

# **ANNOTATED MINUTES**

Thursday, August 10, 2006 - 9:00 AM  
Multnomah Building, First Floor Commissioners Conference Room 112  
501 SE Hawthorne Boulevard, Portland

## **EXECUTIVE SESSION**

*Chair Diane Linn convened the meeting at 9:03 a.m., with Commissioners Lisa Naito and Serena Cruz Walsh present, Vice-Chair Lonnie Roberts arriving at 9:05 a.m. and Commissioner Maria Rojo de Steffey arriving at 9:07 a.m.*

- E-1 The Multnomah County Board of Commissioners will meet in Executive Session Pursuant to ORS 192.660(2)(h). Only Representatives of the News Media and Designated Staff are allowed to attend. News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Session. No Final Decision will be made in the Session. Presented by John Thomas. 15-30 MINUTES REQUESTED.

### ***EXECUTIVE SESSION HELD.***

*There being no further business, the meeting was adjourned at 9:29 a.m.*

---

Thursday, August 10, 2006 - 9:30 AM  
Multnomah Building, First Floor Commissioners Boardroom 100  
501 SE Hawthorne Boulevard, Portland

## **REGULAR MEETING**

*Chair Diane Linn convened the meeting at 9:31 a.m., with Vice-Chair Lonnie Roberts and Commissioners Lisa Naito, Serena Cruz Walsh and Maria Rojo de Steffey present.*

### **CONSENT CALENDAR**

***UPON MOTION OF COMMISSIONER ROBERTS,  
SECONDED BY COMMISSIONER CRUZ, THE  
CONSENT CALENDAR (ITEM C-1) WAS  
UNANIMOUSLY APPROVED.***

## **DEPARTMENT OF COUNTY MANAGEMENT**

- C-1 RESOLUTION Authorizing Cancellation of Uncollectible Personal Property Taxes for Tax Years 1994/05 through 2005/06

### ***RESOLUTION 06-140***

## **REGULAR AGENDA** **PUBLIC COMMENT**

Opportunity for Public Comment on non-agenda matters. Testimony is limited to three minutes per person. Fill out a speaker form available in the Boardroom and turn it into the Board Clerk.

***GEOFF THOMPSON, IRAN PARKER, ANGELO SIMIONE, THOMAS R NICOLA, JON MARC ROSS, DAVID KELLY AND MAYOR PAUL THALHOFER COMMENTED IN SUPPORT OF THE COUNTY ALLOWING ADVERTISING NOW FOR A NOVEMBER OPENING OF THE VIEW POINT INN. MR. KELLY ADVISED HE WILL HAVE TO REDO THE TRAFFIC STUDY BASED ON REVISED COUNTY CONDITIONS AND RESPONDED TO QUESTIONS OF COMMISSIONERS ROBERTS AND NAITO.***

## **DEPARTMENT OF COUNTY MANAGEMENT**

- R-1 RESOLUTION Approving Reimbursement to the County for County Sponsored Projects from Title III Funding for Fiscal Year 2006 and Authorizing Expenditures for Fiscal Year 2007

***COMMISSIONER NAITO MOVED AND COMMISSIONER ROJO SECONDED, APPROVAL OF SUBSTITUTE RESOLUTION. BOB THOMAS EXPLANATION. COMMISSIONER NAITO COMMENDED MR. THOMAS FOR HIS EFFORTS. RESOLUTION 06-141 UNANIMOUSLY ADOPTED.***

- R-2 Budget Modification DCM-01 Authorizing Reclassification of Positions in Central Procurement and Contract Administration, General Ledger, and Information Technology, as Determined by the Class/Comp Unit of Central Human Resources

**COMMISSIONER ROBERTS MOVED AND  
COMMISSIONER CRUZ SECONDED, APPROVAL  
OF R-2. BOB THOMAS EXPLANATION. BUDGET  
MODIFICATION UNANIMOUSLY APPROVED.**

**DEPARTMENT OF HEALTH**

- R-3 NOTICE OF INTENT to Submit a Proposal to the Robert Wood Johnson Foundation *Common Ground: Transforming Public Health Information Systems – Informatics Capacity Grant Competition*

**COMMISSIONER CRUZ MOVED AND  
COMMISSIONER NAITO SECONDED, APPROVAL  
OF R-3. AMY SULLIVAN EXPLANATION. NOTICE  
OF INTENT UNANIMOUSLY APPROVED.**

**DEPARTMENT OF LIBRARY SERVICES**

- R-4 Budget Modification LIB-02 Appropriating \$1,292,310 of Revenues from The Library Foundation to the Library Fund for Program and Collection Enhancements

**COMMISSIONER ROBERTS MOVED AND  
COMMISSIONER CRUZ SECONDED, APPROVAL  
OF R-4. MOLLY RAPHAEL EXPLANATION. CHAIR  
LINN COMMENTS IN SUPPORT. BUDGET  
MODIFICATION UNANIMOUSLY APPROVED.**

**DEPARTMENT OF COUNTY HUMAN SERVICES**

- R-5 Budget Modification DCHS-03 Reclassifying an Office Assistant 2 to Office Assistant Senior in the Aging and Disability Services Division, Administration Program, as Determined by the Class/Comp Unit of Central Human Resources

**COMMISSIONER ROBERTS MOVED AND  
COMMISSIONER CRUZ SECONDED, APPROVAL  
OF R-5. DANA LLOYD EXPLANATION. BUDGET  
MODIFICATION UNANIMOUSLY APPROVED.**

**DEPARTMENT OF COMMUNITY JUSTICE**

- R-6 Budget Modification DCJ-03 Appropriating \$283,543 in State of Oregon Criminal Justice Commission Grant Funds to Provide Program Enhancement for the Sanction Treatment Opportunity Progress (STOP) Drug Court

**COMMISSIONER CRUZ MOVED AND COMMISSIONER NAITO SECONDED, APPROVAL OF R-6. KATHLEEN TREB EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

- R-7 Budget Modification DCJ-04 Appropriating \$7,471 from the Oregon Department of Human Services for Treatment at DCJ's Juvenile Secure Residential Alcohol and Drug Treatment Unit (RAD)

**COMMISSIONER ROJO MOVED AND COMMISSIONER ROBERTS SECONDED, APPROVAL OF R-7. KATHLEEN TREB AND THUY VANDERLINE EXPLANATION AND RESPONSE TO QUESTIONS OF CHAIR LINN AND COMMISSIONER CRUZ. CHAIR LINN COMMENTS IN SUPPORT. BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

#### **NON-DEPARTMENTAL**

- R-8 RESOLUTION Approving a Lease of Additional Space at 421 SW Oak Street, Portland, Oregon

**AT THE REQUEST OF THE DEPARTMENT AND UPON MOTION OF COMMISSIONER CRUZ, SECONDED BY COMMISSIONER NAITO, R-8 WAS UNANIMOUSLY POSTPONED INDEFINITELY.**

- R-9 RESOLUTION Declaring a Portion of the Edgefield Property Located at 1906 SW Halsey Street, Troutdale, Oregon as Surplus Property and Approving an Easement Agreement with Michael McMenamin

**COMMISSIONER ROBERTS MOVED AND COMMISSIONER ROJO SECONDED, APPROVAL OF R-9. DOUG BUTLER AND MIKE SUBLETT EXPLANATION AND RESPONSE TO QUESTIONS OF COMMISSIONER CRUZ REGARDING SALE PROCESS AND STATUS OF THE FINAL**

**DOCUMENTATION. RESOLUTION 06-142  
UNANIMOUSLY ADOPTED.**

- R-10 RESOLUTION Declaring the McCoy Building, 426 SW Stark Street, Portland, Oregon as Surplus Property and Authorizing Facilities and Property Management Division to Commence a Market Sale of the Property

**AT THE REQUEST OF THE DEPARTMENT AND  
UPON MOTION OF COMMISSIONER CRUZ,  
SECONDED BY COMMISSIONER ROJO, R-9 WAS  
UNANIMOUSLY POSTPONED INDEFINITELY.**

**DEPARTMENT OF COMMUNITY SERVICES**

- R-11 Public Hearing to Consider and Possibly Act Upon a Measure 37 Claim by James and Elizabeth McGrew for \$8,097,000 in Compensation or Relief from Regulations to Allow a 38 Lot Subdivision on Property Located at 13154 NW McNamee Road [T 2N, R 1W, SEC 32A, TL 700, 800, 900, and 1000] (Case File T1-05-061). Presented by Derrick Tokos and Sandra Duffy.

**CHAIR LINN CONVENED THE HEARING, WITH  
COMMISSIONERS LISA NAITO, SERENA CRUZ  
WALSH, LONNIE ROBERTS AND MARIA ROJO DE  
STEFFEY PRESENT. AT CHAIR LINN'S REQUEST  
FOR DISCLOSURE, NO EX PARTE CONTACTS  
WERE REPORTED. AT CHAIR LINN'S REQUEST  
FOR DISCLOSURE, NO CONFLICTS OF INTEREST  
WERE REPORTED. AT CHAIR LINN'S REQUESTS  
FOR DISCLOSURE, NO BOARD MEMBER  
DISCLOSED HAVING A FINANCIAL INTEREST IN  
THE OUTCOME OF THIS MATTER AND NO  
BOARD MEMBER DISCLOSED LIVING WITHIN  
THE GEOGRAPHICAL AREA ENTITLED TO  
NOTICE OF CLAIM. CHAIR LINN EXPLAINED  
THE CONDUCT OF HEARING, THE ORDER OF  
TESTIMONY AND HOW TO PRESENT TESTIMONY.  
PLANNER DERRICK TOKOS PRESENTED THE  
STAFF REPORT AND RECOMMENDATIONS;  
READ EMAIL FROM NEIGHBORS REQUESTING  
CLARIFICATION REGARDING AN EASEMENT  
THEY HAVE WITH CLAIMANTS, AND RESPONDED  
TO A QUESTION OF COMMISSIONER NAITO,**

**ADVISING THAT THE ONLY ACCESS TO CLAIMANT'S PROPERTY IS OVER PRIVATE PROPERTY. IT WAS DETERMINED THAT CLAIMANTS JAMES AND ELIZABETH MCGREW WERE NOT PRESENT AND THAT NO ONE WISHED TO TESTIFY. ASSISTANT COUNTY ATTORNEY SANDRA DUFFY RESPONSE TO QUESTIONS OF COMMISSIONER NAITO AND CHAIR LINN REGARDING A RECENT COURT CASE AND TRANSFERABILITY. MS. DUFFY INTRODUCED A PROPOSED ORDER AND ASKED THAT IT BE AMENDED TO REFLECT THAT TAX LOT 700 HAS BEEN IN CONTINUOUS OWNERSHIP. COMMISSIONER CRUZ MOVED AND COMMISSIONER NAITO SECONDED APPROVAL OF AN AMENDMENT TO THE PROPOSED ORDER REFLECTING THAT TAX LOT 700 HAS BEEN IN CONTINUOUS OWNERSHIP, AND APPROVAL OF AN ORDER DENYING MEASURE 37 REQUEST OF JAMES AND ELIZABETH MCGREW. ORDER 06-143 DENYING MEASURE 37 REQUEST OF JAMES AND ELIZABETH MCGREW RELATING TO REAL PROPERTY LOCATED AT 13154 NW MCNAMEE ROAD UNANIMOUSLY ADOPTED, AS AMENDED.**

- R-12 Public Hearing to Consider and Possibly Act Upon a Measure 37 Claim by Dean Richards and William Richards for \$915,000 in Compensation or Relief from Regulations to Allow a 20 Lot Subdivision on Property Located at 29415 and 29429 SE Powell Valley Road [TL 200 and 100, SEC 19AB, 1S - 4E] (Case File T1-05-062). Presented by Adam Barber and Sandra Duffy.

**CHAIR LINN CONVENED THE HEARING, WITH COMMISSIONERS LISA NAITO, SERENA CRUZ WALSH, LONNIE ROBERTS AND MARIA ROJO DE STEFFEY PRESENT. AT CHAIR LINN'S REQUEST FOR DISCLOSURE, NO EX PARTE CONTACTS WERE REPORTED. AT CHAIR LINN'S REQUEST FOR DISCLOSURE, NO CONFLICTS OF INTEREST WERE REPORTED. AT CHAIR LINN'S REQUESTS FOR DISCLOSURE, NO BOARD MEMBER DISCLOSED HAVING A FINANCIAL INTEREST IN THE OUTCOME OF THIS MATTER AND NO**

**BOARD MEMBER DISCLOSED LIVING WITHIN THE GEOGRAPHICAL AREA ENTITLED TO NOTICE OF CLAIM. CHAIR LINN EXPLAINED THE CONDUCT OF HEARING, THE ORDER OF TESTIMONY AND HOW TO PRESENT TESTIMONY. PLANNER ADAM BARBER PRESENTED THE STAFF REPORT; CLARIFIED THAT PROPERTY OWNERS ARE ASKING \$1,830,000 IN COMPENSATION OR RELIEF FROM REGULATIONS TO ALLOW A 40 LOT SUBDIVISION; AND ADVISED THAT STAFF RECOMMENDS DENIAL. IT WAS DETERMINED THAT CLAIMANTS DEAN RICHARDS AND WILLIAM RICHARDS WERE NOT PRESENT AND THAT NO ONE WISHED TO TESTIFY. ASSISTANT COUNTY ATTORNEY SANDRA DUFFY RESPONSE TO A QUESTION OF CHAIR LINN REGARDING CONTINUOUS OWNERSHIP. MR. BARBER AND MS. DUFFY RESPONSE TO QUESTIONS REGARDING OWNERSHIP, DEEDS AND STATUTE OF LIMITATIONS. THERE BEING NO FURTHER BOARD QUESTIONS OR DISCUSSION, COMMISSIONER CRUZ MOVED AND COMMISSIONER NAITO SECONDED, AN ORDER DENYING MEASURE 37 REQUEST OF DEAN RICHARDS AND WILLIAM RICHARDS. COMMISSIONER ROBERTS EXPRESSED DISMAY THAT NO ONE APPEARED TO DEFEND CLAIM. ORDER 06-144 DENYING MEASURE 37 REQUEST OF DEAN RICHARDS AND WILLIAM RICHARDS RELATING TO REAL PROPERTY LOCATED AT 29415 AND 29429 SE POWELL VALLEY ROAD UNANIMOUSLY ADOPTED.**

*There being no further business, the meeting was adjourned at 10:49 a.m.*

BOARD CLERK FOR MULTNOMAH COUNTY, OREGON

*Deborah L. Bogstad*



Multnomah County Oregon

## Board of Commissioners & Agenda

*connecting citizens with information and services*

### BOARD OF COMMISSIONERS

**Diane Linn, Chair**

501 SE Hawthorne Boulevard, Suite 600  
Portland, Or 97214

Phone: (503) 988-3308 FAX (503) 988-3093

Email: [mult.chair@co.multnomah.or.us](mailto:mult.chair@co.multnomah.or.us)

**Maria Rojo de Steffey, Commission Dist. 1**

501 SE Hawthorne Boulevard, Suite 600  
Portland, Or 97214

Phone: (503) 988-5220 FAX (503) 988-5440

Email: [district1@co.multnomah.or.us](mailto:district1@co.multnomah.or.us)

**Serena Cruz Walsh, Commission Dist. 2**

501 SE Hawthorne Boulevard, Suite 600  
Portland, Or 97214

Phone: (503) 988-5219 FAX (503) 988-5440

Email: [serena@co.multnomah.or.us](mailto:serena@co.multnomah.or.us)

**Lisa Naito, Commission Dist. 3**

501 SE Hawthorne Boulevard, Suite 600  
Portland, Or 97214

Phone: (503) 988-5217 FAX (503) 988-5262

Email: [district3@co.multnomah.or.us](mailto:district3@co.multnomah.or.us)

**Lonnie Roberts, Commission Dist. 4**

501 SE Hawthorne Boulevard, Suite 600  
Portland, Or 97214

Phone: (503) 988-5213 FAX (503) 988-5262

Email: [lonnie.j.roberts@co.multnomah.or.us](mailto:lonnie.j.roberts@co.multnomah.or.us)

**On-line Streaming Media, View Board Meetings**

**[www.co.multnomah.or.us/cc/live\\_broadcast.shtml](http://www.co.multnomah.or.us/cc/live_broadcast.shtml)**

**On-line Agendas & Agenda Packet Material**  
**[www.co.multnomah.or.us/cc/agenda.shtml](http://www.co.multnomah.or.us/cc/agenda.shtml)**

**Americans with Disabilities Act Notice:** If you need this agenda in an alternate format, or wish to participate in a Board Meeting, please call the Board Clerk (503) 988-3277, or the City/County Information Center TDD number (503) 823-6868, for information on available services and accessibility.

### **AUGUST 10, 2006 BOARD MEETING FASTLOOK AGENDA ITEMS OF INTEREST**

Pg 2	9:00 a.m. if needed Executive Session
Pg 2	9:30 a.m. Opportunity for Public Comment on Non-Agenda Matters
Pg 2	9:30 a.m. Resolution Approving Reimbursement for County Sponsored Projects from Title III Funding
Pg 4	10:10 a.m. Public Hearing on Measure 37 Claim of James and Elizabeth McGrew, 13154 NW McNamee Road
Pg 4	10:40 a.m. Public Hearing on Measure 37 Claim of Dean Richards and William Richards, 29415 and 29429 SE Powell Valley Road
	<b>The August 24 and 31, 2006 Board Meetings are Cancelled</b>

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

Thursday, 9:30 AM, (LIVE) Channel 30  
Friday, 11:00 PM, Channel 30  
Saturday, 10:00 AM, Channel 30  
Sunday, 11:00 AM, Channel 30

Produced through MetroEast Community Media  
(503) 667-8848, ext. 332 for further info  
or: <http://www.mctv.org>



Thursday, August 10, 2006 - 9:00 AM  
Multnomah Building, First Floor Commissioners Conference Room 112  
501 SE Hawthorne Boulevard, Portland

## **IF NEEDED EXECUTIVE SESSION**

- E-1 The Multnomah County Board of Commissioners will meet in Executive Session Pursuant to ORS 192.660(2)(h). Only Representatives of the News Media and Designated Staff are allowed to attend. News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Session. No Final Decision will be made in the Session. Presented by Agnes Sowle. 15-30 MINUTES REQUESTED.
- 

Thursday, August 10, 2006 - 9:30 AM  
Multnomah Building, First Floor Commissioners Boardroom 100  
501 SE Hawthorne Boulevard, Portland

## **REGULAR MEETING**

### **CONSENT CALENDAR - 9:30 AM**

### **DEPARTMENT OF COUNTY MANAGEMENT**

- C-1 RESOLUTION Authorizing Cancellation of Uncollectible Personal Property Taxes for Tax Years 1994/05 through 2005/06

### **REGULAR AGENDA - 9:30 AM**

### **PUBLIC COMMENT - 9:30 AM**

Opportunity for Public Comment on non-agenda matters. Testimony is limited to three minutes per person. Fill out a speaker form available in the Boardroom and turn it into the Board Clerk.

### **DEPARTMENT OF COUNTY MANAGEMENT - 9:30 AM**

- R-1 RESOLUTION Approving Reimbursement to the County for County Sponsored Projects from Title III Funding for Fiscal Year 2006 and Authorizing Expenditures for Fiscal Year 2007
- R-2 Budget Modification DCM-01 Authorizing Reclassification of Positions in Central Procurement and Contract Administration, General Ledger, and

Information Technology, as Determined by the Class/Comp Unit of Central Human Resources

**DEPARTMENT OF HEALTH - 9:35 AM**

- R-3 NOTICE OF INTENT to Submit a Proposal to the Robert Wood Johnson Foundation *Common Ground: Transforming Public Health Information Systems – Informatics Capacity* Grant Competition

**DEPARTMENT OF LIBRARY SERVICES - 9:40 AM**

- R-4 Budget Modification LIB-02 Appropriating \$1,292,310 of Revenues from The Library Foundation to the Library Fund for Program and Collection Enhancements

**DEPARTMENT OF COUNTY HUMAN SERVICES - 9:45 AM**

- R-5 Budget Modification DCHS-03 Reclassifying an Office Assistant 2 to Office Assistant Senior in the Aging and Disability Services Division, Administration Program, as Determined by the Class/Comp Unit of Central Human Resources

**DEPARTMENT OF COMMUNITY JUSTICE - 9:50 AM**

- R-6 Budget Modification DCJ-03 Appropriating \$283,543 in State of Oregon Criminal Justice Commission Grant Funds to Provide Program Enhancement for the Sanction Treatment Opportunity Progress (STOP) Drug Court
- R-7 Budget Modification DCJ-04 Appropriating \$7,471 from the Oregon Department of Human Services for Treatment at DCJ's Juvenile Secure Residential Alcohol and Drug Treatment Unit (RAD)

**NON-DEPARTMENTAL - 9:55 AM**

- R-8 RESOLUTION Approving a Lease of Additional Space at 421 SW Oak Street, Portland, Oregon
- R-9 RESOLUTION Declaring a Portion of the Edgefield Property Located at 1906 SW Halsey Street, Troutdale, Oregon as Surplus Property and Approving an Easement Agreement with Michael McMenamin

R-10 RESOLUTION Declaring the McCoy Building, 426 SW Stark Street, Portland, Oregon as Surplus Property and Authorizing Facilities and Property Management Division to Commence a Market Sale of the Property

**DEPARTMENT OF COMMUNITY SERVICES - 10:10 AM**

R-11 Public Hearing to Consider and Possibly Act Upon a Measure 37 Claim by James and Elizabeth McGrew for \$8,097,000 in Compensation or Relief from Regulations to Allow a 38 Lot Subdivision on Property Located at 13154 NW McNamee Road [T 2N, R 1W, SEC 32A, TL 700, 800, 900, and 1000] (Case File T1-05-061). Presented by Derrick Tokos and Sandra Duffy.

R-12 Public Hearing to Consider and Possibly Act Upon a Measure 37 Claim by Dean Richards and William Richards for \$915,000 in Compensation or Relief from Regulations to Allow a 20 Lot Subdivision on Property Located at 29415 and 29429 SE Powell Valley Road [TL 200 and 100, SEC 19AB, 1S - 4E] (Case File T1-05-062). Presented by Adam Barber and Sandra Duffy.



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: E-1  
Est. Start Time: 9:00 AM  
Date Submitted: 07/17/06

### BUDGET MODIFICATION:

**Agenda Title:** Executive Session Pursuant to ORS 192.660(2)(h)

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date Requested:</b>	August 10, 2006	<b>Time Requested:</b>	15 -30 mins
<b>Department:</b>	Non-Departmental	<b>Division:</b>	County Attorney's Office
<b>Contact(s):</b>	Agnes Sowle		
<b>Phone:</b>	503 988-3138	<b>Ext.</b>	83138
<b>I/O Address:</b>	503/500		
<b>Presenter(s):</b>	Agnes Sowle and Invited Others		

### General Information

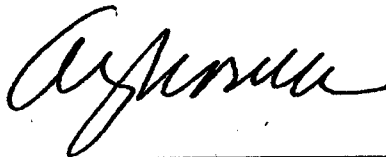
1. What action are you requesting from the Board?  
No Final Decision will be made in the Executive Session.
2. Please provide sufficient background information for the Board and the public to understand this issue.  
Only Representatives of the News Media and Designated Staff are allowed to Attend.  
Representatives of the News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Executive Session.
3. Explain the fiscal impact (current year and ongoing).
4. Explain any legal and/or policy issues involved.  
ORS 192.660(2)(h).
5. Explain any citizen and/or other government participation that has or will take place.

---

**Required Signatures**

---

**Department/  
Agency Director:**



**Date:** 07/17/06

**Budget Analyst:**

**Date:**

**Department HR:**

**Date:**

**Countywide HR:**

**Date:**



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: C-1  
Est. Start Time: 9:30 AM  
Date Submitted: 07/13/06

**BUDGET MODIFICATION:** -

**Agenda Title:** RESOLUTION Authorizing Cancellation of Uncollectible Personal Property Taxes for Tax Years 1994/05 through 2005/06

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date Requested:</b>	August 10, 2006	<b>Time Requested:</b>	N/A
<b>Department:</b>	Dept. of County Management	<b>Division:</b>	Assessment & Taxation
<b>Contact(s):</b>	Pat Frahler and Angelika Loomis		
<b>Phone:</b>	503-988-3345	<b>Ext.</b>	22330
<b>I/O Address:</b>	503/175		
<b>Presenter(s):</b>	Consent Calendar		

### General Information

**1. What action are you requesting from the Board?**

The Personal Property Collections Section is requesting the Board to approve the cancellation of Uncollectible Personal Property Taxes for 1994/95 through 2005/06, in the amount of \$289,972.09.

**2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action effects and how it impacts the results.**

Certain personal property taxes have been delinquent and the Multnomah County Tax Collector has determined that said taxes are wholly uncollectible and has requested the Board for an order directing that the taxes be cancelled pursuant to ORS 311.790.

Attached documents: Write Off List

\*Please return original documents and copies of all to Angelika Loomis, 503/175 Collections following approval

**3. Explain the fiscal impact (current year and ongoing).**

There is a loss of revenue of \$289,972.09 plus interest that indicates less monetary distribution to the Taxing Districts. This has ongoing impact because there is a lack of statutory authority to enforce

and collect delinquent corporation taxes from the responsible corporate owner/s.

**4. Explain any legal and/or policy issues involved.**

No legal issues are expected.

**5. Explain any citizen and/or other government participation that has or will take place.**

No citizen participation is anticipated. Accounting Department will cancel these taxes once Board approval is received.

---

**Required Signatures**

---

**Department/  
Agency Director:**

*Carol M. Ford*

**Date:** 07/17/06

**Budget Analyst:**

**Date:** \_\_\_\_\_

**Department HR:**

**Date:** \_\_\_\_\_

**Countywide HR:**

**Date:** \_\_\_\_\_

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. \_\_\_\_\_**

Authorizing Cancellation of Uncollectible Personal Property Taxes for Tax Years  
1994/05 through 2005/06

**The Multnomah County Board of Commissioners Finds:**

- a. Certain personal property taxes have been delinquent and the Multnomah County Tax Collector and County Counsel have determined that said taxes are wholly uncollectible and have requested the Board for an order directing that the taxes be cancelled pursuant to ORS 311.790.

**The Multnomah County Board of Commissioners Resolves:**

1. That the Multnomah County Tax Collector is directed to cancel those certain personal property taxes which are listed and appended hereto and incorporated herein, for tax years 1994/95 through 2004/05 for the reason that the same are found to be uncollectible.

ADOPTED this 10th day of August, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
John Thomas, Assistant County Attorney



# UNCOLLECTIBLE PERSONAL PROPERTY ACCOUNTS - JULY 2006

ACCOUNT#	TAX REPORT CODE	WARRANT#	TAX & INTEREST	TAX DUE
M356956	WRO		1,684.70	979.82
M354650	WRO	010160	108.92	81.68
P383678	WRO	050118	266.48	214.71
M362234	WRO	031971	854.46	586.09
M356455	WRO	041349	168.25	103.34
M358003	WRO	033332	128.79	61.34
P407266	WRO	930637	787.5	234.04
P424058	WRO	993584	628.06	294.46
M360065	WRO	050406	2,142.80	1,186.07
M353878	WRO	011231	214.27	101.17
P431705	WRO	942292	90.42	33.24
M358216	WRO	050822	476.3	287.29
P425883	WRO	020810	2,527.20	1,441.12
P351715	WRO	002321	353.71	169.14
P351743	WRO	032088	62.5	48.33
M354929	WRO	051154	1,760.33	632.92
M353497	WRO	040985	1,145.22	671.24
M355243	WRO		2,482.30	1,513.67
M355319	WRO	051202	1,543.97	999.33
M359641	WRO	941195	5,370.88	1,729.48
P519646	WRO	032574	4,678.53	3,132.95
M358576	WRO	031677	8,445.40	3,594.28
M358758	WRO	051522	221.31	148.56
<b>WRO - 23 accounts</b>			<b>\$36,142.30</b>	<b>\$18,244.27</b>
P495716	WRO CORP	020002	1,511.46	907.07
P402943	WRO CORP	041633	705.93	431.09
P494340	WRO CORP	031305	2,396.42	1,454.52
P540602	WRO CORP	032760	1,471.19	1,068.15
P503365	WRO CORP	032473	3,950.54	2,824.18
P500969	WRO CORP		1,259.45	944.59
P540636	WRO CORP	040098	1,371.66	1,128.98
P520300	WRO CORP	032581	2,322.69	1,617.66
P511303	WRO CORP	010378	72.11	37.38
P523529	WRO CORP	040302	16.38	14.45
P368162	WRO CORP	032117	942.86	671.9
P402738	WRO CORP	993519	2,622.49	1,193.66
P390236	WRO CORP	020361	3,682.29	2,434.34
P411590	WRO CORP	000540	1,318.03	700.94
P407464	WRO CORP	000556	989.83	519.94
P362600	WRO CORP	010753	1,893.37	1,111.14
P408645	WRO CORP	020407	1,427.58	856.21
P432514	WRO CORP	040421	3,707.51	3,119.76
P368566	WRO CORP	020416	3,815.83	2,227.75
P517924	WRO CORP	032549	15,995.23	13,210.53
P529575	WRO CORP	032636	6,780.75	4,828.25

ACCOUNT#	TAX REPORT CODE	WARRANT#	TAX & INTEREST	TAX DUE
P529612	WRO CORP	020529	4,289.76	2,841.14
P521381	WRO CORP	020530	6,911.33	4,586.84
P404176	WRO CORP	032241	2,903.78	1,964.27
P428891	WRO CORP	011072	891.92	511.04
P517929	WRO CORP	032550	480.15	320.23
P393264	WRO CORP	993998	788.94	330.08
P431728	WRO CORP	040592	5,389.23	3,169.86
P365029	WRO CORP	032106	2,137.75	1,322.37
P418189	WRO CORP	020585	1,441.79	934.02
P426002	WRO CORP	020651	1,974.66	1,218.78
P514544	WRO CORP	011217	1,644.60	1,000.60
P436972	WRO CORP	020657	1,096.30	642.93
P423926	WRO CORP	020655	2,169.98	1,421.63
P503800	WRO CORP	032479	3,815.60	2,826.45
P421078	WRO CORP	994253	860.47	412.23
P437450	WRO CORP	994254	1,987.80	969.63
P488725	WRO CORP	002206	86.62	48.85
P413344	WRO CORP	980585	3,292.19	1,434.56
P378454	WRO CORP	001075	2,103.46	1,134.08
P520834	WRO CORP	040812	1,921.70	1,585.47
P404496	WRO CORP	012578	2,216.94	1,345.00
P522803	WRO CORP	020771	42.74	29.41
P527679	WRO CORP	033034	2,239.12	1,731.28
P366093	WRO CORP	011418	1,078.13	569.68
P503696	WRO CORP	040793	823	661.37
P433062	WRO CORP	994448	1,943.71	963.34
P501323	WRO CORP		530.65	355.34
P484954	WRO CORP	011446	1,559.30	842.55
P504231	WRO CORP	020823	235.64	162.14
P545845	WRO CORP	040834	760.25	607.88
P545835	WRO CORP	040835	3,514.96	2,972.99
P487324	WRO CORP	032395	5,692.99	4,851.98
P504004	WRO CORP	020853	1,536.01	937.17
P501088	WRO CORP	020916	3,532.27	2,388.86
P516502	WRO CORP	032529	2,605.79	1,749.74
P505046	WRO CORP	020951	9.37	5.81
P388032	WRO CORP	020961	4,167.96	2,414.14
P484413	WRO CORP	011729	1,204.79	700.28
P410572	WRO CORP	011745	1,850.67	1,090.93
P385602	WRO CORP	980273	1,433.02	654.85
P403523	WRO CORP	011777	1,174.55	664.54
P517515	WRO CORP	021026	1,057.72	676.82
P407552	WRO CORP	961566	202.34	68.17
P502363	WRO CORP	011845	1,214.94	706.42
P547934	WRO CORP	051248	3,635.70	3,258.78
P507004	WRO CORP	033123	1,171.39	856.14
P392683	WRO CORP	021142	2,271.71	1,479.95
P441156	WRO CORP	032342	549.83	366.3
P490820	WRO CORP	032411	1,223.70	809.66
P363294	WRO CORP	041236	1,152.65	942.32
P517842	WRO CORP	032548	1,366.05	980.69
P396266	WRO CORP	002212	1,364.50	988.13

ACCOUNT#	TAX REPORT CODE	WARRANT#	TAX & INTEREST	TAX DUE
P422524	WRO CORP		251.16	245.7
P380354	WRO CORP	032153	4,198.17	2,658.43
<b>WRO CORP - 75 accounts</b> (No avenue to collect from officers)			<b>\$162,253.35</b>	<b>109,714.34</b>
P487653	WRO B7	001082	83.34	47.00
P365352	WRO CORP B7	000396	12,059.24	6,260.85
P531174	WRO CORP B7		2,869.04	2,574.84
P424943	WRO CORP B7	032313	2,756.34	2,322.22
P420424	WRO CORP B7		5,145.40	2,264.94
P486431	WRO CORP B7		1,686.26	929.93
P487875	WRO CORP B7		29,624.97	17,339.18
P542190	WRO CORP B7	041120	10,828.80	10,060.93
P431674	WRO CORP B7		2,007.22	935.73
<b>WRO - 9 accounts (CHAPTER 7 BANKRUPTCIES)</b>			<b>\$67,060.61</b>	<b>\$42,735.62</b>
P537181	WRO CORP B11	041706	184.81	121.6
P533533	WRO CORP B11	032679	1,420.90	1,069.75
P396032	WRO CORP B11	020390	431.99	295.11
U482671	WRO CORP B11		10,936.09	7,524.83
U516236	WRO CORP B11		56,088.47	34,592.97
P395775	WRO CORP B11		56.57	49.92
P399284	WRO CORP B11		80.21	70.78
P435068	WRO CORP B11		105.99	93.52
P426834	WRO CORP B11		3,441.20	2,367.80
P432366	WRO CORP B11		19,976.44	13,377.08
P530766	WRO CORP B11	040724	3,481.54	2,737.31
P490394	WRO CORP B11	011391	1,295.45	802.97
P378259	WRO CORP B11	001147	2,493.56	1,349.21
P384739	WRO CORP B11	021591	2,411.16	1,364.76
P364012	WRO CORP B11		2,445.14	1,141.00
P496401	WRO CORP B11	020918	1,216.65	783.24
P364483	WRO CORP B11		1,199.78	612.54
P396184	WRO CORP B11		196.95	102.23
P543081	WRO CORP B11		29,480.48	26,093.80
P494764	WRO CORP B11		16,143.34	9,764.12
P505245	WRO CORP B11		8,938.33	5,406.24
P505247	WRO CORP B11		6,211.54	3,789.55
P505248	WRO CORP B11		8,590.42	5,195.82
<b>WRO - 23 accounts (CHAPTER 11 BANKRUPTCIES)</b>			<b>\$176,827.01</b>	<b>118,706.15</b>
P432186	WRO B13	953252	1,662.02	571.71
<b>WRO - 1 account (CHAPTER 13 BANKRUPTCIES)</b>			<b>1,662.02</b>	<b>571.71</b>
<b>GRAND TOTAL</b>			<b>443,945.29</b>	<b>289,972.09</b>

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 06-140**

Authorizing Cancellation of Uncollectible Personal Property Taxes for Tax Years  
1994/05 through 2005/06

**The Multnomah County Board of Commissioners Finds:**

- a. Certain personal property taxes have been delinquent and the Multnomah County Tax Collector and County Counsel have determined that said taxes are wholly uncollectible and have requested the Board for an order directing that the taxes be cancelled pursuant to ORS 311.790.

**The Multnomah County Board of Commissioners Resolves:**

1. That the Multnomah County Tax Collector is directed to cancel those certain personal property taxes which are listed and appended hereto and incorporated herein, for tax years 1994/95 through 2004/05 for the reason that the same are found to be uncollectible.

ADOPTED this 10th day of August, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
\_\_\_\_\_  
Diane M. Linn, Chair



REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
\_\_\_\_\_  
John Thomas, Assistant County Attorney

# UNCOLLECTIBLE PERSONAL PROPERTY ACCOUNTS - JULY 2006

ACCOUNT#	TAX REPORT CODE	WARRANT#	TAX & INTEREST	TAX DUE
M356956	WRO		1,684.70	979.82
M354650	WRO	010160	108.92	81.68
P383678	WRO	050118	266.48	214.71
M362234	WRO	031971	854.46	586.09
M356455	WRO	041349	168.25	103.34
M358003	WRO	033332	128.79	61.34
P407266	WRO	930637	787.5	234.04
P424058	WRO	993584	628.06	294.46
M360065	WRO	050406	2,142.80	1,186.07
M353878	WRO	011231	214.27	101.17
P431705	WRO	942292	90.42	33.24
M358216	WRO	050822	476.3	287.29
P425883	WRO	020810	2,527.20	1,441.12
P351715	WRO	002321	353.71	169.14
P351743	WRO	032088	62.5	48.33
M354929	WRO	051154	1,760.33	632.92
M353497	WRO	040985	1,145.22	671.24
M355243	WRO		2,482.30	1,513.67
M355319	WRO	051202	1,543.97	999.33
M359641	WRO	941195	5,370.88	1,729.48
P519646	WRO	032574	4,678.53	3,132.95
M358576	WRO	031677	8,445.40	3,594.28
M358758	WRO	051522	221.31	148.56

**WRO - 23 accounts**

**\$36,142.30**

**\$18,244.27**

P495716	WRO CORP	020002	1,511.46	907.07
P402943	WRO CORP	041633	705.93	431.09
P494340	WRO CORP	031305	2,396.42	1,454.52
P540602	WRO CORP	032760	1,471.19	1,068.15
P503365	WRO CORP	032473	3,950.54	2,824.18
P500969	WRO CORP		1,259.45	944.59
P540636	WRO CORP	040098	1,371.66	1,128.98
P520300	WRO CORP	032581	2,322.69	1,617.66
P511303	WRO CORP	010378	72.11	37.38
P523529	WRO CORP	040302	16.38	14.45
P368162	WRO CORP	032117	942.86	671.9
P402738	WRO CORP	993519	2,622.49	1,193.66
P390236	WRO CORP	020361	3,682.29	2,434.34
P411590	WRO CORP	000540	1,318.03	700.94
P407464	WRO CORP	000556	989.83	519.94
P362600	WRO CORP	010753	1,893.37	1,111.14
P408645	WRO CORP	020407	1,427.58	856.21
P432514	WRO CORP	040421	3,707.51	3,119.76
P368566	WRO CORP	020416	3,815.83	2,227.75
P517924	WRO CORP	032549	15,995.23	13,210.53
P529575	WRO CORP	032636	6,780.75	4,828.25

ACCOUNT#	TAX REPORT CODE	WARRANT#	TAX & INTEREST	TAX DUE
P529612	WRO CORP	020529	4,289.76	2,841.14
P521381	WRO CORP	020530	6,911.33	4,586.84
P404176	WRO CORP	032241	2,903.78	1,964.27
P428891	WRO CORP	011072	891.92	511.04
P517929	WRO CORP	032550	480.15	320.23
P393264	WRO CORP	993998	788.94	330.08
P431728	WRO CORP	040592	5,389.23	3,169.86
P365029	WRO CORP	032106	2,137.75	1,322.37
P418189	WRO CORP	020585	1,441.79	934.02
P426002	WRO CORP	020651	1,974.66	1,218.78
P514544	WRO CORP	011217	1,644.60	1,000.60
P436972	WRO CORP	020657	1,096.30	642.93
P423926	WRO CORP	020655	2,169.98	1,421.63
P503800	WRO CORP	032479	3,815.60	2,826.45
P421078	WRO CORP	994253	860.47	412.23
P437450	WRO CORP	994254	1,987.80	969.63
P488725	WRO CORP	002206	86.62	48.85
P413344	WRO CORP	980585	3,292.19	1,434.56
P378454	WRO CORP	001075	2,103.46	1,134.08
P520834	WRO CORP	040812	1,921.70	1,585.47
P404496	WRO CORP	012578	2,216.94	1,345.00
P522803	WRO CORP	020771	42.74	29.41
P527679	WRO CORP	033034	2,239.12	1,731.28
P366093	WRO CORP	011418	1,078.13	569.68
P503696	WRO CORP	040793	823	661.37
P433062	WRO CORP	994448	1,943.71	963.34
P501323	WRO CORP		530.65	355.34
P484954	WRO CORP	011446	1,559.30	842.55
P504231	WRO CORP	020823	235.64	162.14
P545845	WRO CORP	040834	760.25	607.88
P545835	WRO CORP	040835	3,514.96	2,972.99
P487324	WRO CORP	032395	5,692.99	4,851.98
P504004	WRO CORP	020853	1,536.01	937.17
P501088	WRO CORP	020916	3,532.27	2,388.86
P516502	WRO CORP	032529	2,605.79	1,749.74
P505046	WRO CORP	020951	9.37	5.81
P388032	WRO CORP	020961	4,167.96	2,414.14
P484413	WRO CORP	011729	1,204.79	700.28
P410572	WRO CORP	011745	1,850.67	1,090.93
P385602	WRO CORP	980273	1,433.02	654.85
P403523	WRO CORP	011777	1,174.55	664.54
P517515	WRO CORP	021026	1,057.72	676.82
P407552	WRO CORP	961566	202.34	68.17
P502363	WRO CORP	011845	1,214.94	706.42
P547934	WRO CORP	051248	3,635.70	3,258.78
P507004	WRO CORP	033123	1,171.39	856.14
P392683	WRO CORP	021142	2,271.71	1,479.95
P441156	WRO CORP	032342	549.83	366.3
P490820	WRO CORP	032411	1,223.70	809.66
P363294	WRO CORP	041236	1,152.65	942.32
P517842	WRO CORP	032548	1,366.05	980.69
P396266	WRO CORP	002212	1,364.50	988.13

ACCOUNT#	TAX REPORT CODE	WARRANT#	TAX & INTEREST	TAX DUE
P422524	WRO CORP		251.16	245.7
P380354	WRO CORP	032153	4,198.17	2,658.43
<b>WRO CORP - 75 accounts</b> (No avenue to collect from officers)			<b>\$162,253.35</b>	<b>109,714.34</b>
P487653	WRO B7	001082	83.34	47.00
P365352	WRO CORP B7	000396	12,059.24	6,260.85
P531174	WRO CORP B7		2,869.04	2,574.84
P424943	WRO CORP B7	032313	2,756.34	2,322.22
P420424	WRO CORP B7		5,145.40	2,264.94
P486431	WRO CORP B7		1,686.26	929.93
P487875	WRO CORP B7		29,624.97	17,339.18
P542190	WRO CORP B7	041120	10,828.80	10,060.93
P431674	WRO CORP B7		2,007.22	935.73
<b>WRO - 9 accounts (CHAPTER 7 BANKRUPTCIES)</b>			<b>\$67,060.61</b>	<b>\$42,735.62</b>
P537181	WRO CORP B11	041706	184.81	121.6
P533533	WRO CORP B11	032679	1,420.90	1,069.75
P396032	WRO CORP B11	020390	431.99	295.11
U482671	WRO CORP B11		10,936.09	7,524.83
U516236	WRO CORP B11		56,088.47	34,592.97
P395775	WRO CORP B11		56.57	49.92
P399284	WRO CORP B11		80.21	70.78
P435068	WRO CORP B11		105.99	93.52
P426834	WRO CORP B11		3,441.20	2,367.80
P432366	WRO CORP B11		19,976.44	13,377.08
P530766	WRO CORP B11	040724	3,481.54	2,737.31
P490394	WRO CORP B11	011391	1,295.45	802.97
P378259	WRO CORP B11	001147	2,493.56	1,349.21
P384739	WRO CORP B11	021591	2,411.16	1,364.76
P364012	WRO CORP B11		2,445.14	1,141.00
P496401	WRO CORP B11	020918	1,216.65	783.24
P364483	WRO CORP B11		1,199.78	612.54
P396184	WRO CORP B11		196.95	102.23
P543081	WRO CORP B11		29,480.48	26,093.80
P494764	WRO CORP B11		16,143.34	9,764.12
P505245	WRO CORP B11		8,938.33	5,406.24
P505247	WRO CORP B11		6,211.54	3,789.55
P505248	WRO CORP B11		8,590.42	5,195.82
<b>WRO - 23 accounts (CHAPTER 11 BANKRUPTCIES)</b>			<b>\$176,827.01</b>	<b>118,706.15</b>
P432186	WRO B13	953252	1,662.02	571.71
<b>WRO - 1 account (CHAPTER 13 BANKRUPTCIES)</b>			<b>1,662.02</b>	<b>571.71</b>
<b>GRAND TOTAL</b>			<b>443,945.29</b>	<b>289,972.09</b>

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
PUBLIC TESTIMONY SIGN-UP**

---

Please complete this form and return to the Board Clerk

\*\*\*This form is a public record\*\*\*

MEETING DATE: AUG 10, 2006  
SUBJECT: THE VIEW POINT INN

AGENDA NUMBER OR TOPIC: \_\_\_\_\_

FOR: \_\_\_\_\_ AGAINST: \_\_\_\_\_ THE ABOVE AGENDA ITEM  
NAME: GEOFF THOMPSON

ADDRESS: 70301 E. LAICH MT RD

CITY/STATE/ZIP: Corbett OR 97019

PHONE: \_\_\_\_\_ DAYS: \_\_\_\_\_ EVES: \_\_\_\_\_

EMAIL: \_\_\_\_\_ FAX: \_\_\_\_\_

SPECIFIC ISSUE: \_\_\_\_\_

WRITTEN TESTIMONY: \_\_\_\_\_

**IF YOU WISH TO ADDRESS THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

**IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.



2

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
PUBLIC TESTIMONY SIGN-UP**

---

**Please complete this form and return to the Board Clerk**

**\*\*\*This form is a public record\*\*\***

**MEETING DATE:** 8/10/06

**SUBJECT:** Viewpoint Inn

**AGENDA NUMBER OR TOPIC:** Viewpoint Inn

**FOR:** ☒ **AGAINST:** ☐ **THE ABOVE AGENDA ITEM**

**NAME:** Iran Parker

**ADDRESS:** 4810 NE Sandy Blvd Apt 108

**CITY/STATE/ZIP:** Portland OR 97213

**PHONE:** **DAYS:** 503-710-4405 **EVES:** 503-710-4405

**EMAIL:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**SPECIFIC ISSUE:** \_\_\_\_\_

**WRITTEN TESTIMONY:** \_\_\_\_\_

**IF YOU WISH TO ADDRESS THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

**IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

# Memo

To: Geoff Thompson  
From: John M. Groen  
Date: July 24, 2006  
Re: Acceptance of courtesy hold deposits

---

I have reviewed the Multnomah County Code to determine whether there is any lawful basis to preclude The View Point Inn from accepting courtesy holds and refundable deposits for 2007. In short, in my opinion there is **no support** for precluding such conditional and nonbinding actions.

First, to be clear, my understanding is that you desire to accept "courtesy holds" for potential clients who might want to plan a private banquet or wedding in 2007. The interested parties would be informed that the permit approval process for opening the View Point Inn is not yet completed. Accordingly, there would be **no guarantee** that a courtesy hold would be honored. Rather, a courtesy hold merely places that interested party first in line so that, if the Inn is actually open, that party will have the desired date already reserved. If the Inn is not yet approved to be open for business, the courtesy hold would be cancelled and the deposit refunded.

The relevant provision is Multnomah County Code section 38.0010. That section states that "[n]o building, structure or land shall be **used**" except for approved uses. Emphasis added. Not surprisingly, the term "used" is not defined. Accordingly, "used" must be interpreted according to its normal and plain meaning.

Webster's New Collegiate Dictionary defines the verb form of "use" as "to put into action or service." Under this plain meaning, a courtesy hold should not be objectionable. The courtesy hold merely establishes a place in line for a contemplated **future** use, but it does not actually involving using the property **at this time**. Accordingly, the Inn is not put into action or service.

Common sense about the purpose of MCC 38.0010 leads to the same conclusion. The purpose of the regulation is to make **sure** that scenic, cultural, recreation and natural resources

are protected. Actually using property without approval can adversely impact these resources. But accepting a courtesy hold involves nothing more than receiving a call, perhaps even on a cell phone. This does not involve "using" the Inn under any normal interpretation and certainly does not threaten the resources associated with the National Scenic Area Act.

The County previously strained to interpret a reservation as "using" the property on the theory that a courtesy hold "supports an unpermitted use." Of course, all types of preliminary steps to open the Inn would be subject to the same objection. Yet, in a prior letter from the County, the County stated correctly: "It is recognized that advanced business planning is an essential component of a sound business venture."

Advance advertising and marketing in anticipation of an opening is a normal component of a sound business venture. While you cannot, and will not, actually open the restaurant and hotel until all necessary permits are in place, I believe it is unfair and contrary to the purposes of the National Scenic Act for the County to block you from engaging in preliminary steps that will help ensure the enterprise will be successful. One of those steps is to be able to accept courtesy holds and place advertisements in annual publications in anticipation of a grand opening.

I understand from our prior discussions that a number of people have already called and would like to place non-guaranteed courtesy holds for the summer months of 2007. From my perspective, there is no legitimate purpose that is advanced by precluding people from making such conditional reservations. Nor do I see any basis in the language of the code to preclude courtesy holds that are not guaranteed and that are subject to cancellation if the approval process is not yet complete.



**Department of Community Services**  
**MULTNOMAH COUNTY OREGON**

Land Use and Transportation Program  
1600 SE 190<sup>th</sup> Avenue  
Portland, Oregon 97233-5910  
PH. (503) 988-3043 Fax (503) 988-3389  
[www.co.multnomah.or.us/landuse](http://www.co.multnomah.or.us/landuse)

**Memo to:** Geoff Thompson and Angelo Simione

**From:** Karen Schilling *KS*

**Date:** July 27, 2006

**Re:** Viewpoint Inn

In the County's letter to John Groen dated February 10, 2006, we explained the legal explanation of the County's position regarding advertising for commercial activities for which permits have not been secured. If you disagree with this explanation, the letter also explains a process for a Planning Director's interpretation which could be appealed to a Hearings Officer. I would like to offer further clarification as to why advertising is still not allowed during the time between when the National Scenic Area Plan was updated to allow commercial activities and when a property owner acquires their permit for specific activities.

The Historic Properties amendment requires the uses be allowed if the approval criteria are met. Shall is used in both places (i.e. that the use must be allowed and that it must meet the criteria). The code does not entitle an applicant to a particular scale of use, as that is the function of the conditional use review. It is through this process that a determination will be made as to whether or not the scale of use proposed compromises the historic integrity of the structure, is suitable considering available parking, has adequate provisions for sewage, won't create traffic hazards, etc.

Until the County can determine that what is being proposed will meet all of these criteria at the scale proposed, it would be inappropriate to advertise.

Regarding a hearing date for your Conditional Use permit, the County will schedule a hearing no later than 60 days following your application being deemed complete.

cc:

John Groen, Attorney  
Michael Grimmert, Code Compliance Specialist  
Sandy Duffy, Multnomah County Attorney

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
PUBLIC TESTIMONY SIGN-UP**

Please complete this form and return to the Board Clerk

\*\*\*This form is a public record\*\*\*

MEETING DATE: 8/10/06

SUBJECT: The View Point Inn  
\*Advertising

AGENDA NUMBER OR TOPIC: —

FOR: — AGAINST: — THE ABOVE AGENDA ITEM

NAME: Angelo Simione

ADDRESS: 40301 E. Larch Mountain Road

CITY/STATE/ZIP: Corbett, Oregon 97019

PHONE: DAYS: (503) 695-5811 EVES: —

EMAIL: — FAX: (503) 695-5818

SPECIFIC ISSUE: Advertising — View Point Inn

WRITTEN TESTIMONY: handed in —

**IF YOU WISH TO ADDRESS THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

**IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.



The Viewpoint Inn

August 10, 2006  
Multnomah County Public Comment

Good morning Chair Linn & Commissioners ----

Recent attempts to find resolve with Land Use Planning and County attorney Sandra Duffy has resulted in a series of changing reasons that all suggest it is "inappropriate" rather than illegal for The View Point Inn to advertise and has recently morphed into the penultimate, and hopefully last reason: *The County doesn't want to be held liable*. This is finally a tangible, concrete reason with a *legal solution*. It is called a HOLD HARMLESS document stating the County is not held liable.

Chair Linn your logic, reasoning and resolve to not allow The View Point Inn to advertise previously was quite sound. At that time the language had not been adopted into County code and was not government law. The situation has changed dramatically as the language *is now* County code and thus, government law which states: The View Point Inn SHALL become an Inn and restaurant and the County *must* allow it, *regardless* of "scale" or anything else. We all now know that for a fact.

Consequently it is *now* reasonable that you can easily change your prior decision based on *that fact alone* and instruct your legal department to accept a HOLD HARMLESS document, rendering the County not liable, and allow The View Point Inn to advertise and accept "conditional" courtesy holds, not reservations. (i.e. #1. courtesy holds are subject to change based on the final permits' parameters concerning details of operations #2. the consumer would be made aware of this prior to making a "conditional" courtesy hold at which time they would also sign a HOLD HARMLESS document #3. the County would then be relieved of any fear or *possibility* of liability.)

It is this *possibility of liability* that Ms. Duffy bases her entire legal reasoning on as to why advertising should not be allowed. Her *other* reasoning involves her personal opinion and social etiquette of what she believes to be "appropriate" or "inappropriate". Only her legal reasoning, based in law, *appropriately* dictates what is relevant in this matter. A HOLD HARMLESS document is a legal and binding document relieving the County of any responsibility in this matter. It solves 100% Ms. Duffy's liability concerns leaving no other legal reason why we should not be able to advertise.

Based on this new information --- the HOLD HARMLESS document --- and the fact that the County now recognizes the government law stating that The View Point Inn SHALL become an inn and restaurant and must be allowed to become an inn and a restaurant regardless of any "scale" issue, or the outcome of the final permit's parameters -- - and with social etiquette aside, --- I respectfully ask you Chair Linn will you, in light of these significant and legal changes, reconsider your previous decision and now allow us, according to government law, to advertise and prepare for business?

4

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
PUBLIC TESTIMONY SIGN-UP**

---

Please complete this form and return to the Board Clerk

\*\*\*This form is a public record\*\*\*

MEETING DATE: 8/10/06

SUBJECT: View Point INN

---

AGENDA NUMBER OR TOPIC: \_\_\_\_\_

FOR: X AGAINST: \_\_\_\_\_ THE ABOVE AGENDA ITEM

NAME: THOMAS R. NICOLAI

ADDRESS: 900 SW 5th Ave. #2600

CITY/STATE/ZIP: PORTLAND, OR 97204

PHONE: \_\_\_\_\_

DAYS: \_\_\_\_\_

EVES: \_\_\_\_\_

EMAIL: \_\_\_\_\_

FAX: \_\_\_\_\_

SPECIFIC ISSUE: Approve advance reservations/deposits

---

WRITTEN TESTIMONY: Copy of oral testimony  
to be submitted.

---

---

---

**IF YOU WISH TO ADDRESS THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

**IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
PUBLIC TESTIMONY SIGN-UP**

---

Please complete this form and return to the Board Clerk

\*\*\*This form is a public record\*\*\*

MEETING DATE: 8-10-6

SUBJECT: THE VIEWPOINT INN

---

AGENDA NUMBER OR TOPIC: \_\_\_\_\_

FOR: ✓ AGAINST: \_\_\_\_\_ THE ABOVE AGENDA ITEM

NAME: JONMARCO ROSS

ADDRESS: 4810 NE SANDY BLVD # 208

CITY/STATE/ZIP: PORTLAND OR 97213

PHONE: DAYS: 503-734-6274 EVES: Same

EMAIL: JonmarcRoss@aol.com FAX: \_\_\_\_\_

SPECIFIC ISSUE: \_\_\_\_\_

---

WRITTEN TESTIMONY: \_\_\_\_\_

---

---

---

---

**IF YOU WISH TO ADDRESS THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

**IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.



6

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
PUBLIC TESTIMONY SIGN-UP**

---

Please complete this form and return to the Board Clerk

\*\*\*This form is a public record\*\*\*

MEETING DATE: 8/10/06

SUBJECT: VIEW POINT INN

---

AGENDA NUMBER OR TOPIC: \_\_\_\_\_

FOR: \_\_\_\_\_ AGAINST: \_\_\_\_\_ THE ABOVE AGENDA ITEM

NAME: DAVID KELLY

ADDRESS: 316 E. FOURTH PLAIN A-2, VANCOUVER, WA.  
98661

CITY/STATE/ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ DAYS: 360-696-6059 EVES: \_\_\_\_\_

EMAIL: DKellyengineer@aol.com FAX: \_\_\_\_\_

SPECIFIC ISSUE: TRAFFIC ENGINEERING

---

WRITTEN TESTIMONY: \_\_\_\_\_

---

---

---

---

**IF YOU WISH TO ADDRESS THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

**IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

#7

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
PUBLIC TESTIMONY SIGN-UP**

---

Please complete this form and return to the Board Clerk

\*\*\*This form is a public record\*\*\*

MEETING DATE: 08.10.06  
SUBJECT: The New Port in

AGENDA NUMBER OR TOPIC: \_\_\_\_\_

FOR: \_\_\_\_\_ AGAINST: \_\_\_\_\_ THE ABOVE AGENDA ITEM  
NAME: Mr T. Hoffer

ADDRESS: Troutdale

CITY/STATE/ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ DAYS: \_\_\_\_\_ EVES: \_\_\_\_\_

EMAIL: \_\_\_\_\_ FAX: \_\_\_\_\_

SPECIFIC ISSUE: \_\_\_\_\_

WRITTEN TESTIMONY: \_\_\_\_\_

**IF YOU WISH TO ADDRESS THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

**IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:**

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

SUBSTITUTE APR

**Board Clerk Use Only**

Meeting Date: 08/10/06  
Agenda Item #: R-1  
Est. Start Time: 9:30 AM  
Date Submitted: 08/10/06

**BUDGET MODIFICATION:** -

**Agenda Title:** RESOLUTION Approving Reimbursement of County Sponsored Projects from Federal Forest Safety Net Title III Funding

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date Requested:</b>	August 10, 2006	<b>Time Requested:</b>	5 minutes
<b>Department:</b>	Department of County Management	<b>Division:</b>	Director's Office
<b>Contact(s):</b>	Bob Thomas		
<b>Phone:</b>	(503) 988-4283	<b>Ext.</b>	84283
	<b>I/O Address:</b>	503 / 531	
<b>Presenter(s):</b>	Bob Thomas		

### General Information

**1. What action are you requesting from the Board?**

The Department of County Management recommends approval of this Resolution authorizing reimbursement to Multnomah County for County sponsored projects from Title III funding (PL 106-393).

**2. Please provide sufficient background information for the Board and the public to understand this issue.**

All FY 2007 County project expenditures described later in this document are fully budgeted in the Adopted FY 2007 Budget. Any action by the Board to shift funding to projects outside these current County operations would create unfunded existing programs.

In May 2005 and May 2006, the Board approved Resolutions electing the methods by which the County would receive federal forest safety net payments from the Forest Service and the Bureau of Land Management (BLM/O&C Lands). These Resolutions were for expenditure after federal fiscal years 2005 and 2006, respectively. A portion of each of these payments was designated to be received as Title III project funds. Title III projects are approved by the Board and are paid for by the County out of Title III funds that it

receives. The moneys are not dedicated to individual departments but are County resources to be used for the following purposes:

- **Search, rescue, and emergency services.** -- An eligible county or applicable sheriff's department may use these funds as reimbursement for search and rescue and other emergency services, including fire fighting, performed on Federal lands and paid for by the county.
- **Community service work camps.** -- An eligible county may use these funds as reimbursement for all or part of the costs incurred by the county to pay the salaries and benefits of county employees who supervise adults or juveniles performing mandatory community service on Federal lands.
- **Easement purchases.** -- An eligible county may use these funds to acquire --
  1. easements, on a willing seller basis, to provide for non-motorized access to public lands for hunting, fishing, and other recreational purposes;
  2. conservation easements; or
  3. both.
- **Forest related educational opportunities.** -- A county may use these funds to establish and conduct forest-related after school programs.
- **Fire prevention and county planning.** -- A county may use these funds for --
  1. efforts to educate homeowners in fire-sensitive ecosystems about the consequences of wildfires and techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires; and
  2. planning efforts to reduce or mitigate the impact of development on adjacent Federal lands and to increase the protection of people and property from wildfires.
- **Community forestry.** -- A county may use these funds towards non-Federal cost-share requirements of section 9 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2105).

In May 2005, the Board also approved \$27,000 of Federal Forest Payments to be designated as Title II Funds for Forest Service and \$17,000 for BLM Resource Advisory Committees for their approval. Title II funds are not under the control of the Multnomah County Board. In May 2006, the Board approved the same Title II allocations to the Forest Service and BLM Resource Advisory Committees as the prior year.

**3. Explain the fiscal impact (current year and ongoing).**

In FY 2006, the County received \$302,923 in Title III funds from the Forest Service and BLM. Interest earned on unexpended Title III funds was calculated to be \$7,733 for FY 2006. Total Title III revenue is \$310,656. The County carried forward into FY 2006 \$92,034 in Board approved, but not yet reimbursed Title III projects from prior years.

The County provides ongoing services to the public that qualify for funding under Title III. For the period July 1, 2005 through June 30, 2006, the following County projects qualify for Title III funding:

**Fiscal Year 2005-2006 Title III Projects to Approve**

**Search and Rescue in National Forests -**

Sheriff's Office expenditures	\$187,534
FY 2005 HR and Finance Charges not yet approved by Board	\$1,607
<u>Support in County Management – Finance Admin</u>	<u>\$2,745</u>
Total Search and Rescue projects	\$191,885

**Community Service Work Camps**

FY 2005 HR and Finance Charges not yet approved by Board	\$19
<u>Support in County Management – Finance Admin</u>	<u>\$1</u>
Total Community Service Work Camps	\$20

**Forest Related Educational Opportunities**

Oregon State Extension Service – 4H Forest Stewards	\$10,000
Northwest Youth Corps	\$10,000
FY 2005 HR and Finance Charges not yet approved by Board	\$80
<u>Support in County Management – Finance Admin</u>	<u>\$6,877</u>
Total Forest Related Educational Opportunities	\$26,957

**Fire Prevention and County Planning –**

Community Services - Land Use Planning	\$25,398
FY 2005 HR and Finance Charges not yet approved by Board	\$268
<u>Support in County Management – Finance Admin</u>	<u>\$571</u>
Total Fire Prevention and County Planning	\$26,241

**Total County Title III eligible projects shown above** **\$245,104**

For FY 2007, Title III payments from the Forest Service and BLM are estimated at \$289,250.

The department is proposing that the Board authorize the following estimated amounts for County FY 2007 Title III projects:

**Fiscal Year 2006-2007 Title III Projects to Pre-Approve****Search and Rescue in National Forests -**

Total Sheriff's Office, County Administration	\$214,379
<u>Search and Rescue Mini Grant</u>	<u>\$9,466</u>
Total Search and Rescue projects	\$223,845

**Forest Related Educational Opportunities**

Oregon State Extension Service – 4H Forest Stewards	\$12,000
<u>County Administration of Mini Grant process</u>	<u>\$2,000</u>
Total Forest Related Educational Opportunities	\$14,000

**Fire Prevention and County Planning -**

Land Use Planning and Finance Administration	\$24,924
--	----------

**Total County Title III eligible projects shown above** **\$262,769**

**4. Explain any legal and/or policy issues involved.**

The legislation requires that the County governing body approve projects for reimbursement from Title III funds. This Resolution is the formal approval of these County projects by the Board.

The County has the ability to approve funding for eligible Title III project costs to groups outside of the County. Any project funds that are approved for use by outside groups would be a direct reduction to County General Fund revenue.

Approval of this Resolution will permit the County to gain full credit for Title III funds already deposited into the County General Fund. This action is in support of County Financial Policies by taking full advantage of a federal/state funding source without expanding service costs and crediting Title III funds to programs that are already in place.

This legislation expires in October 2006 and any benefits to the County gained by Title III payments may not extend beyond FY 2007. Federal legislation reauthorizing part or all of this funding is pending in Congress. It is advised that these payments not be considered dedicated resources for ongoing programs.

**5. Explain any citizen and/or other government participation that has or will take place.**

As was required by the federal legislation, a Public Notice was published and a 45-day comment period began on May 3rd and concluded June 19th. Citizens had the opportunity to provide written comments on the Multnomah County projects that will qualify under Title III. The County received no public comment.

---

**Required Signatures**

---

**Department/  
Agency Director:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Budget Analyst:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Department HR:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Countywide HR:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## 08/10/06 SUBSTITUTE

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

#### RESOLUTION NO. \_\_\_\_\_

Approving Reimbursement to the County for County Sponsored Projects from Title III Funding for Fiscal Year 2006 and Authorizing Expenditures for Fiscal Year 2007

#### The Multnomah County Board of Commissioners Finds:

- a. The Secure Rural Schools and Community Self-Determination Act of 2000 (PL 106-393), provides for funding from the National Forest Service and Bureau of Land Management for use by counties to benefit transportation, education, public safety, law enforcement and other public purposes.
- b. Title III of PL106-393 provides that these funds be dedicated to projects under the following authorized uses: Search, Rescue, and Emergency Services on federal lands; Community Service Work Camps; Easement Purchases; Forest Related Educational Opportunities; Fire Prevention and County Planning; and Community Forestry.
- c. Multnomah County, on May 26, 2005 and May 18, 2006, adopted Resolutions that elected to receive a portion of its annual federal forest payments as Title III project funds for federal fiscal years 2005 and 2006 (for expenditure after federal fiscal years 2005 and 2006, respectively).
- d. On May 3, 2006, the County published a Public Notice describing proposed Title III projects and opened a forty-five (45) day public comment period. That period ended June 19, 2006.
- e. The County received no comments during this period.
- f. The County currently provides several public services in and adjacent to federal lands that are eligible for Title III funding.
- g. The projects sponsored by Multnomah County for County FY 2006 and the amounts spent were:

Search, Rescue, and Emergency Services (Sheriff's Office, County Administrative costs Finance)	\$191,885
Community Service Work Camps (prior years' expenses)	\$20
Forest Related Educational Opportunities (Grants to non-profits and Administrative costs)	\$26,957
Fire Prevention and County Planning (Land Use Planning and County Administrative costs)	\$26,241
Total County Title III projects shown above	\$245,104

## 08/10/06 SUBSTITUTE

- h. The County expects to receive \$289,250 in Title III payments during County FY 2007 and authorizes estimated expenditures from those funds for the following projects:

Search, Rescue, and Emergency Services (Sheriff's Office, County Administrative costs)	\$223,843
Search and Rescue (Grant to Non-profit)	\$9,466
Forest Related Educational Opportunities (Grant to Non-profit)	\$12,000
Forest Related Educational Opportunities (County Administrative costs)	\$2,000
Fire Prevention and County Planning (Land Use Planning)	\$24,924
Total County Title III projects shown above	\$262,769

- i. Carryover expenditures of Title III projects from prior years exceed revenues from prior years by \$26,481.
- j. Grants to two non-County organizations were approved by the Board as Forest Related Educational Opportunities on June 30, 2006 and represented in the table above.

### **The Multnomah County Board of County Commissioners Resolves:**

1. The County projects listed in g. above are authorized to be reimbursed from County Title III funds for expenditures incurred on these projects during the period July 1, 2005 through June 30, 2006.
2. The County projects listed in h. above are authorized for the amounts shown for the period July 1, 2006 through June 30, 2007.

ADOPTED this 10th day of August, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
John S. Thomas, Deputy County Attorney





## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: R-1  
Est. Start Time: 9:30 AM  
Date Submitted: 08/04/06 revision

### BUDGET MODIFICATION: -

**Agenda Title:** **RESOLUTION Approving Reimbursement to the County for County Sponsored Projects from Title III Funding for Fiscal Year 2006 and Authorizing Expenditures for Fiscal Year 2007**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date Requested:</b>	<u>August 10, 2006</u>	<b>Time Requested:</b>	<u>5 minutes</u>
<b>Department:</b>	<u>Department of County Management</u>	<b>Division:</b>	<u>Director's Office</u>
<b>Contact(s):</b>	<u>Bob Thomas</u>		
<b>Phone:</b>	<u>(503) 988-4283</u>	<b>Ext.</b>	<u>84283</u>
		<b>I/O Address:</b>	<u>503 / 531</u>
<b>Presenter(s):</b>	<u>Bob Thomas</u>		

### General Information

**1. What action are you requesting from the Board?**

The Department of County Management recommends approval of this Resolution authorizing reimbursement to Multnomah County for County sponsored projects from Title III funding (PL 106-393).

**2. Please provide sufficient background information for the Board and the public to understand this issue.**

All FY 2007 County project expenditures described later in this document are fully budgeted in the Adopted FY 2007 Budget. Any action by the Board to shift funding to projects outside these current County operations would create unfunded existing programs.

In May 2005 and May 2006, the Board approved Resolutions electing the methods by which the County would receive federal forest safety net payments from the Forest Service and the Bureau of Land Management (BLM/O&C Lands). These Resolutions were for expenditure after federal fiscal years 2005 and 2006, respectively. A portion of each of

these payments was designated to be received as Title III project funds. Title III projects are approved by the Board and are paid for by the County out of Title III funds that it receives. The moneys are not dedicated to individual departments but are County resources to be used for the following purposes:

- **Search, rescue, and emergency services.** -- An eligible county or applicable sheriff's department may use these funds as reimbursement for search and rescue and other emergency services, including fire fighting, performed on Federal lands and paid for by the county.
- **Community service work camps.** -- An eligible county may use these funds as reimbursement for all or part of the costs incurred by the county to pay the salaries and benefits of county employees who supervise adults or juveniles performing mandatory community service on Federal lands.
- **Easement purchases.** -- An eligible county may use these funds to acquire --
  1. easements, on a willing seller basis, to provide for non-motorized access to public lands for hunting, fishing, and other recreational purposes;
  2. conservation easements; or
  3. both.
- **Forest related educational opportunities.** -- A county may use these funds to establish and conduct forest-related after school programs.
- **Fire prevention and county planning.** -- A county may use these funds for --
  1. efforts to educate homeowners in fire-sensitive ecosystems about the consequences of wildfires and techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires; and
  2. planning efforts to reduce or mitigate the impact of development on adjacent Federal lands and to increase the protection of people and property from wildfires.
- **Community forestry.** -- A county may use these funds towards non-Federal cost-share requirements of section 9 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2105).

In May 2005, the Board also approved \$27,000 of Federal Forest Payments to be designated as Title II Funds for Forest Service and \$17,000 for BLM Resource Advisory Committees for their approval. Title II funds are not under the control of the Multnomah County Board. In May 2006, the Board approved the same Title II allocations to the Forest Service and BLM Resource Advisory Committees as the prior year.

**3. Explain the fiscal impact (current year and ongoing).**

In FY 2006, the County received \$302,923 in Title III funds from the Forest Service and BLM. Interest earned on unexpended Title III funds was calculated to be \$7,733 for FY 2006. Total Title III revenue is \$310,656. The County carried forward into FY 2006 \$92,034 in Board approved, but not yet reimbursed Title III projects from prior years.

The County provides ongoing services to the public that qualify for funding under Title III. For the period July 1, 2005 through June 30, 2006, the following County projects qualify for Title III funding:

**Fiscal Year 2005-2006 Title III Projects to Approve**

**Search and Rescue in National Forests -**

Sheriff's Office expenditures	\$196,101
FY 2005 HR and Finance Charges not yet approved by Board	\$1,607
<u>Support in County Management – Finance Admin</u>	<u>\$2,745</u>

Total Search and Rescue projects	\$200,453
<b>Community Service Work Camps</b>	
FY 2005 HR and Finance Charges not yet approved by Board	\$19
<u>Support in County Management – Finance Admin</u>	<u>\$1</u>
Total Community Service Work Camps	\$20
<b>Forest Related Educational Opportunities</b>	
Oregon State Extension Service – 4H Forest Stewards	\$10,000
Northwest Youth Corps	\$10,000
FY 2005 HR and Finance Charges not yet approved by Board	\$80
<u>Support in County Management – Finance Admin</u>	<u>\$6,877</u>
Total Forest Related Educational Opportunities	\$26,957
<b>Fire Prevention and County Planning –</b>	
Community Services - Land Use Planning	\$25,398
FY 2005 HR and Finance Charges not yet approved by Board	\$268
<u>Support in County Management – Finance Admin</u>	<u>\$571</u>
Total Fire Prevention and County Planning	\$26,241
<b>Total County Title III eligible projects shown above</b>	<b>\$253,671</b>

For FY 2007, Title III payments from the Forest Service and BLM are estimated at \$289,250.

The department is proposing that the Board authorize the following estimated amounts for County FY 2007 Title III projects:

<b><u>Fiscal Year 2006-2007 Title III Projects to Pre-Approve</u></b>	
<b>Search and Rescue in National Forests -</b>	
Total Sheriff's Office, County Administration	\$205,812
<u>Search and Rescue Mini Grant</u>	<u>\$9,466</u>
Total Search and Rescue projects	\$215,278
<b>Forest Related Educational Opportunities</b>	
Oregon State Extension Service – 4H Forest Stewards	\$12,000
<u>County Administration of Mini Grant process</u>	<u>\$2,000</u>
Total Forest Related Educational Opportunities	\$14,000
<b>Fire Prevention and County Planning -</b>	
Land Use Planning and Finance Administration	\$24,924
<b>Total County Title III eligible projects shown above</b>	<b>\$254,202</b>

**4. Explain any legal and/or policy issues involved.**

The legislation requires that the County governing body approve projects for reimbursement from Title III funds. This Resolution is the formal approval of these County projects by the Board.

The County has the ability to approve funding for eligible Title III project costs to groups outside of the County. Any project funds that are approved for use by outside groups would be a direct reduction to County General Fund revenue.

Approval of this Resolution will permit the County to gain full credit for Title III funds already deposited into the County General Fund. This action is in support of County Financial Policies by taking full advantage of a federal/state funding source without expanding service costs and crediting Title III funds to programs that are already in place.

This legislation expires in October 2006 and any benefits to the County gained by Title III payments may not extend beyond FY 2007. Federal legislation reauthorizing part or all of this funding is pending in Congress. It is advised that these payments not be considered dedicated resources for ongoing programs.

**5. Explain any citizen and/or other government participation that has or will take place.**

As was required by the federal legislation, a Public Notice was published and a 45-day comment period began on May 3rd and concluded June 19th. Citizens had the opportunity to provide written comments on the Multnomah County projects that will qualify under Title III. The County received no public comment.

---

**Required Signatures**

---

**Department/  
Agency Director:**

*Carol M. Ford*

**Date:** 08/09/06

**Budget Analyst:**

**Date:**

**Department HR:**

**Date:**

**Countywide HR:**

**Date:**

# FINAL DRAFT

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

### RESOLUTION NO. \_\_\_\_\_

Approving Reimbursement to the County for County Sponsored Projects from Title III Funding for Fiscal Year 2006 and Authorizing Expenditures for Fiscal Year 2007

#### **The Multnomah County Board of Commissioners Finds:**

- a. The Secure Rural Schools and Community Self-Determination Act of 2000 (PL 106-393), provides for funding from the National Forest Service and Bureau of Land Management for use by counties to benefit transportation, education, public safety, law enforcement and other public purposes.
- b. Title III of PL106-393 provides that these funds be dedicated to projects under the following authorized uses: Search, Rescue, and Emergency Services on federal lands; Community Service Work Camps; Easement Purchases; Forest Related Educational Opportunities; Fire Prevention and County Planning; and Community Forestry.
- c. Multnomah County, on May 26, 2005 and May 18, 2006, adopted Resolutions that elected to receive a portion of its annual federal forest payments as Title III project funds for federal fiscal years 2005 and 2006 (for expenditure after federal fiscal years 2005 and 2006, respectively).
- d. On May 3, 2006, the County published a Public Notice describing proposed Title III projects and opened a forty-five (45) day public comment period. That period ended June 19, 2006.
- e. The County received no comments during this period.
- f. The County currently provides several public services in and adjacent to federal lands that are eligible for Title III funding.
- g. The projects sponsored by Multnomah County for County FY 2006 and the amounts spent were:

Search, Rescue, and Emergency Services (Sheriff's Office, County Administrative costs Finance)	\$200,453
Community Service Work Camps (prior years' expenses)	\$20
Forest Related Educational Opportunities (Grants to non-profits and Administrative costs)	\$26,957
Fire Prevention and County Planning (Land Use Planning and County Administrative costs)	\$26,241
Total County Title III projects shown above	\$253,671

## FINAL DRAFT

- h. The County expects to receive \$289,250 in Title III payments during County FY 2007 and authorizes estimated expenditures from those funds for the following projects:

Search, Rescue, and Emergency Services (Sheriff's Office, County Administrative costs)	\$205,812
Search and Rescue (Grant to Non-profit)	\$9,466
Forest Related Educational Opportunities (Grant to Non-profit)	\$12,000
Forest Related Educational Opportunities (County Administrative costs)	\$2,000
Fire Prevention and County Planning (Land Use Planning)	\$24,924
Total County Title III projects shown above	\$254,202

- i. Carryover expenditures of Title III projects from prior years exceed revenues from prior years by \$35,048.
- j. Grants to two non-County organizations were approved by the Board as Forest Related Educational Opportunities on June 30, 2006 and represented in the table above.

### **The Multnomah County Board of County Commissioners Resolves:**

1. The County projects listed in g. above are authorized to be reimbursed from County Title III funds for expenditures incurred on these projects during the period July 1, 2005 through June 30, 2006.
2. The County projects listed in h. above are authorized for the amounts shown for the period July 1, 2006 through June 30, 2007.

ADOPTED this 10th day of August, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
John S. Thomas, Deputy County Attorney

**BOGSTAD Deborah L**

---

**From:** THOMAS Bob C  
**Sent:** Friday, August 04, 2006 8:28 AM  
**To:** KINOSHITA Carol; BOGSTAD Deborah L  
**Cc:** THOMAS John S  
**Subject:** Revised August 10th Resolution

Carol:

I finally have figures from departments to include within the Federal Forest Payment Project Authorization Resolution that goes to the Board on August 10<sup>th</sup>. This was reviewed as to form by John last month.

Please print out a copy of the Resolution for John's signature and forward it onto Deb. Thanks for formatting the tables earlier.

Deb:

Attached are the revised Resolution and APR for your purposes.

FYI, I will be on vacation next Monday through Wednesday. I will be here on Thursday for the Board meeting.

Thanks, Bob

8/7/2006



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: R-1  
Est. Start Time: 9:30 AM  
Date Submitted: 07/10/06

### BUDGET MODIFICATION:

**Agenda Title:** RESOLUTION Approving Reimbursement to the County for County Sponsored Projects from Title III Funding for Fiscal Year 2006 and Authorizing Expenditures for Fiscal Year 2007

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

Date Requested:	August 10, 2006	Time Requested:	5 minutes
Department:	Department of County Management	Division:	Director's Office
Contact(s):	Bob Thomas		
Phone:	(503) 988-4283	Ext.	84283
		I/O Address:	503 / 531
Presenter(s):	Bob Thomas		

### General Information

**1. What action are you requesting from the Board?**

The Department of County Management recommends approval of this Resolution authorizing reimbursement to Multnomah County for County sponsored projects from Title III funding (PL 106-393).

**Please note that many figures within this APR and the Resolution itself will be changing through early August as departments gather expenditure information from fiscal year 2006 that ended on June 30th.**

**2. Please provide sufficient background information for the Board and the public to understand this issue.**

All FY 2007 County project expenditures described later in this document are fully budgeted in the Adopted FY 2007 Budget. Any action by the Board to shift funding to projects outside these current County operations will create unfunded new programs.

In May 2005 and May 2006, the Board approved Resolutions electing the methods by



which the County would receive federal forest safety net payments from the Forest Service and the Bureau of Land Management (BLM/O&C Lands). These Resolutions were for expenditure after federal fiscal years 2005 and 2006, respectively. A portion of each of these payments was designated to be received as Title III project funds. Title III projects are approved by the Board and are paid for by the County out of Title III funds that it receives. The moneys are not dedicated to individual departments but are County resources to be used for the following purposes:

- **Search, rescue, and emergency services.** -- An eligible county or applicable sheriff's department may use these funds as reimbursement for search and rescue and other emergency services, including fire fighting, performed on Federal lands and paid for by the county.
- **Community service work camps.** -- An eligible county may use these funds as reimbursement for all or part of the costs incurred by the county to pay the salaries and benefits of county employees who supervise adults or juveniles performing mandatory community service on Federal lands.
- **Easement purchases.** -- An eligible county may use these funds to acquire --
  1. easements, on a willing seller basis, to provide for non-motorized access to public lands for hunting, fishing, and other recreational purposes;
  2. conservation easements; or
  3. both.
- **Forest related educational opportunities.** -- A county may use these funds to establish and conduct forest-related after school programs.
- **Fire prevention and county planning.** -- A county may use these funds for --
  1. efforts to educate homeowners in fire-sensitive ecosystems about the consequences of wildfires and techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires; and
  2. planning efforts to reduce or mitigate the impact of development on adjacent Federal lands and to increase the protection of people and property from wildfires.
- **Community forestry.** -- A county may use these funds towards non-Federal cost-share requirements of section 9 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2105).

In May 2005, the Board also approved \$27,000 of Federal Forest Payments to be designated as Title II Funds for Forest Service and \$17,000 for BLM Resource Advisory Committees for their approval. Title II funds are not under the control of the Multnomah County Board. In May 2006, the Board approved the same Title II allocations to the Forest Service and BLM Resource Advisory Committees as the prior year.

**3. Explain the fiscal impact (current year and ongoing).**

In FY 2006, the County received \$302,923 in Title III funds from the Forest Service and BLM. Interest earned on unexpended Title III funds was calculated to be \$XXXXXX for FY 2006. Total Title III revenue is \$XXXXXX. The County carried forward into FY 2006 \$59,473 in Board approved, but not yet reimbursed Title III projects from prior years.

The County provides ongoing services to the public that qualify for funding under Title III. For the period July 1, 2005 through June 30, 2006, the following County projects qualify for Title III funding:

**Fiscal Year 2005-2006 Title III Projects to Approve**  
**Search and Rescue in National Forests -**

Sheriff's Office expenditures	\$
Emergency Management	\$
DCM-Support of Search and Rescue Grant for FY 2007	\$
Support in Business & Community Services – Finance Admin	\$
Public Notices	\$
Total Search and Rescue	\$
<b>Forest Related Educational Opportunities</b>	
Oregon State Extension Service – 4H Forest Stewards	\$10,000
Northwest Youth Corps	\$10,000
DCM – Administration of Forest Related mini-grants	\$
Public Notices	\$
Total Forest Related Educational Opportunities	\$
<b>Fire Prevention and County Planning –</b>	
DCS - Land Use Planning	\$
DCM - Finance Administration Support	\$
Total Fire Prevention and County Planning	\$
<b>Total County Title III eligible projects shown above</b>	<b>\$</b>

For FY 2007, Title III payments from the Forest Service and BLM are estimated at \$289,250.

The department is proposing that the Board authorize the following estimated amounts for County FY 2007 Title III projects:

<b>Fiscal Year 2006-2007 Title III Projects to Pre-Approve</b>	
<b>Search and Rescue in National Forests –</b>	
Sheriff's Office	\$
MCSO Search & Rescue Team for Emergency Radios	\$9,466
Emergency Management	\$
County Finance Administration	\$
Total Search and Rescue	\$
<b>Forest Related Educational Opportunities</b>	
Oregon State Extension Service – 4H Forest Stewards	\$12,000
County Administration of Mini Grant process	\$
Total Fire Prevention and County Planning	\$
<b>Fire Prevention and County Planning –</b>	
Emergency Management, Land Use Planning and Finance Administration	\$
<b>Total County Title III eligible projects shown above</b>	<b>\$</b>

**4. Explain any legal and/or policy issues involved.**

The legislation requires that the County governing body approve projects for reimbursement from Title III funds. This Resolution is the formal approval of these County projects by the Board.

The County has the ability to approve funding for eligible Title III project costs to groups outside of the County. Any project funds that are approved for use by outside groups would be a direct reduction to County General Fund revenue.

Approval of this Resolution will permit the County to gain full credit for Title III funds already deposited into the County General Fund. This action is in support of County Financial Policies by taking full advantage of a federal/state funding source without expanding service costs and crediting Title III funds to programs that are already in place.

This legislation expires in October 2006 and any benefits to the County gained by Title III payments may not extend beyond FY 2007. Federal legislation reauthorizing part or all of this funding is pending in Congress. It is advised that these payments not be considered dedicated resources for ongoing programs.

**5. Explain any citizen and/or other government participation that has or will take place.**

As was required by the federal legislation, a Public Notice was published and a 45-day comment period began on May 3rd and concluded June 19th. Citizens had the opportunity to provide written comments on the Multnomah County projects that will qualify under Title III. The County received no public comment.

---

**Required Signatures**

---

**Department/  
Agency Director:**

*Carol M. Ford*

**Date:** 07/10/06

**Budget Analyst:**

**Date:**

**Department HR:**

**Date:**

**Countywide HR:**

**Date:**

# DRAFT

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

### RESOLUTION NO. \_\_\_\_\_

Approving Reimbursement to the County for County Sponsored Projects from Title III Funding for Fiscal Year 2006 and Authorizing Expenditures for Fiscal Year 2007

#### The Multnomah County Board of Commissioners Finds:

- a. The Secure Rural Schools and Community Self-Determination Act of 2000 (PL 106-393), provides for funding from the National Forest Service and Bureau of Land Management for use by counties to benefit transportation, education, public safety, law enforcement and other public purposes.
- b. Title III of PL106-393 provides that these funds be dedicated to projects under the following authorized uses: Search, Rescue, and Emergency Services on federal lands; Community Service Work Camps; Easement Purchases; Forest Related Educational Opportunities; Fire Prevention and County Planning; and Community Forestry.
- c. Multnomah County, on May 26, 2005 and May 18, 2006, adopted Resolutions that elected to receive a portion of its annual federal forest payments as Title III project funds for federal fiscal years 2005 and 2006 (for expenditure after federal fiscal years 2005 and 2006, respectively).
- d. On May 3, 2006, the County published a Public Notice describing proposed Title III projects and opened a forty-five (45) day public comment period. That period ended June 19, 2006.
- e. The County received no comments during this period.
- f. The County currently provides several public services in and adjacent to federal lands that are eligible for Title III funding.
- g. The projects sponsored by Multnomah County for County FY 2006 and the amounts spent were:

Search, Rescue, and Emergency Services (Sheriff's Office)	\$
Search and Rescue (DCS Emergency Mgmt & Finance)	\$
Forest Related Educational Opportunities (Grants to non-profits)	\$20,000
Forest Related Educational Opportunities (DCM Finance)	\$
Fire Prevention and County Planning (DCS)	\$
Total County Title III projects shown above	\$

## DRAFT

- h. The County expects to receive \$289,250 in Title III payments during County FY 2007 and authorizes estimated expenditures from those funds for the following projects:

Search, Rescue, and Emergency Services (Sheriff's Office)	\$
Search and Rescue (Emergency Mgmt & Finance Admin)	\$
Search and Rescue (Grant to Non-profit)	\$9,466
Forest Related Educational Opportunities (Grant to Non-profit)	\$12,000
Forest Related Educational Opportunities (County Administration)	\$
Fire Prevention and County Planning (Dept of Community Services)	\$
Total County Title III projects shown above	\$

- i. Carryover expenditures of Title III projects from prior years exceed revenues from prior years by \$.
- j. Grants to two non-County organizations were approved by the Board as Forest Related Educational Opportunities on June 30, 2006 and represented in the table above.

### The Multnomah County Board of County Commissioners Resolves:

1. The County projects listed in g. above are authorized to be reimbursed from County Title III funds for expenditures incurred on these projects during the period July 1, 2005 through June 30, 2006.
2. The County projects listed in h. above are authorized for the amounts shown for the period July 1, 2006 through June 30, 2007.

ADOPTED this 10th day of August, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
John S. Thomas, Deputy County Attorney

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 06-141**

Approving Reimbursement to the County for County Sponsored Projects from Title III Funding for Fiscal Year 2006 and Authorizing Expenditures for Fiscal Year 2007

**The Multnomah County Board of Commissioners Finds:**

- a. The Secure Rural Schools and Community Self-Determination Act of 2000 (PL 106-393), provides for funding from the National Forest Service and Bureau of Land Management for use by counties to benefit transportation, education, public safety, law enforcement and other public purposes.
- b. Title III of PL106-393 provides that these funds be dedicated to projects under the following authorized uses: Search, Rescue, and Emergency Services on federal lands; Community Service Work Camps; Easement Purchases; Forest Related Educational Opportunities; Fire Prevention and County Planning; and Community Forestry.
- c. Multnomah County, on May 26, 2005 and May 18, 2006, adopted Resolutions that elected to receive a portion of its annual federal forest payments as Title III project funds for federal fiscal years 2005 and 2006 (for expenditure after federal fiscal years 2005 and 2006, respectively).
- d. On May 3, 2006, the County published a Public Notice describing proposed Title III projects and opened a forty-five (45) day public comment period. That period ended June 19, 2006.
- e. The County received no comments during this period.
- f. The County currently provides several public services in and adjacent to federal lands that are eligible for Title III funding.
- g. The projects sponsored by Multnomah County for County FY 2006 and the amounts spent were:

Search, Rescue, and Emergency Services (Sheriff's Office, County Administrative costs Finance)	\$191,885
Community Service Work Camps (prior years' expenses)	\$20
Forest Related Educational Opportunities (Grants to non-profits and Administrative costs)	\$26,957
Fire Prevention and County Planning (Land Use Planning and County Administrative costs)	\$26,241
Total County Title III projects shown above	\$245,104

- h. The County expects to receive \$289,250 in Title III payments during County FY 2007 and authorizes estimated expenditures from those funds for the following projects:

Search, Rescue, and Emergency Services (Sheriff's Office, County Administrative costs)	\$223,843
Search and Rescue (Grant to Non-profit)	\$9,466
Forest Related Educational Opportunities (Grant to Non-profit)	\$12,000
Forest Related Educational Opportunities (County Administrative costs)	\$2,000
Fire Prevention and County Planning (Land Use Planning)	\$24,924
Total County Title III projects shown above	\$262,769

- i. Carryover expenditures of Title III projects from prior years exceed revenues from prior years by \$26,481.
- j. Grants to two non-County organizations were approved by the Board as Forest Related Educational Opportunities on June 30, 2006 and represented in the table above.

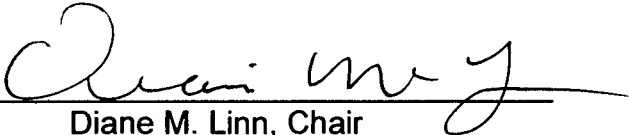
**The Multnomah County Board of County Commissioners Resolves:**

1. The County projects listed in g. above are authorized to be reimbursed from County Title III funds for expenditures incurred on these projects during the period July 1, 2005 through June 30, 2006.
2. The County projects listed in h. above are authorized for the amounts shown for the period July 1, 2006 through June 30, 2007.

ADOPTED this 10th day of August, 2006.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
John S. Thomas, Deputy County Attorney



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-2 DATE 08.10.06  
DEBORAH L. BOGSTAD, BOARD CLERK

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: R-2  
Est. Start Time: 9:34 AM  
Date Submitted: 07/17/06

### BUDGET MODIFICATION: DCM-01

**Budget Modification DCM-01 Authorizing Reclassification of Positions in  
Central Procurement and Contract Administration, General Ledger, and  
Agenda Information Technology, as Determined by the Class/Comp Unit of Central  
Title: Human Resources**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions,  
provide a clearly written title.*

Date Requested:	<u>August 10, 2006</u>	Time Requested:	<u>5 minutes</u>
Department:	<u>County Management</u>	Division:	<u>Director's Office</u>
Contact(s):	<u>Bob Thomas</u>		
Phone:	<u>(503) 988-4283</u>	Ext.	<u>84283</u>
		I/O Address:	<u>503/531</u>
Presenter(s):	<u>Bob Thomas</u>		

### General Information

**1. What action are you requesting from the Board?**

The department is requesting the Board approve a budget modification relating to the reclassification of positions in Central Procurement & Contract Administration, General Ledger, and Information Technology, as determined by the County's Class Comp Unit.

**2. Please provide sufficient background information for the Board and the public to understand this issue.**

The Department of County Management is asking the Board to approve the reclassification and position requests for these four listed positions:

Position Title (Old)	Position Title (New)	Position Number	FTE
<u>Central Procurement &amp; Contract Administration:</u>			
Contract Specialist	Contract Specialist Senior	706637	No change in FTE



Contract Technician	Contract Specialist	709281	No change in FTE
Position Title (Old)	Position Title (New)	Position Number	FTE
<u>General Ledger:</u>			
Vacant Finance Specialist 2	Finance Specialist Sr	705956	No change in FTE

Information Technology:

Network Administrator	Development Analyst	702002	No change in FTE
-----------------------	---------------------	--------	------------------

The reclassification requests for the two positions in Central Procurement & Contract Administration were both employee requested. Based on a review of assigned duties over a period of time, both positions were assigned by the Central Class Comp Unit to different classifications. The department agrees with these classification levels.

The department requested the Class Comp Unit evaluate proposed duties for the vacant position in General Ledger and they agreed that the position should be reclassified to the Finance Specialist Sr level based on the need for advanced level technical skills. The position will be dedicated to fiscal compliance monitoring in response to audit findings for the past several years.

The position change in Information Technology was a management requested reclassification to help accomplish the large division-wide reorganization that took place last fiscal year.

**3. Explain the fiscal impact (current year and ongoing).**

Budget modification detail is attached. All reclassifications are accomplished within current FY 2007 budgeted resources. Materials and services are reduced in each program's budgets to implement these changes. Overall personnel increases for FY 2007 are \$14,935 with a matching reduction in materials and services. All of these costs are covered within existing resources. In future years these positions will have increases due to COLA, merit increases, and increased benefit costs.

**4. Explain any legal and/or policy issues involved.**

Employees have the right to request evaluation of the appropriateness of their classifications. The Classification/Compensation Unit has a formal process for evaluating these requests. The reclassifications for which approval is sought in this request, have been reviewed by the Classification/Compensation Unit and the positions have been found to be wrongly classed. By contract and under our personnel rules, we are required to compensate employees appropriately based on these findings.

Local 88 represented employees have a contractual right to appeal and arbitrate the outcome of a reclassification request, which would include Board action to disapprove the request. It is the policy of Multnomah County to make all employment decisions without regard to race, religion, color, national origin, sex, age marital status, disability, political affiliations, sexual orientation, or any other nonmerit factor.

**5. Explain any citizen and/or other government participation that has or will take place.**

N/A

## ATTACHMENT A

### Budget Modification

If the request is a **Budget Modification**, please answer all of the following in detail:

- **What revenue is being changed and why?**  
Risk Management Fund service reimbursement revenue is increased by \$700 by this bud mod.
- **What budgets are increased/decreased?**  
Risk Management Fund expenditures will increase by \$700 due to this bud mod.
- **What do the changes accomplish?**  
This budget modification implements budget changes and position changes as described in this document.
- **Do any personnel actions result from this budget modification? Explain.**  
Reclassification of existing positions.
- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**  
Any charges will be covered within existing departmental resources.
- **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**  
These changes are ongoing.
- **If a grant, what period does the grant cover?**  
NA
- **If a grant, when the grant expires, what are funding plans?**

*NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.*

---

## ATTACHMENT B

---

**BUDGET MODIFICATION: DCM-01**

---

### Required Signatures

---

**Department/  
Agency Director:**

*Carol M. Ford*

---

**Date: 07/17/06**

---

**Budget Analyst:**

*[Signature]*

---

**Date: 07/17/06**

---

**Department HR:**

*Paul R. Quigley*

---

**Date: 07/17/06**

---

**Countywide HR:**

*Joi E. Orr*

---

**Date: 07/17/06**

---

Budget Modification ID: **DCM-01****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: 2007

Line No.	Fund Center	Fund Code	Func. Area	Accounting Unit			Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
				Internal Order	Cost Center	WBS Element						
1	72-10	1000	0020		704700		60000		10,777	10,777		Increase Permanent
2	72-10	1000	0020		704700		60130		3,458	3,458		Increase Salary Related
3	72-10	1000	0020		704700		60140		700	700		Increase Insurance
4	72-10	1000	0020		704700		60170		(14,935)	(14,935)		Decrease Professional Svcs
5									0			
6									0			
7									0			
8									0			
9	72-10	3500	0020		705210		50316		(700)	(700)		Increase Serv Reimb Revenue
10	72-10	3500	0020		705210		60330		700	700		Increase Insurance
11									0			
12									0			
13									0			
14									0			
15									0			
16									0			
17									0			
18									0			
19									0			
20									0			
21									0			
22									0			
23									0			
24									0			
25									0			
26									0			
27									0			
28									0			
29									0			
										0	0	Total - Page 1
										0	0	GRAND TOTAL

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

[illegible]



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-3 DATE 08.10.06  
DEBORAH L. BOGSTAD, BOARD CLERK

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: R-3  
Est. Start Time: 9:35 AM  
Date Submitted: 08/02/06

### BUDGET MODIFICATION:

**NOTICE OF INTENT to Submit a Proposal to the Robert Wood Johnson  
Foundation Common Ground: Transforming Public Health Information Systems –  
Agenda Title: Informatics Capacity Grant Competition**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date Requested:</b>	August 10, 2006			<b>Time Requested:</b>	5 minutes
<b>Department:</b>	Health Department			<b>Division:</b>	Community Health Services
<b>Contact(s):</b>	Jodi Davich				
<b>Phone:</b>	503-988-3406	<b>Ext.</b>	22852	<b>I/O Address:</b>	160/3
<b>Presenter(s):</b>	Amy Sullivan				

### General Information

#### 1. What action are you requesting from the Board?

The Multnomah County Health Department (MCHD) requests approval to submit a proposal to the Robert Wood Johnson Foundation *Common Ground: Transforming Public Health Information Systems – Informatics Capacity Grant Competition* to secure \$30,000 for a 15 month project that begins January 1, 2007. The Health Department recommends that this request be approved.

#### 2. Please provide sufficient background information for the Board and the public to understand this issue.

State and local public health agencies must have timely, accurate and appropriate information to effectively serve their communities, to promote health, and to make lifesaving decisions that protect the public from health threats. Many public health agencies are examining their existing information systems and seeking to improve their ability to detect, assess, and respond to a range of threats to the public, including infectious diseases,

pandemics, such as avian flu, bioterrorism, and chronic diseases. However, current public health information systems often fail to meet their agencies' operational needs and do not provide interconnectivity with other public health agencies and the health care system—functions that are critical to promoting and protecting the public's health.

The Robert Wood Johnson Foundation (RWJF) seeks to strengthen state and local public health agencies to help them prevent and respond to threats to the public's health. They recognize the need for more sophisticated information systems to respond to the multiple challenges that public health agencies face in the 21st century. They seek to change how public health information systems are conceived and developed—by transforming from a stand-alone environment to one that acts collaboratively to design systems that meet the needs of public health agencies and the public they serve.

The *Common Ground: Transforming Public Health Information System* grant competition will provide funds to accelerate innovative and effective use of information technology in order to increase public health agencies' capacity to apply the collaborative requirements development methodology to advance information systems that support public health agencies' efforts. The purpose of the 15-month Informatics Capacity grants is specifically to prepare public health agencies to analyze and redesign business processes to support essential public health services.

**3. Explain the fiscal impact (current year and ongoing).**

Multnomah County Health Department will request approximately \$30,000 from the Robert Wood Johnson Foundation to implement the project.

**4. Explain any legal and/or policy issues involved.**

No legal or policy issues are involved.

**5. Explain any citizen and/or other government participation that has or will take place.**

Citizen stakeholders are represented on the MCHD's Community Health Council.

---

## ATTACHMENT A

---

---

### Grant Application/Notice of Intent

---

If the request is a Grant Application or Notice of Intent, please answer all of the following in detail:

- **Who is the granting agency?**

Robert Wood Johnson Foundation

- **Specify grant (matching, reporting and other) requirements and goals.**

*Common Ground: Transforming Public Health Information Systems* will support state and local public health agencies' collaboration in two areas: 1) to prepare agencies to analyze and redesign their business processes; and 2) to develop collaborative requirements definitions for information systems to strengthen public health agencies that will help to improve preparedness and chronic disease prevention and control. The purpose of the 15-month Informatics Capacity grant is to prepare public health agencies to analyze and redesign business processes to support essential public health services. Grantees will address questions such as, "How is work done *now* to achieve specific objectives? How *should* it flow to improve quality and performance?" Applicants will identify an area that: 1) is of strategic interest to their agency, and 2) can benefit from the proposed business process analysis methodology. Areas of interest include, but are not limited to: prevention and control related to infectious diseases, chronic diseases, injury, mental health, substance abuse or occupational safety and health; public health preparedness, response and recovery; environmental health; sanitation; food safety; disability prevention; mandated regulatory activities; or delivering specific health services. Applicants will identify a team within their organizations that includes senior health department leaders, program staff and IT staff to be trained by Public Health Informatics Institute in informatics principles and the business process analysis methodology. Informatics Capacity grantees will be trained in business process analysis methodology, receive phone and Web-based coaching from the national program office (NPO), and participate in peer reviews of draft business processes and collaborative learning opportunities. Informatics Capacity grantee outcomes and deliverables include:

- Knowledge of informatics best practices;
- Knowledge and skills on business process analysis and redesign;
- Ability of the team to conduct business process analysis within its own health department;
- Full understanding of the roles and information needs of partners who are involved in new/redesigned business processes;
- Awareness of the importance of a methodology for analyzing public health work and translating that work into process descriptions that lead to continuous quality improvements;
- Documented business processes for the grantee's area of interest; and
- Two- to three-year plan of action that reflects how the redesigned business processes will influence their agency's information systems development strategy and/or organizational thinking, including communication and diffusion of the methodology to other areas within the health department.

- **Explain grant funding detail – is this a one time only or long term commitment?**

Multnomah County Health Department will request approximately \$30,000 for the 15 month project.



- **What are the estimated filing timelines?**  
The grant application is due August 15, 2006.
- **If a grant, what period does the grant cover?**  
January 1, 2007 through March 31, 2008.
- **When the grant expires, what are funding plans?**  
This is a one time project.
- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**  
These costs will be incorporated into the project budget.

## ATTACHMENT B

### Required Signatures

Department/  
Agency Director:



Date: 08/01/06

Budget Analyst:



Date: 08/03/06

Department HR:

Date:

Countywide HR:

Date:



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-4 DATE 08-10-06  
DEBORAH L. BOGSTAD, BOARD CLERK

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: R-4  
Est. Start Time: 9:40 AM  
Date Submitted: 07/17/06

### BUDGET MODIFICATION: LIB - 02

**Agenda Title:** Budget Modification LIB-02 Appropriating \$1,292,310 of Revenues from The Library Foundation to the Library Fund for Program and Collection Enhancements

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date Requested:</b>	<u>August 10, 2006</u>	<b>Time Requested:</b>	<u>5 mins</u>
<b>Department:</b>	<u>Library</u>	<b>Division:</b>	<u>Director's Office</u>
<b>Contact(s):</b>	<u>Becky Cobb</u>		
<b>Phone:</b>	<u>503/988-5499</u>	<b>Ext.</b>	<u>85499</u>
<b>Presenter(s):</b>	<u>Molly Raphael, Director of Libraries</u>		
<b>I/O Address:</b>	<u>317</u>		

### General Information

#### 1. What action are you requesting from the Board?

Request approval of an appropriation of \$1,292,310 to the Library Fund from The Library Foundation for program and collection enhancements for 2006-07.

#### 2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action effects and how it impacts the results.

The Library Foundation provides support raised from private donors, foundations, and corporations to enhance the programs and collections of Multnomah County Library. An annual appropriation is requested each fiscal year.

For FY 2006-07, The Library Foundation is supporting:

Raising A Reader - \$553,000

This early literacy program promotes reading aloud in the home. It is implemented through library

partnerships with childcare centers, the Health Department, and other agencies serving children 0-5. Children take home new books weekly and their parents, teachers, and caregivers receive information on early literacy skill development. Volunteer storytime readers model good readaloud techniques and build excitement for books by providing monthly storytimes at partnering childcare centers. Funds 2.0 librarians and .50 clerk.

#### Summer Reading - \$225,000

The Foundation's support enables Multnomah County Library to present a strong and popular Summer Reading program - over 52,000 babies, children and teens participated during the summer of 2005.

#### Books 2 U - \$137,000

This program impacts the reading habits of students in grades three through six in elementary and middle schools where 25% or more of the students are reading below grade level. Funds 1.0 library outreach specialist.

#### Every Family Reads - \$123,000

A new program patterned after the library's popular Everybody Reads project that encourages parents and children to read. Funds .50 program coordinator.

#### Program enhancements - \$78,790

Money from restricted funds for neighborhood libraries and Central Library will be used to enhance programs such as the Writers Resource Fair, Talk Time (conversation for English language learners), musical programs, Dia de los Ninos and Lunar New Year celebrations, and programs for teens.

#### Library Collections - \$40,000

\$35,000 is provided for expanded children's book collections with \$5,000 for miscellaneous collection needs.

#### Everybody Reads 2007 - \$40,000

Everybody Reads 2007 will be the 5<sup>th</sup> annual community book reading project that brings people together to read and talk about a selected book title, with programs and events such as book discussions, lectures, film screenings and community forums.

#### Tapestry of Tales - \$31,400

This annual storytelling festival highlights the important role oral stories play in building and sustaining lifelong readers. The festival includes special storytelling events for children, adults and families, along with outreach to selected schools.

#### Director's Discretionary Fund - \$20,000

Gives the Library Director a discretionary fund for unforeseen needs and opportunities.

Endowment Fund Earnings - \$19,120

Distribution from this endowment is designated for humanities programming and collections.

Author/Illustrator Lectures - \$15,000

Supports three children/young adult author/illustrator lectures and related programs.

New Parent Packages - \$10,000

First-time parents of babies born in Multnomah County receive a New Parent Gift in the mail when a baby is two months old. The gift includes baby's first library card and materials such as "Read to Your Bunny" by Rosemary Wells, a coupon for a free copy of "Goodnight Moon, and an eensy weensy rhyme book.

**3. Explain the fiscal impact (current year and ongoing).**

For the current year, the Library Fund increases by \$1,292,310 and the General Fund increases by \$7,703. Although The Library Foundation conducts ongoing fund-raising activities, most gifts are committed on an annual basis.

**4. Explain any legal and/or policy issues involved.**

N/A

**5. Explain any citizen and/or other government participation that has or will take place.**

The Library Foundation solicits private citizen support for Library programs and collections that benefit all residents of Multnomah County.

# ATTACHMENT A

## Budget Modification

If the request is a Budget Modification, please answer all of the following in detail:

- **What revenue is being changed and why?**

The Library Fund increases by \$1,292,310 and the General Fund Cash Transfer increases by \$7,703 for department indirect.

- **What budgets are increased/decreased?**

Outreach Services: Children & Teen Svcs Coordination increases by \$363,001; Books 2 U increases by \$136,999; Early Childhood Resources increases by \$563,000.

Director's Office: Adult & Family Programming increases by \$150,190; the Director's Office increases by \$20,000.

Support Services: Library Book Budget increases by \$59,120.

- **What do the changes accomplish?**

Gifts from The Library Foundation enhance library programs, particularly in Youth Outreach Services. This allows for expanded outreach to those who might not otherwise be served by these programs.

- **Do any personnel actions result from this budget modification? Explain.**

This budget modification adds 2.0 Librarians and .50 Clerk for Raising A Reader; 1.0 Library Outreach Specialist for Books 2 U; and .50 Program Coordinator for Every Family Reads. Support is provided on a year-to-year basis for these positions.

- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**

Indirect is covered by the Foundation funds.

- **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**

The Library Foundation has an ongoing fund-raising commitment to enhance library programs and collections.

- **If a grant, what period does the grant cover?**

N/A

- **If a grant, when the grant expires, what are funding plans?**

N/A

*NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.*

## ATTACHMENT B

BUDGET MODIFICATION: LIB - 02

### Required Signatures

Department/  
Agency Director:

*Molly Raphael*

Date: 07/14/06

Budget Analyst:

*Debra*

Date: 07/14/06

Department HR:

*Lula Strathairn*

Date: 07/14/06

Countywide HR:

Date:

Budget Modification or Amendment ID: **07-LIB-BM-02****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: 06-07

Line No.	Fund Center	Fund Code	Func. Area	Accounting Unit			Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
				Internal Order	Cost Center	WBS Element						
1	80-00	1510			800000		60170	35,000	54,520	19,520		Professional Services
2	80-00	1510			800000		60350	12,562	13,042	480		Central Indirect @ 2.46%
3	80-00	1510			800000		60355	3,268	3,393	125	<b>20,125</b>	Department indirect @ 0.64%
4									0			
5	80-00	1510			801100		60170	110,900	212,090	101,190		Professional Services
6	80-00	1510			801100		60180	23,500	26,500	3,000		Printing
7	80-00	1510			801100		60210	8,000	12,000	4,000		Rentals
8	80-00	1510			801100		60240	13,500	51,894	38,394		Supplies
9	80-00	1510			801100		60350	10,740	14,346	3,606		Central Indirect @ 2.46%
10	80-00	1510			801100		60355	2,794	3,732	938	<b>151,128</b>	Department indirect @ 0.64%
11									0			
12	80-30	1510			803100		60245	6,200,000	6,259,120	59,120	<b>59,120</b>	Library Books & Materials
13												
14	80-40	1510			804110		60000	215,788	242,881	27,093		Permanent
15	80-40	1510			804110		61000	0	48,000	48,000		Temporary
16	80-40	1510			804110		60130	69,246	77,125	7,879		Salary Related
17	80-40	1510			804110		60140	43,197	50,337	7,140		Insurance
18	80-40	1510			804110		60170	0	112,400	112,400		Professional Services
19	80-40	1510			804110		60180	2,000	38,000	36,000		Printing
20	80-40	1510			804110		60210	0	4,950	4,950		Rentals
21	80-40	1510			804110		60240	23,700	134,523	110,823		Supplies
22	80-40	1510			804110		60350	8,926	17,641	8,715		Central Indirect @ 2.46%
23	80-40	1510			804110		60355	2,322	4,589	2,267	<b>365,268</b>	Department indirect @ 0.64%
24									0			
25									0			
26									0			
27									0			
28									0			
29									0			
										<b>595,641</b>	<b>595,641</b>	Total - Page 1
										<b>0</b>	<b>0</b>	GRAND TOTAL



Budget Modification or Amendment ID: **07-LIB-BM-02****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: 06-07

Line No.	Fund Center	Fund Code	Func. Area	Accounting Unit			Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
				Internal Order	Cost Center	WBS Element						
30	80-40	1510			804150		60000	161,906	213,317	51,411		Permanent
31	80-40	1510			804150		60130	51,956	68,454	16,498		Salary Related
32	80-40	1510			804150		60140	40,234	53,505	13,271		Insurance
33	80-40	1510			804150		60240	74,620	127,151	52,531		Supplies
34	80-40	1510			804150		60350	8,377	11,666	3,289		Central Indirect @ 2.46%
35	80-40	1510			804150		60355	2,179	3,035	856	<b>137,855</b>	Department indirect @ 0.64%
36									0			
37	80-40	1510			804170		60000	262,048	385,617	123,569		Permanent
38	80-40	1510			804170		60130	84,091	122,204	38,113		Salary Related
39	80-40	1510			804170		60140	71,849	105,181	33,332		Insurance
40	80-40	1510			804170		60170	29,500	123,996	94,496		Professional Services
41	80-40	1510			804170		60230	5,000	10,000	5,000		Postage
42	80-40	1510			804170		60240	79,750	334,722	254,972		Supplies
43	80-40	1510			804170		60350	14,187	27,704	13,517		Central Indirect @ 2.46%
44	80-40	1510			804170		60355	3,691	7,208	3,517	<b>566,516</b>	Department indirect @ 0.64%
45									0			
46	80-00	1510			800000		50210	(600,000)	(1,892,310)	(1,292,310)		OP-Non Governmental Prog.
47	80-00	1510			800000		50320	(15,479,483)	(15,487,186)	(7,703)	<b>(1,300,013)</b>	Department Indirect Revenues
48									0			
49									0			
50									0			
51									0			
52									0			
53									0			
54									0			
55									0			
56									0			
57									0			
58									0			
										<b>(595,641)</b>	<b>(595,641)</b>	Total - Page 2
										<b>0</b>	<b>0</b>	GRAND TOTAL

## ANNUALIZED PERSONNEL CHANGE

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

						ANNUALIZED			
Fund	Job #	HR Org Unit	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1510	6022	61725	Program Coordinator	701844	0.50	27,093	7,879	7,140	42,112
1510	7223	61728	Library Outreach Specialist	709658	1.00	51,411	16,498	13,271	81,179
1510	7222	61730	Librarian	709818	1.00	56,468	18,121	13,549	88,137
1510	7222	61730	Librarian-Vacant	new	1.00	51,168	14,880	13,257	79,305
1510	7202	61730	Library Clerk-Vacant	new	0.50	15,933	5,113	6,526	27,572
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
			TOTAL ANNUALIZED CHANGES		4.00	202,073	62,490	53,743	318,306

## 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			
Fund	Job #	HR Org Unit	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1510	6022	61725	Program Coordinator	701844	0.50	27,093	7,879	7,140	42,112
1510	7223	61728	Library Outreach Specialist	709658	1.00	51,411	16,498	13,271	81,179
1510	7222	61730	Librarian	709818	1.00	56,468	18,121	13,549	88,137
1510	7222	61730	Librarian-Vacant	new	1.00	51,168	14,880	13,257	79,305
1510	7202	61730	Library Clerk-Vacant	new	0:50	15,933	5,113	6,526	27,572
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
			TOTAL CURRENT FY CHANGES		4.00	202,073	62,490	53,743	318,306



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-5 DATE 08-10-06  
DEBORAH L. BOGSTAD, BOARD CLERK

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: R-5  
Est. Start Time: 9:45 AM  
Date Submitted: 07/17/06

### BUDGET MODIFICATION: DCHS - 03

**Budget Modification DCHS-03 Reclassifying an Office Assistant 2 to Office Assistant Senior in the Aging and Disability Services Division, Administration Program, as Determined by the Class/Comp Unit of**  
**Agenda Title: Central Human Resources**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date Requested:</b>	<u>August 10, 2006</u>	<b>Time Requested:</b>	<u>5 mins</u>
<b>Department:</b>	<u>Dept. of County Human Services</u>	<b>Division:</b>	<u>Aging and Disabilities</u>
<b>Contact(s):</b>	<u>Chris Yager</u>		
<b>Phone:</b>	<u>503 988-3691</u>	<b>Ext.</b>	<u>84777</u>
<b>Presenter(s):</b>	<u>Mary Shortall / Jennifer Huntsman</u>		
<b>I/O Address:</b>	<u>167/620</u>		

### General Information

#### 1. What action are you requesting from the Board?

The Department of County Human Services recommends approval of budget modification DCHS-03 reclassifying a position in Aging and Disability Services Division Administration Program Offer 25027.

#### 2. Please provide sufficient background information for the Board and the public to understand this issue.

This modification reflects a Class/Comp decision on a reclassification request from Division management. Class/Comp reviewed the submitted job duties and descriptions and agreed that an Office Assistant Senior was the best fit for the position. The purpose of this position and main job duties are as follows:

Administrative Support to the Division Director and Administrative Unit, including presentations, reports, organizing events, confidential correspondence, travel arrangements and scheduling.

Personnel Management, including timekeeping, completing paperwork for employee actions, and researching personnel/payroll issues for managers and employees.

Division Liaison Responsibilities, including Training, Information Technology, Telecom and Facilities.

Business Operations, including coordination of new or changed policies & procedures, technical assistance on equipment operation & maintenance, cost benefit analysis for purchasing decisions and back-up of the Business line, Helpline and Public Guardian line.

Advisory and Community Support, including meeting reminders for advisory committees, taking minutes at division leadership meetings, and preparing handouts for all advisory and community groups.

**3. Explain the fiscal impact (current year and ongoing).**

For the current fiscal year, this reclassification in the ADS Administration Program is budget neutral as the pay scales overlap. The pay scale for an Office Assistant 2 is \$28,330 - \$34,840 and the pay scale for an Office Assistant Senior is \$32,802 - \$40,394. Personnel costs will increase over time, as the pay scale for an Office Assistant Senior is higher than an Office Assistant 2.

**4. Explain any legal and/or policy issues involved.**

Local 88 represented employees have a contractual right to appeal and arbitrate the outcome of a reclassification request, which would include Board action to disapprove the request. It is the policy of Multnomah County to make all employment decisions without regard to race, religion, color, national origin, sex, age marital status, disability, political affiliations, sexual orientation, or any other non-merit factor.

**5. Explain any citizen and/or other government participation that has or will take place.**

N/A

## ATTACHMENT A

### Budget Modification

If the request is a Budget Modification, please answer all of the following in detail:

- What revenue is being changed and why?  
N/A
- What budgets are increased/decreased?  
N/A
- What do the changes accomplish?  
Approval of a classification decision from Class/Comp initiated by Division Management.
- Do any personnel actions result from this budget modification? Explain.  
Reclassification of an Office Assistant 2 to Office Assistant Senior in Aging and Disability Services Division, Administration Program.
- How will the county indirect, central finance and human resources and departmental overhead costs be covered?  
N/A
- Is the revenue one-time-only in nature?  
N/A
- If a grant, what period does the grant cover?  
N/A
- If a grant, when the grant expires, what are funding plans?  
N/A

*NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.*

## ATTACHMENT B

BUDGET MODIFICATION: DCHS - 03

### Required Signatures

Department/  
Agency Director:

*Pat Surface*

Date: 07/07/06

Budget Analyst:

*Michael D. Gassie*

Date: 07/17/06

Department HR:

*Jennifer*

Date: 07/06/06

Countywide HR:

Date:

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

						ANNUALIZED			
Prog Offer	Job #	HR Org Unit	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
25027	6001	63262	OA2	706811	(1.00)	(34,288)	(11,003)	(12,500)	(57,791)
25027	6002	63262	OA SR	706811	1.00	34,288	11,003	12,500	57,791
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
TOTAL ANNUALIZED CHANGES					0.00	0	0	0	0

**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			
Prg Offer	Job #	HR Org Unit	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
25027	6001	63262	OA2	706811	(1.00)	(34,288)	(11,003)	(12,500)	(57,791)
25027	6002	63262	OA SR	706811	1.00	34,288	11,003	12,500	57,791
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
TOTAL CURRENT FY CHANGES					0.00	0	0	0	0



# MULTNOMAH COUNTY OREGON

DEPARTMENT OF COUNTY  
MANAGEMENT  
HUMAN RESOURCES  
CLASS/COMP

MULTNOMAH BUILDING  
501 SE HAWTHORNE BLVD, 4<sup>th</sup> floor  
PORTLAND OR 97214

PHONE (503) 988-5015 x24422  
FAX (503) 988-3048  
TDD (503) 988-5170

5.12.2006 **REV 6/2/2006**

To: Dana Lloyd 167/1/510  
Wayne Anderchuk 167/1/510  
From: Leon Oswalt Classification/Compensation 503/4  
Subject: Reclassification Request #496

Based upon a management/employee request for reclassification of position 706811 received on 3/22/06, Class/Comp reviewed the presented job duties and descriptions, and the position classification documents. A desk audit was performed with the occupant on 6/1/06. The current classification is OFFICE ASSISTANT 2. We have determined the position best fits within the current OFFICE ASSISTANT SENIOR (JCN 6002) classification.

The position will be reclassified, subject to Board of County Commissioners approval. Under County Personnel Rule 5-50-030, the incumbent will be reclassified with it, as the incumbent has performed the duties of an OFFICE ASSISTANT SENIOR for at least six months.

## ***Summary of position purpose and main job functions.***

*Provide support to the Division Director and Administrative Unit.  
complete personnel paperwork and assist with personnel requests.  
appointment schedule and calendar and arrange meetings.  
compile, and summarize data for special projects and various comprehensive reports including division  
performance reports and advisory and board briefings.  
IT, and training to ensure efficient central office operations.  
and offices. Evaluate operations and activities of assigned responsibilities; recommend organizational or  
procedural improvements. Provide support to DSAC.*

*Perform timekeeping,  
Make travel arrangements, maintain  
Access multiple databases to research,  
Serve as liaison to facilities, telecommunications,  
Coordinate activities among division programs*

## Time allocation for the position is

- 30% ADMINISTRATIVE SUPPORT
  - o Use MS Office software (Word, Excel, Access, Outlook, and Visio) and other complex databases (sap, crystal, StateMainframe, and Oregon Access) to develop spreadsheets, presentations, and reports for the Division Director, Division Central Administrative staff, and Program Managers.
  - o Maintain and coordinate the completion and distribution of the Division's Monthly Client report; this report is updated by multiple staff members and is used for internal and external reports and briefings, including monthly Board Briefs and division program performance reports to ADS management and advisors.
  - o Collect and aggregate Branch statistics; develop and maintain data table, maintain BMAR template.
  - o Participate in Data Coordinating Committee.
  - o Organize, transcribe, and distribute routine and confidential correspondence for the Director and Program Managers.
  - o Schedule appointments and meetings for the Director and Program managers.
  - o Maintain the contact list for the director.



- o Receive sensitive and confidential phone calls, and prioritize calls received for the Division Director in her absence.
- o Place phone calls on behalf of the Division Director to organize events, give information/instructions, and receive information and instructions.
- o Prepare meeting and presentation packets for Director, Central Administrative Staff, and Program Managers. Maintain currency of document and organizational chart.
- o Organize, maintain, and archive Division Director's, Administrative Unit's, and Resource Library files. Make copies for the Central Administrative Staff.

#### 15% PERSONNEL MANAGEMENT

- o Administrative Payroll (which includes all division Program Managers) timekeeper.
  - Distribute and track TAR's
  - Answer time entry questions.
  - Verify accuracy of TAR's.
  - Time entry.
  - Provide backup for other division timekeepers.
- o Assist other timekeepers with payroll changes and requests.
- o Work with employees and Human Resources to resolve problems and answer questions regarding payroll and personnel issues.
- o Complete appropriate Human Resource paperwork for all Administrative unit and Program Manager HR actions.
- o Ensure accuracy of payroll, in accordance with union contracts, county personnel rules, and county procedures; researching and analyzing personnel/payroll issues for managers and employees, as needed.
- o Use SAP and other reports to assist the Director and Program Managers with Human Resource and payroll research and analysis.

#### 25% LIAISON RESPONSIBILITIES

- o ADS Training Liaison:
  - Maintain ADS SAP training module.
  - Create events and non-county attendee records.
  - Book and close events
  - Gather resources for training sessions and provide on-site support for training events.
  - Generate SAP reports and training histories on attendees for managers and employees.
  - Monitor correspondence and follow up regarding training events and attendees.
  - Participate in the Departmental Training Group which consists of employees who maintain their division's training modules.
- o Information Technology liaison for ADS Central Office units and field operations.
  - Prepare Central Administrative unit requests to add, change and terminate employee network and software access; Assist and provide back-up responsibilities for field units.
  - Primary contact for computer Helpdesk requests on network equipment, printers, and networked copiers for Central Admin.
  - Division IT Liaison for hardware requests and issues.
  - RACF sub-administrator for Central ADS office. RACF is the security administration and access authorization for State of Oregon Mainframe and Oregon ACCESS IT system.
- o Primary Telecom Liaison for Central ADS staff, and back-up support for the Mental Health division.
  - Adding, deleting, and changing employees phone service.
  - Adding, deleting, and changing division's telecom equipment.
  - Contact Telecom representative for software support for telecom features.
  - Receive and monitor telecom billing reports and budget for administrative management.
- o Facilities Liaison for ADS staff in the Lincoln building.
  - Arrange facility support for staff, moving into, within, and out of the Lincoln building; including ergonomics adjustments.

- Monitor ADS Lincoln Building work areas for safety, security and efficient operations, and arrange facility support for changes to ADS work area.
- Contact private property management company for building related issues.
- Participate in building Safety Committee, keeping management up to date on safety issues and building procedures.

15% DIVISION BUSINESS OPERATIONS

- o Coordinate the communication and implementation of new, or changes to current Departmental, county, and State Program policies and procedures with Division management and senior Business Services staff.
- o Gather and coordinate information with the field office business services staff regarding office equipment changes and additions.
- o Provide technical assistance and expertise on business equipment (FAX, Copier, Printers, etc) operation and maintenance.
- o Arrange travel, registration, and reimbursement for Division Director, Administrative Unit staff, Division Managers, community partners, and advisors.
- o Conduct research and cost benefit analysis for management to assist in purchase decisions.
- o Arrange for purchasing of office equipment and supplies for ADS units and staff in the Lincoln building.
- o Support the division with reminders and notifications regarding regular business activities.
- o Part of a division team that backs-up the ADS business line, Helpline, and Public Guardian telephone line.

10% ADVISORY AND COMMUNITY SUPPORT

- o Prepare and distribute materials prior to advisory committee meetings.
- o Send out meeting reminders for advisory committees.
- o Within HIPPA requirements prepare and distribute consumer Comments and Complaints Report for the DSAC committee.
- o Take and Prepare minutes from the Executive and General DSAC meetings.
- o Assist the director with preparing the ADS Updates handout for all of advisory and community groups.
- o Ensure needed purchases are made in a timely manner (equipment, food, printing, etc) and in accordance with county policy and procedures.

5% Other duties as assigned:

- o Participate in Ad Hoc Departmental and Division committees as requested.
- o Special projects (ie Division logistical representative during recent Departmental move, security management coordination, reception area management).

Review of class specifications:

**Current Class                      OFFICE ASSISTANT SENIOR**

Class Definition -                      *To perform a wide variety of responsible and difficult clerical work in support of the function or program to which assigned.*

**DISTINGUISHING CHARACTERISTICS**

*This class is distinguished from the Office Assistant 2 by the requirement to exercise*

- *independent judgment in scheduling and accomplishing work, to*
- *handle difficult human relations situations, to*
- *analyze alternatives, to*
- *maintain complex systems, to*
- *carry out research and analysis of varied data and to originate reports and/or correspondence.*

FIT ANALYSIS FOR CLASS.

This position has duties that require independent judgment and to accomplish work. The position requires analysis of alternatives, and the completion of complex systems. The occupant handles difficult human relations situations with work with A&D's community representatives on the committees advising the unit. This classification is a good fit for this position.

**Reclassification Details:**

The effective date of the reclassification is 10/22/05. The step increase date will remain 1/11 of each year. Because the position is represented, the Local 88 Collective Bargaining Agreement (Article 15, IV.C) determines the salary level and step increase date.

<i>Date</i>		<i>Class/JCN</i>	<i>Pay Scale Group</i>	<i>Pay Rate</i>	<i>Pay Step</i>	<i>Union</i>
10/21/05	<i>Old</i>	OFFICE ASSISTANT 2 6001	9	15.24	6	88
10/22/05	<i>Reclass</i>	OFFICE ASSISTANT SENIOR 6002	14	15.24	1	88
1/11/06	<i>Step</i>	OFFICE ASSISTANT SENIOR 6002	14	15.70	2	88

If you have questions, please contact me at extension 24422.

cc:	AFSCME Local 88	B Lally	
	Position HR Rep	Pasquinelli	167/1/140
	Position HR Maintainer	Reed	167/1/140
	File Copy		

28,330-34,846  
32,802-40,394



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-6 DATE 08-10-06  
DEBORAH L. BOGSTAD, BOARD CLERK

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: R-6  
Est. Start Time: 9:50 AM  
Date Submitted: 07/17/06

### BUDGET MODIFICATION: DCJ - 03

**Budget Modification DCJ-03 Appropriating \$283,543 in State of Oregon**  
**Agenda Criminal Justice Commission Grant Funds to Provide Program Enhancement**  
**Title: for the Sanction Treatment Opportunity Progress (STOP) Drug Court**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date Requested:</b>	<u>August 10, 2006</u>	<b>Time Requested:</b>	<u>5 minutes</u>
<b>Department:</b>	<u>Dept. of Community Justice</u>	<b>Division:</b>	<u>ECCS</u>
<b>Contact(s):</b>	<u>Shaun Coldwell</u>		
<b>Phone:</b>	<u>503-988-3961</u>	<b>Ext.</b>	<u>83961</u>
		<b>I/O Address:</b>	<u>503/250</u>
<b>Presenter(s):</b>	<u>John Turner</u>		

### General Information

#### 1. What action are you requesting from the Board?

The Department of Community Justice (DCJ) requests approval of a budget modification to appropriate \$283,543 from the Oregon Criminal Justice Commission to provide program enhancement for the Sanction Treatment Opportunity Progress (STOP) Drug Court.

#### 2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action effects and how it impacts the results.

In 1991 STOP Court became the first drug court in Oregon. The partners involved in STOP Court include the Multnomah County Judiciary, the Metropolitan Public Defender's Office, the Multnomah County District Attorney's Office (MCDA), the Trial Court Administrator, DCJ and InAct, Inc (InAct), the treatment provider. To be eligible for STOP Court, a client must be charged with Felony drug possession and have no other pending Felony, Misdemeanor person crime, DUII or Firearm charges. Treatment lasts for a minimum of one year and includes Court appearances ranging from daily to every six weeks, depending on the quality of participation. At each appearance, the drug court team reviews treatment progress, attendance, group participation,

attitude, and urinary analysis results.

The STOP Court team believes that 50% of the clients do not graduate from the program and fall into the following categories: (1) clients who need residential treatment but are currently unable to access a bed; (2) clients who are currently homeless or living in drug-infested housing; (3) clients who have an Axis I diagnosis for mental illness but are not funded through the County mental health system; and (4) methamphetamine users who need intensive outpatient treatment. This grant will provide funds for the clients who fall in these categories. The goal of the enhancement grant is to successfully graduate more participants by filling in the gaps in the current continuum of care. The grant funds will be used to contract with treatment providers to provide long-term residential treatment beds, transitional drug-free housing, increased on-site mental health services and the implementation of the Matrix Intensive Outpatient Program. By targeting specific services to add to STOP, clients will have a greater chance of succeeding.

Program Offer 50047 provides for additional treatment beds and housing to give clients a greater chance of succeeding and graduating in Drug Court.

**3. Explain the fiscal impact (current year and ongoing).**

This budget modification includes revenue and expenditures covering the period July 1, 2006 through June 30, 2007.

**4. Explain any legal and/or policy issues involved.**

N/A

**5. Explain any citizen and/or other government participation that has or will take place.**

N/A

---

## ATTACHMENT A

---

---

### Budget Modification

---

If the request is a **Budget Modification**, please answer **all** of the following in detail:

- **What revenue is being changed and why?**

State revenue for Criminal Justice Commission increases by \$283,543 for FY07.

- **What budgets are increased/decreased?**

Employee, Community and Clinical Services Professional Services budget is increased \$263,900

Central Indirect increases \$6,495

Department Indirect increases \$13,148

- **What do the changes accomplish?**

Professional Services increases \$263,900 to contract for Counseling Services, Psychiatric Mental Health services, residential beds, transitional housing and supplies/training.

- **Do any personnel actions result from this budget modification? Explain.**

N/A

- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**

This grant provides for Central Indirect and Department Indirect costs.

- **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**

The revenue is one-time only.

- **If a grant, what period does the grant cover?**

July 1, 2006 through June 30, 2007

- **If a grant, when the grant expires, what are funding plans?**

The program will be eliminated at the end of the grant period or based on the outcomes, we will work to incorporate the program into the current clinical model.

<p><i>NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense &amp; Revenues Worksheet and/or a Budget Modification Personnel Worksheet.</i></p>
---

---

## ATTACHMENT B

---

**BUDGET MODIFICATION: DCJ - 03**

---

### Required Signatures

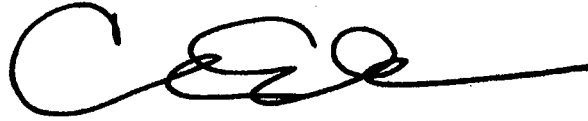
---

**Department/  
Agency Director:**



**Date:** 07/17/06

**Budget Analyst:**



**Date:** 07/17/06

**Department HR:**

**Date:**

**Countywide HR:**

**Date:**



Budget Modification ID: **DCJ-03****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: 2006

Line No.	Fund Center	Fund Code	Func. Area	Accounting Unit			Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
				Internal Order	Cost Center	WBS Element						
1	50-05	32212	50			CJ044.STOP			(283,543)	(283,543)		Incr Revenue Stop Court Grant
2									0		(283,543)	
3	50-05	32212	50			CJ044.STOP	60170		263,900	263,900		Incr Prof Svc for InAct \$142,400; DePaul \$56,000; NARA \$65,500 contracts
4	50-05	32212	50			CJ044.STOP	60350		6,495	6,495		Incr Central Indirect 2.46%
5	50-05	32212	50			CJ044.STOP	60355		13,148	13,148		Incr Dept Indirect 4.98%
6									0		283,543	
7	19	1000	20		9500001000		50310		(6,495)	(6,495)		Incr Reimb Rev GF
8	19	1000	20		9500001000		60470		6,495	6,495		Incr offsetting exp GF
9									0		0	
10	50-00	1000	50		509600		50370		(13,148)	(13,148)		Incr Dept Indirect Revenue
11	50-00	1000	50		509600		60170		13,148	13,148		Incr. Prof Svc by dept indirect
12									0		0	
13									0			
14									0			
15									0			
16									0			
17									0			
18									0			
19									0			
20									0			
21									0			
22									0			
23									0			
24									0			
25									0			
26									0			
27									0			
28									0			
									0		0	Total - Page 1
									0		0	GRAND TOTAL



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-7 DATE 08.10.06  
DEBORAH L. BOGSTAD, BOARD CLERK

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: R-7  
Est. Start Time: 9:53 AM  
Date Submitted: 07/17/06

### BUDGET MODIFICATION: DCJ - 04

**Budget Modification DCJ-04 Appropriating \$7,471 from the Oregon**  
**Agenda Department of Human Services for Treatment at DCJ's Juvenile Secure**  
**Title: Residential Alcohol and Drug Treatment Unit (RAD)**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

Date Requested:	<u>August 10, 2006</u>	Time Requested:	<u>5 minutes</u>
Department:	<u>Dept. of Community Justice</u>	Division:	<u>Juvenile Services</u>
Contact(s):	<u>Shaun Coldwell</u>		
Phone:	<u>503-988-3961</u>	Ext.	<u>83961</u>
	I/O Address:		<u>503/250</u>
Presenter(s):	<u>Wayne Scott and Thuy Vanderlinde</u>		

### General Information

#### 1. What action are you requesting from the Board?

The Department of Community Justice (DCJ) requests approval of a budget modification to appropriate \$7,471 from Oregon Department of Human Services (DHS) in order to provide treatment at DCJ's Juvenile Secure Residential A&D Treatment Unit (RAD).

#### 2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action effects and how it impacts the results.

The Department of Human Services has requested a one month extension of treatment in the RAD unit for a 17 year old female youth in their custody. The client has been in treatment in the RAD unit since November 1, 2005 and her six month treatment program ended on April 30, 2006. This six month treatment program was approved by the Board on Budget Modification DCJ-17. In April, 2006 DHS requested a two month extension and was approved by the Board on Budget Modification DCJ-32. DHS is requesting an additional one month extension to allow time to coordinate wrap around services with participating agencies in order to build a more comprehensive safety net before the client is discharged from the RAD program. DHS will provide independent living for this client

to include housing, mental health services, job training and job placement, vocational training, mentorship and case management services to help her be self sufficient.

DHS is requesting this extension for one month of treatment to allow time for placement in an independent living program and to continue service to maintain a healthy lifestyle. DHS wants to ensure this client does not resort to her street friends and cohorts in order to survive because of her lack of family support. During this one month extension the client turns 18 which will allow her to live on her own with wrap around services being coordinated by DHS. DHS lacks the necessary resources for older clients and must resort to wrap around services to provide independent living services to older clients.

This youth has made great progress while in RAD and DHS does not want to see her without a safety net when she leaves the RAD program. This one-time only funding from DHS will continue to pay for one Child Care Specialist and one part-time Alcohol & Drug Counselor hired through the Morrison Center Contract. The Child Care Specialist will continue to provide supervision, pro-social skill building, and safety and security. The Alcohol & Drug Counselor has a dual diagnosis mental health background and will continue to provide psychiatric and alcohol & drug treatment.

Program Offer 50021. This budget modification adds a 16<sup>th</sup> bed that is funded by Marion County; no beds were taken from Multnomah County youth to accommodate this treatment episode.

**3. Explain the fiscal impact (current year and ongoing).**

This budget modification includes revenue and expenditures covering the period July 1, 2006 through July 31, 2006.

The inter-governmental agreement provides funds for professional services to provide alcohol and drug and psychiatric treatment to a female youth from Marion County and to maintain the youth in a secure drug and alcohol treatment environment.

**4. Explain any legal and/or policy issues involved.**

N/A

**5. Explain any citizen and/or other government participation that has or will take place.**

---

## ATTACHMENT A

---

---

### Budget Modification

---

If the request is a **Budget Modification**, please answer **all** of the following in detail:

- **What revenue is being changed and why?**

State Department of Human Services revenue increases by \$7,471 for FY 2007.

- **What budgets are increased/decreased?**

Juvenile Services Division, Residential Alcohol and Drug Treatment (RAD) Professional Services increases by \$6,954.

Central Indirect increases by \$171.

Department indirect increases by \$346

- **What do the changes accomplish?**

Professional Services increases by \$6,954 to provide treatment to a youth in RAD. Treatment will be provided by Morrison Center.

- **Do any personnel actions result from this budget modification? Explain.**

N/A

- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**

The inter-governmental agreement covers Central Indirect and Department Indirect.

- **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**

The revenue is one-time-only. The FY07 agreement is effective July 1, 2006 through July 31, 2006.

- **If a grant, what period does the grant cover?**

The FY07 inter-governmental agreement is July 1, 2006 through July 31, 2006.

- **If a grant, when the grant expires, what are funding plans?**

This grant covers a one month episode of Residential and Alcohol Treatment for a youth from Marion County.

<p><i>NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense &amp; Revenues Worksheet and/or a Budget Modification Personnel Worksheet.</i></p>
---

---

## ATTACHMENT B

---

**BUDGET MODIFICATION: DCJ - 04**

---

### Required Signatures

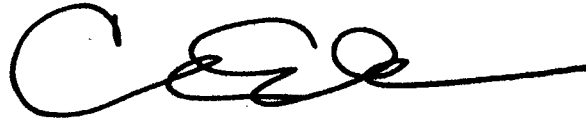
---

**Department/  
Agency Director:**



**Date:** 07/17/06

**Budget Analyst:**



**Date:** 07/17/06

**Department HR:**

**Date:**

**Countywide HR:**

**Date:**

Budget Modification or Amendment ID: **DCJ-04****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: **06**

Line No.	Fund Center	Fund Code	Func. Area	Accounting Unit		WBS Element	Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
				Internal Order	Cost Center							
1	50-50	32162	50			CJ035.DHS.RAD	50180	0	(7,471)	(7,471)	(7,471)	Incr DHS Revenue 1 bed x \$241/day x 31 days
2	50-50	32162	50			CJ035.DHS.RAD	60170	0	6,954	6,954		Incr Prof Svc Morrison Ctr
3	50-50	32162	50			CJ035.DHS.RAD	60350	0	171	171		incr central indirect 2.46%
4	50-50	32162	50			CJ035.DHS.RAD	60355	0	346	346		incr dept indirect 4.98%
5												
6											7,471	
7									0			
8												
9												
10	19	1000	20		9500001000		50310		(171)	(171)		incr central indirect rev to GF
11	19	1000	20		9500001000		60470		171	171		CGF Contingency Exp.
12	50-00	1000	50		509600		50370		(346)	(346)		incr dept indirect
13	50-00	1000	50		509600		60170		346	346		incr Prof Svc/Bus Svcs
14												
15												
16											0	
17												
18												
19												
20												
21												
22									0		0	
										0	0	Total - Page 1
										0	0	GRAND TOTAL



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date: 08/10/06

Agenda Item #: R-8

Est. Start Time: 9:55 AM

Date Submitted: 08/01/06

**BUDGET MODIFICATION:** -

<b>Agenda Title:</b>	<b>RESOLUTION Approving a Lease of Additional Space at 421 SW Oak Street, Portland, Oregon</b>
----------------------	--

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date</b>	August 10, 2006	<b>Time</b>	10 Minutes
<b>Requested:</b>		<b>Requested:</b>	
<b>Department:</b>	Chair Linn	<b>Division:</b>	Chair's Office
<b>Contact(s):</b>	Doug Butler		
<b>Phone:</b>	(503) 988-6294	<b>Ext.</b>	86924
		<b>I/O Address:</b>	274/FPM/Doug Butler
<b>Presenter(s):</b>	Doug Butler		

### General Information

**1. What action are you requesting from the Board?**

The Department of County Management requests the Board approve a lease of 72,000 square feet of additional space at 421 SW Oak Street, Portland, Oregon, for the relocation of Health Department staff and programs located at the McCoy Building, 426 SW Stark Street, Portland, Oregon, and the relocation of the Downtown Aging and Disability Services Office located at the YWCA Downtown Center, 1111 SW 10th Avenue, Portland, Oregon.

The Department of County Management, Facilities and Property Management Division, recommends adoption of the Resolution.

**2. Please provide sufficient background information for the Board and the public to understand this issue.**

By Resolution 05-018, dated January 20, 2005, Multnomah County entered into a lease commencing June 30, 2005 ("Lease") with BRCP/Unico Lincoln, LLC for 99,478 square feet of office space in the Lincoln Building ("Property") located at 421 SW Oak Street, Portland, Oregon. Under the terms of the Lease, Multnomah County has certain rights of first refusal on space in the Property. In

addition, Multnomah County has rights of expansion on existing terms in the Property which will expire December 30, 2006. Multnomah County owns the McCoy Building, located at 426 SW Stark Street, Portland, Oregon, an approximately 100,000 square foot ten-story building built in 1923 which is currently used by the Health Department ("Health") for a variety of clinic and administrative uses. A retail lease expiring November 30, 2012, occupies approximately 6,700 square feet on the ground floor. The McCoy Building has not been sufficiently updated, with significant deferred maintenance and seismic liabilities. In addition, Multnomah County leases approximately 8,400 square feet in the YWCA Downtown Center, 1111 SW 10th Avenue, Portland, Oregon, for its Aging and Disability Services ("ADS") program, and approximately 3,700 square feet for a separate Multicultural Center. The lease expires December 31, 2007. The landlord has expressed an interest in an early termination of the lease. The Facilities and Property Management Division ("Facilities") has conducted an intensive and in-depth analysis of ADS and Health program space needs in Downtown Portland. Space planning, financial sensitivity analysis and operational and programmatic development have been studied with Health and ADS in the process.

A Real Property Transaction Summary, included, was developed to meet key goals from the Strategic Facilities Plan adopted by Resolution 05-148, dated August 18, 2005. Through disposing of the McCoy Building and terminating the YWCA lease, significant savings to Multnomah County can be realized over the next ten years by moving Health programs (including the clinics) and the ADS program into the Lincoln Building. The transaction would result in reducing the portfolio by two sites and approximately 34,000 square feet; reducing on-going operating expenses by \$6.1 million over ten years; and, reducing the deferred capital backlog by \$4.4 million. The transaction will be funded by the landlord provided tenant improvement allowance of approximately \$3.3 million dollars; McCoy Building sales proceeds of approximately \$5.6 million; and additional gap funding of approximately \$1 million. The transaction plan is presented in the attached Real Property Transaction Summary dated August 10, 2006.

Facilities has negotiated the attached Letter of Intent, dated March 30, 2006, with BRCP/Unico Lincoln, LLC for an expansion of approximately 72,000 square feet in the Property using the rights of first refusal and rights of expansion contained in the Lease for favorable terms compared to current market. Facilities recommends that it is in the best interests of the County to amend the Lincoln Building lease on the terms and conditions set forth in the Letter of Intent, and to relocate the Health and ADS programs and staff to the Lincoln Building. Facilities will negotiate an early termination of the YWCA lease for Board approval. Facilities will also present to the Board on August 10, 2006, a Resolution declaring the McCoy Building surplus, waiving the public comment process from the Surplus Property Policy, directing a market sale, and committing the proceeds to the capital requirements of the Lincoln Building expansion.

**3. Explain the fiscal impact (current year and ongoing).**

The transaction would result in reducing the portfolio by two sites and approximately 34,000 square feet. It will reduce on-going operating expenses by \$6.1 million over ten years. Finally, it will reduce the deferred capital backlog by \$4.4 million. The transaction will be partly funded by the landlord provided tenant improvement allowance of approximately \$3.3 million dollars. County funding will come from the McCoy Building sales proceeds of approximately \$5.6 million and additional short term FY08 capital borrowing of approximately \$1.1 million.

**4. Explain any legal and/or policy issues involved.**

None

**5. Explain any citizen and/or other government participation that has or will take place.**

None

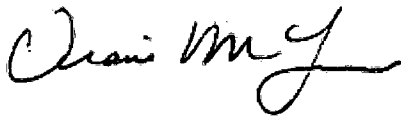


---

## Required Signatures

---

Department/  
Agency Director:



Date: 08/03/06

Budget Analyst:

Date:

Department HR:

Date:

Countywide HR:

Date:



March 30, 2006

Via Electronic Delivery

David Reinhart  
Principal  
*CRESA Partners*  
One SW Columbia, Ste. 1610  
Portland, OR 97258

RE: *Multnomah County - Lincoln Building*

Dear David:

Enclosed for your review are the proposed business terms regarding an expansion for Multnomah County ("Tenant") at the Lincoln Building. We appreciate the opportunity to provide this proposal and look forward to the possibility of a mutually beneficial relationship with Multnomah County.

Building	The Lincoln Building, 421 SW Oak Street, Portland, Oregon
Ownership	The Building is owned by BRCP/Unico Lincoln, LLC, a joint partnership between Unico Investment Company and Broadreach Capital Partners. Additional information on Unico and Broadreach can be found on their respective websites at <a href="http://www.unicoprop.com">www.unicoprop.com</a> and <a href="http://www.broadreachcp.com">www.broadreachcp.com</a> .
Existing Premises	Tenant's current Premises containing 99,478 RSF, located on the 1 <sup>st</sup> , 2 <sup>nd</sup> , 5 <sup>th</sup> and 6 <sup>th</sup> floors.
Expansion Premises	Those portions of the Building that are, as of this date, vacant, consisting of approximately 19,000 RSF on the 1 <sup>st</sup> Floor, 584 RSF on the 2 <sup>nd</sup> Floor, 34,650 RSF on the 7 <sup>th</sup> Floor, and 12,034 RSF on the 8 <sup>th</sup> Floor, totaling 66,268 RSF. In addition, the 5,632 RSF on the 2 <sup>nd</sup> Floor currently occupied by FSH Communications is anticipated to be part of the Expansion Premises, provided that they can be relocated as described later in this document.
Clinic Expansion Premises	Those portions of Tenant's Expansion Premises located on the first floor that shall be used as clinic and/or medical use. Exact square footages to be determined upon final space planning.
Clinic Existing Premises	Those portions of Tenant's Existing Premises that shall be converted to use as clinic and/or medical use. Exact square footages to be determined upon final space planning. It is expressly understood that no portions of Tenant's existing Premises or Expansion Premises above the 2 <sup>nd</sup> floor shall be used for Clinic uses.

*Unico Properties, Inc.*  
T [503] 275-7461  
F [503] 275-3449  
[www.unicoprop.com](http://www.unicoprop.com)



**Administrative Office Expansion Premises** Those portions of Tenant's Expansion Premises that shall be used as administrative office uses. Exact square footages to be determined upon final space planning.

**Load Factor** The load factor is estimated at 10% for Full Floor and 15% for Partial Floors; however, the final rentable square footage of the Expansion Premises shall be based upon current BOMA standards.

**Lease Term** Through April 30, 2016 for the Administrative Space and through September 30, 2021 for the Clinic Space.

**Lease Commencement** Estimated to be August 1, 2006 for the administrative office space and thirty (30) days later for the clinic space. Tenant shall be provided at least thirty (30) days early access to each space for the purpose of installing furniture, phones and fixtures. Early access shall be at no additional cost.

**Full Service Lease Rate** Existing Premises:  
Identical terms and conditions as in the Current Lease.

Clinic Existing Premises:  
Identical terms and conditions as in the Current Lease, except that Base Rent shall be converted to a NNN rental structure.

Administrative Office Expansion Premises:  
The base rental rate, net of Real Estate Taxes for the term shall be:  
Months 1-12: \$17.60 per RSF per Year

Clinic Expansion Premises:  
The base rental rate, NNN for the term shall be:  
Months 1-12: \$15.00 per RSF per Year

Base rental for all categories of space shall increase by 3.0% each year thereafter.



**Concessions**

**Rental Abatement:** Rent shall be abated on 6,684 rsf of the Administrative Office Expansion Premises for the initial eighteen (18) months of the lease term.

**Excess Improvement Cost Reimbursement:** In the event the Tenant Improvement costs exceed the Improvement Allowance, Landlord shall provide Tenant with an Excess Improvement Cost Reimbursement equal to the first three (3) months of Base Rent on the Expansion Premises. This reimbursement will be paid to Tenant no later than the last day of the sixth (6<sup>th</sup>) month of the new lease term.

**Operating Expenses**

The base rental for the Administrative Office Expansion Premises includes operating expenses for the calendar year 2007 (the base year for the existing lease shall remain the same). Escalations for operating expenses shall be payable as additional rent beginning the first calendar year after the base year. Tenant's pro-rata share of Operating Expenses for the Clinic Expansion Premises and Clinic Existing Premises shall be payable as additional rent beginning at Lease Commencement. Tenant's utilities shall be separately metered.

**Tenant  
Improvements**

Landlord shall tender the lease space to tenant in "as-is" condition, except for any Landlord's Work outlined below. Landlord shall provide tenant with an Improvement Allowance of \$2,672,568.00 (Based upon \$33.00 per RSF on 71,896 RSF, plus an additional \$300,000.00) to offset design and construction costs. All design and construction cost overages shall be at Tenant's sole cost and expense. Specifically included as part of the Improvement Allowance shall be all costs to provide fully separated HVAC distribution to all Clinic Premises, Tenant's portion of the costs for a dedicated exclusive elevator and stairs and all related structural improvements, and any relocation of existing functions of Tenant contemplated to accommodate this expansion.

All construction shall be in accordance with terms specified in Landlord's standard work agreement using Landlord's architect for any office space, Tenant's architect for any clinic space, and an approved contractor. Costs associated with final space planning, permitting, construction drawings and a three (3%) percent Unico construction management fee will be applied against the Improvement Allowance. Landlord makes no representation whatsoever to the actual cost of tenant construction. Tenant shall be responsible solely for costs associated with data and communications cabling, furniture, non-standard graphics and artwork. Contractor fees and general conditions will be bid amongst multiple contractors prior to final selection which is to be mutually agreed to by Landlord and Tenant.



**Landlord's Work**

Landlord, at its sole cost and expense, shall:

1. Ensure that all existing HVAC units, electrical, lighting, and plumbing slated to be re-used in the construction of Tenant's Improvements shall be brought to good working condition prior to Lease Commencement.
2. Install one (1) additional building ADA compliant entry. This entry is currently contemplated to serve that Clinic space and shall be located on the SW 4<sup>th</sup> Avenue side of the Building. In the event that Landlord and Tenant agree to locate the entry on a different side of the building, the entry shall either be an emergency exit only or shall serve as a non-public staff entry only. Landlord's maximum contribution towards the entry shall be capped at \$75,000. The design and scope of this entry door shall be mutually agreed upon by both parties.
3. Participate in the cost of the aforementioned elevator and stairs on an equal basis with Tenant, up to a maximum of \$75,000.

**Space Planning /  
Architectural**

For the clinic portion of the Expansion Premises, Landlord shall provide an allowance not to exceed \$7,000.00 for the preparation of a space plan by Tenant's architect. For the administrative office portion of the Expansion Premises, Landlord shall provide space planning service at Landlord's sole cost utilizing Landlord's architect. Landlord shall utilize Tenant's architect for the preparation of construction documents relating to the Clinic space.

**Construction**

All improvements shall be made using building standard finishes or better. Space plans, construction drawings and finish selections will be subject to Landlord's review and approval.

**Parking**

Tenant shall be granted the right to rent reserved parking spaces at the rate of 1 space per 4,000 rentable square feet leased.

Current rates are \$150 per month, and are subject to change.

**HVAC and Lighting**

Landlord shall provide building standard heating, ventilation, air conditioning and lighting Monday through Friday between the hours of 6am and 8pm, and Saturday from 8am to 6pm. Overtime air conditioning is available at the current rate of \$40.00 per hour. These hours of operation shall apply to Tenant's entire leased premises in the Building. The automatic lighting shutoff for the entire leased premises shall also be set to match these hours of operation.



Existing Termination  
Rights

As a material inducement to enter into this transaction, Tenant agrees to modify its existing Termination Rights in the following manner:

- Article 34.A – Modify timing of right to terminate at twenty-four (24) months, as opposed to thirty-six (36) months.
- Article 34.B – Consolidation Termination. This Right shall apply to all Tenant's leased space in the Building.
- Article 34.C – Budget Constraint Termination. Add the following language: "Landlord shall designate the location of the BC Termination Space, to be determined in Landlord's sole discretion acting reasonably, and notify Tenant of the location of the BC Termination Space within sixty (60) days after the receipt of the BC Termination Notice. The foregoing notwithstanding, the location of the BC Termination space chosen by the Landlord shall be of like kind to the use being terminated and shall not have a material negative impact on Tenant's ability to conduct business nor a material negative impact on Landlord's ability to lease the BC Termination space."

Layout Contingency

This offer is strictly contingent upon Landlord's approval of the proposed layout of all Clinic Premises, including access, exiting, and appearance from the exterior of the Building. It is intended that the parties would come to agreement on the business points contained in this proposal, proceed with space planning to address these layout issues and gather initial improvement estimates. In the event either party elects to terminate negotiations due to layout issues or project costs, neither party will have any obligation to the other, except for Landlord's obligation to provide a space planning allowance as outlined above.

FSH Group  
Relocation

This proposal does not currently contemplate the relocation of FSH Communications, currently located on the 2<sup>nd</sup> floor. Landlord is aware that the ability to relocate FSH Communications may be material in Tenant's ability to expand in the Building. In the event the Landlord, in its reasonable discretion, can successfully relocate the above referenced Tenant, then that Premises shall be included in the additional Premises under identical terms and conditions as the Administrative Office Space. Upon execution of this Letter of Intent, Landlord shall diligently pursue such a relocation.

Option to Extend

Tenant's Option to Extend in the current lease shall apply to all administrative office space in the building. For all clinic space in the building, Tenant shall have one (1) five year option to extend by providing not more than thirteen (13) months and not less than twelve (12) months prior written notice. The rental rate for the clinic space option shall be at 95% of market.



ROFR Response

Landlord and Tenant hereby agree that by entering into negotiations as contemplated by this Proposal does not release or waive the obligations or rights of either party as they relate to Tenant's Right of First Refusal under the existing lease between Landlord and Tenant for the Building or Landlord's Notice to Tenant dated February 9, 2006 offering Tenant an opportunity to exercise its Right of First Refusal with respect to certain space within the Building.

Documentation

A Lease Amendment will document this transaction. All other terms and conditions not addressed above shall remain as written in the Original Lease. It is the intent of both parties that the contemplated Lease Amendment will attempt to unify the deal terms of the original lease and the expansion to the maximum extent possible while holding both parties harmless. This includes, but is not limited to, creating a single blended rental rate for all administrative office space, creating a single blended rental rate for all clinic space and establishing a single Base Year.

Professional Representation

Unico Properties, Inc. will pay a commission for this lease pursuant to a separate agreement. In no event shall Landlord, or Unico be liable to broker for any commission on portions of the Premises currently under lease to Tenant. Unico recognizes CRESA Partners in this transaction.

Conditions Precedent

This proposal is an outline of the material terms of our proposed transaction. We expect to negotiate a lease agreement, which will be generally consistent with this letter. This proposal shall not constitute a formal agreement, is subject to the full execution of a mutually acceptable lease, availability of the space and the approval of the transaction by building ownership and any lender.

If the attached terms meet your approval, please sign and return a copy of the document as acknowledgment of your acceptance. This proposal may be withdrawn at any time prior to mutual execution. Upon notification, lease documents will be prepared for your review. If you have any questions, please do not hesitate to call me at 503-425-6707.

Sincerely,

A handwritten signature in black ink, appearing to read "B Pearce", written over a horizontal line.

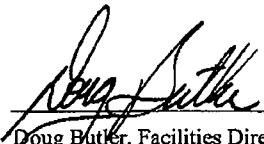
Brian Pearce  
General Manager



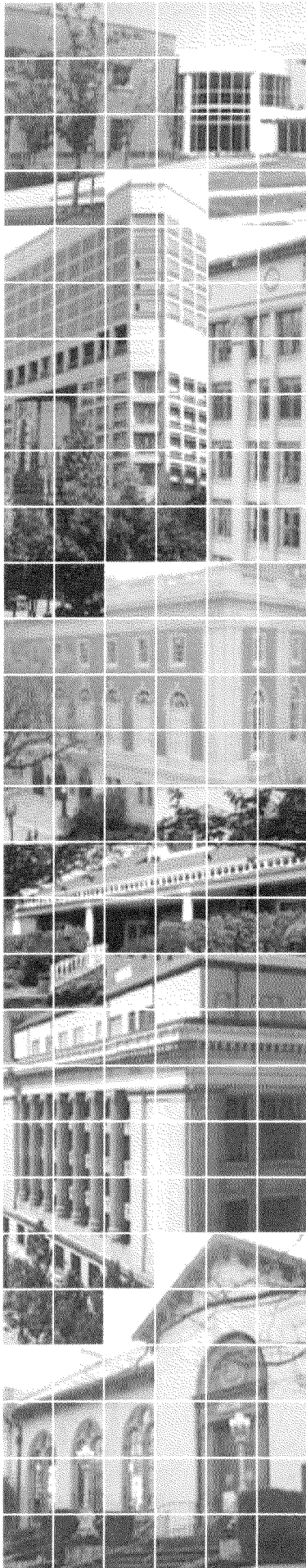
**AGREED AND ACCEPTED**

**Any proposed amendments to terms and conditions of the current lease between Landlord and Tenant will be subject to review by the County Attorney. Please note any amendment requested, proposal made, or counteroffer accepted by me or other authorized County representative for the above referenced property is not binding on the County until and unless the Board approves the proposed lease or amendment upon such terms and conditions that may be imposed.**

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

  
Doug Butler, Facilities Director  
Multnomah County





# Real Property Transaction Summary August 10, 2006



MULTNOMAH COUNTY OREGON  
Facilities and Property Management Division

<b>TABLE OF CONTENTS</b>
--------------------------

<b>I.</b>	<b>Transaction Overview</b>	<b>3</b>
<b>II.</b>	<b>Planning and Research Team</b>	<b>4</b>
<b>III.</b>	<b>Summary</b>	<b>5</b>
	<b>EXHIBIT 1: General Space Planning Assumptions</b>	<b>12</b>

## **I. Transaction Overview**

As will be described in detail in this report, Facilities and Property Management (FPM) recommends disposing of the McCoy Building, terminating the lease in the YWCA Building and expanding the lease in the Lincoln Building. This transaction will be a major step in FPM's mission to "migrate the County's real estate portfolio to include only well-sited, high-performance, affordable, and sustainable facilities" as is prescribed in the 2005 *Multnomah County Strategic Facilities Plan*. Not only will this transaction save the County money, it will dramatically improve the environment in which our employees work and our clients receive services.

### **Concept**

1. Dispose of the fiscally and operationally inefficient McCoy Building and relocate most operations to the Lincoln Building.
2. Terminate the Aging and Disability Services (ADS) lease at the YWCA Building and relocate the program to Lincoln Building.
3. Better utilize other County operated facilities.

### **Transaction Goal**

Plan and implement the relocation of the Health Department operations from the McCoy Building, ADS operations from the YWCA and expand the lease at the Lincoln Building resulting in the overall reduction of County operating expense, a drastic reduction in our deferred maintenance and seismic back-log and improve the clinic environment for our clients.

### **Alignment with County Strategies**

This project will realize the goals of the following policy strategies adopted by the Multnomah County Board of Commissioners:

#### *Facilities Consolidation and Disposition Strategy (Adopted November 18, 2004) Goals:*

- Reduce portfolio square footage (SF) **33,799 SF**
- Reduce the number of primary sites **2 sites**
- Cut on-going operating expenses **\$6.1m over 10 years**
- Reduce the deferred capital backlog **\$4.4m plus \$5.5m seismic**

#### *Multnomah County Strategic Facilities Plan (Adopted August 18, 2005) Goals:*

- Migrate the County's real estate portfolio to include only well-sited, high-performance, affordable, and sustainable facilities.
- Fully fund the operating costs of owned Tier I facilities including compliance and preventive maintenance. In addition, the County will stay completely current on its non-seismic capital maintenance program.

Within these goals, Strategy #1: Dispose of all Tier III facilities by 2010.

### **At the completion of this transaction:**

- The McCoy Building will be sold and will likely be put back on the tax rolls.
- Clinic capacity, patient flow and quality of space will be dramatically improved.
- The YWCA lease will be terminated and ADS operations will relocate to the Lincoln Building.

### **Costs and Timing:**

As will be detailed later in this report, this transaction will save the County **\$6.1m** in operating expense over the next ten years. Implementation of this proposal is projected to take 12 months from Board approval.

## **II. Planning and Research Team**

### **Facilities and Property Management Division**

Doug Butler, Director  
Matt Newstrom, Project Manager  
Mike Sublett, Senior Property Management Specialist  
Stephen Pearson, Budget Analyst

CRESA Partners, LLC  
Giffen Bolte Jurgens Architects  
GBD Architects

### **Health Department**

Lillian Shirley, Director  
Carol Ford, Deputy Director  
Wendy Lear, Finance Manager  
Vanetta Abdellatif, ICS Director  
Dave Houghton, EHS Director  
Lincoln Building Clinic Design Team: Kim Tierney, Tim Donohue, Margaret Lentel, Gary Sawyer, Joy Belcourt, Kathy Innes, Deborah Cockrell, Jan Carpenter, Tricia Tillman.

### **Department of County Management**

Dave Boyer, DCM Director  
Carol Ford, Interim DCM Director  
Mindy Harris, CFO

### **Department of County Human Services**

Rex Surface, Director  
Mary Shortall, ADS Director  
Cathy Clay-Ekton, ADS Program Manager  
Scott Henderson, ADS Program Manager

### **Department of Schools and Community Partners**

Lorenzo Poe, Director  
Kathy Tinkle, Sr. Program Manager

### **Commission on Children and Families**

Wendy Lebow, Director  
Bonnie Rosatti, Administrative Secretary

### **III. Summary**

The McCoy Building, 426 SW Stark, was built in 1923 for JK Gill as retail and administration space and was not intended for its current use. With the exception of some retail and storage space this 98,000 SF building is used by the Health Department for a variety of clinic and administrative uses. The McCoy Building has been designated as a **Tier III** facility and is in need of a complete renovation or disposition.

According to the 2005 *Multnomah County Strategic Facilities Plan* regarding Tier III facilities "...the County only intends to keep these properties operating safely until they are disposed of or reassigned." Strategy Number 1 in the plan dictates that the County will dispose of all Tier III facilities by 2010. This proposed project is in alignment with the adopted strategy.

The Lincoln Building is a leased facility which houses about 500 County personnel from the Department of County Human Services (DCHS), Department of School and Community Partners (DSCP), Commission on Children and Families (CCFC), Information Technology (IT) and the Health Department (HD) administration. The lease was established in January 2005 with Unico Properties at rates well below current market (estimated at 10% below market). An expansion clause was negotiated that would allow the County to expand at comparable terms within the first eighteen months of the lease term. This provision will expire in **December of 2006**.

There are several motivating factors that initiated the study of disposing of the McCoy and YWCA buildings and expanding our lease within the Lincoln Building:

#### **McCoy Building:**

##### Facilities Infrastructure

The McCoy Building is in poor shape and is a liability to the County and its occupants. The McCoy has the fourth largest seismic requirement of any County owned building. Current estimates for the necessary seismic upgrades are in the range **\$5.5m - \$8.8m**. Current capital funding levels will not sustain the McCoy Building over the next ten years.

- ❑ Capital rates will only recover **\$2.5m** for the McCoy Building over the next 10 years.
- ❑ Our minimum projections for the capital needs in the McCoy are **\$6.2m** in the next 10 years resulting in a shortfall of **\$3.7m**.
  - Note that our capital projections **do not include seismic** upgrades, space engineering or interior finish improvements.
- ❑ Our biggest challenge lies within the next 5 years in which an estimated **\$4.8m** in projects will be required to keep the McCoy Building operational. Due to water intrusion, the immediate projects that need to be started include roof replacement, window replacement and full exterior repair and water-proofing.

To address these issues if this transaction is not approved, FPM will recommend that we obtain interim financing in the minimal amount of \$2.5m to begin necessary repairs immediately.

##### McCoy Operations

It is important to note that the improvements mentioned above do not improve the layout or efficiency of the space. There is an un-quantified number of lost patient visits and lost revenue due to the cramped conditions within the McCoy Building. Currently the County is spending operating funds on the conversion of offices, conference rooms and closets into new exam rooms.

### **Window of Opportunity**

We have a one time window of opportunity to expand our lease in the Lincoln Building. This window of opportunity is comprised of a number of important factors:

- ❑ In our existing Lincoln lease we can take advantage of a provision to expand our space at below market rates during the first 18 months of our lease. This expansion option expires in December 2006.
- ❑ The Lincoln Building location is ideal for Health and ADS operations and is located only two blocks north of the McCoy Building.
- ❑ Consecutive increases have been seen in rental rates and decreases in available space on the real estate market.
- ❑ It is rare in the downtown area to find 58,000 SF of contiguous space on the ground floor that has a dedicated entrance.

### **ADS West**

The County currently leases approximately 12,000 SF of space from the YWCA. The ADS office portion is 8,394 SF and the Multi-Cultural Center, which includes Loaves and Fishes is 3,738. The YWCA would like to negotiate an early termination of our current lease arrangement. In addition to meeting the program's geographical requirements, the Lincoln Building would be a cost saving move for ADS and will allow better coordination with other ADS programs already located in the building. Loaves and Fishes is searching for a replacement facility elsewhere in the Downtown core.

### **Resulting Action**

The Consolidation and Disposition Strategy adopted in November 2004 included the McCoy Building as a site to study for disposition.

Together, Facilities and Property Management and the affected departments formed a team to determine the costs and consequences of relocating the Health clinics and administration staff at the McCoy Building and YWCA Building into the Lincoln Building and other existing County occupied facilities.

### **Requirements**

The team set the following transaction requirements:

1. Relocate all McCoy **clinic** functions into a single County-occupied site and move functions not critical to clinic operations into existing County sites.
2. Reduce County operating expense.
3. Terminate a costly ADS lease and integrate operations into the Lincoln Building.
4. Develop a project primarily funded from disposition sale proceeds.
5. Increase the quality and condition of patient, client and staff environment.

### **Scope of Work**

The Health Department occupies 82,070 SF in the McCoy Building (out of 97,644 total rentable SF). This is a mix of clinic and administration space and also includes the Health Department's Incident Command Post. ADS occupies about 12,000 SF at the YWCA site.

The total lease amendment in the Lincoln Building is **75,940 SF**. Due to the fact that the existing 2<sup>nd</sup> floor occupants (DSCP & Health Admin) must be relocated to upper floors the total effective project SF is about 99,900. The project plan will fit all clinical operations on the **1<sup>st</sup> and 2<sup>nd</sup> floors** of the Lincoln Building, into about 58,000 square feet. The existing occupants on the 2<sup>nd</sup> floor and the majority of the McCoy administration staff would move to Lincoln Building floors 7 and 8 into about 41,900 SF.

A total of five programs currently located in the McCoy and Lincoln Building that are not critical to clinical operations will fill vacancies in other County sites. With the exception of some minor shuffling, the Lincoln 5<sup>th</sup> and 6<sup>th</sup> floors will remain relatively unchanged (see exhibit one for a complete list of space planning assumptions). The net number affected by this transaction results in the total movement of approximately 325 County staff.

Department	Program	Number of Staff	From	To
Health	Call Center	31	McCoy	Blanchard Bldg.
Health	Dental Admin	10	McCoy	Blanchard Bldg.
Health	School Base Health	8	McCoy	Blanchard Bldg.
	Breast/Cervical			
Health	Cancer	5	McCoy	GCC - Svcs. Bldg.
CCFC	CCFC	8	Lincoln 2nd flr.	Blanchard Bldg.
Health	Staff Training	4	McCoy	Lincoln 5/6

This transaction will reduce the overall square County footage by **33,799 SF**. When we compare the existing space in the McCoy Building and the YWCA Building to the projected space in the Lincoln Building we realize a sizable reduction in administrative space by utilizing County standards. By incorporating ADA standards in our planning, we have been able to right-size the clinic areas and provide the service delivery space necessary to maximize existing resources.

The square footage changes are driven by a number of different reasons.

1. The McCoy Building is out of ADA compliance in many aspects. Implementing this project will bring the County into full ADA compliance. Implementing ADA requirements naturally requires the usage of more space to account for added circulation, larger restrooms, exam rooms and waiting areas.
2. We have cut the administrative space needs by incorporating County space standards, standardizing cubicles and furnishings and by filling vacancies in other County occupied facilities.

<b>Department Square Footage Change</b>			
	<b>No Move</b>	<b>After Move</b>	<b>Change</b>
DCHS Lincoln	65,354	68,720	3,366
DCHS YWCA	12,095		(12,095)
<b>Subtotal DCHS</b>	<b>77,449</b>	<b>68,720</b>	<b>(8,729)</b>
DSCP Lincoln	11,807	11,210	(597)
HD Blanchard	0	7,800	7,800
HD Lincoln	9,310	27,355	18,045
HD Lincoln Clinic	0	58,653	58,653
HD McCoy	82,070		(82,070)
<b>Subtotal Health</b>	<b>91,380</b>	<b>96,808</b>	<b>2,428</b>
County McCoy-Other	8,266		(8,266)
County Blanchard	7,800		(7,800)
County McCoy-Vacancy	7,308		(7,308)
County Multnomah-underutilized	2,500		(2,500)
<b>Subtotal County Wide Space</b>	<b>25,874</b>	<b>0</b>	<b>(25,874)</b>
IT Lincoln	9,763	9,480	(283)
ND Lincoln/Multnomah	3,245	2,500	(745)
<b>Total</b>	<b>219,517</b>	<b>185,718</b>	<b>(33,799)</b>

### **Costs and Schedule**

#### **County Cost Savings**

Based on the above general description and on preliminary design and engineering work carried out during the study, an analysis was developed to detail the costs and potential savings of both the prospective Project, and for comparison, a scenario of retaining the McCoy Building.

**Key features** of this comparison include:

- Total 10-year projected facilities occupancy and operations savings of about **\$6.1m** by moving to the Lincoln Building.
- The cost decrease is associated with avoiding imminent capital expenditures, terminating a lease and filling vacancies.
- If we choose to retain the McCoy Building we will need to provide \$2.5m capital funds immediately for exterior repairs.

#### **Operating Costs**

Operating Costs for McCoy, YWCA and the existing Lincoln occupants will be essentially unaffected through FY07.

Starting in FY08, it will be necessary to create a "blended" rate for all Lincoln administration space and establish a new clinic rate. This blended rate is the average between the existing rate



established in the original Lincoln lease and the slightly higher rate negotiated with the proposed expansion amendment. The net affect of this blended rate on the existing Lincoln Building occupants is approximately \$.67 per SF or \$67,000 aggregate increase on the existing lease.

<b>FY08 Department Operating Projections</b>				
	<b>FY07 Baseline</b>	<b>No Move</b>	<b>After Move</b>	<b>Change</b>
DCHS Total	\$1,374,284	\$1,374,163	\$1,185,693	(\$188,470)
DSCP Total	\$206,351	\$205,085	\$202,246	(\$2,839)
HD Total	\$1,478,191	\$2,200,554	\$2,007,213	(\$193,341)
IT Total	\$170,622	\$169,575	\$171,034	\$1,459
ND Total	\$56,720	\$56,372	\$58,150	\$1,778

### **Tenant Improvement Costs**

Inserted below is a detailed outline of all cost elements.

<b>Tenant Improvements</b>	
Landlord General Contractor + Contingency	\$7,075,899
Architecture & Consultants	\$751,764
Permits	\$125,102
Blue Prints	\$5,000
UNICO 3% Fee on T.I. Allowance	\$89,301
<b>TOTAL</b>	<b>\$8,047,066</b>
<b>Multnomah County Furniture/Fixtures/Equip.</b>	
Multnomah County Tele-Data Wiring	\$520,000
Multnomah County Card Access	\$40,000
Multnomah County Desktop Overtime	\$4,000
Moving	\$100,000
System Furniture	\$930,800
Furniture Disposition	\$60,000
Chart Room Shelving	\$20,000
Signage - interior way finding & outside awning	\$30,000
Electrostatic Refinishing	\$15,000
Security Guard	\$10,000
5% Project Contingency on FFE	\$131,633
<b>TOTAL</b>	<b>\$1,861,433</b>
<b>Sub-Total</b>	<b>\$9,908,499</b>
<b>Unico Tenant Improvement Allowance</b>	<b>(\$3,277,152)</b>
<b>Total Cost Less</b>	<b>\$6,631,347</b>

**Funding Plan**

Our recommendation assumes that McCoy debt will be reinvested into the Lincoln Health clinic and will be recovered through future Disposition proceeds.

As outlined in the strategic plan, FPM will pledge future proceeds (from unrelated transactions) to pay off Debt. Interim payments could also be covered by proceeds if the full Debt cannot be retired within one year.

If approved by the Board of County Commissioners, FM will fund the project from Disposition proceeds as follows:

FY07 Tenant improvement allowance from Unico Properties	\$3,277,000
FY08 Capital out of McCoy sales proceeds	*\$5,600,000
<u>FY08 Capital Short Term Borrowing</u>	<u>\$1,100,000</u>
Total	\$9,977,000

## Schedule

The prospective tenant improvement is expected to take about **12 months to implement** following an authorization by the Board of County Commissioners. Disposition of the McCoy Building is not included in that timeline. FPM is separately recommending that we proceed with the declaration of surplus process and pursue a market sale of the McCoy Building simultaneously with planning and construction and tenant improvements.

The preliminary schedule attached illustrates the major steps and milestones.

<b>Task</b>	<b>Month Complete</b>	<b>Year</b>
<b>Design and Construction</b>		
Phase 1: D. D. & Construction Documents 7th & 8th floors	July	2006
Phase 1: Construction Documents 7th & 8th floors	August	2006
Phase 1: Bid Drawings & Submit for Permits	September	2006
Unico review GMP Contracts w/client	September	2006
Unico Permit / Award Contracts & Mobilize	September	2006
Phase 1: Construction 7th & 8th floors	December	2006
Move occupants from 2nd floor to 7 & 8th floor	December	2006
Phase 2: D. D. & Construction Documents 1st & 2nd floors	October	2006
Phase 2: Bid Drawings & Submit for Permits	November	2006
Unico review GMP Contracts w/client	November	2006
Unico Permit / Award Contracts & Mobilize 1 <sup>st</sup> & 2 <sup>nd</sup> construction	November	2006
Move ADS West office to Lincoln 1 <sup>st</sup> Floor	February	2007
Phase 2: Construction 1st & 2nd floors complete	May	2007
<b>Furniture/Fixtures/Equipment</b>		
New Furniture layout and inventory existing furniture	July	2006
Locate Existing furniture on plans & Specifications for new furniture	August	2006
Phase 1 Office: Finalize Furniture Order & Specifications	September	2006
I.T. Phone & Cabling Bidding & Selection	September	2006
Phase 1 Office: Furniture Manufacturing	October	2006
Phase 1 Office: Furniture Shipping	November	2006
Phase 1 Office: Furniture Installation & Cabling Cubicles	November	2006
Phase 2 Medical: Finalize Furniture Order & Specifications	February	2007
Phase 2 Medical: Furniture Manufacturing	April	2007
Phase 2 Medical: Furniture Shipping	May	2007
Phase 2 Medical: Furniture Installation & Cabling	May	2007
<b>Move</b>		
Phase 1 staff pack boxes	October	2006
Phase 1 move from McCoy to Blanchard, GCC, and TMB	October	2006
Phase 2 staff pack boxes	November	2006
Phase 2 move occupants from 2nd floor to 7 & 8th floor	December	2006
Phase 3 staff pack boxes	November	2006
Phase 3 McCoy admin. and ADS West	December	2006
Phase 4 Medical - People pack boxes and contents	June	2007
Phase 4 Medical "The Move" - July 6, 7, 8	July	2007
Phase 5 Medical - People pack boxes and contents	June	2007
Phase 5 Medical "The Move" - July 13, 14, 15	July	2007
Clean & Vacate McCoy Building July 31st	July	2007

Exhibit -1  
General Space Planning Assumptions

Lincoln Building General

- The central vending room will be reduced significantly. The new vending area will be for food prep and vending only, break areas will still be available on individual floors as well as in the atrium.
- Bike parking will be relocated to the basement parking area.
- Atrium access will be confined to the South side only.
- Health will use the 4<sup>th</sup> Ave entrance for all public clinic access.
- The IT training room will move to the 7<sup>th</sup> floor.
- In the case of an emergency, Health Emergency Preparedness would have priority over scheduling the 7<sup>th</sup> floor large conference room.

Health Department

- Call center, Dental Admin, School Based Health Admin will move to the Blanchard Building L1.
- HD Staff training and development will move to space in Lincoln on the 5<sup>th</sup> or 6<sup>th</sup> floor. Next phase space planning will attempt to swap spaces with HD space on the 7<sup>th</sup> floor and move ADS from 7 to the 5<sup>th</sup> or 6<sup>th</sup> floors.
- The health clinics will be on floors 1&2 and will use the 4<sup>th</sup> Avenue entrance.
- Administration will be on floors 7&8. 8<sup>th</sup> Floor tenants will need to enter from the 5<sup>th</sup> Avenue entrance.
- The Breast & Cervical Cancer Program will move to CRC.
- Health will use the 4<sup>th</sup> Ave entrance for all public clinic access.

DSCP

- DSCP will move to the East side of the 7<sup>th</sup> floor.
- Will gain one additional private office.

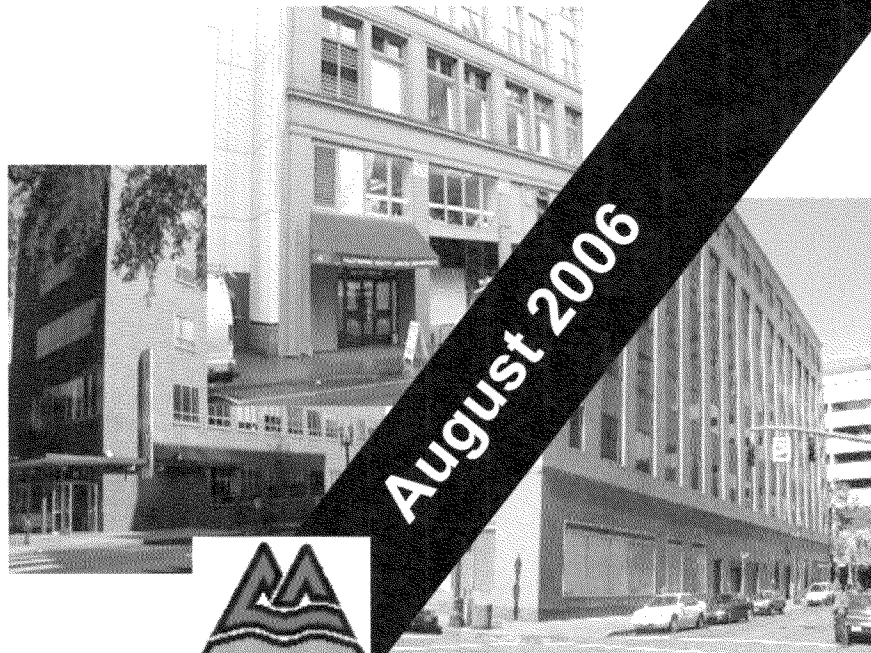
CCFC

- Will move to either the Blanchard Building or Multnomah Building location TBD.

DCHS

- ADS West will move into space within the Lincoln Building
  - Clients will be seen on the 1<sup>st</sup> floor.
  - Six caseworkers will be on the first floor plus two support positions at the reception desk.
  - The balance of the ADS West staff will be located on upper floors.
    - HD Staff training and development will move to space in Lincoln on the 5<sup>th</sup> or 6<sup>th</sup> floor. Next phase space planning will attempt to swap spaces with HD space on the 7<sup>th</sup> floor and move ADS from 7 to the 5<sup>th</sup> or 6<sup>th</sup> floors.
  - Some meeting rooms on the 1<sup>st</sup> floor will need to be converted to office space for ADS.
- We will need to remove the secondary storage room on the 1<sup>st</sup> floor.

# McCoy & YWCA Building Disposition



Facilities & Property  
Management

## Lincoln Building Lease Amendment

August 10th, 2006

## **We are at a crossroad and need to make a decision...**

- The McCoy Building is a Tier III Facility and in need of complete renovation or replacement
- We can no longer reliably sustain the clinic operations in the McCoy Bldg
- Any further financial investment in the McCoy Building will not increase the asset's value
- The YWCA wishes to terminate our ADS-West lease early
- We have a one time window of opportunity at the Lincoln Building

# Background

- Facilities Consolidation and Disposition Strategy (Adopted Nov. 18, 2004)  
*directs FPM to study the McCoy Building further and develop a disposition strategy*
- Multnomah County Strategic Facilities Plan (Adopted August 18, 2005)
  - *dispose of Tier III facilities by 2010*
  - *“...portfolio to include only well sited, high-performance, affordable and sustainable facilities”*
  - *Tier III Buildings – dispose or renovate*
- CIP rates will not sustain McCoy capital needs over next 10 years
  - ☐ Needs at least \$6.2m in next 10 yrs, CIP provides only \$2.5m  
= \$3.7m deficit
  - ☐ Need approx. \$4.8m in the next five years
  - ☐ Does not include seismic - \$5.5m
  - ☐ Money spent above will NOT improve layout or efficiency of space

# Background Cont...

- It is not realistic to assume that we can continue to operate out of the McCoy building for more than another year without a major reinvestment
- If we stay in the building, the McCoy rates will go up in FY08 ...
  - ❑ Basic operating costs up \$150k
    - In FY06, Facilities under-recovered McCoy costs by over \$200k, or \$2.00+ per sq ft because of unplanned repairs.
  - ❑ Borrow \$2.5m for immediate improvements to eliminate risk of closure\*  
Payments would be recovered through the McCoy rates (\$570k yr/5yr).
    - The roof, windows and exterior need immediate repair/replacement due to water intrusion. Major HVAC upgrades are needed in FY09 -10



# Limited Window of Opportunity

1. County has an option to expand the Lincoln Building lease at existing rates
  - Expires in December '06
  - Rate is more than 10% below market
  - The rental market is changing rapidly, vacancies are dropping/rates rising
2. Rare to find 55,000 SF of contiguous space located in the downtown core with a dedicated 1<sup>st</sup> floor entrance.
3. Easy transition for clients - two blocks North of McCoy.

FPM disposition study for the McCoy Building and presents three options:

**Option #1 – Retain the McCoy Building and YWCA lease**

- Operating expense will go up about **\$720k** (\$150 op+\$570 cap)
- CIP rates will not cover the minimum requirements
- \$2.5m will need to be borrowed for the next five years, \$1.2m years 6-10
- Does not improve layout or efficiency of space

**Option #2 – Move to Lincoln/Dispose of the McCoy/YWCA**

- Will save the County \$6.1m over the next ten years
- Eliminates deferred maintenance (\$4.4m) and seismic (\$5.5m)
- Dramatically improves building and clinical environment
- Opportunity to provide more access to patients
- Will avoid catastrophic building failure
- Presumes that the County will maintain a downtown clinic

**Option #3 – McCoy Sale/2 year lease-back**

- Presumes that the County will phase out the downtown clinics in the next two years
- Moves Health Admin and ADS-West to Lincoln Building immediately

## **Recommendation: Option #2**

### **Dispose of McCoy & YWCA**

#### **Effect on Strategic Goals**

##### *Facilities Consolidation and Disposition Strategy Goals:*

*(Adopted November 18, 2004)*

- ☐ Reduce portfolio square footage - **33,799 SF**
- ☐ Reduce the number of primary sites - **2 sites**
- ☐ Cut on-going operating expenses - **\$6.1m** over 10 years
- ☐ Reduce the deferred capital backlog - **\$4.4m** plus **\$5.5m** seismic

# Project Scope

- ☐ Net Reduction of almost **34,000 SF**
  - ☐ Eliminate McCoy/YWCA
  - ☐ Add Lincoln
- ☐ Better utilization of County occupied spaces. Close to 10ksf (Blanchard/GCC)
- ☐ Cutting administration space by using standards – 11,000 SF in McCoy alone
- ☐ Will bring our space into ADA and HIPAA compliance

# Capital Funding

## Funding by McCoy and other Disposition sales proceeds

✓ T.I. allowance from UNICO properties	\$3,277,000
✓ FY08 capital from McCoy Sales Proceeds	\$5,600,000
✓ <u>FY08 Short Term Borrowing</u>	<u>\$1,100,000</u>
Total for T.I.'s and move costs	\$9,977,000

Proceeds from other disposition sales will fund McCoy debt.

Debt as of 7/1/07	\$3,000,000
-------------------	-------------

# Option # 2 Budget Impacts

Over 10 yrs, this strategy will save \$6.1m in County **operating** expense.

Majority of changes occur within Health and Human Services:

(Changes from \*FY08 "No Move" scenario)

- DCHS annual **operating** decrease approximately \*\$188k
- Health annual **operating** decrease approximately \*\$193k  
    \*FY08 Baseline = 6% escalation, 570k COP payment, and increased clinic rate  
    Note: this is an increase of \$529k over FY07 baseline
- Vacancy cost decrease annual average \$270k  
    Reduction of vacancy at McCoy \$1.4m and Blanchard \$1.3m over 10 yrs.
- County saves external lease costs and fills vacancies which reduces the pressure on facilities rates

\* These are estimates with 5% tolerance. Final allocation and billing figures will be established once design is complete and approved by tenants.

# Funding Strategy

Our recommendation assumes that McCoy debt will be reinvested into the Lincoln Health clinic and will be recovered through future Disposition proceeds.

As outlined in the strategic plan, FPM will pledge future proceeds (from unrelated transactions) to pay off Debt. Interim payments could also be covered by proceeds if the full Debt cannot be retired within one year.

# Next Steps:

**NEXT 90 DAYS:**

**Capital Budget Action**



BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO.**

Approving a Lease of Additional Space at 421 SW Oak Street, Portland, Oregon.

**The Multnomah County Board of Commissioners Finds:**

- a. By Resolution 05-018, dated January 20, 2005, Multnomah County entered into a lease commencing June 30, 2005 ("Lease") with BRCP/Unico Lincoln, LLC for 99,478 square feet of office space in the Lincoln Building ("Property") located at 421 SW Oak Street, Portland, Oregon.
- b. Under the terms of the Lease, Multnomah County has certain rights of first refusal on space in the Property. In addition, Multnomah County has rights of expansion on existing terms in the Property which will expire December 30, 2006.
- c. Multnomah County owns the McCoy Building, located at 426 SW Stark Street, Portland, Oregon, an approximately 100,000 square foot ten-story building built in 1923 which is currently used by the Health Department ("Health") for a variety of clinic and administrative uses. A retail lease expiring November 30, 2012, occupies approximately 6,700 square feet on the ground floor. The McCoy Building has not been sufficiently updated, with significant deferred maintenance and seismic liabilities.
- d. Multnomah County leases approximately 8,400 square feet in the YWCA Downtown Center, 1111 SW 10th Avenue, Portland, Oregon, for its Aging and Disability Services ("ADS") program, and approximately 3,700 square feet for a separate Multicultural Center. The lease expires December 31, 2007. The landlord has expressed an interest in an early termination of the lease.
- e. The Facilities and Property Management Division ("Facilities") has conducted an intensive and in-depth analysis of ADS and Health program space needs in Downtown Portland. Space planning, financial sensitivity analysis, and operational and programmatic development have been studied with Health and ADS in the process.
- f. A transaction plan was developed to meet key goals from the Strategic Facilities Plan adopted by Resolution 05-148, dated August 18, 2005. Through disposing of the McCoy Building and terminating the YWCA lease, significant savings to Multnomah County can be realized over the next ten years by moving Health programs (including the clinics) and the ADS program into the Lincoln Building. The transaction would result in reducing the portfolio by two sites and approximately 34,000 square feet; reducing on-going operating expenses by \$6.1 million over ten years; and, reducing the deferred capital backlog by \$4.4 million. The transaction will be funded by the landlord provided tenant improvement

allowance of approximately \$3.3 million dollars; McCoy Building sales proceeds of approximately \$5.6 million; and additional short term capital borrowing of approximately \$1.1 million. The transaction plan is presented in the attached Real Property Transaction Summary dated August 10, 2006.

- g. Facilities has negotiated the attached Letter of Intent, dated March 30, 2006, with BRCP/Unico Lincoln, LLC for an expansion of approximately 72,000 square feet in the Property using the rights of first refusal and rights of expansion contained in the Lease.
- h. It is in the best interests of the County to amend the Lease on the terms and conditions set forth in the attached Letter of Intent, and to relocate the Health and ADS programs and staff to the Property.

**The Multnomah County Board of Commissioners Resolves:**

- 1. The Board approves the attached Letter of Intent as the basis for an amendment to the Lease at the Property effective on or about August 15, 2006. The County Chair is authorized to execute a lease amendment substantially in accordance with the terms of the attached Letter of Intent.
- 2. Facilities is directed to negotiate an early termination of the YWCA lease for Board approval and to present to the Board an appropriate resolution declaring the McCoy Building surplus.

ADOPTED this 10th day of August, 2006

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By



---

John S. Thomas, Deputy County Attorney



March 30, 2006

Via Electronic Delivery

David Reinhart

Principal

*CRESA Partners*

One SW Columbia, Ste. 1610

Portland, OR 97258

RE: *Multnomah County - Lincoln Building*

Dear David:

Enclosed for your review are the proposed business terms regarding an expansion for Multnomah County ("Tenant") at the Lincoln Building. We appreciate the opportunity to provide this proposal and look forward to the possibility of a mutually beneficial relationship with Multnomah County.

Building	The Lincoln Building, 421 SW Oak Street, Portland, Oregon
Ownership	The Building is owned by BRCP/Unico Lincoln, LLC, a joint partnership between Unico Investment Company and Broadreach Capital Partners. Additional information on Unico and Broadreach can be found on their respective websites at <a href="http://www.unicoprop.com">www.unicoprop.com</a> and <a href="http://www.broadreachcp.com">www.broadreachcp.com</a> .
Existing Premises	Tenant's current Premises containing 99,478 RSF, located on the 1 <sup>st</sup> , 2 <sup>nd</sup> , 5 <sup>th</sup> and 6 <sup>th</sup> floors.
Expansion Premises	Those portions of the Building that are, as of this date, vacant, consisting of approximately 19,000 RSF on the 1 <sup>st</sup> Floor, 584 RSF on the 2 <sup>nd</sup> Floor, 34,650 RSF on the 7 <sup>th</sup> Floor, and 12,034 RSF on the 8 <sup>th</sup> Floor, totaling 66,268 RSF. In addition, the 5,632 RSF on the 2 <sup>nd</sup> Floor currently occupied by FSH Communications is anticipated to be part of the Expansion Premises, provided that they can be relocated as described later in this document.
Clinic Expansion Premises	Those portions of Tenant's Expansion Premises located on the first floor that shall be used as clinic and/or medical use. Exact square footages to be determined upon final space planning.
Clinic Existing Premises	Those portions of Tenant's Existing Premises that shall be converted to use as clinic and/or medical use. Exact square footages to be determined upon final space planning. It is expressly understood that no portions of Tenant's existing Premises or Expansion Premises above the 2 <sup>nd</sup> floor shall be used for Clinic uses.

*Unico Properties, Inc.*  
T [503] 275-7461  
F [503] 275-3449  
[www.unicoprop.com](http://www.unicoprop.com)



Administrative Office Expansion Premises	Those portions of Tenant's Expansion Premises that shall be used as administrative office uses. Exact square footages to be determined upon final space planning.
Load Factor	The load factor is estimated at 10% for Full Floor and 15% for Partial Floors; however, the final rentable square footage of the Expansion Premises shall be based upon current BOMA standards.
Lease Term	Through April 30, 2016 for the Administrative Space and through September 30, 2021 for the Clinic Space.
Lease Commencement	Estimated to be August 1, 2006 for the administrative office space and thirty (30) days later for the clinic space. Tenant shall be provided at least thirty (30) days early access to each space for the purpose of installing furniture, phones and fixtures. Early access shall be at no additional cost.
Full Service Lease Rate	<p>Existing Premises: Identical terms and conditions as in the Current Lease.</p> <p>Clinic Existing Premises: Identical terms and conditions as in the Current Lease, except that Base Rent shall be converted to a NNN rental structure.</p> <p>Administrative Office Expansion Premises: The base rental rate, net of Real Estate Taxes for the term shall be: Months 1-12: \$17.60 per RSF per Year</p> <p>Clinic Expansion Premises: The base rental rate, NNN for the term shall be: Months 1-12: \$15.00 per RSF per Year</p> <p>Base rental for all categories of space shall increase by 3.0% each year thereafter.</p>



**Concessions**

**Rental Abatement:** Rent shall be abated on 6,684 rsf of the Administrative Office Expansion Premises for the initial eighteen (18) months of the lease term.

**Excess Improvement Cost Reimbursement:** In the event the Tenant Improvement costs exceed the Improvement Allowance, Landlord shall provide Tenant with an Excess Improvement Cost Reimbursement equal to the first three (3) months of Base Rent on the Expansion Premises. This reimbursement will be paid to Tenant no later than the last day of the sixth (6<sup>th</sup>) month of the new lease term.

**Operating Expenses**

The base rental for the Administrative Office Expansion Premises includes operating expenses for the calendar year 2007 (the base year for the existing lease shall remain the same). Escalations for operating expenses shall be payable as additional rent beginning the first calendar year after the base year. Tenant's pro-rata share of Operating Expenses for the Clinic Expansion Premises and Clinic Existing Premises shall be payable as additional rent beginning at Lease Commencement. Tenant's utilities shall be separately metered.

**Tenant  
Improvements**

Landlord shall tender the lease space to tenant in "as-is" condition, except for any Landlord's Work outlined below. Landlord shall provide tenant with an Improvement Allowance of \$2,672,568.00 (Based upon \$33.00 per RSF on 71,896 RSF, plus an additional \$300,000.00) to offset design and construction costs. All design and construction cost overages shall be at Tenant's sole cost and expense. Specifically included as part of the Improvement Allowance shall be all costs to provide fully separated HVAC distribution to all Clinic Premises, Tenant's portion of the costs for a dedicated exclusive elevator and stairs and all related structural improvements, and any relocation of existing functions of Tenant contemplated to accommodate this expansion.

All construction shall be in accordance with terms specified in Landlord's standard work agreement using Landlord's architect for any office space, Tenant's architect for any clinic space, and an approved contractor. Costs associated with final space planning, permitting, construction drawings and a three (3%) percent Unico construction management fee will be applied against the Improvement Allowance. Landlord makes no representation whatsoever to the actual cost of tenant construction. Tenant shall be responsible solely for costs associated with data and communications cabling, furniture, non-standard graphics and artwork. Contractor fees and general conditions will be bid amongst multiple contractors prior to final selection which is to be mutually agreed to by Landlord and Tenant.



**Landlord's Work**

Landlord, at its sole cost and expense, shall:

1. Ensure that all existing HVAC units, electrical, lighting, and plumbing slated to be re-used in the construction of Tenant's Improvements shall be brought to good working condition prior to Lease Commencement.
2. Install one (1) additional building ADA compliant entry. This entry is currently contemplated to serve that Clinic space and shall be located on the SW 4<sup>th</sup> Avenue side of the Building. In the event that Landlord and Tenant agree to locate the entry on a different side of the building, the entry shall either be an emergency exit only or shall serve as a non-public staff entry only. Landlord's maximum contribution towards the entry shall be capped at \$75,000. The design and scope of this entry door shall be mutually agreed upon by both parties.
3. Participate in the cost of the aforementioned elevator and stairs on an equal basis with Tenant, up to a maximum of \$75,000.

**Space Planning /  
Architectural**

For the clinic portion of the Expansion Premises, Landlord shall provide an allowance not to exceed \$7,000.00 for the preparation of a space plan by Tenant's architect. For the administrative office portion of the Expansion Premises, Landlord shall provide space planning service at Landlord's sole cost utilizing Landlord's architect. Landlord shall utilize Tenant's architect for the preparation of construction documents relating to the Clinic space.

**Construction**

All improvements shall be made using building standard finishes or better. Space plans, construction drawings and finish selections will be subject to Landlord's review and approval.

**Parking**

Tenant shall be granted the right to rent reserved parking spaces at the rate of 1 space per 4,000 rentable square feet leased.

Current rates are \$150 per month, and are subject to change.

**HVAC and Lighting**

Landlord shall provide building standard heating, ventilation, air conditioning and lighting Monday through Friday between the hours of 6am and 8pm, and Saturday from 8am to 6pm. Overtime air conditioning is available at the current rate of \$40.00 per hour. These hours of operation shall apply to Tenant's entire leased premises in the Building. The automatic lighting shutoff for the entire leased premises shall also be set to match these hours of operation.



**Existing Termination  
Rights**

As a material inducement to enter into this transaction, Tenant agrees to modify its existing Termination Rights in the following manner:

- Article 34.A – Modify timing of right to terminate at twenty-four (24) months, as opposed to thirty-six (36) months.
- Article 34.B – Consolidation Termination. This Right shall apply to all Tenant's leased space in the Building.
- Article 34.C – Budget Constraint Termination. Add the following language: "Landlord shall designate the location of the BC Termination Space, to be determined in Landlord's sole discretion acting reasonably, and notify Tenant of the location of the BC Termination Space within sixty (60) days after the receipt of the BC Termination Notice. The foregoing notwithstanding, the location of the BC Termination space chosen by the Landlord shall be of like kind to the use being terminated and shall not have a material negative impact on Tenant's ability to conduct business nor a material negative impact on Landlord's ability to lease the BC Termination space."

**Layout Contingency**

This offer is strictly contingent upon Landlord's approval of the proposed layout of all Clinic Premises, including access, exiting, and appearance from the exterior of the Building. It is intended that the parties would come to agreement on the business points contained in this proposal, proceed with space planning to address these layout issues and gather initial improvement estimates. In the event either party elects to terminate negotiations due to layout issues or project costs, neither party will have any obligation to the other, except for Landlord's obligation to provide a space planning allowance as outlined above.

**FSH Group  
Relocation**

This proposal does not currently contemplate the relocation of FSH Communications, currently located on the 2<sup>nd</sup> floor. Landlord is aware that the ability to relocate FSH Communications may be material in Tenant's ability to expand in the Building. In the event the Landlord, in its reasonable discretion, can successfully relocate the above referenced Tenant, then that Premises shall be included in the additional Premises under identical terms and conditions as the Administrative Office Space. Upon execution of this Letter of Intent, Landlord shall diligently pursue such a relocation.

**Option to Extend**

Tenant's Option to Extend in the current lease shall apply to all administrative office space in the building. For all clinic space in the building, Tenant shall have one (1) five year option to extend by providing not more than thirteen (13) months and not less than twelve (12) months prior written notice. The rental rate for the clinic space option shall be at 95% of market.



**ROFR Response**

Landlord and Tenant hereby agree that by entering into negotiations as contemplated by this Proposal does not release or waive the obligations or rights of either party as they relate to Tenant's Right of First Refusal under the existing lease between Landlord and Tenant for the Building or Landlord's Notice to Tenant dated February 9, 2006 offering Tenant an opportunity to exercise its Right of First Refusal with respect to certain space within the Building.

**Documentation**

A Lease Amendment will document this transaction. All other terms and conditions not addressed above shall remain as written in the Original Lease. It is the intent of both parties that the contemplated Lease Amendment will attempt to unify the deal terms of the original lease and the expansion to the maximum extent possible while holding both parties harmless. This includes, but is not limited to, creating a single blended rental rate for all administrative office space, creating a single blended rental rate for all clinic space and establishing a single Base Year.

**Professional  
Representation**

Unico Properties, Inc. will pay a commission for this lease pursuant to a separate agreement. In no event shall Landlord, or Unico be liable to broker for any commission on portions of the Premises currently under lease to Tenant. Unico recognizes CRESA Partners in this transaction.

**Conditions  
Precedent**

This proposal is an outline of the material terms of our proposed transaction. We expect to negotiate a lease agreement, which will be generally consistent with this letter. This proposal shall not constitute a formal agreement, is subject to the full execution of a mutually acceptable lease, availability of the space and the approval of the transaction by building ownership and any lender.

If the attached terms meet your approval, please sign and return a copy of the document as acknowledgment of your acceptance. This proposal may be withdrawn at any time prior to mutual execution. Upon notification, lease documents will be prepared for your review. If you have any questions, please do not hesitate to call me at 503-425-6707.

Sincerely,

A handwritten signature in black ink, appearing to read "B Pearce", with a long horizontal flourish extending to the right.

Brian Pearce

General Manager





**AGREED AND ACCEPTED**

**Any proposed amendments to terms and conditions of the current lease between Landlord and Tenant will be subject to review by the County Attorney. Please note any amendment requested, proposal made, or counteroffer accepted by me or other authorized County representative for the above referenced property is not binding on the County until and unless the Board approves the proposed lease or amendment upon such terms and conditions that may be imposed.**

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

A handwritten signature in black ink, appearing to read "Doug Butler", written over a horizontal line.

Doug Butler, Facilities Director  
Multnomah County



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date:	08/10/06
Agenda Item #:	R-9
Est. Start Time:	10:00 AM
Date Submitted:	08/02/06

**BUDGET MODIFICATION:** -

<b>Agenda Title:</b>	<b>RESOLUTION Declaring a Portion of the Edgefield Property Located at 1906 SW Halsey Street, Troutdale, Oregon as Surplus Property and Approving an Easement Agreement with Michael McMenamin</b>
----------------------	--

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date Requested:</b>	August 10, 2006	<b>Time Requested:</b>	5 Minutes
<b>Department:</b>	Chair Linn	<b>Division:</b>	Chair's Office
<b>Contact(s):</b>	Doug Butler		
<b>Phone:</b>	(503) 988-6294	<b>Ext.</b>	86924
<b>Presenter(s):</b>	Doug Butler	<b>I/O Address:</b>	274/FPM/Doug Butler

### General Information

**1. What action are you requesting from the Board?**

The Department of County Management requests that the Board declare a portion of the Edgefield Property, located at 1906 SW Halsey Street, Troutdale, Oregon as Surplus Property and approve an Easement Agreement with Michael McMenamin.

The Department of County Management, Facilities and Property Management Division, recommends adoption of the Resolution.

**2. Please provide sufficient background information for the Board and the public to understand this issue.**

Multnomah County previously issued a Permit and Power Line Easement Agreement ("Agreement") to Michael McMenamin at the Edgefield Property, 1906 SW Halsey Street, Troutdale, Oregon ("Property"). The Agreement was a limited easement to accommodate electrical service for the McMenamin's Edgefield concert venue directly adjacent to the Property.

Under the Short Term Use Permit authority granted the Chair under Resolution 05-182, the term of any permit is limited to ninety (90) days. The Agreement expires August 11, 2006.

Under Resolution 05-131, dated July 28, 2005, the Board approved the sale of the real property partly described by the Agreement to Michael McMenamin. Because of unavoidable extensions in closing the sale, a longer term easement becomes necessary. It is reasonable to provide this sort of accommodation to a property buyer under terms substantially in the form of the attached Easement Agreement.

**3. Explain the fiscal impact (current year and ongoing).**

None.

**4. Explain any legal and/or policy issues involved.**

None

**5. Explain any citizen and/or other government participation that has or will take place.**

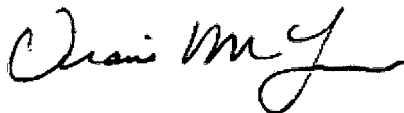
None

---

**Required Signatures**

---

**Department/  
Agency Director:**



**Date:** 08/03/06

**Budget Analyst:**

**Date:**

**Department HR:**

**Date:**

**Countywide HR:**

**Date:**

**BOGSTAD Deborah L**

**From:** SUBLETT Michael A  
**Sent:** Thursday, May 11, 2006 5:39 PM  
**To:** ROJO DE STEFFEY Maria; CRUZ Serena M; NAITO Lisa H; ROBERTS Lonnie J  
**Cc:** LINN Diane M; BUTLER Douglas E - FPM; THOMAS John S  
**Subject:** Edgefield Easement

**MEMORANDUM**

**May 11, 2006**

**To:** Multnomah County Board of Commissioners

**From:** Doug Butler, Director, FPM

**cc:** Diane M. Linn, County Chair  
John Thomas, Deputy County Attorney

**Contact:** Michael Sublett X84149  
Senior Property Management Specialist  
Facilities & Property Management

**RE:** Edgefield Easement Agreement

**Authority:** Resolution 05-182 (Short Term Use Permits)

Multnomah County, by above Resolution dated October 27, 2005, authorized the County Chair to execute Short Term Use Agreements for County real property where the permit term does not exceed ninety (90) days and the permit fee is \$25,000.00 or less. It further provides that each time the Director of Facilities and Property Management ("Director") recommends to the Chair that the Chair approve and execute a Short Term Use Permit, the Director shall contemporaneously advise the Board of the recommendation including all pertinent facts concerning the proposed permit.

The attached ninety (90) day use permit provides McMenamins, owner of the adjacent property and approved buyer for the easement property, the ability to contract PGE to install a power line from a pole on our property to a pole on their property. The urgency is in order to facilitate their summer concert series. Because of unavoidable extensions in closing the sale, this easement becomes necessary. It is customary to provide this sort of accommodation at no cost to a property buyer. It is fully anticipated that extended closing will necessitate that a longer term easement will be needed within ninety (90) days, which will require Board approval. The Permit has been agreed to as to form by the County Attorney.



Edgefield Easement  
May 2006.do...

**PERMIT AND  
POWER LINE EASEMENT AGREEMENT  
(90 Day Term)**

**THIS POWER LINE EASEMENT AGREEMENT** (this "**Agreement**") is entered into by and between **THE COUNTY OF MULTNOMAH, OREGON ("Grantor")** and **MICHAEL MCMENAMIN, ("Grantee")** this \_\_\_\_ day of \_\_\_\_\_, 2006.

**RECITALS**

- A. Grantor is the owner of that certain real property located in Multnomah County, Oregon partially depicted in the attached Exhibit A ("**Grantor's Property**").
- B. Grantee is the owner of certain real property adjacent to Grantor's Property partially depicted in the attached Exhibit A ("**Grantee's Property**").
- C. Grantee has entered into a Memorandum of Understanding to purchase Grantor's Property, a portion of which includes the Easement Property.
- D. Grantor desires to grant to Grantee, for the benefit of Grantee and its electric power utility provider, an easement across and over a portion of Grantor's Property for the construction and location of an electrical power line to provide such service to Grantee's Property, in accordance with the terms and conditions set forth herein.

**AGREEMENT**

1. **Grant of Easement.** Grantor hereby grants to Grantee a non-exclusive easement for the construction and location of an electrical power transmission line (the "**Power Line**") over that portion of Grantor's Property depicted in Exhibit A attached hereto (the "**Easement Property**"). Grantee, or Grantee's electrical power utility provider shall also have an easement over the Easement Property and that portion of Grantor's Property as shall be necessary to effectuate the construction and installation of the Power Line. Until terminated as set forth herein, the easement rights granted in this Agreement shall run with the land and shall inure to the benefit of the parties, their successors and assigns.
2. **Scope of the Easement.** The easement granted herein shall be used for the construction, location and use of the Power Line over the Easement Property which shall provide electrical service to Grantee's Property. Excavation in the easement area and placement of the Power Line under ground are not permitted. Except as limited by the rights granted herein, Grantor shall have full use and control of the Easement Property.
3. **Term of the Easement.** The easement granted herein shall expire ninety (90) days from the date of execution of this Agreement.
4. **Maintenance/Restoration of Grantor's Property on Termination.** Grantee shall be solely responsible, at its cost, for the maintenance and repair of the Power Line as may

be reasonably necessary to maintain the same in a safe and suitable condition for the purposes set forth herein.

At the expiration of this Easement, all improvements and alterations to the Easement Property constructed by Grantee shall, at Grantor's option, be removed at Grantee's sole expense and the Easement Property shall be restored to the condition it was in prior to the improvement or alteration unless the Grantor's written consent specifically provides otherwise.

5. **Damage to Grantor's Property.** Any damage to Grantor's Property resulting from the construction, maintenance or repair of the Power Line shall be promptly repaired by Grantee at Grantee's sole expense.

6. **Indemnity.** Grantee agrees to indemnify, defend and hold Grantor harmless from and against all liability, damage, loss, and costs of any nature whatsoever, including attorney fees, arising from or relating to the use of the easement granted herein by Grantee, Grantee's electrical power utility provider, and Grantee's agents, employees, independent contractors, licensees and invitees.

7. **Miscellaneous.** All exhibits referenced in this Agreement are incorporated herein. Any amendment or alteration to this Agreement shall only be in writing and shall be signed by each party to the Agreement. This Agreement shall be governed by and construed in accordance with the laws and decisions of the State of Oregon. In the event of litigation, exclusive venue shall lie in Multnomah County, Oregon. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. **No Recordation.** This easement shall not be recorded.

EXECUTED by the parties or their duly authorized representatives on the date first above written.

**GRANTOR:**

**THE COUNTY OF MULTNOMAH, OREGON**

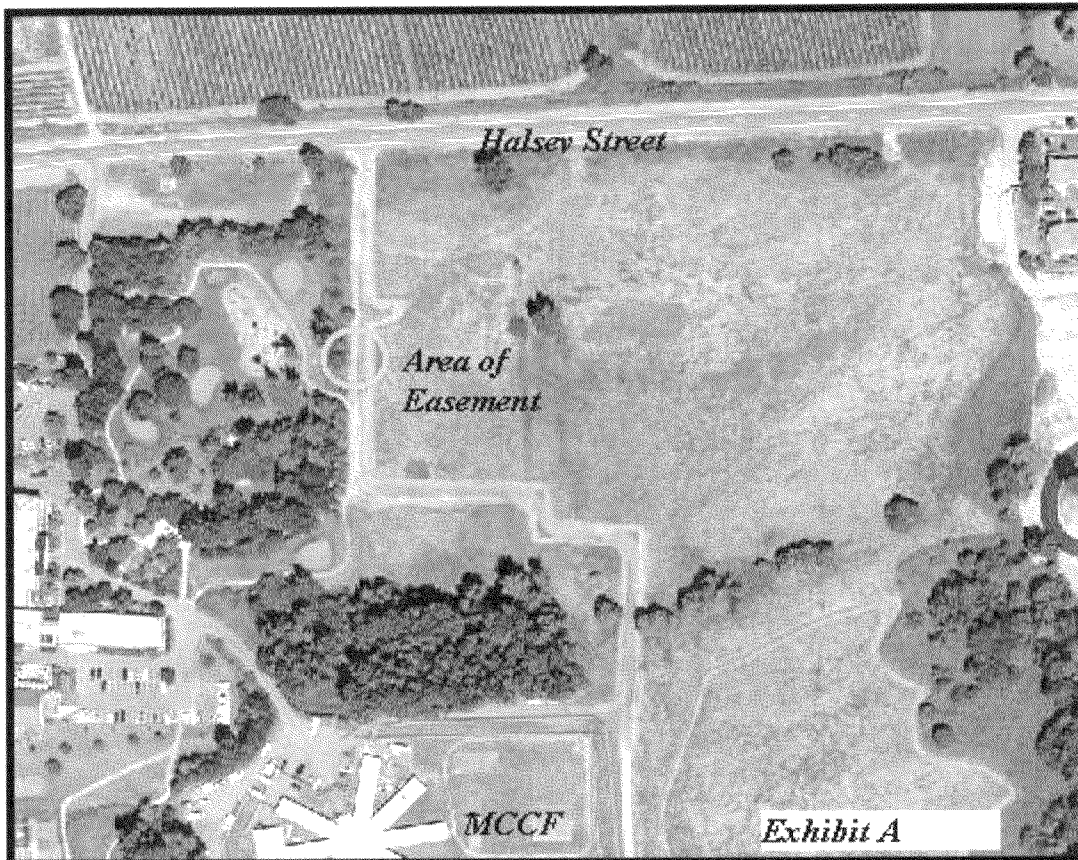
By \_\_\_\_\_  
Diane M. Linn, Chair

**GRANTEE:**

\_\_\_\_\_  
Michael McMenamin

## EXHIBIT A

### Depiction of Grantor's Property, Grantee's Property and Easement Property





BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. \_\_\_\_\_**

Declaring a Portion of the Edgefield Property Located at 1906 SW Halsey Street, Troutdale, Oregon as Surplus Property and Approving an Easement Agreement with Michael McMenamin

**The Multnomah County Board of Commissioners Finds:**

- a. Multnomah County previously issued a Permit and Power Line Easement Agreement ("Agreement") to Michael McMenamin at the Edgefield Property, 1906 SW Halsey Street, Troutdale, Oregon ("Property"). The Agreement was a limited easement to accommodate electrical service for the McMenamin's Edgefield concert venue directly adjacent to the Property.
- b. Under the Short Term Use Permit authority granted the Chair under Resolution 05-182, the term of any permit is limited to ninety (90) days. The Agreement expires August 11, 2006.
- c. Under Resolution 05-131, dated July 28, 2005, the Board approved the sale of the real property partly described by the Agreement to Michael McMenamin. Because of unavoidable extensions in closing the sale, a longer term easement becomes necessary. It is reasonable to provide this sort of accommodation to a property buyer under terms substantially in the form of the attached Easement Agreement.

**The Multnomah County Board of Commissioners Resolves:**

1. The Board approves the Easement Agreement. The Chair is authorized to execute the Easement Agreement substantially in the form attached to this Resolution.
2. The Chair is authorized to execute extensions to and amendments to the Easement Agreement without further Board action.

ADOPTED this 10<sup>th</sup> day of August, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

\_\_\_\_\_  
Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_

John S. Thomas, Deputy County Attorney

**PERMIT AND  
POWER LINE EASEMENT AGREEMENT**

**THIS POWER LINE EASEMENT AGREEMENT** (this "**Agreement**") is entered into by and between **THE COUNTY OF MULTNOMAH, OREGON** ("**Grantor**") and **MICHAEL MCMENAMIN**, ("**Grantee**") this \_\_\_\_ day of \_\_\_\_\_, 2006.

**RECITALS**

A. Grantor is the owner of that certain real property located in Multnomah County, Oregon partially depicted in the attached Exhibit A ("**Grantor's Property**").

B. Grantee is the owner of certain real property adjacent to Grantor's Property partially depicted in the attached Exhibit A ("**Grantee's Property**").

C. Grantee has entered into a Memorandum of Understanding to purchase Grantor's Property, a portion of which includes the Easement Property.

D. Grantor has entered into a 90-day term Power Line Easement with Grantee which expires August 11, 2006.

E. Grantor and Grantee desire to replace the 90-day term Power Line Easement with this Permit and Power Line Easement Agreement.

F. Grantor desires to grant to Grantee, for the benefit of Grantee and its electric power utility provider, an easement across a portion of Grantor's Property for an electrical power line to provide such electrical service to Grantee's Property, in accordance with the terms and conditions set forth herein.

**AGREEMENT**

1. **Grant of Easement.** Grantor hereby grants to Grantee a non-exclusive easement for the location of an electrical power transmission line (the "**Power Line**") across that portion of Grantor's Property depicted in Exhibit A attached hereto (the "**Easement Property**") for construction of improvements as shown on Exhibit B. Grantee, or Grantee's electrical power utility provider shall also have an easement over the Easement Property and that portion of Grantor's Property as shall be necessary to effectuate the construction, location, installation, and maintenance of the Power Line. Until terminated as set forth herein, the easement rights granted in this Agreement shall run with the land and shall inure to the benefit of the parties, their successors and assigns.

2. **Scope of the Easement.** The easement granted herein shall be used for the construction, location, use, and maintenance of the Power Line as shown on Exhibit B on and in the Easement Property which shall provide electrical service to Grantee's Property. Except as limited by the rights granted herein, Grantor shall have full use and control of the Easement Property, provided that no changes to the improvements shown on Exhibit B shall be made without the written consent of the Grantor, which consent shall not be unreasonably withheld. Grantee shall be responsible for all costs to maintain the improvements in and on the Easement Property.

3. **Term of the Easement.** The easement granted herein shall expire on the sooner of:

a. The date Grantee's proposed purchase of the Easement Property (along with other property) closes; and

b. The date Grantee's proposed purchase of the Easement Property (along with other property) fails to close and is terminated; and

c. December 31, 2007.

4. **Maintenance.** Grantee shall be solely responsible, at its cost, for the maintenance and repair of the Power Line as may be reasonably necessary to maintain the same in a safe and suitable condition for the purposes set forth herein.

5. **Damage to Grantor's Property.** Any damage to Grantor's Property resulting from Grantee's construction, maintenance or repair of the Power Line shall be promptly repaired by Grantee at Grantee's sole expense.

6. **Indemnity.** Grantee agrees to indemnify, defend and hold Grantor harmless from any and against all liability, damage loss, and costs arising from the use of the easement granted herein by Grantee, Grantee's agents, employees, independent contractors, licensees and invitees.

7. **Miscellaneous.** All exhibits referenced in this Agreement are incorporated herein. Any amendment or alteration to this Agreement shall only be in writing and shall be signed by each party to the Agreement. This Agreement shall be governed by and construed in accordance with the laws and decisions of the State of Oregon. In the event of litigation, exclusive venue shall lie in Multnomah County, Oregon. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. **No Recordation.** This easement shall not be recorded.

9. **Renewal.** Provided conditions 3.a. and 3.b. above have not occurred, this easement may be renewed at the option of Grantee for one (1) year upon written notice to Grantor prior to December 31, 2007.

EXECUTED by the parties or their duly authorized representatives on the date first above written.

GRANTOR:

THE COUNTY OF MULTNOMAH, OREGON

By \_\_\_\_\_  
Diane M. Linn, Chair

GRANTEE:

\_\_\_\_\_  
Michael McMenamin

Deb -

Mike says

Sublett

the exhibits

will be done

B4

this is

presented -

asked me to

leave blank.

ck

**EXHIBIT A**

**Depiction of Grantor's Property, Grantee's Property and Easement Property**

## **EXHIBIT B**

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 06-142**

Declaring a Portion of the Edgefield Property Located at 1906 SW Halsey Street, Troutdale, Oregon as Surplus Property and Approving an Easement Agreement with Michael McMenamin

**The Multnomah County Board of Commissioners Finds:**

- a. Multnomah County previously issued a Permit and Power Line Easement Agreement ("Agreement") to Michael McMenamin at the Edgefield Property, 1906 SW Halsey Street, Troutdale, Oregon ("Property"). The Agreement was a limited easement to accommodate electrical service for the McMenamin's Edgefield concert venue directly adjacent to the Property.
- b. Under the Short Term Use Permit authority granted the Chair under Resolution 05-182, the term of any permit is limited to ninety (90) days. The Agreement expires August 11, 2006.
- c. Under Resolution 05-131, dated July 28, 2005, the Board approved the sale of the real property partly described by the Agreement to Michael McMenamin. Because of unavoidable extensions in closing the sale, a longer term easement becomes necessary. It is reasonable to provide this sort of accommodation to a property buyer under terms substantially in the form of the attached Easement Agreement.

**The Multnomah County Board of Commissioners Resolves:**

1. The Board approves the Easement Agreement. The Chair is authorized to execute the Easement Agreement substantially in the form attached to this Resolution.
2. The Chair is authorized to execute extensions to and amendments to the Easement Agreement without further Board action.

ADOPTED this 10th day of August, 2006.



REVIEWED:

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Diane M. Linn, Chair

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By

  
John S. Thomas, Deputy County Attorney

Resolution 06-142 Approving Easement Agreement

**DRAFT**  
**PERMIT AND**  
**POWER LINE EASEMENT AGREEMENT**

**THIS POWER LINE EASEMENT AGREEMENT** (this "**Agreement**") is entered into by and between **THE COUNTY OF MULTNOMAH, OREGON** ("**Grantor**") and **MICHAEL MCMENAMIN**, ("**Grantee**") this \_\_\_\_ day of \_\_\_\_\_, 2006.

**RECITALS**

- A. Grantor is the owner of that certain real property located in Multnomah County, Oregon partially depicted in the attached Exhibit A ("**Grantor's Property**").
- B. Grantee is the owner of certain real property adjacent to Grantor's Property partially depicted in the attached Exhibit A ("**Grantee's Property**").
- C. Grantee has entered into a Memorandum of Understanding to purchase Grantor's Property, a portion of which includes the Easement Property.
- D. Grantor has entered into a 90-day term Power Line Easement with Grantee which expires August 11, 2006.
- E. Grantor and Grantee desire to replace the 90-day term Power Line Easement with this Permit and Power Line Easement Agreement.
- F. Grantor desires to grant to Grantee, for the benefit of Grantee and its electric power utility provider, an easement across a portion of Grantor's Property for an electrical power line to provide such electrical service to Grantee's Property, in accordance with the terms and conditions set forth herein.

**AGREEMENT**

1. **Grant of Easement.** Grantor hereby grants to Grantee a non-exclusive easement for the location of an electrical power transmission line (the "**Power Line**") across that portion of Grantor's Property depicted in Exhibit A attached hereto (the "**Easement Property**") for construction of improvements as shown on Exhibit B. Grantee, or Grantee's electrical power utility provider shall also have an easement over the Easement Property and that portion of Grantor's Property as shall be necessary to effectuate the construction, location, installation, and maintenance of the Power Line. Until terminated as set forth herein, the easement rights granted in this Agreement shall run with the land and shall inure to the benefit of the parties, their successors and assigns.
2. **Scope of the Easement.** The easement granted herein shall be used for the construction, location, use, and maintenance of the Power Line as shown on Exhibit B on and in the Easement Property which shall provide electrical service to Grantee's Property. Except as limited by the rights granted herein, Grantor shall have full use and control of the Easement Property, provided that no changes to the improvements shown on Exhibit B shall be made without the written consent of the Grantor, which consent shall not be unreasonably withheld. Grantee shall be responsible for all costs to maintain the improvements in and on the Easement Property.



**DRAFT**

3. **Term of the Easement.** The easement granted herein shall expire on the sooner of:

a. The date Grantee's proposed purchase of the Easement Property (along with other property) closes; and

b. The date Grantee's proposed purchase of the Easement Property (along with other property) fails to close and is terminated; and

c. December 31, 2007.

4. **Maintenance.** Grantee shall be solely responsible, at its cost, for the maintenance and repair of the Power Line as may be reasonably necessary to maintain the same in a safe and suitable condition for the purposes set forth herein.

5. **Damage to Grantor's Property.** Any damage to Grantor's Property resulting from Grantee's construction, maintenance or repair of the Power Line shall be promptly repaired by Grantee at Grantee's sole expense.

6. **Indemnity.** Grantee agrees to indemnify, defend and hold Grantor harmless from any and against all liability, damage loss, and costs arising from the use of the easement granted herein by Grantee, Grantee's agents, employees, independent contractors, licensees and invitees.

7. **Miscellaneous.** All exhibits referenced in this Agreement are incorporated herein. Any amendment or alteration to this Agreement shall only be in writing and shall be signed by each party to the Agreement. This Agreement shall be governed by and construed in accordance with the laws and decisions of the State of Oregon. In the event of litigation, exclusive venue shall lie in Multnomah County, Oregon. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. **No Recordation.** This easement shall not be recorded.

9. **Renewal.** Provided conditions 3.a. and 3.b. above have not occurred, this easement may be renewed at the option of Grantee for one (1) year upon written notice to Grantor prior to December 31, 2007.

EXECUTED by the parties or their duly authorized representatives on the date first above written.

**GRANTOR:**

**THE COUNTY OF MULTNOMAH, OREGON**

By \_\_\_\_\_  
Diane M. Linn, Chair

**GRANTEE:**

By \_\_\_\_\_  
Michael McMenamin

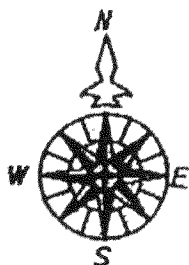
# Multnomah County Edgefield Properties

## EASEMENT PROPERTY

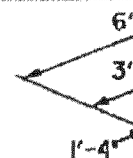
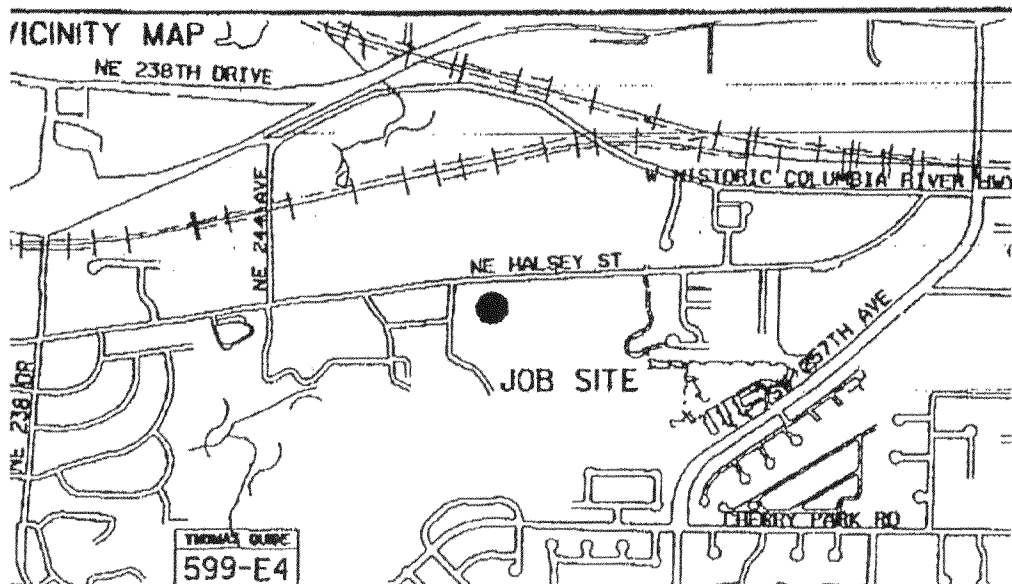


EXHIBIT B

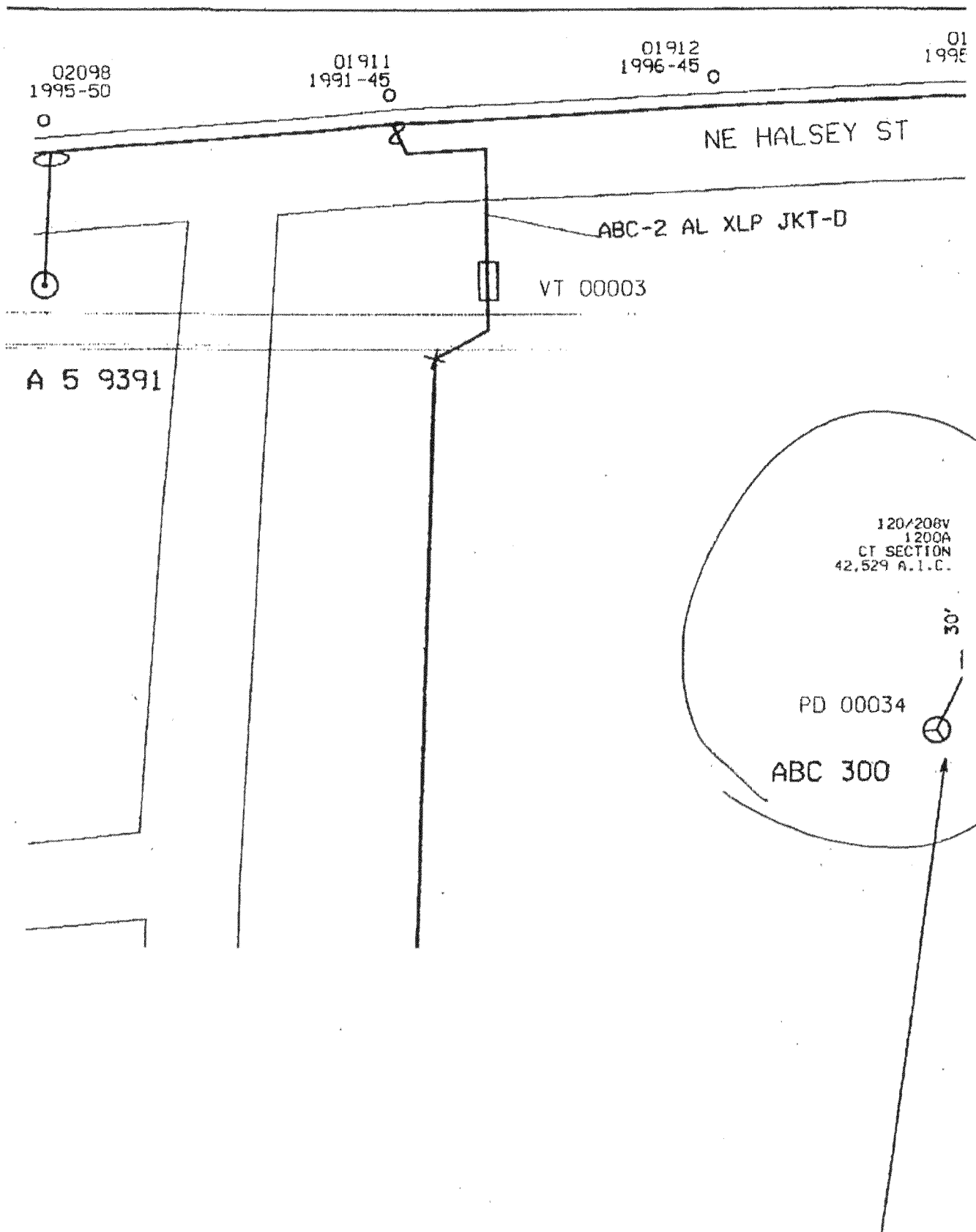
PD 00034  
ABC 300



INSTALL  
3Ø PADMOUNT 300 3Ø 7200V  
120/208V



TRANS



BUILDING AND 4 FEET ONO FROM ANY FIRE HYDRANT. PGE TRANSFORMERS MUST BE WITHIN 15 FEET OF A DRIVEABLE AREA. ALWAYS MAINTAIN 10 FEET CLEARANCE IN FRONT OF ALL TRANSFORMERS.

5. TRANSFORMER PADS ARE TO BE SET SO THAT THE TOP IS 2 INCHES ABOVE FINAL GRADE. CONDUIT IS TO BE INSTALLED IN PAD AS INDICATED IN DETAIL AND TO EXTEND 1 INCH ABOVE THE PAD.
6. STEEL BARRIER POSTS ARE REQUIRED AROUND TRANSFORMERS THAT ARE EXPOSED TO VEHICLES.
7. PGE TO BE NOTIFIED AND INSPECT ALL CONDUIT, VAULT AND PAD INSTALLATIONS BEFORE BACKFILL. ALL NEW VAULT & PAD LOCATIONS TO BE FIELD VERIFIED WITH PGE AND CUSTOMER REPRESENTATIVE.
8. REFER TO LETTER OF RESPONSIBILITY FOR FURTHER DETAILS AND THE OREGON ELECTRIC SERVICE REQUIREMENTS BOOKLET FOR SPECIFIC REQUIREMENTS.
9. DESIGN IS BASED ON STANDARD UNDERGROUND EQUIPMENT. NON-STANDARD UNDERGROUND EQUIPMENT MAY BE AN OPTION AT AN ADDITIONAL COST TO THE CUSTOMER.
10. THE POINT OF DELIVERY AND DIVISION OF OWNERSHIP BETWEEN THE CUSTOMER AND PGE WILL BE AT THE LINE SIDE OF THE NEW CUSTOMER PROVIDED SWITCH GEAR.

DEAN Gilkey *inspector*  
669-5225

CALL BEFORE YOU DIG: OREGON LAW REQUIRES YOU TO REQUEST UTILITY LOCATION 48 HOURS PRIOR TO EXCAVATION. FOR LOCATES CALL THE OREGON UTILITY NOTIFICATION CENTER AT 503-246-8669 OR 1-800-332-2344.

CONTACT SERVICE COORDINATOR FOR TRENCH AND CONDUIT INSPECTION PRIOR TO BACKFILL. PGE WILL NOT INSTALL WIRE UNTIL TRENCH IS 100% BACKFILLED.

SERVICE COORDINATOR  
503-736-5450

**PGE FACILITIES NOT DRAWN TO SCALE**  
THIS DRAWING IS A GRAPHICAL REPRESENTATION OF PORTLAND GENERAL ELECTRIC FACILITIES IN THE FIELD. THIS MAP ILLUSTRATES ELECTRICAL CONNECTIVITY, TYPES AND NUMBERS OF CONDUCTORS AND PLACEMENT OF EQUIPMENT WITHIN THE DISTRIBUTION SYSTEM. IT IS RECOMMENDED THAT THE USER NOT RELY ON THIS DIAGRAM FOR GEOGRAPHICAL LOCATIONS

**AS-BUILT VERIFICATION  
& NESC VIOLATIONS CORRECTED**

This document accurately  
represents FIELD construction.

Foreman: \_\_\_\_\_ Date: \_\_\_\_\_

SDC  
Engineer: \_\_\_\_\_ Date: \_\_\_\_\_

Designer: \_\_\_\_\_ Date: \_\_\_\_\_

[www.PortlandGeneral.com](http://www.PortlandGeneral.com)

[www.PortlandGeneral.biz](http://www.PortlandGeneral.biz)

[www.EarthAdvantage.com](http://www.EarthAdvantage.com)



GRESHAM  
LINE CREW CENTER  
1705 E BURNSIDE ST  
GRESHAM, OR 97030

JOB NO. 433493	DATE 04/24/06	SECTION(S) A13-26C	SCALE 1"=50'
CIRCUIT FAIRVIEW-TROUTDALE			SIZE 17x22
TITLE MCMENAMINS, INC.			
LOCATION 2126 SW HALSEY ST, TROUTDALE			
DESCRIPTION INSTALL 3PH 1200A SVC TO COMM BLDG			SHEET 1 OF
DESIGN BY ED EKSTROM	PHONE 669-5216	DRAWN BY AROUN X	

© PORTLAND GENERAL ELECTRIC CO. - ALL RIGHTS RESERVED

## COMMERCIAL LEGEND

### NEW PGE FACILITIES TO BE INSTALLED

(UNLESS OTHERWISE SPECIFIED)



6'x6' TRANSFORMER PAD  
PROVIDED & INSTALLED BY CUSTOMER



INSTALL CUTOUT  
SIZE FUSING AS NOTED

----- INSTALL 3-#2 AL JKT PRIMARY IN 4" PVC CONDUIT  
PROVIDED & INSTALLED BY CUSTOMER

----- INSTALL 1-#350 AL-OX IN 3 OF 4-4" PVC CONDUIT  
PROVIDED & INSTALLED BY CUSTOMER

### CONSTRUCTION NOTES:

COM

1. CUSTOMER IS RESPONSIBLE FOR ALL TRENCH, CONDUIT, VAULTS, PADS AND ROAD CROSSINGS.
2. ALL CONDUIT TO BE INSTALLED 36 INCHES MIN BELOW FINAL GRADE.
3. ALL PGE CONDUCTORS TO BE INSTALLED IN GRAY, SCHEDULE 40, ELECTRICAL GRADE, PVC CONDUIT WITH NYLON PULL STRINGS MIN 500 LBS. TEST. PGE TO DETERMINE THE SIZE AND NUMBER OF CONDUITS REQUIRED. MAINTAIN 12 VERTICAL INCHES AND 24 HORIZONTAL INCHES CLEARANCE BETWEEN GAS AND OTHER UTILITIES. ALL ELBOWS TO BE 36 INCH MIN RADII. ALL BENDS MUST BE FACTORY MADE. CONDUIT RUNS LONGER THAN 150 FEET OR WITH MORE THAN 270 DEGREES OF BENDS MUST USE RIGID STEEL ELBOWS, OR PGE APPROVED FIBERGLASS AND MUST BE APPROVED BY PGE PRIOR TO INSTALLATION BY CUSTOMER.
4. ALL PGE TRANSFORMERS TO BE INSTALLED 8 FEET MIN FROM ANY COMBUSTIBLE BUILDING AND 4 FEET MIN FROM ANY FIRE HYDRANT. PGE TRANSFORMERS MUST BE WITHIN 15 FEET OF A DRIVEABLE AREA. ALWAYS MAINTAIN 10 FEET CLEARANCE IN FRONT OF ALL TRANSFORMERS.
5. TRANSFORMER PADS ARE TO BE SET SO THAT THE TOP IS 2 INCHES ABOVE FINAL GRADE. CONDUIT IS TO BE INSTALLED IN PAD AS INDICATED IN DETAIL AND TO EXTEND 1 INCH ABOVE THE PAD.
6. STEEL BARRIER POSTS ARE REQUIRED AROUND TRANSFORMERS THAT ARE EXPOSED TO VEHICLES.
7. PGE TO BE NOTIFIED AND INSPECT ALL CONDUIT, VAULT AND PAD INSTALLATIONS BEFORE BACKFILL. ALL NEW VAULT & PAD LOCATIONS TO BE FIELD VERIFIED WITH PGE AND CUSTOMER REPRESENTATIVE.
8. REFER TO LETTER OF RESPONSIBILITY FOR FURTHER DETAILS AND THE OREGON ELECTRIC SERVICE REQUIREMENTS BOOKLET FOR SPECIFIC REQUIREMENTS.
9. DESIGN IS BASED ON STANDARD UNDERGROUND EQUIPMENT. NON-STANDARD UNDERGROUND EQUIPMENT MAY BE AN OPTION AT AN ADDITIONAL COST TO THE CUSTOMER.
10. THE POINT OF DELIVERY AND DIVISION OF OWNERSHIP BETWEEN THE CUSTOMER AND PGE WILL BE AT THE LINE SIDE OF THE NEW CUSTOMER PROVIDED SWITCH GEAR.

No Am Gilkey inspector  
609-5225

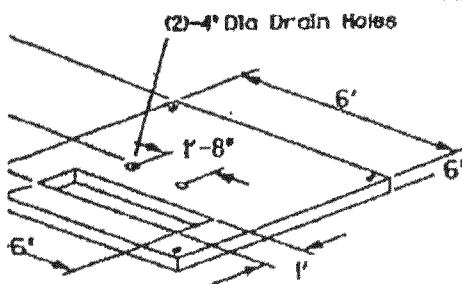
03520  
1962-45

- BUILDING AND  
BE WITHIN 10'  
IN FRONT OF
5. TRANSFORMER  
FINAL GRADE  
AND TO EXT
6. STEEL BARRI  
TO VEHICLES
7. PGE TO BE  
BEFORE BACK  
WITH PGE A
8. REFER TO  
ELECTRIC S
9. DESIGN IS  
UNDERGROU
10. THE POINT  
PGE WILL B

LOAD TYPE	CONNECTED KW	DIVERSITY FACTOR	ESTIMATED DEMAND
LIGHTING	144.0	0.9	129.60
RECEPTACLES	72.2	0.1	7.22
WATER HEATING		0.2	
ELECTRIC HEAT	72.2	0.75	54.15
REFRIGERATION / AC		0.75	
MOTORS	72.2	0.50	36.10
TOTAL EST. DEMAND	360.6		227.07

CALL BE  
LOCATION  
UTILITY B  
CONTACT  
TO BACK

WR CHECKLIST		
ITEM	NO	YES
HOLEDIGGER	X	
BOOM		X
BACKHOE	X	
PGE TRENCH	X	
LOCATES	X	
STAKING	X	
FLAGGING	X	
TREETRM	X	
LANDSCAPE	X	
EASEMENT	X	
PERMITS	X	
CUTSHEET	X	
SHUTDOWN	X	
CONTACT PH#		
DATE		
TIME		
DOOR HANGER	X	
UG CIR. VER.	X	



PADMOUNT - THREE PHASE

PGE FA  
THIS DRAWING IS  
ELECTRIC FACILI  
CONNECTIVITY, TYP  
EQUIPMENT WITHIN  
THE USER NOT

**AS-BUILT VERIFI  
& NESC VIOLA**

Foreman:  
SDC  
Engineer:  
Designer:  
www.PortlandGenera



GRESHAM  
LINE CREW CENTER  
1705 E BURNSIDE ST  
GRESHAM, OR 97030

ABC-795 AAC  
N-4/O AAC

NEW

03519  
1995-50

ABC-2 ACSR

PL-3520  
INSTALL 4" POLE CONDUIT UNIT  
WITH 12" BRACKETS,  
3-142 C/O F25T  
& LIGHTNING ARRESTER

03520  
1962-45

CONS

1. CUSTOMER ROAD ETC
2. ALL CONDUIT
3. ALL PCE GRADE, PCE TO D MAINTAIN GAS AND ALL BEND OR WITH I OR PCE A INSTALLA
4. ALL PCE BUILDING BE WITHIN IN FRONT
5. TRANSFORMER FINAL GRV AND TO F
6. STEEL BA TO VEHICLE
7. PCE TO H BEFORE B WITH PCE
8. REFER TO ELECTRIC
9. DESIGN I UNDERG
10. THE PCE WILL

LOAD TYPE	CONNECTED KW	DIVERSITY FACTOR	ESTIMATED DEMAND
LIGHTING	144.0	0.9	129.60
RECEPTACLES	72.2	0.1	7.22
WATER HEATING		0.2	
ELECTRIC HEAT	72.2	0.75	54.15
REFRIGERATION / AC		0.75	
MOTORS	72.2	0.50	36.10

De





## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date:	08/10/06
Agenda Item #:	R-10
Est. Start Time:	10:05 AM
Date Submitted:	08/02/06

**BUDGET MODIFICATION:** -

<b>Agenda Title:</b>	<b>RESOLUTION Declaring the McCoy Building, 426 SW Stark Street, Portland, Oregon as Surplus Property and Authorizing Facilities and Property Management Division to Commence a Market Sale of the Property</b>
----------------------	---

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

<b>Date</b>	August 10, 2006	<b>Time</b>	5 Minutes
<b>Requested:</b>		<b>Requested:</b>	
<b>Department:</b>	Chair Linn	<b>Division:</b>	Chair's Office
<b>Contact(s):</b>	Doug Butler		
<b>Phone:</b>	(503) 988-6294	<b>Ext.</b>	86924
		<b>I/O Address:</b>	274/FPM/Doug Butler
<b>Presenter(s):</b>	Doug Butler		

### General Information

**1. What action are you requesting from the Board?**

The Department of County Management requests that the Board declare the McCoy Building, 426 SW Stark Street, Portland, Oregon as Surplus Property and authorizing Facilities and Property Management Division to commence a market sale of the property.

The Department of County Management, Facilities and Property Management Division, recommends adoption of the Resolution.

**2. Please provide sufficient background information for the Board and the public to understand this issue.**

The McCoy Building, located at 426 SW Stark Street, Portland, Oregon, is an approximately 100,000 square foot ten-story building built in 1923 which is currently used by the Health Department ("Health") for a variety of clinic and administrative uses. A retail lease expiring November 30, 2012, occupies approximately 6,700 square feet on the ground floor.

The McCoy Building has not been sufficiently updated and has significant deferred maintenance. By separate Resolution, the Board approved an expansion in a lease at the Lincoln Building, 421 SW Oak Street, Portland, Oregon, to accommodate Health programs located in the McCoy Building. The Board has directed Facilities and Property Management Division ("Facilities") to take the actions needed to complete the transaction. Because Health will be relocated to the Lincoln Building and to other County facilities, the Director of Facilities and Property Management ("Facilities Director") has determined that the McCoy Building is no longer required for County use. Upon relocation of Health, the County will have no practical, efficient, or appropriate use for the McCoy Building. The Facilities Director recommends that the McCoy Building be declared surplus.

**3. Explain the fiscal impact (current year and ongoing).**

The net proceeds, estimated to be approximately \$5.6 million, will be dedicated to the Lincoln Building Lease Expansion, approved under separate Resolution. The fiscal benefits of the disposition are fully explained in that Resolutions Board Agenda Packet.

**4. Explain any legal and/or policy issues involved.**

None

**5. Explain any citizen and/or other government participation that has or will take place.**

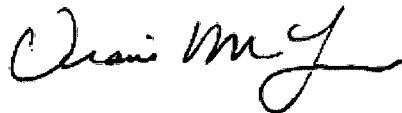
By Resolution 04-185 dated December 9, 2004, the Board adopted a policy for declaring real property owned by the County as surplus ("Surplus Property Process"). The Board may exempt a particular property from the process set forth in the Resolution upon determining that it is in the best interest of the County to do so. Because the move of Health to the Lincoln Building requires the proceeds from the sale of the McCoy Building, it is in the best interest of the County to exempt the sale of the McCoy Building from the process set forth in Resolution 04-185 and to commence an immediate market sale of the McCoy Building. The market sale will broadly expose the disposition of the property to the general public, as well as the real estate community.

---

**Required Signatures**

---

**Department/  
Agency Director:**



**Date:** 08/03/06

**Budget Analyst:**

**Date:**

**Department HR:**

**Date:**

**Countywide HR:**

**Date:**

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. \_\_\_\_\_**

Declaring the McCoy Building, 426 SW Stark Street, Portland, Oregon as Surplus Property and Authorizing Facilities and Property Management Division to Commence a Market Sale of the Property

**The Multnomah County Board of Commissioners Finds:**

- a. The McCoy Building, located at 426 SW Stark Street, Portland, Oregon, is an approximately 100,000 square foot ten-story building built in 1923 which is currently used by the Health Department ("Health") for a variety of clinic and administrative uses. A retail lease expiring November 30, 2012, occupies approximately 6,700 square feet on the ground floor.
- b. The McCoy Building has not been sufficiently updated and has significant deferred maintenance. By separate Resolution, the Board has approved an expansion in a lease at the Lincoln Building, 421 SW Oak Street, Portland, Oregon, to accommodate Health programs located in the McCoy Building. The Board has directed Facilities and Property Management Division ("Facilities") to take the actions needed to complete the transaction.
- c. Because Health will be relocated to the Lincoln Building and other County facilities, the Director of Facilities and Property Management ("Facilities Director") has determined that the McCoy Building is no longer required for County use. Upon relocation of Health, the County will have no practical, efficient, or appropriate use for the McCoy Building. The Facilities Director recommends that the McCoy Building be declared surplus.
- d. By Resolution 04-185 dated December 9, 2004, the Board adopted a policy for declaring real property owned by the County as surplus ("Surplus Property Process"). The Board may exempt a particular property from the process set forth in the Resolution upon determining that it is in the best interest of the County to do so. Because the move of Health to the Lincoln Building requires the proceeds from the sale of the McCoy Building, it is in the best interest of the County to exempt the sale of the McCoy Building from the process set forth in Resolution 04-185 and to commence an immediate market sale of the McCoy Building.

**The Multnomah County Board of Commissioners Resolves:**

1. The McCoy Building is declared surplus. It is in the best interest of the County to exempt the sale of the McCoy Building from the process set forth in Resolution 04-185.

2. Facilities is directed to commence an immediate market sale of the McCoy Building. Upon completion of the sale, all net proceeds from the sale shall be applied to the Lincoln Building lease expansion.

ADOPTED this 10<sup>th</sup> day of August, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

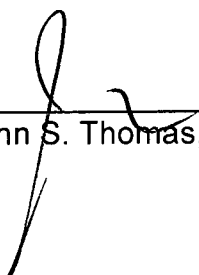
---

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By



---

John S. Thomas, Deputy County Attorney



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: R-11  
Est. Start Time: 10:10 AM  
Date Submitted: 07/17/06

BUDGET MODIFICATION: -

**Public Hearing to Consider and Possibly Act Upon a Measure 37 Claim by James and Elizabeth McGrew for \$8,097,000 in Compensation or Relief from Regulations to Allow a 38 Lot Subdivision on Property Located at 13154 NW**  
**Agenda Title: McNamée Road [T 2N, R 1W, SEC 32A, TL 700, 800, 900, and 1000] (Case File T1-05-061)**

Date Requested: August 10, 2006 Time Requested: 30 minutes  
Department: Community Services Division: Land Use & Transportation  
Contact(s): Derrick Tokos, Sandra Duffy  
Phone: 503-988-3043 Ext. 22682 I/O Address: 455/116  
Presenter(s): Derrick Tokos, Sandra Duffy

### General Information

#### 1. What action are you requesting from the Board?

Action requested is to provide a public hearing and render a decision regarding a Measure 37 claim by James and Elizabeth McGrew for a 38 lot subdivision on property known as T 3N, R 2W, SEC 25C, TL 700, 800, 900, and 1000. Land use planning has outlined an approach to decision this claim in a staff report dated July 14, 2006.

#### 2. Please provide sufficient background information for the Board and the public to understand this issue.

The claimants have submitted a Measure 37 request to divide four tax lots into a 38 lot subdivision, or have the county pay \$8,097,000 in compensation. The claimants assert James and Elizabeth McGrew have held an ownership in all four tax lots since 1974 at a time when claimants assert zoning regulations would have allowed a 38 lot subdivision.

Multnomah County's understanding of the law as reflected in its Measure 37 ordinance is that division of a property is not a 'use' of land subject to the provisions of Measure 37 and that development rights gained through a waiver are personal to the claimant and will result in no

reduction in value if transferred to a purchaser of a subdivided parcel. Because a subsequent owner would acquire the property subject to all laws in effect when the subsequent owner purchased the property, the subsequent owner would not acquire a "buildable lot". This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy which has been attached to the staff report. For the reasons outlined in this legal memorandum, Staff finds this request is invalid.

In addition, it does not appear that the claimants have held a continual interest in the entire property involved in this claim. One of the lots involved with the claim (Tax lot 800) was sold by the claimants in 1986 and remains in separate ownership. The McGrews have no standing to make a Measure 37 claim for tax lot 800. There have been changes to the ownership of the other three tax lots since the McGrews first acquired the lots. No title report was submitted showing a complete chain of title which would allow staff to verify that the McGrews have had a continual ownership right in the remaining three lots.

At the time the McGrews originally acquired the lots in 1974, they were zoned F2, which was a farm zone. None of the properties have access to a public road. The County subdivision regulations and authority to evaluate new streets or roads under ORS 92.014 in effect in 1974 required a subdivision include public roads that connected to the public road system. The claimants have not established that it is possible to provide public roads to serve a subdivision on their property. Additionally, the claimants' property was zoned F2, which was a farm land zoning designation. Staff's review of historic records has established that a 38-lot subdivision would likely have been determined to be incompatible with the Comprehensive Plan requirements that F-2 zoned land be used for farming. The applicants have failed to establish that a 38-lot subdivision would have been approvable on their property under the zoning in effect at the time.

For a claim to be valid, the land use regulations challenged must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants acquired the property. As outlined in the staff report and memorandum from the County Attorney's Office dated June 8<sup>th</sup>, 2006, this requirement has not been met. The reasons for this are as follows:

- (a) The claimants have failed to establish that they acquired and have continuously owned the property prior to the date the challenged regulations were enforced and;
- (b) The claimants have failed to document that a 38-lot subdivision could have been approved under the zoning and subdivision laws in effect at the time they acquired the property.
- (c) Subdividing property is not a "use" subject to the provisions of Measure 37 and that, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

Consequently, staff recommends the Board of Commissioners deny this claim.

**3. Explain the fiscal impact (current year and ongoing).**

The claimants assert a reduction in value of \$8,097,000; however, this dollar figure is not supported by an appraisal prepared in accordance with the County ordinance. Staff does not believe any compensation is due because the claim is invalid.

**4. Explain any legal and/or policy issues involved.**

Policy and legal issues are outlined in a staff report from Land Use Planning dated July 14, 2006.

The County Attorney has advised that any property rights obtained by relief from land use regulations are not transferable under Ballot Measure 37, consistent with the DOJ opinion of February 2005.

**5. Explain any citizen and/or other government participation that has or will take place.**

Public notice of this hearing will be mailed to all property owners within 750 feet of the subject property. Deliberation and any action on this item will be done following a public hearing at which interested citizens will have an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

---

**Required Signatures**

---

**Department/  
Agency Director:**

*Robert A Maestre*

**Date:** 07/17/06

**Budget Analyst:**

**Date:** \_\_\_\_\_

**Department HR:**

**Date:** \_\_\_\_\_

**Countywide HR:**

**Date:** \_\_\_\_\_



**LAND USE & TRANSPORTATION  
PLANNING PROGRAM**

1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
<http://www.co.multnomah.or.us/landuse>

---

## Staff Analysis of a Measure 37 Claim

---

The following matter is scheduled for public hearing, deliberation and possible action before the Multnomah County Board of Commissioners

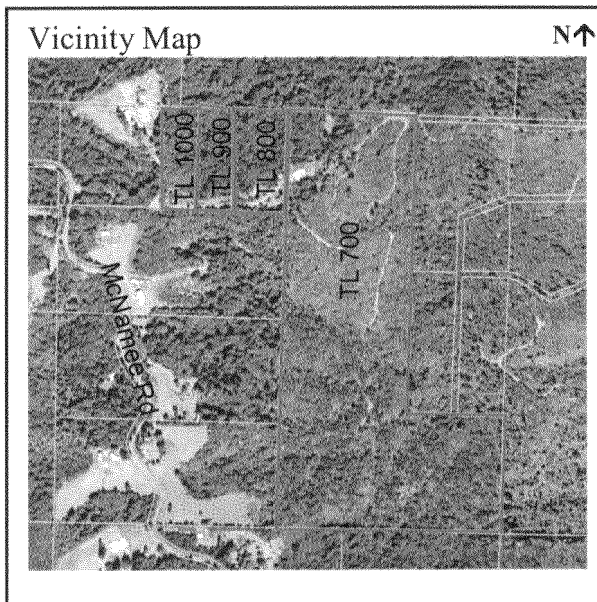
Hearing Date, Time, & Place:

**August 10, 2006 at 9:30 am** or soon thereafter, in the Commissioners' Board Room of the Multnomah Building, located at 501 SE Hawthorne, Portland, Oregon.

**Case File:** T1-05-061

**Claimants:** James & Elizabeth McGrew

**Location:** 13154 NW McNamee Road  
TL 700, 800, 900 & 1000, Sec 32A, 2N-1W



---

**Claim:** Compensation in the amount of \$8,097,000 or relief from land use regulations to allow a 38 lot subdivision or any other use allowed in 1974.

**Zoning:** Commercial Forest Use-1 (CFU-1), Significant Environmental Concern for Wildlife Habitat and Views (SEC-h, SEC-v), Protected Aggregate and Mineral Impact Area (PAM-IA), Slope Hazard

<b>Site Size:</b>	Tax Lot 700- 55 acres	Tax Lot 900- 3 acres
	Tax Lot 800- 4.76 acres	Tax Lot 1000- 3 acres

---

### Approach to Deciding the Claim:

For a claim to be valid, the land use regulations challenged must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant acquired the property. As outlined in this report and memorandum from the County Attorney's Office dated June 8<sup>th</sup>, 2006, this requirement has not been met. The reasons for this are as follows:

- (a) The claimants have failed to establish that they acquired and have continuously owned the property prior to the date the challenged regulations were enforced and;
- (b) The claimants have failed to document that a 38-lot subdivision could have been approved under the zoning and subdivision laws in effect at the time they acquired the property.



- (c) Subdividing property is not a “use” subject to the provisions of Measure 37 and that, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

*(The following is a step-by-step evaluation of the claim, which consists of the application materials submitted by Mark O'Donnell, ESQ, applicant for the claimant. The analysis is structured as a series of questions that must be answered to establish if a claim is valid, comparable to the methodology outlined in a February 24th, 2005 memo authored by the State Attorney General's Office.)*

**1. Has the owner made a complete written demand under Ballot Measure 37?**

**No. The materials submitted by the claimant do not constitute a complete written demand for compensation as required by the county's code.**

This claim involves four contiguous properties that will be referred to as tax lots 700, 800, 900 and 1000 throughout this staff report. Tax lot 800 was sold by the claimants in 1986 and remains in separate ownership. Since the claimants do not own tax lot 800, they have no standing to make a Measure 37 claim on tax lot 800.

Tax lots 900 and 1000 are contiguous, allowing processing under a consolidated claim. However, tax lot 700 is not contiguous, requiring a separate claim to be filed pursuant to MCC 27.515(A). The applicants have not filed separate claims to date.

The subject properties are zoned Commercial Forest Use-1 with zoning overlays for Significant Environmental Concern (SEC habitat and views), Protected Mineral and Aggregate Impact Area (PAM-IA), and Hillside Development. None of the properties contain frontage on a public road. The 55 acre property (tax lot 700) is developed with a residence and is heavily forested. The three smaller properties (Tax lots 800, 900 & 1000) are vacant forest land.

Multnomah County Code 27.500 – 27.565 implements Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37 (ORS 197.352). These regulations, in part, provide the framework used to decide whether or not a claim is sufficiently complete, valid and eligible for compensation by either regulatory waiver or monetary compensation. Staff followed these guidelines to determine that the necessary contents of a written claim have not been submitted.

This claim was submitted to Multnomah County on September 28, 2005. On October 20<sup>th</sup>, the county sent the claimants a letter indicating the review would be suspended in light of the October 14<sup>th</sup> Marion County ruling MacPherson v. Department of Administrative Services finding Measure 37 unconstitutional. On February 27<sup>th</sup>, 2006, a letter was sent to the claimants indicating the review would again commence because five days earlier, Oregon's Supreme Court overturned this ruling. On February 27<sup>th</sup>, 2006, County Staff provided a detailed letter to the claimants outlining the outstanding information required for a complete claim pursuant to the provisions of MCC 27.500 – 27.565.

The missing information included the \$1,500 processing fee, a title report to verify ownership and property appraisals to support the alleged reduction in value. The chain of title in a title report is critical to understanding the property ownership. There are several questions in this

claim regarding whether or not the claimants have had continuous ownership of the subject property.

By May 4<sup>th</sup>, 2006 the required information for a complete claim had not been submitted. A letter was mailed on that date to the claimants indicating that the county could either process the claim as an invalid claim, or put the claim on hold in order to see how the land division issue is resolved by the courts. We received no response to the May 4<sup>th</sup> request and therefore have prepared this report.

**2. *Did the claimants acquire the properties before the laws in question were adopted?***

**No. The claimants sold tax lot 800 in 1997, thus terminating their ownership of this lot and their rights to make a Measure 37 claim on tax lot 800. The claimants established that they originally purchased tax lots 700, 900 and 1000 prior to the enactment of the 1977 regulations but have not established that their ownership of these lots has been continuous.**

The claimants have submitted a Measure 37 request to divide four properties into a 38 lot subdivision, or have the county pay \$8,097,000 in compensation. The claimants state that James and Elizabeth McGrew have held an ownership in tax lots 800, 900, and 1000 since July 24, 1974, when zoning regulations would have allowed the division of these tax lots into up to 10 lots of at least 1 acre each. The claimants also state that James and Elizabeth McGrew have held an ownership in tax lot 700 since November 2, 1973, when zoning regulations would have allowed the division of this tax lot into up to 27 lots of at least 2 acres each.

Zoning was first applied to the properties in 1958 with the adoption of Suburban Residential (SR) and Agricultural District (F-2) zoning regulations. Tax lots 1000, 900, and 800 were zoned SR and tax lot 700 was zoned F2. The zoning of all four tax lots was changed to Multiple Use Forest-20 (MUF-20) on October 6<sup>th</sup>, 1977. The MUF-20 zone was changed to MUF-19 on tax lots 1000, 900, and 800 and MUF-38 on tax lot 700 on August 14, 1980. The zoning of all four lots was changed to CFU-80 on January 7, 1993, which was changed to the current CFU-1 zone on August 8, 1998.

Adoption of MUF-20 zoning regulations in 1977 required new lots created in the district, by a subdivision for example, to be at least 20-acres in size. Currently, the EFU zoning district requires all newly created properties from a land division to be at least 80-acres in size (MCC 36.2660(C)).

***Ownership History of Tax Lot 1000, 900, and 800***

Property totaling 10.76 acres, referenced as Tax Lots 1000, 900 and 800 today, was originally acquired by James and Elizabeth McGrew from the Dorothy and Nykee English on July 24, 1974. (Book 1069 Page 993). This property was divided by deed into three lots on June 6, 1986. Tax lot 1000 was transferred to Elizabeth McGrew (Book 1919 Page 2170), tax lot 900 was transferred to James McGrew (Book 1919 Page 2172) and tax lot 800 was transferred to Kyle and Robbie Preedy who are listed in Assessment and Taxation data as the current owners of tax lot 800. This division by deed was found to be unlawful by a Multnomah County Hearing Officer in land use planning cases CU 1-93 and CU 2-93. At the time the division was executed, land use review was required and not obtained by the owners. Tax lots 1000 and 900 are currently owned by Elizabeth McGrew and James McGrew respectively. No chain of title has been submitted to the file to allow staff to verify that the McGrews have had continuous

ownership of tax lots 1000 and 900 since their original purchase date of July 24, 1974. Staff requested a title report in a letter sent February 27, 2006 to verify that ownership of tax lots 1000 and 900 had been continuous. No title report had been provided by the claimants.

#### *Ownership History of Tax Lot 700*

James and Elizabeth McGrew purchased tax lot 700 on November 2, 1973 (Book 957 Page 1555). The applicants have submitted this deed as the only evidence of ownership for tax lot 700 and state that James and Elizabeth McGrew have owned the property since 11-2-1973. While researching the claim, staff located a real estate contract dated February 20, 1984 (Book 1732 Page 1198) transferring a one-half interest in tax lot 700 to Kenneth McGrew, Dorothy McGrew, William Sander, and Helen Yeager. This half-interest was granted back to James and Elizabeth McGrew on June 14, 1993 in a deed recorded in Book 2722 Page 869. It is unclear if additional sales transactions have taken place related to this property since the McGrew's first purchased the land. Staff requested a title report in a letter sent February 27, 2006 to verify the chain of title of tax lot 700. No title report had been provided by the claimants.

In conclusion, the claimants have not established that they have had continuous ownership of all four tax lots involved with the claim. The claimants have not established that they have any ownership of tax lot 800 and have not established that they have had continuous ownership of tax lots 1000, 900 or 700 since before the restrictive Multiple Use Agriculture-20 zoning regulations were first applied in 1977.

### **3. *Have the challenged regulations restricted the use of the properties for the claimant?***

Zoning was first applied to the properties on July 10, 1958 with the adoption of Suburban Residential (SR) and Agriculture District (F2) zoning regulations. Tax lots 1000, 900, and 800 were zoned SR and tax lot 700 was zoned F2. The zoning of all four tax lots was changed to Multiple Use Forest-20 (MUF-20) on October 6<sup>th</sup>, 1977. The MUF-20 zone was changed to MUF-19 on tax lots 1000, 900, and 800 and MUF-38 on tax lot 700 on August 14, 1980. The zoning of all four lots was changed to CFU-80 on January 7, 1993, which was changed to the current CFU-1 zone on August 8, 1998. The claimants have indicated James and Elizabeth McGrew have held an interest all four properties since 1974 when the SR and F2 zoning regulations were in effect. Deed records show the McGrews transferred tax lot 800 to other owners in 1986. Additional deed records show changes to the ownership of lots 1000, 900, and 700 since the original purchase. While the claimants have established the dates that they first became owners, they have not provided a chain of title to document that they have had continuous ownership of tax lots 1000, 900, or 700 since their original purchase dates. Without verifying that ownership has been continuous, it is not possible to determine what date the claimants have the right to seek a waiver of regulations back to. Without knowing what ownership date a claim stems from, it is not possible to determine that regulations have resulted in a restriction of use.

Multnomah County's understanding of the law as reflected in its Measure 37 ordinance is that division of a property is not a 'use' of land subject to the provisions of Measure 37 and that development rights gained through a waiver are personal to the claimant and will result in no restriction in use if transferred to a third party. No restriction in use would occur for the third party because the newly purchased subdivision lots would be subject to the current Commercial Forest Use-1 regulations preventing a dwelling from being built.

This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy, which has been attached to the staff report as Exhibit A1. For the reasons outlined in this legal memorandum, Staff finds this request to subdivide the property is an invalid request.

Even if a land division were a use eligible for regulatory relief, the claimant has failed to show that one could be approved under the rules in effect when they purchased the property. Staff's review of County decisions from the 1970's involving land divisions in the F-2 district indicates that a 38 lot subdivision would have been denied. The McGrew properties do not adjoin a public road and the County would have required the subdivision include public roads that connect to the public road system in order for them to be approved. This was accomplished through exercise of the subdivision code and authority to evaluate new streets or roads under ORS 92.014. When challenged, the County's authority to take such action was affirmed by the Circuit Court. The County also denied large subdivision requests in the F-2 zone finding that they were inconsistent with the Comprehensive Plan which called for these lands to be used for agricultural purposes. There was discretion involved in these decisions, with subdivisions as large as 19 lots being approved but those over 50 lots being denied. At 38 lots, this request is twice the size of the largest subdivision approved in this district so we expect that it would have been denied on these grounds. Our review of historic records is not exhaustive, but is adequate to show a pattern of practice.

**4. *Have the regulations reduced the fair market value of the properties?***

A reduction in value has not occurred because the owners have failed to establish that their proposed 38 lot subdivision could have been approved at the time they acquired the property and because development rights for each subdivision lot would not transfer to the new owners of those lots. As discussed in section 3 of this report, questions related to the ability of the property to be tied into the public road system and the appropriateness of a 38 lot subdivision on land designated for farm uses in the comprehensive plan would likely have lead to a denial of the subdivision under rules in effect at the time the owners acquired the property. Even if a subdivision could have been approved at the time the owners acquired the property, Measure 37 rights are personal to the claimant and are of no value to a third party. For instance, the current Commercial Forest Use-1 zoning regulations would be applied once a newly created subdivision lot is sold to a third party. These regulations would prohibit the establishment of a dwelling on each subdivision lot rendering it an unbuildable lot. Because the resulting lots would have no development value, no reduction in value will occur as compared to the current development value of each property under the current zoning regulations.

**PUBLIC NOTICE**

Public notice of this hearing was mailed to all property owners within 750 feet of the subject property. Deliberation and any action on this item will be done following a public hearing at which interested citizens will have an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

**CONCLUSION**

In conclusion, the claimants have failed to establish that they acquired the property and have had continuous ownership prior to the date the challenged regulations were enforced and have failed to establish that a 38 lot subdivision could have been approved on their property under the standards in effect at the time they acquired the property. Staff also finds subdividing property is not a "use" subject

to the provisions of Measure 37 and that, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

Consequently, staff recommends the Board of Commissioners deny this claim.

Issued by:

By: Tammy Boren-King  
Tammy Boren-King, AICP  
Planner

For: Karen Schilling, Planning Director

Date: July 14, 2006

**Exhibits**

Copies of the exhibits, referenced herein, are in the case record that is on file at the Land Use and Transportation Planning Office.

A1 – Memo from Sandra Duffy, Assistant County Attorney dated June 8, 2006

**Multnomah County Attorney's Office**  
**501 S.E. Hawthorne Blvd., Suite 500**  
**Portland, Oregon 97214**

**PHONE: 503.988.3138**  
**FAX 503.988.3377**



## **MEMORANDUM**

**To:** Derrick Tokos, Principal Planner

**From:** Sandy Duffy, Assistant County Attorney

**Re:** All Measure 37 Land Divisions Are Facially Invalid

**Date:** June 8, 2006

### **INTRODUCTION:**

A substantial portion of the Measure 37 claims being submitted to Multnomah County are for partitions or subdivisions. MCC 27.530(O) authorizes the Planning Director to determine whether a claim is invalid on its face and to recommend to the Board of County Commissioners that the claim be denied. The question this memorandum addresses is whether claims for land divisions are invalid on their face. This memorandum is intended as guidance for the Planning Director and the land use planners who are reviewing Measure 37 claims.

Set out below is the County's legal analysis addressing whether partitioning and/or subdividing land is a "use" of land which is subject to the provisions of Measure 37 and whether development rights gained through a waiver are personal to the claimant are transferable to a purchaser of a subdivided parcel. If the development rights are not transferable, there has been no "... reduc[tion in] the fair market value of the property," which is required for a valid Measure 37 claim.

**EXHIBIT**  
**A1**

## **DISCUSSION:**

### **A. County land division regulations do not restrict the owner's "use" of the property.**

The meaning of the term "use" in the Measure is a critical factor in determining the validity of claims, as well as the governing bodies' authority to pay compensation or to waive<sup>1</sup> regulations. Section (1) of the Measure requires compensation from the County if it enforces an ordinance that "restricts the *use* of private real property."

As an alternative to paying compensation, the Measure, in Section(8) authorizes the governing body to: "...modify, remove or not to [sic] apply the land use regulation or land use regulations to allow the owner to *use* the property for a *use* permitted at the time the owner acquired the property."

If the county land division regulations (MCC 33.7700 – 33.8035) are a *use* restriction, the Board may pay compensation or waive the regulations which would allow Measure 37 claimants to partition or subdivide their parcels.

#### (1) Land division ordinances as land use regulations in Measure 37.

The proponents of the Measure give import to the fact that the Measure defines "land use regulation" in subsection (11)(B) as including "land division ordinances." First, land division ordinances do not specify how a property is to be *used*. Land division ordinances set out the requirements for and procedures to partition or subdivide parcels of land.

Second, on February 24, 2005, the Attorney General's Office issued a Measure 37 letter-opinion to Lane Shetterly, Director of DLCD. That letter-opinion makes it very clear that a

---

<sup>1</sup> Waiver is a term used in this memorandum in lieu of the Measure 37 language which authorizes the governing body to "modify, remove or not to [sic] apply the land use regulation..."

waiver is valid only if a *series* of conditions are met<sup>2</sup>, including: “The law [county code] restricts the use of private real property or any interest therein,” and “The law [county code] has the effect of reducing the fair market value of the claimant’s property or any interest therein.” Inclusion of a type of regulation within the definition of “land use regulation” does not necessarily mean that it is a “use” regulation which restricts the use and diminishes the value of property, giving rise to a Measure 37 claim.

Finally, the two sections of the Measure (the definitions and the requirement that a restriction in use diminish the value), must be read in context and effect must be given to both, if possible. The general definition provision will not take precedence over the substantive provision requiring a restriction in *use* and a diminution in value to prove a valid claim under the Measure.<sup>3</sup>

#### (2) Interpreting the word “use.”

When construing a statute, the court’s task is to determine the intent of the legislature. The best indication of legislative intent is the text of the statute. Only if the court finds the test is ambiguous will the court analyze the legislative history of the statute. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993); ORS 174.010. The same analysis applies whether the statute was enacted by the legislature or through the initiative process. *Stranahan v. Fred Meyer, Inc.*, 331 Or 61; 11 P3d 228 (2000).

The term “use” is undefined in the Measure which means it is to be interpreted in its common, everyday meaning. The common meaning of “use,” in the context of land use

---

<sup>2</sup> The same holds true for a determination to pay compensation. There must be a valid Measure 37 claim which meets the same series of conditions.

<sup>3</sup> ORS 174.020(2) “When a general and particular provision are inconsistent the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.”



regulations, includes such uses as: rural residential use, commercial use, farmland use, forestland use, industrial use, community service use.<sup>4</sup> Those broad categories of uses are subdivided into more specific uses in the zoning code. For example, rural residential allowed uses include: raising and harvesting of crops, raising livestock and honeybees, and family day care.<sup>5</sup> All of these uses can take place on a parcel of land without subdividing the parcel.

The common dictionary definition of the word "use" is:

*"The act of using or the state of being used."* Webster's New Universal Unabridged Dictionary, Second Edition, (Dorset and Baber 1989).

The legal definition of the word "use" is:

*"The application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional <the neighbors complained to the city about the owner's use of the building as a dance club>."* Black's Law Dictionary, Seventh Edition, West Group, St. Paul Minn., (1999).

Both of these definitions contemplate active employment of the land for a specific purpose. The acts to subdivide land (applying for a land use permit, obtaining a title report, obtaining a survey, recording a plat) do not involve the employment of land. Subdividing is preparation for a use of the land, but is not, itself, a use.

Other than *MacPherson*<sup>6</sup>, there are no cases to date interpreting the language of Measure 37, however, the Court of Appeals, in *Parks v. Tillamook County*, 11 Or App 177 (1972),

---

<sup>4</sup> This is a representative sample of some of the uses contained in MCC Chapter 33; there are many others but none of them include partitions or subdivisions.

<sup>5</sup> These are examples from MCC Chapter 33.

<sup>6</sup> *MacPherson v. Department of Administrative Services*, 340 Or 117, 130 P3d 308 (2006) found Measure 37 to be constitutional.

recognized that platted but undeveloped land is not regarded as a "use" in zoning law.<sup>7</sup> It follows that the process of subdividing land would not be a "use" of land either.

(3) The Attorney General concludes Measure 37 rights are not transferable.

The Attorney General's letter-opinion to the Director of DLCD also reviews the voter's pamphlet statements for voter intent on transferability of Measure 37 relief. Some of that discussion may be relevant as legislative history of voter's intent on whether the Measure was intended to allow subdivision of qualified parcels. It states:

*The arguments in favor include 40 submissions ...slightly more than half of the arguments discuss the perceived adverse effects of land use laws in the abstract... slightly fewer than half are statements about how land use laws are preventing a specific owner from putting his or her property to some particular current use. All of those specific concerns could be remedied either by a decision that is personal to that owner or one that ran with the land, with the possible exception of several owners who expressed dissatisfaction with not being able to subdivide their property and give parcels to descendants, sell them to third parties, or both. Allowing an owner to subdivide property by not applying a prohibition would do him no good, of course, unless the subdivision remained lawful after its transfer to one or more new owners. Existing laws generally allow new owners to perpetuate non-conforming uses that were lawful when instituted, but it is not certain whether all would apply to a decision under Measure 37. See, e.g., ORS 215.130. [non-conforming use statute – footnote omitted] None of the arguments in favor addresses whether subsequent purchasers would acquire the rights, or step into the shoes, of owners covered by the measure. Likewise, no argument directly mentions the effect of laws on property's resale value, although one argument states that they restrict the use of home equity to fund owners' retirements. The latter implies an adverse effect on resale value, which might be recognized by discerning voters as a problem that would only be remedied if the exemptions ran with the land. On the other hand, an argument in favor of the measure by the chief petitioners expressly states that if an owner entitled to Measure 37 compensation conveys her property, that will establish a new "date of acquisition" for purposes of determining what laws may give rise to a claim. This is a clear statement that the chief petitioners expected that the relief available under the measure depends on when the current owner acquired the property – that the relief is personal to the current owner. If the current owner is eligible for relief, but sells the*

---

<sup>7</sup> At 196.

*property, then only laws adopted after the new owner acquired the property create a right to relief. (Emphasis added.)*

The opinion, in a footnote to this quoted section, which related to the non-conforming use statute (ORS 215.130), questions whether Measure 37 implementing ordinances, adopted by local governments, can confer non-conforming use status upon transferred properties. The footnote states:

*"This statute [ORS 215.130] allows the continuation of uses that have been made unlawful by a subsequent change in the law. But if a decision to grant non-monetary relief under Measure 37 is personal to the owner, uses covered by an [sic] decision would be made unlawful not by a change in the law but by a change in ownership, which does not come under ORS 215.130. Therefore, voters whose decision to support the measure was motivated by the arguments about subdivision restrictions presumably expected either that a decision to grant non-monetary relief would run with the land or that existing law would not require that a subdivision be undone upon the property's sale. Additional legislation may be needed to implement that intent." (Page 6.) (Emphasis added.)*

This footnote implies that the voter's pamphlet "legislative history" probably includes an intent to perpetuate a legal use of the property upon transfer, but it does not fit into the nonconforming use statute because the trigger is sale, not change in land use laws. This footnote seems to suggest that the nonconforming use statute (ORS 215.130) could be amended by the legislature to add the sale of Measure 37 properties as creating a nonconforming use.

In light of the Attorney General's letter-opinion, the *Parks* case, common land use parlance, the dictionary definitions of "use," and the failure of the Measure to specifically authorize partitions or subdivisions in zones where those actions are prohibited, this Court should interpret Measure 37 to exclude a subdivision or partition of land as a "use" of land.

**B. A “diminished value” relies on an erroneous assumption of transferability.**

Even assuming an owner’s evidence of value is legally sufficient to support a finding in his/her favor, it is erroneously predicated on an assumption that the owner can sell his/her properties with Measure 37 historical rights to use the property intact.

If Measure 37 rights do not transfer with the sale of a property, the property has only the value it will have in the hands of the purchaser with *current* applicable regulations.

**(1) Regulatory Relief is Personal to the Present Owner**

Regulatory relief under ORS 197.352 is personal to the present owner of the property. When the County finds that a claimant meets the standards for relief under ORS 197.352, the County may, in lieu of compensation, waive land use regulations “to allow *the owner* to use the property for a use permitted at the time *the owner* acquired the property.” ORS 197.352 (8) (emphasis added). The statute then defines “owner” as the “present owner of the property.” ORS 197.352 (11)(C). Therefore, the regulatory relief authorized by the statute as an alternative to compensation is personal to the present owner.

This conclusion is consistent with the advice the Oregon Attorney General (“AG”) has given to State agencies. In a letter dated February 24, 2005, to the Director of the Department of Land Conservation and Development, the AG writes that a decision “to ‘not apply’ a law would necessarily be personal to the owner submitting the claim.” The letter cites to and relies on arguments made by the proponents of the statute that were presented in the Voters Pamphlet:

“[A]n argument in favor of the measure by the chief petitioners expressly states that if an owner entitled to Measure 37 compensation conveys her property, that will establish a new ‘date of acquisition’ for purposes of determining what laws may give rise to a claim. This is a clear statement

that the chief petitioners expected that the relief available under the measure depends on when the current owner acquired the property – that the relief is personal to the current owner. If the current owner is eligible for relief, but sells the property, then only laws adopted after the new owner acquired the property create a right for relief.”

Any rights obtained by and owner pursuant to a state waiver or a county waiver are personal to the owner with Measure 37 rights and may not be transferred to subsequent owners. Because a subsequent owner would acquire the property subject to all laws in effect on the date the subsequent owner acquired it, the subsequent owner would not acquire a “buildable lot.”

Property owners who are making Measure 37 claims to Multnomah County are claiming that they are entitled to compensation in some identified amount based on an assertion that they can divide the property into some specific number of “buildable lots.” The core of this claim is the assertion that, absent zoning regulations enacted after date of owner acquisition, the claimant could divide the property into some specified number of “buildable lots.” However, as noted above, any rights obtained pursuant to a claim filed under ORS 197.352 are personal to the claimant and do not transfer with the property. Accordingly, a purchaser of a lot from a Measure 37 owner will acquire the property subject to all laws currently in effect and current laws do not allow new dwellings on the lots in contravention of the current regulations.<sup>8</sup>

Because the lots cannot be sold as residential building sites, they have no real market value for residential use and regulations that prohibit their creation do not reduce the property’s value.

(2) Plaintiff cannot divide land because land division is not a “use”.

---

<sup>8</sup> State and local laws allow new dwellings in commercial forest zones only under very limited circumstances – none of which would apply to the subdivision lots created pursuant to this claim. See e.g. ORS 215.705, 215.720, 215.730, 215.740 and 215.750; Multnomah County Code (“MCC”) 33.2220, 33.2225, 33.2230, 33.2235 and 33.2240.

See Section A(3) above. (The Attorney General concludes Measure 37 rights are not transferable.)

If Measure 37 rights do not run with the land, then Plaintiff's property has no enhanced value in the eyes of a potential purchaser and no diminution in value attributable to current regulations.

#### **CONCLUSION:**

Partitioning and subdividing land is not a "use" of land which is subject to the provisions of Measure 37. Development rights gained through a waiver are personal to the claimant and are not transferable to a purchaser of a subdivided parcel. Because the development rights are not transferable, there has been no reduction in the fair market value of the property, which is required for a valid Measure 37 claim. A potential purchaser will only pay the fair market value of the property with land use restrictions in place because those restrictions will apply to the purchaser.

FOR BOARD  
PACKETS  
ONLY

# DRAFT

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

ORDER NO. \_\_\_\_\_

Order Denying Measure 37 Request of James and Elizabeth McGrew Relating to Real Property Located at 13154 NW McNamee Road

### The Multnomah County Board of Commissioners Finds:

- a. **Party:** James & Elizabeth McGrew are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on September 28, 2005.
- b. **Subject Real Property:** This claim relates to real property located at 13154 NW McNamee Road, Multnomah County, Portland, Oregon more specifically described as:

TL 700, 800, 900 & 1000, Sec 32A, 2N-1W

- c. **Adequacy of Demand for Compensation:**  
The materials submitted by the claimant do not constitute a complete written demand for compensation as required by Multnomah County Code 27.520.

This claim was submitted to Multnomah County on September 28, 2005. On October 20, 2005 the County sent the claimants a letter indicating the review would be suspended in light of the October 14, 2005 Marion County ruling MacPherson v. Department of Administrative Services finding Measure 37 unconstitutional. On February 27, 2006, a letter was sent to the claimants indicating the review would again commence because five days earlier, Oregon's Supreme Court overturned this ruling. On February 27, 2006, County Staff provided a detailed letter to the claimants outlining the outstanding information required for a complete claim pursuant to the provisions of MCC 27.500 – 27.565.

The missing information included the \$1,500 processing fee, a title report to verify ownership and property appraisals to support the alleged reduction in value. The chain of title in a title report is critical to understanding the property ownership. There is no evidence in the record regarding whether or not the claimants have had continuous ownership of the subject property.

By May 4, 2006 the required information for a complete claim had not been submitted. A letter was mailed on that date to the claimants indicating that the county could either process the claim as an invalid claim, or put the claim on hold in order to see how the land division issue is resolved by the courts. County planning staff received no response to the May 4th request and prepared its staff report without benefit of the required information.



## DRAFT

The Board finds that the materials submitted by the claimant do not constitute a complete written demand for compensation as required by Multnomah County Code 27.520.

d. **Relevant Dates of Property Ownership:**

The claimants have submitted a Measure 37 request to divide four properties into a 38 lot subdivision, or have the county pay \$8,097,000 in compensation. The claimants state that James and Elizabeth McGrew have held an ownership in tax lots 800, 900, and 1000 since July 24, 1974, when zoning regulations would have allowed the division of these tax lots into up to 10 lots of at least 1 acre each. The claimants also state that James and Elizabeth McGrew have held an ownership in tax lot 700 since November 2, 1973, when zoning regulations would have allowed the division of this tax lot into up to 27 lots of at least 2 acres each.

Zoning was first applied to the properties in 1958 with the adoption of Suburban Residential (SR) and Agricultural District (F-2) zoning regulations. Tax lots 1000, 900, and 800 were zoned SR and tax lot 700 was zoned F2. The zoning of all four tax lots was changed to Multiple Use Forest-20 (MUF-20) on October 6, 1977. The MUF-20 zone was changed to MUF-19 on tax lots 1000, 900, and 800 and MUF-38 on tax lot 700 on August 14, 1980. The zoning of all four lots was changed to CFU-80 on January 7, 1993, which was changed to the current CFU-1 zone on August 8, 1998.

Adoption of MUF-20 zoning regulations in 1977 required new lots created in the district, by a subdivision for example, to be at least 20-acres in size. Currently, the EFU zoning district requires all newly created properties from a land division to be at least 80-acres in size (MCC 36.2660(C)).

***Ownership History of Tax Lot 1000, 900, and 800***

Property totaling 10.76 acres, referenced as Tax Lots 1000, 900 and 800 today, was originally acquired by James and Elizabeth McGrew from the Dorothy and Nykee English on July 24, 1974. (Book 1069 Page 993). This property was divided by deed into three lots on June 6, 1986. Tax lot 1000 was transferred to Elizabeth McGrew (Book 1919 Page 2170), tax lot 900 was transferred to James McGrew (Book 1919 Page 2172) and tax lot 800 was transferred to Kyle and Robbie Preedy who are listed in Assessment and Taxation data as the current owners of tax lot 800. This division by deed was found to be unlawful by a Multnomah County Hearing Officer in land use planning cases CU 1-93 and CU 2-93. At the time the division was executed, land use review was required and not obtained by the owners. Tax lots 1000 and 900 are currently owned by Elizabeth McGrew and James McGrew respectively. No chain of title has been submitted to the file to allow county planning staff to verify that the McGrews have had continuous ownership of tax lots 1000 and 900 since their original purchase date of July 24, 1974. Staff requested a title report in a letter sent February 27, 2006 to verify that ownership of tax lots 1000 and 900 had been continuous. No title report was provided by the claimants.

## DRAFT

### ***Ownership History of Tax Lot 700***

James and Elizabeth McGrew purchased tax lot 700 on November 2, 1973 (Book 957 Page 1555). The applicants have submitted this deed as the only evidence of ownership for tax lot 700 and state that James and Elizabeth McGrew have owned the property since 11-2-1973. While researching the claim, staff located a real estate contract dated February 20, 1984 (Book 1732 Page 1198) transferring a one-half interest in tax lot 700 to Kenneth McGrew, Dorothy McGrew, William Sander, and Helen Yeager. This half-interest was granted back to James and Elizabeth McGrew on June 14, 1993 in a deed recorded in Book 2722 Page 869. It is unclear if additional sales transactions have taken place related to this property since the McGrew's first purchased the land. Staff requested a title report in a letter sent February 27, 2006 to verify the chain of title of tax lot 700. No title report had been provided by the claimants.

The Board finds that the claimants have not established that they have had continuous ownership of all four tax lots involved with the claim. The claimants sold tax lot 800 in 1997, thus terminating their ownership of this lot and their rights to make a Measure 37 claim on tax lot 800. The claimants established that they originally purchased tax lots 700, 900 and 1000 prior to the enactment of the 1977 regulations but have not established that they have had continuous ownership of tax lots 1000, 900 or 700 since before the restrictive Multiple Use Forest-20 zoning regulations were first applied in 1977.

e. **County Codes as a Restriction on Use of the Property.**

Zoning was first applied to the properties on July 10, 1958 with the adoption of Suburban Residential (SR) and Agriculture District (F2) zoning regulations. Tax lots 1000, 900, and 800 were zoned SR and tax lot 700 was zoned F2. The zoning of all four tax lots was changed to Multiple Use Forest-20 (MUF-20) on October 6, 1977. The MUF-20 zone was changed to MUF-19 on tax lots 1000, 900, and 800 and MUF-38 on tax lot 700 on August 14, 1980. The zoning of all four lots was changed to CFU-80 on January 7, 1993, which was changed to the current CFU-1 zone on August 8, 1998. The claimants have indicated James and Elizabeth McGrew have held an interest all four properties since 1974 when the SR and F2 zoning regulations were in effect. Deed records show the McGrews transferred tax lot 800 to other owners in 1986. Additional deed records show changes to the ownership of lots 1000, 900, and 700 since the original purchase. While the claimants have established the dates that they first became owners, they have not provided a chain of title to document that they have had continuous ownership of tax lots 1000, 900, or 700 since their original purchase dates. Without verifying that ownership has been continuous, it is not possible to determine what date the claimants have the right to seek a waiver of regulations back to. Without knowing what ownership date a claim stems from, it is not possible to determine that regulations have resulted in a restriction of use.

Division of a property is not a 'use' of land subject to the provisions of Measure 37 and development rights gained through a waiver are personal to the claimant and will result in no restriction in use if transferred to a third party. No restriction in use would occur for the third party because the newly purchased subdivision lots would be subject to the current Commercial Forest Use-1 regulations preventing a dwelling from being built.

## DRAFT

This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy, which has been attached to the staff report as Exhibit A1. For the reasons outlined in this legal memorandum, Staff finds this request to subdivide the property is an invalid request.

Even if a land division were a use eligible for regulatory relief, the claimant has failed to show that one could be approved under the rules in effect when they purchased the property. County planning staff's review of County decisions from the 1970's involving land divisions in the F-2 district indicates that a 38 lot subdivision would have been denied. The McGrew properties do not adjoin a public road and the County would have required the subdivision include public roads that connect to the public road system in order for them to be approved. This was accomplished through exercise of the subdivision code and authority to evaluate new streets or roads under ORS 92.014. When challenged, the County's authority to take such action was affirmed by the Circuit Court. The County also denied large subdivision requests in the F-2 zone finding that they were inconsistent with the Comprehensive Plan which called for these lands to be used for agricultural purposes. There was discretion involved in these decisions, with subdivisions as large as 19 lots being approved but those over 50 lots being denied. At 38 lots, this request is twice the size of the largest subdivision approved in this district so we expect that it would have been denied on these grounds. The county planning staff's review of historic records was not exhaustive, but was adequate to show a pattern of practice.

f. **County Code Restrictions Reduce Fair Market Value:**

A reduction in value has not occurred because the owners have failed to establish that their proposed 38 lot subdivision could have been approved at the time they acquired the property and because development rights for each subdivision lot would not transfer to the new owners of those lots.

As discussed in section 3 of this report, questions related to the ability of the property to be tied into the public road system and the appropriateness of a 38 lot subdivision on land designated for farm uses in the comprehensive plan would likely have lead to a denial of the subdivision under rules in effect at the time the owners acquired the property. Even if a subdivision could have been approved at the time the owners acquired the property, Measure 37 rights are personal to the claimant and are of no value to a third party.

The current Commercial Forest Use-1 zoning regulations would be applied once a newly created subdivision lot is sold to a third party. These regulations would prohibit the establishment of a dwelling on each subdivision lot rendering it an unbuildable lot. Because the resulting lots would have no development value, no reduction in value will occur as compared to the current development value of each property under the current zoning regulations

## DRAFT

g. **Public Notice**

This action is before the Board under MCC 27.530(N), which authorizes the Planning Director to determine whether a claim is complete and allows the Director to recommend to the Board that the claim be denied if it is invalid on its face. Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The claimant and persons who own land within 750 feet of the subject property received notice by mail.

h. **Validity of Claim for Compensation:** The Board finds that:

- (1) The claim materials submitted by the claimants do not constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.530.
- (2) The claimants have not established that they have had continuous ownership of all four tax lots involved with the claim. The claimants sold tax lot 800 in 1997, thus terminating their ownership of this lot and any Measure 37 rights they may have had to make a claim on tax lot 800. The claimants established that they originally purchased tax lots 700, 900 and 1000 prior to the enactment of the 1977 regulations but have not established that they have had continuous ownership of tax lots 1000, 900 or 700 since before the restrictive Multiple Use Forest-20 zoning regulations were first applied in 1977.
- (3) Without verifying that ownership has been continuous, it is not possible to determine what date the claimants have the right to seek a waiver of regulations back to. Without knowing what ownership date a claim stems from, it is not possible to determine that regulations have resulted in a restriction of use.
- (4) Even assuming continuous ownership of tax lots 1000, 900 and 700, there has been no restriction in use because land use regulations in place at the time of acquisition would have prevented a subdivision.
- (5) Subdividing property is not a "use" subject to the provisions of Measure 37 and, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

**DRAFT**

**The Multnomah County Board of Commissioners Orders:**

**Claimants, James & Elizabeth McGrew's request is denied.**

ADOPTED this 10th day of August, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By 

---

Sandra Duffy, Assistant County Attorney

## Script for James and Elizabeth McGrew Measure 37 Hearing

### INTRODUCTION:

**Chair:** This is the time set for public hearing on the claim of **JAMES AND ELIZABETH MCGREW** under Ballot Measure 37. I am Diane Linn, Chair of the Multnomah County Board of Commissioners. Also in attendance are Commissioners \_\_\_\_\_ [name each Commissioner].

All information relevant to the claim may be submitted and will be considered in this hearing. The evidence may be in any form including oral and written testimony, letters, petitions or other written material, slides, photographs, maps drawings or other items.

The Commission will base its decision on the evidence presented, along with the information on the claim in the Planning file. The Board decision will be by Order adopted by the Board.

### DISCLOSURES:

**Chair:** Board members are required to disclose the content of any *ex parte* contacts. Any Board member who has received any factual information obtained outside the information provided by the county planning staff or this hearing is an *ex parte* contact. A visit to the property is considered an *ex parte* contact. Any *ex parte* contacts should be disclosed at this time. Such disclosures should include the time and date of the visit, what he/she observed, who (if anyone) the Commissioner talked to at the site and any other relevant facts or observations obtained as a result of the site visit.

**Chair:** I have *no ex parte* contacts to disclose.

*or if the Chair has disclosures to make*

I have the following disclosures to make: \_\_\_\_\_

**Chair:** [Invite the other Commissioners to make any necessary disclosures.)  
Commissioner Rojo de Steffey? Commissioner Naito? Commissioner Cruz?  
Commissioner Roberts? [If there are none, each Commissioner should say "none" on the record.]

[If there are disclosures of *ex parte* contacts, the claimant and the public should be given an opportunity to rebut the substance of any disclosure. "Does anyone have any rebuttal testimony relating to any disclosure?"]

**Chair:** Board members are also required to disclose any conflicts of interest and to recuse themselves from deliberation and voting if a conflict exists. It is deemed a conflict of interest if any Board member, or a member of his/her immediate family or household, has a financial interest in the outcome of a matter before the Board. It is a conflict of interest if a Board member lives within the geographical area entitled to notice of a claim.

## **Script for James and Elizabeth McGrew Measure 37 Hearing**

**Chair:** Does any Board member, or a member of his/her immediate family or household, have a financial interest in the outcome of matter now before us?

I do [do not] have a financial interest in the outcome of this matter. [Invite other commissioners to make any necessary disclosures.] Rojo de Steffey? Naito? Cruz? Roberts? [If yes, that person must recuse himself/herself on the record.]

Does any Board member live within the geographical area entitled to notice of claim?

I do [do not] live within the geographical area. Rojo de Steffey? Naito? Cruz? Roberts?

[Any commissioner who lives within the relevant geographical area must recuse himself/herself. MCC 7.540]

### **CONDUCT OF THE HEARING:**

**Chair:** I will ask for testimony and other evidence in the following order:

1. Staff report
2. Claimant or claimant's representative
3. Others who wish to be heard on the claim
4. Commission discussion, questions, deliberation
5. Future scheduling if necessary

### **HOW TO PRESENT TESTIMONY:**

**Chair:** There are testimony cards at the back of the room and should be filled out by anyone wishing to testify. The claimant need not fill out a card. The cards should be given to the Board Clerk.

1. State your name and address before you begin your presentation
2. Avoid repetitive testimony
3. During the hearing, I ask those in the audience to refrain from any demonstration in support or opposition to the claim.

**Chair:** [Ask for testimony in the order listed above]

### **AT THE CONCLUSION OF THE TESTIMONY:**

**Chair:** [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDER NO. \_\_\_\_\_

ORDER TO NOT APPLY LAND USE REGULATIONS TO 13154 NW McNamee Road  
UNDER BALLOT MEASURE 37

**The Multnomah County Board of Commissioners Finds:**

a. **Party:** James & Elizabeth McGrew are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on September 28, 2005.

b. **Subject Real Property:** This claim relates to real property located at 13154 NW McNamee Road, Multnomah County, Portland, Oregon more specifically described as:

TL 700, 800, 900 & 1000, Sec 32A, 2N-1W

c. **Adequacy of Demand for Compensation:**

The materials submitted by the claimant do not constitute a complete written demand for compensation as required by Multnomah County Code 27.520.

This claim was submitted to Multnomah County on September 28, 2005. On October 20<sup>th</sup>, the county sent the claimants a letter indicating the review would be suspended in light of the October 14<sup>th</sup> Marion County ruling MacPherson v. Department of Administrative Services finding Measure 37 unconstitutional. On February 27<sup>th</sup>, 2006, a letter was sent to the claimants indicating the review would again commence because five days earlier, Oregon's Supreme Court overturned this ruling. On February 27<sup>th</sup>, 2006, County Staff provided a detailed letter to the claimants outlining the outstanding information required for a complete claim pursuant to the provisions of MCC 27.500 – 27.565.

The missing information included the \$1,500 processing fee, a title report to verify ownership and property appraisals to support the alleged reduction in value. The chain of title in a title report is critical to understanding the property ownership. There is no evidence in the record regarding whether or not the claimants have had continuous ownership of the subject property.

By May 4<sup>th</sup>, 2006 the required information for a complete claim had not been submitted. A letter was mailed on that date to the claimants indicating that the county could either process the claim as an invalid claim, or put the claim on hold in order to see how the land division issue is resolved by the courts. County planning staff received no response to the May 4<sup>th</sup> request and prepared its staff report without benefit of the required information.

The Board finds that the materials submitted by the claimant do not constitute a complete written demand for compensation as required by Multnomah County Code 27.520.



**d. Relevant Dates of Property Ownership:**

The claimants have submitted a Measure 37 request to divide four properties into a 38 lot subdivision, or have the county pay \$8,097,000 in compensation. The claimants state that James and Elizabeth McGrew have held an ownership in tax lots 800, 900, and 1000 since July 24, 1974, when zoning regulations would have allowed the division of these tax lots into up to 10 lots of at least 1 acre each. The claimants also state that James and Elizabeth McGrew have held an ownership in tax lot 700 since November 2, 1973, when zoning regulations would have allowed the division of this tax lot into up to 27 lots of at least 2 acres each.

Zoning was first applied to the properties in 1958 with the adoption of Suburban Residential (SR) and Agricultural District (F-2) zoning regulations. Tax lots 1000, 900, and 800 were zoned SR and tax lot 700 was zoned F2. The zoning of all four tax lots was changed to Multiple Use Forest-20 (MUF-20) on October 6<sup>th</sup>, 1977. The MUF-20 zone was changed to MUF-19 on tax lots 1000, 900, and 800 and MUF-38 on tax lot 700 on August 14, 1980. The zoning of all four lots was changed to CFU-80 on January 7, 1993, which was changed to the current CFU-1 zone on August 8, 1998.

Adoption of MUF-20 zoning regulations in 1977 required new lots created in the district, by a subdivision for example, to be at least 20-acres in size. Currently, the EFU zoning district requires all newly created properties from a land division to be at least 80-acres in size (MCC 36.2660(C)).

*Ownership History of Tax Lot 1000, 900, and 800*

Property totaling 10.76 acres, referenced as Tax Lots 1000, 900 and 800 today, was originally acquired by James and Elizabeth McGrew from the Dorothy and Nykee English on July 24, 1974. (Book 1069 Page 993). This property was divided by deed into three lots on June 6, 1986. Tax lot 1000 was transferred to Elizabeth McGrew (Book 1919 Page 2170), tax lot 900 was transferred to James McGrew (Book 1919 Page 2172) and tax lot 800 was transferred to Kyle and Robbie Preedy who are listed in Assessment and Taxation data as the current owners of tax lot 800. This division by deed was found to be unlawful by a Multnomah County Hearing Officer in land use planning cases CU 1-93 and CU 2-93. At the time the division was executed, land use review was required and not obtained by the owners. Tax lots 1000 and 900 are currently owned by Elizabeth McGrew and James McGrew respectively. No chain of title has been submitted to the file to allow county planning staff to verify that the McGrews have had continuous ownership of tax lots 1000 and 900 since their original purchase date of July 24, 1974. Staff requested a title report in a letter sent February 27, 2006 to verify that ownership of tax lots 1000 and 900 had been continuous. No title report was provided by the claimants.

*Ownership History of Tax Lot 700*

James and Elizabeth McGrew purchased a ½ undivided interest in tax lot 700 on November 2, 1973 (Book 957 Page 1555). The applicants have submitted this deed as the only evidence of ownership for tax lot 700 and state that James and Elizabeth McGrew have owned the property since 11-2-1973. While researching the claim, staff located a real estate contract dated February

20, 1984 (Book 1732 Page 1198) showing that James and Elizabeth McGrew acquired the other ½ interest in tax lot 700 from Kenneth McGrew, Dorothy McGrew, William Sander, and Helen Yeager. This contract was satisfied on June 14, 1993 in a deed recorded in Book 2722 Page 869. It is unclear if additional sales transactions have taken place related to this property since the McGrew's first purchased the land. Staff requested a title report in a letter sent February 27, 2006 to verify the chain of title of tax lot 700. No title report had been provided by the claimants.

The Board finds that the claimants have not established that they have had continuous ownership of all four tax lots involved with the claim. The claimants sold tax lot 800 in 1997, thus terminating their ownership of this lot and their rights to make a Measure 37 claim on tax lot 800. The claimants established that they originally purchased tax lots 700, 900 and 1000 prior to the enactment of the 1977 regulations but have not established that they have had continuous ownership of tax lots 1000, 900 or 700 since before the restrictive Multiple Use Forest-20 zoning regulations were first applied in 1977.

**e. County Codes as a Restriction on Use of the Property:**

Zoning was first applied to the properties on July 10, 1958 with the adoption of Suburban Residential (SR) and Agriculture District (F2) zoning regulations. Tax lots 1000, 900, and 800 were zoned SR and tax lot 700 was zoned F2. The zoning of all four tax lots was changed to Multiple Use Forest-20 (MUF-20) on October 6<sup>th</sup>, 1977. The MUF-20 zone was changed to MUF-19 on tax lots 1000, 900, and 800 and MUF-38 on tax lot 700 on August 14, 1980. The zoning of all four lots was changed to CFU-80 on January 7, 1993, which was changed to the current CFU-1 zone on August 8, 1998. The claimants have indicated James and Elizabeth McGrew have held an interest all four properties since 1974 when the SR and F2 zoning regulations were in effect. Deed records show the McGrews transferred tax lot 800 to other owners in 1986. Additional deed records show changes to the ownership of lots 1000, 900, and 700 since the original purchase. While the claimants have established the dates that they first became owners, they have not provided a chain of title to document that they have had continuous ownership of tax lots 1000, 900, or 700 since their original purchase dates. Without verifying that ownership has been continuous, it is not possible to determine what date the claimants have the right to seek a waiver of regulations back to. Without knowing what ownership date a claim stems from, it is not possible to determine that regulations have resulted in a restriction of use.

Division of a property is not a 'use' of land subject to the provisions of Measure 37 and development rights gained through a waiver are personal to the claimant and will result in no restriction in use if transferred to a third party. No restriction in use would occur for the third party because the newly purchased subdivision lots would be subject to the current Commercial Forest Use-1 regulations preventing a dwelling from being built.

This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy, which has been attached to the staff report as Exhibit A1. For the reasons outlined in this legal memorandum, Staff finds this request to subdivide the property is an invalid request.

Even if a land division were a use eligible for regulatory relief, the claimant has failed to show that one could be approved under the rules in effect when they purchased the property. County planning staff's review of County decisions from the 1970's involving land divisions in the F-2 and SR districts indicates that a 38 lot subdivision would have been denied. The McGrew properties do not adjoin a public road and the County would have required the subdivision include public roads that connect to the public road system in order for them to be approved. SR zoning was in place when Tax Lots 800, 900, and 1000 were created as a 10.76 acre property with a recorded sales contract from Dorothy and Nykee English to James and Elizabeth McGrew in 1974. This zone required all lots abut a street or have other access held suitable by the Planning Commission (§ 3.1536). When the McGrew's sought non-resources dwelling approvals on the properties in 1993 a County Hearings Officer found that the properties did not comply with this requirement because alternative access was not approved by the Planning Commission. The Hearings Officer denied the applications (Case No. CU 1-93 and 2-93). The Hearings Officer's decision was affirmed by the Board of Commissioners. In the F-2 district, road frontage was required through exercise of the subdivision code and authority to evaluate new streets or roads under ORS 92.014. When challenged, the County's authority to take such action was affirmed by the Circuit Court. The County also denied large subdivision requests in the F-2 zone finding that they were inconsistent with the Comprehensive Plan which called for these lands to be used for agricultural purposes. There was discretion involved in these decisions, with subdivisions as large as 19 lots being approved but those over 50 lots being denied. At 38 lots, this request is twice the size of the largest subdivision approved in this district so we expect that it would have been denied on these grounds. The county planning staff's review of historic records was not exhaustive, but was adequate to show a pattern of practice.

**f. County Code Restrictions Reduce Fair Market Value:**

A reduction in value has not occurred because the owners have failed to establish that their proposed 38 lot subdivision could have been approved at the time they acquired the property and because development rights for each subdivision lot would not transfer to the new owners of those lots.

As discussed in section 3 of this report, questions related to the ability of the property to be tied into the public road system and the appropriateness of a 38 lot subdivision on land designated for farm uses in the comprehensive plan would likely have lead to a denial of the subdivision under rules in effect at the time the owners acquired the property. Even if a subdivision could have been approved at the time the owners acquired the property, Measure 37 rights are personal to the claimant and are of no value to a third party.

The current Commercial Forest Use-1 zoning regulations would be applied once a newly created subdivision lot is sold to a third party. These regulations would prohibit the establishment of a dwelling on each subdivision lot rendering it an unbuildable lot. Because the resulting lots would have no development value, no reduction in value will occur as compared to the current development value of each property under the current zoning regulations

**g. Public Notice**

This action is before the Board under MCC 27.530(N), which authorizes the Planning Director to determine whether a claim is complete and allows the Director to recommend to the Board that the claim be denied if it is invalid on its face. Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The claimant and persons who own land within 750 feet of the subject property received notice by mail.

**h. Validity of Claim for Compensation:** The Board finds that:

(1) The claim materials submitted by the claimants do not constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.530.

(2) The claimants have not established that they have had continuous ownership of all four tax lots involved with the claim. The claimants sold tax lot 800 in 1997, thus terminating their ownership of this lot and any Measure 37 rights they may have had to make a claim on tax lot 800. The claimants established that they originally purchased tax lots 700, 900 and 1000 prior to the enactment of the 1977 regulations but have not established that they have had continuous ownership of tax lots 1000, 900 or 700 since before the restrictive Multiple Use Forest-20 zoning regulations were first applied in 1977.

(3) Without verifying that ownership has been continuous, it is not possible to determine what date the claimants have the right to seek a waiver of regulations back to. Without knowing what ownership date a claim stems from, it is not possible to determine that regulations have resulted in a restriction of use.

(4) Even assuming continuous ownership of tax lots 1000, 900 and 700, there has been no restriction in use because land use regulations in place at the time of acquisition would have prevented a subdivision.

(5) Subdividing property is not a "use" subject to the provisions of Measure 37 and, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

//

//

//

//

//

**The Multnomah County Board of Commissioners Orders:**

**Claimants, James & Elizabeth McGrew's, request is denied.**

ADOPTED this 10<sup>th</sup> day of August, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
Sandra Duffy, Assistant County Attorney

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**ORDER NO. 06-143**

Order Denying Measure 37 Request of James and Elizabeth McGrew Relating to Real Property  
Located at 13154 NW McNamee Road

**The Multnomah County Board of Commissioners Finds:**

- a. Party: James & Elizabeth McGrew are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on September 28, 2005.
- b. Subject Real Property: This claim relates to real property located at 13154 NW McNamee Road, Multnomah County, Portland, Oregon more specifically described as:

TL 700, 800, 900 & 1000, Sec 32A, 2N-1W

- c. **Adequacy of Demand for Compensation:**  
The materials submitted by the claimant do not constitute a complete written demand for compensation as required by Multnomah County Code 27.520.

This claim was submitted to Multnomah County on September 28, 2005. On October 20th, the county sent the claimants a letter indicating the review would be suspended in light of the October 14<sup>th</sup> Marion County ruling MacPherson v. Department of Administrative Services finding Measure 37 unconstitutional. On February 27, 2006, a letter was sent to the claimants indicating the review would again commence because five days earlier, Oregon's Supreme Court overturned this ruling. On February 27, 2006, County Staff provided a detailed letter to the claimants outlining the outstanding information required for a complete claim pursuant to the provisions of MCC 27.500 – 27.565.

The missing information included the \$1,500 processing fee, a title report to verify ownership and property appraisals to support the alleged reduction in value. The chain of title in a title report is critical to understanding the property ownership. There is no evidence in the record regarding whether or not the claimants have had continuous ownership of the subject property.

By May 4, 2006 the required information for a complete claim had not been submitted. A letter was mailed on that date to the claimants indicating that the county could either process the claim as an invalid claim, or put the claim on hold in order to see how the land division issue is resolved by the courts. County planning staff received no response to the May 4th request and prepared its staff report without benefit of the required information.

The Board finds that the materials submitted by the claimant do not constitute a complete written demand for compensation as required by Multnomah County Code 27.520.

**d. Relevant Dates of Property Ownership:**

The claimants have submitted a Measure 37 request to divide four properties into a 38 lot subdivision, or have the county pay \$8,097,000 in compensation. The claimants state that James and Elizabeth McGrew have held an ownership in tax lots 800, 900, and 1000 since July 24, 1974, when zoning regulations would have allowed the division of these tax lots into up to 10 lots of at least 1 acre each. The claimants also state that James and Elizabeth McGrew have held an ownership in tax lot 700 since November 2, 1973, when zoning regulations would have allowed the division of this tax lot into up to 27 lots of at least 2 acres each.

Zoning was first applied to the properties in 1958 with the adoption of Suburban Residential (SR) and Agricultural District (F-2) zoning regulations. Tax lots 1000, 900, and 800 were zoned SR and tax lot 700 was zoned F2. The zoning of all four tax lots was changed to Multiple Use Forest-20 (MUF-20) on October 6<sup>th</sup>, 1977. The MUF-20 zone was changed to MUF-19 on tax lots 1000, 900, and 800 and MUF-38 on tax lot 700 on August 14, 1980. The zoning of all four lots was changed to CFU-80 on January 7, 1993, which was changed to the current CFU-1 zone on August 8, 1998.

Adoption of MUF-20 zoning regulations in 1977 required new lots created in the district, by a subdivision for example, to be at least 20-acres in size. Currently, the EFU zoning district requires all newly created properties from a land division to be at least 80-acres in size (MCC 36.2660(C)).

**Ownership History of Tax Lot 1000, 900, and 800**

Property totaling 10.76 acres, referenced as Tax Lots 1000, 900 and 800 today, was originally acquired by James and Elizabeth McGrew from the Dorothy and Nykee English on July 24, 1974. (Book 1069 Page 993) This property was divided by deed into three lots on June 6, 1986. Tax lot 1000 was transferred to Elizabeth McGrew (Book 1919 Page 2170), tax lot 900 was transferred to James McGrew (Book 1919 Page 2172) and tax lot 800 was transferred to Kyle and Robbie Preedy who are listed in Assessment and Taxation data as the current owners of tax lot 800. This division by deed was found to be unlawful by a Multnomah County Hearing Officer in land use planning cases CU 1-93 and CU 2-93. At the time the division was executed, land use review was required and not obtained by the owners. Tax lots 1000 and 900 are currently owned by Elizabeth McGrew and James McGrew respectively. No chain of title has been submitted to the file to allow county planning staff to verify that the McGrews have had continuous ownership of tax lots 1000 and 900 since their original purchase date of July 24, 1974. Staff requested a title report in a letter sent February 27, 2006 to verify that ownership of tax lots 1000 and 900 had been continuous. No title report was provided by the claimants.

#### Ownership History of Tax Lot 700

James and Elizabeth McGrew purchased a ½ undivided interest in tax lot 700 on November 2, 1973 (Book 957 Page 1555). The applicants have submitted this deed as the only evidence of ownership for tax lot 700 and state that James and Elizabeth McGrew have owned the property since 11-2-1973. While researching the claim, staff located a real estate contract dated February 20, 1984 (Book 1732 Page 1198) showing that James and Elizabeth McGrew acquired the other ½ interest in tax lot 700 from Kenneth McGrew, Dorothy McGrew, William Sander, and Helen Yeager. This contract was satisfied on June 14, 1993 in a deed recorded in Book 2722 Page 869. It is unclear if additional sales transactions have taken place related to this property since the McGrew's first purchased the land. Staff requested a title report in a letter sent February 27, 2006 to verify the chain of title of tax lot 700. No title report had been provided by the claimants.

The Board finds that the claimants have not established that they have had continuous ownership of all four tax lots involved with the claim. The claimants sold tax lot 800 in 1997, thus terminating their ownership of this lot and their rights to make a Measure 37 claim on tax lot 800. The claimants established that they originally purchased tax lots 700, 900 and 1000 prior to the enactment of the 1977 regulations but have not established that they have had continuous ownership of tax lots 1000, 900 or 700 since before the restrictive Multiple Use Forest-20 zoning regulations were first applied in 1977.

e. **County Codes as a Restriction on Use of the Property:**

Zoning was first applied to the properties on July 10, 1958 with the adoption of Suburban Residential (SR) and Agriculture District (F2) zoning regulations. Tax lots 1000, 900, and 800 were zoned SR and tax lot 700 was zoned F2. The zoning of all four tax lots was changed to Multiple Use Forest-20 (MUF-20) on October 6<sup>th</sup>, 1977. The MUF-20 zone was changed to MUF-19 on tax lots 1000, 900, and 800 and MUF-38 on tax lot 700 on August 14, 1980. The zoning of all four lots was changed to CFU-80 on January 7, 1993, which was changed to the current CFU-1 zone on August 8, 1998. The claimants have indicated James and Elizabeth McGrew have held an interest all four properties since 1974 when the SR and F2 zoning regulations were in effect. Deed records show the McGrews transferred tax lot 800 to other owners in 1986. Additional deed records show changes to the ownership of lots 1000, 900, and 700 since the original purchase. While the claimants have established the dates that they first became owners, they have not provided a chain of title to document that they have had continuous ownership of tax lots 1000, 900, or 700 since their original purchase dates. Without verifying that ownership has been continuous, it is not possible to determine what date the claimants have the right to seek a waiver of regulations back to. Without knowing what ownership date a claim stems from, it is not possible to determine that regulations have resulted in a restriction of use.

Division of a property is not a 'use' of land subject to the provisions of Measure 37 and development rights gained through a waiver are personal to the claimant and will result in no restriction in use if transferred to a third party. No restriction in use would occur for



the third party because the newly purchased subdivision lots would be subject to the current Commercial Forest Use-1 regulations preventing a dwelling from being built.

This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy, which has been attached to the staff report as Exhibit A1. For the reasons outlined in this legal memorandum, Staff finds this request to subdivide the property is an invalid request.

Even if a land division were a use eligible for regulatory relief, the claimant has failed to show that one could be approved under the rules in effect when they purchased the property. County planning staff's review of County decisions from the 1970's involving land divisions in the F-2 and SR districts indicates that a 38 lot subdivision would have been denied. The McGrew properties do not adjoin a public road and the County would have required the subdivision include public roads that connect to the public road system in order for them to be approved. SR zoning was in place when Tax Lots 800, 900, and 1000 were created as a 10.76 acre property with a recorded sales contract from Dorothy and Nykee English to James and Elizabeth McGrew in 1974. This zone required all lots about a street or have other access held suitable by the Planning Commission (§ 3.1536). When the McGrew's sought non-resources dwelling approvals on the properties in 1993 a County Hearings Officer found that the properties did not comply with this requirement because alternative access was not approved by the Planning Commission. The Hearings Officer denied the applications (Case No. CU 1-93 and 2-93). The Hearings Officer's decision was affirmed by the Board of Commissioners. In the F-2 district, road frontage was required through exercise of the subdivision code and authority to evaluate new streets or roads under ORS 92.014. When challenged, the County's authority to take such action was affirmed by the Circuit Court. The County also denied large subdivision requests in the F-2 zone finding that they were inconsistent with the Comprehensive Plan which called for these lands to be used for agricultural purposes. There was discretion involved in these decisions, with subdivisions as large as 19 lots being approved but those over 50 lots being denied. At 38 lots, this request is twice the size of the largest subdivision approved in this district so we expect that it would have been denied on these grounds. The county planning staff's review of historic records was not exhaustive, but was adequate to show a pattern of practice.

f. **County Code Restrictions Reduce Fair Market Value:**

A reduction in value has not occurred because the owners have failed to establish that their proposed 38 lot subdivision could have been approved at the time they acquired the property and because development rights for each subdivision lot would not transfer to the new owners of those lots.

As discussed in section 3 of this report, questions related to the ability of the property to be tied into the public road system and the appropriateness of a 38 lot subdivision on land designated for farm uses in the comprehensive plan would likely have lead to a denial of the subdivision under rules in effect at the time the owners acquired the property. Even if a subdivision could have been approved at the time the owners acquired the property, Measure 37 rights are personal to the claimant and are of no value to a third party.

The current Commercial Forest Use-1 zoning regulations would be applied once a newly created subdivision lot is sold to a third party. These regulations would prohibit the establishment of a dwelling on each subdivision lot rendering it an unbuildable lot. Because the resulting lots would have no development value, no reduction in value will occur as compared to the current development value of each property under the current zoning regulations

g. **Public Notice:**

This action is before the Board under MCC 27.530(N), which authorizes the Planning Director to determine whether a claim is complete and allows the Director to recommend to the Board that the claim be denied if it is invalid on its face. Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The claimant and persons who own land within 750 feet of the subject property received notice by mail.

h. **Validity of Claim for Compensation: The Board finds that:**

(1) The claim materials submitted by the claimants do not constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.530.

(2) The claimants have not established that they have had continuous ownership of all four tax lots involved with the claim. The claimants sold tax lot 800 in 1997, thus terminating their ownership of this lot and any Measure 37 rights they may have had to make a claim on tax lot 800. The claimants established that they originally purchased tax lots 700, 900 and 1000 prior to the enactment of the 1977 regulations but have not established that they have had continuous ownership of tax lots 1000 or 900 since before the restrictive Multiple Use Forest-20 zoning regulations were first applied in 1977.

(3) Without verifying that ownership has been continuous, it is not possible to determine what date the claimants have the right to seek a waiver of regulations back to. Without knowing what ownership date a claim stems from, it is not possible to determine that regulations have resulted in a restriction of use.

(4) Even with continuous ownership of tax lot 700 and assuming continuous ownership of tax lots 1000 and 900, there has been no restriction in use because land use regulations in place at the time of acquisition would have prevented a subdivision.

(5) Subdividing property is not a "use" subject to the provisions of Measure 37 and, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

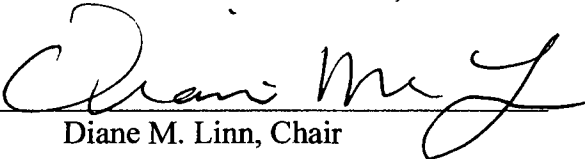
**The Multnomah County Board of Commissioners Orders:**

Claimants, James and Elizabeth McGrew's request is denied.

ADOPTED this 10th day of August, 2006.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
Sandra Duffy, Assistant County Attorney



## MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

### Board Clerk Use Only

Meeting Date: 08/10/06  
Agenda Item #: R-12  
Est. Start Time: 10:40 AM  
Date Submitted: 07/17/06

### BUDGET MODIFICATION: -

**Public Hearing to Consider and Possibly Act Upon a Measure 37 Claim by Dean Richards and William Richards for \$915,000 in Compensation or Relief from Regulations to Allow a 20 Lot Subdivision on Property Located at 29415 and 29429 SE Powell Valley Road [TL 200 and 100, SEC 19AB, 1S - 4E] (Case File Title: T1-05-062)**

*Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.*

Date Requested:	August 10, 2006	Time Requested:	30 minutes
Department:	Community Services	Division:	Land Use / Transportation
Contact(s):	Adam Barber, Derrick Tokos		
Phone:	503-988-3043	Ext.:	22599
	I/O Address:		455/116
Presenter(s):	Adam Barber, Sandy Duffy		

### General Information

**1. What action are you requesting from the Board?**

Action requested is to provide a public hearing and render a decision on this Measure 37 claim by Dean and William Richards for properties at 29415 and 29429 SE Powell Valley Road. Land use planning has outlined an approach to deciding this claim in a staff report dated July 12th, 2006.

This Agenda Placement Request contains summary information related to the claim. A staff report related to the claim is attached which provides more detailed information. The staff report contains the analysis conducted by land use planning staff. An exhibit to the staff report contains a legal analysis related to land divisions and Measure 37 which was prepared by Sandy Duffy, Assistant County Attorney.

**2. Please provide sufficient background information for the Board and the public to understand this issue.**

The claimants have submitted a Measure 37 request to divide two properties into a 20 lot

subdivision, or have the county pay \$915,000 in compensation. The claimants assert William Richards has held an ownership in both tax lots since 1973 at a time when zoning regulations would have allowed a 20 lot subdivision.

Multnomah County's understanding of the law as reflected in its Measure 37 ordinance is that division of a property is not a 'use' of land subject to the provisions of Measure 37 and that development rights gained through a waiver are personal to the claimant and will result in no reduction in value if transferred to a purchaser of a subdivided parcel. Because a subsequent owner would acquire the property subject to all laws in effect when the subsequent owner purchased the property, the subsequent owner would not acquire a "buildable lot". This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy which has been attached to the staff report. For the reasons outlined in this legal memorandum, Staff finds this request is invalid.

In addition, it does not appear that the claimants have held a continual interest in the entire property involved in this claim before the zoning regulations first prevented the creation of 20 lots in 1977. Property totaling 38.62 acres, referenced today as Tax Lot 100 and 200, was originally acquired by Eugene and Dean Richards from the Inland Feeding Company, Inc. on August 31, 1944 for farm purposes (Book 867 Page 173). In 1973, Eugene and Dean Richards leased thirty five (35) of the 38.62 acres to their son William Richards according to the claimant. Staff does not believe a lease for farming purposes can be used to claim a right to other uses allowed at the time (e.g. a dwelling) because the leaseholder's interest in the land did not extend to those uses.

According to Multnomah County's assessment and deed records, Tax Lot 100 is currently owned by Dean Richards, claimant, who purchased the property in 1944 and then transferred ownership to a trust on December 27<sup>th</sup>, 1994. This action may have reset ownership of this lot if the trust was set up as a non-revocable trust. This lot was then transferred from the trust back to Dean Richards June 7<sup>th</sup>, 2005.

For a claim to be valid, the land use regulations challenged must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants acquired the property. As outlined in the staff report and memorandum from the County Attorney's Office dated June 8<sup>th</sup>, 2006, this requirement has not been met. The reasons for this are as follows:

- (a) The claimants have failed to establish that they acquired the property prior to the date the challenged regulations were enforced and;
- (b) Subdividing property is not a "use" subject to the provisions of Measure 37 and that, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

Consequently, the Board of Commissioners must deny this claim.

**3. Explain the fiscal impact (current year and ongoing).**

The claimants assert a reduction in value of \$915,000; however, this dollar figure is not supported by an appraisal prepared in accordance with the County ordinance. Staff does not believe any compensation is due because the claim is invalid.

**4. Explain any legal and/or policy issues involved.**

Policy and legal issues are outlined in a staff report from Land Use Planning dated July 12<sup>th</sup>, 2006.

The County Attorney has advised that any property rights obtained by relief from land use regulations are not transferable under Ballot Measure 37, consistent with the DOJ opinion of February 2005.

**5. Explain any citizen and/or other government participation that has or will take place.**

Public notice of this hearing was mailed to all property owners within 750 feet of the subject property. Deliberation and any action on this item will be done following a public hearing at which interested citizens will have an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

---

**Required Signatures**

---

**Department/  
Agency Director:**

*Robert A Maestre*

**Date:** 07/17/06

**Budget Analyst:**

**Date:**

**Department HR:**

**Date:**

**Countywide HR:**

**Date:**



## LAND USE & TRANSPORTATION PLANNING PROGRAM

1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
<http://www.co.multnomah.or.us/landuse>

---

### Staff Analysis of a Measure 37 Claim

---

The following matter is scheduled for public hearing, deliberation and possible action before the Multnomah County Board of Commissioners

Hearing Date, Time, & Place:

**August 10<sup>th</sup>, 2006 at 9:30 am** or soon thereafter, in the Commissioners' Board Room of the Multnomah Building, located at 501 SE Hawthorne, Portland, Oregon.

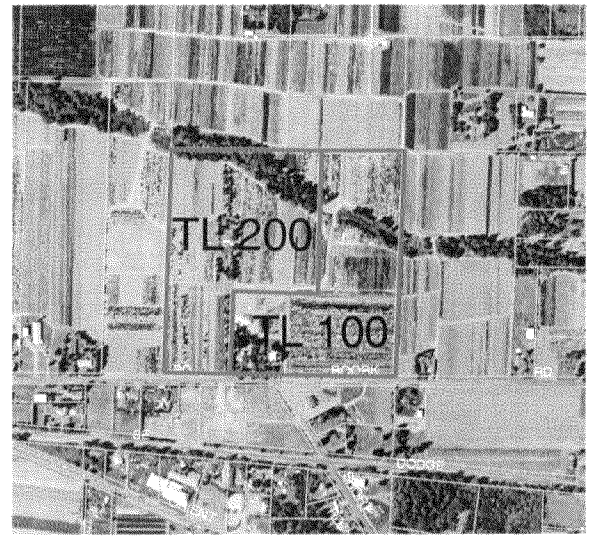
**Case File:** T1-05-062

**Claimants:** Dean Richards and William Richards

**Location:** 29415 and 29429 SE Powell Valley Road  
TL 200 & 100, Sec 19AB, 1S – 4E

Vicinity Map

N↑



---

**Claim:** Compensation in the amount of \$915,000 or relief from land use regulations to allow a 20 lot subdivision or any other use allowed in 1973.

**Zoning:** Exclusive Farm Use (EFU), Significant Environmental Concern (SEC water resources) and Hillside Development (HD).

**Site Size:** 29415 SE Powell Valley Road (TL 200) – 19.99 acres  
29429 SE Powell Valley Road (TL 100) – 18.63 acres

---

#### Approach to Deciding the Claim:

For a claim to be valid, the land use regulations challenged must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant acquired the property. As outlined in this report and memorandum from the County Attorney's Office dated June 8<sup>th</sup>, 2006, this requirement has not been met. The reasons for this are as follows:

- (a) The claimants have failed to establish that they acquired the property prior to the date the challenged regulations were enforced and;
- (b) Subdividing property is not a "use" subject to the provisions of Measure 37 and that, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

Consequently, the Planning staff recommends that the Board of Commissioners deny this claim.

*(The following is a step-by-step evaluation of the claim, which consists of the application materials submitted by Mark O'Donnell, ESQ, applicant for the claimant. The analysis is structured as a series of questions that must be answered to establish if a claim is valid, comparable to the methodology outlined in a February 24th, 2005 memo authored by the State Attorney General's Office.)*

**1. Has the owner made a complete written demand under Ballot Measure 37?**

**No. The materials submitted by the claimant do not constitute a complete written demand for compensation as required by the county's code.**

This claim involves two contiguous properties, one owned by Dean A. Richards (TL 100) and the other by the William Richards (TL 200). The subject properties are zoned Exclusive Farm Use (EFU) with zoning overlays for Significant Environmental Concern (SEC water resources) and Hillside Development (HD). Kelly Creek passes through the northern portion of both properties which are located between SE Powell Valley Road to the north and SE Dodge Park Blvd. to the south. The properties are less than ½ mile east of the City of Gresham limits. Both properties are developed with a residence and appear to be engaged in farming activities according to a recent aerial photo of the area.

Multnomah County Code 27.500 – 27.565 implements Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37 (ORS 197.352). These regulations, in part, provide the framework used to decide whether or not a claim is sufficiently complete, valid and eligible for compensation by either regulatory waiver or monetary compensation. Staff followed these guidelines to determine that the necessary contents of a written claim have not been submitted.

This claim was submitted to Multnomah County on October 3<sup>rd</sup>, 2005. On October 20<sup>th</sup>, the county sent the claimant a letter indicating the review would be suspended in light of the October 14<sup>th</sup> Marion County ruling in MacPherson v. Department of Administrative Services finding Measure 37 unconstitutional. On February 28<sup>th</sup>, 2006, a letter was sent to the claimant indicating the review would again commence because five days earlier, Oregon's Supreme Court overturned this ruling. On March 10<sup>th</sup>, County Staff provided a detailed letter to the claimant outlining the outstanding information required for a complete claim pursuant to the provisions of MCC 27.500 – 27.565.

The missing information included the \$1,500 processing fee, property appraisals and copies of the 1973 farm lease agreement and trust documents referenced in the claim's narrative. The details of the lease and trust documents are critical to the determination of property ownership interests.

By May 3<sup>rd</sup>, 2006 the required information for a complete claim had not been submitted. A letter was mailed on that date to the claimant indicating that the county could either process the claim as an invalid claim, or put the claim on hold in order to see how the land division issue is resolved by the courts. We received no response to the May 3<sup>rd</sup> request and therefore have prepared this report.



2. ***Did the claimant acquire the properties before the laws in question were adopted?***

**No. The claimants have failed to establish that they acquired the properties prior to the date the challenged regulations first prevented subdivision of the properties in 1977.**

The claimants have submitted a Measure 37 request to divide two properties into a 20 lot subdivision, or have the county pay \$915,000 in compensation. The claimants state that William Richards has held an ownership in both tax lots through a farming lease since 1973 when zoning regulations would have allowed a 20 lot subdivision.

Zoning was first applied to the properties in 1962 with the adoption of Suburban Residential (SR) zoning regulations. The zoning was changed from SR to Multiple Use Agriculture-20 (MUA-20) on October 6<sup>th</sup>, 1977 and from MUA-20 to Exclusive Farm Use (EFU) in 1980.

Adoption of MUA-20 zoning regulations in 1977 required new lots created in the district, by a subdivision for example, to be at least 20-acres in size. This minimum lot size requirement would have prevented the subdivision request outlined in this claim. In 1980, the minimum lot size was increased to 38-acres for all new properties. Currently, the EFU zoning district requires all newly created properties from a land division to be at least 80-acres in size (MCC 36.2660(C)).

***Ownership History of Tax Lot 200 (29415 SE Powell Valley Road)***

Property totaling 38.62 acres, referenced today as Tax Lot 100 and 200, was originally acquired by Eugene and Dean Richards from the Inland Feeding Company, Inc. on August 31, 1944 for farm purposes (Book 867 Page 173). In 1973, Eugene and Dean Richards leased thirtyfive (35) of the 38.62 acres to their son William Richards according to the claimant. This arrangement could not be verified by Staff because a copy of the lease agreement was not submitted with the claim and could not be obtained from county records.

Ownership of Tax Lot 200 was transferred from Eugene and Dean Richards to William Richards in 1978 with the recording of a bargain and sale deed (Book 1272, Page 842). Subsequent deeds were recorded in 1981 and 1998 which appear to release Mr. Richard's spouse's interest in the property after marriages were dissolved. These deeds did not impact Mr. Richard's ownership of Tax Lot 200.

Staff does not believe a lease for farming purposes can be used to claim a right to other uses allowed at the time (e.g. a dwelling) because the leaseholder's interest in the land did not extend to those uses. What we know of the nature of the lease is limited to the claimant's narrative description that it was drafted in 1973 for farming purposes. Staff requested a copy of this lease agreement in a May 10<sup>th</sup>, 2005 letter and would expect that the lease document would specifically describe the use or uses subject to the agreement. Deed records show that William Richards did not obtain an interest in the property for the type of development envisioned until 1978, after the MUA-20 zoning was adopted prohibiting further subdivision.

***Ownership History of Tax Lot 100 (29429 SE Powell Valley Road)***

Although Dean Richards has owned 18.63 acre Tax Lot 100 since 1944, ownership of this lot was transferred to a trust on December 27<sup>th</sup>, 1994 and then back to Dean A. Richards, the

individual on June 7<sup>th</sup>, 2005. The details of the trust arrangement are important because transfer of land to a non-revocable trust would likely constitute a transfer of ownership because the trustee holds legal title to the property and the settler retains no rights over the property. Staff requested a copy of the trust documents in a letter sent May 10<sup>th</sup>, 2005 in order to determine if a change in ownership had occurred. A copy of that document was not provided by the claimants and was not able to be located by county's recorders office.

Transfer of Tax Lot 100 to a non-revocable trust would effectively reset the date of acquisition of Tax Lot 100 to the time the land was put in the trust's name (i.e. 1994). On the other hand, if the land were put into a revocable trust, a change in ownership would not have likely occurred because the transfer could be reversed by the individual controlling the trust. Even if the trust was set up as a revocable trust, the claim is for both properties rather than just Tax Lot 100.

In conclusion, the claimants have not established that both properties involved in this claim were acquired before the restrictive Multiple Use Agriculture-20 zoning regulations were first applied in 1977.

**3. *Have the challenged regulations restricted the use of the properties for the claimant?***

Zoning was first applied to the properties in 1962 with the adoption of Suburban Residential (SR) zoning regulations. The zoning was changed from SR to Multiple Use Agriculture-20 (MUA-20) on October 6<sup>th</sup>, 1977 and from MUA-20 to Exclusive Farm Use (EFU) in 1980. The claimants have indicated William Richards has held an interest in both properties since 1973 when the SR zoning regulations were in effect. Deed records show William Richards did not obtain a fee interest in Tax Lot 200 until 1978 when a subdivision of land could not have been approved under the Multiple Use Agriculture-20 zoning regulations. As a result, there has been no restriction in use for the claimant.

Even if a subdivision were permissible, Multnomah County's understanding of the law as reflected in its Measure 37 ordinance is that division of a property is not a 'use' of land subject to the provisions of Measure 37 and that development rights gained through a waiver are personal to the claimant and will result in no restriction in use if transferred to a third party. No restriction in use would occur for the third party because the newly purchased subdivision lots would be subject to the current Exclusive Farm Use regulations preventing a dwelling from being built.

This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy, which has been attached to the staff report as Exhibit A1. For the reasons outlined in this legal memorandum, Staff finds this request to subdivide the property is an invalid request.

**4. *Have the regulations reduced the fair market value of the properties?***

A reduction in value has not occurred because land use regulations would have prevented the subdivision in 1978 when William Richards first obtained fee interest in Tax Lot 200 and because development rights for each subdivision lot would not transfer to the new owners of those lots. Measure 37 rights are personal to the claimant and are of no value to a third party. For instance, the current Exclusive Farm Use zoning regulations would be applied once a newly created subdivision lot is sold to a third party. These regulations would prohibit the establishment of a dwelling on each subdivision lot rendering it an unbuildable lot. Because the resulting lots would have no development value, no reduction in value will occur as compared to the current development value of each property under the current zoning regulations.

## **PUBLIC NOTICE**

Public notice of this hearing was mailed to all property owners within 750 feet of the subject property. Deliberation and any action on this item will be done following a public hearing at which interested citizens will have an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

After receiving notice of the claim; Alison Winter, Multnomah County Transportation Planning Specialist, indicated the County Transportation department will need more information regarding the proposed development to determine the necessary transportation-related requirements. Ms. Winter indicated that on and/or off site-improvements, right-of-way dedication, and/or permits for access or construction within the County right-of-way may be required in the event development occurs as a result of this Measure 37 process. A copy of Ms. Winter's comment letter is presented as Exhibit A2 to this report.

## **CONCLUSION**

In conclusion, the claimants have failed to establish that they acquired the property prior to the date the challenged regulations were enforced. Staff also finds subdividing property is not a "use" subject to the provisions of Measure 37 and that, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

Consequently, the Planning staff recommends that the Board of Commissioners deny this claim.

Issued by:

By:   
Adam Barber, Planner

For: Karen Schilling, Planning Director

Date: July 12, 2006

## **Exhibits**

Copies of the exhibits, referenced herein, are in the case record that is on file at the Land Use and Transportation Planning Office.

A1 – Memo from Sandra Duffy, Assistant County Attorney dated June 8, 2006

A2 – Comment letter from Alison Winter, County Transportation Planning Specialist dated June 26, 2006.

**Multnomah County Attorney's Office**  
**501 S.E. Hawthorne Blvd., Suite 500**  
**Portland, Oregon 97214**

**PHONE: 503.988.3138**  
**FAX 503.988.3377**



## **MEMORANDUM**

To: Derrick Tokos, Principal Planner

From: Sandy Duffy, Assistant County Attorney

Re: All Measure 37 Land Divisions Are Facially Invalid

Date: June 8, 2006

### **INTRODUCTION:**

A substantial portion of the Measure 37 claims being submitted to Multnomah County are for partitions or subdivisions. MCC 27.530(O) authorizes the Planning Director to determine whether a claim is invalid on its face and to recommend to the Board of County Commissioners that the claim be denied. The question this memorandum addresses is whether claims for land divisions are invalid on their face. This memorandum is intended as guidance for the Planning Director and the land use planners who are reviewing Measure 37 claims.

Set out below is the County's legal analysis addressing whether partitioning and/or subdividing land is a "use" of land which is subject to the provisions of Measure 37 and whether development rights gained through a waiver are personal to the claimant are transferable to a purchaser of a subdivided parcel. If the development rights are not transferable, there has been no "... reduc[tion in] the fair market value of the property," which is required for a valid Measure 37 claim.

**EXHIBIT**  
**A1**

## DISCUSSION:

### A. County land division regulations do not restrict the owner's "use" of the property.

The meaning of the term "use" in the Measure is a critical factor in determining the validity of claims, as well as the governing bodies' authority to pay compensation or to waive<sup>1</sup> regulations. Section (1) of the Measure requires compensation from the County if it enforces an ordinance that "restricts the *use* of private real property."

As an alternative to paying compensation, the Measure, in Section(8) authorizes the governing body to: "...modify, remove or not to [sic] apply the land use regulation or land use regulations to allow the owner to *use* the property for a *use* permitted at the time the owner acquired the property."

If the county land division regulations (MCC 33.7700 – 33.8035) are a *use* restriction, the Board may pay compensation or waive the regulations which would allow Measure 37 claimants to partition or subdivide their parcels.

#### (1) Land division ordinances as land use regulations in Measure 37.

The proponents of the Measure give import to the fact that the Measure defines "land use regulation" in subsection (11)(B) as including "land division ordinances." First, land division ordinances do not specify how a property is to be *used*. Land division ordinances set out the requirements for and procedures to partition or subdivide parcels of land.

Second, on February 24, 2005, the Attorney General's Office issued a Measure 37 letter-opinion to Lane Shetterly, Director of DLCD. That letter-opinion makes it very clear that a

---

<sup>1</sup> Waiver is a term used in this memorandum in lieu of the Measure 37 language which authorizes the governing body to "modify, remove or not to [sic] apply the land use regulation..."

waiver is valid only if a *series* of conditions are met<sup>2</sup>, including: “The law [county code] restricts the use of private real property or any interest therein,” and “The law [county code] has the effect of reducing the fair market value of the claimant’s property or any interest therein.” Inclusion of a type of regulation within the definition of “land use regulation” does not necessarily mean that it is a “use” regulation which restricts the use and diminishes the value of property, giving rise to a Measure 37 claim.

Finally, the two sections of the Measure (the definitions and the requirement that a restriction in use diminish the value), must be read in context and effect must be given to both, if possible. The general definition provision will not take precedence over the substantive provision requiring a restriction in *use* and a diminution in value to prove a valid claim under the Measure.<sup>3</sup>

#### (2) Interpreting the word “use.”

When construing a statute, the court’s task is to determine the intent of the legislature. The best indication of legislative intent is the text of the statute. Only if the court finds the text is ambiguous will the court analyze the legislative history of the statute. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993); ORS 174.010. The same analysis applies whether the statute was enacted by the legislature or through the initiative process. *Stranahan v. Fred Meyer, Inc.*, 331 Or 61; 11 P3d 228 (2000).

The term “use” is undefined in the Measure which means it is to be interpreted in its common, everyday meaning. The common meaning of “use,” in the context of land use

---

<sup>2</sup> The same holds true for a determination to pay compensation. There must be a valid Measure 37 claim which meets the same series of conditions.

<sup>3</sup> ORS 174.020(2) “When a general and particular provision are inconsistent the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.”

regulations, includes such uses as: rural residential use, commercial use, farmland use, forestland use, industrial use, community service use.<sup>4</sup> Those broad categories of uses are subdivided into more specific uses in the zoning code. For example, rural residential allowed uses include: raising and harvesting of crops, raising livestock and honeybees, and family day care.<sup>5</sup> All of these uses can take place on a parcel of land without subdividing the parcel.

The common dictionary definition of the word “use” is:

*“The act of using or the state of being used.” Webster’s New Universal Unabridged Dictionary, Second Edition, (Dorset and Baber 1989).*

The legal definition of the word “use” is:

*“The application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional <the neighbors complained to the city about the owner’s use of the building as a dance club>.” Black’s Law Dictionary, Seventh Edition, West Group, St. Paul Minn., (1999).*

Both of these definitions contemplate active employment of the land for a specific purpose. The acts to subdivide land (applying for a land use permit, obtaining a title report, obtaining a survey, recording a plat) do not involve the employment of land. Subdividing is preparation for a use of the land, but is not, itself, a use.

Other than *MacPherson*<sup>6</sup>, there are no cases to date interpreting the language of Measure 37, however, the Court of Appeals, in *Parks v. Tillamook County*, 11 Or App 177 (1972),

---

<sup>4</sup> This is a representative sample of some of the uses contained in MCC Chapter 33; there are many others but none of them include partitions or subdivisions.

<sup>5</sup> These are examples from MCC Chapter 33.

<sup>6</sup> *MacPherson v. Department of Administrative Services*, 340 Or 117, 130 P3d 308 (2006) found Measure 37 to be constitutional.

recognized that platted but undeveloped land is not regarded as a “use” in zoning law.<sup>7</sup> It follows that the process of subdividing land would not be a “use” of land either.

(3) The Attorney General concludes Measure 37 rights are not transferable.

The Attorney General’s letter-opinion to the Director of DLCD also reviews the voter’s pamphlet statements for voter intent on transferability of Measure 37 relief. Some of that discussion may be relevant as legislative history of voter’s intent on whether the Measure was intended to allow subdivision of qualified parcels. It states:

*The arguments in favor include 40 submissions ...slightly more than half of the arguments discuss the perceived adverse effects of land use laws in the abstract... slightly fewer than half are statements about how land use laws are preventing a specific owner from putting his or her property to some particular current use. All of those specific concerns could be remedied either by a decision that is personal to that owner or one that ran with the land, with the possible exception of several owners who expressed dissatisfaction with not being able to subdivide their property and give parcels to descendants, sell them to third parties, or both. Allowing an owner to subdivide property by not applying a prohibition would do him no good, of course, unless the subdivision remained lawful after its transfer to one or more new owners. Existing laws generally allow new owners to perpetuate non-conforming uses that were lawful when instituted, but it is not certain whether all would apply to a decision under Measure 37. See, e.g., ORS 215.130. [non-conforming use statute – footnote omitted] None of the arguments in favor addresses whether subsequent purchasers would acquire the rights, or step into the shoes, of owners covered by the measure. Likewise, no argument directly mentions the effect of laws on property’s resale value, although one argument states that they restrict the use of home equity to fund owners’ retirements. The latter implies an adverse effect on resale value, which might be recognized by discerning voters as a problem that would only be remedied if the exemptions ran with the land. On the other hand, an argument in favor of the measure by the chief petitioners expressly states that if an owner entitled to Measure 37 compensation conveys her property, that will establish a new “date of acquisition” for purposes of determining what laws may give rise to a claim. This is a clear statement that the chief petitioners expected that the relief available under the measure depends on when the current owner acquired the property – that the relief is personal to the current owner. If the current owner is eligible for relief, but sells the*

---

<sup>7</sup> At 196.



*property, then only laws adopted after the new owner acquired the property create a right to relief. (Emphasis added.)*

The opinion, in a footnote to this quoted section, which related to the non-conforming use statute (ORS 215.130), questions whether Measure 37 implementing ordinances, adopted by local governments, can confer non-conforming use status upon transferred properties. The footnote states:

*"This statute [ORS 215.130] allows the continuation of uses that have been made unlawful by a subsequent change in the law. But if a decision to grant non-monetary relief under Measure 37 is personal to the owner, uses covered by an [sic] decision would be made unlawful not by a change in the law but by a change in ownership, which does not come under ORS 215.130. Therefore, voters whose decision to support the measure was motivated by the arguments about subdivision restrictions presumably expected either that a decision to grant non-monetary relief would run with the land or that existing law would not require that a subdivision be undone upon the property's sale. Additional legislation may be needed to implement that intent." (Page 6.) (Emphasis added.)*

This footnote implies that the voter's pamphlet "legislative history" probably includes an intent to perpetuate a legal use of the property upon transfer, but it does not fit into the nonconforming use statute because the trigger is sale, not change in land use laws. This footnote seems to suggest that the nonconforming use statute (ORS 215.130) could be amended by the legislature to add the sale of Measure 37 properties as creating a nonconforming use.

In light of the Attorney General's letter-opinion, the *Parks* case, common land use parlance, the dictionary definitions of "use," and the failure of the Measure to specifically authorize partitions or subdivisions in zones where those actions are prohibited, this Court should interpret Measure 37 to exclude a subdivision or partition of land as a "use" of land.

**B. A “diminished value” relies on an erroneous assumption of transferability.**

Even assuming an owner’s evidence of value is legally sufficient to support a finding in his/her favor, it is erroneously predicated on an assumption that the owner can sell his/her properties with Measure 37 historical rights to use the property intact.

If Measure 37 rights do not transfer with the sale of a property, the property has only the value it will have in the hands of the purchaser with *current* applicable regulations.

**(1) Regulatory Relief is Personal to the Present Owner**

Regulatory relief under ORS 197.352 is personal to the present owner of the property. When the County finds that a claimant meets the standards for relief under ORS 197.352, the County may, in lieu of compensation, waive land use regulations “to allow *the owner* to use the property for a use permitted at the time *the owner* acquired the property.” ORS 197.352 (8) (emphasis added). The statute then defines “owner” as the “present owner of the property.” ORS 197.352 (11)(C). Therefore, the regulatory relief authorized by the statute as an alternative to compensation is personal to the present owner.

This conclusion is consistent with the advice the Oregon Attorney General (“AG”) has given to State agencies. In a letter dated February 24, 2005, to the Director of the Department of Land Conservation and Development, the AG writes that a decision “to ‘not apply’ a law would necessarily be personal to the owner submitting the claim.” The letter cites to and relies on arguments made by the proponents of the statute that were presented in the Voters Pamphlet:

“[A]n argument in favor of the measure by the chief petitioners expressly states that if an owner entitled to Measure 37 compensation conveys her property, that will establish a new ‘date of acquisition’ for purposes of determining what laws may give rise to a claim. This is a clear statement

that the chief petitioners expected that the relief available under the measure depends on when the current owner acquired the property – that the relief is personal to the current owner. If the current owner is eligible for relief, but sells the property, then only laws adopted after the new owner acquired the property create a right for relief.”

Any rights obtained by and owner pursuant to a state waiver or a county waiver are personal to the owner with Measure 37 rights and may not be transferred to subsequent owners. Because a subsequent owner would acquire the property subject to all laws in effect on the date the subsequent owner acquired it, the subsequent owner would not acquire a “buildable lot.”

Property owners who are making Measure 37 claims to Multnomah County are claiming that they are entitled to compensation in some identified amount based on an assertion that they can divide the property into some specific number of “buildable lots.” The core of this claim is the assertion that, absent zoning regulations enacted after date of owner acquisition, the claimant could divide the property into some specified number of “buildable lots.” However, as noted above, any rights obtained pursuant to a claim filed under ORS 197.352 are personal to the claimant and do not transfer with the property. Accordingly, a purchaser of a lot from a Measure 37 owner will acquire the property subject to all laws currently in effect and current laws do not allow new dwellings on the lots in contravention of the current regulations.<sup>8</sup>

Because the lots cannot be sold as residential building sites, they have no real market value for residential use and regulations that prohibit their creation do not reduce the property’s value.

(2) Plaintiff cannot divide land because land division is not a “use”.

---

<sup>8</sup> State and local laws allow new dwellings in commercial forest zones only under very limited circumstances – none of which would apply to the subdivision lots created pursuant to this claim. See e.g. ORS 215.705, 215.720, 215.730, 215.740 and 215.750; Multnomah County Code (“MCC”) 33.2220, 33.2225, 33.2230, 33.2235 and 33.2240.

*See* Section A(3) above. (The Attorney General concludes Measure 37 rights are not transferable.)

If Measure 37 rights do not run with the land, then Plaintiff's property has no enhanced value in the eyes of a potential purchaser and no diminution in value attributable to current regulations.

#### **CONCLUSION:**

Partitioning and subdividing land is not a "use" of land which is subject to the provisions of Measure 37. Development rights gained through a waiver are personal to the claimant and are not transferable to a purchaser of a subdivided parcel. Because the development rights are not transferable, there has been no reduction in the fair market value of the property, which is required for a valid Measure 37 claim. A potential purchaser will only pay the fair market value of the property with land use restrictions in place because those restrictions will apply to the purchaser.



Department of Community Services

**MULTNOMAH COUNTY OREGON**

Land Use and Transportation Program

1600 SE 190th Avenue  
Portland, Oregon 97233-5910  
(503) 988-5050

**MEMORANDUM**

**TO:** Adam Barber, County Land Use Planning  
Ed Abrahamson, County Transportation Planning  
Patrick Hinds, County Program Manager  
Alan Young, County Right of Way Section

**FROM:** *aw*  
Alison Winter  
Transportation Planning Specialist

**DATE:** June 26, 2006

**SUBJECT:** T1-05-062, Richards M37 Claim  
1S 4E 19 AB Tax Lots 100 & 200, 29415 & 29429 SE Powell Valley Rd.  
EP 2006071

Multnomah County Land Use and Transportation Program has reviewed the applicant's demand to pay \$915,000 or not apply County land use regulations to allow a 20-lot subdivision or any other use allowed when a lease was acquired in 1973. The subject property is adjacent to Powell Valley Road and Roork Road, which are County roads with Rural Collector and Rural Local functional classifications, respectively. County Transportation will need more information regarding the proposed land use and development of the site to determine the necessary transportation-related requirements. On and/or off-site improvements, right-of-way dedication, and/or permits for access or construction within the County right-of-way may be required and will be based on the impact of the proposal.

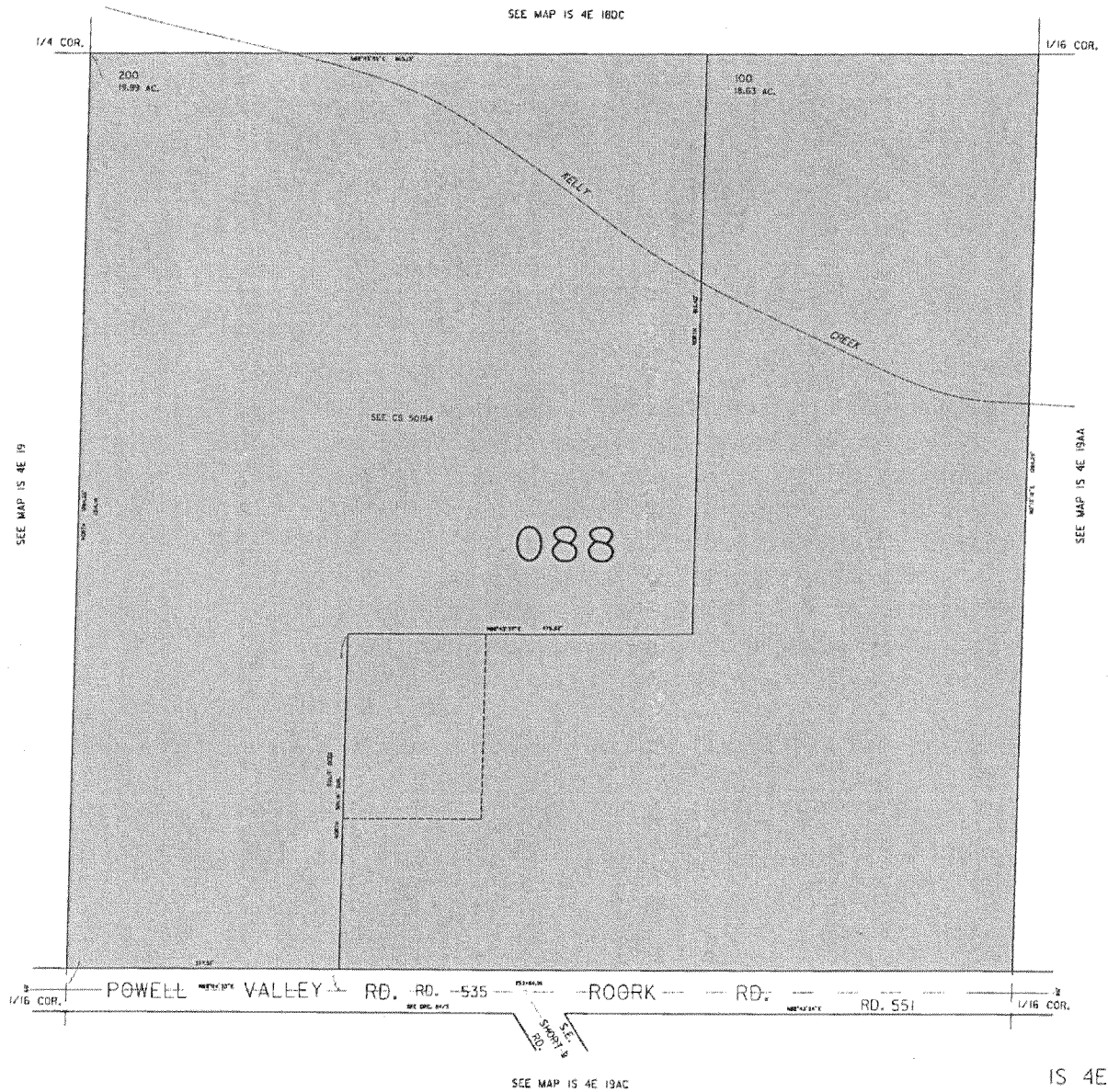
AWCK3174.MEM (TRANR233)

EXHIBIT  
A2

HIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

NW1/4 NE1/4 SEC. 19 T.1S R.4E. W.M.  
MULTNOMAH COUNTY  
1" = 100'

IS 4E



For Board  
Packets  
only

# DRAFT

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

ORDER NO. \_\_\_\_\_

Order Denying Measure 37 Request of Dean Richards and William Richards Relating to Real Property Located at 29415 and 29429 SE Powell Valley Road

### The Multnomah County Board of Commissioners Finds:

- a. **Parties:** Dean Richards and William Richards are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on October 3, 2005.
- b. **Subject Real Property:** This claim relates to real property located on 29415 and 29429 SE Powell Valley Road, Multnomah County, Portland, Oregon more specifically described as:

Section 19 AB, 1 South - 4 East (Tax Lot 200) – 19.99 acres

Section 19 AB, 1 South – 4 East (Tax Lot 100) – 18.63 acres

- c. **Adequacy of Demand for Compensation:**

This claim involves two contiguous properties, one owned by Dean A. Richards (TL 100) and the other by the William Richards (TL 200). The subject properties are zoned Exclusive Farm Use (EFU) with zoning overlays for Significant Environmental Concern (SEC water resources) and Hillside Development (HD). Kelly Creek passes through the northern portion of both properties which are located between SE Powell Valley Road to the north and SE Dodge Park Blvd. to the south. The properties are less than ½ mile east of the City of Gresham limits. Both properties are developed with a residence and appear to be engaged in farming activities according to a recent aerial photo of the area. (See County planning staff report, incorporated herein by this reference.)

Multnomah County Code 27.500 – 27.565 implements Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37 (ORS 197.352). These regulations, in part, provide the framework used to decide whether or not a claim is sufficiently complete, valid and eligible for compensation by either regulatory waiver or monetary compensation. County planning staff followed these guidelines to determine that the necessary contents of a written claim have not been submitted.

This claim was submitted to Multnomah County on October 3, 2005. On October 20, 2005 the County sent the claimant a letter indicating the review would be suspended in light of the October 14, 2005 Marion County ruling in MacPherson v. Department of Administrative Services finding Measure 37 unconstitutional. On February 28, 2006, a letter was sent to the claimant indicating the review would again commence because five days earlier, Oregon's Supreme Court overturned this ruling. On March 10, 2006, County Staff provided a detailed letter to the claimant outlining the outstanding



## DRAFT

information required for a complete claim pursuant to the provisions of MCC 27.500 – 27.565.

The missing information included the \$1,500 processing fee, property appraisals and copies of the 1973 farm lease agreement and trust documents referenced in the claim's narrative. The details of the lease and trust documents are critical to the determination of property ownership interests.

By May 3, 2006 the required information for a complete claim had not been submitted. A letter was mailed on that date to the claimant indicating that the county could either process the claim as an invalid claim, or put the claim on hold in order to see how the land division issue is resolved by the courts. The planning staff received no response to the May 3, 2006 request and prepared a staff report for the Board of County Commissioners.

The Board finds that the materials submitted by the claimant do not constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.520.

d. **Relevant Dates of Property Ownership:**

The claimants have submitted a Measure 37 request to divide two properties into a 20 lot subdivision, or have the county pay \$915,000 in compensation. The claimants state that William Richards has held an ownership in both tax lots through a farming lease since 1973 when zoning regulations would have allowed a 20 lot subdivision.

Zoning was first applied to the properties in 1962 with the adoption of Suburban Residential (SR) zoning regulations. The zoning was changed from SR to Multiple Use Agriculture-20 (MUA-20) on October 6, 1977 and from MUA-20 to Exclusive Farm Use (EFU) in 1980.

Adoption of MUA-20 zoning regulations in 1977 required new lots created in the district, by a subdivision for example, to be at least 20-acres in size. This minimum lot size requirement would have prevented the subdivision request outlined in this claim. In 1980, the minimum lot size was increased to 38-acres for all new properties. Currently, the EFU zoning district requires all newly created properties from a land division to be at least 80-acres in size (MCC 36.2660(C)).

***Ownership History of Tax Lot 200 (29415 SE Powell Valley Road)***

Property totaling 38.62 acres, referenced today as Tax Lot 100 and 200, was originally acquired by Eugene and Dean Richards from the Inland Feeding Company, Inc. on August 31, 1944 for farm purposes (Book 867 Page 173). In 1973, Eugene and Dean Richards leased thirty-five (35) of the 38.62 acres to their son William Richards according to the claimant. This arrangement could not be verified by the county planning staff because a copy of the lease agreement was not submitted with the claim and could not be obtained from county records.

## DRAFT

Ownership of Tax Lot 200 was transferred from Eugene and Dean Richards to William Richards in 1978 with the recording of a bargain and sale deed (Book 1272, Page 842). Subsequent deeds were recorded in 1981 and 1998 which appear to release Mr. Richard's spouse's interest in the property after marriages were dissolved. These deeds did not impact Mr. Richard's ownership of Tax Lot 200.

A lease for farming purposes cannot be used to claim a right to other uses allowed at the time (e.g. a dwelling) because the leaseholder's interest in the land did not extend to those uses. County knowledge of the nature of the lease is limited to the claimant's narrative description which asserted that it was drafted in 1973 for farming purposes. Staff requested a copy of this lease agreement in a May 10, 2005 letter and expected that the lease document would specifically describe the use or uses subject to the agreement. Deed records show that William Richards did not obtain a fee interest in the property for the type of development envisioned until 1978, after the MUA-20 zoning was adopted prohibiting further subdivision.

### ***Ownership History of Tax Lot 100 (29429 SE Powell Valley Road)***

Although Dean Richards has owned 18.63 acre Tax Lot 100 since 1944, ownership of this lot was transferred to a trust on December 27, 1994 and then back to Dean A. Richards, the individual on June 7, 2005. The nature of the trust arrangement is important because transfer of land to an irrevocable trust would constitute a transfer of ownership because the trustee holds legal title to the property and the settler retains no rights over the property. Staff requested a copy of the trust documents in a letter sent May 10, 2005 in order to determine if a change in ownership had occurred. A copy of that document was not provided by the claimants and was not able to be located by the county recorder's office.

Transfer of Tax Lot 100 to an irrevocable trust would effectively reset the date of acquisition of Tax Lot 100 to the time the land was put in the trust's name (i.e. 1994). On the other hand, if the land were put into a revocable trust, a change in ownership would not have likely occurred because the transfer could be reversed by the individual controlling the trust. Even if the trust was set up as a revocable trust, the claim is for both properties rather than just Tax Lot 100.

The claimants have not established that both properties involved in this claim were acquired before the restrictive Multiple Use Agriculture-20 zoning regulations were first applied in 1977.

The Boards finds that the claimants have failed to establish that they acquired the properties prior to the date the challenged regulations first prevented subdivision of the properties in 1977.

### **e. County Codes as a Restriction on Use of the Property:**

Zoning was first applied to the properties in 1962 with the adoption of Suburban Residential (SR) zoning regulations. The zoning was changed from SR to Multiple Use Agriculture-20 (MUA-20) on October 6<sup>th</sup>, 1977 and from MUA-20 to Exclusive Farm

## DRAFT

Use (EFU) in 1980. The claimants have indicated William Richards has held an interest in both properties since 1973 when the SR zoning regulations were in effect. Deed records show William Richards did not obtain a fee interest in Tax Lot 200 until 1978 when a subdivision of land could not have been approved under the Multiple Use Agriculture-20 zoning regulations. As a result, there has been no restriction in use for the claimant.

Even if a subdivision were permissible, a division of a property is not a 'use' of land subject to the provisions of Measure 37 and development rights gained through a waiver are personal to the claimant and will result in no restriction in use if transferred to a third party. No restriction in use would occur because the newly purchased subdivision lots would be subject to the current Exclusive Farm Use regulations preventing a dwelling from being built.

This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy, which has been attached to the staff report as Exhibit A1. For the reasons outlined in this legal memorandum, the Board finds this request to subdivide the property is not a valid request under Measure 37.

f. **County Code Restrictions Reduce Fair Market Value:**

A reduction in value has not occurred because land use regulations would have prevented the subdivision in 1978 when William Richards first obtained fee interest in Tax Lot 200 and because development rights for each subdivision lot would not transfer to the new owners of those lots. Measure 37 rights are personal to the claimant and are of no value to a third party. For instance, the current Exclusive Farm Use zoning regulations would be applied once a newly created subdivision lot is sold to a third party. These regulations would prohibit the establishment of a dwelling on each subdivision lot rendering it an unbuildable lot. Because the resulting lots would have no development value, no reduction in value will occur as compared to the current development value of each property under the current zoning regulations.

g. **Public Notice**

This action is before the Board under MCC 27.530(N), which authorizes the Planning Director to determine whether a claim is complete and allows the Director to recommend to the Board that the claim be denied if it is invalid on its face. Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The claimant and persons who own land within 750 feet of the subject property received notice by mail.

h. **Validity of Claim for Compensation:** The Board finds that:

(1) The claim materials submitted by the claimants do not constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.520.

(2) The claimants failed to establish that they acquired the properties prior to the date the challenged regulations first prevented subdivision of the properties in 1977.

**DRAFT**

(3) There has been no restriction in use because land use regulations in place at the time of acquisition of Tax Lot 200 would have prevented a subdivision.

(4) Subdividing property is not a "use" subject to the provisions of Measure 37 and that, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

**The Multnomah County Board of Commissioners Orders:**

**Claimants, Dean Richards' and William Richards' request is denied.**

ADOPTED this 10th day of August, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
Sandra Duffy, Assistant County Attorney

## Script for Dean Richards and William Richards Measure 37 Hearing

### INTRODUCTION:

**Chair:** This is the time set for public hearing on the claim of **JAMES AND ELIZABETH MCGREW** under Ballot Measure 37. I am Diane Linn, Chair of the Multnomah County Board of Commissioners. Also in attendance are Commissioners \_\_\_\_\_ [name each Commissioner].

All information relevant to the claim may be submitted and will be considered in this hearing. The evidence may be in any form including oral and written testimony, letters, petitions or other written material, slides, photographs, maps drawings or other items.

The Commission will base its decision on the evidence presented, along with the information on the claim in the Planning file. The Board decision will be by Order adopted by the Board.

### DISCLOSURES:

**Chair:** Board members are required to disclose the content of any *ex parte* contacts. Any Board member who has received any factual information obtained outside the information provided by the county planning staff or this hearing is an *ex parte* contact. A visit to the property is considered an *ex parte* contact. Any *ex parte* contacts should be disclosed at this time. Such disclosures should include the time and date of the visit, what he/she observed, who (if anyone) the Commissioner talked to at the site and any other relevant facts or observations obtained as a result of the site visit.

**Chair:** I have *no ex parte* contacts to disclose.

*or if the Chair has disclosures to make*

I have the following disclosures to make: \_\_\_\_\_

**Chair:** [Invite the other Commissioners to make any necessary disclosures.)  
Commissioner Rojo de Steffey? Commissioner Naito? Commissioner Cruz?  
Commissioner Roberts? [If there are none, each Commissioner should say "none" on the record.]

[If there are disclosures of *ex parte* contacts, the claimant and the public should be given an opportunity to rebut the substance of any disclosure. "Does anyone have any rebuttal testimony relating to any disclosure?"]

**Chair:** Board members are also required to disclose any conflicts of interest and to recuse themselves from deliberation and voting if a conflict exists. It is deemed a conflict of interest if any Board member, or a member of his/her immediate family or household, has a financial interest in the outcome of a matter before the Board. It is a conflict of interest if a Board member lives within the geographical area entitled to notice of a claim.

## **Script for Dean Richards and William Richards Measure 37 Hearing**

**Chair:** Does any Board member, or a member of his/her immediate family or household, have a financial interest in the outcome of matter now before us?

I do [do not] have a financial interest in the outcome of this matter. [Invite other commissioners to make any necessary disclosures.] Rojo de Steffey? Naito? Cruz? Roberts? [If yes, that person must recuse himself/herself on the record.]

Does any Board member live within the geographical area entitled to notice of claim?

I do [do not] live within the geographical area. Rojo de Steffey? Naito? Cruz? Roberts?

[Any commissioner who lives within the relevant geographical area must recuse himself/herself. MCC 7.540]

### **CONDUCT OF THE HEARING:**

**Chair:** I will ask for testimony and other evidence in the following order:

1. Staff report
2. Claimant or claimant's representative
3. Others who wish to be heard on the claim
4. Commission discussion, questions, deliberation
5. Future scheduling if necessary

### **HOW TO PRESENT TESTIMONY:**

**Chair:** There are testimony cards at the back of the room and should be filled out by anyone wishing to testify. The claimant need not fill out a card. The cards should be given to the Board Clerk.

1. State your name and address before you begin your presentation
2. Avoid repetitive testimony
3. During the hearing, I ask those in the audience to refrain from any demonstration in support or opposition to the claim.

**Chair:** [Ask for testimony in the order listed above]

### **AT THE CONCLUSION OF THE TESTIMONY:**

**Chair:** [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDER NO. \_\_\_\_\_

ORDER TO NOT APPLY LAND USE REGULATIONS TO 29415 and 29429 SE Powell Valley Road UNDER BALLOT MEASURE 37

**The Multnomah County Board of Commissioners Finds:**

a. **Parties:** Dean Richards and William Richards are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on October 3, 2005.

b. **Subject Real Property:** This claim relates to real property located on 29415 and 29429 SE Powell Valley Road, Multnomah County, Portland, Oregon more specifically described as:

Section 19 AB, 1 South - 4 East (Tax Lot 200) – 19.99 acres  
Section 19 AB, 1 South – 4 East (Tax Lot 100) – 18.63 acres

c. **Adequacy of Demand for Compensation:**

This claim involves two contiguous properties, one owned by Dean A. Richards (TL 100) and the other by the William Richards (TL 200). The subject properties are zoned Exclusive Farm Use (EFU) with zoning overlays for Significant Environmental Concern (SEC water resources) and Hillside Development (HD). Kelly Creek passes through the northern portion of both properties which are located between SE Powell Valley Road to the north and SE Dodge Park Blvd. to the south. The properties are less than ½ mile east of the City of Gresham limits. Both properties are developed with a residence and appear to be engaged in farming activities according to a recent aerial photo of the area. (See County planning staff report, incorporated herein by this reference.)

Multnomah County Code 27.500 – 27.565 implements Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37 (ORS 197.352). These regulations, in part, provide the framework used to decide whether or not a claim is sufficiently complete, valid and eligible for compensation by either regulatory waiver or monetary compensation. County planning staff followed these guidelines to determine that the necessary contents of a written claim have not been submitted.

This claim was submitted to Multnomah County on October 3<sup>rd</sup>, 2005. On October 20<sup>th</sup>, the county sent the claimant a letter indicating the review would be suspended in light of the October 14<sup>th</sup> Marion County ruling in MacPherson v. Department of Administrative Services finding Measure 37 unconstitutional. On February 28<sup>th</sup>, 2006, a letter was sent to the claimant indicating the review would again commence because five days earlier, Oregon's Supreme Court overturned this ruling. On March 10<sup>th</sup>, County Staff provided a detailed letter to the claimant

outlining the outstanding information required for a complete claim pursuant to the provisions of MCC 27.500 – 27.565.

The missing information included the \$1,500 processing fee, property appraisals and copies of the 1973 farm lease agreement and trust documents referenced in the claim's narrative. The details of the lease and trust documents are critical to the determination of property ownership interests.

By May 3<sup>rd</sup>, 2006 the required information for a complete claim had not been submitted. A letter was mailed on that date to the claimant indicating that the county could either process the claim as an invalid claim, or put the claim on hold in order to see how the land division issue is resolved by the courts. The planning staff received no response to the May 3<sup>rd</sup> request and prepared a staff report for the Board of County Commissioners.

The Board finds that the materials submitted by the claimant do not constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.520.

**d. Relevant Dates of Property Ownership:**

The claimants have submitted a Measure 37 request to divide two properties into a 40 lot subdivision, or have the county pay \$1,830,000 in compensation. The claimants state that William Richards has held an ownership in both tax lots through a farming lease since 1973 when zoning regulations would have allowed a 40 lot subdivision.

Zoning was first applied to the properties in 1962 with the adoption of Suburban Residential (SR) zoning regulations. The zoning was changed from SR to Multiple Use Agriculture-20 (MUA-20) on October 6<sup>th</sup>, 1977 and from MUA-20 to Exclusive Farm Use (EFU) in 1980.

Adoption of MUA-20 zoning regulations in 1977 required new lots created in the district, by a subdivision for example, to be at least 20-acres in size. This minimum lot size requirement would have prevented the subdivision request outlined in this claim. In 1980, the minimum lot size was increased to 38-acres for all new properties. Currently, the EFU zoning district requires all newly created properties from a land division to be at least 80-acres in size (MCC 36.2660(C)).

*Ownership History of Tax Lot 200 (29415 SE Powell Valley Road)*

Property totaling 38.62 acres, referenced today as Tax Lot 100 and 200, was originally acquired by Eugene and Dean Richards from the Inland Feeding Company, Inc. on August 31, 1944 for farm purposes (Book 867 Page 173). In 1973, Eugene and Dean Richards leased thirty-five (35) of the 38.62 acres to their son William Richards according to the claimant. This arrangement could not be verified by the county planning staff because a copy of the lease agreement was not submitted with the claim and could not be obtained from county records.

Ownership of Tax Lot 200 was transferred from Eugene and Dean Richards to William Richards in 1978 with the recording of a bargain and sale deed (Book 1272, Page 842). Subsequent deeds were recorded in 1981 and 1998 which appear to release Mr. Richard's spouse's interest in the



property after marriages were dissolved. These deeds did not impact Mr. Richard's ownership of Tax Lot 200.

A lease for farming purposes cannot be used to claim a right to other uses allowed at the time (e.g. a dwelling) because the leaseholder's interest in the land did not extend to those uses. County knowledge of the nature of the lease is limited to the claimant's narrative description which asserted that it was drafted in 1973 for farming purposes. Staff requested a copy of this lease agreement in a May 10<sup>th</sup>, 2005 letter and expected that the lease document would specifically describe the use or uses subject to the agreement. Deed records show that William Richards did not obtain a fee interest in the property for the type of development envisioned until 1978, after the MUA-20 zoning was adopted prohibiting further subdivision.

*Ownership History of Tax Lot 100 (29429 SE Powell Valley Road)*

Although Dean Richards has owned 18.63 acre Tax Lot 100 since 1944, ownership of this lot was transferred to a trust on December 27<sup>th</sup>, 1994 and then back to Dean A. Richards, the individual on June 7<sup>th</sup>, 2005. The nature of the trust arrangement is important because transfer of land to an irrevocable trust would constitute a transfer of ownership because the trustee holds legal title to the property and the settler retains no rights over the property. Staff requested a copy of the trust documents in a letter sent May 10<sup>th</sup>, 2005 in order to determine if a change in ownership had occurred. A copy of that document was not provided by the claimants and was not able to be located by the county recorder's office.

Transfer of Tax Lot 100 to an irrevocable trust would effectively reset the date of acquisition of Tax Lot 100 to the time the land was put in the trust's name (i.e. 1994). On the other hand, if the land were put into a revocable trust, a change in ownership would not have likely occurred because the transfer could be reversed by the individual controlling the trust. Even if the trust was set up as a revocable trust, the claim is for both properties rather than just Tax Lot 100.

The claimants have not established that both properties involved in this claim were acquired before the restrictive Multiple Use Agriculture-20 zoning regulations were first applied in 1977.

The Boards finds that the claimants have failed to establish that they acquired the properties prior to the date the challenged regulations first prevented subdivision of the properties in 1977.

**e. County Codes as a Restriction on Use of the Property:**

Zoning was first applied to the properties in 1962 with the adoption of Suburban Residential (SR) zoning regulations. The zoning was changed from SR to Multiple Use Agriculture-20 (MUA-20) on October 6<sup>th</sup>, 1977 and from MUA-20 to Exclusive Farm Use (EFU) in 1980. The claimants have indicated William Richards has held an interest in both properties since 1973 when the SR zoning regulations were in effect. Deed records show William Richards did not obtain a fee interest in Tax Lot 200 until 1978 when a subdivision of land could not have been approved under the Multiple Use Agriculture-20 zoning regulations. As a result, there has been no restriction in use for the claimant.

Even if a subdivision were permissible, a division of a property is not a 'use' of land subject to the provisions of Measure 37 and development rights gained through a waiver are personal to the claimant and will result in no restriction in use if transferred to a third party. No restriction in use would occur because the newly purchased subdivision lots would be subject to the current Exclusive Farm Use regulations preventing a dwelling from being built.

This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy, which has been attached to the staff report as Exhibit A1. For the reasons outlined in this legal memorandum, the Board finds this request to subdivide the property is not a valid request under Measure 37.

**f. County Code Restrictions Reduce Fair Market Value:**

A reduction in value has not occurred because land use regulations would have prevented the subdivision in 1978 when William Richards first obtained fee interest in Tax Lot 200 and because development rights for each subdivision lot would not transfer to the new owners of those lots. Measure 37 rights are personal to the claimant and are of no value to a third party. For instance, the current Exclusive Farm Use zoning regulations would be applied once a newly created subdivision lot is sold to a third party. These regulations would prohibit the establishment of a dwelling on each subdivision lot rendering it an unbuildable lot. Because the resulting lots would have no development value, no reduction in value will occur as compared to the current development value of each property under the current zoning regulations.

**g. Public Notice**

This action is before the Board under MCC 27.530(N), which authorizes the Planning Director to determine whether a claim is complete and allows the Director to recommend to the Board that the claim be denied if it is invalid on its face. Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The claimant and persons who own land within 750 feet of the subject property received notice by mail.

**h. Validity of Claim for Compensation:** The Board finds that:

- (1) The claim materials submitted by the claimants do not constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.520.
- (2) The claimants failed to establish that they acquired the properties prior to the date the challenged regulations first prevented subdivision of the properties in 1977.
- (3) There has been no restriction in use because land use regulations in place at the time of acquisition of Tax Lot 200 would have prevented a subdivision.
- (4) Subdividing property is not a "use" subject to the provisions of Measure 37 and that, in any event, development rights gained through a waiver are personal to the claimant

and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

**The Multnomah County Board of Commissioners Orders:**

**Claimants, Dean Richards' and William Richards', request is denied.**

ADOPTED this \_\_\_\_ day of \_\_\_\_, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

---

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
Sandra Duffy, Assistant County Attorney

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**ORDER NO. 06-144**

Order Denying Measure 37 Request of Dean Richards and William Richards Relating to Real Property Located at 29415 and 29429 SE Powell Valley Road

**The Multnomah County Board of Commissioners Finds:**

- a. **Parties:** Dean Richards and William Richards are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on October 3, 2005.
- b. **Subject Real Property:** This claim relates to real property located on 29415 and 29429 SE Powell Valley Road, Multnomah County, Portland, Oregon more specifically described as:

Section 19 AB, 1 South - 4 East (Tax Lot 200) – 19.99 acres

Section 19 AB, 1 South – 4 East (Tax Lot 100) – 18.63 acres

- c. **Adequacy of Demand for Compensation:**  
This claim involves two contiguous properties, one owned by Dean A. Richards (TL 100) and the other by the William Richards (TL 200). The subject properties are zoned Exclusive Farm Use (EFU) with zoning overlays for Significant Environmental Concern (SEC water resources) and Hillside Development (HD). Kelly Creek passes through the northern portion of both properties which are located between SE Powell Valley Road to the north and SE Dodge Park Blvd. to the south. The properties are less than ½ mile east of the City of Gresham limits. Both properties are developed with a residence and appear to be engaged in farming activities according to a recent aerial photo of the area. (See County planning staff report, incorporated herein by this reference.)

Multnomah County Code 27.500 – 27.565 implements Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37 (ORS 197.352). These regulations, in part, provide the framework used to decide whether or not a claim is sufficiently complete, valid and eligible for compensation by either regulatory waiver or monetary compensation. County planning staff followed these guidelines to determine that the necessary contents of a written claim have not been submitted.

This claim was submitted to Multnomah County on October 3, 2005. On October 20th, the county sent the claimant a letter indicating the review would be suspended in light of the October 14th Marion County ruling in MacPherson v. Department of Administrative Services finding Measure 37 unconstitutional. On February 28, 2006, a letter was sent to the claimant indicating the review would again commence because five days earlier, Oregon's Supreme Court overturned this ruling. On March 10th, County Staff provided a detailed letter to the claimant outlining the outstanding information required for a complete claim pursuant to the provisions of MCC 27.500 – 27.565.

The missing information included the \$1,500 processing fee, property appraisals and copies of the 1973 farm lease agreement and trust documents referenced in the claim's narrative. The details of the lease and trust documents are critical to the determination of property ownership interests.

By May 3, 2006 the required information for a complete claim had not been submitted. A letter was mailed on that date to the claimant indicating that the county could either process the claim as an invalid claim, or put the claim on hold in order to see how the land division issue is resolved by the courts. The planning staff received no response to the May 3rd request and prepared a staff report for the Board of County Commissioners.

The Board finds that the materials submitted by the claimant do not constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.520.

d. **Relevant Dates of Property Ownership:**

The claimants have submitted a Measure 37 request to divide two properties into a 40 lot subdivision, or have the county pay \$1,830,000 in compensation. The claimants state that William Richards has held an ownership in both tax lots through a farming lease since 1973 when zoning regulations would have allowed a 40 lot subdivision.

Zoning was first applied to the properties in 1962 with the adoption of Suburban Residential (SR) zoning regulations. The zoning was changed from SR to Multiple Use Agriculture-20 (MUA-20) on October 6, 1977 and from MUA-20 to Exclusive Farm Use (EFU) in 1980.

Adoption of MUA-20 zoning regulations in 1977 required new lots created in the district, by a subdivision for example, to be at least 20-acres in size. This minimum lot size requirement would have prevented the subdivision request outlined in this claim. In 1980, the minimum lot size was increased to 38-acres for all new properties. Currently, the EFU zoning district requires all newly created properties from a land division to be at least 80-acres in size (MCC 36.2660(C)).

*Ownership History of Tax Lot 200 (29415 SE Powell Valley Road)*

Property totaling 38.62 acres, referenced today as Tax Lot 100 and 200, was originally acquired by Eugene and Dean Richards from the Inland Feeding Company, Inc. on August 31, 1944 for farm purposes (Book 867 Page 173). In 1973, Eugene and Dean Richards leased thirty-five (35) of the 38.62 acres to their son William Richards according to the claimant. This arrangement could not be verified by the county planning staff because a copy of the lease agreement was not submitted with the claim and could not be obtained from county records.

Ownership of Tax Lot 200 was transferred from Eugene and Dean Richards to William Richards in 1978 with the recording of a bargain and sale deed (Book 1272, Page 842). Subsequent deeds were recorded in 1981 and 1998 which appear to release Mr. Richard's

spouse's interest in the property after marriages were dissolved. These deeds did not impact Mr. Richard's ownership of Tax Lot 200.

A lease for farming purposes cannot be used to claim a right to other uses allowed at the time (e.g. a dwelling) because the leaseholder's interest in the land did not extend to those uses. County knowledge of the nature of the lease is limited to the claimant's narrative description which asserted that it was drafted in 1973 for farming purposes. Staff requested a copy of this lease agreement in a May 10, 2005 letter and expected that the lease document would specifically describe the use or uses subject to the agreement. Deed records show that William Richards did not obtain a fee interest in the property for the type of development envisioned until 1978, after the MUA-20 zoning was adopted prohibiting further subdivision.

*Ownership History of Tax Lot 100 (29429 SE Powell Valley Road)*

Although Dean Richards has owned 18.63 acre Tax Lot 100 since 1944, ownership of this lot was transferred to a trust on December 27, 1994 and then back to Dean A. Richards, the individual on June 7, 2005. The nature of the trust arrangement is important because transfer of land to an irrevocable trust would constitute a transfer of ownership because the trustee holds legal title to the property and the settler retains no rights over the property. Staff requested a copy of the trust documents in a letter sent May 10, 2005 in order to determine if a change in ownership had occurred. A copy of that document was not provided by the claimants and was not able to be located by the county recorder's office.

Transfer of Tax Lot 100 to an irrevocable trust would effectively reset the date of acquisition of Tax Lot 100 to the time the land was put in the trust's name (i.e. 1994). On the other hand, if the land were put into a revocable trust, a change in ownership would not have likely occurred because the transfer could be reversed by the individual controlling the trust. Even if the trust was set up as a revocable trust, the claim is for both properties rather than just Tax Lot 100.

The claimants have not established that both properties involved in this claim were acquired before the restrictive Multiple Use Agriculture-20 zoning regulations were first applied in 1977.

The Boards finds that the claimants have failed to establish that they acquired the properties prior to the date the challenged regulations first prevented subdivision of the properties in 1977.

**e. County Codes as a Restriction on Use of the Property:**

Zoning was first applied to the properties in 1962 with the adoption of Suburban Residential (SR) zoning regulations. The zoning was changed from SR to Multiple Use Agriculture-20 (MUA-20) on October 6, 1977 and from MUA-20 to Exclusive Farm Use (EFU) in 1980. The claimants have indicated William Richards has held an interest in both properties since 1973 when the SR zoning regulations were in effect. Deed records show William Richards did not obtain a fee interest in Tax Lot 200 until 1978 when a

subdivision of land could not have been approved under the Multiple Use Agriculture-20 zoning regulations. As a result, there has been no restriction in use for the claimant.

Even if a subdivision were permissible, a division of a property is not a 'use' of land subject to the provisions of Measure 37 and development rights gained through a waiver are personal to the claimant and will result in no restriction in use if transferred to a third party. No restriction in use would occur because the newly purchased subdivision lots would be subject to the current Exclusive Farm Use regulations preventing a dwelling from being built.

This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy, which has been attached to the staff report as Exhibit A1. For the reasons outlined in this legal memorandum, the Board finds this request to subdivide the property is not a valid request under Measure 37.

f. **County Code Restrictions Reduce Fair Market Value:**

A reduction in value has not occurred because land use regulations would have prevented the subdivision in 1978 when William Richards first obtained fee interest in Tax Lot 200 and because development rights for each subdivision lot would not transfer to the new owners of those lots. Measure 37 rights are personal to the claimant and are of no value to a third party. For instance, the current Exclusive Farm Use zoning regulations would be applied once a newly created subdivision lot is sold to a third party. These regulations would prohibit the establishment of a dwelling on each subdivision lot rendering it an unbuildable lot. Because the resulting lots would have no development value, no reduction in value will occur as compared to the current development value of each property under the current zoning regulations.

g. **Public Notice**

This action is before the Board under MCC 27.530(N), which authorizes the Planning Director to determine whether a claim is complete and allows the Director to recommend to the Board that the claim be denied if it is invalid on its face. Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The claimant and persons who own land within 750 feet of the subject property received notice by mail.

h. **Validity of Claim for Compensation:** The Board finds that:

(1) The claim materials submitted by the claimants do not constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.520.

(2) The claimants failed to establish that they acquired the properties prior to the date the challenged regulations first prevented subdivision of the properties in 1977.

(3) There has been no restriction in use because land use regulations in place at the time of acquisition of Tax Lot 200 would have prevented a subdivision.

(4) Subdividing property is not a "use" subject to the provisions of Measure 37 and that, in any event, development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

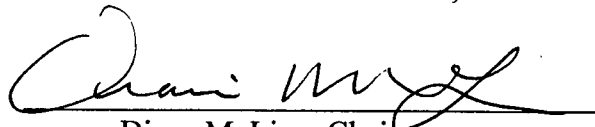
**The Multnomah County Board of Commissioners Orders:**

**Claimants, Dean Richards' and William Richards' request is denied.**

ADOPTED this 10th day of August, 2006.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
Sandra Duffy, Assistant County Attorney