program and if all other criteria are met.

(d) Contractor shall have reported that contractor has experienced barriers in the conduct of contractor's business based on race, gender or size of the business.

The Purchasing Manager may develop additional criteria for selection of contractors for participation in the program which further the purpose of the program.

(3) A contractor may appeal from a decision to deny participation in the program to the Public Contract Review Board in accordance with the procedure prescribed in AR 40.090.

(4) Contracts to be included in the Sheltered Market Program shall be selected by the Purchasing Manager from projects estimated at the time of bidding to result in a contract in excess of \$50,000 and less than \$200,000. The Purchasing Manager may include in the program additional contracts up to \$250,000 if inclusion will further the purposes of the program. In the selection of contracts to be included in the program, the Purchasing

Manager shall consider the number of contractors in the program which have the qualifications and the capacity to perform the work. If necessary to assure that all Sheltered Market contractors have an opportunity to participate, contracts may be offered for bid to only selected contractors within the Sheltered Market Program.

- (5) Contracts selected for inclusion in the Sheltered Market Program shall be offered for bid only to contractors admitted to the Sheltered Market Program. Except as provided in subsection (6) below, the contract shall be awarded to the lowest responsive responsible bidder among those bidding.
- (6) For each project selected for the Sheltered Market Program, the project manager for the program shall forward to the Purchasing Manager a cost estimate for the project. If the lowest responsive responsible bid is more than the cost estimate, the Purchasing Manager shall have the option to award the contract, re-bid the project within the Sheltered Market Program, or open the bidding on the project to all bidders. If bidding is opened to all bidders, the contract shall then be awarded to the lowest responsible responsive bid from among all bids received.
- (7) The Purchasing Manager shall promulgate rules setting forth conditions for continued participation in the program, and for graduation from the program. Participation in the Program shall be limited to three years absent extraordinary circumstances.
- (8) The Purchasing Manager shall prepare a report to the Board of County Commissioners on an annual basis which provides an evaluation of the program, including information on the subjects set forth in Section 4 of HB 2910. The annual report shall include a recommendation whether the program should be continued. If the Purchasing Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

VIDEO

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#3

Community Budget Forum
Northwest Coalition of Neighborhoods
1/25/97 - Tape 1 of 1
RT 2:08:25

VIDEO

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#4

Community Budget Forum
East Portland - Tape 1 of 1
1/29/97 - RT 1:47:44

VIDEO

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#2

Community Budget Forum
Central N.E. Neighbors - Tape 1 of 1
1/25/97 - RT 1:03:00

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#1

Community Budget Forum
Downtown - Tape 1 of 1
1/23/97 - RT 1:53:45

VIDEO

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#7

Community Budget Forum
North Portland - Tape 1 of 2
2/01/97 - RT 2:04:00

VIDEO

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#6

Community Budget Forum
Neighbors West/N.W. - Tape 1 of 1
2/01/97 - RT :53:30

VIDEO

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#5

Community Budget Forum
Southeast Uplift - Tape 1 of 2
1/30/97 - RT 1:55:52



Multnomah Community Television 26000 S.E. Stark St. Gresham, Oregon 97030-3300

#10

Gresham City Council Measure 47 Hearing (c) 1997



Multnomah Community Television 26000 S.E. Stark St. Gresham, Oregon 97030-3300

#9

Measure 47 Forum Troutdale City Hall

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#8

Community Budget Forum
S.W.N.I. - Tape 1 of 1
2/05/97 - FRT 1:05:00

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#7

Community Budget Forum
North Portland - Tape 2 of 2
2/01/97 - RT :17:30

VIDEO
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Portland, OR 97201
503 • 226 • 5091

#5

Community Budget Forum
Southeast Uplift - Tape 2 of 2
1/30/97 - RT :24:29