



# MULTNOMAH COUNTY, OREGON

## BOARD OF COMMISSIONERS

### Beverly Stein, Chair

1120 SW Fifth Avenue, Suite 1515  
Portland, Or 97204-1914  
Phone: (503) 248-3308 FAX (503) 248-3093  
Email: mult.chair@co.multnomah.or.us

### Diane Linn, Commission Dist. 1

1120 SW Fifth Avenue, Suite 1500  
Portland, Or 97204-1914  
Phone: (503) 248-5220 FAX (503) 248-5440  
Email: diane.m.linn@co.multnomah.or.us

### Serena Cruz, Commission Dist. 2

1120 SW Fifth Avenue, Suite 1500  
Portland, Or 97204-1914  
Phone: (503) 248-5219 FAX (503) 248-5440  
Email: serena.m.cruz@co.multnomah.or.us

### Lisa Naito, Commission Dist. 3

1120 SW Fifth Avenue, Suite 1500  
Portland, Or 97204-1914  
Phone: (503) 248-5217 FAX (503) 248-5262  
Email: lisa.h.naito@co.multnomah.or.us

### Sharron Kelley, Commission Dist. 4

1120 SW Fifth Avenue, Suite 1500  
Portland, Or 97204-1914  
Phone: (503) 248-5213 FAX (503) 248-5262  
Email: sharron.e.kelley@co.multnomah.or.us

### ANY QUESTIONS? CALL BOARD CLERK DEB BOGSTAD @ 248-3277

Email: deborah.l.bogstad@co.multnomah.or.us

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

## JULY 20 & 22, 1999 BOARD MEETINGS

### FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	9:00 a.m. Tuesday Briefing: Mixed Use Development Review Board
Pg 2	9:45 a.m. Tuesday Briefing: Regional Coordination Opportunities for Endangered Species Act Listings
Pg 3	9:35 a.m. Thursday Ordinance Exempting Motor Vehicle Rental Tax
Pg 3	9:50 a.m. Thursday Vacation of SW Pomona and SW Moapa
Pg 3	10:05 a.m. Thursday E 1-99 Land Use Appeal Hearing
★	The August 26 & September 2, 1999 Board Meetings are Cancelled
★	Check the County Web Site: <a href="http://www.co.multnomah.or.us/">http://www.co.multnomah.or.us/</a>

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, 10:00 PM, Channel 30  
Sunday, 1:00 PM, Channel 30

Produced through Multnomah Community Television

Tuesday, July 20, 1999 - 9:00 AM  
Multnomah County Courthouse, Boardroom 602  
1021 SW Fourth Avenue, Portland

## **BOARD BRIEFINGS**

- B-1 Mixed Use Development Review Board Proposal for Composition and Procedures. Presented by Larry Nicholas, Dave Boyer and Bob Oberst. 45 MINUTES REQUESTED.
- B-2 Regional Coordination Opportunities for ESA Listings of Steelhead, Chinook, and Chum Salmon. Presented by Larry Nicholas and Donna Hempstead. 90 MINUTES REQUESTED
- 

Thursday, July 22, 1999 - 9:30 AM  
Multnomah County Courthouse, Boardroom 602  
1021 SW Fourth Avenue, Portland

## **REGULAR MEETING**

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

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

- C-1 Renewal of Intergovernmental Agreement 0010049 with Oregon Health Sciences University to Purchase Mental Health Consultation Services for Children/Adolescents and Involuntary Commitment Services

#### **DEPARTMENT OF HEALTH**

- C-2 Renewal of Intergovernmental Agreement 0010320 with Oregon Health Sciences University Providing After Hours Patient Information and Triage Telephone Service through the Nurse Consult Program

#### **NON-DEPARTMENTAL**

- C-3 Budget Modification CCFC 2000-01 Increasing the CCFC Pass Through and Indirect Budget by \$50,000 to Accept the Total \$150,000 Grant from Legacy Health System, of which \$100,000 was Included in the Adopted Budget, which is to be Used for the CCFC Early Childhood Collaborative Initiative

## **PUBLIC CONTRACT REVIEW BOARD**

- C-4 ORDER Authorizing an Exemption to Specify the At-a-Glance/Franklin Covey Brand Name for the Purchase of Time Management Products
- C-5 ORDER Exempting from the Competitive Bid Process the Selection of Seating Contractor(s) through the Request for Proposal Process

## **REGULAR AGENDA**

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

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

### **NON-DEPARTMENTAL - 9:30 AM**

- R-2 Budget Modification HD 01 Transferring \$53,738 from General Fund Contingency and Adding a .5 FTE Health Services Specialist to the Health Department Budget to Assist the U.S. Census Bureau with the 2000 Census Count in Multnomah County
- R-3 First Reading of a Proposed ORDINANCE Amending MCC 11.300 and 11.305 to Exempt Car Sharing Programs from the Motor Vehicle Rental Tax

### **DEPARTMENT OF ENVIRONMENTAL SERVICES - 9:50 AM**

- R-4 RESOLUTION Vacating a Portion of SW Pomona Street and SW Moapa Avenue Pursuant to ORS 368.326
- R-5 De Novo Hearing on Appeal of Hearings Officer Decision Denying E 1-99 Regarding Request for Retroactive Exception to the Secondary Fire and Safety Zones and Forest Practices Setbacks for an Illegal Structure on Property Located on NW Skyline Boulevard. Presented by Tricia Sears and Deniece Won. TESTIMONY LIMITED TO 20 MINUTES PER SIDE. 1 HOUR REQUESTED.

### **COMMISSIONER COMMENT/LEGISLATIVE ISSUES - 10:50 AM**

- R-6 Opportunity (as Time Allows) for Commissioners to Comment on Non-Agenda Items or to Discuss Legislative Issues.



## Beverly Stein, Multnomah County Chair

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

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

### MEMORANDUM

TO: Commissioner Diane Linn  
Commissioner Serena Cruz  
Commissioner Lisa Naito  
Commissioner Sharron Kelley  
Office of the Board Clerk

FROM: R. Lynn Martin

DATE: June 24, 1999

RE: Beverly's Absence Board/Briefing meetings

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Chair Stein will be away from the scheduled Board/Briefing meetings on these days:

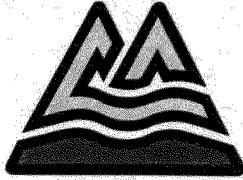
July 22  
August 31-September 2  
September 9  
September 25-October 2

If these dates should change, and they may, I will notify you.

cc: Chair's Staff

BOARD OF  
COUNTY COMMISSIONERS  
99 JUN 24 PM 1:57  
MULTNOMAH COUNTY  
OREGON





LISA H. NAITO  
Multnomah County Commissioner, District 3  
1120 SW Fifth Avenue, Suite 1500  
Portland, Oregon 97204-1914  
Phone (503) 248-5217 Fax (503) 248-5262

## MULTNOMAH COUNTY OREGON

### MEMORANDUM

TO: Chair Beverly Stein  
Commissioner Diane Linn  
Commissioner Serena Cruz  
Commissioner Sharron Kelley  
Board Clerk Deb Bogstad

FROM: Charlotte Comito  
Staff to Commissioner Lisa Naito

DATE: July 7, 1999, 1999

RE: Board absence

BOARD OF  
COUNTY COMMISSIONERS  
99 JUL 7 PM 5:26  
MULTNOMAH COUNTY  
OREGON

Commissioner Naito will be on vacation the week of July 19<sup>th</sup> and will be absent for the BCC briefing on July 20<sup>th</sup> and Board meeting on July 22<sup>nd</sup>.

MEETING DATE: JUL 22 1999

AGENDA NO: C-1

ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use Only)

**AGENDA PLACEMENT FORM**

**SUBJECT:** Intergovernmental expenditure agreement for \$89,760, with Oregon Health Science University purchasing mental health psychiatric consultation services for children/adolescents and involuntary commitment services

**BOARD BRIEFING**

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

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

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

**REGULAR MEETING**

Date Requested: Next Available

Amount of Time Needed: Consent

**DEPARTMENT:** Community and Family Services

**DIVISION:** Behavioral Health

**CONTACT:** Lorenzo Poe/Gloria Wang

**TELEPHONE:** 248-3691

**BLDG/ROOM:** 166/5

**PERSON(S) MAKING PRESENTATION:** N/A

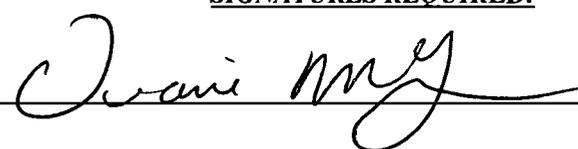
**ACTION REQUESTED:**

INFORMATIONAL ONLY    POLICY DIRECTION    APPROVAL    OTHER

**SUGGESTED AGENDA TITLE**

**Intergovernmental Expenditure Agreement With Oregon Health Science University To Purchase Mental Health Consultation Services For Children/Adolescents And Involuntary Commitment Services**

**SIGNATURES REQUIRED:**

ELECTED OFFICIAL:  7/22/99 ORIGINALS to LYNN REYNOLDS

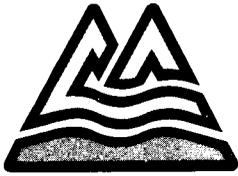
OR

DEPARTMENT MANAGER: 

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

Any Questions: Call the Board Clerk @ 248-3277

BOARD OF  
COUNTY COMMISSIONERS  
99 JUL 22 11:34  
MULTI-COUNTY  
OREGON



# MULTNOMAH COUNTY OREGON

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES  
421 SW SIXTH AVENUE, SUITE 700  
PORTLAND, OREGON 97204-1618  
PHONE (503) 248-3691  
FAX (503) 248-3379  
TDD (503) 248-3598

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR OF THE BOARD  
DIANE LINN • DISTRICT 1 COMMISSIONER  
SERENA CRUZ • DISTRICT 2 COMMISSIONER  
LISA NAITO • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

TO: Board of County Commissioners

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

DATE: July 6, 1999

SUBJECT: FY 1999-2000 Contract with Oregon Health Science University

**I. Recommendation/Action Requested:** The Department of Community and Family Services recommends County Chair approval of the attached contract with OHSU for the period July 1, 1999 through June 30, 2000.

**II. Background/Analysis:** The Department of Community and Family Services is contracting with OHSU to purchase psychiatric consultation services for the Department's children's mental health services, involuntary commitment services, care coordination, and alcohol/drug central intake services. Support for these services comes from the County General Fund, the State Mental Health and Developmental Disabilities Division, and AITP Medicaid billings. The funds are included in the Department budget. The Procurement authorization is not applicable because OHSU is a government entity.

**III. Financial Impact:** Total amount of the contract is \$89,760.

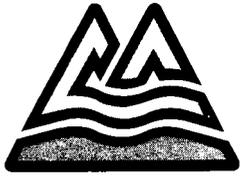
**IV. Legal Issues:** None

**V. Controversial Issues:** None

**VI. Link to Current County Policies:** Services provided through this agreement will assist in the assurance of public safety.

**VII. Citizen Participation:** None

**VIII. Other Government Participation:** None



# MULTNOMAH COUNTY OREGON

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES  
421 SW SIXTH AVENUE, SUITE 700  
PORTLAND, OREGON 97204-1618  
PHONE (503) 248-3691  
FAX (503) 248-3379  
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BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR OF THE BOARD  
DIANE LINN • DISTRICT 1 COMMISSIONER  
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LISA NAITO • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

TO: Beverly Stein, Chair  
Board of County Commissioners

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

DATE: June 23, 1999

SUBJECT: FY 1999-2000 Contract with Oregon Health Sciences University (OHSU) Psychiatric Consultation

**I. Recommendation/Action Requested:** The Department of Community and Family Services recommends County Chair approval of the attached contract with OHSU for the period July 1, 1999 through June 30, 2000.

**II. Analysis:** The Department of Community and Family Services is contracting with OHSU to purchase psychiatric consultation services for the Department's children's mental health services, involuntary commitment services, Care Coordination, and alcohol/drug central intake services.

**III. Background:** Support for these services comes from the County General Fund, the State Mental Health and Developmental Disabilities Division, and AITP Medicaid billings. The funds are included in the Department budget. Total amount of the contract is \$89,760. The Procurement authorization is not applicable because OHSU is a government entity.

F:\ADMIN\CEU\CONTRACT.00\OHSUPMEM.doc

**MULTNOMAH COUNTY CONTRACT APPROVAL FORM**

(See Administrative Procedure CON-1)

Contract #: **0010049**

Pre-approved Contract Boilerplate (with County Counsel signature)  Attached  Not Attached

Amendment #: **0**

<p align="center"><b>Class I</b></p> <input type="checkbox"/> Professional Services not to exceed \$50,000 (and not awarded by RFP or Exemption) <input type="checkbox"/> Revenue not to exceed \$50,000 (and not awarded by RFP or Exemption) <input checked="" type="checkbox"/> Intergovernmental Agreement (IGA) not to exceed \$50,000 <input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Revenue <input type="checkbox"/> Architectural & Engineering not to exceed \$10,000 (for tracking purposes only)	<p align="center"><b>Class II</b></p> <input type="checkbox"/> Professional Services that exceed \$50,000 or awarded by RFP or Exemption (regardless of amount) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue that exceeds \$50,000 or awarded by RFP or Exemption (regardless of amount)	<p align="center"><b>Class III</b></p> <input type="checkbox"/> Intergovernmental Agreement (IGA) that exceeds \$50,000 <input type="checkbox"/> Expenditure <input type="checkbox"/> Revenue <p align="center"><b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b></p> <p align="center">AGENDA # <u>C-1</u> DATE <u>7/22/99</u>                  _____                  DEB BOGSTAD  <b>BOARD CLERK</b></p>
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Department: <u>Community and Family Services</u>	Division: <u>Behavioral Health</u>	Date: <u>June 23, 1999</u>
Originator: <u>Gloria Wang</u>	Phone: <u>24561</u>	Bldg/Rm: <u>166/6</u>
Contact: <u>Lynn Ervins</u>	Phone: <u>26644</u>	Bldg/Rm: <u>166/7</u>

Description of Contract **Purchases psychiatric consultation for mental health services to children/adolescents and involuntary commitment services.**

RENEWAL <input checked="" type="checkbox"/>	PREVIOUS CONTRACT #(S): <u>100568 &amp; 9910156</u>
RFP/BID: <u>N/A IGA</u>	RFP/BID DATE: _____
EXEMPTION #/DATE: _____	EXEMPTION EXPIRATION DATE: _____
CONTRACTOR IS: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> ESB <input type="checkbox"/> QRF <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NONE (Check all boxes that apply)	

Contractor <u>Oregon Health Science University</u>	Remittance Address _____
Address <u>3181 SW Sam Jackson Park Road</u>	(If different) _____
<u>Portland, OR 97201</u>	
Phone <u>494-5075</u>	Payment Schedule / Terms
Employer ID# or SS# <u>93-1176109</u>	<input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt
Effective Date <u>July 1, 1999</u>	<input checked="" type="checkbox"/> Monthly \$ <u>Invoice</u> <input type="checkbox"/> Net 30
Termination Date <u>June 30, 2000</u>	<input type="checkbox"/> Other \$ _____ <input type="checkbox"/> Other
Original Contract Amount \$ <u>89,760</u>	
Total Amt. of Previous Amendments \$ <u>0</u>	<input type="checkbox"/> Requirements \$ _____
Amount of Amendment \$ <u>0</u>	
Total Amount of Agreement \$ <u>89,760</u>	Encumber <input type="checkbox"/> Yes <input type="checkbox"/> No

**REQUIRED SIGNATURES**

Department Manager <u>Lorenzo Pae mus</u>	DATE <u>6/30/99</u>
Purchasing Manager _____	DATE _____
County Counsel <u>Katie Dauter</u>	DATE <u>7/8/99</u>
County Chair <u>Juan Jimenez</u>	DATE <u>7/22/99</u>
Sheriff _____	DATE _____
Contract Administration _____	DATE _____

LGFS VENDOR CODE 683134						DEPT REFERENCE					
LINE #	FUND	AGENCY	ORG	SUB ORG	ACTIVITY	OBJ/ REV	SUB OBJ	REP CAT	LGFS DESCRIPTION	AMOUNT	INC DEC
01								See	Attached		
02											
03											

COMMUNITY AND FAMILY SERVICES DEPARTMENT  
 CONTRACT APPROVAL FORM SUPPLEMENT  
 Contractor : OHSU OREGON HEALTH SCIENCES UNIVERSITY  
 Vendor Code : 683134

Fiscal Year : 99/00

Numeric Amendment : 00

Contract Number : 0010049

LINE	FUND	AGEN	ORG CODE	ACTIVIY CODE	OBJECT CODE	REPORTING CATEGORY	LGFS DESCRIPTION	ORIGINAL AMOUNT	AMENDMENT AMOUNT	FINAL AMOUNT	REQT'S ESTIMATE
02	156	010	1611	B00P	6110	9001X [ ]	AMH SMHD BHD Psychiatric Consultation	\$14,351.00		\$14,351.00	
05	156	010	1611	B00P	6110	9005X [ ]	SMHD Carryover BHD Psychiatric Consultation	\$32,371.00		\$32,371.00	
04	156	010	1611	B00P	6110	9310F [ ]	CMH Medicaid: AITP BHD Psychiatric Consultation	\$17,480.00		\$17,480.00	
03	156	010	1611	B00P	6110	9999L [ ]	County General Fund BHD Psychiatric Consultation	\$25,558.00		\$25,558.00	
TOTAL								\$89,760.00	\$0.00	\$89,760.00	\$0.00

INTERGOVERNMENTAL AGREEMENT

#0010049

THIS CONTRACT is between MULTNOMAH COUNTY, acting by and through its Department of Community and Family Services, hereafter called COUNTY, and Oregon Health Sciences University, hereafter called CONTRACTOR.

THE PARTIES AGREE:

I. DESCRIPTION OF SERVICES. CONTRACTOR will provide the following services:

A. Psychiatric Consultation

1. The consulting psychiatrists will provide consultation and psychiatric review to the Children's Mental Health Clinical Services Unit (School Mental Health Program, School-Based Health Centers, Family Enhancement Program, Early Childhood Program, CARES, Kaleidoscope), Alcohol and Drug Program Central Intake Unit, Adult & Children's Community Mental Health Programs (Involuntary Commitment Unit and Care Coordination), the CAAPCare/CAAPCare + Utilization Review Unit, and to Behavioral Health Program Managers.
2. It is anticipated that each psychiatrist will provide the above services both in group and individual settings.
3. Administrative supervision will be provided by the Medical Director.

B. Service Expectation

1. Adult mental health: Benson McFarland 2 hrs/wk and Neal Falk 8 hrs/wk
2. Children's mental health: Kathleen Meyers 2 hrs/wk
3. Addictive services: New faculty 4 hrs/wk
4. Care Coordination services: Nancy Winters 6 hrs/wk

C. Consultation for Commitment Services

1. Attendance at two one-hour meetings monthly with the entire commitment team to discuss cases, review situations, give input and recommendations, and provide training, as needed;
2. Review of clinical records documentation in conjunction with the Commitment Services Supervisor or other staff, for approximately one hour per week;
3. Working with hospital discharge planners and trial visit staff for approximately four hours per week; and
4. Coordination of MD functions and work with staff on program development for approximately one hour per week.

D. Alcohol and Drug (Central Intake) Consultation

1. Assistance in developing care management policy and procedures (e.g., which physical procedures are appropriate to a psychiatric hold);
2. Assistance in developing protocols for the different treatment modalities in the mental health/acute care system;
3. Advice to the care management coordinators on the retrospective review of clinical necessity of admissions and continued stays according to the level of service;
4. Advice to care management coordinators on quality assurance review analysis;
5. Participation in utilization reviews;
6. Consultation with the management information system (MIS) staff for database development and maintenance;
7. Assistance in the development and implementation of the grievance and appeal procedures for both consumers and providers;

- 8. Provision of training for providers and staff;
- 9. Maintenance of a liaison function with community providers;
- 10. Consultation regarding program development and implementation;
- 11. Evaluation of client psychiatric status; and
- 12. Training of staff and participation in case consultations.

**II. COMPENSATION.** COUNTY will pay for services under this Contract on receipt of a monthly invoice. Payment will be on a fee-for-service basis at a rate of \$85.00 per hour. The maximum number of psychiatric consultation hours under this Contract is 1,056. CONTRACTOR will submit all invoices to Gayle Kron, Behavioral Health, 421 SW Sixth Avenue, Suite 600, Portland Oregon 97204.

**III. TERM.** The CONTRACTOR'S services will begin on July 1, 1999, and terminate when completed but no later than June 30, 2000.

**IV. CONTRACT DOCUMENTS.** This Contract consists of this contract document, the attached Conditions of Contract, and Attachment A.

**V. SIGNATURES**

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

MULTNOMAH COUNTY, OREGON

OREGON HEALTH SCIENCES UNIVERSITY

BY *Lorenzo Paez* 6/29/99  
 Director, Dept of Community & Family Svcs. Date

BY \_\_\_\_\_  
 Signature Date

BY *Beverly Stein* 7/22/99  
 for Beverly Stein, Multnomah County Chair Date

\_\_\_\_\_  
 Name, (please print)

REVIEWED:

THOMAS SPONSLER, County Counsel  
 for Multnomah County, Oregon

\_\_\_\_\_  
 Title

By *Katie Gaetjens* 7/8/99  
 Katie Gaetjens, Asst. Counsel Date

APPROVED MULTNOMAH COUNTY  
 BOARD OF COMMISSIONERS  
 AGENDA # C-1 DATE 7/22/99  
DEB BOGSTAD  
 BOARD CLERK

**MULTNOMAH COUNTY CONTRACT NO. 0010049**  
**CONDITIONS OF INTERGOVERNMENTAL CONTRACT**

The attached contract for services between Multnomah County, herein "COUNTY", and OREGON HEALTH SCIENCES UNIVERSITY, herein "CONTRACTOR", is subject to the following:

1. **FUNDS AVAILABLE.** COUNTY certifies that sufficient funds are available and authorized to finance the costs of this agreement. In the event that funds cease to be available to COUNTY in the amounts anticipated, COUNTY may terminate or reduce contract funding accordingly. COUNTY will notify CONTRACTOR as soon as it receives notification from funding source.

2. **INDEPENDENT CONTRACTOR STATUS.** CONTRACTOR is an independent contractor, and neither CONTRACTOR, CONTRACTOR'S subcontractors nor employees are employees of the COUNTY. CONTRACTOR is responsible for all federal, state, and local taxes and fees applicable to payments for services under this agreement.

3. **SUBCONTRACTS AND ASSIGNMENT.** CONTRACTOR shall neither subcontract with others for any of the work prescribed herein, nor assign any of CONTRACTOR's rights acquired hereunder without the prior written consent of COUNTY. The COUNTY is not liable to any third person for payment of any compensation payable to CONTRACTOR as provided in this agreement.

4. **ACCESS TO RECORDS.** The COUNTY'S authorized representatives shall have access to the books, documents, papers, and records of CONTRACTOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcripts.

5. **PROPERTY OF COUNTY.** All work performed by CONTRACTOR under this contract shall be the property of the COUNTY.

6. **WORKERS' COMPENSATION INSURANCE**

A. CONTRACTOR shall maintain worker's compensation insurance coverage for all non-exempt workers employed by CONTRACTOR in the performance of the work either as a carrier or insured employer as provided in Chapter 656 of Oregon Revised Statutes. CONTRACTOR shall provide COUNTY with a certificate showing current worker's compensation insurance upon request.

B. If CONTRACTOR'S worker's compensation insurance coverage is due to expire before completion of the work, CONTRACTOR will renew or replace such insurance coverage and provide COUNTY with a certificate of insurance coverage showing compliance with this section.

7. **INDEMNIFICATION**

CONTRACTOR agrees to indemnify, defend, and save harmless COUNTY, the State of Oregon, and other funding sources, and their agents and employees against all liability, loss, and costs arising from actions, suits, claims, or demands attributable to or allegedly attributable to acts or omissions of CONTRACTOR, its employees, agents, or subcontractors. CONTRACTOR further agrees to defend COUNTY, the state, and other funding sources, their agents and employees, against all suits, actions, or proceedings brought against them in connection with CONTRACTOR'S performance of its duties under this contract. This indemnification is limited to the extent permitted by the Oregon Tort Claim Act and the Oregon Constitution.

8. **ADHERENCE TO LAW.** The CONTRACTOR shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this contract.

9. **NONDISCRIMINATION.** CONTRACTOR shall not unlawfully discriminate against any individual with respect to hiring, compensation, terms, conditions, or privileges of employment, nor shall any person be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity because of such individual's race, color, religion, sex, national origin, age, handicap, or sexual orientation. CONTRACTOR must comply with all applicable provisions of federal, state, and local laws, regulations, and policies concerning nondiscrimination.

10. **EARLY TERMINATION**

A. This contract may be terminated by mutual consent of both parties or by either party upon thirty (30) days notice in writing and delivered by certified mail or in person.

B. The COUNTY, by written notice of default, may terminate this agreement if CONTRACTOR fails to provide any part of the services described herein within the time specified for completion of that part or any extension thereof.

C. Upon termination before completion of the services, payment of CONTRACTOR shall be prorated to and including the day of termination and shall be in full satisfaction of all claims by CONTRACTOR against COUNTY under this Agreement.

D. Termination under any provision of this paragraph shall not affect any right, obligation, or liability of CONTRACTOR or liability of CONTRACTOR or COUNTY which accrued prior to termination.

11. **FINAL PAYMENT**

All final requests for payment shall be received within twenty (20) calendar days following the end of this contract term. Final requests for payment documents not received within the specified time frame shall not be processed and the expense shall be the sole responsibility of the CONTRACTOR.

# Washington Casualty Company

## Certificate of Insurance

### CERTIFICATE HOLDER AND ADDRESS:

Multnomah County  
Department of Community and Family Services  
Contract and Evaluation Services  
421 SW Sixth, Seventh Floor  
Portland, Or 97204-1618  
Attn: Amy Nease

This is to certify that an insurance policy, subject to its terms, conditions and exclusions, is presently in force for the Named Insured. This certificate confers no rights upon the Certificate Holder, nor does it extend or alter the coverage afforded by the policy.

POLICY NO: OR HD0/2486

Policy Period: (12:01 A.M. at place of issue)  
From: 7/1/99 To: 6/30/00

Retroactive Date: 7/1/92

### HEALTH CARE PROFESSIONAL LIABILITY POLICY:

Coverage	Limits of Liability
Personal Injury and Professional Liability	\$1,000,000 each claim/\$4,000,000 annual aggregate
Excess Personal Injury & Professional Liability	None
Fire Legal Liability	None
Premises Medical	None
Other	None

**SPECIAL PROVISIONS:** All OHSU faculty, employees, students and volunteers are provided coverage for services rendered on behalf of the Named Insured within the scope of his or her duties as such for the Named Insured. Liability of the Named Insured and its officers, employees and agents is limited pursuant to ORS 30.270.

**NAMED INSURED**  
Oregon Health Sciences University  
3181 SW Sam Jackson Park Road, L328  
Portland, Oregon 97201-3098

ISSUE DATE: 6/30/99

  
AUTHORIZED REPRESENTATIVE

Kari Jansen  
Risk & Insurance Administrator  
(503) 494-2451

**Certificate of Insurance**

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED.



This is to Certify that

**OREGON HEALTH SCIENCES UNIVERSITY**  
**3181 SW SAM JACKSON PARK RD**  
**L328**  
**PORTLAND OR 97201-3011**

P O Box 5240  
 Portland, OR 97208-5240  
 503.239.5800



is, at the date of the certificate, insured by the Company under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and conditions and is not altered by any requirement, term or condition of any contract or other document with respect to which this certificate may be issued.

TYPE OF POLICY	EXPIRATION DATE	POLICY NUMBER	LIMITS OF LIABILITY	
<input checked="" type="checkbox"/> WORKERS' COMPENSATION	7/01/2000	WC4-1NC-010293	COVERAGE AFFORDED UNDER W.C. LAW OF FOLLOWING STATES	LIMIT OF LIABILITY - COVERAGE B
			OR	B.I. by Accident \$500,000 Each Accident Policy Limit B.I. by Disease \$500,000 B.I. by Disease \$500,000 Each Employee
GENERAL LIABILITY <input type="checkbox"/> Commercial General Liability (Occurrence) <input type="checkbox"/> Owner's and Contractor's Protective <input type="checkbox"/> _____			MARITIME COVERAGE-FOLLOWING STATES	LIMIT OF LIAB.-MARITIME COVERAGE
			General Aggregate	\$
			Products Comp/DPS Aggregate	\$
			Personal & Advertising Injury	\$
			Each Occurrence	\$
AUTOMOBILE LIABILITY <input type="checkbox"/> Any Auto <input type="checkbox"/> All owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-owned Autos <input type="checkbox"/> Garage Liability <input type="checkbox"/> _____			CSL	\$
			Bodily Injury (Per Person)	\$
			Bodily Injury (Per Accident)	\$
			Property Damage	\$
			Medical Expense (Any one person)	\$
OTHER				
LOCATION(S) OF OPERATIONS & JOB # (IF APPLICABLE)			DESCRIPTION OF OPERATIONS	
CANCELLATION:	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, OR REPRESENTATIVES.			

MAILED TO: MULTNOMAH COUNTY  
 DEPARTMENT OF COMMUNITY & FAMILY SERVICE  
 CONTRACTS & EVALUATION DIVISION  
 421 SW 6TH AVE 7TH FL  
 PORTLAND OR 97204-1629



*Cathy Hamble*

EFS kg 6/25/1999 PORTLAND Marketing  
 DATE ISSUED OFFICE

MEETING DATE: JUL 22 1999

AGENDA NO.: C-2

ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: Intergovernmental Agreement with Oregon Health Science University Hospital

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

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

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

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

Amount of Time Needed: 5 minutes or less

DEPARTMENT: Health

DIVISION: Primary Care

CONTACT: \* Patricia Bauer

TELEPHONE #: x24381

BLDG/ROOM #: 160/8

PERSON(S) MAKING PRESENTATION: Consent Calendar

**ACTION REQUESTED:**

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL  OTHER

**SUGGESTED AGENDA TITLE:**

Renewal of Intergovernmental Agreement #0010320 with Oregon Health Science University Hospital for nurse consult services.

7/22/99 originals to MARIANNE Metzger

**SIGNATURES REQUIRED:**

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

Or

DEPARTMENT MANAGER: 

BOARD OF COUNTY COMMISSIONERS  
MULTI-COUNTY OREGON  
99 JUL - 9 AM 11:34

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

Any Questions: Call the Board Clerk at 248-3277



# MULTNOMAH COUNTY OREGON



HEALTH DEPARTMENT  
BUSINESS SERVICES DIVISION  
426 SW STARK, 7TH FLOOR  
PORTLAND, OREGON 97204-2394  
(503) 248-3056  
FAX (503) 248-3015  
TDD (503) 248-3816

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR OF THE BOARD  
DIANE LINN • DISTRICT 1 COMMISSIONER  
SERENA CRUZ • DISTRICT 2 COMMISSIONER  
LISA NAITO • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

## MEMORANDUM

**Date:** June 30, 1999  
**To:** Board of County Commissioners  
**Via:** Gary Oxman, M.D., Acting Director, Health Department  
**From:** Sharon Armstrong, Director, Primary Care Division  
**Subject:** Contract #0010320 with OHSU for Nurse Consult Services

HONOR CULTURE, CELEBRATE DIVERSITY AND INSPIRE QUALITY

- I. **Recommendation/Action Requested:** The Health Department recommends Board ratification of Contract #0010320 with Oregon Health Science University Hospital (OHSU) for Nurse Consult Services for the period July 1, 1999, through June 30, 2000.
- II. **Background/Analysis:** OHSU will continue to provide after hours telephone triage between the hours of 9pm and 7am. The original contract was for a trial period of six months. The Health Department extended the term to 12 months due to satisfactory performance of services.  

The Health Department has provided after hours telephone triage since it was required by the federal rules governing Federally Qualified Health Centers. The initial volume was low; Corrections Health Nurses and later nurses at the Juvenile Detention Medical Unit (JDMU) handled calls. Call volume has increased significantly. The workload at JDMU has made it impossible for JDMU to continue to provide this service. This is the second contract for OHSU to provide this service.
- III. **Financial Impact:** The Health Department will pay OHSU Nurse Consult Service \$82,542 under the terms of this Contract. Funds are budgeted. This is the least expensive alternative that is available. One alternative to this contract would have been to fund 1.9 FTE Community Health Nurse and a bilingual Office Assistant to provide this service. This would have cost a minimum of \$117,000 for a year. A second alternative would have been to hire a national phone triage service. This would cost approximately \$91,250 annually, plus interpretation charges.

By separate agreement, the Health Department provides after hours telephone triage services for Clackamas County. On an annual basis, the Contract with Clackamas County provides revenue of approximately \$35,000; this revenue offsets the cost of Contract #0010320 by 42 percent.

June 30, 1999  
Oregon Health Sciences University  
Contract #0010320

IV. Legal Issues: None

V. Controversial Issues: None

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

VII. Citizen Participation: None

VIII. Other Government Participation: None

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedure CON-1)

Pre-approved Contract Boilerplate (with County Counsel signature)  Attached  Not Attached

Contract #: 0010320  
Amendment #: \_\_\_\_\_

<p><b>CLASS I</b></p> <input type="checkbox"/> Professional Services not to exceed \$50,000 (and not awarded by RFP or Exemption) <input type="checkbox"/> Revenue not to exceed \$50,000 (and not awarded by RFP or Exemption) <input type="checkbox"/> Intergovernmental Agreement (IGA) not to exceed \$50,000 <input type="checkbox"/> Expenditure <input type="checkbox"/> Revenue <input type="checkbox"/> Architectural & Engineering not to exceed \$10,000 (for tracking purposes only)	<p><b>CLASS II</b></p> <input type="checkbox"/> Professional Services that exceed \$50,000 or awarded by RFP or Exemption (regardless of amount) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue that exceeds \$50,000 or awarded by RFP or Exemption (regardless of amount)	<p><b>CLASS III</b></p> <input checked="" type="checkbox"/> Intergovernmental Agreement (IGA) that exceeds \$50,000 <input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Revenue <p style="text-align: center;"><b>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</b></p> <p>AGENDA # <u>C-2</u> DATE <u>7/22/99</u>  <u>DEB BOGSTAD</u>  <b>BOARD CLERK</b></p>
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Department: Health Department Division: Primary Care Services Date: 05/08/99  
 Originator: Pat Bauer Phone: x24381 Bldg/Rm: 160/8  
 Contact: Marianne Metzger Phone: x26207 Bldg/Rm: 160/7

Description of Contract:  
 Contract with OHSU Nurse Consult Service to provide Afterhours Phone Triage. Multnomah County Centralized Clinical Services will contract with OHSU Nurse Consult Program to provide medical telephone advise between 9pm and 7am.

RENEWAL:  PREVIOUS CONTRACT NO(S): 9910452  
 RFP/BID: \_\_\_\_\_ RFP/BID DATE: \_\_\_\_\_  
 EXEMPTION NO/DATE: \_\_\_\_\_ EXEMPTION EXPIRATION DATE: \_\_\_\_\_ ORS/AR #: \_\_\_\_\_  
 CONTRACTOR IS:  MBE  WBE  ESB  QRF  N/A  NONE (Check all boxes that apply)

Contractor <u>Oregon Health Sciences University</u> Address <u>3181 SW Sam Jackson Park Road</u> <u>Portland, Oregon 97201-3098</u> Phone <u>494-8548</u> Employer ID# or SS# <u>93-1176109</u> Effective Date <u>July 1, 1999</u> Termination Date <u>June 30, 2000</u> Original Contract Amount \$ <u>82,542</u> Total Amt of Previous Amendments \$ <u>n/a</u> Amount of Amendment \$ <u>n/a</u> Total Amount of Agreement \$ <u>82,542</u>	Bill Brown, Senior Contracts Officer, 494-4768 Remittance address <u>Attn: Contract Accounting</u> <u>University Hospital Fiscal Services</u> <u>P.O. Box 590, Portland, Oregon 97207-0590</u> Payment Schedule / Terms <input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt <input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30 <input checked="" type="checkbox"/> Other \$ <u>\$20,635.50/quarter</u> <input type="checkbox"/> Other <input type="checkbox"/> Requirements Not to Exceed \$ _____ Encumber <input type="checkbox"/> Yes <input type="checkbox"/> No
--	---

REQUIRED SIGNATURES:

Department Manager [Signature] DATE 7.6.99  
 Purchasing Manager \_\_\_\_\_ DATE \_\_\_\_\_  
 (Class II Contracts Only)  
 County Counsel [Signature] DATE 7/18/99  
 County Chair [Signature] DATE July 22, 1999  
 Sheriff \_\_\_\_\_ DATE \_\_\_\_\_  
 Contract Administration \_\_\_\_\_ DATE \_\_\_\_\_  
 (Class I, Class II Contracts only)

LGFS VENDOR CODE						DEPT REFERENCE					
LINE #	FUND	AGENCY	ORG	SUB ORG	ACTIVITY	OBJ/ REV	SUB OBJ	REP CAT	LGFS DESCRIPTION	AMOUNT	INC DEC
01	156	015	0712			6110		0360			
02											
03											

**INTERGOVERNMENTAL AGREEMENT  
FOR NURSE CONSULT SERVICES**

This is a Contract between Oregon Health Sciences University Hospital (hereinafter called "**OHSU HOSPITAL**") and Multnomah County, acting by and through its Health Department (hereinafter called "**COUNTY**").

WHEREAS, **OHSU HOSPITAL** has developed the Nurse Consult Program; and

WHEREAS, **OHSU HOSPITAL** desires to make enhancements to the program; and

WHEREAS, **OHSU HOSPITAL** desires to provide this necessary service; and

WHEREAS, **COUNTY** wishes to utilize the Nurse Consult Program and desires to assist **OHSU HOSPITAL** in the enhancement of the program,

**NOW, THEREFORE it is agreed between the parties as follows:**

**1. TERM.**

This Contract shall be effective July 1, 1999 through June 30, 2000.

**2. SERVICES.**

**A. OHSU HOSPITAL**

**OHSU HOSPITAL** through the Nurse Consult Program agrees to act as the after-hours patient information and triage telephone service for patients of **COUNTY** After Hours Triage.

This scope of work is based on an average of 10.75 calls per night. If this number should change significantly, this scope of work and the corresponding rate may be adjusted by written consent of the parties, through an amendment to this Contract.

The Nurse Consult Program will provide the following services to:

- 1) Receiving of after hours telephone calls from or concerning patients of **COUNTY**. Hours of service: 9:00 pm through 7:00 am. Coverage for individual days may be renegotiated if agreeable to both parties.
- 2) Patient concerns and questions will be assessed utilizing standard telephone triage protocols from the Dale Woodke, RN, MA, FNP publication, "Telephone Protocols for Primary Care Centers", published April 1994 and Barton Schmidt's M.D., "Pediatric Telephone Protocols", revised March 1995. **OHSU HOSPITAL** may replace the above listed protocols with "HealthLine Computerized Triage Protocols" during the course of this Contract.

- 3) Following initial patient assessment and evaluation, the Nurse Consult staff will recommend appropriate home care or other level of care. This may include office visit, urgent care facility or emergency department referral. In the event the patient condition requires referral to immediate care, **COUNTY** or designated on-call physician will be notified.
- 4) Most deemed appropriate follow up with the patient will be provided to determine compliance with recommendations, improvement in condition and reassessment of patient symptoms. A written copy of the communication will be sent to **COUNTY** for inclusion in the medical record.
- 5) Reports of utilization and disposition will be issued quarterly or as requested by **COUNTY**.
- 6) Authorization numbers for Urgency Care services will be assigned to visits and **COUNTY** will be notified that authorization was made.

**B. COUNTY:**

- 1) **COUNTY** is responsible for advising patients about the consult service, and for maintaining access to the service through call forwarding.
- 2) **COUNTY** will identify choices for urgent and emergent care facilities, as well as appropriate alternative resources for their patients and advise **OHSU HOSPITAL** of such choices in writing.
- 3) **COUNTY** will identify method to be used for Nurse Consult to contact **COUNTY** during hours of service (pager number, office number, home number, exchange service).
- 4) **COUNTY** will maintain physician availability to Nurse Consult staff during hours of service identified in this Contract and advise Nurse Consult in writing of on-call schedules and changes in on-call schedules, as changes occur. In the event Nurse Consult staff is unable to contact **COUNTY**, Nurse Consult staff will contact an OHSU emergency department physician for assistance with patient management.
- 5) **COUNTY** will identify fax numbers where documentation of patient nurse communications will be sent.
- 6) During the term of this Contract, **COUNTY** may be requested to participate in program evaluation through continuous feedback as well as possible surveys focusing on specific aspects of service.
- 7) **COUNTY** will provide **OHSU HOSPITAL** with a list of Authorization numbers for Urgent Care Authorizations.
- 8) **COUNTY** will provide reference documentation including on-call physician lists, clinic and contact numbers, and other relevant requested information.

3. **COMPENSATION.**

**COUNTY** will reimburse **OHSU HOSPITAL** \$82,542.

The **COUNTY** will reimburse **OHSU** \$82,542 annually. This compensation rate is guaranteed through June 30, 2000. With prior written notice to the County, **OHSU** may adjust its rates for each year thereafter. Annual fee increases will be determined by evaluating workload factors as identified in Section 2.A. above and by applying the most recently published Portland-area medical CPI.

Payments will be as follows:

**COUNTY** will reimburse **OHSU** \$20,635.50 quarterly upon receipt of an invoice. Invoices shall be sent to:

Patricia Bauer, Primary Care Systems  
Multnomah County Health Department  
426 SW Stark, 8<sup>th</sup> Floor  
Portland, OR 97204

**OHSU HOSPITAL** will maintain these rates for the Contract period.

4. **INSURANCE.**

- A. **OHSU HOSPITAL** is self-insured for malpractice and tort liability insurance coverage pursuant to the Oregon Tort Claims Act, ORS 30.260 to 30.300, and subject to the limits of the Act, for all services provided by **OHSU HOSPITAL** personnel acting within the scope of their employment pursuant to this Contract.
- B. **COUNTY** is self-insured for general and professional liability, in accordance with the provision of ORS 30.270 (Tort Claims Act). **COUNTY** maintains an insurance fund from which to pay all costs and expenses relating to claims for which it is self-insured. **COUNTY**'s exposure for professional liability is limited by ORS 30.270 to \$50,000 property damage, \$100,000 personal injury per person and \$500,000 total damages per occurrence.
- C. **COUNTY** is not an officer, employee, or agent of the State of Oregon or **OHSU HOSPITAL** as those terms are used in ORS 30.265.
- D. **OHSU HOSPITAL** shall maintain workers' compensation insurance coverage for all non-exempt workers, employees, and subcontractors either as a carrier-insured employer or a self-insured employer as provided in ORS Chapter 656.

5. **HOLD HARMLESS.**

- A. To the extent permitted by Oregon Law (ORS 30.260 through 30.300), and the Oregon Constitution, Article XI, Section 7, **OHSU HOSPITAL** shall hold and save harmless **COUNTY**, its officers, agents, and employees from damages arising out of the tortious acts of **OHSU HOSPITAL**, or its officers, agents, and employees acting within the scope of their employment and duties in performance of this Contract.
- B. To the extent permitted by Oregon Law (ORS 30.260 through 30.300), and the Oregon Constitution, Article XI, Section 7, **COUNTY** shall hold and save harmless **OHSU HOSPITAL**, its officers, agents, and employees from damages arising from the tortious acts of **COUNTY** or its subcontractors, officers, agents, or employees acting within the scope of their employment and duties in performance of this agreement.

6. **ASSIGNMENT.**

- A. **COUNTY** shall not assign or transfer its interest nor delegate its obligation in this Contract without the express written consent of **OHSU HOSPITAL**.
- B. **OHSU HOSPITAL** shall not assign or transfer its interest nor delegate its obligation in this Contract without the express written consent of **COUNTY**.
- C. **COUNTY** by this Contract incurs no liability to third persons for payment of any compensation provided herein to **OHSU HOSPITAL**.

7. **FORCE MAJEURE.** Neither **OHSU HOSPITAL** nor **COUNTY** shall be held responsible for delay or default caused by fire, riot, labor disruptions, acts of God and war which is beyond the affected party's reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of their obligations under the Contract.

8. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

9. **TERMINATION.** This Contract may be terminated at any time by mutual consent of both parties, or by either party upon thirty (30) days' notice in writing and delivered by certified mail or in person to the other party.

In addition, either party may terminate this Contract effective upon delivery of written notice to the other party, or at such later date as may be established by that party, if:

- A. Violation of any of the rules, procedures, attachments, or conditions of this Contract may, at the option of either party, be cause for termination of the Contract and, unless and until corrected, of funding support by **COUNTY** and services by **OHSU HOSPITAL**, or be cause for placing conditions on said funding and/or service, which may include withholding of funds. Waiver by either party of any violation of this Contract shall not prevent said party from invoking the remedies of this paragraph for any succeeding violations of this Contract.

- B. Federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate under this Contract; or
  - C. Any license or certificate required by law or regulation to be held by either party to perform as required by this Contract is for any reason denied, revoked, or not renewed.
  - D. If the Contract is terminated under this paragraph, **COUNTY** shall pay **OHSU HOSPITAL** only for services provided in accordance with the Contract through the day of termination.
  - E. Termination under any provision of this paragraph shall not affect any right, obligation or liability of **OHSU HOSPITAL** or **COUNTY** that accrued prior to such termination.
  - F. If this Contract is terminated, compensation shall be pro-rated. If a party or the parties terminate this Contract at a time when **COUNTY** has paid **OHSU HOSPITAL** for services not yet provided, **OHSU HOSPITAL** shall reimburse **COUNTY** for that portion of the compensation paid for which it has not provided services. If a party or the parties terminate this Contract at a time when **OHSU HOSPITAL** had provided services for which **COUNTY** has not paid, **COUNTY** shall pay **OHSU HOSPITAL** for those services. Any reimbursements or payments will be calculated to the nearest day that services are provided.
10. **MODIFICATION AND AMENDMENT.** This Contract may be modified or amended by the mutual written agreement of both parties.
11. **COMPLIANCE WITH APPLICABLE LAW.** Both parties agree to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. The parties also specifically agree to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Failure or neglect on the part of a party to comply with any or all such laws, ordinances, rules, and regulations shall not relieve the party of these obligations nor of the requirements of this Contract.
12. **TAX COMPLIANCE CERTIFICATION.** Both parties hereby affirms under penalty of perjury, as provided in ORS 305.385, (6), that to the best of their knowledge they are not in any violation of any of the tax laws described in ORS 305.380(4).
13. **ACCESS TO RECORDS.** **OHSU HOSPITAL** agrees to permit authorized representatives of **COUNTY**, and/or the applicable federal or state government audit agency, to make such review of the records of **OHSU HOSPITAL** or **COUNTY** or auditor may deem necessary to satisfy audit and/or program evaluation purposes. **OHSU HOSPITAL** shall permit authorized representatives of **COUNTY** to site-visit all programs covered by this Contract. Contract costs disallowed as the result of such audits, review or site visits will be the sole responsibility of **OHSU HOSPITAL**. If a Contract cost is disallowed after reimbursement has occurred, **OHSU HOSPITAL** will make prompt repayment of such cost.

14. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon. Any suit for enforcement shall be filed in the Circuit Court for Multnomah County, Oregon.
15. **WAIVER.** The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision.
16. **NOTICES AND REPRESENTATIVES.** All notices, certificates, or communications shall be delivered or mailed postage prepaid to the parties at their respective places of business as identified below, unless otherwise designated in writing.

To: **OHSU HOSPITAL**                      Contract Office, Mail Code L104  
Oregon Health Sciences University  
3930 SW Macadam Avenue  
Portland, OR 97201-4406  
ATTN: H-00-001  
(503) 494-5075

To: **COUNTY**                                      Director  
Multnomah County Health Department  
426 SW Stark, 8th Floor  
Portland, OR 97204  
(503) 248-3674 X22686

17. **SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
18. **INDEPENDENT CONTRACTOR STATUS.** **OHSU HOSPITAL** is an independent Contractor and is solely responsible for the conduct of its programs. **OHSU HOSPITAL**, its employees and agents shall not be deemed employees or agents of **COUNTY**.
19. **RECORD CONFIDENTIALITY.** **COUNTY** and **OHSU HOSPITAL** agree to keep all client specific information confidential in accordance with state and federal statutes and rules governing confidentiality.
21. **WAIVER OF DEFAULT.** Waiver of a default shall not be deemed to be a waiver of any subsequent default. Waiver of any breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the provisions of this Contract.

22. ENTIRE CONTRACT. THIS CONTRACT CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THE AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. ANY SUCH AMENDMENT, WAIVER, OR CONSENT, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THE PARTIES, BY THE SIGNATURE BELOW OF THEIR AUTHORIZED REPRESENTATIVES, ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE CONTRACT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

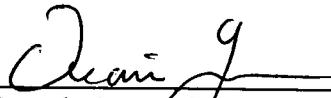
OREGON HEALTH SCIENCE  
UNIVERSITY HOSPITAL

3181 SW Sam Jackson Road  
Portland, OR 97201-3098  
(503) 494-8548

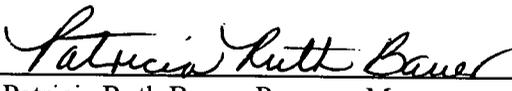
By \_\_\_\_\_  
William B. Brown, Senior Contracts Officer  
OHSU Hospital  
Date \_\_\_\_\_

\_\_\_\_\_  
Contractor's Federal Tax ID Number

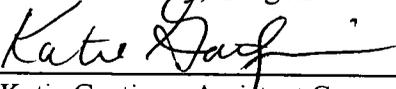
MULTNOMAH COUNTY

By   
for Beverly Stein, Multnomah County Chair  
Date July 22, 1999

By   
Gary Oxman, M.D., Acting Director  
Health Department  
Date 7-6-99

By   
Patricia Ruth Bauer, Program Manager  
Date 8/30/99

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

By   
Katie Gaetjens, Assistant County Counsel  
Date 7/8/99

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # C-2 DATE 7/22/99  
DEB BOGSTAD  
BOARD CLERK

**BUDGET MODIFICATION NO.**

CCFC 2000-01

(For Clerk's Use) Meeting Date JUL 22 1999

Agenda No. C-3

**1. REQUEST FOR PLACEMENT ON THE AGENDA FOR**

07/22/99

DEPARTMENT CCFC  
 CONTACT Jim Clay

DIVISION \_\_\_\_\_  
 TELEPHONE 248-3897, 736-6906  
 \_\_\_\_\_  
 NA

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

**SUGGESTED  
 AGENDA TITLE**

Legacy Health Systemns Grant award to CCFC

(Estimated Time Needed on the Agenda)

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

No change to personnel Personnel changes are shown in detail on the attached sheet

**This bud mod increases the CCFC pass through and indirect budget by \$50,000 to accept the total Grant from Legacy Health System.**

**The adopted budget had identified \$100,000 of private donations/sponsorships for CCFC community initiatives. The actual award from Legacy, \$150,000 is larger than expected, and is to be used for the CCFC Early Childhood Collaborative Initiative.**

CLERK OF COUNTY COMMISSIONERS  
 MULTNOMAH COUNTY  
 OREGON  
 99 JUL 14 PM 1:33

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

**Increases CCFC Private Donation/Sponsorship revenue by \$50,000.**

**The adopted budget included \$100,000 for private donations/sponsorships the actual amount of the award from Legacy Health systems is \$150,000.**

**4. CONTINGENCY STATUS** (to be completed by Budget & Quality)

Fund Contingency before this modification \_\_\_\_\_

Date \_\_\_\_\_

After this modification \_\_\_\_\_

Originated By <b>Jeanette Hankins</b>	Date <b>July 14, 1999</b>	Department Director <i>[Signature]</i> <b>Jim Clay</b>	Date <b>July 14, 1999</b>
Plan/Budget Analyst <i>[Signature]</i>	Date <b>7/14/99</b>	Employee Services	Date
Board Approval <i>[Signature]</i>	Date <b>7/22/99</b>		



EXPENDITURE												
TRANSACTION EB GM [ ]			TRANSACTION DATE				ACCOUNTING PERIOD				BUDGET FY	
Document Number	Action	Fund	Agency	Organi- zation	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description
										0		
										0		
CCFC 2000-01		156	050	9035	J07D	9960	6060	1,672,586	1,722,238	49,652		pass through
		156	050	9035	J07D	9960	7100	46,873	47,221	348		indirect .7%
										0		
		100	075	9120			7700		348	348		
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TOTAL EXPENDITURE CHANGE										50,348	0	

REVENUE												
TRANSACTION RB GM [ ]			TRANSACTION DATE				ACCOUNTING PERIOD				BUDGET FY	
Document Number	Action	Fund	Agency	Organi- zation	Activity	Reporting Category	Revenue	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description
										0		
CCFC 2000-01		156	050	9035			6703	100,000	150,000	50,000		Donations/contributions
										0		
		100	075	7410			6602		348	348		indirect
										0		
										0		
										0		
										0		
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										0		
										0		
										0		
										0		
TOTAL REVENUE CHANGE										50,348	0	

# supplemental staff report



TO: Multnomah County Board of Commissioners  
FROM: Jim Clay, Executive Director,  
Commission on Children, Families, and Community  
DATE: July 14, 1999  
SUBJECT: Legacy Health System Grant award to CCFC

## Members

Larry Norvell, Chair  
Serena Cruz, Vice-Chair  
Pauline Anderson  
Lena Bean  
Mary Daly Bennetts  
Alcena Boozer  
Carol Cole  
Lee Coleman  
Paul Drews  
Barbara Friesen  
Steve Fulmer  
Muriel Goldman  
Linda Grear  
Carla Harris  
Margie Harris  
Patricia Johnson  
Janet Kretzmeier  
Kay Lowe  
Sharon McCluskey  
Janice Nighthale  
D. Claire Oliveros  
Lorenzo Poe  
Tom Potter  
Mark Rosenbaum  
Cornetta Smith  
Judith Smith  
Luther Sturtevant  
DeWayne Taylor  
Nan Waller  
Jessica Weit  
Duncan Wyse

## Staff

Jim Clay, Executive Director  
Erin Barnhart  
Judy Brodkey  
Jeff Cogen  
Jeanette Hankins  
Janet Hawkins  
Bonnie Rosatti  
Jana Rowley  
Chris Tebben

421 SW 6th Avenue,  
Suite 1075  
Portland, OR 97204-1620  
Ph: (503) 248-3897  
Fx: (503) 306-5538  
ccfc.org@co.multnomah.or.us  
www.ourcommission.org  
inter-office: 166/1075

## 1. Recommendation/Action Requested:

Staff recommends **approval of acceptance of \$150,000 grant** offered to Commission on Children, Families, and Community from Legacy Health System, in support of the Commission's Early Childhood Collaborative Initiative on language and literacy development of youngest children.

## 2. Background/Analysis:

The Commission on Children, Families, and Community has made a policy decision to allocate significant amounts of its available funding to improve systems of support for children and families in Multnomah County, in addition to funding direct services. This support for systems improvement is conditioned on leveraging substantial other private investment. The first of what is expected to be many collaborative investments over time is the Commission's Early Childhood Collaborative Initiative, which brings together the CCFC, the United Way, Legacy Health System, and possibly other investors, in support of language and literacy development activities (see attached). After assessing the benefits of many other potential investments, Legacy has offered in writing to grant \$150,000 to the CCFC's project (see attached).

## 3. Financial Impact:

Approving this grant offer will bring \$150,000 new revenues to the CCFC's Early Childhood Collaborative Initiative, and likely assist in leveraging additional investments over time.

## 4. Legal Issues:

County administrative rules require the Multnomah County Board of Commissioners' approval of this grant prior to acceptance of the funds. Consistent with state law the Commission on Children, Families, and Community has already approved the receipt of these funds and the activities for which they are dedicated.

## 5. Controversial Issues:

None identified.

6. Link to Current County Policies:

County policies advocate the leveraging of private funds, the collaborative involvement of other partners and particularly businesses, and the enhancement of current systems. In addition, the activities undertaken under this Early Childhood Collaborative Initiative will favorably impact the county benchmark of reducing childhood poverty.

7. Citizen Participation:

This has been an open process, involving diverse community stakeholders, including the Commission on Children, Families, and Community; Early Childhood Care and Education Council, Portland Public Schools, SMART, Head Start, Mount Hood and Portland Community Colleges, Multnomah County Library, Multnomah County Health Department, Metro Childcare Resource and Referral, Portland-Multnomah Progress Board, Leaders Roundtable and many others.

8. Other Government Participation:

The Portland-Multnomah Progress Board has been a key participant, and there is great potential for connecting to the SUN Schools project. The Oregon Commission on Children and Families' early childhood planning guide gave direction and support to the framing of this initiative.



System Office  
1919 N.W. Lovejoy Street  
Portland, Oregon 97209  
(503) 415-5600

July 1, 1999

James Clay, Executive Director  
**Multnomah Commission  
on Children, Families and Community**  
421 SW 6th Avenue, Suite 1075  
Portland, OR 97204

Dear Mr. Clay,

On behalf of Legacy Health System, I am very pleased to support the Multnomah Commission on Children, Families and Community Early Childhood Literacy project with funding through the Legacy Community Health Fund. The Legacy Community Health Committee spent many months talking with people in the community, and identifying issues, populations and organizations that Legacy would be able to partner with to achieve its goal to improve the health status of the community. Your project met the criteria developed by the Committee.

**Grant funding is for one year: \$150,000.**

Attached is an agreement that we would like to be signed prior to the granting of dollars. The grant dollars will be sent to you as outlined in the attached agreement. If you would, please, return it as soon as possible, and we will be able to move forward with the grant. It takes approximately four weeks for the check to be processed.

Congratulations on your award and we wish you great success in your endeavor!

Sincerely,

A handwritten signature in cursive script that reads "Sonja Steves".

Sonja Steves, Vice President  
Marketing & Community Relations

SS/dlc

**Legacy Health System  
Community Health Fund  
Grant Agreement**

**Organization:** Multnomah Commission on Children, Families and Community

**Program Name:** Early Childhood Literacy

**Amount of Grant:** One Year: \$150,000

**General Requirements:**

- Grant dollars are contingent upon grantee implementing the project.
- Grant dollars will be used specifically for the project proposed and will not be used for other purposes.
- Any changes in the goals, objectives, implementation strategies, timeline or budget must be approved by Legacy Health System.
- Financial records will be kept related to the expenditure of funds within this grant. At the year's end, documentation of how funds were spent must be submitted.
- The schedule of funding will be as follows: \$75,000 within four weeks following receipt of this signed agreement and \$75,000 in December, 1999.
- A final report will be submitted to Legacy which includes how the project's goal and objectives were met.
- The grantee organization is an IRS tax-exempt 501(C)(3) organization or tax-exempt public education or government agency.
- Public relations related to the funded project is supported. If news articles related to funded activities are developed, Legacy would appreciate its being cited as a supporter of the project.

Agreement Authorized:

Agreed and Accepted:

\_\_\_\_\_  
Sonja Steves  
Vice President  
Legacy Health System

\_\_\_\_\_  
Signature  
Title \_\_\_\_\_  
Multnomah Commission on  
Children, Families & Community

Date \_\_\_\_\_

Date \_\_\_\_\_

**Working plan for creating collaborative improvements in the  
language and literacy  
development of youngest children in Multnomah County**

*(with allocation amounts for FY 99/00, from CCFC,  
Legacy Health System, and United Way Funding)*



**STRATEGY 1: (\$275K total)**

---

**Conduct outreach to families and communities, providing the knowledge, the motivation, the opportunity, and the resources needed for more adults to become involved in meaningful language and literacy development among young children, ensuring that the needs of non-English speaking families are considered.**

- Produce or purchase, and then distribute language/literacy materials to new birth parents, either at the hospital, or after return home via US mail, or other distribution means, coordinated with other similar efforts (including *Take the Time*, United Way's Success by Six, and others). Arrange for every newborn to get a nice gift (the child's first book) with a "welcome to our community" letter to be read to the child.  
(\$50K)
- Develop and promote the "literacy van" public outreach concept: a highly visible van, with an engaging consumer name and logo, filled with people and things that bring language and literacy development materials and activities to children and families throughout the county at family-focused events and locations, such as festivals, indoor play parks, community centers, malls, neighborhood parks, etc. This would include purchase, or possible donation, of a van, maintenance, equipment, books, and supplies; funding for up to 2.5 FTE staff (driver, program director, volunteer coordinator) for start-up. First year efforts should include developing the project goals and policies, developing business and community partners. Coordinate with Multnomah County Library, United Way's Success by Six, and others.  
(\$225K)

## **STRATEGY 2: (\$225K)**

---

**Build skills and capacities among child care /education professionals, designing and providing training opportunities and referral to resources, and coordination with certification training, ensuring that the needs of non-English speaking families are considered.**

- Literacy van provider outreach, with activities that target supporting child care and education professionals  
(included in STRATEGY #1: see above)
- Design and provide training and professional development to child care centers and to home child care providers. Support their ability to advance the language and literacy development of the young children in their care, and connect them to others in the field for peer support and referral to resources. Support their ability and capacity for enlisting parents in become literacy advocates.  
(\$200K)
- Provide language and literacy development media (books, videos, other resources) to child care providers that participate in training and development activities, to support their ability to put the training and professional development in to action.  
(\$25K)

## **STRATEGY 3: (\$70K)**

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**Collect data and evaluate activities to provide funders and providers of community services and supports the information needed to make wise continuing investments, and the ability to leverage an increasing amount of community investment and support..**

MEETING DATE: JUL 22 1999  
AGENDA NO: C-4  
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

**SUBJECT: PCRB EXEMPTION REQUEST TO SPECIFY THE AT-A-GLANCE/FRANKLIN COVEY BRAND NAME FOR THE PURCHASE OF TIME MANAGEMENT PRODUCTS**

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

REGULAR MEETING: DATE REQUESTED: July 22, 1999  
AMOUNT OF TIME NEEDED: N/A

DEPARTMENT: DSS DIVISION: Finance/Purchasing

CONTACT: Franna Hathaway TELEPHONE #: 248-5111 X22651  
BLDG/ROOM #: 421/1<sup>st</sup> floor

PERSON(S) MAKING PRESENTATION: Consent Calendar

**ACTION REQUESTED:**

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL  OTHER

**SUGGESTED AGENDA TITLE:**

**PCRB Exemption Request to Specify the AT-A-GLANCE/FRANKLIN COVEY Brand Name for the Purchase of Time Management Products**

*7/23/99 copies to FRANNA HATHAWAY*

**SIGNATURES REQUIRED:**

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

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
99 JUL 14 AM 11:40

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

**Any Questions: Call the Board Clerk @ 248-3277**

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM BRIEFING  
STAFF REPORT SUPPLEMENT**

TO: BOARD OF COUNTY COMMISSIONERS

FROM:  Franna Hathaway, Administrator  
Purchasing Section

TODAY'S DATE: July 14, 1999

REQUESTED PLACEMENT DATE: July 22, 1999

RE: PCRB EXEMPTION REQUEST TO SPECIFY THE AT-A-GLANCE/FRANKLIN COVEY BRAND NAME FOR THE PURCHASE OF TIME MANAGEMENT PRODUCTS

I. Recommendation/Action Requested:

The Materiel Management Section of the Finance Division requests approval of an exemption to specify the AT-A-GLANCE/FRANKLIN COVEY brand name for the purpose of establishing a requirements contract for time management products through the period ending August 31, 2002.

II. Background/Analysis:

Over the past few years there have been many takeovers and buyouts throughout the office supply industry. As a result, AT-A-GLANCE/FRANKLIN COVEY is the most common calendar brand available. In the product catalogues of the three largest office supply vendors (Office Depot, US Office Supply and BT Office Products), AT-A-GLANCE/FRANKLIN COVEY is the only time management manufacturer found.

It is unlikely that the specification of AT-A-GLANCE/FRANKLIN COVEY brand name will encourage favoritism or substantially diminish competition, because it is anticipated that many smaller office supply vendors can also bid AT-A-GLANCE/FRANKLIN COVEY products. Reasonable efforts will be made to notify all known suppliers of the specified products and invite such vendors to submit competitive bids.

III. Financial Impact:

The specification of AT-A-GLANCE/FRANKLIN COVEY brand name will result in substantial cost savings to the County because the products are compatible with existing equipment, such as calendar holders, booklets.

IV. Legal Issues:

N/A

V. Controversial Issues:

N/A

VI. Link to Current County Policies:  
PCRB Rules 20.050 and 20.060 require approval of the Public Contract Review Board for the specification of brand names in the procurement process.

VII. Citizen Participation  
N/A

VIII. Other Government Participation:  
N/A



# MULTNOMAH COUNTY, OREGON

## COUNTY COMMISSIONERS

BEVERLY STEIN, CHAIR  
DIANE LINN, DISTRICT #1  
SERENA CRUZ, DISTRICT #2  
LISA NAITO, DISTRICT #3  
SHARRON KELLEY, DISTRICT #4

DIRECTORS OFFICE  
ACCOUNTS PAYABLE  
GENERAL LEDGER  
INFORMATION MGMT.  
PAYROLL  
TREASURY  
PORTLAND BUILDING  
1120 SW FIFTH AVENUE, SUITE 1430  
PO BOX 14700  
PORTLAND, OR 97293-0700  
PHONE (503)248-3312  
FAX (503) 248-3292

## FINANCE DIVISION

CENTRAL STORES  
CONTRACTS  
PURCHASING  
FORD BUILDING  
2505 SE 11TH 1ST FLOOR  
PORTLAND, OR 97202  
PHONE (503) 248-5111  
FAX (503)248-3252  
TDD (503) 248-5170

## MEMORANDUM

TO: FRANNA HATHAWAY, ADMINISTRATOR  
PURCHASING SECTION

FROM:  BRIAN LEWIS, MANAGER  
MATERIEL MANAGEMENT

DATE: July 2, 1999

SUBJECT: REQUEST FOR BRAND NAME EXEMPTION  
AT-A-GLANCE/FRANKLIN COVEY TIME MANAGEMENT PRODUCTS

**REQUEST:** The Materiel Management section hereby requests a brand name exemption pursuant to PCRB Rules 20.050 for the purpose of establishing a requirements contract through the period of August 2002.

**BACKGROUND:** Over the past few years there have been many takeovers and buyouts throughout the office supply industry. As a result, AT-A-GLANCE/FRANKLIN COVEY is the most common, or in some cases- the only, calendar brand available.

It is unlikely that the specification of AT-A-GLANCE/FRANKLIN COVEY will encourage favoritism or substantially diminish competition. Reviewing the product catalogues of the three (3) largest office supply vendors (Office Depot, US Office Supply, and BT Office Products), you will find that AT-A-GLANCE/FRANKLIN is the only time management manufacturer found. It is anticipated that many smaller office supply vendors can also bid AT-A-GLANCE/FRANKLIN.

Specification of AT-A-GLANCE/FRANKLIN will also result in substantial cost savings to the County through the efficient utilization of a standard product line which would be compatible with existing equipment, i.e. calendar holders, booklets.

As with any other competitive solicitation, the County will make reasonable effort to notify all known suppliers of that AT-A-GLANCE/FRANKLIN and invite such vendors to submit competitive bids. The procurement file will be documented to support the determination there is adequate competition for AT-A-GLANCE/FRANKLIN products.

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON  
ACTING AS THE PUBLIC CONTRACT REVIEW BOARD  
**ORDER NO. 99-153**

Authorizing exemption to specify the AT-A-GLANCE/FRANKLIN COVEY brand name for the purchase of time management products,

The Multnomah County Board of Commissioners Finds:

- a. The Board, acting in its capacity as the Multnomah County Public Contract Review Board to review, pursuant to PCRBR Rules 20.050 and 20.060, a request from the Materiel Management Section, Finance Division for an exemption to specify the AT-A-GLANCE/FRANKLIN COVEY brand name for the purchase of time management products.
- b. As it appears in the staff report from Franna Hathaway and the memorandum from Brian Lewis, the request for exemption is based upon the fact that AT-A-GLANCE/FRANKLIN COVEY is the most common and, for some office supply vendors, the only calendar brand available. These products are compatible with existing equipment and therefore the specification of this product line will result in cost savings.
- c. This exemption request is in accord with the requirements of Multnomah County Public Contract Review Board Administrative Rules 20.050 and 20.060.

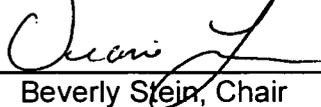
The Multnomah County Board of Commissioners, acting as the Public Contract Review Board Orders:

That the AT-A-GLANCE/FRANKLIN COVEY brand name be specified for the purchase of time management products.

APPROVED this 22nd day of July, 1999.



BOARD OF COUNTY COMMISSIONERS FOR  
MULTNOMAH COUNTY, OREGON, ACTING  
AS THE PUBLIC CONTRACT REVIEW BOARD

  
for Beverly Stein, Chair

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

By   
John Thomas, Assistant County Counsel

MEETING DATE: JUL 22 1999  
AGENDA NO: C-5  
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: PCRB EXEMPTION REQUEST TO USE THE REQUEST FOR PROPOSAL PROCESS TO SELECT A SEATING CONTRACTOR(S)

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

REGULAR MEETING: DATE REQUESTED: July 22, 1999  
AMOUNT OF TIME NEEDED: N/A

DEPARTMENT: DSS DIVISION: Finance/Purchasing

CONTACT: Franna Hathaway TELEPHONE #: 248-5111 X22651  
BLDG/ROOM #: 421/1<sup>st</sup> floor

PERSON(S) MAKING PRESENTATION: Consent Calendar

ACTION REQUESTED:

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL  OTHER

SUGGESTED AGENDA TITLE:

PCRB Exemption request to use the Request for Proposal process to select a seating contractor(s)

7/23/99 copies to FRANNA HATHAWAY

SIGNATURES REQUIRED:

ELECTED OFFICIAL: \_\_\_\_\_  
(OR)  
DEPARTMENT  
MANAGER: Dave Boyly Jr

99 JUL 14 11:11 AM  
MULTI-COUNTY  
OREGON  
BOARD OF  
COUNTY COMMISSIONERS

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM BRIEFING  
STAFF REPORT SUPPLEMENT**

TO: BOARD OF COUNTY COMMISSIONERS

FROM:  Franna Hathaway, Administrator  
Purchasing Section

TODAY'S DATE: July 14, 1999

REQUESTED PLACEMENT DATE: July 22, 1999

RE: PCRB EXEMPTION REQUEST TO USE THE REQUEST FOR  
PROPOSAL PROCESS TO SELECT A SEATING  
CONTRACTOR(S)

I. Recommendation/Action Requested:

The Environmental Services Department, Facilities and Property Management Division requests approval of an exemption to use the Request for Proposal process to select a contractor(s) for task, conference, huddle, reception, lounge and miscellaneous seating.

II. Background/Analysis:

On January 5, 1999, The County Chair assigned the Facilities Client Team (FCT) to develop Countywide Space Allocation Policy and Office Standards. As part of the standards development, a recommendation was made to secure long term contracts for furniture and equipment components, which would be integrated into the standards. The standards would then have their first application at the newly acquired Multnomah Building, serving as the model for the County.

A key component of the process of developing standards is the participation and support of County employees. As part of the RFP process, furniture mock-ups will be installed in the Multnomah Building, and chair manufacturers responding to the RFP will be requested to provide sample chairs that meet the specifications for employee review. Employees will be asked to evaluate the comfort level, appearance, and ease of operation of the chairs. These results will be weighed with the other selection criteria.

The Chair's Office, FCT and Facilities and Property Management Division believe it is essential to secure employee input when new standards and processes are being developed, and the Request for Proposal process will allow employees to have input in the selection of the seating contractor(s).

III. Financial Impact:

N/A

IV. Legal Issues:

N/A

V. Controversial Issues:

N/A

VI. Link to Current County Policies:

Current County policies and procedures require a formal competitive bid process for contracts over \$50,000, but PCRБ Rule 10.085 supports the use of alternative selection methods when appropriate.

VII. Citizen Participation

N/A

VIII. Other Government Participation:

N/A

RECEIVED  
MAY 27 9 23 AM '99  
MULTNOMAH COUNTY

**To:** Franna Hathaway

**From:** Stephen Shatter

**Through:** Larry Nicholas

**Date:** May 26, 1999

**Re:** Exemption Request for Proceeding with Chair Bid as a Request for Proposal (RFP)

---

This memo is to request proceeding with a Request for Proposal (RFP) in lieu of the bidding process to obtain pricing information to secure a three year contract with a vendor(s) for task, conference, huddle, reception, lounge, and miscellaneous seating.

**BACKGROUND:** On January 5, 1999, Chair Beverly Stein assigned the Facilities Client Team (FCT) to develop Countywide Space Allocation Policy and Office Standards. As part of standards development, a recommendation was proposed to have access to or secure long term contracts for furniture and equipment components which would be integrated into the standards. The standards would then have its first direct application at the newly acquired Multnomah Building, serving as the model for the County.

A key component of the process of developing standards and its first application is securing the participation of and garnering the support of County employees. The Chair's office, the FCT, and Facilities acknowledge that employee involvement throughout the process is critical to the overall success of this endeavor. A MINT site was created to track the evolution of the standards and a On The Move newsletter distributed to keep employees informed of the progress.

*As part of the RFP process*

~~In July~~, furniture mock-ups will be installed in the Multnomah Building as part of an open house for employees to review the new workstation typicals. Due to the fast time schedule to develop the standards, key decisions for the typicals such as size, components, and panel fabrics, were made by the FCT. As part of the employee involvement recommendation, Facilities, proposed that the employees have key input on flipper door fabric for the typicals, chair selection, keyboard trays, and the layout design process for group and common spaces. The Chair's Office and the FCT fully support this proposal.

Proposal: We are recommending that an exemption be granted to waive the normal bid procedure and allow us to select a seating vendor(s) via the RFP process to secure employee input. The RFP would consist of three evaluative criteria, 1) specifications 33%, 2) price 33%, and 3) employee input 34%. As part of the mock-up at the Multnomah Building, we are requesting that the various chair manufacturers responding to the RFP, provide a sample task chair(s) that meets the specifications for employee review. During the open house, employees will be asked to conduct a "Sit Test" which will evaluate the comfort level, appearance, and ease of operation of the chair. These results would be weighed with the other selection criteria.

REQUEST: The Chair's Office, the FCT, and Facilities feel it is essential to secure employee input when new standards and processes are being developed. Task seating is an area where employee input is most beneficial because it involves a personal choice based on direct, tactile experience. Please grant an exemption to waive the normal bid procedure and allow us to select a seating vendor(s) via the RFP process, so as to secure employee input in the process.

Cc: F. Wayne George  
Jim Emerson  
Bob Kieta  
Martha Kavorinos  
Karen Jones  
Leslie Mestman

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON  
ACTING AS THE PUBLIC CONTRACT REVIEW BOARD  
**ORDER NO. 99-154**

Exempting from the competitive bid process the selection of seating contractor(s) through the Request for Proposal process,

The Multnomah County Board of Commissioners Finds:

- a. The Board, acting in its capacity as the Multnomah County Public Contract Review Board to review, pursuant to PCRB Rules 10.140 and 10.085, a request from the Department of Environmental Services, Facilities and Property Management Division for an exemption to use the Request for Proposal process to select a seating contractor(s).
- b. As it appears in the staff report from Franna Hathaway and the memorandum from Larry Nicholas, the request for exemption is based upon the fact that in the process of developing the Countywide Space Allocation Policy and Office Standards, it was decided that employee involvement is essential to the success of the process, and the Request for Proposal method will allow employees to have input in the selection of a seating contractor(s).
- c. This exemption request is in accord with the requirements of Multnomah County Public Contract Review Board Administrative Rules 10.140 and 10.085.

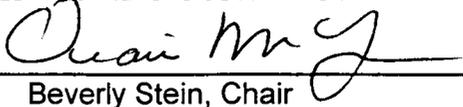
The Multnomah County Board of Commissioners, acting as the Public Contract Review Board Orders:

That the selection of seating contractor(s) be exempted from competitive bidding and that the RFP process be used for contractor selection.

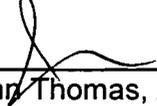
APPROVED this 22nd day of July, 1999.



BOARD OF COUNTY COMMISSIONERS FOR  
MULTNOMAH COUNTY, OREGON, ACTING  
AS THE PUBLIC CONTRACT REVIEW BOARD

  
for Beverly Stein, Chair

Thomas Sponsler, County Counsel  
For Multnomah County, Oregon

By   
John Thomas, Assistant County Counsel

**SPEAKER SIGN UP CARDS**

DATE 7-22-99

NAME ROGER TROEN

ADDRESS 4226 N. MONT. AV.  
97217

PHONE 287-7894

SPEAKING ON AGENDA ITEM NUMBER OR  
TOPIC SB 795 + NO KILL CONF.  
GIVE TO BOARD CLERK



## Board of Commissioners

Courthouse, Room 110  
225 W. Olive Street  
Newport, Oregon 97365  
(541)265-4100  
FAX (541)265-4176

July 14, 1999

Honorable John A. Kitzhaber, M.D.  
Governor of the State of Oregon  
State Capitol  
Salem, OR 97310-0370

Dear Governor Kitzhaber,

We are writing to ask that you veto Senate Bill 795. Once you have carefully reviewed that legislation, we feel confident that you will likewise realize that SB 795 is poorly crafted legislation that needlessly hurts effective local dog control programs.

### A LITTLE BACKGROUND

State law currently requires the killing of any dog that has chased, injured, or killed livestock. ORS 609.155. Thankfully, state law allows counties, by ordinance, to opt out of that harsh and inflexible statute. ORS 609.015.

Many counties, including Lincoln County, have enacted such an ordinance. Lincoln County's ordinance provides a uniform notice and hearing procedure for all dog cases, and provides a method for case-by case assessment of whether a dog should be euthanized or placed on probation with appropriate conditions. This ordinance was created after consultation with local livestock industry and animal rights representatives, and now has a proven track record of success.

However, a recent rash of difficult cases from counties without an opt out ordinance has caused a grass roots movement to change state law to the opposite extreme (proposed Initiative 35, sponsored by CHAL, Citizens for Humane Animal Legislation; the ballot title was recently certified by the Oregon Supreme Court).

### THE PURPOSE OF SB 795

In an effort to head off the need for Initiative 35, Senator Neil Bryant assembled a "task force" to create draft legislation to fix the state law. The task force included representatives from CHAL, OHS (the Portland area humane society), OVMA (Oregon Veterinary Medical Association), AOC (Association of Oregon Counties), and various livestock industries. Their work product became SB 795.



Veto SB 795  
July 14, 1999  
Page 2 of 3

### THE ORIGINAL SB 795

In its original form, SB 795 preserved the local opt out currently contained in state law. For this reason, Lincoln County did not take a position on the original bill.

### AMENDED SB 795

However, the bill was amended to specifically eliminate local control. As a result, the bill would now cause Lincoln County to lose its highly effective and proven ordinance, and instead be required to use the rigid matrix/chip implant/civil penalty scheme contained in the bill.

Our efforts to have the bill amended to restore local control fell on deaf ears, after lobbyists for the chief proponents insisted that SB 795's scheme be mandated state-wide.

Political momentum has driven SB 795 to your desk, without any real analysis by any legislative committee as to the contents or effects of the bill. If SB 795 were well-crafted legislation, we might very well be willing to live with its mandates. However, Sections 5 and 9 of the bill mandate a rigid and inflexible civil penalty/chip implant/relocation scheme that is, at best, ill suited for many parts of the state. **There is no justification for striping Lincoln County and other counties of their effective and locally created dog control programs.**

### SB 795 DOES NOT EVEN ACCOMPLISH ITS OWN GOAL

SB 795 was intended to head off a proposed initiative measure being sponsored by CHAL. However, because of SB 795's inflexibility and mandatory nature, CHAL has indicated that it is now even more dedicated to seeing that Initiative 35 gets on the ballot in November of 2000.

### SB 795 ALSO HAS LATENT DEFECTS/UNINTENDED CONSEQUENCES

Because no legislative committee spent the time to critically analyze the contents of the bill, many latent defects and unintended consequences had to be pointed out by CHAL. Those defects were then corrected by the chief sponsors in later versions of SB 795.

However, yet another latent defect in SB 795 has recently come to light: State law has long given a livestock owner special rights and remedies to deal with dogs involved in the chasing, injuring, or killing of livestock (ORS 609.150, right to kill a dog actively engaged in such activity; ORS 609.140, right to double damages; ORS 609.157, statutory damage presumption; ORS 609.160, right to prohibit continued ownership).



Veto SB 795

July 14, 1999

Page 3 of 3

Through an unintended error in drafting by the OVMA's lobbyists, SB 795 would specifically eliminate those statutory livestock owner rights in counties that do not have a dog control program, which are the most rural counties in Oregon, and in which those rights are therefore the most important.

#### SUMMARY

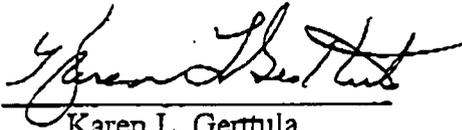
- Senate Bill 795 is a poorly crafted piece of legislation that unnecessarily strips counties of local control over dog control issues. This issue alone deserves your veto: PLEASE RETAIN LOCAL CONTROL OVER DOG CONTROL, AND VETO SB 795.
- Senate Bill 795 fails to accomplish its own goal of avoiding the driving force behind Initiative 35.
- Senate Bill 795 would impose an inflexible and inappropriate scheme of civil penalties/chip implants/relocation/euthanization.
- Senate Bill 795 contains latent defects that would strip livestock owners of important rights in the most rural of Oregon counties.

**SENATE BILL 795 HAS EARNED, AND DESERVES, YOUR VETO.**

#### LINCOLN COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Jean Cowan  
Commissioner

  
\_\_\_\_\_  
Don Lindly  
Chair

  
\_\_\_\_\_  
Karen L. Gerttula  
Commissioner



Citizens For Humane Animal Legislation  
14520 SW Chesterfield Lane  
Tigard, Oregon 97224

July 19, 1999

Governor John Kitzhaber  
254 State Capitol  
Salem, Oregon 97310

Re: Senate Bill 795

Dear Governor Kitzhaber:

Current Oregon *state* law requires the killing of dogs that chase, injure, or kill livestock. Cruel as it can be, current law retains a "savings clause," a provision that permits counties to opt out of the killing requirement and establish local laws suited to local needs and fitted to the facts of individual situations. In order to prevent passage of an initiative designed to assure consideration of practical alternatives to death while maintaining local control over this properly local issue, the Oregon Sheep Growers, aided by the Oregon Veterinary Medicine Association and the Oregon Humane Society, wrote and successfully lobbied amendments that they claim are more humane than current law.

We ask that you veto SB 795. It deserves rejection because it wrests from local governments control over what you have long recognized to be a "local issue" and, by imposing "one size fits all" solutions on *all* localities, forces a number of counties, including Lincoln, Multnomah, and Yamhill, to give up flexible, case-specific programs that have effectively protected livestock without unnecessary resort to killing.

You will hear -- or, probably, have already heard -- that the this loss of local authority is justified because SB 795 (a) will assure that leniency is granted when appropriate, (b) will teach dog owner responsibility by "putting the bite on the owner, not the dog," and (c) will assure that dog owners receive fair hearings. Every one of these claims is false.

With the single exception of the first completely harmless livestock chase -- the first scattering of a few chickens -- SB 795 limits county options

to killing, adoption, or "removal to another location," in short: killing or forfeiture. These are the only choices permitted, regardless of circumstance, regardless of other effective alternatives, regardless of whether the owner was responsible or a scofflaw. Even in the case of the first harmless chase, the sponsors of SB 795 -- those public proponents of "humane animal laws" -- *refused* to specifically prohibit needless vengeance-driven killing and, instead, permitted counties with a documented history of unnecessary killing to impose whatever sanctions believed "reasonable." Anyone aware of the situation involving Nadas in Jackson County *and* that county's refusal last week to permit Nadas' adoption by a Utah dog trainer that has worked with him for the past year and a half *knows* precisely what that county will determine "reasonable."

SB 795 will do nothing to improve owner responsibility. It mandates financial penalties of up to \$1000 *even if the owner did nothing wrong, even if the incident was a pure accident or was caused by a third-party*. When these fines are added to the restitution (in many cases *double damage* payments) the net effect will be increased abandonment, involuntary but forced by costs that are beyond the means of most Oregonians. When the guilty and the innocent are treated the same, when both are forced into the same rigid punishment matrix, the message is clear: responsibility simply doesn't matter.

One of the most outrageous claims is that SB 795 will assure that the fates of dogs and their owners will be determined by "fair" hearings. Nothing could be further from the truth. Current law requires "hearings." By forbidding consideration of all circumstances and alternatives, SB 795 guarantees that both hearings and outcomes in many counties will be even more unfair and unjust. As an example, please read the attached case example from Lincoln County.

All of Oregon's counties shouldn't be forced to adhere to a "solution" designed by a few people lacking any knowledge about the way current laws are enforced in different areas. If our local governments can be trusted to develop local laws governing dogs chasing/biting *people* surely there is no reason to refuse an equal degree of trust when the object of the incident is a sheep, a rabbit, or a chicken. Oregon simply doesn't need an apartheid -- separate and unequal -- system of "dog justice." And that's exactly what SB 795 creates.

SB 795 is bad policy and bad law. Its flaws have been masked by a propaganda campaign that prevented any thoughtful legislative analysis and debate. It was designed to preserve an unjust *status quo* and to protect special interests and economic concerns. *It is not a program for humane animal welfare progress.* It does not further humane treatment of animals. It will do serious damage to the human/animal bond that is so important to so many. It provokes urban/rural divisions by forcing urban governments to adhere to policies designed to appease rural interests. And, it strips local governments of the authority that they deserve. It merits your veto.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gail".

Gail R. O'Connell-Babcock


**OFFICE OF LINCOLN COUNTY LEGAL COUNSEL**

225 West Olive Street, Room 110

Newport, Oregon 97365

(541) 265-4108

Fax: (541) 265-4176

Wayne Belmont  
 County Counsel  
 Rob Bovett  
 Assistant County Counsel  
 Judy Eames  
 Legal Assistant

**FACSIMILE (FAX) TRANSMISSION COVER SHEET**

Date: June 1, 1999

Time: 2:30 p.m.

To: House Committee on Judiciary - Civil Law:

Representative Lane Shetterly, Chair,  
 Representative Randall Edwards,  
 Representative Kathy Lowe,  
 and Representative Larry Wells,  
 fax # (503) 986-1130

Representative Judith Uherbelau, Vice-Chair,  
 and Representative Vicki Walker,  
 fax # (503) 986-1561

Representative Vic Backlund,  
 And Representative Bill Witt,  
 fax # (503) 986-1997

Ann @ (503) 986-1009

From: Rob Bovett, Assistant County Counsel (and Dog Judge), Lincoln County

Subject: SB 795

Dear Committee Members,

In my letter to you earlier today, I mentioned that I would not be able to attend the work session on SB 795 because, ironically, I would be conducting a dog-livestock hearing.

I just finished that hearing, and it presents the perfect example of what is wrong with SB 795.

In my case today, a dog got out of its yard and chased a ewe. The ewe later died as a result of injuries sustained during the chase. The livestock owner stated her strong position that the dog not be euthanized, because the dog is a kind dog and this was an isolated incident. The dog owners agreed to take appropriate action to prevent any further incident, and are paying the livestock owner's vet bill. I placed the dog on probation with appropriate conditions. At the end of the hearing, the neighbors (the dog owner and the livestock owner) breathed a sigh of relief, and hugged each other.

SB 795 would require that I either order the dog relocated or euthanized. Section 5(1)(c). What an injustice.

This transmission consists of 1 page, including this cover sheet.

Lincoln and Multnomah  
 counties were denied  
 the right to keep their  
 local effective animal  
 control programs by  
 sponsors of SB795.A.  
 Support the rights of  
 county self government.  
 Don't trade them away.  
Vote No on SB795A

ROBERT E. BABCOCK  
ATTORNEY

*Advising maritime  
employers and insurers  
since 1970*

June 23, 1999

OPEN LETTER TO THE MEMBERS OF THE  
OREGON SENATE REGARDING SENATE BILL 795-B

Within the next few days you will be asked to approve the House amendments to SB 795-A. They will arrive amidst a phalanx of spear carriers headed by the Oregon Veterinary Medical Association ("We are *Doctors!* *We* know what's best."), flanked on the left by Representative Walker and on the right by Representative Witt, and pushed along by Senator Bryant, the Oregon Humane Society ("Anyway, there *are* too many dogs."), and the Oregon Sheep Growers Association ("We *deserve* the right to kill."). All will be chanting their well-rehearsed chorus:

Don't bother with content.  
Don't squander your time.  
It's like the jelly by Smuckers.  
When it carries our names, it's *got* to be fine.

The experts report that you will approve the amendments. They're probably right. This letter is not written with much hope that you will prove them wrong. The Senate and House Committee hearings have shown that no one is interested in discussing the bill's contents and effects. I write only to make sure that each of you knows that your "aye" will achieve.

The best way to understand the effects of amended SB 795-A is to set the stage with a factual scenario similar to one played out this month:

Mary had a beagle. Her next door neighbor Janet raised rabbits. They were good friends and had lived side-by-side for years. One day the beagle found a soft spot along the fence, dug her way into Janet's yard, and -- doing what beagles do when given the chance -- broke into one of the hutches and killed one of the rabbits. Mary paid for the dead rabbit and the veterinary costs incurred for another. The veterinarian reported the incident to animal control.

REPLY TO:

148 B AVENUE

LAKE OSWEGO, OR  
97034

503-635-9191

FAX 503-635-4354

E MAIL:

ROBERTBABCOCK  
@MSN.COM

The case was heard by the local "dog judge." After learning the facts, after determining that Mary was a very responsible dog owner who had done everything reasonable to keep her dog confined, and after hearing Janet's request that the beagle be returned to Mary, he released the dog as soon as he was assured that the fence had been inspected and "dog proofed." Mary and Janet left together, still good friends and good neighbors. Problem solved. Case closed.

REPLY TO:

148 B AVENUE  
LAKE OSWEGO, OR  
97034

503•635•9191

FAX 503•635•4354

E MAIL:  
ROBERTBABCOCK  
@MSN.COM

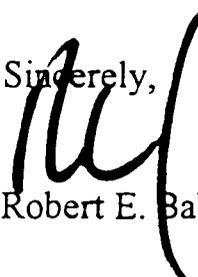
Most people would say "okay, if that solution works for the parties, it's fine with me." Even those who think that harsh punishment is deserved would probably go along with letting the county come up with its own solution.

But the supporters of SB 795 know better. If the House amendments are approved, Mary will have to pay a \$500 fine. Her beagle will be banished from her home or killed. That's it. No choice. No discretion. No consideration of Mary's history of responsibility, or Janet's plea for leniency. Substituting a chicken or sheep for the rabbit or an irresponsible felon for Mary would make no difference. *But*, make the rabbit a household cat and local government can still do whatever it chooses. SB 795 proves that cream is not the only thing that can rise to the top in Salem.

This usurpation of local authority was *not* unintended, the result of some unfortunate error in drafting. When Lincoln and Multnomah counties asked for permission to continue enforcement of their own approaches to dog control, SB 795's supporters were adamant in opposition. The *purpose* of the bill's scheme is to impose a "one size fits all" solution upon every county in the state. *No* exceptions permitted. *No* local discretion allowed.

That's the bill you'll be asked to approve this week. You'll probably vote "aye;" that's what your leadership wants and this is the time of the year when turkeys can fly. But when you do, at least have the grace to be embarrassed.

Sincerely,



Robert E. Babcock

# CITIZENS FOR HUMANE ANIMAL LEGISLATION

148 B Avenue

Lake Oswego, Oregon 97034

(503) 635-9191 or 590-0292 [phone]

(503) 635-4354 [fax]

## SENATE BILL 795-B: BAD POLICY AND BAD LAW

With the latest amendments, the House of Representatives has pushed the bill you passed into a shape you probably never anticipated. What was a poorly conceived model has been transformed into an inflexible mandate.

If you concur in the House amendments, no Oregon county will be able to opt out of the sponsors' rigid punishment matrix. Every Oregon county will have to comply with the OHS/OVMA/Sheep Grower solution regardless of whether it does or does not suit local conditions. Even if everybody *knows* that what happened was an accident, even if everybody *knows* that fixing a fence will solve the problem, the newly amended version of SB 795 not only demands punishment, it specifies in advance precisely what punishments should be imposed. And it leaves **NOTHING** to county discretion.

Whatever the county officials may want, if a dog gets loose and kills "livestock" -- whether chicken or rabbit or sheep -- the county has no discretion. Local government *must* order the dog killed or "removed" to a new location and *must* levy a fine of at least \$500 *even if the dog's owner did nothing wrong and there had been no previous problems*. And, that's *in addition to* paying the full (and sometimes double) value of the livestock.

If a first offense chase results in livestock injury - whether serious or minor - the county officials must pick from a 3-item menu of pre-conceived solutions (death, "removal," or adoption) and must add a minimum fine of \$250 to the selection. If one harmless chase precedes that event, the minimum fine increases to \$500 and the dog must be killed or removed. Even adoption by a responsible owner is not permitted. Even a second harmless chase -- a "no injury" scattering of a neighbor's chickens -- triggers the "kill or get rid of" demand and the mandatory \$250 fine.

For the requirement that these punishments be imposed in all Oregon counties, SB 795's vaunted "compromise" gained *absolutely nothing*. For even a first offense "harmless chase," the counties can do *precisely* what current law permits. They can kill whenever killing is found to be a "reasonable" way to prevent future problems. History proves that some counties believe that killing is the *only* solution.

With their amendments, the House has substituted the OHS/OVMA/Sheep Grower "solution" for the views of local officials. In some instances, killing is mandated when there *are* other ways to prevent future problems. In others, heavy fines be imposed upon people who did *nothing* wrong. And, in *all* instances counties *must* enforce two separate laws -- one for dogs that chase livestock, another for dogs that chase cats or people -- *and* must turn back the clock on humanitarian progress. SB 795-A was bad policy and bad law when it passed the Senate. With the House amendments it is far worse.

**VOTE "NO" WHEN YOU ARE ASKED TO CONCUR IN THE HOUSE AMENDMENTS. SEND SB 795 TO CONFERENCE COMMITTEE AND SUPPORT THE FAR SUPERIOR "MINIMUM STANDARD" ALTERNATIVE. FROM EVERY PERSPECTIVE, IT IS BETTER FOR OREGON'S ANIMALS, BETTER FOR OREGON'S COUNTIES, BETTER FOR OREGON.**

## MINIMUM STANDARD ALTERNATIVE TO SB 795

"Section 1: ORS 609.015 is amended to read as follows:

**609.015 Application of ORS 609.010 to 190.** (1) ORS 609.010 to 609.190 apply in every county except as otherwise provided by county charter or ordinance and, except as provided in subsections 2 and 3, shall not be construed to limit the powers of cities and counties to adopt ordinances and regulations relating to the control of dogs.

(2) A county dog licensing and control program shall not apply within the limits of a city that has its own dog licensing and control program.

(3) The following provisions shall apply throughout Oregon and shall be construed to preclude the enforcement of all provisions of state law and all ordinances and regulations relating to the control of dogs that are inconsistent with their requirements:

(a) No dog may be ordered killed, impounded for a period exceeding ten (10) days, moved to a new location, or surrendered for temporary placement or adoption unless it is first determined that the owner or keeper will not properly care for it or will again allow it violate state laws or local ordinances and regulations relating to the control of dogs. No dog may be ordered killed unless it is further determined that all other persons or organizations that have offered to adopt the dog or accept it for temporary placement will not properly care for it or will again allow it violate state laws or local ordinances and regulations relating to the control of dogs. In no event may any dog may be placed with or adopted by a research facility or person who breeds or possesses animals for sale to research facilities.

(b) All orders subject to subparagraph (a) shall be subject to appeal in accordance with subparagraph (c). All orders kill dogs shall be stayed for a reasonable period following the later of (A) personal service of such order upon the dog's owner or keeper and (B) public notice of such order in a manner reasonably calculated to give actual notice to all persons and organizations that have requested such notice. Service and public notice of all orders subject to subparagraph (a) shall be accompanied by a notice reasonably describing (i) the specific behavior and incident alleged, (ii) the possible penalties and remedial measures, and (iii) the opportunity to appeal. If appealed, all orders to kill dogs shall be further stayed for a reasonable period following issuance of any decision on appeal and, if judicial review of such decision is sought within that period, for a further reasonable period following issuance of the decision on judicial review.

(c) The owner or keeper and all persons or organizations that have offered to accept a dog for placement or adoption shall have standing to appeal any order subject to subparagraphs (a) and (b). Appeals from all determinations and orders shall be conducted in a manner that assures a full and fair inquiry into the facts necessary to determine whether the order appealed should be affirmed, vacated, or modified. Judicial review of all orders issued following appeal shall be solely as provided by ORS 34.010 to 34.100.

(d) No financial penalty, fee, or charge of any nature may be imposed upon or assessed against any person or organization that has offered to adopt or accept for temporary placement any dog subject to these provisions. *Provided however*, nothing in this subparagraph shall limit in any way the responsibility of such person or organization to fully comply with all state laws and local ordinances and regulations relating to the control of dogs following of adoption or placement.

(e) All governmental agencies and employees acting in accordance with this section and all persons and organizations to whom or to which a dog has been released for placement or adoption pursuant to this section shall be immune from civil liability for or resulting from any act or omission done or made while engaged in placement or adoption efforts, unless the act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another.

**B-Engrossed  
Senate Bill 795**

Ordered by the House June 17  
Including Senate Amendments dated May 7 and House Amendments dated  
June 17

Sponsored by Senator BRYANT; Representative WALKER (at the request of Oregon Veterinary Medical Association, Oregon Humane Society and Oregon Sheep Growers Association)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates schedule of progressive civil penalties and remedial measures for county having dog control program to use when dog kills, wounds, injures or chases livestock. Allows imposition of additional remedial measures. Requires offering dog owner opportunity for hearing.

Requires microchip identification of dogs killing, wounding, injuring or chasing livestock. Establishes record keeping system to track history of offending dogs and owners. Allows county to file lien to recover civil penalties.

Allows counties to enact ordinances that supersede application of state statutes regarding dog interactions with livestock.

Requires State Department of Agriculture to develop dog owner education program to extent of available funding.

Adds alpacas to definition of livestock.

Includes animal shelter facility as permissible nonfarm use of property in exclusive farm use zone. Sunsets animal shelter facility provision on January 1, 2002.

**A BILL FOR AN ACT**

Relating to animals; creating new provisions; and amending ORS 167.310, 167.387, 215.283, 609.010, 609.015, 609.090, 609.095, 609.100, 609.155, 609.157, 609.160, 609.180 and 609.190.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** Sections 2 to 10 of this 1999 Act are added to and made a part of ORS 609.140 to 609.190.

**SECTION 2.** (1) Prior to making a determination whether a dog has killed, wounded, injured or chased livestock, a county shall provide an opportunity for the dog owner to receive a hearing. The county shall send notice of the opportunity to request a hearing in a manner that is reasonably calculated, under all the circumstances, to apprise the dog owner of the specific behavior and incident alleged and the possible penalties, and to provide the dog owner with a fair opportunity for making the hearing request.

(2) A dog owner must cause a hearing request to be delivered to the county not later than the 14th day following the sending of notice under subsection (1) of this section. If a dog owner does not make a timely request for a hearing, the dog owner is conclusively presumed to have admitted the matter alleged and the county may immediately take action under sections 5 and 6 of this 1999 Act. The county shall send notice of its determination in the manner provided under section 3 (4) of this 1999 Act.

**SECTION 3.** (1) A hearing may be conducted and a determination whether a dog has killed, wounded, injured or chased livestock may be made by the county governing body or

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in boldfaced type.

1 any members thereof, the dog control board or any members thereof or a county hearings  
2 officer.

3 (2) Notwithstanding ORS 9.160 and 9.320, the county may choose to be represented at the  
4 hearing by any employee of the county. If the employee is not an attorney, the employee  
5 shall not present legal argument, examine or cross-examine witnesses, present rebuttal evi-  
6 dence or give legal advice to the governing body, dog control board or hearings officer con-  
7 ducting the hearing.

8 (3) The person presiding at the hearing shall ensure that the record developed at the  
9 hearing shows a full and fair inquiry into the facts necessary to determine the matter al-  
10 leged. A determination made by a county following a hearing must be upon consideration of  
11 the whole record and supported by reliable, probative and substantial evidence.

12 (4) The county shall notify the dog owner of its determination and of any civil penalties  
13 or other measures imposed by delivering or mailing a copy to the dog owner or, if applicable,  
14 the attorney of the dog owner.

15 (5) If a hearing is not conducted by a majority of the county governing body, the owner  
16 may request that the county governing body reexamine the determination. If the county  
17 governing body does not grant the request for reexamination within 14 days, the request  
18 shall be deemed denied. A county governing body may not reexamine a determination if a  
19 petition for judicial review of the determination has been filed.

20 SECTION 4. (1) A determination issued under section 2 or 3 of this 1999 Act is subject  
21 to judicial review by the circuit court for the county making the determination as provided  
22 under ORS 34.010 to 34.100. Notwithstanding ORS 34.070, filing a petition for review shall  
23 automatically stay execution of the determination made by the county.

24 (2) Notwithstanding ORS 34.030, a petition for review must be filed no later than the 21st  
25 day following the date on which the county delivered or mailed its determination in accord-  
26 ance with section 3 (4) of this 1999 Act. The filing of a request for reexamination under sec-  
27 tion 3 (5) of this 1999 Act does not act to toll the time for filing a petition for judicial review.  
28 However, if a county governing body reexamines the determination, the time for filing a pe-  
29 tition for judicial review shall be extended through the 21st day following the date that the  
30 result of the reexamination is delivered or mailed.

31 (3) If the court reverses the decision of the county, the court shall make special findings  
32 of fact based upon the evidence in the record and conclusions of law indicating clearly all  
33 aspects in which the county's procedure or determination was in error.

34 SECTION 5. (1) If a county determines under section 2 (2) of this 1999 Act or after a full  
35 and fair hearing that a dog has engaged in killing, wounding, injuring or chasing livestock,  
36 the county shall take action in accordance with the following guidelines:

37 (a) If the dog has engaged in chasing livestock and has not previously killed, wounded,  
38 injured or chased livestock:

39 (A) The county shall take reasonable measures to prevent a recurrence. Reasonable  
40 measures include, but are not limited to, requiring that the dog owner take specific measures  
41 to adequately confine the dog and provide a notarized written pledge that the owner will  
42 prevent the dog from chasing livestock again; and

43 (B) The county may impose a civil penalty of not more than \$500.

44 (b) If the dog has engaged in chasing livestock and has previously killed, wounded, injured  
45 or chased livestock, or if the dog has engaged in wounding or injuring livestock and has not

1 previously killed, wounded, injured or chased livestock, the county shall impose a civil pen-  
2 alty of not less than \$250 and not more than \$1,000. In addition to imposing the civil penalty,  
3 the county may:

4 (A) Require the dog owner to surrender the dog for adoption by a new owner approved  
5 by the county;

6 (B) Require the owner to remove the dog to a location where, in the opinion of the  
7 county, the dog does not present a threat to livestock; or

8 (C) Require that the dog be put to death in a humane manner. Before requiring that a  
9 dog be put to death under this subparagraph, the county shall make specific findings on the  
10 record that other measures are not available, are not adequate to remedy the problem or  
11 are otherwise unsuitable.

12 (c) If the dog has engaged in wounding or injuring livestock and has previously killed,  
13 wounded, injured or chased livestock, or if the dog has engaged in killing livestock and has  
14 not previously killed livestock, the county shall impose a civil penalty of not less than \$500  
15 and not more than \$1,000. In addition to imposing the civil penalty, the county shall:

16 (A) Require the dog owner to remove the dog to a location where, in the opinion of the  
17 county, the dog does not present a threat to livestock; or

18 (B) Require that the dog be put to death in a humane manner.

19 (d) If the dog has engaged in killing livestock and the dog has previously killed livestock,  
20 the county shall impose a civil penalty of not less than \$500 and not more than \$1,000. In  
21 addition to imposing the civil penalty, the county shall require that the dog be put to death  
22 in a humane manner.

23 (2) In establishing the history of a dog for purposes of this section, or the history of an  
24 owner for purposes of section 6 of this 1999 Act, a county shall consider all known determi-  
25 nations involving the dog or owner by any court, or by a governing body, official or agency  
26 of any local or state government, without regard to where or when the incident occurred.

27 SECTION 6. (1) If a county assesses a civil penalty under section 5 of this 1999 Act  
28 against a dog owner who has previously been assessed a civil penalty, fine or forfeiture based  
29 upon the killing, wounding, injuring or chasing of livestock in an incident not involving the  
30 same dog or dogs as in the matter being determined, the county shall assess an additional  
31 civil penalty of not less than \$250 and not more than \$1,000.

32 (2) If a county assesses a civil penalty under section 5 of this 1999 Act against a dog  
33 owner who has previously been assessed two or more civil penalties, fines or forfeitures, or  
34 a combination thereof, based upon the killing, wounding, injuring or chasing of livestock in  
35 two or more incidents not involving the same dog or dogs as in the matter being determined,  
36 the county shall assess an additional civil penalty of not less than \$1,000 and not more than  
37 \$5,000. A penalty under this subsection is in lieu of a civil penalty under subsection (1) of this  
38 section.

39 (3) In addition to any other civil penalty under this section or section 5 of this 1999 Act,  
40 if a dog that kills, wounds, injures or chases livestock is not licensed as required, the county  
41 may assess a civil penalty of not more than \$1,000. A civil penalty imposed under this sub-  
42 section shall prevent imposition of a fine under ORS 609.990 for violation of ORS 609.100.

43 SECTION 7. (1) Moneys collected from a dog owner under section 5 or 6 of this 1999 Act  
44 shall be deposited in the county treasury.

45 (2) A civil penalty under section 5 or 6 of this 1999 Act is a penalty against the person

1 owning the dog at the time that the dog killed, wounded, injured or chased livestock. The  
2 penalty may not be transferred to a subsequent owner of the dog.

3 (3) When a county assesses a civil penalty under section 5 or 6 of this 1999 Act, if the  
4 amount of penalty is not paid within 21 days after delivery or mailing of the determination,  
5 the county may record the penalty with the county clerk of any county of this state. The  
6 clerk shall thereupon record in the County Clerk Lien Record the name of the person in-  
7 curring the penalty. However, the county shall not record a penalty with a county clerk while  
8 a request for reexamination or petition for judicial review is pending.

9 (4) In addition to any other remedy provided by law, recording an order in the County  
10 Clerk Lien Record pursuant to this section has the effect provided for in ORS 205.125 and  
11 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

12 (5) Imposition of a civil penalty under section 5 or 6 of this 1999 Act does not prevent the  
13 bringing of an action for damages under ORS 609.140 or 609.190. A determination by the  
14 county that a dog has killed, wounded, injured or chased livestock is prima facie evidence  
15 of the matter in a subsequent action under ORS 609.140 but not in an action under ORS  
16 609.190.

17 SECTION 8. (1) When a civil penalty is assessed against a dog owner under section 5 or  
18 6 of this 1999 Act, the county shall supply the State Department of Agriculture with infor-  
19 mation identifying the dog owner. The department shall supply the counties with forms for  
20 recording the information.

21 (2) The department shall maintain the record of a penalized dog owner for a reasonable  
22 period and shall make the record available to any county upon request.

23 (3) The county and the department may charge reasonable fees to the dog owner to cover  
24 the cost of conducting and administering the dog owner information program.

25 SECTION 9. (1) A county shall implant an identifying microchip into a dog described in  
26 section 5 of this 1999 Act that is not put to death. Implantation shall be made prior to any  
27 adoption or relocation of the dog. The State Department of Agriculture, by rule, shall pre-  
28 scribe standards for microchip implantation. The county making an implantation shall for-  
29 ward the microchip information and the record of the dog to the department.

30 (2) The department shall maintain the record for a dog implanted with a microchip under  
31 this section for a reasonable period and shall make the record available to any county upon  
32 request.

33 (3) The county and the department may charge reasonable fees to the dog owner to cover  
34 the cost of conducting and administering the microchip implantation program.

35 SECTION 9a. (1) Sections 2, 5 and 9 of this 1999 Act apply in every county having a dog  
36 control program.

37 (2) Except as provided under subsections (1) and (3) of this section, ORS 609.140 to 609.190  
38 apply in every county having a dog control program except as otherwise provided by county  
39 charter or ordinance. Except as provided under subsections (1) and (3) of this section, the  
40 provisions of ORS 609.140 to 609.190 do not limit the powers of cities or counties to adopt  
41 ordinances and regulations relating to the control of dogs.

42 (3) Section 5 (2) of this 1999 Act does not eliminate or restrict the ability of a county to  
43 adopt a charter or ordinance that is contrary to section 6 of this 1999 Act. Notwithstanding  
44 any county charter or ordinance, a notice of determination sent under section 2 (2) of this  
45 1999 Act or after a full and fair hearing shall be sent as provided under section 3 (4) of this

1 1999 Act.

2 SECTION 10. (1) The State Department of Agriculture shall coordinate the development  
3 of a program to educate dog owners concerning their responsibility to avoid conflicts be-  
4 tween dogs and livestock. The program shall include the publication of a brochure. A dis-  
5 cussion of penalties and other measures provided for under sections 5 and 6 of this 1999 Act  
6 shall be included in the brochure.

7 (2) The obligation of the department under subsection (1) of this section is limited to the  
8 extent of any moneys specifically appropriated for that purpose or available from donations,  
9 gifts and grants by private or other nonstate sources.

10 SECTION 11. As used in ORS 609.140 to 609.190, "livestock" means ratites, psittacines,  
11 horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl and  
12 any fur-bearing animal bred and maintained commercially or otherwise, within pens, cages  
13 and hutches.

14 SECTION 12. ORS 609.097 is added to and made a part of ORS 609.040 to 609.110.

15 SECTION 13. ORS 167.310 is amended to read:

16 167.310. As used in ORS 167.310 to 167.350:

17 (1) "Animal" means any nonhuman mammal, bird, reptile, amphibian or fish.

18 (2) "Good animal husbandry" includes, but is not limited to, the dehorning of cattle, the docking  
19 of horses, sheep or swine, and the castration or neutering of livestock, according to accepted prac-  
20 tices of veterinary medicine or animal husbandry.

21 (3) "Livestock" has the meaning provided in [ORS 609.010] section 11 of this 1999 Act.

22 (4) "Pet or domestic animal" means any animal that is owned or possessed by a person, other  
23 than livestock or poultry.

24 (5) "Physical injury" has the meaning provided in ORS 161.015.

25 (6) "Possess" has the meaning provided in ORS 161.015.

26 (7) "Serious physical injury" has the meaning provided in ORS 161.015.

27 (8) As used in ORS 167.325 and 167.330, "Minimum care" means care sufficient to preserve the  
28 health and well-being of an animal and, except for emergencies or circumstances beyond the rea-  
29 sonable control of the owner, includes, but is not limited to, the following requirements:

30 (a) Food of sufficient quantity and quality to allow for normal growth or maintenance of body  
31 weight.

32 (b) Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs.  
33 Snow or ice is not an adequate water source.

34 (c) In the case of pet or domestic animals, access to a barn, dog house or other enclosed struc-  
35 ture sufficient to protect the animal from wind, rain, snow or sun and which has adequate bedding  
36 to protect against cold and dampness.

37 (d) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from  
38 injury, neglect or disease.

39 (e) Pet or domestic animals shall not be confined to an area without adequate space for exercise  
40 necessary for the health of the animal or which does not allow access to a dry place for the animal  
41 to rest. The air temperature in a confinement area must be suitable for the animal involved. Con-  
42 finement areas must be kept reasonably clean and free from excess waste or other contaminants  
43 which could affect the animal's health.

44 SECTION 14. ORS 167.387 is amended to read:

45 167.387. As used in this section and ORS 167.388:

1 (1) "Livestock" has the meaning given in [ORS 609.010] section 11 of this 1999 Act.

2 (2) "Livestock production facility" means:

3 (a) Any facility or organization engaged in animal breeding, production or processing; or

4 (b) Any facility or institution whose primary purpose is to impound estray animals, as that term  
5 is defined in ORS 607.007.

6 **SECTION 14a.** ORS 215.283 is amended to read:

7 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

8 (a) Public or private schools, including all buildings essential to the operation of a school.

9 (b) Churches and cemeteries in conjunction with churches.

10 (c) The propagation or harvesting of a forest product.

11 (d) Utility facilities necessary for public service, except commercial facilities for the purpose of  
12 generating power for public use by sale and transmission towers over 200 feet in height.

13 (e) A dwelling on real property used for farm use if the dwelling is:

14 (A) Located on the same lot or parcel as the dwelling of the farm operator; and

15 (B) Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister  
16 of the farm operator or the farm operator's spouse, whose assistance in the management of the farm  
17 use is or will be required by the farm operator.

18 (f) The dwellings and other buildings customarily provided in conjunction with farm use.

19 (g) Operations for the exploration for and production of geothermal resources as defined by ORS  
20 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of  
21 compressors, separators and other customary production equipment for an individual well adjacent  
22 to the wellhead. Any activities or construction relating to such operations shall not be a basis for  
23 an exception under ORS 197.732 (1)(a) or (b).

24 (h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or  
25 construction relating to such operations shall not be a basis for an exception under ORS 197.732  
26 (1)(a) or (b).

27 (i) A site for the disposal of solid waste that has been ordered to be established by the Envi-  
28 ronmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings  
29 necessary for its operation.

30 (j) The breeding, kenneling and training of greyhounds for racing.

31 (k) Climbing and passing lanes within the right of way existing as of July 1, 1987.

32 (L) Reconstruction or modification of public roads and highways, including the placement of  
33 utility facilities overhead and in the subsurface of public roads and highways along the public right  
34 of way, but not including the addition of travel lanes, where no removal or displacement of buildings  
35 would occur, or no new land parcels result.

36 (m) Temporary public road and highway detours that will be abandoned and restored to original  
37 condition or use at such time as no longer needed.

38 (n) Minor betterment of existing public road and highway related facilities such as maintenance  
39 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous  
40 public-owned property utilized to support the operation and maintenance of public roads and high-  
41 ways.

42 (o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has  
43 been listed in a county inventory as historic property as defined in ORS 358.480.

44 (p) Seasonal farmworker housing as defined in ORS 197.675.

45 (q) Creation of, restoration of or enhancement of wetlands.

1 (r) A winery, as described in ORS 215.452.

2 (s) Farm stands, if:

3 (A) The structures are designed and used for the sale of farm crops and livestock grown on  
4 farms in the local agricultural area, including the sale of retail incidental items, if the sales of the  
5 incidental items make up no more than 25 percent of the total sales of the farm stand; and

6 (B) The farm stand does not include structures designed for occupancy as a residence or for  
7 activities other than the sale of farm crops and livestock and does not include structures for ban-  
8 quets, public gatherings or public entertainment.

9 (t) Alteration, restoration or replacement of a lawfully established dwelling that:

10 (A) Has intact exterior walls and roof structure;

11 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to  
12 a sanitary waste disposal system;

13 (C) Has interior wiring for interior lights;

14 (D) Has a heating system; and

15 (E) In the case of replacement, is removed, demolished or converted to an allowable nonresi-  
16 dential use within three months of the completion of the replacement dwelling. A replacement  
17 dwelling may be sited on any part of the same lot or parcel. A dwelling established under this par-  
18 agraph shall comply with all applicable siting standards. However, the standards shall not be applied  
19 in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a  
20 portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of ap-  
21 proval, shall execute and record in the deed records for the county where the property is located  
22 a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The re-  
23 striction imposed shall be irrevocable unless a statement of release is placed in the deed records for  
24 the county. The release shall be signed by the county or its designee and state that the provisions  
25 of this paragraph regarding replacement dwellings have changed to allow the siting of another  
26 dwelling. The county planning director or the director's designee shall maintain a record of the lots  
27 and parcels that do not qualify for the siting of a new dwelling under the provisions of this para-  
28 graph, including a copy of the deed restrictions and release statements filed under this paragraph.

29 (u) A site for the takeoff and landing of model aircraft, including such buildings or facilities as  
30 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor  
31 area or placed on a permanent foundation unless the building or facility preexisted the use approved  
32 under this paragraph. The site shall not include an aggregate surface or hard surface area unless  
33 the surface preexisted the use approved under this paragraph. As used in this paragraph, "model  
34 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is  
35 used or intended to be used for flight and is controlled by radio, lines or design by a person on the  
36 ground.

37 (v) A facility for the processing of farm crops located on a farm operation that provides at least  
38 one-quarter of the farm crops processed at the facility. The building established for the processing  
39 facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for  
40 preparation, storage or other farm use or devote more than 10,000 square feet to the processing  
41 activities within another building supporting farm uses. A processing facility shall comply with all  
42 applicable siting standards but the standards shall not be applied in a manner that prohibits the  
43 siting of the processing facility.

44 (2) The following nonfarm uses may be established, subject to the approval of the governing body  
45 or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

1 (a) Commercial activities that are in conjunction with farm use but not including the processing  
2 of farm crops as described in subsection (1)(v) of this section.

3 (b) Operations conducted for:

4 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas  
5 as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

6 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-  
7 sources subject to ORS 215.298;

8 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

9 (D) Processing of other mineral resources and other subsurface resources.

10 (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds.

11 (d) Parks, playgrounds or community centers owned and operated by a governmental agency or  
12 a nonprofit community organization.

13 (e) Golf courses.

14 (f) Commercial utility facilities for the purpose of generating power for public use by sale.

15 (g) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-  
16 tenance and service facilities. A personal-use airport as used in this section means an airstrip re-  
17 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional  
18 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-  
19 erations. No aircraft may be based on a personal-use airport other than those owned or controlled  
20 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be  
21 granted through waiver action by the Department of Transportation in specific instances. A  
22 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-  
23 ject to any applicable rules of the Department of Transportation.

24 (h) Home occupations as provided in ORS 215.448.

25 (i) A facility for the primary processing of forest products, provided that such facility is found  
26 to not seriously interfere with accepted farming practices and is compatible with farm uses de-  
27 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is  
28 renewable. These facilities are intended to be only portable or temporary in nature. The primary  
29 processing of a forest product, as used in this section, means the use of a portable chipper or stud  
30 mill or other similar methods of initial treatment of a forest product in order to enable its shipment  
31 to market. Forest products, as used in this section, means timber grown upon a parcel of land or  
32 contiguous land where the primary processing facility is located.

33 (j) A site for the disposal of solid waste approved by the governing body of a city or county or  
34 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-  
35 mental Quality together with equipment, facilities or buildings necessary for its operation.

36 (k) One manufactured dwelling, or the temporary residential use of an existing building, in  
37 conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the  
38 existing resident or a relative of the resident. Within three months of the end of the hardship, the  
39 manufactured dwelling shall be removed or demolished or, in the case of an existing building, the  
40 building shall be removed, demolished or returned to an allowed nonresidential use. The governing  
41 body or its designee shall provide for periodic review of the hardship claimed under this paragraph.  
42 A temporary residence approved under this paragraph is not eligible for replacement under sub-  
43 section (1)(t) of this section.

44 (L) Transmission towers over 200 feet in height.

45 (m) Dog kennels not described in subsection (1)(j) of this section.

1 (n) Residential homes as defined in ORS 197.660, in existing dwellings.

2 (o) The propagation, cultivation, maintenance and harvesting of aquatic or insect species. Insect  
3 species shall not include any species under quarantine by the State Department of Agriculture or  
4 the United States Department of Agriculture. The county shall provide notice of all applications  
5 under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance  
6 with the county's land use regulations but shall be mailed at least 20 calendar days prior to any  
7 administrative decision or initial public hearing on the application.

8 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way  
9 but not resulting in the creation of new land parcels.

10 (q) Reconstruction or modification of public roads and highways involving the removal or dis-  
11 placement of buildings but not resulting in the creation of new land parcels.

12 (r) Improvement of public road and highway related facilities, such as maintenance yards, weigh  
13 stations and rest areas, where additional property or right of way is required but not resulting in  
14 the creation of new land parcels.

15 (s) A destination resort which is approved consistent with the requirements of any statewide  
16 planning goal relating to the siting of a destination resort.

17 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-  
18 dences.

19 (u) Operations for the extraction and bottling of water.

20 (v) Expansion of existing county fairgrounds and activities directly relating to county  
21 fairgrounds governed by county fair boards established pursuant to ORS 565.210.

22 (w) **Expansion or replacement of an existing facility for an animal shelter as defined in**  
23 **ORS 609.500, if the shelter is tax exempt pursuant to section 501(c)(3) of the Internal Re-**  
24 **venue Code as amended and in effect on January 1, 1999.**

25 (3) Roads, highways and other transportation facilities and improvements not allowed under  
26 subsections (1) and (2) of this section may be established, subject to the approval of the governing  
27 body or its designee, in areas zoned for exclusive farm use subject to:

28 (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable  
29 goal with which the facility or improvement does not comply; or

30 (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development  
31 Commission as provided in section 3, chapter 529, Oregon Laws 1993.

32 **SECTION 14b.** ORS 215.283, as amended by section 14a of this 1999 Act, is amended to read:

33 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

34 (a) Public or private schools, including all buildings essential to the operation of a school.

35 (b) Churches and cemeteries in conjunction with churches.

36 (c) The propagation or harvesting of a forest product.

37 (d) Utility facilities necessary for public service, except commercial facilities for the purpose of  
38 generating power for public use by sale and transmission towers over 200 feet in height.

39 (e) A dwelling on real property used for farm use if the dwelling is:

40 (A) Located on the same lot or parcel as the dwelling of the farm operator; and

41 (B) Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister  
42 of the farm operator or the farm operator's spouse, whose assistance in the management of the farm  
43 use is or will be required by the farm operator.

44 (f) The dwellings and other buildings customarily provided in conjunction with farm use.

45 (g) Operations for the exploration for and production of geothermal resources as defined by ORS

1 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of  
2 compressors, separators and other customary production equipment for an individual well adjacent  
3 to the wellhead. Any activities or construction relating to such operations shall not be a basis for  
4 an exception under ORS 197.732 (1)(a) or (b).

5 (h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or  
6 construction relating to such operations shall not be a basis for an exception under ORS 197.732  
7 (1)(a) or (b).

8 (i) A site for the disposal of solid waste that has been ordered to be established by the Envi-  
9 ronmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings  
10 necessary for its operation.

11 (j) The breeding, kenneling and training of greyhounds for racing.

12 (k) Climbing and passing lanes within the right of way existing as of July 1, 1987.

13 (L) Reconstruction or modification of public roads and highways, including the placement of  
14 utility facilities overhead and in the subsurface of public roads and highways along the public right  
15 of way, but not including the addition of travel lanes, where no removal or displacement of buildings  
16 would occur, or no new land parcels result.

17 (m) Temporary public road and highway detours that will be abandoned and restored to original  
18 condition or use at such time as no longer needed.

19 (n) Minor betterment of existing public road and highway related facilities such as maintenance  
20 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous  
21 public-owned property utilized to support the operation and maintenance of public roads and high-  
22 ways.

23 (o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has  
24 been listed in a county inventory as historic property as defined in ORS 358.480.

25 (p) Seasonal farmworker housing as defined in ORS 197.675.

26 (q) Creation of, restoration of or enhancement of wetlands.

27 (r) A winery, as described in ORS 215.452.

28 (s) Farm stands, if:

29 (A) The structures are designed and used for the sale of farm crops and livestock grown on  
30 farms in the local agricultural area, including the sale of retail incidental items, if the sales of the  
31 incidental items make up no more than 25 percent of the total sales of the farm stand; and

32 (B) The farm stand does not include structures designed for occupancy as a residence or for  
33 activities other than the sale of farm crops and livestock and does not include structures for ban-  
34 quets, public gatherings or public entertainment.

35 (t) Alteration, restoration or replacement of a lawfully established dwelling that:

36 (A) Has intact exterior walls and roof structure;

37 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to  
38 a sanitary waste disposal system;

39 (C) Has interior wiring for interior lights;

40 (D) Has a heating system; and

41 (E) In the case of replacement, is removed, demolished or converted to an allowable nonresi-  
42 dential use within three months of the completion of the replacement dwelling. A replacement  
43 dwelling may be sited on any part of the same lot or parcel. A dwelling established under this par-  
44 agraph shall comply with all applicable siting standards. However, the standards shall not be applied  
45 in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a

1 portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of ap-  
2 proval, shall execute and record in the deed records for the county where the property is located  
3 a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The re-  
4 striction imposed shall be irrevocable unless a statement of release is placed in the deed records for  
5 the county. The release shall be signed by the county or its designee and state that the provisions  
6 of this paragraph regarding replacement dwellings have changed to allow the siting of another  
7 dwelling. The county planning director or the director's designee shall maintain a record of the lots  
8 and parcels that do not qualify for the siting of a new dwelling under the provisions of this para-  
9 graph, including a copy of the deed restrictions and release statements filed under this paragraph.

10 (u) A site for the takeoff and landing of model aircraft, including such buildings or facilities as  
11 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor  
12 area or placed on a permanent foundation unless the building or facility preexisted the use approved  
13 under this paragraph. The site shall not include an aggregate surface or hard surface area unless  
14 the surface preexisted the use approved under this paragraph. As used in this paragraph, "model  
15 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is  
16 used or intended to be used for flight and is controlled by radio, lines or design by a person on the  
17 ground.

18 (v) A facility for the processing of farm crops located on a farm operation that provides at least  
19 one-quarter of the farm crops processed at the facility. The building established for the processing  
20 facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for  
21 preparation, storage or other farm use or devote more than 10,000 square feet to the processing  
22 activities within another building supporting farm uses. A processing facility shall comply with all  
23 applicable siting standards but the standards shall not be applied in a manner that prohibits the  
24 siting of the processing facility.

25 (2) The following nonfarm uses may be established, subject to the approval of the governing body  
26 or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

27 (a) Commercial activities that are in conjunction with farm use but not including the processing  
28 of farm crops as described in subsection (1)(v) of this section.

29 (b) Operations conducted for:

30 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas  
31 as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

32 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-  
33 sources subject to ORS 215.298;

34 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

35 (D) Processing of other mineral resources and other subsurface resources.

36 (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds.

37 (d) Parks, playgrounds or community centers owned and operated by a governmental agency or  
38 a nonprofit community organization.

39 (e) Golf courses.

40 (f) Commercial utility facilities for the purpose of generating power for public use by sale.

41 (g) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-  
42 tenance and service facilities. A personal-use airport as used in this section means an airstrip re-  
43 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional  
44 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-  
45 erations. No aircraft may be based on a personal-use airport other than those owned or controlled

1 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be  
2 granted through waiver action by the Department of Transportation in specific instances. A  
3 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-  
4 ject to any applicable rules of the Department of Transportation.

5 (h) Home occupations as provided in ORS 215.448.

6 (i) A facility for the primary processing of forest products, provided that such facility is found  
7 to not seriously interfere with accepted farming practices and is compatible with farm uses de-  
8 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is  
9 renewable. These facilities are intended to be only portable or temporary in nature. The primary  
10 processing of a forest product, as used in this section, means the use of a portable chipper or stud  
11 mill or other similar methods of initial treatment of a forest product in order to enable its shipment  
12 to market. Forest products, as used in this section, means timber grown upon a parcel of land or  
13 contiguous land where the primary processing facility is located.

14 (j) A site for the disposal of solid waste approved by the governing body of a city or county or  
15 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-  
16 mental Quality together with equipment, facilities or buildings necessary for its operation.

17 (k) One manufactured dwelling, or the temporary residential use of an existing building, in  
18 conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the  
19 existing resident or a relative of the resident. Within three months of the end of the hardship, the  
20 manufactured dwelling shall be removed or demolished or, in the case of an existing building, the  
21 building shall be removed, demolished or returned to an allowed nonresidential use. The governing  
22 body or its designee shall provide for periodic review of the hardship claimed under this paragraph.  
23 A temporary residence approved under this paragraph is not eligible for replacement under sub-  
24 section (1)(t) of this section.

25 (L) Transmission towers over 200 feet in height.

26 (m) Dog kennels not described in subsection (1)(j) of this section.

27 (n) Residential homes as defined in ORS 197.660, in existing dwellings.

28 (o) The propagation, cultivation, maintenance and harvesting of aquatic or insect species. Insect  
29 species shall not include any species under quarantine by the State Department of Agriculture or  
30 the United States Department of Agriculture. The county shall provide notice of all applications  
31 under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance  
32 with the county's land use regulations but shall be mailed at least 20 calendar days prior to any  
33 administrative decision or initial public hearing on the application.

34 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way  
35 but not resulting in the creation of new land parcels.

36 (q) Reconstruction or modification of public roads and highways involving the removal or dis-  
37 placement of buildings but not resulting in the creation of new land parcels.

38 (r) Improvement of public road and highway related facilities, such as maintenance yards, weigh  
39 stations and rest areas, where additional property or right of way is required but not resulting in  
40 the creation of new land parcels.

41 (s) A destination resort which is approved consistent with the requirements of any statewide  
42 planning goal relating to the siting of a destination resort.

43 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-  
44 dences.

45 (u) Operations for the extraction and bottling of water.

1 (v) Expansion of existing county fairgrounds and activities directly relating to county  
2 fairgrounds governed by county fair boards established pursuant to ORS 565.210.

3 [(w) Expansion or replacement of an existing facility for an animal shelter as defined in ORS  
4 609.500, if the shelter is tax exempt pursuant to section 501(c)(3) of the Internal Revenue Code as  
5 amended and in effect on January 1, 1999.]

6 (3) Roads, highways and other transportation facilities and improvements not allowed under  
7 subsections (1) and (2) of this section may be established, subject to the approval of the governing  
8 body or its designee, in areas zoned for exclusive farm use subject to:

9 (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable  
10 goal with which the facility or improvement does not comply; or

11 (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development  
12 Commission as provided in section 3, chapter 529, Oregon Laws 1993.

13 **SECTION 15.** ORS 609.010 is amended to read:

14 609.010. [(1) As used in ORS 609.140 to 609.190, "livestock" means ratites, psittacines, horses,  
15 mules, jackasses, cattle, llamas, sheep, goats, swine, domesticated fowl and any fur-bearing animal bred  
16 and maintained commercially or otherwise, within pens, cages and hutches.]

17 [(2)] As used in ORS 609.040 to 609.110, any dog shall be considered "running at large" when it  
18 is off or outside of the premises belonging to the owner or keeper of [such] the dog, or not in com-  
19 pany of and under the control of its owner or keeper.

20 **SECTION 16.** ORS 609.015 is amended to read:

21 609.015. (1) ORS [609.010 to 609.190] **609.030 and 609.040 to 609.110** apply in every county except  
22 as otherwise provided by county charter or ordinance. [The provisions of ORS 609.010 to 609.190  
23 shall not be construed to] **ORS 609.030 and 609.040 to 609.110 do not** limit the powers of cities and  
24 counties to adopt ordinances and regulations[,] relating to the control of dogs.

25 (2) A county dog licensing and control program shall not apply within the limits of a city  
26 [which] **that** has its own dog licensing and control program.

27 **SECTION 17.** ORS 609.090 is amended to read:

28 609.090. (1) When any dog is found running at large in any county, precinct or city[ which] **that**  
29 is subject to ORS [609.010 to 609.190] **609.040 to 609.110** or when a dog is a public nuisance de-  
30 scribed by ORS 609.095 [or 609.150], every chief of police, constable, sheriff or deputy of either, or  
31 other police or dog control officer shall impound it or cite the owner or keeper to court or do both.

32 (2) All dogs taken up and impounded under this section and ORS 609.030 shall be held in an  
33 adequate and sanitary pound to be provided by the county governing body from the general fund  
34 or out of funds obtained from dog licenses and from the redemption of dogs so impounded. However,  
35 in lieu of the establishment of a dog pound, the county governing body may contract for the care  
36 of the dogs.

37 (3) Unless claimed by the owner, a dog shall be impounded for at least three days if the dog is  
38 without a license or identification tag and for at least five days if it has a license or identification  
39 tag. A reasonable effort shall be made to notify the owner of a dog before the dog is removed from  
40 impoundment. Unless the county governing body provides otherwise, if the owner appears and re-  
41 deems the dog, the owner shall pay a sum of not less than \$10 for the first impoundment and not less  
42 than \$20 for each subsequent impoundment and also pay the expense of keeping the dog during the  
43 time it was impounded. If the dog is unlicensed the owner shall also purchase a license and pay the  
44 applicable penalty for failure to have a license. If no owner appears to redeem a dog within the al-  
45 lotted time, or if the dog has been impounded as a public nuisance for killing or injuring a person,

1 it shall be killed in a humane manner.

2 (4) If in the opinion of the dog control board or county governing body the dog is not dangerous  
3 and can be safely kept, the board or governing body may release the dog to a responsible person  
4 upon receiving assurance that the person will properly care for the dog and not allow it to become  
5 a nuisance, and upon payment of a sum established by the county governing body plus cost of keep  
6 during its impounding, and purchase of a license if required. The person shall thereafter be liable  
7 as owner of the dog as provided by [609.010 to 609.190 and 609.405] **ORS 609.040 to 609.110.**

8 [(3)] (5) Notwithstanding *[the provisions of subsection (2)]* **subsections (2), (3) and (4)** of this  
9 section, any dog impounded for biting a person shall be held for not less than 10 days before re-  
10 demption or destruction to determine if the dog is rabid.

11 [(4)] (6) A board or county governing body may provide for lesser fees or fines under this section  
12 for certain senior citizens under certain circumstances.

13 **SECTION 18.** ORS 609.095 is amended to read:

14 609.095. (1) A dog is a public nuisance if it:

15 (a) Bites a person;

16 (b) Chases vehicles or persons;

17 (c) Damages or destroys property of persons other than the owner of the dog;

18 (d) Scatters garbage;

19 (e) Trespasses on private property of persons other than the owner of the dog;

20 (f) Disturbs any person by frequent or prolonged noises; or

21 (g) Is a female in heat and running at large.

22 (2) The owner or keeper of a dog in a county subject to ORS [609.010 to 609.190] **609.030 and**  
23 **609.040 to 609.110** shall not allow the dog to be a public nuisance under subsection (1) of this sec-  
24 tion.

25 (3) Any person who has cause to believe a dog is being maintained as a public nuisance may  
26 complain, either orally or in writing, to the county. The complaint shall be considered sufficient  
27 cause for the county to investigate the matter and determine if the owner or keeper of the dog is  
28 in violation of subsection (2) of this section.

29 **SECTION 19.** ORS 609.100 is amended to read:

30 609.100. (1) In a county having a dog control program under ORS [609.010 to 609.190] **609.030,**  
31 **609.040 to 609.110** and 609.405, every person owning or keeping any dog *[which]* that has a set of  
32 permanent canine teeth or is six months old, whichever comes first, shall[,] **procure a license for**  
33 **the dog. The license must be procured by paying a license fee to the county in which the**  
34 **person resides** not later than March 1 of each year or within 30 days after the person becomes  
35 owner or keeper of the dog.*[ procure from the county in which the person resides, a license for the*  
36 *dog by paying to the county a license fee provided,]* However, *[that]* the county governing body may  
37 provide for dates other than March 1 for annual payment of fees. The fee for the license shall be  
38 determined by the county governing body in such amount as it finds necessary to carry out ORS  
39 609.040 to 609.110. A license fee shall not be less than \$9 for each dog, except that the fee shall not  
40 be less than \$3 for each spayed female or neutered male dog for which a veterinarian's certificate  
41 of operation for the spaying or neutering of the dog is presented to the county. If the person fails  
42 to procure a license within the time provided by this section, the county governing body may pre-  
43 scribe a penalty in an additional sum to be set by the governing body.

44 (2) The county shall, at the time of issuing a license, supply the licensee, without charge, with  
45 a suitable identification tag, which shall be fastened by the licensee to a collar and kept on the dog

1 at all times when not in the immediate possession of the licensee.

2 (3) The license fees in subsection (1) of this section do not apply to dogs that are kept primarily  
3 in kennels and are not permitted to run at large. The county governing body may establish a sepa-  
4 rate license for dogs that are kept primarily in kennels when the dogs cease to be taxed as inven-  
5 tory under ORS 307.400, the fee for which shall not exceed \$5 per dog.

6 (4) No license fee shall be required to be paid for any dog owned by a blind person who uses  
7 it as a guide. A license shall be issued for such dog upon **the blind person's filing of an affidavit**  
8 with the county [*an affidavit by the blind person*] showing [*such*] **that the dog [to come] comes**  
9 within this exemption.

10 (5) The county shall keep a record of dog licenses.

11 (6) Notwithstanding any other provision of this section or ORS 609.015, when the owner or  
12 keeper of a dog obtains a license for the dog, that license is valid and is in lieu of a license for the  
13 dog required by any other city or county within this state, for the remainder of the license period:

14 (a) If the owner or keeper of the dog changes residence to a city or county other than the city  
15 or county in which the license was issued; or

16 (b) If the owner or keeper of the dog transfers ownership or possession of the dog to a person  
17 who resides in a city or county other than the city or county in which the license was issued.

18 **SECTION 20.** ORS 609.155 is amended to read:

19 609.155. (1) In a county with a dog control program, upon finding a dog engaged in killing,  
20 wounding, injuring or chasing livestock or upon receipt from a complainant of evidence that a dog  
21 has been so engaged, the dog control officer or other law enforcement officer shall impound the dog.

22 (2) If there is reason to believe that reasonable testing of a dog impounded pursuant to sub-  
23 section (1) of this section, including but not limited to a fecal examination or examination of the  
24 teeth of the dog, will provide substantial further evidence as to whether the dog has been engaged  
25 in killing, wounding, injuring or chasing livestock, the county [*governing body*] shall provide for the  
26 administration of the tests by a licensed veterinarian.

27 (3)(a) After the completion of [*such*] tests [*as are*] administered pursuant to subsection (2) of this  
28 section **and allowing an opportunity for a hearing under section 3 of this 1999 Act**, the county  
29 [*governing body*] shall determine whether the dog has been engaged in killing, wounding, injuring  
30 or chasing livestock. If the county [*governing body*] determines that the dog has been so engaged,  
31 [*the dog shall be killed in a humane manner and costs of keeping and testing of the dog during the*  
32 *impoundment shall be paid by the owner of the dog.*] **the county shall take action as provided**  
33 **under sections 5 and 6 of this 1999 Act. In addition to any action taken under sections 5 and**  
34 **6 of this 1999 Act, the county may require that the dog owner pay the costs of keeping and**  
35 **testing the dog during impoundment.** If the county [*governing body*] determines that the dog has  
36 not been [*so*] engaged **in killing, wounding, injuring or chasing livestock**, the dog shall be re-  
37 leased to its owner and, if the dog had been impounded upon receipt of evidence from a complainant,  
38 the complainant shall pay the costs of keeping and testing [*of*] the dog during the impoundment.

39 (b) Notwithstanding ORS 609.090, a dog impounded pursuant to subsection (1) of this section  
40 shall not be released until a determination is made by the county [*governing body*] pursuant to this  
41 subsection.

42 **SECTION 21.** ORS 609.157 is amended to read:

43 609.157. **For purposes of ORS 609.140 to 609.190**, a disputable presumption shall arise that a  
44 dog has been engaged in killing, wounding, injuring or chasing livestock [*within the meaning of ORS*  
45 *609.140 and 609.155*] if:

1 (1) The dog is found chasing livestock not the property of the owner of the dog in an area where  
2 freshly damaged livestock are found;

3 (2) The dog is found feeding upon a warm carcass of a livestock animal;

4 (3) An examination of the dog's feces indicates ingestion of portions of the anatomy or covering  
5 of the anatomy of livestock by the dog; or

6 (4) Portions of the anatomy or covering of the anatomy of livestock ~~[is]~~ are found on the teeth  
7 of the dog, unless the dog is regularly used for the purpose of herding sheep.

8 **SECTION 22.** ORS 609.160 is amended to read:

9 609.160. (1) ~~[No]~~ **Except as provided under subsections (2) and (3) of this section, a person**  
10 **[shall] may not own, harbor or keep any dog with knowledge that it has killed, [or] wounded [any]**  
11 **or injured livestock within this state** or, with knowledge that, while off the premises owned or  
12 under the control of its owner and while not acting under the direction of its master or the agents  
13 or employees of such master, it has killed or seriously injured any person.

14 (2) **A person is not prohibited from owning, harboring or keeping a dog pursuant to a**  
15 **county approved adoption or relocation of a dog under section 5 (1)(b) or (c) of this 1999 Act.**

16 ~~[(2)]~~ (3) ~~[However, no person shall be liable for]~~ **A person is not prohibited from owning,**  
17 **harboring or keeping [such] a dog, with knowledge that it has killed or wounded chickens, unless**  
18 **the dog owner fails to pay full damages for the [chickens] killed or wounded chickens within three**  
19 **days after receipt of a demand for [such] those damages from the owner of the chickens.**

20 **SECTION 23.** ORS 609.180 is amended to read:

21 609.180. All claims presented as provided by ORS 609.170 shall be heard at the first regular  
22 session of the dog control board or county governing body after their presentation, or as soon  
23 thereafter as may be practicable. If the board or governing body determines that any livestock has  
24 been damaged by being **killed, wounded, injured[,] or chased, [wounded or killed,]** it shall file and  
25 enter a record of the value of the livestock and order a warrant drawn for the amount of damages  
26 thus found, or any portion thereof that it considers just, to be paid by the county treasurer out of  
27 the Dog License Fund. **A livestock owner may refuse to accept the tendered payment and may**  
28 **withdraw a claim filed under ORS 609.170. If [it] the dog control board or county governing**  
29 **body considers the claim unjust, it shall disallow [it] the claim and enter that fact upon its record.**  
30 ~~[No]~~ **A claim [shall] may not be allowed where it appears that the [injury or] damage complained**  
31 **of was caused by a dog owned or controlled by the claimant or the agent of the claimant.**

32 **SECTION 24.** ORS 609.190 is amended to read:

33 609.190. In each case where a claim against the Dog License Fund of any county has been paid  
34 by the dog control board or county governing body, the county shall be subrogated to all the rights  
35 of the livestock owner ~~[of the livestock killed, wounded, chased or injured]~~ against the dog owner  
36 ~~[of the dog]~~ for damages. The district attorney shall proceed promptly, in a lawful way, to collect  
37 ~~[it]~~ **for those damages.** Any money so collected shall be paid over immediately to the treasurer of  
38 the county and credited to the Dog License Fund.

39 **SECTION 25.** Sections 2 to 9a and 11 of this 1999 Act and the amendments to statutes  
40 by sections 15 to 21 of this 1999 Act apply to dogs that are impounded beginning on or after  
41 the effective date of this 1999 Act for an incident occurring before, on or after the effective  
42 date of this 1999 Act that involves the killing, wounding, injuring or chasing of livestock.

43 **SECTION 26.** The amendments to ORS 215.283 by section 14b of this 1999 Act become  
44 operative January 1, 2002.

# Adoption Pact: Year Five

**O**n April 1, 1994, *The San Francisco SPCA* and the San Francisco Department of Animal Care and Control signed the Adoption Pact. This historic agreement—the first and only one of its kind in the nation—guarantees a loving home to every adoptable dog and cat in San Francisco. The Pact also commits the two agencies to saving the lives of thousands of treatable dogs and cats—those who are sick, injured, traumatized, unweaned, and under-socialized.

All dogs and cats who were healthy and of good temperament—even if old, blind, deaf, missing limbs, or disfigured—were placed in loving homes last year. An additional 2,530 dogs and cats received the lifesaving foster care, medical and/or behavior rehabilitation they needed at *The SF/SPCA* to make them adoptable, before finding new homes.

In the past five years, the cooperative efforts of *The SF/SPCA* and the City shelter have saved the lives of 41,398 dogs and cats—8,305 of them last year alone. Once again, San Francisco leads the nation in saving lives!

## San Francisco Leads the Nation in Saving Lives!



Thanks to the Adoption Pact, no adoptable dogs or cats have been killed in San Francisco shelters since 1993—an accomplishment unparalleled anywhere in the country. But the Pact doesn't stop there. Every year *The SF/SPCA* is ensuring that a majority of the other dogs and cats in our shelters—those who are sick, injured, and traumatized—are given the lifesaving care they need. These are animals who must be rehabilitated first, before they can be placed in homes. And we are saving them by the thousands—also making San Francisco the only City and County in the nation

rescuing these animals on such a comprehensive scale.

In its fifth year, San Francisco's Adoption Pact broke its previous lifesaving achievements and brought dog and cat euthanasia to an all-time low.

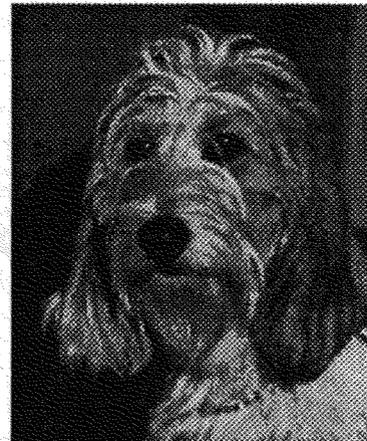
### Adoption Pact Year #5 Facts & Figures, SF/SPCA:\*

Cats and Dogs Placed in New Homes .....	4,971
Cats and Dogs Saved from the City Shelter .....	2,482
Animals Rehabilitated Prior to Adoption .....	2,530
Cats & Dogs Fostered by Volunteers .....	1,235
Total Spay/Neuter Surgeries .....	9,066
Feral Cat Spay/Neuter Surgeries .....	1,877

\*Comprehensive statistics are available on The SF/SPCA website.

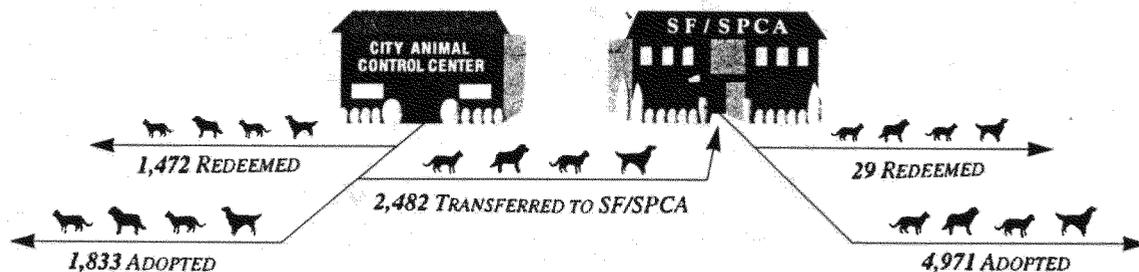
## The Adoption Pact Mended Broken Limbs and Broken Spirits!

Under the Adoption Pact, *The SF/SPCA* saved 2,482 stray and abandoned animals from the City shelter last year—animals who, without our intervention, may otherwise have been killed. Of these, 1,598 had special impediments, often requiring medical and behavior care prior to adoption. 932 of the 2,643 dogs and cats that *The San Francisco SPCA* accepted directly from the public also had these needs.



Each and every one of these treatable dogs and cats—2,530 in all—received the care they needed before being placed in loving new homes. Surgeries, prescription drugs, extended behavioral “therapy,” and long-term foster care—these are how we mend the broken limbs and spirits of the animals who come to us. In the five years since our two organizations signed the Pact, *The SF/SPCA* has saved the lives of 15,999 special-needs dogs and cats. These are animals who would have been euthanized in virtually any other community in the nation, but not here in San Francisco—proving that loving homes are available for old, disfigured, difficult-to-place dogs and cats most other shelters would consider “unadoptable.”

### TOTAL LIVES SAVED – ADOPTION PACT'S FIFTH YEAR



## Euthanasia of Dogs and Cats a Fraction of National Average!

Once again, San Francisco achieved the lowest euthanasia rate of any City and County in the entire nation. Last year, 3,688 dogs and cats were euthanized in San Francisco—an all-time low. None were adoptable. Of those classified as treatable, many had serious illness and/or were euthanized immediately upon their arrival at the City shelter without being offered to *The SF/SPCA*. 2,526 were classified as non-rehabilitatable.\* This includes animals suffering from painful, incurable conditions, or aggressive animals who might pose a threat to public safety.

\* Of these dogs and cats, SFACC euthanized 2,443, and *The SF/SPCA* euthanized 83. All were non-rehabilitatable.

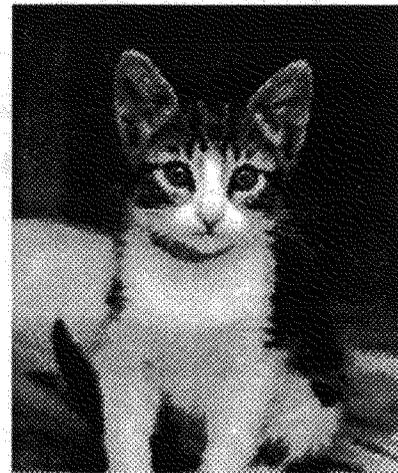
**The Adoption Pact Means Fewer Animals Abandoned on Streets, Fewer Killed on Roads:** The Adoption Pact is more than just an agreement between two agencies, it is a "pact" with the community. At the heart of the Adoption Pact is the understanding that more people will surrender unwanted pets to shelters, instead of abandoning or neglecting them, if they know the animals will be placed in loving homes rather than killed. It also means Good Samaritans will feel empowered to rescue homeless animals and bring them to *The SF/SPCA* or the City shelter.

Fewer abandoned dogs and cats on our streets means fewer to be collected by the Department of Animal Care and Control, saving taxpayers money. Animal Control picked up 592 fewer animals last year than in the year before the Adoption Pact. Even more impressive, the number of dogs and cats picked up dead from our City streets and neighborhoods has dropped a full 23 percent since the Pact went into effect. These declines translate not just into reduced taxpayer costs, but into greatly reduced animal suffering as well.

### The Challenge for the New Millennium!

The challenge today for San Francisco is *not* in saving the lives of and finding homes for healthy, adoptable shelter animals—together, *The San Francisco SPCA* and the San Francisco Department of Animal Care and Control have been doing that for the last five years.

Since 1994, *The San Francisco SPCA* has not only saved 100% of adoptable City and County dogs and cats. Thanks to the Adoption Pact, *The SF/SPCA* also saves *thousands* of injured and sick animals each and every year—a full 88% of all stray and abandoned pet dogs and cats who are savable. With innovative adoption programs, backed by years of free and low-cost voluntary spay/neuter efforts, we see that each one of these animals receives a loving home—no matter how long it takes or how many there are.



Our challenge now is to save the remaining 12 percent. When *every* sick, injured, traumatized, or otherwise debilitated pet dog or cat in our City shelter who can be saved is saved, San Francisco—the first City to guarantee homes for *all* adoptable animals—will then become the first to provide a comprehensive safety net of health and rehabilitative care for *every* homeless, stray, and abandoned pet in its borders.

But we are not there yet. Last year, 1,162 treatable dogs and cats were euthanized at the City shelter. And while *The SF/SPCA* provides the most comprehensive safety net of lifesaving care for homeless dogs and cats in the country, with the help of dedicated volunteers, rescuers, advocates, and animal lovers in our City, we strive to do better every year. And once we reach our goal of saving all the treatables, we will have accomplished nothing less than universal, lifelong comprehensive care for all savable City and County dogs and cats—the first of its kind, anywhere in the world.



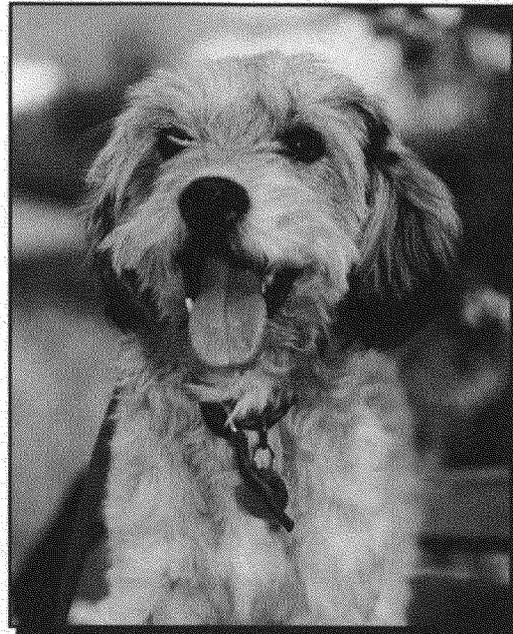
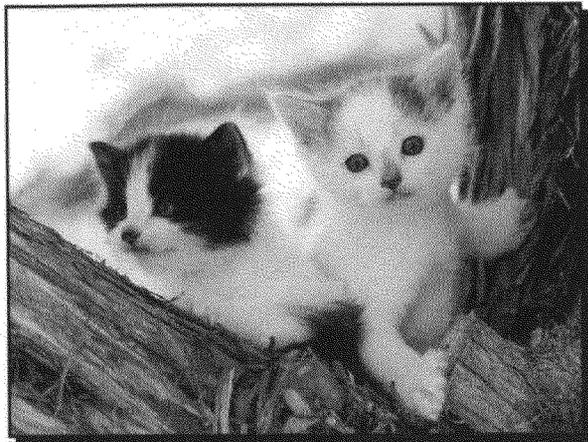
### **They Are More Than Just Statistics:**

**Velvet**, a pit bull/boxer mix, was transferred from the City shelter to *The San Francisco SPCA* under the Adoption Pact. When she came to our shelter, she was covered with bite wounds on her head, neck, and legs, and she had an ulcer and heart murmur. We provided her with the medical and behavior rehabilitation needed to make a complete recovery. Now, whenever Velvet sees a friendly and familiar face, her whole body shakes in excitement. Status: Adopted.

**Moonbeam**, a small, undernourished cat, had a fractured leg and pelvis. She also came to *The San Francisco SPCA* from the City shelter under the Adoption Pact. She had surgery to repair the damage, including a pin in her left leg, and rehabilitated fully while in our care. Status: Adopted.

Velvet and Moonbeam are just two of the 2,530 old, unsocialized, sick and/or injured faces who were saved last year thanks to the Adoption Pact. All told, the Adoption Pact gave lifesaving protection to 8,305 dogs and cats in the last year alone.

**1999 *No Kill Conference***



***No More Homeless Pets . . .  
the dream is coming true!***

**Doing Things For Animals**

invites you to attend the 5<sup>th</sup> annual

***NO - KILL CONFERENCE***

September 30 - October 3, 1999 Chicago, Illinois

**Sponsored by:**

PETSMART Charities, Best Friends Animal Sanctuary,  
San Francisco SPCA, North Shore Animal League, LW Robbins Associates,  
International Fund for Animal Welfare, Country Graphics

**Lodging and Conference Site:**

Hilton Lisle/Naperville  
Lisle, Illinois

**Transportation:**

Easy access from O'Hare and  
Midway Airports

**JOIN US! Share the dream of making this a no-kill nation!**

**1999  No Kill Conference**

**SCHEDULE OF EVENTS**

**Thursday, September 30th: Pre-Conference Seminars**

(See Pages 4 and 5 for Details)

7:30 a.m. to 4:45 p.m. Choice of eight 3-hour seminars in the morning and afternoon  
(separate registration required)  
Continental Breakfast and Lunch included

7:00 to 9:00 p.m. Welcome Reception

**Friday, October 1st: Conference, Day One**

(See Pages 6 and 7 for Details)

7:30 a.m. to 4:45 p.m. General sessions with two keynote speakers, choice of  
fifteen 90-minute workshops in the morning and afternoon  
Continental breakfast and lunch included

7:00 to 9:00 p.m. Roundtable Discussions, Special Meeting

**Saturday, October 2nd: Conference, Day Two**

(See Pages 8 and 9 for Details)

7:30 a.m. to 4:45 p.m. General sessions with three keynote speakers, choice of  
fifteen 90-minute workshops in the morning and afternoon  
Continental breakfast and lunch included

6:00 to 9:00 p.m. Dinner and Speaker

**Sunday, October 3rd: Post-Conference Events**

(See Page 10 for Details)

8:30 a.m. to 12:30 p.m. Alley Cat Allies presents: The Real No-Kill Solution -  
Trap/Neuter/Return of Feral Cats  
(separate registration required)

9:00 to 11:00 a.m. Brunch with Lynda Foro (no host)

2:00 to 4:00 p.m. Open House: West Suburban Humane Society



**KEYNOTE SPEAKERS**



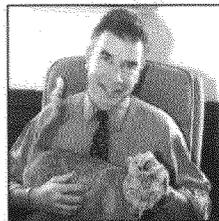
**Richard Avanzino**  
Maddie's Fund



**Michael Mountain**  
Best Friends Animal Sanctuary



**Becky Robinson**  
Alley Cat Allies



**Ed Sayres**  
The San Francisco SPCA



**Joyce Briggs**  
PETsMART Charities



**Lynda Foro**  
Doing Things for Animals

**Speakers / Presenters**

**Karen Adams**, Ph D, MFCC (CA)  
**Richard Avanzino**, President, Maddie's Fund(CA)  
**Val Beatty**, President, Just Cats, Inc.; Co-Founder, Vice-President, Humane Coalition of Massachusetts  
**Paul Berry**, Co-Founder, Executive Director, Southern Animal Foundation (LA)  
**Sister Marijon Binder**, Founder, Executive Director, Touched by an Animal (IL)  
**Donna Bishop**, Founder, Executive Director, Alliance for Animals; Director, Humane Coalition of Massachusetts  
**Paul Bonacci**, A R Q Architects (ME, CA)  
**Dennis Bradley**, R. A., Bradley & Associates (MO)  
**Jim Brewer**, Farm Manager, PIGS, sanctuary (WV)  
**Joyce Briggs**, Director, PETsMART Charities (AZ)  
**Bonney Brown**, Director of Best Friends Network, Best Friends Animal Sanctuary (UT); Vice-President, Doing Things for Animals  
**Jill Carnegie**, Executive Director, J.E.S. Exotics Sanctuary (WI)  
**Gregory Castle**, Co-Founder, Director of Regional Programs, Best Friends Animal Sanctuary (UT)  
**Julie Castle**, Director of Northern Utah Programs, Best Friends Animal Sanctuary (UT)  
**James Collins**, Esq., Co-Founder, Austin Pets Alive (TX)  
**Mert Davis**, Manager, North Branch Facility, SPCA of Texas

**Jana de Peyer**, Co-Founder, Photographer, Best Friends Animal Sanctuary (UT)  
**Bill DeRidder**, Operations Manager, Ulster County SPCA (NY)  
**Paula Fasseas**, Founder/Chair, PAWS Chicago (IL)  
**Perry Fina**, Director of Operations, North Shore Animal League (NY)  
**Lynda Foro**, Founder, President, Doing Things for Animals (AZ)  
**Christine French**, Executive Director, Ulster County SPCA (NY)  
**Nathania Gartman**, Co-Founder, Director of Education, Best Friends Animal Sanctuary; President, Humane Educators Assoc. of Utah  
**Steve Hindi**, Executive Director, SHARK (IL)  
**Louise Holton**, Co-Founder, President, Alley Cat Allies (DC)  
**Tammy Kirkpatrick**, Associate Director of Special Adoption Services, North Shore Animal League (NY)  
**Dan Knapp**, General Manager, Department of Animal Regulation, City of Los Angeles (CA)  
**Art Lee-Drewes**, Accounting Manager, Tony LaRussa's Animal Rescue Foundation (CA)  
**Julie Levy**, DVM, Ph D, ACVIM, College of Veterinary Medicine, University of Florida  
**Carter Luke**, Vice-President, Humane Services, Massachusetts SPCA  
**Amy Marder**, VMD, Vice-President, Behavioral Medicine and Companion Animal Services, American SPCA(NY)  
**Jim Mason**, Director, Two Mauds, Inc. (MO)

**Ed McLarin**, Adoption Center Director, PAWS Chicago (IL)  
**Esther Mechler**, Director, SPAY/USA, Pet Savers Foundation (CT)  
**Michael Mountain**, Co-Founder, Director of Outreach and Media, Editor of Best Friends Magazine, Best Friends Animal Sanctuary (UT)  
**Gary Patronek**, VMD, Ph D, Director, Tufts Center for Animals and Public Policy, Tufts University (MA)  
**Jamie Pinn**, Executive Director, HART/ Muttmatchers (CA)  
**Dale Riffle**, Director, PIGS, a sanctuary (WV)  
**Becky Robinson**, Co-Founder, Executive Director, Alley Cat Allies (DC)  
**Cari Rodman**, Adoption Manager, Tony LaRussa's Animal Rescue Foundation (CA)  
**Edwin Sayres**, President, San Francisco SPCA (CA)  
**Lew Seidenberg**, DVM, River Woods Pet Clinic (IL)  
**Lucy Schlafler**, A R Q Architects (ME, CA)  
**Gloria South**, Project Manager, Tony LaRussa's Animal Rescue Foundation (CA)  
**Joseph Sprague**, Consultant, Marketing and Development (IL)  
**David Stegman**, Executive Director, Tony LaRussa's Animal Rescue Foundation (CA)  
**David Sykes**, Esq., Director, Noah's Ark Animal Foundation (IA)  
**Laura Sykes**, Co-Director, Noah's Ark Animal Foundation (IA)

# 1999 No Kill Conference

## PRE-CONFERENCE SEMINARS; Thursday September 30<sup>th</sup>

Choose one morning seminar and one afternoon seminar.  
**Separate registration required - priced separately from No-Kill Conference.**

**7:30 - 8:30 a.m.**

Check-in and Continental Breakfast

**8:30 - 11:45 a.m. Morning Seminars**

(includes 10:00-10:15 a.m. break)

Choose to attend one Morning Seminar

Morning Seminar #1:

### **Rising to the No-Kill Challenge: Building A Collaborative Model to Create a No-Kill County**

Presenters: David Stegman, Cari Rodman, Gloria South, Art Lee-Drewes

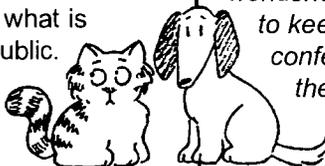
In September 1998, the Duffield Family Foundation, now known as Maddie's Fund, announced it was investing \$200 million in creating a no-kill nation within 10 years. In January 1999, Tony La Russa's Animal Rescue Foundation submitted a grant proposal on behalf of six local animal organizations. Learn how ARF began building this county-wide collaborative model and put a program together in just four short months. ARF will share their ideas for creating a no-kill county in five years or less, through expanded foster recruitment and training, adoption marketing, shelter outreach, and high-volume spay/neuter. Get nuts and bolts advice on how to plan, budget and staff such an effort, how to forge alliances, and how to put together your proposal.

Morning Seminar #2:

### **Drugs and Behavioral Therapy: Are We Turning Our Pets Into Junkies?**

Presenter: Amy Marder

Drug therapy has been promoted by veterinary behaviorists for years as an option for the treatment of behavior problems in companion animals. The media blitz covering the recent FDA approval of two drugs has resulted in increased public awareness and demand for "Prozac for pets." Unfortunately, other than the small FDA clinical trials on these two drugs, there are very few controlled studies on effectiveness and side effects of drug therapy. Anyone working with animals (veterinarians, shelter workers, dog trainers) needs to know about what is known so they can rationally advise the public. Types of drugs and their indications for use for the treatment of common behavior problems will be covered.



Morning Seminar #3:

### **How to Start A Humane Education Program**

Presenter: Nathania Gartman

Humane education is not just for children. The seminar will present sample lesson plans, review two videos, and discuss educational opportunities outside the classroom. A bibliography of sources for videos, lesson plans, web sites, books and magazines that are available for educators will be provided.

**12:00 - 1:30 p.m. Lunch**

**1:30 - 4:45 p.m. Afternoon Seminars**

(includes 3:00-3:15 a.m. break)

Choose to attend one Afternoon Seminar

Afternoon Seminar #1:

### **Busting Out of the Cage! Planning and Designing an Animal Service Facility**

Presenters: Dennis Bradley, Lucy Schlafler, Paul Bonacci

**Part I:** Explore the process from developing a mission, vision and values through the capital campaign to the design and construction of the facility with Dennis Bradley. You'll learn how to evaluate an existing shelter and determine elements that would need to be modified to accommodate long-term animal care.

**Part II:** Learn about the design of San Francisco SPCA's famous Maddie's Pet Adoption Center from the architects who created it. Lucy Schlafler and Paul Bonacci worked more than four years with Richard Avanzino developing new concepts in acoustic design, air ventilation and aesthetic options. See how using good design can increase visitors and encourage successful adoptions.

### **One of Many Conference Comments . . . .**

*"It is very nourishing to be together with all of these wonderful, dedicated people to bolster your energy to keep on going. I loved every minute of this conference and made many good contacts for the future."*

Nora Star, Greyhound Rescue, Animal Advocates (CA)

# 1999 No Kill Conference

## **PRE-CONFERENCE SEMINARS; Thursday September 30<sup>th</sup>**

Choose one morning seminar and one afternoon seminar.  
**Separate registration required - priced separately from No-Kill Conference.**



Afternoon Seminar #2:

### **Building Coalitions to Save Animals' Lives**

Presenters: Paul Berry, Gregory Castle, James Collins

Working with other agencies to end animal overpopulation is increasingly recognized as a necessity. Learn from those who have lived through this challenging process to create model programs. Paul Berry will explore the dynamics of social change, drawing from his experiences developing coalitions in Louisiana including SNIP Mobile/Community Partners Program and the Big Easy Feral Cat Network. Gregory Castle will explain the development of Utah's Week for the Animals and the No-Kill Utah campaign, involving the humane community, animal control, veterinarians and animal lovers. James Collins of Austin Pets Alive will discuss the process which led to landmark legislation and cooperative efforts to make Austin, Texas, a no-kill city by the year 2005.

Afternoon Seminar #3:

### **Holistic Health Care in A Cat Shelter**

Presenter: Laura Sykes, a Veterinarian (to be announced)

Natural health care options are increasingly popular. Learn how the cats in your shelter can benefit from Laura's 15 years of experience with alternative health care methods at Noah's Ark shelter. Topics will include shelter environment, diet and dietary supplements, vitamins, herbs, accupressure, acupuncture, chiropractic and homeopathic medications.

Afternoon Seminar #4:

### **The Fate of the Feral Cat**

Presenters: Donna Bishop, Louise Holton

Discover the true nature of feral cats! Donna and Louise will discuss quality of life and other ethical issues as they relate to the feral cat. Hot topics like predation and environmental impact, human and animal health concerns, and the effects of "taming" ferals vs. the trap/neuter/return method will be discussed.

Afternoon Seminar #5:

### **Photographing Animals for Adoption**

Presenter: Jana de Peyer

Best Friends' photographer Jana de Peyer will present a hands-on seminar about using photography to promote animals for adoption. The seminar will cover various successful programs and include a photo session at West Suburban Humane Society, a no-kill shelter near the Hilton. No photographic experience is necessary. Please bring a camera if you have one. Transportation will be arranged.



### **7:00 - 9:00 p.m. Welcome Reception**

- Start the conference with an evening of fun and networking
- Enjoy the cash bar and complimentary hors d'oeuvres
- Say hello to old friends, make new friends.
- Visit our vendor and exhibitor displays!

Reception sponsored by:  
The San Francisco SPCA

### **Another Conference Comment . . . .**

*"Wonderful organization - you did an amazing job. Great to meet the people from overseas and compare notes."*

Liz Northcott, Foothills Animal Rescue (AZ)

**1999**  **No Kill Conference**

**DAY 1 WORKSHOPS & EVENTS; Friday October 1<sup>st</sup>**

**7:30 - 8:30 a.m.** Check-in & Continental Breakfast  
Sponsored by LW Robbins Associates

**8:30 - 10:00 a.m.**  
**Welcome & Opening Remarks**  
Bonney Brown, Lynda Foro

**Opening Address**  
**"Advancing the Cause of No Kill"** Richard Avanzino

**10:00 - 10:15 a.m. Break**

**10:15 - 11:45 a.m. Morning Workshops**  
Choose to attend one Morning Workshop

Morning Workshop #1:

**Meeting the Needs of the Animals:  
Long-Term Care**

Presenters: Nathania Gartman, Carter Luke

A practical "how-to" for sanctuaries and shelters to provide the best quality of life for dogs and cats. Studies about residential care. How to relate long-term care to a traditional shelter building.

Morning Workshop #2:

**To Test or Not to Test -  
Infectious Diseases of Feral Cats**

Presenters: Julie Levy, Louise Holton

Learn about the latest research on infectious diseases of feral cats.

Morning Workshop #3:

**Does Size Really Matter?  
Effective Change on a Small Scale**

Presenters: Jim Brewer, Dale Riffle

Is opening a sanctuary or shelter really the best way to effect change for the animals? We'll take a hard look at the realities of operating an animal care facility. You'll gain practical insights from Jim and Dale's real-life experiences and explore other options to help the animals.

Morning Workshop #4:

**Saying No and Knowing Why**

Presenter: Lynda Foro

How can an organization be no kill and still euthanize animals? Learn about the company you keep - appreciate the diversity and explore the trends that are appearing in animal

welfare. Develop greater comfort in explaining your mission and working with others who care as much as you do.

Morning Workshop #5:

**No More Homeless Pets**

Presenters: Michael Mountain, Bonney Brown

Thousands of Best Friends members nation-wide are working together to bring an end to the problem of homeless animals in their neighborhoods. Find out how your group can tap into this valuable resource. You'll also get practical information on how to make your volunteer program more effective.

**12:00 - 1:30 p.m. Lunch & Luncheon Address**  
**"You Say You Want a Revolution?"**

Becky Robinson

**1:30 - 3:00 p.m. Early Afternoon Workshops**  
Choose to attend one Early Afternoon Workshop

Early Afternoon Workshop #1:

**Feline Follies - A Look at Cat Behavior  
for the Curious Human Being**

Presenter: Val Beatty

Successfully addressing behavior problems can help to keep cats in homes and make shelter cats more adoptable. Using case studies, Val will explore a variety of common issues and practical solutions.

Early Afternoon Workshop #2:

**Good Relations -  
Rescuers and Animal Control**

Presenter: Jamie Pinn

A lively, constructive workshop on "getting to yes" in the relationship between local no-kill rescuers and municipal animal control authorities. Timely issues will be represented with viewpoints, ideas and realistic suggestions on mediating what tears us apart and too often prevents us from working together.

Early Afternoon Workshop #3:

**Taking the Show on the Road! -  
Mobile Spay Clinics**

Presenter: Esther Mechler

Mobile spay vans are now used to deliver spay/neuter ser-

# 1999 No Kill Conference

## DAY 1 WORKSHOPS & EVENTS; Friday October 1<sup>st</sup>

vices in both urban and rural areas. A slide presentation will include examples of the many types of vans available. You'll learn about how successful programs, serving a variety of communities, have been organized and funded.

Early Afternoon Workshop #4:

### **Hoarders - Collectors by Any Other Name**

Presenter: Gary Patronek

Animal collectors unintentionally harm animals and the no-kill cause. Recent studies demonstrate that the animal collector phenomenon is a pathological disease known as hoarding. You'll learn more about this psychological disorder and effective intervention and prevention strategies.

Early Afternoon Workshop #5:

### **Healing Society Through Animals**

Presenter: Dan Knapp

A phenomenal amount of healing can occur through relationships between people and animals. Dan will talk about his campaign, "Healing Los Angeles through the animals." Dan believes that animals are an integral part of our lives and that through our relationship with them, they can bring healing to our lives, whether emotional or physical.

**3:00 - 3:15 p.m. Break**

**3:15 - 4:45 p.m. Late Afternoon Workshops**  
Choose to attend one Late Afternoon Workshop

Late Afternoon Workshop #1:

### **Transitioning to No Kill**

Presenter: Christine French

As it becomes more apparent that the trend to go no kill is the future of the humane movement, many traditional sheltering organizations are making the decision to stop destroying healthy companion animals. The decision should be well planned. Learn about common mistakes to avoid and join in a discussion about the concerns you have for your organization.

Late Afternoon Workshop #2:

### **The Veterinarian's Role in the Shelter**

Presenter: Lew Seidenberg

Explore the relationship and responsibilities between a veterinarian and an animal shelter. Topics covered in-

clude quality care issues, disease control, euthanasia, management and procedural decisions.

Late Afternoon Workshop #3:

### **Pets & the Elderly - A Winning Combination**

Presenter: Sister Marijon Binder

Research documents the beneficial health effects of companion animals for the elderly, infirm and disabled. Given supportive services of volunteers, our growing senior population can provide the safe, loving homes needed for us to become a no-kill nation.

Late Afternoon Workshop #4:

### **Creating and Managing A Mailing List for Effective Fund Raising**

Presenter: Joseph Sprague

You'll learn how to find donors and build a mailing list; how to clean up an existing list and explore bulk mail, renting and trading lists, and computer programs that make the job easier.

Late Afternoon Workshop #5:

### **Effective Adoption Pre-Screening and Follow-Up Techniques**

Presenter: Tammy Kirkpatrick

For small or large size adoption programs, learn about positive pre-screening, adoption follow-up, education and programs that can work. Get acquainted with an adoption agreement that you can enforce when needed. See how our own personal feelings or moods interfere with our ability to objectively screen applicants. Enjoy several role-playing examples.

**7:00 - 9:00 p.m.**

### **Roundtable Discussions**

Meet with friends and colleagues in small groups at round tables to discuss topics of special interest. Enjoy an informal exchange of experiences and ideas.

### **Meet The President . . . of Maddie's Fund!**

Richard Avanzino has offered to meet with individuals who would like more detailed information about Maddie's Fund. Here is your chance to ask a question that can help clarify eligibility criteria and project goals that are required in the application.

**1999**  **No Kill Conference**

**DAY 2 WORKSHOPS & EVENTS; Saturday October 2<sup>nd</sup>**

**7:30 - 8:30 a.m.**

Check-in and Continental Breakfast

**8:30 - 10:00 a.m.**

**Announcements**

Bonney Brown, Lynda Foro

**Keynote Address**

**"The Dream That Will Come True"** Michael Mountain

**10:00 - 10:15 a.m. Break**

**10:15 - 11:45 a.m. Morning Workshops**

Choose to attend one Morning Workshop

Morning Workshop #1:

**Take a Walk! Planning A Successful Walk-a-Thon**

Presenters: Gregory Castle, Julie Castle, Bonney Brown

You'll learn how to plan a successful walk fund-raising event step-by-step, from getting sponsors, to publicizing the event, to organizing volunteers. Walk events can raise significant resources and draw public attention to your organization's work. Examples will be drawn from two successful walk events: Best Friends Animal Sanctuary's "Strut Your Mutt" and Neponset Valley Humane Society's "Walk for Animals." Each raise more than \$50,000.

Morning Workshop #2:

**Fight Animal Abuse with Better Laws**

Presenter: David Sykes

Successful lobbying tactics can help you to change laws in your state to protect animals. David will explore the well-documented link between human violence and animal abuse and review the current status of animal anti-cruelty laws, state by state. David has become an expert on affecting legislative change following the tragic murder of 27 cats at his shelter in 1997.

Morning Workshop #3:

**Building a No-Kill Chicago**

Presenters: Paula Fasseas, Ed McLarin

Showcasing animals for adoption in swanky storefront windows, Angels with Tails events and using satellite adoption centers are just some of the cooperative efforts pioneered by PAWS Chicago to bring about a no-kill city. Learn more in this workshop about how these successful programs to unite area organizations were developed and organized.

Morning Workshop #4:

**Quality of Life Issues in Long-Term Care**

Presenter: Gary Patronek

The issue of quality of life for animals has received much attention in laboratory animal and zoo settings, but little has been done to look at the issue for companion animals in other forms of institutional settings. This presentation will review some of the available information, including results from a survey done in conjunction with Doing Things for Animals.

Morning Workshop #5:

**Creative Ideas that Increase Adoptions**

Presenters: Perry Fina, Tammy Kirkpatrick

Hear about the concepts that work to promote animal adoptions, including off-site and mobile events. Successful marketing ideas, public relations, "inventory balance," developing positive customer relationships.

**12:00 - 1:30 p.m. Lunch & Luncheon Address**

- hosted by PETSMART Charities

**"Partnering to Save Lives"** Joyce Briggs

**1:30 - 3:00 p.m. Early Afternoon Workshops**

Choose to attend one Early Afternoon Seminar

Early Afternoon Workshop #1:

**High-Tech Cruelty Investigations**

Presenter: Steve Hindi

Seeing is believing! Most of the cruelty issues SHARK has documented would not have near the impact with the media if they couldn't see the cases for themselves. Steve will explain techniques ranging from basic documentation of a cruelty case to conducting an undercover investigation. Attendees will experience the equipment and techniques first hand in this intriguing workshop.

Early Afternoon Workshop #2:

**Cat Shots - Feline Vaccinology for Dummies**

Presenter: Julie Levy

Learn the latest about feline vaccines. Julie will explain vaccine strategies for shelters and feral cats, choosing the best products, novel vaccines on the horizon, injection-site sarcomas, and revised vaccine schedules from the American Association of Feline Practitioners in this comprehensive workshop.

# 1999 No Kill Conference

## DAY 2 WORKSHOPS & EVENTS; Saturday October 2<sup>nd</sup>

Early Afternoon Workshop #3:

### **Crash and Burn of a Rescuer**

Presenters: Jamie Pinn, Karen Adams

Stress, anger, grief: all in a day's work for an animal rescuer. Ignored, these emotions can cause even the best of us to make bad choices which can lead to disastrous results. You'll learn to recognize the warning signs of stress and gain coping strategies that really work.

Early Afternoon Workshop #4:

### **Web Sites that Work**

Presenter: Michael Mountain

A lively, non-technical review of several web sites of animal organizations, large and small. Why some work and why some don't. Tips to follow and pitfalls to avoid.

Early Afternoon Workshop #5:

### **From a Foundation's Viewpoint: The Perfect Shelter**

Presenter: Jim Mason

What do foundations look for when they are awarding grants? Here's your chance to find out! Jim, an author, environmentalist, journalist, lecturer and attorney, has reviewed countless grant applications. Jim will tell us what to include in a successful proposal for your organization's development.

**3:00 - 3:15 p.m. Break**

**3:15 - 4:45 p.m. Late Afternoon Workshops**

Choose to attend one Late Afternoon Workshop

Late Afternoon Workshop #1:

### **The Final Blessing: Euthanasia**

Presenter: Val Beatty

Euthanasia, true mercy killing (as opposed to killing animals for society's convenience) is a critical part of providing responsible care to animals in a no-kill shelter or sanctuary. Val will discuss the criteria for making the euthanasia decision, coping with grief for staff and volunteers, and understanding the humane medical process of euthanasia.

Late Afternoon Workshop #2:

### **Workable Ways to Save Animals' Lives**

Presenter: Mert Davis

In an effort to save lives, the SPCA of Texas has initi-

ated special programs to provide additional chances for animals to find homes. The Mobile Adoption program now adopts out more than 1600 animals a year, with over 20% of all adoptions occurring off site. The new Treatment Ward saves an average of 400 animals a year, who once would have been destroyed due to minor health problems. You'll see a slide presentation about these life-saving programs and learn how they were developed.

Late Afternoon Workshop #3:

### **"Stick A Stamp on This" - The Truth About Direct Mail Fund Raising**

Presenter: Michael Mountain

Why are some mailing programs successful while others end up losing money? Learn how to make direct mail work.

Late Afternoon Workshop #4:

### **Tigers in Dairyland - Rescuing Felids in Wisconsin**

Presenter: Jill Carnegie

Caring for large exotic cats presents unique challenges everyday. You'll get a complete overview of what it takes to establish and operate a successful sanctuary for exotic animals. You'll also learn that happy tigers puff and cougars purr, and that if an animal paces, he is unhappy. J.E.S. Exotics Sanctuary is big on education, much like the bigness of their treasured exotics.

Late Afternoon Workshop #5:

### **Social Skills for Dogs**

Presenter: Bill DeRidder

Find out what works and what does not when it comes to keeping shelter dogs happy, healthy, and adoptable. Long-term care presents special challenges. Bill will offer practical advice on providing an interactive environment for good socialization and the psychological well-being of shelter dogs.

**6:00 - 9:00 p.m. Dinner**

**7:00 p.m. Remarks**

Bonney Brown, Lynda Foro

**7:30 p.m. Dinner Address:**

**"Partnerships for Life" Edwin Sayres**



# 1999 No Kill Conference

## POST - CONFERENCE EVENTS; Sunday October 3<sup>rd</sup>

9:00 a.m. - 12:30 p.m. Seminar by Alley Cat Allies  
(Check-in begins at 8:30 a.m.)

### The Real No-Kill Solution - Trap-Neuter-Return for Feral Cats

Join Alley Cat Allies' co-founders, Louise Holton and Becky Robinson, for the definitive seminar on how "trap-neuter-return" is becoming the preferred method to control feral cat populations in the U.S. Well established, successful TNR programs will be featured, and such misunderstood topics as rabies and predation will be clarified.

A question and answer session will give you the opportunity to have your specific needs and concerns addressed.

Don't miss this if you are working with feral cats or if your organization is receiving calls from the public concerning ferals.



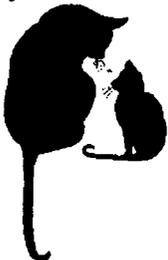
Free informational material will be available as well as a variety of books for purchase.

**Seminar Fee: \$15.00** (lunch not included)

Registration closes September 15

No refunds after September 15 - Cancellations must be in writing.

**REGISTER DIRECTLY WITH ALLEY CAT ALLIES**  
by mail, fax or e-mail. Visa or MasterCard accepted.



Alley Cat Allies  
1801 Belmont Rd, NW, Suite 201  
Washington, DC 20009  
Phone 202-667-3630  
Fax 202-667-3640  
e-mail <alleycat@alleycat.org>

Name: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Street/POB: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Day Ph: \_\_\_\_\_ Night Ph: \_\_\_\_\_  
Fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_  
\_\_\_\_\_ \$15 check enclosed \_\_\_\_\_ VISA \_\_\_\_\_ MasterCard  
Account Number: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_  
Authorized Signature: \_\_\_\_\_

**Remember, register separately for Alley Cat  
Allies' Sunday morning event.  
Please do not send payment to DTF.**

9:00 a.m. - 11:00 a.m.  
**No-Host BRUNCH with Lynda Foro**

Enjoy an informal get-together; break bread with the founder and president of Doing Things for Animals. Discuss what's on your mind and share your thoughts with others as a relaxing finale to the inspirational No-Kill Conference.

2:00 p.m. - 4:00 p.m.  
**Open House West Suburban Humane Society**

Visit this 25-year-old animal shelter in nearby Downers Grove, Illinois, and see how they have successfully managed their companion animal programs over the years!

## Transportation & Accommodation

(Arrangements must be made by participants)

**Hotel:** (Conference site and overnight lodging.)  
Hilton Lisle/Naperville  
3003 Corporate West Drive  
Lisle, IL 60532  
Phone 630-505-0900 or 800-552-2599

**Reservations:** 1-800-HILTONS  
(Be sure to mention special No-Kill  
Conference rate of \$89 + tax per night.)

**Note:** Conference rate is only available for reservations made before September 10 - Call for sleeping rooms early.

### Airport Connections (O'Hare and Midway):

If you need transportation from & to the airports, schedule pick-up reservations before you travel. Confirm your arrival once you land in Chicago and are ready to be picked up.

### Bluebird Charter Coach/Airtran O'Hare:

Reservations, information, notice of arrival:  
800-851-0200, 708-961-5500

Cost from O'Hare or Midway:  
\$15 per person, van service, or \$18 per person,  
automobile. All service is "shared ride."

### My Chauffeur Limousine Service:

Reservations, information, notice of arrival:  
800-244-6200, 847-671-3600

Website: [www.mychauffeur.com](http://www.mychauffeur.com)

Cost from O'Hare Airport, \$65 for 1-4 people, each way  
Cost from Midway Airport, \$70 for 1-4 people, each way

# 1999 No Kill Conference

## 1999 No - Kill Conference Registration

**1999 No-Kill Conference Registration Form. September 30 to October 3, 1999 Chicago, Illinois.**  
*Separate Registration required as noted. Please read carefully! Use one form for each person registered.*

**Fees** (Checks or Credit Cards Accepted)

**Early Registration**  
(Due by September 1)

**Late Registration**  
(Due by September 15)

**Enclosed**

**A) Pre-Conference Seminar Day September 30:**

\$45

\$60

\_\_\_\_\_

Includes two 3-hour seminars, continental breakfast, one lunch and two breaks with refreshments.  
 (Select two seminars below, one in the morning and one in the afternoon)

Choose \_\_\_\_\_ Rising to the No-Kill Challenge  
 one 3-hr. \_\_\_\_\_ Drugs and Behavioral Therapy  
 morning \_\_\_\_\_ How to Start A Humane Education  
 seminar \_\_\_\_\_ Program

Choose \_\_\_\_\_ Busting Out of the Cage (Shelter Design)  
 one 3-hr. \_\_\_\_\_ Building Coalitions to Save Animals' Lives  
 afternoon \_\_\_\_\_ Holistic Health Care in a Cat Shelter  
 seminar \_\_\_\_\_ Fate of the Feral Cat  
 \_\_\_\_\_ Photographing Animals for Adoption

**B) No-Kill Conference:**

- i) Both days, October 1 and 2 \$175 \$210 \_\_\_\_\_  
 Includes 5 keynote speeches, 6 workshops, 2 continental breakfasts, 2 lunches, 4 breaks with refreshments, 1 dinner
- ii) Friday, only, October 1 \$80 \$100 \_\_\_\_\_  
 Includes 2 keynote speeches, 3 workshops, 1 continental breakfast, 1 lunch and 2 breaks with refreshments
- iii) Saturday only, October 2 \$105 \$120 \_\_\_\_\_  
 Includes 3 keynote speeches, 3 workshops, 1 continental breakfast, 1 lunch, 2 breaks with refreshments, 1 dinner

**All meals are vegetarian.**

*Note: Alley Cat Allies is hosting a special event on feral cat management on Sunday morning, October 3, 1999.  
 For information and registration see page 10 or contact Alley Cat Allies directly at 202-667-3630*

I can't attend the No-Kill Conference but I'd like to contribute to this unique educational event to help save animals' lives.  
 Here is my donation: \$100 \_\_\_\_\_ \$50 \_\_\_\_\_ \$25 \_\_\_\_\_ Other (\$ \_\_\_\_\_)



**Method of Payment:** (Your payment by check or credit card must accompany this form)

\_\_\_\_\_ Check or Credit Card (check one): \_\_\_\_\_ VISA \_\_\_\_\_ MasterCard

Total Enclosed: \_\_\_\_\_

Acc't Number: \_\_\_\_\_ Exp. Date \_\_\_\_\_ Authorized Signature \_\_\_\_\_

**Registration closes September 15, 1999.**

Doing Things for Animals will send you confirmation shortly after receiving your registration and payment.

Name: \_\_\_\_\_ Title (if any): \_\_\_\_\_

Organization (if any): \_\_\_\_\_

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

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

\_\_\_\_\_ Check here if you would like to share a hotel room. Efforts will be made to notify interested parties.  
 Remember, transportation & sleeping accommodations must be made by participants. The Hilton welcomes you!

Make check or money order payable to DTFA, NO-KILL CONFERENCE and mail promptly to:  
 DTFA, c/o Patti Lahn, Waggin' Tails, 1001 Taintor Rd., Springfield, IL 62702-1704

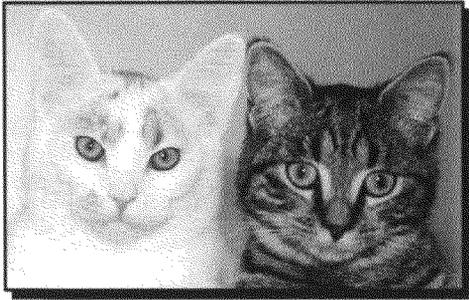
**Refunds will be made minus a 15% administration fee. No refunds after September 20, 1999.**  
 Any questions? Phone DTFA at 623-977-5793 or fax 623-977-5838 or e-mail <forodtfa@interacs.com>

**1999**  **No Kill Conference**

**DON'T MISS THE 5<sup>th</sup> ANNUAL NO - KILL CONFERENCE**  
**September 30 - October 3, 1999 Chicago Illinois**

Seminars ● Workshops ● Discussion Groups

*"Wonderful being with people with same ideas and goals."*  
 Robin Bass, Save Our Strays (FL)



*"The atmosphere of caring at the '98 Conference was something I wish all our volunteers at Forgotten Felines could experience to give them the boost we all need once in a while ."*

Suzanne Mashek, Forgotten Felines (CA)

*"For all those small, struggling organizations that just can't quite manage to attend a conference, THINK AGAIN! The No-Kill Conference can make a difference in your organization and in your city."*

Jane Long, President, PACA/AAR (NM)



**"No More Homeless Pets**

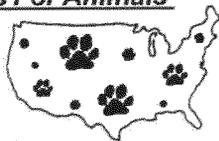


**The Dream is Coming True!"**

Art: Katy Linnett & Carol Draw. Photos: Jana de Peyer & Chandra Forsythe.

**Doing Things For Animals**

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 PORTLAND OR 97217-3237

BUDGET MODIFICATION NO.

HD 01

(For Clerk's Use) Meeting Date JUL 22 1999  
Agenda No. R-2

1. REQUEST FOR PLACEMENT ON THE AGENDA FOR

(Date)

DEPARTMENT Commissioner District 2  
CONTACT Mary Carroll

DIVISION Nondepartmental  
TELEPHONE x85275

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

Mary Carroll

SUGGESTED  
AGENDA TITLE

Provides assistance to the Federal Bureau of the Census to ensure an accurate census count in Multnomah County for the 2000 census.

(Estimated Time Needed on the Agenda)

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

[Redacted]

Personnel changes are shown in detail on the attached sheet

Adds \$53,738 and 0.5 FTE Health Services Specialist to the Health Department to assist the Federal Bureau of the Census with the 2000 census count in Multnomah County.

BOARD OF COUNTY COMMISSIONERS  
99 JUL 14 AM 9:35  
MULTNOMAH COUNTY  
OREGON

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

Reduces General Fund contingency by \$53,738

4. CONTINGENCY STATUS (to be completed by Budget & Quality)

General	Fund Contingency before this modification	<u>7/2/99</u>	<u>3,464,758</u>
		Date	
	After this modification		<u>3,411,020</u>

Originated By <u>Mary Carroll</u> <i>MC</i>	Date <u>7/1/99</u>	Department Director <u>Serena Cruz</u> <i>(MC)</i>	Date <u>7/14/99</u>
Plan/Budget Analyst <u>Julie Neburka</u> <i>JN</i>	Date <u>7/1/99</u>	Employee Services	Date
Board Approval <u>NEBORAH C BOGASTO</u>	Date <u>7/22/99</u>		



BUDMOD Dist 2 census.XLS

EXPENDITURE												
TRANSACTION EB GM [ ]			TRANSACTION DATE				ACCOUNTING PERIOD				BUDGET FY 2000	
Document Number	Action	Fund	Agency	Organi- zation	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description
		100	015	0905			5100		23,888	23,888		0.5 FTE Health Svc. Spec
		100	015	0905			5200		7,500	7,500		intern \$9/hour X 16 hrs/wk
		100	015	0905			5500		6,642	6,642		Fringe
		100	015	0905			5550		3,548	3,548		Insurance
		100	015	0905			6120		500	500		Printing
		100	015	0905			6230		7,500	7,500		supplies
		100	015	0905			6330		480	480		\$40/month
		100	015	0905			7400		680	680		parking
		100	015	0905			7560		3,000	3,000		mail/distribution
		100	075	9120			7700		(53,738)	(53,738)		
		400	070	7531			6580		3,548	3,548		
		410	030	5610			6230		680	680		
		404	030	5950			6200		3,000	3,000		
									0			
									0			
TOTAL EXPENDITURE CHANGE										7,228	0	

REVENUE												
TRANSACTION RB GM [ ]			TRANSACTION DATE				ACCOUNTING PERIOD				BUDGET FY 2000	
Document Number	Action	Fund	Agency	Organi- zation	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description
		400	070	7531			6600		3,548	3,548		
		410	030	5610			6600		680	680		
		404	030	5950			6600		3,000	3,000		
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
TOTAL REVENUE CHANGE										7,228	0	



## SERENA CRUZ, Multnomah County Commissioner

### District 2

July 13, 1999

TO: Board of County Commissioners  
FR: Commissioner Serena Cruz   
RE: Request for Budget Modification to support the Complete Count Committee

Following discussions with the Health Department, I am requesting approval of a budget modification for a half-time position, which will support activities to ensure an accurate Census 2000 count in Multnomah County.

At the request of Chair Stein, I am honored to serve as the Chair of the Complete Count Committee. The Committee will be made up of community leaders and advocates who will develop and implement a plan of action to target hard-to-reach populations for specialized contact. This will include reaching out to the homeless, minorities, non-English speaking immigrants, migrant workers and urban Native Americans among others.

According to the State of Oregon, Multnomah County had an undercount of 4.8% of the Latino population and an 8.5% undercount of African Americans in the 1990 Census. This undercount cost our county significant federal resources for our community services and programs. In addition, census figures are used in urban planning, forecasting labor, transportation and housing needs, and drawing state federal and local legislative districts.

I am proud that Multnomah County, and specifically the Health Department are stepping up to commit resources to make sure that all people understand and participate in the census. I look forward to working with you and our other partners in Multnomah County on a successful Census 2000.



## **Census 2000 Workplan Complete Count Committee**

### **Committee Formation Groundwork (June 1999-September 1999)**

- Meet with Federal Bureau of Census
- Meet with Cities and Counties
- Identify leaders from government, faith community, businesses, schools, community groups, and the community at large
- Hire a part time County employee to coordinate the CCC
- Develop database
- Establish partnerships with key players
- Gather Census 2000 educational materials and information
- Develop the framework for the CCC "Plan of Action"

### **Organize Complete Count Committee Meeting (July 1999-September 1999)**

- Develop database
- Reserve a venue (PSU)
- Identify keynote speakers, presenters, and facilitators
- Invitations
- Outreach
- Media
- Order educational materials to send with the invitations
- Set the agenda
- Put together a packet of materials for the event
- Refreshments
- Develop a "Census 101" presentation
- Develop CCC subcommittees
- Build on the "Plan of Action"
- Acknowledgements

### **Status of Activities Meetings (September 1999-June 2000)**

- Set date, time, location, agenda for monthly committee meetings
- Committees continue planning, outreach, and problem solving
- Organize Data Collection Support Activities
- Organize Recruiting Activities
- Organize Educational/Awareness Activities
- Organize Promotional Activities
- Present committee "status of activities" reports
- Evaluate progress

Organize Census Day & Census Day/Week Activities (September 1999-April 1, 2000)

- Identify available resources
- Media Strategy
- Outreach
- Develop a Census Education Strategy
- Create community based activities

Organize Post Census Activities (March 2000-July 2000)

- Develop contingency plans
- Organize a Response Campaign

\*Census Day Event (April 1, 2000)

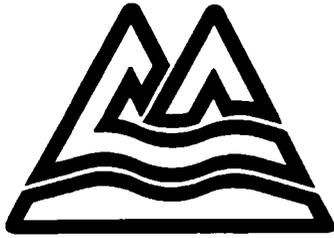
\*Census Week Events (March 28, 2000-April 3, 2000)

Post Census Activities (April 2000-June 2000)

- Report on Census Day/Week results
- Draft the Complete Count Committee evaluation with recommendations

Final Complete Count Meeting (June 2000)

- Compile Census 2000 data, information, reports
- Present subcommittee reports
- Present final comprehensive CCC Report
- Acknowledge members of the committee for their participation and support

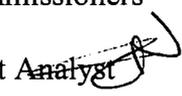


# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DIANE LINN  
SERENA CRUZ  
LISA NAITO  
SHARRON KELLEY

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

TO: Board of County Commissioners

FROM: Julie Neburka, Budget Analyst 

DATE: July 14, 1999

SUBJECT: Budget Modification HD 01, providing assistance to the U.S. Census Bureau for the 2000 census count in Multnomah County.

---

Commissioner District 2 is requesting approval of Budget Modification #HD 01, adding \$53,738 from the General Fund contingency to the Health Department. This one-time-only expenditure will add 0.5 FTE and supplies to provide cooperative assistance to the U.S. Census Bureau to enable an accurate year 2000 census count in Multnomah County next April. This appropriation will support database development, town hall and community meetings, and outreach to various communities in the County in order to ensure the most accurate count possible during the Census Bureau's upcoming decennial census. The Census Bureau will provide most of the educational materials needed and will conduct the actual census.

The U.S. Census Bureau estimates that about half of the \$162 billion in federal funds distributed to state, local, and tribal governments in 1998 was based on formulae involving census population data. Additionally, data on racial characteristics are required by federal programs that promote equal employment opportunity and to assess racial disparities in health and environmental risks. In the past, the Census Bureau has experienced difficulty in collecting data on certain ethnic and migrant populations due to language and other barriers. Given the direct financial impact on local communities of having accurate population data, it is in the County's best interest to work aggressively toward a thorough census count. As the County provides services to many of the populations previously "missed" in Census Bureau counts, we are in a particularly good position to offer our assistance.

This contingency request contains an ongoing half-time position in the Health Department. The proposed half-time position will be combined with a half-time vacancy in the Health Department to create a full-time position, and the person hired for this position will work in both the District 2 Office and in the Health Department during FY 2000 on the Census project. The Health Department has already identified ongoing responsibilities for the position, and it is expected that the department will continue it within constraint in the FY 2001 budget.

The Budget Office recommends approval of this budget modification. As of 7/2/99, the General Fund contingency was \$3,464,758. This budget modification will reduce that amount to \$3,411,020.

MEETING DATE: JUL 22 1999  
AGENDA NO: R-3  
ESTIMATED START TIME: 9:35

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: Amending MCC11.300 and 11.305 to exempt car sharing programs from the motor vehicle rental tax

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

REGULAR MEETING: DATE REQUESTED: July 22, 1999  
AMOUNT OF TIME NEEDED: 15 mins.

DEPARTMENT: Non-departmental DIVISION: Cruz  
CONTACT: Beckie Lee TELEPHONE #: 248-5219  
BLDG/ROOM #: 106-1500

PERSON(S) MAKING PRESENTATION: Dave Brooks, CarSharing Portland 872-9882

**ACTION REQUESTED:**

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL  OTHER

**SUGGESTED AGENDA TITLE:**

Amending MCC 11.300 and 11.305 to exempt car sharing programs from the motor vehicle rental tax.

**SIGNATURES REQUIRED:**

ELECTED OFFICIAL: Serena Cruz (MC)  
(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

99 JUL 12 PM 2:58  
COUNTY COMMISSIONER  
CLERK  
MULTI-COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



SERENA CRUZ, Multnomah County Commissioner

District 2

## Memorandum

**To:** Board of County Commissioners  
**From:** Serena Cruz  
**Date:** 07/16/99  
**Re:** Car Sharing exemption - Agenda No. R-3

After meeting with County Counsel and the finance department, I feel that car sharing organizations should be exempt from the County rental car tax for the following reasons:

- Car sharing organizations provide an alternative to car ownership, not rentals.
- Carsharing Portland, currently the only car sharing organization in the County, is a membership organization. They require 3-5 days to approve new members/drivers and do not take people "off the street."
- Members live near where the cars are located in neighborhoods in Multnomah County and are not visitors/tourists.
- Cars are used on an on-going basis by members.

In the long term, car sharing organizations give people an alternative to owning their own car, effectively eliminating the amount of cars on the road and reducing the impact on our environment. Additionally, car sharing gives mobility to responsible drivers who may not be able to afford car ownership.

For more information, please contact:

- Carol Kinoshita, County Counsel - 248-3138
- Dave Brooks, President, CarSharing Portland - 872-9882



BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. \_\_\_\_\_

Amending MCC 11.300 and 11.305 to exempt car sharing programs from the motor vehicle rental tax.

(Double- underlined language is new.)

**Multnomah County Ordains as follows:**

**Section 1.** MCC 11.300 is amended as follows:

**§ 11.300- Definitions.**

For the purpose of this subchapter, the following definitions shall apply unless the context requires a different meaning.

**CAR SHARING ORGANIZATION.** A profit or non-profit organization with membership requirements that provides the use of motor vehicles exclusively to its members for a fee.

**COMMERCIAL ESTABLISHMENT.** Any person or other entity, any part of whose business consists of providing the use of motor vehicles for a rental fee.

**DIRECTOR.** The Finance Director of the county.

**DOING BUSINESS IN THE COUNTY.** Any of the following conduct by a commercial establishment whose business address is within or outside the county:

(1) Delivery of a rented vehicle to a location within the county for use by a person within the county; or

(2) Presenting for execution within the county by any person a car rental agreement.

**EXEMPTION AREA.** Multnomah, Washington and Clackamas Counties.

**MOTOR VEHICLE.** Without limitation, automobiles, trucks having a manufacturer's gross vehicle weight not exceeding 24,000 pounds, motor homes, motorcycles, pickup campers and any motorized passenger vehicles designed to carry fewer than ten persons, which are capable of being used on the highways of the state.

**RENTAL FEE.** The gross fee and charges, whatever the basis of their calculation, paid to a commercial establishment by any person for the rental of a motor vehicle.

**RENTAL or RENTING.** Obtaining in the county the use of a motor vehicle from a commercial establishment in the county for a rental fee, and includes all services, supplies and commodities furnished by the commercial establishment in connection with providing the use of the vehicle, but does not include leasing or other transactions where title of a motor vehicle is permanently or temporarily transferred from the commercial establishment to any other person or entity.

**Section 2.** MCC 11.305 is amended as follows:

**§ 11.305 Exemptions.**

The tax imposed hereby shall not be applicable to:

- (A) A rental fee which state or federal law exempts from the tax.
- (B) A rental fee for a motor vehicle to be used for official governmental business by an employee of the federal government.
- (C) A motor vehicle rented by a resident of the exemption area to temporarily replace a vehicle being repaired or serviced.
- (D) A motor vehicle rented in the county by a member of a car sharing organization who is a resident of the exemption area

FIRST READING:

July 22, 1999

SECOND READING AND ADOPTION:

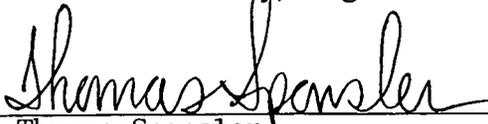
July 29, 1999

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

\_\_\_\_\_  
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel  
For Multnomah County, Oregon

  
\_\_\_\_\_  
Thomas Sponsler

**THE LAST  
TIME IT WAS  
THIS CHEAP  
TO DRIVE  
A CAR,**

# JUST WHAT IS CARSHARING?

RID YOURSELF OF

GAS | REPAIRS

& INSURANCE

A N A L T E R N A T I V E T O C A R O W N E R S H I P

Ten years ago, some smart folks in Switzerland, seeking to save a little money and do some good for the environment, began sharing cars with one another. It was an ingenious idea that caught on, and 50,000 people throughout Europe have been happily sharing cars ever since.

Now, thanks to CarSharing™ Portland Inc., you too can enjoy the benefits of a dependable car without the hassles and costs of actually owning one. CarSharing takes care of the insurance, the maintenance, even the gas. All you do is go.

Here's the best part. Chances are CarSharing has a vehicle within blocks of where you live or work. Once you're a member you can reserve it for as little as an hour, or as long as you like. The last time driving a car was this affordable, you had to ask mom and dad for the keys.



## COST COMPARISON

	HOURS/MILES	CARSHARING	OWNERSHIP*	RENTAL
ERRAND	1 HR./11 MI.	\$6	\$7	N/A
SHOPPING	3 HR./26 MI.	\$15	\$26	\$48
RECREATION	5 HR./95 MI.	\$45	\$43	\$52

\*Based on AAA average annual cost figures



TRUCK: TOYOTA TACOMA

SEDAN: 4-DOOR NEON

**IT BELONGED  
TO YOUR  
PARENTS.**



# HARING WORK?

**MEMBERSHIP:** Not everyone gets to drive the cars, only the responsible. Our insurance company requires you to be at least 21, have a good driving record and good credit. If you become a member, you'll appreciate knowing that your fellow members are as considerate and responsible as you.

To apply, simply fill out the attached application and mail it to us with \$25, which we apply toward your driving and credit check. If more than one member of your household is applying, photocopy the application, and make sure to include \$25 for each one you submit. When you're accepted for membership, pay a fully refundable security deposit of \$500 and you're ready to go.

Various membership plans, with reduced security deposits, are available for households, organizations and businesses. Call to see if you qualify.



FOR MORE INFO

CALL 872-9882



We all know too many cars can clog up both the streets and the air, but they can also wreak havoc on the earth's climate. A car coughs up nearly a pound of carbon dioxide for every mile it's driven. Oregonians alone pump millions of tons of greenhouse gases and other pollutants into the air every year. Combine that with the pollution created by the rest of the world and we're seeing a dramatic shift in the earth's climates. One less car won't save the earth, but CarSharing is about thousands fewer cars and tons less carbon dioxide. No wonder the Oregon Office of Energy, the DEQ, the EPA and Tri-Met all support CarSharing. It's one sure way to help preserve our world.

CURRENT  
LOCATIONS

SE 36th & Hawthorne  
SE 21st & Division  
SE 42nd & Division  
NW 23rd & Lovejoy

NE 10th & Schuyler  
NE 16th & Flanders  
SW 5th & Harrison  
SW 19th & Burnside

New locations are added frequently.

WWW.CARSHARING-PDX.COM | (503) 872-9882 • FAX: (503) 239-5058

OFFICE: 2106 SOUTHEAST DIVISION STREET | PORTLAND, OREGON

# JOIN!

FILL  SEND

Current insurance requirements limit membership to drivers 21 or older with no more than two moving violations or insurance claims in the past three years. Our insurance company reserves the right to deny any applicant with one or more tickets or claims. Photocopy this application form for additional drivers in a household. Please print clearly.

## COMING SOON

If CarSharing isn't available near you, but you'd like to be a member as soon as it is, fill out the application form and check the "Call me" box. CarSharing will let you know when there is a car near you.

“Carsharing is incredibly convenient and very inexpensive. It definitely fits my lifestyle.”

Julie Livingston, Portland resident

## APPLICATION

FULL NAME: \_\_\_\_\_

SOCIAL SECURITY #: \_\_\_\_\_

HOME ADDRESS: \_\_\_\_\_

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

YEARS AT RESIDENCE: \_\_\_\_\_ OWN: \_\_\_\_\_ OR RENT: \_\_\_\_\_

DAY PHONE: \_\_\_\_\_ EVENING PHONE: \_\_\_\_\_

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

EMPLOYER NAME: \_\_\_\_\_

WORK ADDRESS: \_\_\_\_\_

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

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

DRIVER'S LICENSE #: \_\_\_\_\_ STATE: \_\_\_\_\_

LICENSE EXPIRATION: \_\_\_\_\_ BIRTH DATE: \_\_\_\_\_

TOTAL YEARS LICENSED IN OREGON: \_\_\_\_\_

IF LESS THAN 3 YEARS, PREVIOUS STATE AND LICENSE #: \_\_\_\_\_

APPROX. NUMBER OF MILES DRIVEN YEARLY: \_\_\_\_\_

NAME OF AUTO INSURANCE CO. (IF ANY): \_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_

NUMBER OF MOVING VIOLATIONS IN LAST 3 YEARS: \_\_\_\_\_

NUMBER OF ACCIDENTS/INSURANCE CLAIMS IN LAST 3 YEARS: \_\_\_\_\_

PLEASE PROVIDE MORE DETAIL ON REVERSE SIDE IF YOU HAVE HAD ONE OR MORE MOVING VIOLATIONS OR ACCIDENTS/INSURANCE CLAIMS.

Everything stated in this application is true to the best of my knowledge. I understand that CarSharing Portland, Inc. relies on this information in deciding whether my application is approved. CarSharing is authorized to check my credit, driving record and employment history.

SIGNATURE: \_\_\_\_\_

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

Please send this form with a \$25 check to  
**CARSHARING PORTLAND, INC.**  
1905 NE Clackamas St., Portland, OR 97232

If you would like to pay by credit card, please fill out the following information and mail or fax both sides of this form. Fax to (503) 239-5058.

CHECK ENCLOSED



ACCOUNT #:

EXPIRATION DATE:

NAME AS IT APPEARS ON CARD:

SIGNATURE:

DATE:

CALL ME

Fill out the application form and check the "Call Me" box if CarSharing isn't available near you but you'd like to be a member as soon as it is. CarSharing will call you when there is a car near you and process your application at that time.

Please provide details regarding moving violations and/or insurance claims in the space provided below (use a separate sheet if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



CarSharing® is a registered trademark of CarSharing Portland, Inc.

## THE BENEFITS OF CARSHARING

### ADD UP QUICKLY!

The average person could save up to \$200 per month by using CarSharing rather than owning a car. That's almost \$2,400 a year, a good start on a down payment for a house.

CarSharing allows you to simplify your life by getting rid of car payments, insurance premiums and the hassles of maintenance and repairs.

By using CarSharing, members plan their trips more efficiently and therefore drive fewer miles, which helps the planet. Driving 25 fewer miles a week keeps more than a half-ton of greenhouse gases out of the atmosphere each year.

#### SAVING ENERGY

This brochure was partially funded by a grant from the Oregon Office of Energy and the U.S. Environmental Protection Agency.

SAVES EVERYTHING





## CARSHARING IS FOR YOU IF:

- YOU DRIVE LESS THAN 8,000 MILES A YEAR.
- YOU DON'T USE YOUR CAR FOR COMMUTING.
- YOU OCCASIONALLY NEED A SECOND CAR BUT CAN'T AFFORD ONE.
- YOU WANT TO SIMPLIFY LIFE AND SAVE MONEY.

# HOW DOES CARSHARING

**USE:** Pick up the phone and reserve a vehicle for the time you want. Then simply walk to the car parked near you, let yourself in and drive. Use CarSharing as much, or as little, as you like. Once a month, CarSharing will send you a statement and bill your credit or debit card.

**COSTS:** Cars cost \$1.50 per hour plus 40¢ a mile, with a cap of \$45 per 24-hours. Specialty vehicles cost \$2 per hour plus 40¢ a mile, with a cap of \$55 per 24-hours.

**GAS:** Whenever the gas gauge dips below 1/4 tank, the member driving the car fills the tank with the CarSharing gas card.

**INSURANCE:** CarSharing's fleet insurance policy includes liability, comprehensive and collision insurance for all members. There's no need for you to have any coverage at all.

**MAKE/MODEL:** The standard sedans in the CarSharing fleet are new, 4-door Neons. There's also a pickup truck to complement the cars. As the network grows CarSharing will be adding other specialty vehicles including minivans. All vehicles are smoke free and feature air conditioning and automatic transmission.

**CLEANING/MAINTENANCE:** All the vehicles are vacuumed twice a month and washed as needed. Members are responsible for leaving cars clean for the next driver. And remember, CarSharing performs all maintenance and all repairs.

**CAR LOCATIONS:** As CarSharing grows, vehicles will be placed in more locations. If you fill out the application form and check the "Call Me" box, CarSharing will inform you when there's a car near you.

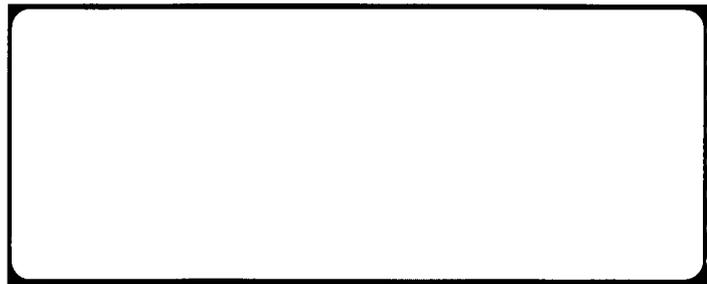
1905 NE CLACKAMAS ST., PORTLAND, OR 97232

CARSHARING



DON'T BUY,

BORROW.







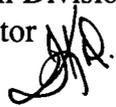
# MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES  
TRANSPORTATION DIVISION  
1600 SE 190TH AVENUE  
PORTLAND, OREGON 97233  
(503) 248-5050

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR • 248-3308  
DIANE LINN • DISTRICT 1 • 248-5220  
SERENA CRUZ • DISTRICT 2 • 248-5219  
LISA NAITO • DISTRICT 3 • 248-5217  
SHARRON KELLEY • DISTRICT 4 • 248-5213

## STAFF REPORT

**TO:** Board of County Commissioners

**FROM:**  Larry F. Nicholas, P. E., DES Director  
Harold Lasley, P.E., Director, Transportation Division   
John Dorst, Engineering Services Administrator 

**DATE:** July 9, 1999

**RE:** Transportation Director's Report on the Proposed Vacation of a portion of S.W. Pomona St. and S.W. Moapa Ave.

1. Recommendation/Action Requested:

The Transportation Division recommends approval of the Resolution.

2. Background/Analysis:

The portions of S.W. Pomona Street and S.W. Moapa Avenue to be vacated were acquired in conjunction with creation of the 1890 plat called Palatine Hill No. 3. Multnomah County has made no improvements to the area being vacated by this resolution, and there are no future improvement plans. Multnomah County vacated the westerly extension of Pomona Street in 1939 and vacated the southerly extension of S.W. Moapa Avenue in 1947. The petitioners have notified utilities in the area of the proposed vacation and requested comments. Northwest Natural Gas was the only respondent, and they had no objection. Multnomah County is under no obligation to notify utilities regarding this street vacation. This vacation will be subject to the easement rights and interests of the Dunthorpe-Riverdale Service District No. 1

The County Engineer has assessed the vacation proposal and has concluded that the property to be vacated is surplus; that the vacation is in the best interests of the public, and that the property to be vacated should be returned to its previous taxable status.

3. Financial Impact:

None. The costs associated with vacation proceedings are recovered by Multnomah County through application fees. Multnomah County has received a total of \$1,265 from the petitioners, of which \$200 applies to the feasibility study that was performed by Multnomah County and the remaining \$1,065 will be applied to the vacation proceedings, including posting the vacation.

4. Legal Issues:

The proposed road vacation was initiated by a petition of 100 percent of both the abutting and underlying property owners. Pursuant to O.R.S. 368.351, a citizen initiated vacation by petition is more streamlined because there is no requirement for notice by publication and full public hearing if the proposed vacation is supported by 100 percent of the affected property owners:

5. Controversial Issues:

None.

6. Link to Current County Policies:

N/A

7. Citizen Participation:

This is a citizen-initiated petition.

8. Other Government Participation:

None required.



# MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES  
TRANSPORTATION DIVISION  
1600 SE 190TH AVENUE  
PORTLAND, OREGON 97233  
(503) 248-5050

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN • CHAIR • 248-3308  
DIANE LINN • DISTRICT 1 • 248-5220  
SERENA CRUZ • DISTRICT 2 • 248-5219  
LISA NAITO • DISTRICT 3 • 248-5217  
SHARRON KELLEY • DISTRICT 4 • 248-5213

## MEMORANDUM

**TO:** Board of County Commissioners

**FROM:** W.E. Chuck Henley, P.E.   
County Engineer/Engineering Services Manager

**DATE:** July 9, 1999

**RE:** Vacation of Portions of SW Pomona Street and SW Moapa Avenue

In response to the petition of Millicent Natio, et al., the Transportation Division has investigated the above referenced proposal and the following is our report.

1. The proceeding involve the proposed vacation of that portion, lying outside of the city of Portland, of SW Pomona Street and SW Moapa Avenue, being more particularly described as follows:

A tract of land situated in the NE One-quarter of Section 34, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, being more particularly described as follows:

All of Pomona Street (50.00 foot wide right of way) lying westerly of a line drawn between the southeast corner of Block 108 and the northeast corner of Block 109 of Palatine Hill No. 3 and easterly of a line drawn between the southeast corner of Block 105 and the northeast corner of Block 104 of said Palatine Hill No. 3.

Also including, all of Moapa Avenue (formerly known as Larch Street) lying northerly of a line drawn between the southeast corner of Block 105 and the southwest corner of Block 108 of said Palatine Hill No. 3 and southerly of a line drawn between the northeast corner of Lot 19 of Block 105 and the northwest corner of Lot 2 of Block 108 of said Palatine Hill No. 3.

2. SW Pomona Street and SW Moapa Avenue were dedicated to the public in the duly recorded plat of Palatine Hill No. 3

Memo to Board of County Commissioners

RE: Vacation/SW Pomona St. and SW Moapa Ave.

Page 2

3. The portions of SW Pomona Street and SW Moapa Avenue being considered for vacation have not been improved, nor are they being considered for improvement by Multnomah County.
4. It is the petitioner's responsibility to identify and notify utilities that may operate within the right of way of the streets being proposed for vacation. The petitioners have indicated that they have notified utility companies in the area. Northwest Natural Gas was the only respondent, and they indicated that they do not use these portions of SW Pomona Street or SW Moapa Avenue, nor do they object to the proposed vacation.
5. The petition has been submitted with the consent of 100% of the abutting property owners.
6. Multnomah County has received a total of \$1265.00 from petitioners, of which \$200.00 applies to the feasibility study that was performed by the Transportation Division and the remaining \$1065.00 will be applied to the vacation proceedings, including posting the vacation.
7. The streets proposed to be vacated lay wholly within Multnomah County.

The proposed vacation is in the best interest of the public and will return the property being

PHKLH0017.LTR (YA2580)

February 26, 1998

**TARLOW  
JORDAN &  
SCHRADER**  
ATTORNEYS AT LAW

John K. Dorst  
Civil Services Manager  
Multnomah County Oregon  
Department of Environmental Services  
1620 SE 190th Avenue  
Portland, Oregon 97233

Re: SW Pomona Street Feasibility Study - YA 2477  
Our File No. 45041/27665

Dear John:

This letter is to serve as a Petition for Vacation of a portion of SW Pomona Street and SW Moapa Street.

STEVEN L. NAITO

- 1. The legal description of the property proposed to be vacated:** Attached is Exhibit A the legal description of the portion of SW Pomona Street and SW Moapa Street proposed to be vacated together with a site map;
- 2. Statement of the reasons the vacation is requested;** The streets are no longer needed for public purposes;
- 3. The names and addresses of all persons holding any recorded interest in the property to be vacated:** I have enclosed as Exhibit B a copy of the original subdivision plat map of Palatine Hill #3 which shows the proposed vacated streets were in common ownership;
- 4. Names and addresses of all persons owning any improvements constructed on public property proposed to be vacated:** Attached as Exhibit C is a letter from Northwest Natural Gas advising that there is no utilities in the street. We have requested from all other utilities in the area a similar review and will forward their response to you shortly;
- 5. Names and addresses of all persons owning real property abutting any portion of the property proposed to be vacated:**

PO BOX 230669  
PORTLAND, OREGON 97281  
503 598 7373 facsimile  
888 598 7070 toll-free  
503 598 7070

email:  
naito@tjsslw.com

Millicent Naito  
11025 SW Tryon Avenue  
Portland, OR 97219

Safari Kiavash and Sananee Nazanin  
1139 SW Palatine Hill Road  
Portland, OR 97219

*A Total Quality Management Organization*

27665 003 sln ltr.doc\mj1/02/26/98-ff

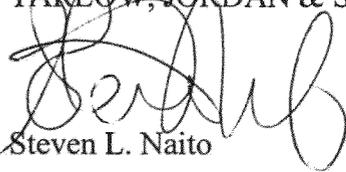
**TARLOW, JORDAN & SCHRADER**

John K. Dorst  
February 26, 1998  
Page 2

6. **Signatures, acknowledged by persons authorized to execute deeds as owners of 100% of the land abutting the portion of SW Pomona Street proposed to be vacated:** Consents from the abutting property owners for the street vacation;
7. **If the petition is for vacation of property that will be redivided in any manner, subdivision plan or partition plan showing the proposed redivision:**  
No redivision plan at this time;
8. Our firm check no. 1206 in the amount of \$1,065 representing the deposit for estimated costs.

Very truly yours,

TARLOW, JORDAN & SCHRADER

  
Steven L. Naito

Enclosures

cc w/enc: Micki Naito  
Safari Kiavash  
Sanamee Nazanin

Legal Description  
Right-of-way Vacation

BEING a strip of land located in the northeast one-quarter of Section 34, Township 1 South, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon, and being more particularly described as follows:

All of Pomona Street (50.00 foot wide right-of-way) lying westerly of a line drawn between the southeast corner of Block 108 and the northeast corner of Block 109 of Palatine Hill No. 3" and easterly of a line drawn between the southeast corner of Block 105 and the northeast corner of Block 104 of said Palatine Hill No. 3".

ALSO INCLUDING all of S.W. Moapa Ave. (formerly known as Larch Street) lying northerly of a line drawn between the southeast corner of Block 105 and the southwest corner of Block 108 of said Palatine Hill No. 3" and southerly of a line drawn between the northeast corner Lot 19 of Block 105 and the northwest corner of Lot 2 of Block 108 of said Palatine Hill No. 3.

EXHIBIT     A      
PAGE     1 OF 1

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 99-155**

Vacation of a portion of SW Pomona Street and SW Moapa Avenue Pursuant to ORS 368.326

The Multnomah County Board of Commissioners finds:

1. The portions of SW Pomona Street and SW Moapa Avenue affected by this vacation were originally dedicated as public roads named Pomona Street and Larch Street, respectively, by the 1890 plat Palatine Hill No. 3, Recorded in Book 151, Page 13. These portions of SW Pomona Street and SW Moapa Avenue are undeveloped as public roads and Multnomah County has no plans to develop the portions being considered for vacation. The property to be vacated is surplus.
2. The portions of SW Pomona Street and SW Moapa Avenue to be vacated are described as follows:

A tract of land situated in the NE one-quarter of Section 34, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, being more particularly described as follows:

All of Pomona Street (50.00 foot wide right of way) lying westerly of a line drawn between the southeast corner of Block 108 and the northeast corner of Block 109 of Palatine Hill No. 3 and easterly of a line drawn between the southeast corner of Block 105 and the northeast corner of Block 104 of said Palatine Hill No. 3.

Also including, all of Moapa Avenue (formerly known as Larch Street) lying northerly of a line drawn between the southeast corner of Block 105 and the southwest corner of Block 108 of said Palatine Hill No. 3 and southerly of a line drawn between the northeast corner of Lot 19 of Block 105 and the northwest corner of Lot 2 of Block 108 of said Palatine Hill No. 3.

3. Petitioners Millicent E. Naito, Kiavash Safari, Nazanin Safari, Nazanin Sananee, Robert W. Yeager and Barbara E. Coit have submitted a petition in compliance with ORS 368.341(3), containing the signatures and addresses of 100 percent of the abutting property owners who would also qualify as the owners of the property proposed to be vacated. A copy of the petition is attached to this Resolution as Exhibit 1 and hereby incorporated by this reference.

4. Under ORS 368.351, because petitioners represent 100 percent of the ownership of the property to be vacated and the abutting property, the County may proceed to complete this vacation without additional notice and publication as would be required under ORS 368.346.
5. Multnomah County has received a total of \$1,265.00 from the petitioners, of which \$200.00 applies to the feasibility study that was performed by Multnomah County and the remaining \$1,065.00 will be applied to the vacation proceeding, including posting the vacation.
6. The entire portion being vacated will remain subject to the rights of the Dunthorpe-Riverdale Sanitary Sewer District No. 1, for access and maintenance of an existing sanitary sewer line.

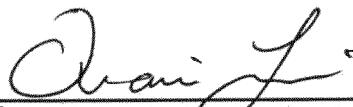
The Multnomah County Board of Commissioners resolves:

1. The above described portions of SW Pomona Street and SW Moapa Avenue are hereby vacated as public roads, subject to the Dunthorpe-Riverdale Sanitary Sewer District No. 1 easement.
2. Pursuant to ORS 368.366(d): "Title to the vacated property shall vest in the owner of the land abutting the vacated property by extension of the person's abutting property boundaries to the center of the vacated property."

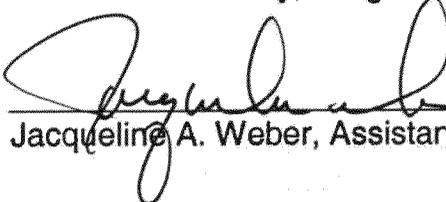
Adopted this 22nd day of July, 1999.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
for Beverly Stein, Chair

Thomas Sponsler, County Counsel  
For Multnomah County, Oregon

By   
Jacqueline A. Weber, Assistant County Counsel

# EXHIBIT 1

February 26, 1998

John K. Dorst  
Civil Services Manager  
Multnomah County Oregon  
Department of Environmental Services  
1620 SE 190th Avenue  
Portland, Oregon 97233

Re: SW Pomona Street Feasibility Study - YA 2477  
Our File No. 45041/27665

Dear John:

This letter is to serve as a Petition for Vacation of a portion of SW Pomona Street and SW Moapa Street.

- 1. The legal description of the property proposed to be vacated:** Attached is Exhibit A the legal description of the portion of SW Pomona Street and SW Moapa Street proposed to be vacated together with a site map;
- 2. Statement of the reasons the vacation is requested;** The streets are no longer needed for public purposes;
- 3. The names and addresses of all persons holding any recorded interest in the property to be vacated:** I have enclosed as Exhibit B a copy of the original subdivision plat map of Palatine Hill #3 which shows the proposed vacated streets were in common ownership;
- 4. Names and addresses of all persons owning any improvements constructed on public property proposed to be vacated:** Attached as Exhibit C is a letter from Northwest Natural Gas advising that there is no utilities in the street. We have requested from all other utilities in the area a similar review and will forward their response to you shortly;
- 5. Names and addresses of all persons owning real property abutting any portion of the property proposed to be vacated:**

Millicent Naito  
11025 SW Tryon Avenue  
Portland, OR 97219

Safari Kiavash and Sananee Nazanin  
1139 SW Palatine Hill Road  
Portland, OR 97219

*A Total Quality Management Organization*

27665 003 sln ltr.doc/mjl/02/26/98-4f

**TARLOW  
JORDAN &  
SCHRADER**  
ATTORNEYS AT LAW

STEVEN L. NAITO

PO BOX 230669  
PORTLAND, OREGON 97281  
503 598 7373 facsimile  
888 598 7070 toll-free  
503 598 7070

email:  
naito@tjslaw.com

## TARLOW, JORDAN & SCHRADER

John K. Dorst  
February 26, 1998  
Page 2

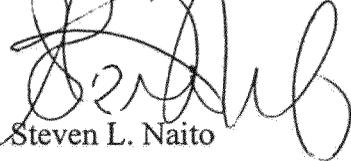
6. **Signatures, acknowledged by persons authorized to execute deeds as owners of 100% of the land abutting the portion of SW Pomona Street proposed to be vacated:** Consents from the abutting property owners for the street vacation;

7. **If the petition is for vacation of property that will be redivided in any manner, subdivision plan or partition plan showing the proposed redivision:** No redivision plan at this time;

8. Our firm check no. 1206 in the amount of \$1,065 representing the deposit for estimated costs.

Very truly yours,

TARLOW, JORDAN & SCHRADER

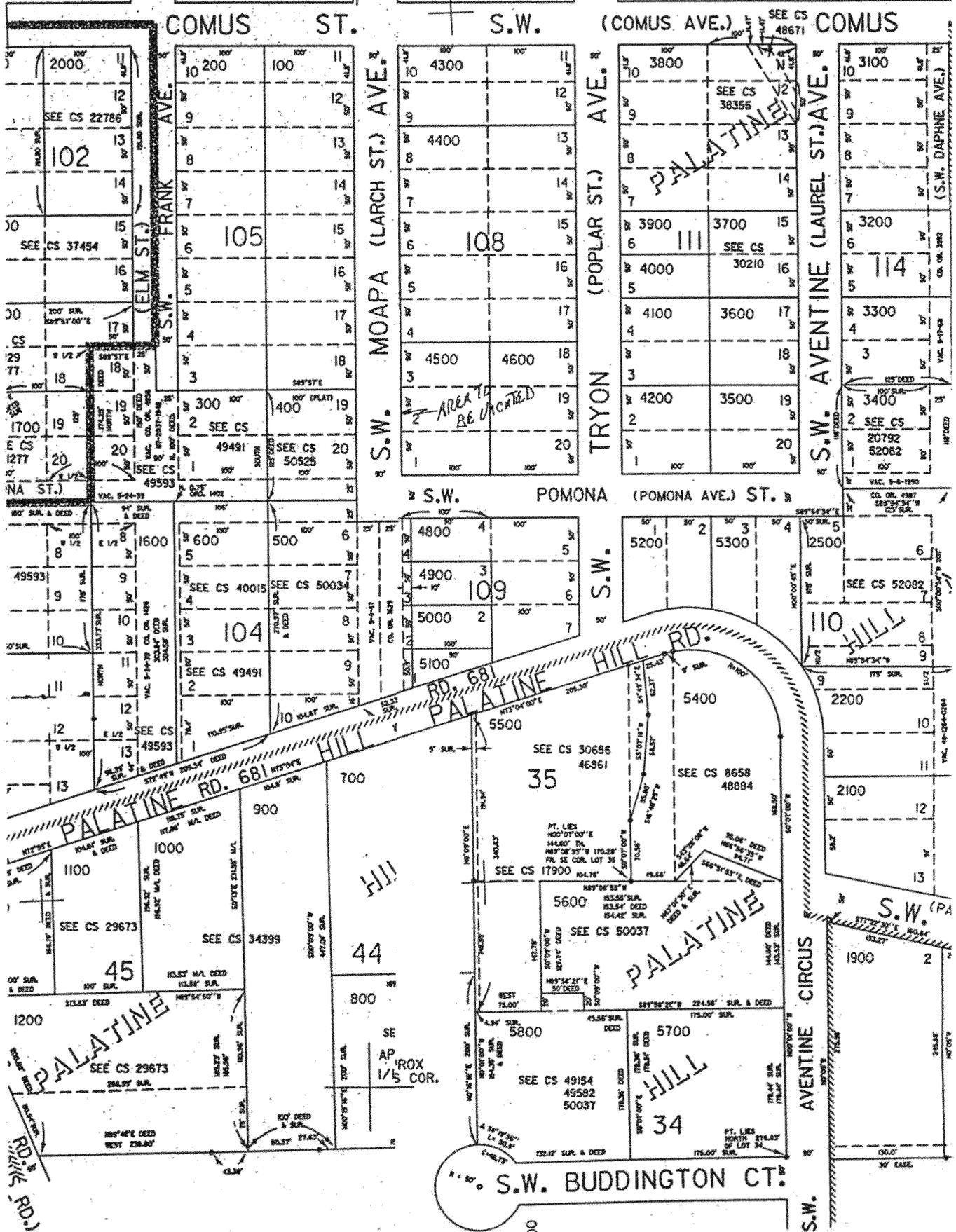
  
Steven L. Naito

Enclosures

cc w/enc: Micki Naito  
Safari Kiavash  
Sanamee Nazanin

# VICINITY MAP

APPROX  
1/16 COR.



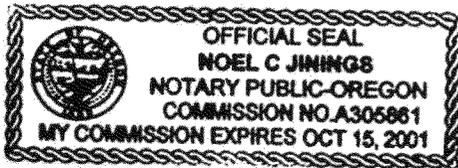
CONSENT TO STREET VACATION

The undersigned owner of the real property described on the attached Exhibit "A", incorporated by reference, hereby consents to and approves the Petition for Street Vacation for the vacation of all that portion of SW Pomona Street and SW Moapa Street described on attached Exhibit B, incorporated by reference.

Millicent E. Naito  
Millicent E. Naito

STATE OF OREGON            )  
  ) ss.  
County of Clatsop        )

This instrument was acknowledged before me on Feb. 25, 1998, by Millicent E. Naito.



Noel C. Jinnings  
NOTARY PUBLIC FOR OREGON  
My Commission Expires Oct. 15, 2001

## **EXHIBIT A**

### **Legal Descriptions**

Lots one (1) to six (6), inclusive, and fifteen (15) to twenty (20), inclusive, in Block one hundred eight (108), PALATINE HILL PLAT 3, in the County of Multnomah and State of Oregon.

and

The East 90 feet of Lots 1, 2, 3 and 4, and all of Lots 5, 6, and 7, Block 109, PALATINE HILL NO. 3, in the county of Multnomah and State of Oregon.

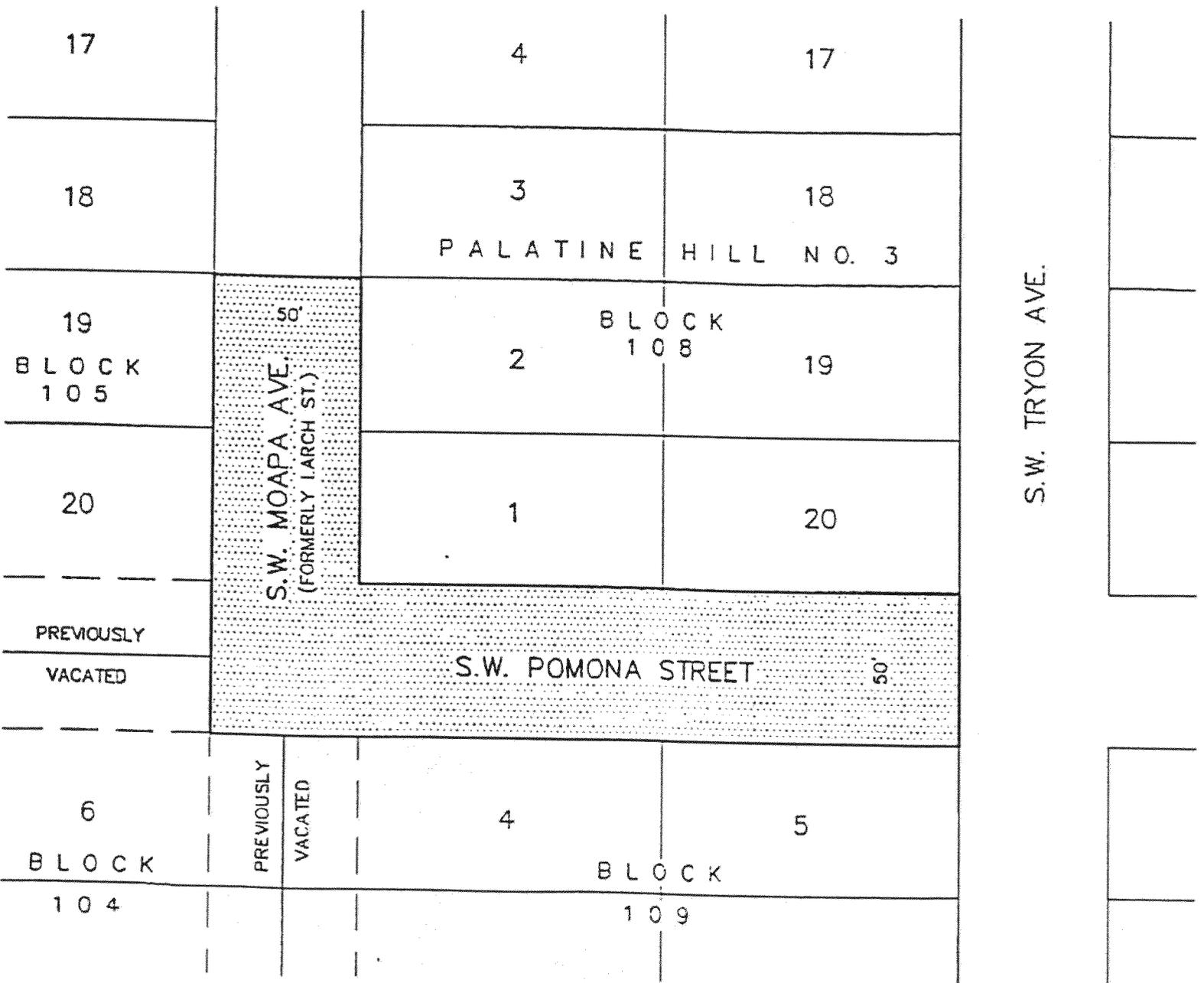
EXHIBIT B  
Page 1  
Legal Description  
Right-of-way Vacation

BEING a strip of land located in the northeast one-quarter of Section 34, Township 1 South, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon, and being more particularly described as follows:

All of Pomona Street (50.00 foot wide right-of-way) lying westerly of a line drawn between the southeast corner of Block 108 and the northeast corner of Block 109 of Palatine Hill No. 3" and easterly of a line drawn between the southeast corner of Block 105 and the northeast corner of Block 104 of said Palatine Hill No. 3".

ALSO INCLUDING all of S.W. Moapa Ave. (formerly known as Larch Street) lying northerly of a line drawn between the southeast corner of Block 105 and the southwest corner of Block 108 of said Palatine Hill No. 3" and southerly of a line drawn between the northeast corner Lot 19 of Block 105 and the northwest corner of Lot 2 of Block 108 of said Palatine Hill No. 3.

RIGHT-OF-WAY VACATION  
 LOCATED IN "PALATINE HILL NO. 3"  
 IN THE NORTHEAST ONE-QUARTER  
 OF SECTION 34, T. 1 S., R. 1 E., W.M.  
 CITY OF PORTLAND  
 MULTNOMAH COUNTY, OREGON





Northwest Natural Gas

September 4, 1997

Millicent Naito  
11025 SW Tyron Avenue  
Portland, OR 97219

RE: Proposed vacation of portions of SW Pomona St and SW Moapa Ave.

Please be advised Northwest Natural Gas Company has no facilities within the proposed vacation area. We would, therefore, have no objection to the vacating of the area requested.

Please notify us when the vacation is complete so that we can update our records accordingly.

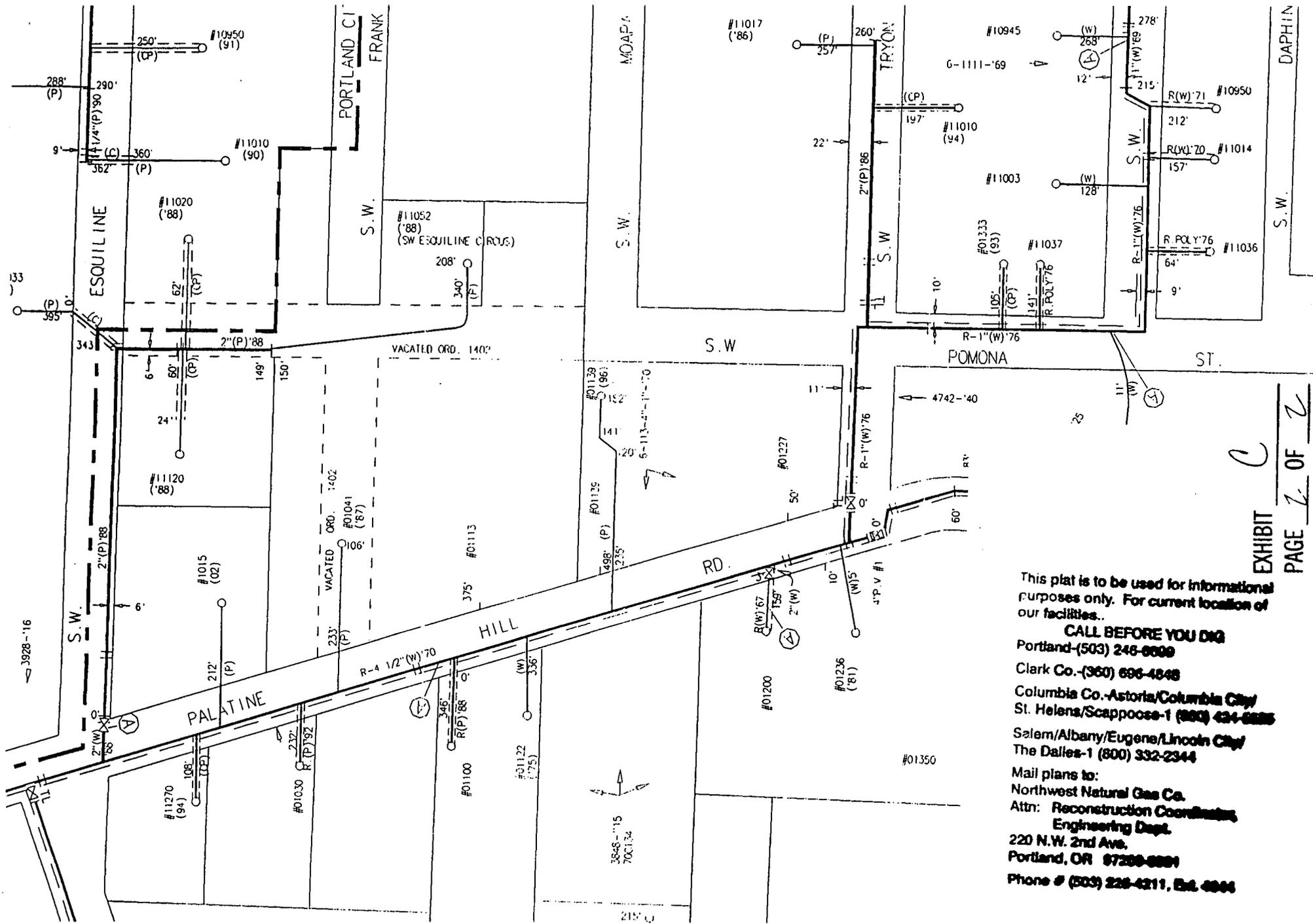
Sincerely,

Judith Wisniewski  
Engineering Department

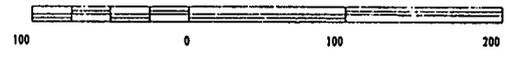
cc: Vacation File

Plat Number: 41-30  
Doc. Number: 970366

EXHIBIT   C    
PAGE   1   OF   1



Plat: 1-041-030  
 Legal: T01S R01E 34NE



This plat is to be used for informational purposes only. For current location of our facilities..

**CALL BEFORE YOU DIG**

Portland-(503) 246-6600  
 Clark Co.-(360) 696-4848  
 Columbia Co.-Astoria/Columbia City/  
 St. Helens/Scappoose-1 (800) 434-6885  
 Salem/Albany/Eugene/Lincoln City/  
 The Dalles-1 (800) 332-2344

Mail plans to:  
 Northwest Natural Gas Co.  
 Attn: Reconstruction Coordinator,  
 Engineering Dept.  
 220 N.W. 2nd Ave.  
 Portland, OR 97209-6881  
 Phone # (503) 226-4211, Ext. 4044

EXHIBIT C  
 PAGE 1 OF 2

CONSENT TO STREET VACATION

The undersigned owner of the real property described on the attached Exhibit "A", incorporated by reference, hereby consents to and approves the Petition for Street Vacation to be submitted by Millicent E. Naito for the vacation of all of that portion of S.W. Pomona Street and SW Moapa Street described on attached Exhibit B, incorporated by reference.

*[Signature]*  
\_\_\_\_\_  
Kiavash Safari

STATE OF OREGON )  
 ) ss.  
County of CLACKAMAS )

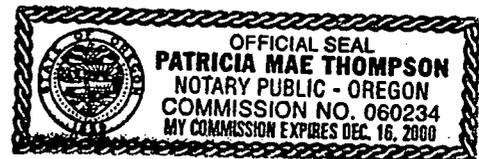


This instrument was acknowledged before me on  
JANUARY 30, 1998 by KIAVASH SAFARI

*[Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: DEC. 16 2000

*[Signature]*  
\_\_\_\_\_  
Nazanin Safari

STATE OF OREGON )  
 ) ss.  
County of CLACKAMAS )



This instrument was acknowledged before me on  
JANUARY 30, 1998 by NAZANIN SAFARI

*[Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: DEC 16, 2000

# Exhibit A

Order No. 768575

PARCEL I:

Lots 6, 7, 8, 9 and 10, Block 104, PALATINE HILL NO. 3, in the County of Multnomah and State of Oregon, Together With that portion of S.W. Pomona Street which inured by Ordinance No. 1402 and that portion of S.W. Moapa Avenue which inured by Ordinance No. 1629.

PARCEL II:

The Westerly 10 feet of Lots 1, 2, 3 and 4 of Block 109, PALATINE HILL NO. 3, in the County of Multnomah and State of Oregon, Together With that vacated portion of S.W. Moapa Avenue which inured by Ordinance No. 1629, recorded September 4, 1947.

PARCEL III:

Lots 19 and 20, Block 105, PALATINE HILL NO. 3, in the County of Multnomah and State of Oregon, Together With that portion of vacated S.W. Pomona Street which inured by Ordinance No. 1402, recorded May 24, 1939.

MULTNOMAH COUNTY  
MULTNOMAH COUNTY

Let Describe the location of the property to which this instrument relates and the names of the parties thereto in the County of Multnomah, Oregon.

96 FEB 15 AM 10:15

RECORDING SECTION  
MULTNOMAH CO, OREGON

96 23517

MULTNOMAH COUNTY, OREGON

*C. Swick*

2

23517

FEBRUARY 15, 1996

Exhibit B  
Page 1  
Legal Description  
Right-of-way Vacation

BEING a strip of land located in the northeast one-quarter of Section 34, Township 1 South, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon, and being more particularly described as follows:

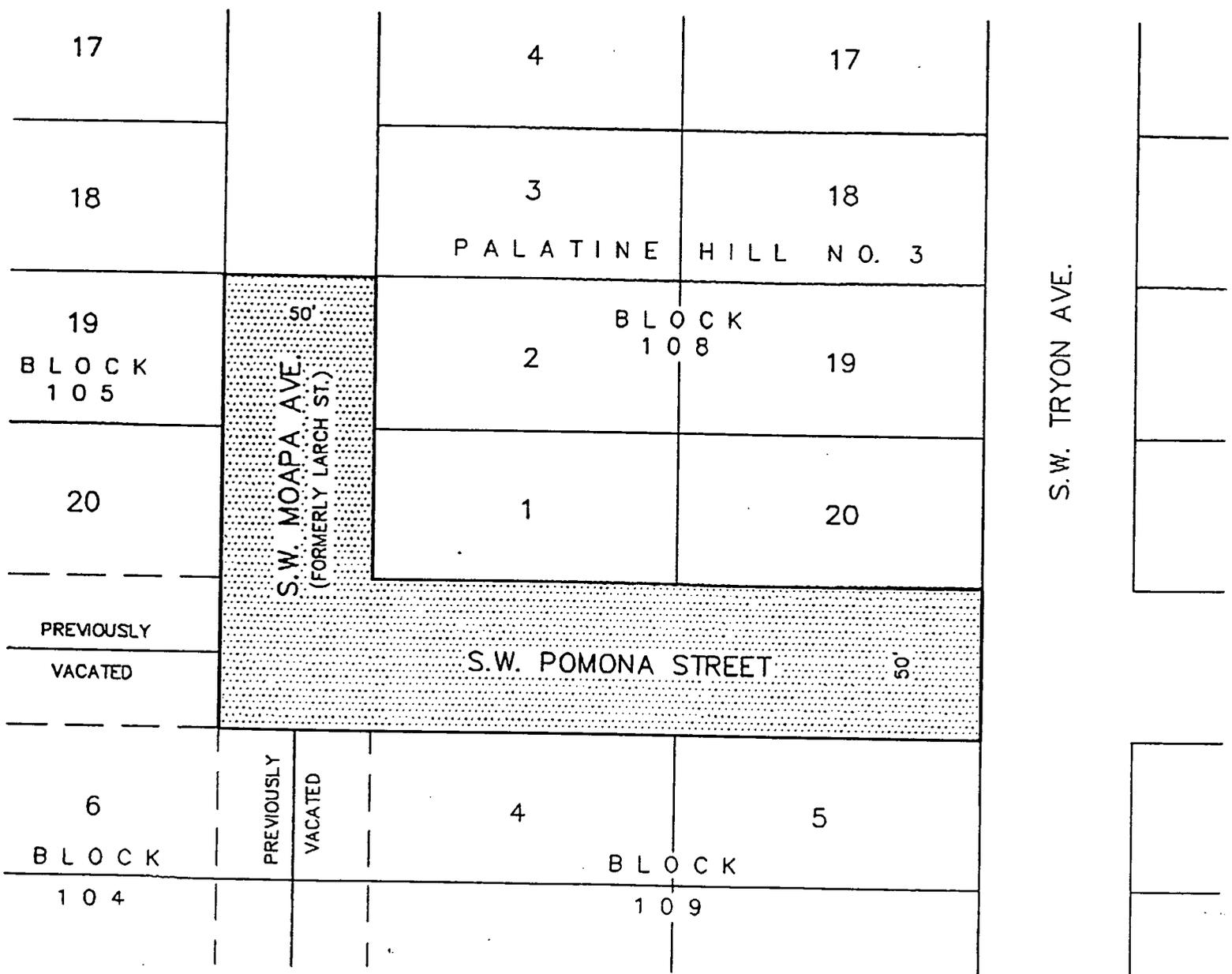
All of Pomona Street (50.00 foot wide right-of-way) lying westerly of a line drawn between the southeast corner of Block 108 and the northeast corner of Block 109 of Palatine Hill No. 3" and easterly of a line drawn between the southeast corner of Block 105 and the northeast corner of Block 104 of said Palatine Hill No. 3".

ALSO INCLUDING all of S.W. Moapa Ave. (formerly known as Larch Street) lying northerly of a line drawn between the southeast corner of Block 105 and the southwest corner of Block 108 of said Palatine Hill No. 3" and southerly of a line drawn between the northeast corner Lot 19 of Block 105 and the northwest corner of Lot 2 of Block 108 of said Palatine Hill No. 3.

Exhibit B  
page 2

# EXHIBIT

RIGHT-OF-WAY VACATION  
LOCATED IN "PALATINE HILL NO. 3"  
IN THE NORTHEAST ONE-QUARTER  
OF SECTION 34, T. 1 S., R. 1 E., W.M.  
CITY OF PORTLAND  
MULTNOMAH COUNTY, OREGON



**CONSENT TO STREET VACTION**

The undersigned owner of the real property described on the attached Exhibit "A", incorporated by reference, hereby consents to and approves the Petition for Street Vacation to be submitted by Millicent E. Naito for the vacation of all of that portion of S.W. Pomona Street and SW Moapa Street described on attached Exhibit B, incorporated by reference.

STATE OF OREGON )  
 ) ss.  
County of Clatsop )

This instrument was acknowledged before me on July 1, 1999 by Nazanin Sananee

*Nazanin Sananee*  
Nazanin Sananee



*Patricia Mae Thompson*  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: Dec. 16, 2000

1 - CONSENT TO STREET VACATION

## **Exhibit A**

### PARCEL I:

Lots 6, 7, 8, 9, and 10. Block 104, PALATINE HILL NO. 3 in the County of Multnomah and State of Oregon, together with that portion of S.W. Pomona Street which inured by Ordinance No. 1402 and that portion of S.W. Moapa Avenue which inured by a Ordinance No. 1629.

### PARCEL II:

The Westerly 10 feet of Lots 1, 2, 3 and 4 of Block 109. PALATINE HILL NO. 3, in the County of Multnomah and State of Oregon, together with that vacated portion of S.W. Moapa Avenue which inured by Ordinance No. 1629, recorded September 4, 1947.

### PARCEL III:

Lots 19 and 20, Block 105, PALATINE HILL NO. 3. In the County of Multnomah and State of Oregon, together with that portion of vacated S.W. Pomona Street which inured by Ordinance No. 1402, recorded May 24, 1939.

EXHIBIT "B"

Page 1  
Legal Description  
Right-of-Way Vacation

BEING a strip of land located in the Northeast One-quarter of Section 34, Township 1 South, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon, and being more particularly described as follows:

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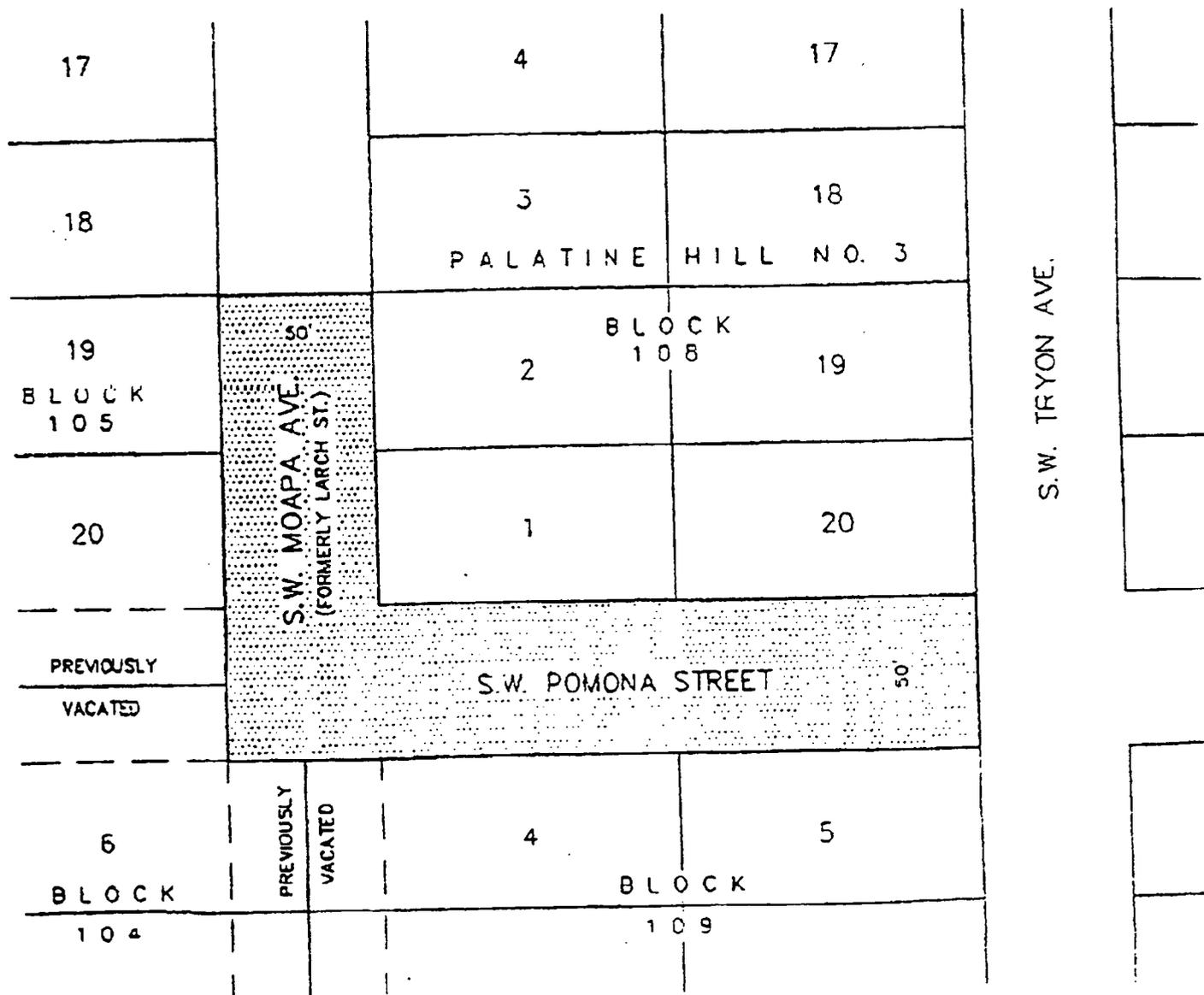
ALSO INCLUDING all of S.W. Moapa Avenue (formerly known as Larch Street) lying northerly of a line drawn between the Southeast corner of Block 105 and the Southwest corner of Block 108 of said PALATINE HILL NO. 3 and southerly of a line drawn between the Northeast corner of Lot 19 of Block 105 and the Northwest corner of Lot 2 of Block 108 of said PALATINE HILL NO. 3.

08-95

# EXHIBIT B

PAGE 2

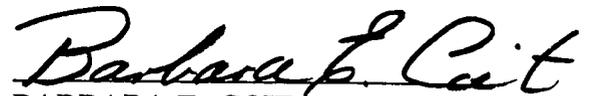
RIGHT-OF-WAY VACATION  
LOCATED IN "PALATINE HILL NO. 3"  
IN THE NORTHEAST ONE-QUARTER  
OF SECTION 34, T. 1 S., R. 1 E., W.M.  
CITY OF PORTLAND  
MULTNOMAH COUNTY, OREGON



CONSENT TO STREET VACATION

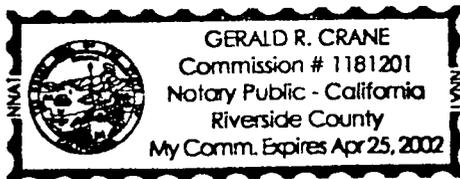
The undersigned owners of the real property described on the attached EXHIBIT "A" incorporated by reference, hereby consent to and approve the Petition for Street Vacation for the vacation of all that portion of S.W. Pomona Street and S.W. Moapa Street, described on attached EXHIBIT "B", Page 1, incorporated by reference.

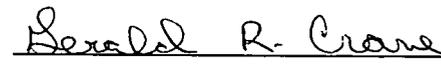
  
ROBERT W. YEAGER

  
BARBARA E. COIT

STATE OF California County of Riverside

This instrument was acknowledged before me on May 3, 1999,  
by Robert W. Yeager and Barbara E. Coit.



  
Notary Public for said State

My Commission expires 4-25-02

EXHIBIT "A"

Legal Descriptions

Lots one (1) to six (6) inclusive, and fifteen (15) to twenty (20), inclusive, in Block one hundred eight (108), PALATINE HILL PLAT 3, in the County of Multnomah and State of Oregon;

and

the East 90 feet of Lots 1, 2, 3 and 4, and all of Lots 5, 6, and 7, Block 109, PALATINE HILL NO. 3, in the County of Multnomah and State of Oregon.

EXHIBIT "B"

Page 1  
Legal Description  
Right-of-Way Vacation

BEING a strip of land located in the Northeast One-quarter of Section 34, Township 1 South, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon, and being more particularly described as follows:

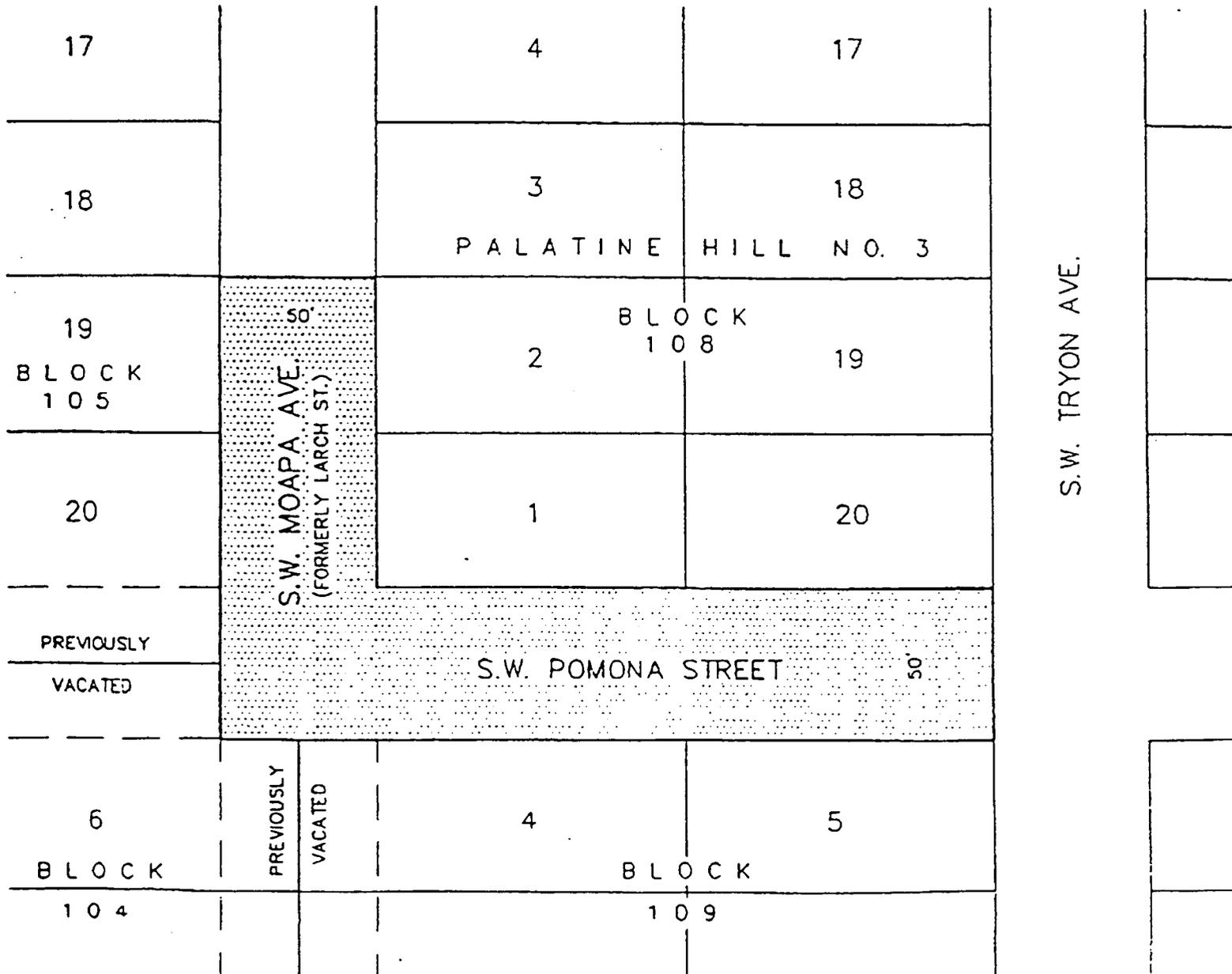
All of Pomona Street (50.00 foot wide right-of-way) lying westerly of a line drawn between the Southeast corner of Block 108 and the Northeast corner of Block 109 of PALATINE HILL NO. 3 and easterly of a line drawn between the Southeast corner of Block 105 and the Northeast corner of Block 104 of said PALATINE HILL NO. 3.

ALSO INCLUDING all of S.W. Moapa Avenue (formerly known as Larch Street) lying northerly of a line drawn between the Southeast corner of Block 105 and the Southwest corner of Block 108 of said PALATINE HILL NO. 3 and southerly of a line drawn between the Northeast corner of Lot 19 of Block 105 and the Northwest corner of Lot 2 of Block 108 of said PALATINE HILL NO. 3.

# EXHIBIT B

PAGE 2

RIGHT-OF-WAY VACATION  
 LOCATED IN "PALATINE HILL NO. 3"  
 IN THE NORTHEAST ONE-QUARTER  
 OF SECTION 34, T. 1 S., R. 1 E., W.M.  
 CITY OF PORTLAND  
 MULTNOMAH COUNTY, OREGON







CASE NAME: Request for an Exception to the Secondary Fire Safety Zones and Forest Practices Setbacks.
NUMBER: E 1-99.

1. Applicant & Property Owner Name/ Address:

Leslie and Florence Shields
11272 NW Skyline Blvd.
Portland, OR 97231-2633

2. Appellant Name/ Address:

Christopher Koback
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, #2300
Portland, OR 97201

3. Action Requested by Applicant:

Request for approval of an Exception to the Secondary Fire Safety Zones and Forest Practices Setbacks. The applicant requested retroactive approval to have a setback of less than 130 feet, the required setback from the property line to a building in the CFU-2 zone. The retroactive request was submitted because the applicant built the horse/barn arena on the subject parcel without obtaining land use and building permit approval. The existing structure is approximately 64 feet from the east property line of the subject parcel.

3. Planning Staff Recommendation

Approval, with conditions, of the Request for an Exception to the Secondary Fire Safety Zones and Forest Practices Setbacks. The administrative decision was issued March 19, 1999. Deborah Nass appealed the administrative decision on March 28, 1999. Based on the information reviewed subsequent to the administrative decision, Staff now agrees with the Hearings Officer decision issued on May 6, 1999.

4. Hearings Officer Decision

Denial of the Request for an Exception to the Secondary Fires Safety Zones and Forest Practices Setbacks. The Hearings Officer referred to prior cases GEC 8-98 (approved), HV 13-97 (denied), and SEC 23-97 (withdrawn) in her decision document. The Hearings Officer's decision upholds the appellant's request for denial of the Exception, E 1-99. The Hearings Officer decision was issued on

Action Requested of Board
Affirm Hearings Officer Decision
Hearing/Rehearing
Scope of Review
On The Record
De Novo
New information allowed

May 6, 1999. The last day to appeal the Hearings Officer's decision was May 20, 1999 and it was appealed on that day by Christopher Koback. Koback is the representative for the applicant/property owners of the subject parcel, Les and Florence Shields.

**5. If recommendation and decision are different, why?**

The administrative decision for E 1-99 was issued by Staff based on the information submitted by the applicant. Subsequently, several applicant responses to decision criteria were found to be inaccurate. In addition, additional research on the issue of a legal established access provided new information about the case to Staff. At the time of the public hearing on the appeal on April 21, 1999, Staff concurred with the Hearing's Officer's evaluation of the case.

**6. Issues:**

The main issue raised by the appellant is in regards to the establishment of legal access to the subject parcel. The applicant states the subject parcel (formerly Tax Lots 29 and 30 but consolidated into one 10-acre parcel in October 1998) has a legal established access. The appellant argues "The property in question does not have easement to the existing private access road" under the criteria of MCC 11.15.2074 (D). Staff is required under Section .2074 (D) to make a finding that, "A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to..." exists for the subject parcel.

The applicant's attorney argued that "there is substantial evidence in the record upon which the Hearings Officer could conclude that the Shields have easement rights to the barn/ arena. An easement has been granted to the former Tax Lot 30. The former Tax Lots 29 and 30 have been consolidated into Tax Lot 30. He contends therefore, that the entirety of the consolidated Tax Lot 30 now has an access easement" (Hearings Officer decision May 6, 1999, page 4).

The appellant's attorney presented an argument based on two legal cases which he cited, Jones v. Edwards, and College Inns of America v. Cully. The cases presented by the attorney discuss, "for the proposition that the grantee of an easement may not grant to adjacent land which he owns a right of access across grantor's land. Mr. Norr contended that the grant of an easement to Tax Lot 30 to cross Tax Lot 28 was a grant to the dominant estate described in the metes and bounds legal description contained in the deed" (Hearings Officer decision May 6, 1999, page 5).

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

Staff is required to make finding of legally established access to a subject parcel under Section .2074 (D). The issues cited above may have policy implications. If Staff cannot make the finding of legal established access for a subject parcel under review for a land use or building permit application, then Staff cannot make a finding of compliance with the required criteria. Hence, Staff would find the criteria have not been met. Staff, the Hearings Officer, the Planning Commission, or the Board of County Commissioners may deny the application when the applicant has not met the criteria of an application.



# Davis Wright Tremaine LLP

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July 19, 1999

**VIA FAX #248-3013**  
**And U.S. MAIL**

Beverly Stein, Chairperson  
 Diane Linn, Commissioner  
 Serena Cruz, Commissioner  
 Lisa Naito, Commissioner  
 Sharon Kelley, Commissioner  
 MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
 1120 S.W. Fifth Avenue, Rm. 1515  
 Portland, OR 97233

BOARD OF  
 COUNTY COMMISSIONERS  
 MULTNOMAH COUNTY  
 OREGON  
 99 JUL 21 PM 2:53

Re: Case File E-1-99  
 Applicants Les and Florence Shields

Dear Members of the Board:

This matter is set for a hearing before the Board on July 22, 1999, having been continued from the original date of June 17, 1999. Regrettably, a medical emergency has arisen which requires the Shieldses to request an additional continuance.

On Wednesday, July 14, 1999, Les Shields lost virtually all vision in one of his eyes. It was subsequently discovered that Mr. Shields suffered a partial detachment of his retina. On Thursday, July 15, 1999, Mr. Shields underwent emergency surgery to reattach his retina. I spoke with Mr. Shields this morning and he informs me that his surgery was determined to be successful. However, Mr. Shields is unable to do those tasks necessary to prepare for the hearing on July 22, 1999. Furthermore, given the restrictions placed upon Mr. Shields by his physician, it is unlikely that he would be able to attend the hearing and provide testimony, which I believe to be pertinent.

Accordingly, on behalf of Les and Florence Shields, I respectfully request the Board's indulgence in granting a further continuance of this matter.

MULTNOMAH COUNTY BOARD OF COMMISSIONERS

July 19, 1999

Page 2



Previously, the Shieldses acknowledged that their request for a continuance necessitated a waiver of the 120-day rule. I do not believe an additional waiver is necessary, but to the extent it is, the Shieldses have authorized me again to reiterate their acknowledgement that this current request for a continuance would likewise justify a further waiver of the 120-day rule.

Thank you in advance for your consideration of this request.

Very truly yours,

Davis Wright Tremaine LLP

Christopher P. Koback

CPK/ikt

cc: Les and Florence Shields  
Trisha Sears, Planner, Multnomah County (via facsimile)  
Paul Norr, Esq.



# Davis Wright Tremaine LLP

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June 15, 1999

**VIA FAX #248-3013**  
**And U.S. MAIL**

Beverly Stein, Chairperson  
 Diane Linn, Commissioner  
 Serena Cruz, Commissioner  
 Lisa Naito, Commissioner  
 Sharon Kelley, Commissioner  
 MULTNOMAH COUNTY BOARD OF COMMISSIONERS  
 1120 S.W. Fifth Avenue, Rm. 1515  
 Portland, OR 97233

Re: Case File E-1-99  
 Applicants Les and Florence Shields

Dear Members of the Board:

This firm represents Les and Florence Shields, who have appealed a hearings officer's decision in the above-referenced case to the Board of County Commissioners. This matter is set for hearing before the Board on June 17, 1999. The purpose of this letter is to request that the hearing before the Board be continued to a later date.

The reasons appellants request an extension are two-fold. First, one of the central issues involved in this appeal is whether the appellants have adequate access to serve the structure for which they seek approval. The Hearings Officer found that appellants did not present evidence of an easement or other access to the structure. Applicants are in the process of attempting to address the access issue by obtaining an easement to that portion of their property upon which the proposed structure sits. Incidentally, in a related case, SEC-10-99, another applicant who owns a parcel of property in the same area has proposed to develop that property and faces the same issue regarding access. That landowner has also undertaken negotiations to obtain an easement that would provide access to his proposed structure. It is the hope of the appellants in this case that together with the landowner in Case No. SEC-10-

MULTNOMAH COUNTY BOARD OF COMMISSIONERS

June 15, 1999

Page 2



99, that they will be able to obtain the necessary easement to prove access exists to both structures. Appellants believe additional time is needed to resolve the access issue. Appellants believe that if the access issue can be resolved with an easement, the issues before the Board will be greatly narrowed and the resources of all parties involved can be preserved.

The second basis for the requested continuance is that I am unavailable on June 17, 1999. Prior to receiving notice of the hearing, I scheduled to depart on a vacation with my family the afternoon of June 16, 1999. After receiving the notice of hearing, I spoke with staff to address the available procedures for requesting an extension. Today, staff informed me that a written request to the Board is required and, thus, I am hereby submitting that request.

Appellants fully understand that, along with their request for an extension, they also must request a waiver of the 120-day rule and have authorized me to make that request at this time.

For the foregoing reasons, the appellants, Les and Florence Shields, respectfully request that the Board grant a continuance of the June 17, 1999 hearing in this matter to a date in the future that is convenient to the Board. Neither appellants nor myself anticipate any conflict in a continued date, but do believe that thirty (30) days would be an appropriate time frame to permit negotiations regarding the easement to culminate.

Thank you in advance for your consideration of this request.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'Christopher P. Koback', with a long horizontal line extending to the right.

Christopher P. Koback

CPK/ikt

cc: Les and Florence Shields  
Trisha Sears, Planner, Multnomah County (via facsimile)  
Paul Norr, Esq.

**Deniece Birdseye Won  
Attorney at Law  
6295 SW 155<sup>th</sup> Avenue  
Beaverton, Or 97007  
(503) 643-5346**

June 14, 1999

Board of County Commissioners  
Beverly Stein, Chair  
Portland Building, Room 1515  
1120 SW Fourth Ave.  
Portland, OR 97204

VIA FACSIMILE

Re: E 1-99 appeal, Les and Florence Shields

Chair Stein and Commissioners,

I write to respond to the assertion in the notice of review for Les and Florence Shields that the hearings officer erred by basing her decision upon grounds not raised in the appeal from the Administrative Decision violating MCC 11.15.8295. I did consider issues not raised in the notice of appeal. I believe I was obligated to do so to provide a legally required right to a full evidentiary hearing on an application for a "permit" under ORS 215.416. Further, I was the Hearings Officer on an earlier application to establish the same structure on the same property. For purposes of this application, that earlier hearing was like an ex parte contact and I was obligated to identify what I had earlier heard. I did that by entering into the record the entire record on the earlier application. Finally, I am required to make findings of fact and conclusions on relevant criteria based on substantial evidence in the whole record. Under ORS 215.416 the relevant criteria are all the land use regulations applicable to approval of the requested permit, not just the issues raised in the applicant's notice of appeal. Substantial evidence is evidence a reasonable prudent person would rely on in reaching a decision. A reasonable person would not rely on only the applicant's evidence submitted in this case that conflicted with the findings of fact adopted by the Hearings Officer and the Board of County Commissioners after hearings on the former application.

This letter addresses my conclusion that the provisions in the County Code for appeals from an administrative decision violate mandatory statutory requirements for a full evidentiary hearing on an application for a "permit." Under the statute, the initial hearing on the Shields' application, held by me, needed to address all applicable criteria.

Hearings Officer Letter Concerning Appeal of E 1-99  
Page 1 of 10

**Background.**

The Shields' application and all evidence in support of it were filed by the applicant. The planning staff prepared an administrative Decision, based on the evidence submitted by the applicant. The administrative decision was to deny the application. That decision was mailed to persons entitled to notice and provided a statement about appeal rights. The surrounding property owners whom the application might affect if it were approved, had no reason to file a notice of appeal, even if based on findings of fact they might think incorrect. The only persons having a reason to appeal the decision were the applicants.

The applicants identified the basis for their appeal in their notice of appeal. Under the applicant's challenge contending that the petition for review would frame all the issues that could be considered, other affected parties would be prohibited from asserting issues other than those raised by the applicant. Following this approach would result in prohibiting opponents from responding to evidence on criteria not raised in the applicants' notice of appeal or to present argument based on evidence in the Planning Director's Decision, violating the opponents' substantial rights to present and rebut evidence and to a full and fair hearing.

**ORS 215.416 Requires An Opportunity for an Evidentiary Hearing on All Applicable Criteria.**

The Hearings Officer must follow the provisions of the County Code unless the Code is inconsistent with state law. ORS 215.416 contains the procedures for decisions on applications for permits. It requires an opportunity for an evidentiary hearing on all applicable criteria.

The subject application was for a land use decision for a permit as defined in ORS 215.402(4). ORS 215.402(3) allows counties to appoint hearings officers to conduct hearings on matters such as the permit involved here. ORS 215.416, which contains procedures for permits, provides in part:

- (3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least one public hearing on the application.
- (4) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions . . .
- (5) Hearings under this section shall be held only after notice . . . and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

\*\*\*

- (8) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and

comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

\*\*\*

- (9) Approval or denial of a permit . . . shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

ORS 215.416, thus requires at least one public hearing on a permit application, unless the exception in subsection (11) applies. It also prohibits approval if a permit would conflict with any land use regulation criterion applicable to the permit. The approval must be based on findings of fact and conclusions on all applicable approval criteria.

The exception to the required public hearing requirement in ORS 215.416(11) allows an administrative decision on a permit to be final but there must be notice and an opportunity for a hearing:

- (11)(a) The . . . person as the governing body designates, may approve or deny an application for a permit without a hearing if the . . . designated person gives notice of the decision and provides an opportunity for appeal of the decision to those persons who would have had a right to notice if a hearing had been scheduled or who are adversely affected or aggrieved by the decision . . . An appeal from [the designated person] shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be a de novo hearing.

ORS 215.416(11)(a) allows the decision to approve a permit without a hearing to be made by either a "hearings officer, or such other person as the governing body designates." Multnomah County has designated the planning director as the initial decision-maker. If the designated person is a hearings officer, an appeal from that decision-maker may be made to the Planning Commission or the Board. If the initial decision maker is "such other person as the governing body designates," an appeal may be made to a hearings officer, the planning commission or Board. Multnomah County has provided that the appeal of the planning director's administrative decision is made to a hearings officer. An appeal from the hearings officer decision is covered in ORS 215.422, discussed below. It provides that the appeal may be made to the Planning Commission or the Board. The Board has provided that the appeal shall be to the Board.

A decision made without a hearing may be final if persons who were entitled to notice of the permit application or who are adversely affected or aggrieved have an opportunity for a hearing. The appeal is required to be a "de novo" hearing. The statute gives counties the option not to conduct a hearing "in the first instance if a de novo hearing and a meaningful ability to pursue it are provided for at a later stage of the county process." *Tarjoto v. Lane County*, 137 Or App 305, 309, 904 P.2d 641 (1995).

The Appeals Court explained this process, stating:

Hearings Officer Letter Concerning Appeal of E 1-99  
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"In the event that the right to an appeal is invoked, ORS 215.416(11)(a) provides further that depending on the circumstances, the appeal shall take the form of a de novo hearing before a hearings officer or the county planning commission or governing body. In effect, once the right is pursued, the hearing process that is mandated by ORS 215.402 et seq comes into operation in more or less the same way it would have if the county had not initially exercised the no-hearing option under ORS 215.416(11)(a). ORS 215.416(5) requires, as part of that process, that prehearing notice be given "to the applicant and \* \* \* to other persons as otherwise provided by law." Under ORS 215.416(10), those persons who participate in the hearing are also entitled to a post-decision notice of the county's approval or denial of the application. The statutory right to notice and to participate in or pursue hearing and appeal procedures are interconnected, with each serving to assure that the others cannot be rendered illusory. See *Flowers v. Klamath County*, 98 Or.App. 384, 780 P.2d 277, rev. den. 308 Or 592, 784 P.2d 1099(1998)."

"\* \* \* The clear purpose of the notice and appeal provision in ORS 2215.416(11)(a) is to safeguard opportunities to pursue and participate in hearing and appeal procedures in cases where a county elects to make an initial decision without a hearing . . . "

*Wilber Residents for a Clean Neighborhood v. Douglas County*, 151 Or App 523, 528-529, 950 P2d 368, (1997).

ORS 215.416(11)(a) authorizes an exception to the mandatory hearing requirement for permits. The administrative decision can be final if there is an opportunity for notice and a hearing. ORS 215.416(11)(a) does not alter the provisions that require the permit to comply with all applicable criteria and to be based on findings of fact and conclusions concerning all applicable criteria. If there is a request for a hearing, the provisions in ORS 215.416(1) through (10) remain applicable, including the provision that there be at least one hearing and that the application comply with all criteria applicable to the permit.

ORS 215.412 authorizes the County to adopt procedures of the conduct of hearings. Nonetheless, certain other statutory requirements are mandatory. The authorization to adopt procedures relates to procedures not to limiting the substantive requirements contained in the statutes or County regulations. The notice and hearing requirements of ORS 215.416 are legislative mandates. *Doughton v. Douglas County*, 88 Or App 198, 744 P2d 1299 (1987), citing *League of Women Voters v. Coos County*, 82 Or App 673, 729 P.2d 588 (1986); *Overton v. Benton County*, 61 Or App 667, 658 P.2d 574 (1983). In *Doughton*, the Court of appeals stated:

The notice and hearing requirements of ORS 215.416 are legislative mandates. Moreover, they are directly tied to the LUBA appeal rights and appellate procedures which ORS 215.422 and ORS 197.930 to 197.845 require with respect to discretionary county land use decisions involving the issuance of permits. As respondent argues, the term "[w]hen required or authorized by [county legislation]" in ORS 215.416(1) is not a condition precedent to the county's compliance with the requirements of ORS 215.416; the term relates to what the applicant must do to obtain a discretionary permit, not to what the county must do in deciding whether to issue one. The other subsections of the statute answer the latter question.

The appeal hearing is required by statute to be a "de novo hearing." "Hearing de novo" is defined in Black's Law Dictionary as follows:

"Generally, a new hearing or a hearing for the second time, contemplating an entire trial in the same manner in which the matter was originally heard and a review of previous hearing. On hearing 'de novo' court hears matter as a court of original and not appellate jurisdiction. \* \* \* Black's Law Dictionary, p. 649 (5<sup>th</sup> ed 1979).

The most recent case involving ORS 215.416 is *Hugo v. Columbia County*, 157 Or App 1 (1998). In *Hugo*, a rock quarry operator applied to increase the area of their mining operation exempt from the county's surface mining ordinance regulations in the county's Surface Mining Ordinance (SMO). Under the SMO, applications were first reviewed by a Surface Mining Advisory committee (committee), which makes recommendations to the county board of commissioners (commissioners). The commissioners make a decision on the application during a 'public meeting,' but are not required to hold a hearing. Landowners or applicants adversely affected by the decision could appeal the decision to the commissioners and receive an evidentiary hearing. At the hearing, only the appellant could present evidence and argument; the commissioners were not required to consider evidence or testimony from other persons. At the Board of County Commissioner's hearings on the application the applicant and other proponents were permitted to present evidence and testimony supporting approval, but opponents Hugo and others present at the proceeding were not allowed to present evidence and argument opposing the application. The County approved the requested expanded exemption. LUBA agreed with Hugo's arguments that the procedures followed by the county violated ORS 197.763, ORS 215.416 and ORS 215.422. In rejecting petitioners' contrary arguments, LUBA observed:

"ORS 197.763 and 215.416 are designed to ensure that citizens have the opportunity to participate in local land use decisions. That opportunity is a substantive right, perhaps the most fundamental right extended by Oregon's land use system. The county's refusal to allow [Hugo] and other opponents to participate in the proceedings it conducted denied [Hugo] that substantive right."

The appeals court agreed with that opinion in its entirety and reiterated its statement in *Flowers* that counties must comply with the requirements of ORS 215.416 without modification or deviation.

#### **ORS 215.422 Authorizes Limited Scope Appeals After an Evidentiary Hearing.**

ORS 215.422 provides that counties may provide for review of decisions made by "hearings officers or other decision-making authority" by the planning commission or the county board or provide that the decision of the hearings officer is final. If counties choose to provide for such reviews, they are required to adopt procedures for such an appeal. Specifically ORS 215.422 states:

- (1) (a) A party aggrieved by the action of a hearings officer or other decision-making authority may appeal the action to the planning commission or county governing body, or both, however the governing body prescribes. The appellate authority on its own motion may review the action. The procedure and type of hearing for such an appeal or review shall be prescribed by the governing body . . .

- (B) Notwithstanding paragraph (a) of this subsection, the governing body may provide that the decision of a hearings officer or other decision-making authority is the final determination of the county.

Thus, ORS 215.422 authorizes counties to adopt procedures for reviewing a decision made after a hearing. Addressing ORS 215.416, 215.412 and 215.422 the supreme Court has stated that:

Initial land use decision-making authority is granted to the county governing body within whose jurisdiction the affected land is found. ORS Chapter 215. Counties are directed to . . . conduct initial quasi-judicial hearings on individual land use requests. *See* ORS 215.416.

Counties are required to adopt procedures for conducting local land use hearings (ORS 215.412) and may create a local appeal procedure for appeals of decisions of hearings officers or planning commissions. Furthermore, a county may provide that the decision of the hearings officer is the final determination of the county. ORS 215.422(1)(b) . . . "

*Columbia River Television v. Multnomah County*, 299 Or 325, 702 P.2d 1065 (1985).

ORS is confusing because the legislature has provided alternatives for counties to choose from concerning what body can make an initial decision, then what body can conduct an initial hearing on appeal from the initial decision and finally what body can decide an appeal after an initial evidentiary hearing. Reading ORS 215.422(1)(a) alone, the use of the terms "hearings officer or other decision-making authority" could be understood to refer to any decision made by a "decision making authority," here, the Planning Director. If so read, the reader might conclude that an appeal from a planning director's decision may be proscribed solely by procedures adopted by the governing body. However, read in context with ORS 215.416 it becomes clear that ORS 215.416 concerns the initial evidentiary hearing and ORS 215.422 concerns an appeal from the decision rendered in the initial evidentiary hearing. ORS 215.422 does not apply to appeals from an administrative decision to a hearings officer or other decision making authority. It specifically relates to an appeal of a "hearings officer or other decision-making authority." Given the choice that Multnomah County has made to have the initial evidentiary hearing held on appeal from the Planning Director's decision held by the hearings officer, the "other decision-making authority" refers to the planning commission. Therefore, the appeal from the evidentiary hearing may not be made not to a hearings officer, it may be made either to the planning commission or the Board. Multnomah County has chosen the option to have the appeal from the Hearings Officer made to the Board.

ORS 215.412 authorizes counties to adopt procedures for the conduct of hearings. ORS 215.422(1)(a) authorizes counties to adopt the procedure and type of hearing for an appeal after an evidentiary hearing. ORS 215.422(1)(a) was adopted by the 1979 Legislature and amended in 1983. According to the Supreme Court in *Menges v. Board of County Com'rs of Jackson County*, 290 Or 251, 621 P2d 562 (1980), ORS 215.422 was amended to clarify that a county has discretion to hear an appeal de novo or on the evidentiary hearing record. In *Menges* there had been a full evidentiary hearing before the planning

commission. *Menges* does not say that no evidentiary hearing is required but that an appeal from an evidentiary hearing can be on the record.

There is a line of cases that uphold appeal provisions that limit the issues raised on appeal beginning with *Smith v. Douglas County*, 16 Or LUBA 731, *rev'd* 93 Or App 503, 63 P2d 169; *rev'd on other grounds* 308 Or 191; 777 P2d 1377 (1989). However, in each of those cases a full evidentiary hearing preceded the appeal hearing. The decisions upholding the appeals were based on the provisions in ORS 125.422 concerning appeals from a body that held an evidentiary hearing, not ORS 215.416 which concerns appeals from administrative decisions without a public hearing. *Murray v. City of Beaverton*, 17 Or LUBA 723 (1990); *Choban v. Washington County*, 25 Or LUBA 572 (1993); *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

### Multnomah County Code Provisions for Appeals from Administrative Decisions Violates Statute.

MCC 11.15.8115 provides that except as otherwise provided the Hearings Officer shall:

- (A) Exercise the authority of a Planning and Zoning Hearings Officer under ORS 215.402 through 215.422.

\*\*\*

- (I) Exercise such other powers and perform such other duties as may be given to the Hearings Officer by this or other Ordinance.

This Code section recognizes that the provisions of ORS 215.402 and ORS 215.422 are binding upon the Hearings Officer. The County has determined that decisions by the Planning Director are final unless appealed. Specifically, MCC 11.15.8290(A) states:

"A decision by the Planning Director on an administrative matter made appealable under this Section by ordinance provision, shall be final at the close of business on the tenth calendar day following the filing of the written Decision, Findings and Conclusions with the Director or the Department of Environmental Services unless prior thereto, the applicant files a Notice of Appeal with the Department, under subsections (B) and (C)."

Emphasis added. I note that this provision is not consistent with ORS 215.416(11)(a) because the Code provides an opportunity for an appeal hearing only by the applicant but not by "those persons who would have had a right to notice if a hearing had been scheduled or who are adversely affected or aggrieved by the decision."

MCC 11.15.8290(B) contains items that must be included in the notice of appeal including "The specific grounds relied on for reversal or modification of the decision." If an appeal is filed it is scheduled for a "hearing" by the Hearings Officer. Notice is given to the applicant and to surrounding property owners. The Multnomah County Code impermissibly limits the issues that may be heard on an appeal from the planning director's decision to the hearings

Hearings Officer Letter Concerning Appeal of E 1-99

Page 7 of 10

officer. The Code contains procedures for proceedings on appealed administrative decisions at MCC 11.15.8295:

Except as otherwise provided in this Section, proceedings before the Hearings Officer on matters appealed under MCC .8290(A) and appeals therefrom to the Board of County Commissioners shall be conducted according to the provisions of MCC .8230 through .8290.

- (A) A hearing before the Hearings Officer on a matter appealed under MCC .8290(A) shall be limited to the specific grounds relied on for reversal or modification of the decision on the Notice of Appeal.

If an application is for a permit as defined in ORS 215.402(4), the permit applicant and other persons are entitled to a public hearing before the decision, or to notice of the decision and a right to obtain a public hearing through an appeal. ORS 215.416(3) and (11). ORS 215.416 requires "hearings," and prescribes participatory and other procedures for them, in connection with applications to counties for permits. ORS 197.763, together with ORS 215.416(5), prescribe notice, hearing and other procedural requirements applicable to quasi-judicial hearings on individual land use requests. Counties are required to adopt procedures for conducting local land use hearings (ORS 215.412) and may create a local appeal procedure for appeals of decisions of hearings officers. The Appeals Court has stated that "[t]he clear purpose of the notice and appeal provision in ORS 215.416(11)(a) is to safeguard opportunities to pursue and participate in hearing and appeal procedures in cases where a county elects to make an initial decision without a hearing." *Wilbur Residents for a Clean Neighborhood v. Douglas County*, 151 Or App 523, 950 P2d 368 (1997).

The Code's provision that all appeal hearings are limited to issues raised in the notice of appeal is analogous to appellate court practice. However, this analogy fails to recognize critical differences between the function performed by local governments in its quasi-judicial land use decision making and the function performed by appellate courts. More important, it fails to comply with the hearing requirements in ORS 215.416 for permit applications.

Once the County has made a final determination on a land use matter, a party may appeal the decision to LUBA if the decision were made without a hearing or ability to participate in the hearing or if a party is aggrieved by the decision. It is evident from the statutory scheme that the legislature intended local governments to have the first opportunity both to hear and to reach a final determination on land use matters within their respective jurisdictions, before those decisions are reviewed by LUBA. When a local government fails to provide an opportunity for a hearing, by right or through appeal, when issuing a permit, LUBA is required to remand on appeal if someone's substantial rights are prejudiced. *Flowers v. Klamath County*, 18 Or LUBA 647 (1990). LUBA has described these "substantial rights" as the rights to an adequate opportunity to prepare and submit one's case and a full and fair hearing.

Parties affected by an application for a permit must be provided at least an opportunity not just for a hearing, but for a full and fair evidentiary hearing. Once a right to a hearing after an administrative hearing is invoked the hearing process that is mandated by ORS 215.402 *et seq* comes into operation. The hearing required is the same hearing that would be held if the county had not initially exercised the no-hearing option under ORS 215.416(11)(a). ORS 215.416(3) - (9); *Wilber Residents for a Clean Neighborhood, supra*; *Fasano v. Board of County Com'rs of Washington County*, 264 Or 574, 507 P.2d 23 (1973).

The County Code provisions are not consistent with the mandatory provisions in ORS 215.416 which requires an opportunity for a hearing on all applicable approval criteria.

If the Hearings Officer followed the procedures in the County Code, the opponents would have been unable to present evidence on all applicable approval criteria and to rebut the applicant's evidence on many approval criteria. Failure to provide an opportunity to rebut would have been a substantive error and opponents substantial rights would have been prejudiced. See *Caine v. Tillamook County*, 25 Or LUBA 209 (1993):

"[LUBA] has not yet determined whether the requirements of ORS 197.763(4)(b) apply to local proceedings . . . or whether such proceedings are instead governed by the right to rebuttal first extended to parties in quasi-judicial land use proceedings under *Fasano v. Washington Co. Comm.*, 264 Or 574 588, 507 P2d 23 (1973). . . [T]he county was required to provide petitioner with an opportunity to rebut the [applicant's evidence] under either ORS 197.763(4)(b) or *Fasano*, and it committed procedural error by failing to do so. . . Here, petitioner's substantial rights were prejudiced because he never had an opportunity to rebut the information. . ."

*Stotter v. City of Eugene*, 18 Or LUBA 135 (1989).

A hearing was provided. The issue is whether a hearing in which the applicant/appellant limits the scope of the issues that may be considered at the hearing satisfies the requirement for a hearing. A hearing is defined in ORS 215.402(2) as follows:

"Hearing" means a quasi-judicial hearing, authorized or required by the ordinances and regulations of a county adopted pursuant to ORS 215.010 to 215.213, 215.215 to 215.263, 215.283 to 215.293, 215.317, 215.327, 215.402 to 215.438 and 215.700 to 215.780:

- (a) To determine in accordance with such ordinances and regulations if a permit shall be granted or denied; or
- (b) To determine a contested case.

As already noted, ORS 215.416(4) provides that an application cannot be approved if it conflicts with any applicable land use regulations. ORS 215.416(8) requires a decision on a permit to be based on applicable standards and criteria. In addition, ORS 197.643 contains minimum requirements applicable to hearings. Reading these provisions together shows that an hearing needs to be provided that allows all affected persons to participate, to provide evidence on all applicable criteria, to rebut evidence and to fully present their case.

The requirement of a full and fair hearing is implicit in the very requirement for a hearing. A purpose of a hearing is to obtain evidence upon which findings of fact and conclusions can be based, concerning whether all applicable approval criteria are satisfied. Another purpose of a hearing is to provide due process rights to affected persons. The Hearings Officer concluded that the rights of opponents to a hearing on all criteria relevant to the application would be violated if the hearing were limited to the issues raised in the appeal notice, precluding submission of evidence on all the criteria relevant to the establishment of the barn/arena structure on the applicants property. In other words it would be error to limit the scope of the hearing to the issues raised by the applicant. The Hearings Officer also concluded that to obtain evidence on all applicable criteria, the hearing needed to be unlimited concerning the issues addressed.

Sincerely,



Deniece Won  
Hearings Officer

cc: Tom Sponsler  
Stuart Farmer



DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING AND DEVELOPMENT

2115 SE MORRISON STREET <sup>LAND USE</sup> 1000 SE 190th Ave  
PORTLAND, OREGON 97214 (503) 248-3043  
97233

NOTICE OF REVIEW

11#  
ZONING 530.00  
TOTAL 530.00  
0000-001 5/20/99  
0072 TRICIA 2:58PM

1. Name: Christopher P. Koback

2. Address: 1300 S.W. Fifth Ave., #2300, Portland, OR 97201  
*Last Middle First*

3. Telephone: ( 503 ) 241 - 2300  
*Street or Box City State and Zip Code*

4. If serving as a representative of other persons, list their names and addresses:  
Christopher P. Koback is representing the Applicants, Les and  
Florence Shields, as their attorney. The Shields' address is  
11272 Skyline Blvd., Portland, OR 97231.

5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?  
Denial of Request for exception from secondary fire safety zone and  
the forest practices setback requirements of the Commercial  
Forest Use Zone. A copy of the Decision for which review is sought is  
attached hereto.

6. The decision was announced by the Hearing Officer on May 10, 19 99

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
Les and Florence Shields are the Applicants in this matter  
and thus are parties entitled to notice under MCC 11.15.8220(C)(1).  
The Shieldses also appeared before the approval authority at the  
hearing on this matter.



DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF LAND USE  
1600 SE 190<sup>TH</sup> AVE  
PORTLAND, OREGON 97233 (503) 248-3043

**NOTICE OF REVIEW**

ATTACHMENT. (Applicants: Les and Florence Shields)

**8. Grounds for Reversal of Decision.**

- A. The Hearings Officer erred in basing her decision upon grounds not raised in the appeal from the Administrative Decision. Specifically, the Hearings Officer found that Applicants' failed to present evidence that their proposal met the criteria in MCC 11 WH.2074(A)(1), (2), (3) and (4). The Director concluded that Applicants had met the above criteria. The issue of whether the Director erred in rendering that that conclusion was not raised on appeal. Thus, it was error for the Hearings Officer to require Applicants to present evidence on that criteria. It was also error for the Hearings Officer to incorporate prior findings that related to issues not raised on appeal. Applicants consented to incorporating prior findings relevant to the issues on appeal, but did not agree to expand the issues on appeal. Applicants were prejudiced by the above errors.
- B. Additionally, even if compliance with 11 WH.2074(A)(4) had been properly raised on appeal, the Hearings Officer erred in applying the criteria of 11 WH.2074(A)(4) in that said criteria only applies to access roads. Applicants' property is not served by an access road; it is served by a private driveway.

- C. The Hearings Officer erred in finding that the subject parcel was not a lot of record and basing her decision to reverse the Director's decision, in part, upon that finding. The issue of whether the subject parcel was a lot of record was not raised on appeal. Thus, it was error for the Hearings Officer to consider it. Additionally, the requirement that the subject parcel be a lot of record does not apply to accessory structures like the one proposed.
- D. The Hearings Officer erred in finding that the Applicants did not satisfy the criteria of 11 WH.2074(D). The criteria in 11 WH.2074(D) applies to private roads or driveways serving dwellings. Applicants' request does not relate to a dwelling, but rather to an accessory structure.

**9. If you checked 9(b) or (c), you must use this space to present the grounds on which you base your request to introduce new evidence (Use additional sheets if necessary). For further explanation, see handout entitled *Appeal Procedure*.**

Grounds for *De Novo* Review.

Following the Planning Director's Administrative Decision to conditionally approve Applicants' request for exception from the secondary fire safety zone, Deborah Nass appealed that decision raising six specific grounds for reversal. MCC 11.15.8290.

Applicants prepared to present evidence and argument on those six grounds. Before the Hearings Officer, Applicants addressed the grounds for reversal raised on appeal.

However, the Hearings Officer reversed the Planning Director's decision, in part, upon grounds never raised in any appeal. The Hearings Officer found that Applicants failed to present evidence that their application met criteria that were not the subject matter of the appeal. Applicants had no notice that they needed to present evidence on said criteria.

Applicants are requesting the Board to limit its review to the grounds raised in the appeal and strike those portions of the Hearings Officer's decision that address criteria not part of the appeal. However, if the Board is inclined to review the merits of the entirety of the Hearings Officer's decision, Applicants believe they are entitled to a *de novo* hearing to undo the prejudice created by the Hearings Officer's inclusion of issues not raised on appeal.

99 MAY 10 PH 1:23

MULTNOMAH COUNTY, OREGON  
PLANNING SECTION  
**HEARINGS OFFICER DECISION**

**Case File:** E 1-99

**WHAT:** Request for an exception from the secondary fire safety zone and the forest practices setback requirements of the Commercial Forest Use zone to allow a 96' X 120' Barn/Arena which was constructed without necessary approval.

**PROPERTY LOCATION:** Approximate address: 11272 NW Skyline Boulevard  
T2N, R1W, Section 32, Tax lot '30'

**APPLICANT PROPERTY OWNER:** Les & Florence Shields  
11272 NW Skyline Blvd.  
Portland, OR 97231-2633

**Site Size:** 10.04 acres

**Plan Designation:** Commercial Forest Use

**Zoning District:** Commercial Forest Use (CFU-2)  
Significant Environmental Concern for Wildlife Habitat and View (SEC-h, v)

**Hearings Officer:** Deniece B. Won

## I. Decision

The Hearings Officer hereby denies the applicant's Request for an exception from the secondary fire safety zone and the forest practices setback requirements of the Commercial Forest Use zone to allow a 96' X 120' Barn/Arena based on the findings and conclusions contained in this decision.

## II. Summary of the Request and Background

The Shields' property is found just below the ridge-line of the Tualatin Mountains, east of Skyline Blvd. and McNamee Road, and north of Newberry Road. The applicants acquired

two (2) contiguous parcels of approximately five (5) acres each (Tax Lots 29 and 30). The two parcels have been consolidated, now identified by the Department of Assessment and Taxation as Tax Lot 30. The applicants have a residence on former Tax Lot 30 which was approved approximately twelve (12) years ago, when the property was zoned Multiple Use Farm-19 (MUF-19). The applicants have built a 96' x 120' barn/arena ("farm structure") on former Tax Lot 29. This barn/arena is the subject of this application. The applicants intend, after this application is approved, to use the barn/arena for the primary purpose of obtaining a profit in money by stabling, breeding and training equines, including but not limited to providing riding lessons, training clinics and schooling shows.

The barn was placed slightly diagonally so that it is set back 64-feet from the east property line; 132-feet from the north property line; 500-feet from the west property line; and 120-feet from the Shields' dwelling and 423- to 440-feet from the south property line of the Shields' ownership. The appellant owns the adjacent parcel to the west, Tax Lot 28. Another opponent, Karen Anderson, owns the adjacent parcel to the east, Tax Lot 33.

In 1997 the applicants applied for a variance and a significant environmental concern permit. The planning director denied HV 13-97, the variance request from the required yard setback of 200 feet. The Shields appealed that denial and the Hearings officer denied the appeal. The County Board of Commissioners denied the Shields' appeal of the Hearings Officer's denial of the variance request. SEC 23-97 was withdrawn because the County determined that they do not require a SEC permit for farm use structures under Code Section .6406. The applicant then applied for a Grading and Erosion Control Permit, GEC 8-98, for approval of the grading activity done on the site to accommodate the barn/arena construction. The GEC request was approved. A condition of approval required that the barn "shall be substantially disassembled by July 31, 1998." The Land Use Planning Department extended the removal order subject to the outcome of proposed Zoning Code changes.

Multnomah County amended the Zoning Code on August 8, 1998. The amendments altered some approval criteria and added a provision for the county to grant exceptions to the secondary fire safety zone and forest practices setback requirements. The changes to the zoning code included a change to the side yard setback requirements from 200 feet to 130 feet. On October 14, 1998, the applicant consolidated the two tax lots. The applicant then filed this second application to legitimate the barn/arena, requesting an exception from the requirement to have a 130-foot setback from a structure to a tract boundary. The staff deemed this application complete on March 16, 1999. The planning director administratively approved the application. The appellant filed this appeal of the planning director's decision.

### III. Basis for Appeal

In the notice of appeal, the appellant lists the following points of appeal.

1. The property in question does not have easement to the existing private access road [Section 11.15.2074 (D)].
2. There is no fire hydrant in close proximity to the property in question [Section 11.15.2074 (A)(5)(b)].
3. There does not exist adequate turnaround space for fire department vehicles [Section 11.15.2074 (D)(6)].
4. The existing access road is unsuitable for heavy vehicles [Section 11.15.2074 (D)(1)].
5. The secondary fire safety zone is inadequate [Section 11.15.2074 (B)(2)].
6. The width of the access road is inadequate [Section 11.15.2074 (D)(2)].

The appellant's attorney, Paul Norr stated, in a letter dated April 14, 1999, that the following development standards in 11.WH.2074 and exceptions to secondary fire safety zones and forest practices setbacks in 11.WH.2075 cannot be satisfied:

- (A)(2) Adverse impacts will not be minimized because without adequate access the fire hazard to farm and forest operations will be increased.
- (A)(3) There is no demonstrated legal access.
- (A)(4) There is no demonstrated legal access. In addition, even the access claimed by the applicant is in excess of 500 feet and the applicant has not demonstrated that this is the absolute minimum length required for a new barn on this property.
- (A)(5)(b) There is no demonstrated legal access for pumping fire trucks. There is no demonstrated legal access which meets the driveway standards.
- (D)(2) There is no demonstrated private road or approved easement serving the former Tax Lot 29, nor the former Tax Lot 30.
- (D)(5) There is no demonstrated private road or approved easement serving the former Tax Lot 29, nor the former Tax Lot 30.
- (D)(6) There is no demonstrated legal access serving the former Tax Lot 29, nor the former Tax Lot 30.

- (D)(7) There is no demonstrated private road or approved easement providing for the safe and convenient passage of vehicles to the former Tax Lot 29, nor the former Tax Lot 30.
- (A)(2) There is no documentation in the record that the proposed barn/arena is located within the required 130 feet of a public or private road that can legally provide access to the structure for fire fighting or other purposes.
- (B)(6) There is no demonstrated easement across Tax Lot 28 over which access can legally be gained to the former Tax Lot 29 in order to install the required central monitored alarm system in the barn/arena. The applicant has not demonstrated this requirement can be met.

### III. Hearing and Testimony

1. The Hearings Officer announced in her introductory comments that she was the Hearings Officer for the appeal of HV 13-97. She stated that she noticed during her preparation for this public hearing that the findings of facts and conclusions in the staff's decision were not consistent with the findings of fact and conclusions ultimately adopted by the Board of County Commissioners on appeal of HV 13-97 on criteria that were not affected by the Zoning Code changes. She asked if anyone objected to incorporating the record on HV 13-98 into the record on E-199. Mrs. Shields asked whether the Hearings Officer was aware that the zoning had changed. The Hearings Officer responded that she was. There was no objection to the incorporation and the Hearings Officer thus incorporates the record of HV 13-97 into this record.
2. Tricia Sears, County Planner, summarized the staff report and showed slides of the barn/arena structure, access road, driveway, and area surrounding the barn/arena. She entered Exhibits H1 through H5 into the record.
3. Christopher Koback, attorney representing Mr. and Mrs. Shields, testified. In summary he said the primary issue was access. He argued that there is substantial evidence in the record upon which the Hearings Officer could conclude that the Shields have easement rights to the barn/arena area. An easement has been granted to the former Tax Lot 30. The former Tax Lots 29 and 30 have been consolidated into Tax Lot 30. He contends therefore, that the entirety of the consolidated Tax Lot 30 now has an access easement.

He argued that consolidation of the parcels equates to a change in the dominant estate. He cited Jones v. Edwards, 219 Or 429, 347 P2d 846 (1959) for the proposition that reasonably foreseeable changes in the dominant estate have easement rights. The Hearings Officer notes that the issue in that case was

whether the owner of the servient estate, not the dominant estate, had the right to place additional burdens on an easement granted to the owner of the dominant estate. He also contended that the use of an easement is properly resolved in a civil action, not in a land use action.

Concerning the dimensional issues, he said that the staff concluded that those problems can be cured with conditions of approval and he agrees. He said that the Shields need a 12-foot wide driveway with 20 to 40-foot turnouts. A condition of approval could require inspection by an enforcement officer before the County issues a building permit and for the Tualatin Valley Fire and Rescue District to reinspect the property.

Concerning whether the structure needs to meet class 1 or Class 2 construction requirements, he said the issue relates to whether there needs to be a sprinkler or only monitoring and the issue relates to the space on the east side of the structure. If necessary, the Shields would remove part of the structure to provide a 50-foot setback from the east property line.

4. Paul Norr, attorney representing Deborah Nass, testified. He submitted a letter dated April 19, 1999 with exhibits. His testimony focused on the access issue. He Cited College Inns of America v. Cully, 254 Or 375, 460 P2d 360 (1969), which was decided after Jones v. Edwards, for the proposition that the grantee of an easement may not grant to adjacent land which he owns a right of access across grantor's land. Mr. Norr contended that the grant of an easement to Tax Lot 30 to cross Tax Lot 28 was a grant to the dominant estate described in the metes and bounds legal description contained in the deed.
5. Karen Anderson, owner of Tax Lot 33, located east of the subject property, testified. She stated that she hopes no exceptions will be made to the fire safety zone standards. She said the private road is only 10-feet wide, not 20-feet as required by the zoning code.
6. A letter, dated April 14, 1999, was received from Mr. Treitsworth and Ms. Buchanan, owners of a parcel directly west of former Tax Lot 29. In their letter they challenge the applicants' statements concerning the location of fire hydrants, their right to use the private road, the ability of the private road and driveway to support a gross vehicle weight of 52,000 pounds, the width of the private road and driveway, the existence of turnarounds and turnouts, compliance with fire safety zone requirements and concerns about parking.

With respect to parking they state that the barn/arena structure was built to be used commercially for the stabling or training of horses including providing riding lessons, training clinics and schooling shows. The structure contains 20 stalls and could board up to 20 horses whose owners would need to drive 800 feet up a narrow (less than 20-feet wide) and in places a quite steep private road to reach the

beginning of the Shield's 349 +-foot driveway. They ask where these cars will park.

Concerning the impact of the use on the private road, they state that the additional traffic of cars, trucks pulling horse trailers, trucks delivering feed and trucks hauling away manure on the private road will result in higher maintenance costs. They state that the Shields have never approached the other three households with access rights to the private road with an offer to pay the additional maintenance costs that will result from the Shields' use of the barn/arena.

#### **IV. Approval Criteria, Findings and Conclusions**

The Hearings Officer must find that the proposal meets the applicable approval criteria of the Zoning Code. In this section the applicable code sections are set out in a bold font, followed by findings of fact and conclusions of law for each criterion.

##### **11.WH.2042 Purposes**

**The purposes of the Commercial Forest Use District are to conserve and protect designated lands for continued commercial growing and harvesting of timber and the production of wood fiber and other forest uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses; to protect scenic values; to provide for agricultural uses; to provide for recreational opportunities and other uses which are compatible with forest use; implement Comprehensive Framework Plan Policy 11, Commercial Forest Land, the Commercial Forest Use policies of the West Hills Rural Area Plan, and to minimize potential hazards or damage from fire, pollution, erosion or urban development.**

##### **11.WH.2044 Area Affected**

**MCC .2042 through .2075 shall apply to those lands designated CFU-2 on the Multnomah County Zoning Map.**

Findings and Conclusions. The parcel is zoned CFU-2. The applicable provisions in MCC .2042 through .2075 are considered in this decision.

**11.WH.2046 Uses**

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2048 through .2056.

Findings and Conclusions. The applicant has constructed the barn/arena without the required land use approval and building permits. The County has issued a Grading and Erosion Control permit, GEC 8-98, for the site. During the review of GEC 8-98, no determination of the use of the site was made or required to be made. The use of the barn/arena is farm use, which is a use allowed outright in MCC .2048. However, the locational standards are applicable to outright permitted uses.

**11.WH.2048 Uses Permitted Outright**

\* \* \*

(C) Farm use, as defined in ORS 215.203

\* \* \*

Findings and Conclusions. Under Section 11.WH.2048 and 11.WH.2054 of the Code "Farm use, as defined in ORS 215.203" is a Use Permitted Outright. The proposed use falls within the definition of farm use under ORS 215.203 (2)(a). What is under review is its location and its compliance with the County's dimensional requirements in MCC .2058, Development standards in MCC .2074 and criteria for exceptions to secondary fire safety zones and forest practices setbacks in MCC .2075.

**11.WH.2058 Dimensional Requirements**

(A) Except as provided in MCC .2060, .2061, .2062, and .2064, the minimum lot size shall be 80 acres.

\* \* \*

(C) Minimum Forest Practices Setback from tract boundary - Feet:

Road Frontage	Other Front	Side	Rear
60 from centerline of road from which access is gained	130	130	130

Maximum Structure Height -35 feet

**Minimum Front Lot Line Length - 50 feet**

Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 11.WR.2075, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 11.WR.2074(A)(5)(c)(ii).

\* \* \*

- (G) Agricultural buildings, as specified in ORS 455.315(2) and allowed under MCC .2048(C), may have minimum side and rear yard setbacks of 30 feet, but in no case shall any setback be less than the minimum primary fire safety zone required by MCC .2074(A)(5)(c)(ii).

Findings and Conclusions. The parcel contains 10.04 acres, thus it does not meet the minimum lot size of 80 acres. As discussed below, it does not meet any of the exceptions, most notably the exception applicable to lots of record in MCC .2062. See discussion below on MCC .2062.

The applicant has constructed a barn/arena on a portion (formerly identified as Tax Lot 29) of Tax Lot 30 of Section 32, Map 2N 1W. They built the barn/arena structure illegally (without land use and building permit approval), violating sideyard setback requirements of the zoning district. The barn/arena was set back 64 feet from the east property line, while the zoning Code required a setback of 200 feet. On August 8, 1998, the County changed the zoning of the parcel from CFU to CFU-2. The CFU-2 zone requires a sideyard setback of 130-feet instead of the formerly required 200-feet. The structure meets the dimensional requirements on the other sides. It is set back 132 feet from the north property line, 423 to 440 feet from the south property line, and 500 feet from the west property line.

The applicant applied for an exception to the 130-foot sideyard setback from the east property line. The planning director's decision reviewed the application as though the applicable setbacks were those set out in subsection (C). Under subsection (C) of this Code section, exceptions to setbacks are made pursuant to MCC 11.WH.2075. However, the approved setback under an exception may not be less than the required minimum primary fire safety zone under MCC 11.WH.2074(A)(5)(c)(ii).

The former zoning code section .2058(C) related to minimum yard dimensions in the zone and did not contain a separate provision for agricultural buildings. In the amended zoning code section, applicable to this application, .2058(C) concerns setbacks applicable to "minimum forest practices" and it contains a new subsection (H) applicable to "agricultural buildings." Agricultural buildings are those defined in ORS 455.315 and allowed under MCC .2048(C). ORS 455.315(2) defines an agricultural building as:

" . . . a structure located on a farm and used in the operation of such farm . . . in the feeding, breeding, management and sale of, or the produce of, livestock . . . or any

other agricultural . . . or animal husbandry, or any combination thereof . . .  
"Agricultural building" does not include:

\* \* \*

(c) A structure regulated by the State Fire Marshal pursuant to ORS chapter 476;

(d) A structure used by the public;

\* \* \*

Because the public will use the structure, the Hearings Officer concludes that the set back requirements in MCC .2058(H) do not apply here. The Hearings Officer agrees with the planning staff that the applicable dimensional standards are contained in MCC .2058(C). As noted, the applicant meets the dimensional standards on all sides except the east side where the set back is 64 feet, not the required 130 feet. The deviation from the required set back amounts to 66 feet or 50 percent. If they moved the structure 66 feet west, it would comply with all forest practices set back requirements. The amended zoning code contains a provision for the County to approve an exception to these setback requirements at MCC .2075. This decision discusses the applicant's request for an exception below under the section addressing MCC .2075.

#### 11.WH.2062 Lot of Record

(A) For the purposes of this district, a Lot of Record is

(1) A parcel of land:

(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to August 15, 1980;

(b) Which satisfied all applicable laws when the parcel was created; and

(c) Which satisfies the minimum lot size requirements of MCC .2058, or

(2) A parcel of land:

(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;

- (b) Which satisfied all applicable laws when the parcel was created;
  - (c) Does not meet the minimum lot size requirements of MCC .2058; and
  - (d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or
- (3) A group of contiguous parcels of land:
- (a) For which deeds or other instruments creating the parcels were recorded with the Department of General Services, or were in recordable form prior to February 20, 1990;
  - (b) Which satisfied all applicable laws when the parcels were created;
  - (c) Which individually do not meet the minimum lot size requirements of MCC .2058, but, when considered in combination, comply as nearly as possible with a minimum lot size of nineteen acres, without creating any new lot line; and
  - (d) Which are held under the same ownership.
- (B) For purposes of this subsection:
- (1) Contiguous refers to parcels of land which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way;
  - (2) Substandard Parcel refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2058; and
  - (3) Same Ownership refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.
- (C) A Lot of Record which has less than the front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

\* \* \*

Findings and Conclusions. The Planning Director's decision applied the Lot of Record criteria in the former CFU zone instead of the amended criteria for the CFU-2 zone. Subsection (1) applies to parcels that satisfy the 80-acre minimum lot size requirement. The applicant's property contains only 10.04 acres. Therefore, subsection (1) does not apply. Subsection (2) applies to parcels that do not satisfy the 80-acre minimum lot size and the subject tax lot is all the property in this area owned by the applicants. Therefore, the criteria of subsection (2) must be satisfied.

The two parcels that the Shields acquired, comprising the subject parcel, were apparently created in 1963 by deed. A more detailed discussion of the chain of title is contained below under MCC .2070(D). The parent parcel is described in a deed recorded in Book 2172, Page 552. From the parent parcel, former Tax Lot 30 was deeded to Luella (Eunice) Weich Hannigan from a parcel owned by Mable Weich and George Smith, recorded in Book 2172, Page 557. The Smiths also conveyed a parcel in trust to Robert Walsh. That parcel was for the area on which the barn/arena is located, described in a metes and bounds legal description recorded in Book 2172 page 555. The conveyance of former Tax Lot 29 did not include access rights. The deed creating Tax Lot 30 granted an easement across Tax Lot 28 for access to Skyline Boulevard. There is no evidence in the record that former Tax Lot 29 was ever granted any access rights.

In 1963 the area was zoned Suburban Residential (SR). The SR zone required parcels created in 1963 to have a minimum lot size of 2 acres and frontage on a public street or other access approved by the planning commission. (Former Code section 3.1536). From the evidence in the record, the Hearings Officer concludes that Former Tax Lot 29 undoubtedly does not qualify as a lot of record because it has no documented access. Tax Lot 30 also does not qualify as a lot of record because it lacks frontage on a public street and there is no evidence that the planning commission approved its easement access.

Mr. Norr argues in his April 14, 1999 letter (Exhibit 4), that "neither the former Tax Lot 29, the former Tax Lot 30, nor the newly created Tax Lot 30, can be found to be a Lot of Record since there is no documentation in the record of this case which would allow the finding that any of the parcels satisfied all applicable laws when the respective parcel was created, since none of them have a demonstrated legal access to a public road."

In the Decision document for HV 13-97 the Hearings Officer concluded that the entire contiguous area owned by Les and Florence Shields was a tract. The Shields have since consolidated their parcels. In reaching that conclusion, the Hearings Officer was focused on whether Tax Lot 29 was a lot of record or whether Tax Lots 29 and 30 were a tract, requiring consolidation of the parcels. In the proceedings on HV 13-97 the Hearings Officer did not have evidence concerning whether the lots satisfied applicable laws when they were created.

In conclusion, the deeds creating the parcel were recorded before February 20, 1990. The parcels did not satisfy all applicable laws when created. The tax lot does not meet the minimum lot size requirements of MCC .2058. The parcel is not contiguous to another substandard parcel under the same ownership. Because all applicable laws have not been

shown to have been satisfied when the lots were created, the subsection (2) criteria are not satisfied.

The zone specifically requires large acreage dwellings and template dwellings to meet the lot of record standards. However, farm uses are not specifically required to meet the lot of record standards. Section .2062 is essentially a definition of a lot of record applicable in those circumstances where a use is required to comply with the lot of record provisions. However, MCC .2058 provides that the minimum lot size in the CFU-2 zone shall be 80 acres except as set forth in the provisions for lots of exception (MCC .2060), lot line adjustments (MCC .2060), lots of record (MCC .2062) and lot size for conditional uses (MCC .2064). None of the exceptions to the minimum lot size applies to this application. Therefore, to be eligible for a land use approval, the parcel must have been legally created meeting the zoning requirements at the time the parcel was created. As stated above, the evidence in the record does not prove that the parcels were legally created.

#### 11.WH.2074 Development Standards for Dwellings and Structures

Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048(D), .2048(E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

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

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

Findings and Conclusions. The applicants stated in their application that the barn/arena location has the least impact on nearby or adjoining forest lands because it meets minimum yard setbacks and is a use permitted outright. They noted that the County may not apply the Dimensional Requirements to the extent that they would prohibit a use permitted outright. The staff noted that the applicant has illustrated the location of the primary and secondary fire safety zones on the submitted site plan, and submitted a letter from the TVF&R as part of their evidence the structure meets the required fire safety standards. The staff concluded that the applicant met this criterion.

First, the statement that the yard setbacks are satisfied is not correct, it will only be correct if the requested exception is approved. Second, the "least impact" prong of this standard is additional to the requirement that the minimum yard and set back standards be satisfied. The fact that the yard and set back standards are satisfied is no proof that the structure was placed so that it has the least impact on nearby or adjoining lands. Similarly, the fact that the structure is a permitted use is no proof that it is located such that it has the least impact on nearby and adjoining lands. The staff's findings that the applicant addressed the fire safety zone standards and submitted a letter from the fire district that the structure meets fire safety standards also fail to address the issue of placing the

structure such that it has the least impact on nearby or adjoining lands. The applicants completely failed to meet their burden of proof on this criterion.

Neither the applicant nor the staff addressed the findings of fact and conclusions contained in the Hearings Officer's decision on HV 13-97 which the Board of County Commissioners adopted. Those findings and conclusions concerning this criterion are provided below:

"This application involves the siting of a structure, not a dwelling. The subject parcel abuts lands to the north, south and east designated Commercial Forest Use and protected for forest uses. The territory to the west is within the regional urban growth boundary and the City of Portland. Although some of the CFU designated parcels are currently used for residential purposes, they are forest lands, not residential lands.

"This criteria requires a finding of "least impact" on "nearby or adjoining forest" or agricultural lands. The controlling factor is the adjoining lands' land use designation as Commercial Forest land. . .

"Mr. Norr argued, and the Hearings Officer finds, that there are substantial impacts from having the building located where it is. Fire protection is one. The general activities associated with this facility, even though it may be a structure that is allowed in the CFU zone, are not allowed this close to a neighbor's property. There are more reasons for the setback than just fire protection. One is concern for the impact on the neighbor. The impact of the noise and the activities associated with the use that will take place within this building. The open side of the building that will attract the most activity, is the side that faces Ms. Anderson's property. The hub of the activity associated with the building is on the side of the structure facing the Anderson's property. That is where the vehicles and horse trailers will have to come in and where deliveries will be made. There is no information in the record about the impacts from the manure pile, the smell from the horses, the general activity, and the noise, all within 64 feet from Ms. Anderson's property.

"The applicants have not provided basic information regarding the intensity of the proposed commercial operation, such as the hours of operation, the days of operation, the number of horses and people that will be using the facility at any one time, where the manure piles would be stored, how the dust will be controlled, the number of vehicle trips per day, the anticipated level of noise and smell, etc. The Hearings Officer cannot determine what the impact is, let alone how the impact at this location compares to other locations on the applicants' property.

"Mr. Norr argues that view is an issue because protection of views is one of the purposes of the Code's setback requirement . . . Based on a drawing to general scale, Exhibit H14, showing the impact from the perspective of a person five feet tall standing at the Anderson property line looking at the building, the building would have to be 55 feet tall to have the same impact that it has at its existing location, while the maximum structure height in the CFU zone is 35 feet. The proximity of

the building has a substantial impact on adjoining property even though there is no specified view corridor. He argues that the view affect should be taken into account on the impacts caused on the neighboring property by violating the setback requirement.

"The applicants presented evidence showing that the proposed location of the building is the best location for themselves. They have not, however, presented any evidence proving that the proposed structure cannot physically be placed at least [130] feet from Karen Anderson's property or at some other location having the least impact on adjoining forest land. The evidence shows that the [130] foot setback requirement can be observed without placing the structure within [130] feet of any other property.

"The [appellants] in their September 24, 1997, letter state under paragraph 2 on page 4:

"The Shields propose a farm use, a use permitted as right in the district [which is] inherently compatible with the existing farm and forest practices on adjoining lands. (Emphasis added in original).

"The fact that the use is permitted outright is not evidence that this arena was sited so that it has the least impact on nearby and adjoining farm and forest lands. The proposed use could be inherently compatible only if the Code required minimum yard setback requirements of MCC .2058 are met.

"The east side yard has been reduced to [49]% of the required [130] feet. The County in adopting the [130] foot yard requirements made the policy choice that [130] feet was the separation between structures and property lines that provides the minimum protection from impact on adjoining forest lands. Reducing the required side yard and secondary fire safety break by more than 50% on this hillside site places the Anderson property in jeopardy. The applicants have not demonstrated this location has the "least impact" on the Anderson property.

"In his October 7, 1997 letter Christopher Brand responded that from a construction, grading, and erosion control standpoint, the current location of the farm structure is the best location on the property. The written and oral testimony of Mr. Rondema, Mr. Koroch, Mr. Nausbaum, and Mr. Wood, all indicate that the current location minimizes the possibility of future erosion problems and future subsidence problems. Those conclusions are based on considering only a portion of the Shields' ownership and without considering alternate building construction or structure size.

"In minimizing the potential for erosion and subsidence problems, the current site of the farm structure minimizes potential adverse impacts on downhill adjoining lands. Erosion problems and/or a land slide on the property could adversely impact downhill lands, including the applicants' dwelling. Earth movement could also affect the uphill property, including the Anderson's, by removing support. Nonetheless, the

applicants have not shown that a different building could not be built so that it was safe and has less impact on the adjoining properties.

"The applicant contends that the Property Owner Consent to Variance Request form signed by all neighbors, except Ms. Anderson, shows that the existing barn location has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements. The fact that all but one of the adjoining property owners consented to the variance request is not proof that the structure is sited at a location that has the least impact on nearby and adjoining farm and forest lands. It is no proof at all that the yard requirements are met.

"The Shields have not shown that the arena's location has the least impact on neighboring and adjacent farm and forest uses. Mr. Norr and Ms. Anderson's testimony that Ms. Anderson's views may be impaired, wildfire spread may be increased, as well as other arguments of alleged adverse impacts, are relevant and uncontroverted."

The applicants have failed to prove that the proposed location has the least impact on adjoining forest or agricultural lands when compared with other possible locations on their own property and considering different building sizes and construction methods.

- (2) **Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

Findings and Conclusions. The applicants stated in their application that they minimized adverse impacts on forest operations and accepted farming practices because the structure is for farm use. They stated that they sited the structure on the best and most logical location that minimized the necessary fill and grading. This siting left the maximum remaining area for pasture use.

This criterion requires the applicant to site the structure such that it will minimize adverse impacts on the tract. The arena is a farm use. The applicants considered the circumstances of the site as a whole concerning the best place to place this building. The steeper the area the more fill that will be required. This is the best location on the property for this type of structure from the Shields' point of view. The location of the arena, by intruding into the yard setbacks, leaves the maximum remaining area for pasture and the riding and training of horses. The applicant has placed the structure where they reduce the impacts on the tract, at the expense of noncompliance with other Code criteria.

- (3) **The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

Findings and Conclusions. The applicants stated in their application that they minimized how much forest land was used for siting the structure and access because the road they extended to the structure was only an additional 135 feet to their driveway and ties directly to the driveway to their dwelling. In addition, they stated that the portion of land

where the structure was located was sparsely treed and was the most efficient site for the proposed use.

Neither the applicant nor the staff addressed the findings of fact and conclusions contained in the Hearings Officer's decision on HV 13-97 which the Board of County Commissioners adopted. Those findings and conclusions concerning this criterion are provided below:

"Mr. Norr argued that the access road is longer than necessary and therefore, consumes more forest land than necessary. The applicant responded that they could not shorten the access road by placing the structure closer to the existing house on Tax Lot 29 and closer to SW Skyline Boulevard. The applicant testified that the sloping topography of the land, the amount of cut and fill required to site the structure closer to the existing house, the conditions of the soils on the west end of the property, make placing the building closer to the house and the existing drive less feasible than where they built it. However, the applicant did not demonstrate that the building could not have been at a location that had a shorter access . . . .

The Hearings Officer concludes that the applicants have failed to meet their burden to prove that they minimized the land area used to site the structure and its service corridor.

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

Findings and Conclusions. The applicant states the additional access to the structure does not exceed 500 feet in length. It is true that the access distance from the Shields' house to the barn/arena does not exceed 500 feet. However, the access to the barn from NW Skyline Boulevard is first taken approximately 268.5-feet through an adjacent parcel identified as Tax Lot 28, then across the frontage of Tax Lot 30, approximately 600 feet, then from the private road north through the subject parcel. The total distance from NW Skyline Boulevard to the barn exceeds 500 feet in length. The staff concluded that the application partially meets the criterion.

The Hearings Officer notes that each decision-making criterion must be satisfied either by evidence in the record or the imposition of a condition of approval that will assure compliance. If a criterion is not fully satisfied, the application must be denied. Here, the access to the structure exceeds 500 feet. Consequently, the applicant must prove that they minimize the access length.

In HV 13-97 the applicant argued that this provision does not apply at all to the Shields' driveway extension. Here, they address their driveway but not the private road that serves their driveway. MCC 11.15.2074 refers to "access road or service corridor." While the Multnomah Code does not define "access road" or "service corridor," "roads" are defined in MCC 11.15.0010 as "Every public way, thoroughfare, road, street or easement within the

County used or intended for use by the general public for vehicular travel, but excluding private driveways" and an "accessway" is defined as "[a] private street which is not a part of a lot or parcel and which provides access to more than one lot or parcel." The Shield's driveway is not a public way, thoroughfare, road, street or easement used or intended for use by the general public. It is intended for use of the Shields and their guests and invitees. The shields' driveway also is not an accessway because the driveway is part of their lot. Similarly, the applicants maintain that this provision does not apply to the private road portion of their access. The easement is used or intended for access use by the owners of the dominant estates benefitted by the easement and their guests and invitees. It is not intended to provide for use by the general public. Therefore, the private access road does not meet the definition of a "road." The subject private road is not an "access way" because it is an easement, a part of a lot or parcel.

In HV 13-97, the Hearings Officer concluded that the access requirements of 11.15.2074(D) apply and that the applicant needs to prove that the MCC 11.15.2074(A)(4) requirement that any access road greater than 500 feet in length is necessary due to physical limitations unique to the property and is the minimum length required. The focus of the criterion is on the "access" to the proposed development. If the Code provision were interpreted as the applicant's contend, it would never apply to any access that is privately owned. In other EFU cases, the County has applied this criterion to private access, including both private roads and private driveways cumulatively. The terms road or service corridor refer to two types of access, access for vehicles (roads) and access for utilities (service corridor).

The applicant has not proved that the access is the minimum necessary. Neither the applicant nor the staff addressed the findings of fact and conclusions contained in the Hearings Officer's decision on HV 13-97 which the Board of County Commissioners adopted. Those findings and conclusions concerning this criterion are provided below:

"An extension of the existing access was built to serve the farm structure. Mr. Norr argues that the access is far in excess of 500 feet from Skyline Road and there is an absolute requirement that the minimum be used. If the barn had been located further down the hill, closer to the house it would not have required extension of the access. The applicant contends the access does not exceed 500 feet in length. The applicant argues that this criteria applies only to the access which must be created in order to facilitate the farm structure. . . He argues the driveway which was created to access the farm structure does not exceed 500 feet. The Hearings Officer disagrees, the length of the access should consider the entire access to the structure, not just the length of the extension of an access to get from the end of an existing access to a new structure. The entire length of the access should be considered because a purpose of the requirement is to minimize the distance from a public road to a structure for emergency response vehicles [and to protect the maximum amount of forest zoned land].

"The record shows that access to the site is provided from Skyline Blvd. The record does not show the total length of the access. The Tax Assessors map shows the

access is on an easement. The record does not contain any information about the width, surface conditions, signage, etc., of the access. The applicant has not demonstrated that the amount of land for the access is minimized.

In this appeal, the Hearings Officer maintains her interpretation that MCC .2074(A)(4) requires the applicant to prove that the length of the access to the structure is the minimum length required. The applicant has provided no evidence that they minimized the length required. This criterion is not satisfied.

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

\* \* \*

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

Findings and Conclusions. The territory is within the Tualatin Valley Fire and Rescue District (TVF&R). TVF&R provides service to this area by tankers. The property is approximately 1-1/2 miles from TVF&R Station 198. Equipments housed at the station are:

Brush Rig 198	90 gpm	300 gallons of water
Engine 198	750 gpm	500 gallons of water
Water Tender 198	750 gpm	3000 gallons of water

Fire hydrants are found at the intersection of Skyline Boulevard and Newberry Road, and at the intersection of Skyline Boulevard and McNamee Road. The applicant stated that there was a fire hydrant at the point of the private road access to Skyline Boulevard. This is incorrect. The staff of TVF&R inspected the applicant's property on September 19, 1997. The District concluded that fire department access to all structures on the property is adequate for fire suppression operations. See September 19, 1997 Letter from Arthur E. Thurber, Deputy Fire Marshal.

This criterion applies to "Access for a pumping fire truck to . . . any perennial water source on the lot." The subject parcel does not contain a perennial water source. Consequently, this criterion is not applicable.

- (c) Maintenance of a primary and a secondary fire safety zone on the subject tract.
- (i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced

with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

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

Percent Slope	Distance In Feet
Less than 10	Not required
Less than 20	50
Less than 25	75
Less than 40	100

- (iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. . . . The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 11.WH.2058(D) and .2075.

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

- (v) Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).

- (d) The building site must have a slope less than 40 percent.

Findings and Conclusions. The applicants stated in their application that there are less than five trees within the 30-foot primary fire safety zone around the structure and these trees are spaced farther than 15 feet between the crowns.

The primary and secondary fire buffer zone setbacks are measured from the structure out on all sides for a minimum distance of 30 feet for the primary fire safety zone. The minimum distance for the primary fire safety zone increases as the slope increases. Because the distance is based on slopes, the primary zone may be different on each side of the structure. According to the applicant, the slope of the site of the barn/arena is less than 10%. According to the soils maps on file at Multnomah County, the soil types for the portion of the property around the subject horse-barn include Cascade silt loam, 8 to 15 percent slopes (7C), requiring a primary fire safety zone of 30 or 50 feet, and Cascade silt loam, 15 to 30 percent slopes (7D), requiring a primary fire safety zone of 50, 75 or 100 feet. In addition, Karl Koroch of CIDA, Inc. stated in the application for the Grading and Erosion Control permit, GEC 8-98 for the subject site, dated March 26, 1998, that the "average slope is 12.3%" for the site. Consequently, it appears the primary fire safety zone is required to be 50-feet, based on the more detailed analysis of the site for the GEC permit.

The applicant showed the buffer zone on the subject property by marking the 50-foot buffer with posts tied with orange tape. These markers are visible in the photos taken by the Staff at site visits on April 1, 1999 and April 5, 1999. However, the applicants have not provided documentation concerning the percentage of the slope immediately next to the building site (barn/arena). Although the average slope of the parcel is 12.3%, the slopes may be more or less around the barn/arena site. There is no evidence in the record concerning the slopes around the structure.

The fire zone requirements require a primary fire safety zone of a minimum of 30 feet in all directions from a structure, plus a secondary fire safety zone extending a minimum of 100 feet in all directions around the primary safety zone. Thus, there is a total fire safety zone of at least 130 feet required by MCC .2074(5)(b). If the slopes require a greater primary fire safety zone, the total requirement could be as much as 200 feet. However, the County cannot require the fire safety zone to exceed the area of an approved side yard. The Code approves a side yard of 130 feet, so that is the maximum total fire safety zone that the County may require. If the Code requires a 50-foot primary fire safety zone on the east side of the structure, 16-feet would remain between the structure and the east property line for a secondary fire safety zone. To completely comply, the structure could be relocated 66-feet farther west. Another alternative would be to remove the portion of the structure that intrudes into the setback.

The zoning code contains a provision allowing the County to approve an exception to the setback and secondary fire safety zone standards at MCC .2075. The applicant's have requested an exception for the east side of the structure. The exception provision from the secondary fire safety zone standards was added to the zoning code by the amendments adopted after HV 13-97 was decided. These new provisions provide for protection from fire by higher construction standards for structures placed within the secondary fire safety zone, including sprinklers.

The exception requirements are addressed below. The Hearings Officer concluded that the applicant meets the exception criteria and the structure must meet the Class 1 construction requirements, including a sprinkler system.

The building site of the barn/arena has a slope less than 40 percent.

The applicants stated in their narrative, submitted April 7, 1999, that they intend to comply with the applicable fire safety zone requirements. A condition of approval could be imposed to require the applicants to 1) provide evidence of the slope for each side of the barn/arena, and 2) a site plan illustrating the location of the required primary and secondary fire safety buffer zones, based upon the slope of the site, before the County issues a building permit. Upon compliance with those conditions these criteria would be satisfied.

(B) The dwelling or structure shall:

\* \* \*

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

Findings and Conclusions. The staff determined that section (B) does not apply because the structure is not a mobile home. However, the provisions in (3) and (4) apply to all structures. As discussed below, under MCC .2075, the structure will be required to have a fire retardant roof and no chimney is present on the structure. These criteria can be met with conditions of approval.

(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.

Findings and Conclusions. The applicants stated in their application that the water supply to the barn/arena will be from a private well on their property that serves their dwelling. The applicants stated that they will provide water to the barn/arena site for stock watering purposes only. The proposed stock watering is not a "domestic water" use.

The Hearings Officer notes that it is likely that they will require water at the arena for the public who will be attending events at the arena. The applicant has provided well log evidence that the domestic water supply is from a source authorized according to the Department of Water Resources Oregon Administrative rules for the appropriation of groundwater. The applicants meet this criterion.

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

Findings and Conclusions. The appellant, Deborah Nass, contends that the barn/arena site does not have an easement right to the private road across her property which serves the applicant's dwelling. Ms. Nass' property is identified by the Multnomah County Department of Taxation and Assessment as Tax Lot 28.

The planning staff researched the history of the Shield's chain of title. The record contains several recorded documents related to the creation of the parcels and easement rights. The following findings and conclusions are based on those documents.

A predecessor in interest to Ms. Nass' property, Mable Weich Smith and her husband (the Smiths) conveyed a parcel to Myrna Weich McShirely, a predecessor in interest to the property on which the Applicants' dwelling is located (Book 2172, Page 558). That 1963 conveyance created a 12.5-foot easement for the benefit of the conveyed property for "road purposes." The conveyed property was described by a metes and bounds legal description, containing a parcel 609.2 feet wide (east and west) and 357.5 feet deep (north and south). The conveyed parcel was identified by the Multnomah County Department of Assessment and Taxation as "Tax Lot 30." In 1963, the Smiths also conveyed a parcel which is now identified by Assessment and Taxation as Tax Lots 28 and 49 to Luella (Eunice) Weich Hannigan (Book 2172, Page 557). That deed noted that the parcel was subject to a 12.5-foot right of way easement. Also in 1963, the Smiths conveyed to Robert Walsh in trust for Nancy Lee Walsh, Teresa Eileen Walsh and Alice Marie Walsh, a parcel (on which the barn/arena subject to this application is located) described in a metes and bounds legal description (Book 2172, Page 555) that was identified by the Department of Assessment and Taxation as Tax Lot 29. That conveyance did not include access rights for the conveyed parcel, Tax Lot 29.

The Smiths conveyed the parcel immediately east of Tax Lot 30 to David Frederick Weich (Book 2172, Page 556), also in 1963. The conveyance to David Weich did not contain an access easement.

David Weich obtained easements to his property, in 1972, from Luella (Eunice) Weich Hannigan (Book 896 page 930) and Myrna Weich McShirley (Book 896 Page 932). Those easements were for a 50-foot wide strip for "private access and utility rights." Those easement documents describe by metes and bounds the easement strip and the burdened properties (the servient estates) but do not describe the benefitted property (the dominant estate). Consequently, the 50-foot easement was for the benefit of David Weich only. It did not grant an additional easement right for the benefit of the property owned by Myrna Weich McShirley (Tax Lot 30). The easement for Tax Lot 30 continued to be a 12.5-foot easement.

In 1980 Luella (Eunice) Weich Hannigan partitioned her parcel into the two parcels now identified by Assessment and Taxation as Tax Lots 28 and 49. Apparently, Luella (Eunice)

Weich Hannigan acquired the parcel identified by Assessment and Taxation as Tax Lot 30 sometime between 1972 and 1980. In November 1980 she sold the partitioned parcel and Tax Lot 30, the parcel on which the applicant's dwelling is located, to Jack and Barbara Myers. There is no reference in the deeds to easements. When the same owner holds title of the dominant and servient estates, merger extinguishes an easement. Merger occurs at the time the fee owner of the dominant parcel acquires the fee in the servient parcel. In Witt v. Reavis, 284 Or. 503, 508, 587 P.2d 1005 (1978) the Oregon Supreme Court held that the effect of merger is a complete destruction of the easement. Thus, it appears that the easement across Tax Lot 28 to provide access to Tax Lot 30 was extinguished when Luella Hannigan, owner of the servient estate acquired Tax Lot 30, the dominant estate.

In 1984, Robert Walsh, trustee, conveyed Tax Lot 29 (on which the barn/arena is located and is subject to this application), to Alice Marie Walsh Laney, also known as Barbara Alice Weich, (Book 1798, Page 2378). That conveyance also does not contain any reference to access to the conveyed parcel.

The applicants obtained the parcel on which their dwelling is located (Tax Lot 30) from Jack and Barbara Meyers (Book 1783, Page 1169). Their deed includes a reference to an easement recorded in Book 896, Page 930. From the documents in the record, it appears that the easement for Tax Lot 30 was extinguished and that the conveyer should have granted a new easement. (Note that the record does not include a complete chain of title for Tax Lot 28. The Hearings Officer assumes, without knowing, that Jack and Barbara Meyers still owned both parcels when they sold Tax Lot 30 to the applicants and therefore, could have granted access to Skyline Road when they sold Tax Lot 30 to the applicants). As there is uncertainty about the grant of an easement to Tax Lot 30, a court would look beyond the wording of the deed to decide the intent of the parties. Because the deed included a reference to an easement which burdened seller's adjoining property, it appears that it was the seller's intent to transfer an easement to the applicants. Also, because the referenced easement in Book 896, Page 930 is to a 50-foot easement, it appears likely that the easement they intended to convey is 50-feet wide. Even if the Meyers sold Tax Lot 28 before selling Tax Lot 30, it appears more likely than not that the Meyer's would have reserved an easement for Tax Lot 30. No one has asserted that Tax Lot 30 does not have a right of easement. The Hearings Officer concludes that the land area described in the conveyance from Meyers to Shields does have a 50-foot easement across Tax Lot 28.

The appellant, the current owner of Tax Lot 28, the servient property, contends that Tax Lot 29 has never been granted an easement to the access road across her property. The record contains no evidence that an easement was ever granted to Tax Lot 29. It appears that the parcel identified as Tax Lot 29 was created by deed in 1963 by a conveyance from the Smiths to Robert Walsh, trustee. Robert Walsh then conveyed Tax Lot 29 to Barbara Alice Laney Weich in 1984, who conveyed the property to Eldon Shields in March 1993. Neither the 1963 nor the 1984 deeds contain a reference to access rights to the property. The 1993 statutory warranty deed conveying the property to Eldon Shields contains the following note:

"This property is free of liens and encumbrances, EXCEPT: No apparent means of record ingress or egress to or from the property."

Eldon Shields conveyed his parcel to the applicants in May 1993 by quit claim deed. In October 1998, the applicants consolidated the two parcels into one parcel. Thus, the former Tax Lot 29 to the north where the subject barn/arena is located and the former Tax Lot 30 to the south where the applicant's dwelling is located are now one parcel for assessment and taxation purposes. The Department of Assessment and Taxation identifies the parcel as Tax Lot 30.

In their General Application Form for Variance, HV 13-97, and in this proceeding, the Shields cited an Agreement for Easement, Book 896, Page 932, as proof of their having been granted an easement. As discussed above, this agreement granted an easement across Tax Lot 30 to David Weich, it was not an access easement for the benefit of the former Tax Lot 30. It does not mention lot 29. The Hearings Officer has already concluded that the reference in the deed conveying Tax Lot 30 to the Shields by the Meyers to the easement described in Book 896, Page 930 was intended to create access to the area identified formerly as Tax Lot 30. However, nothing in the deed grants access to former Tax Lot 29. There is no evidence in the record that the area contained in former Tax Lot 29 was ever granted access across Tax Lot 28, or any other access.

The applicant argues that the area in former Tax Lot 29 has rights to the easement granted to the area within the former Tax Lot 30 by virtue of the applicants' consolidation of Tax Lot 29 with Tax Lot 30. In reaching this conclusion they rely in part on a conclusion reached by Mary Pfau, Public Researcher in the Multnomah County Assessment and Taxation Department, that their perpetual easement to Tax Lot 30 automatically applies to Tax Lot 29 after the tax lots are consolidated. The applicant also relied on Jones v. Edwards for the proposition that the scope of an easement is subject to changing circumstances.

The applicants confused the easement law concepts of dominant estate and scope of easements. The scope of an easement concerns the dominant estate's use of the easement. The scope of an easement is subject to adjustment consistent with normal development of the dominant estate. The dominant estate which has the easement rights is the area described in the easement grant. Here, the dominant estate is the area described in the deed the Shields acquired from Meyers, former Tax Lot 30. The dominant estate is not adjusted because a dominant estate is consolidated with another parcel(s).

After researching the access to the barn/arena site, the county planning staff concluded in its March 19, 1999 decision that the site of the barn/arena has a legally established access. The Access for Easement on Tax Lot 28, attached as Exhibit #7, states that the property owner of Tax Lots 28 and 49 (formerly one parcel) was the lawful property owner and thus qualified to convey the right of the easement across the said property. The easement agreement describes the area of the access easement and it grants "Private Access and Utility Rights." The document further states, "the statement described above shall continue for a period of Permanent, always subject, however, to the following

specified conditions, restrictions, and considerations: None." The staff concluded that it thus it appears that the easement runs with the land. Additionally, the easement is granted for "Private Access and Utility Rights" and does not restrict the use of the properties that are accessed by the easement. The staff failed to note that the easement was granted to David Weich, the owner of the land east of the applicant's property, not to the applicants or any of their predecessors. Therefore, the staff incorrectly concluded that the easement agreement was for the benefit of applicants' land.

The appellant argued that a notation on the 1993 deed conveying Tax Lot 29 to Eldon Shields is conclusive that the easement across Tax Lot 28 does not serve Tax Lot 29. That notation includes the statement:

"This property is free of liens and encumbrances, EXCEPT: No apparent means of record ingress or egress to or from the property."

The staff concluded that former Tax Lot 29 does have access. The staff correctly found that agreements for access are not always "of record" and that a grant of access could legally exist but not be recorded. However, there is no evidence in the record that there was ever a grant of access to Tax Lot 29, recorded or unrecorded.

The staff relied on an excerpt from Evidence and Procedures for Boundary Location (3rd edition), Section 12-15, Location of Easements, which states, "Easements necessary for the enjoyment of a property may automatically be transferred, whether mentioned in a conveyance or not" to draw the conclusion that the access that was granted to Tax Lot 30 could be "transferred" to the area in former Tax Lot 29. The planning staff misunderstood the language on transferring an easement. The excerpt is a correct statement of Oregon easement law in the sense that a perpetual easement granted to a property can be transferred to subsequent owners of the property whether or not the easement is mentioned in the conveyance. However, the language does not apply to the situation where the owner of a dominant estate wants to "transfer" an easement to lands beyond the territory described as the dominant estate in the grant of easement rights. The owner of a dominant estate has no right to grant to another dominant estate a right to use the land of the servient estate which he does not own.

The staff reasoned that the appellant's contention, taken to its logical end, leads to an illogical result. The staff reasoned that if the easement can only serve land area served at the time of the easement is granted, then any land area added to the original parcel through a lot line adjustment or consolidation would be precluded from being accessed by the easement. The staff further reasoned that the access easement granted access to Tax Lot 30 and cannot restrict access within Tax Lot 30, even if Tax Lot 30 gains land area.

The staff is incorrect that the easement was granted to Tax Lot 30. The easement was granted to an area specifically described in a metes and bounds legal description that correlates to the area identified by the Department of Assessment and Taxation as the former Tax Lot 30. The dominant estate is the land area described by metes and bounds

on the deed which created the easement. The dominant estate is not "Tax Lot 30" which may become a larger area by consolidation of tax lots.

For purposes of easing the development of land, it may be desirable for access rights for an area to be expanded to other areas when lots or parcels are consolidated. However, an easement is a limitation on the property rights of the burdened estate to exclude others from using his land. An owner of a property granted an easement does not have the right to grant to the owners of other property a right to cross the property of the landowner who granted him a right of access. Concerning any easement across Tax Lot 28 for access to Tax Lot 30, the easement would be an "easement appurtenant" to the former Tax Lot 30, and the former Tax Lot 30 would be the "dominant tenement" or estate. The Oregon Supreme Court in College Inns of America, Inc. v. Cully, 254 Or 375, at 376, 460 P2d 360 (1969) addressed the situation where the owner of a dominant estate acquired property next to the dominant estate and constructed a large dormitory on his entire property. The court held:

"It is well established law that 'a right of way appurtenant to land conveyed cannot be used by the owner of the dominant tenement to pass to or from other land adjacent to or beyond that to which the easement is appurtenant."

The current Oregon State Bar CLE materials summarize Oregon law as follows:

"An easement holder may not use the easement for the benefit of property other than the dominant estate . . . even if the other property is adjacent to the dominant estate and is owned by the easement holder. See Principles of Real Estate Law (Oregon CLE 1995), Section 3.28. Page 3-20).

Thus, the owner of the former Tax Lot 30, who has been granted access rights across Tax Lot 28 cannot extend those access rights to the former Tax Lot 29, even if the same people own the former Tax Lot 29 and 30.

The staff found that the easement was not granted for the sole benefit of Tax Lot 30 because it provides access to five properties. There is no evidence in the record as to the basis for the rights of access to the other properties using the easement. Those properties may have independent grants of easement, prescriptive easements, or no legal access rights. The fact that other properties use the private road is not evidence that Tax Lot 29 has an easement right to use the private road.

Finally, the staff relied on the decision document from the Hearings Officer for HV 13-97, a variance request for the subject barn/arena, issued October 20, 1997, in which the Hearings Officer discussed access to former Tax Lot 29. The Hearings Officer stated, "The access is an easement. The access provides access to a dwelling on Tax Lot 30 (the Shields residence) and on Tax Lot 33 (Ms. Anderson). [It t]hus meets the definition of 'a private road (including approved easements) access two dwellings.' The Hearings Officer concludes that the access requirements of 11.15.2074(D) apply..." This statement of the

Hearings Officer provides that the criterion applies, it does not state that the criterion is satisfied.

The access to the barn/arena structure is a private road. The site of the structure does not have any demonstrated easement rights to this access. This criterion implicitly requires that the land subject to the land use action have access rights. The site of the structure does not. Consequently, the applicants do not meet this criterion.

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

Findings and Conclusions. The applicants stated that they experienced no problems on the private road from heavy construction trucks during the building of their home 16 years ago, the construction of their new structure or the two other homes along the private road. The applicants stated that their experience with the access road over the last 14 years, is that it has supported the weight of all construction vehicles weighing more than the 52,000-pound requirement. There have been four homes plus two additional structures constructed along this private road. The applicants stated that they contacted a concrete supplier who told them that the nine trucks delivering concrete to the subject barn/arena site weighed from 52,000 to 60,000 pounds each. The supervisor told them that the road never posed a problem except once when one truck tried to avoid a broken low-hanging tree limb partially over the road (which has since been removed). They say this was the cause of the "partial collapse" noted in the appeal. This "collapse" was only the width of one truck tire which measured 6 inches wide by approximately 5 feet long and 4 inches deep. It has long since disappeared due to one of their neighbor's routine road maintenance, which has smoothed out this minor depression.

In a September 19, 1997 letter, Arthur Thurber, Deputy Fire Marshal for Tualatin Valley Fire and Rescue district stated that "Fire department access to all structures on [the] property is adequate for fire suppression operations." The Fire Marshall's letter contains no factual evidence to support this conclusion.

The Tualatin Valley Fire and Rescue district has adopted minimum roadway design criteria for fire apparatus access to all proposed and newly constructed structures. These requirements are contained in the record in the document titled "Fire & Life Safety Requirements for Fire Department Access and Water Supplies." These design criteria require the applicant to construct access roads adequate to support a minimum weight of 12,500 pounds wheel point load and a gross vehicle weight of 50,000 pounds. The Hearings Officer notes that the District's access road design criteria are less restrictive than the Multnomah County Code criterion - 50,000 rather than 52,000 gross vehicle weight. The District requires road design and compaction reports to be submitted verifying load carrying capacity. To meet the District's load bearing requirements, an applicant can provide either: 1) a soil compaction report certifying a bearing capacity of 2,000 pounds per square foot for the roadbed, plus a minimum depth of 5-inches of 1-1/2-inch minus

gravel, 2) a minimum depth of 8-inches of uncompacted 1-1/2-inch minus gravel, or 3) construction plans prepared and stamped by a registered engineer. The fire district requires an access road to extend to within 150-feet of the structure and a turnaround if the excess distance to an intersecting roadway is greater than 150-feet and/or the access road is a dead-end road. Here, the intersecting roadway is the intersection of the private road access to the structure with Skyline Road which is approximately 800 feet from the structure. Consequently the Fire District requires a turnaround. The District's standards provide that the district can modify the access standards if the applicants protect the structure with an approved automatic sprinkler system.

There is no direct evidence in the record that the District's standards are satisfied. The Hearings Officer finds that the District's letter concluding that there is adequate access is not credible because they do not base the conclusion on evidence that the District's own adopted design criteria are met. For example the District's criteria require a turnaround and none is present and there is no evidence of a soil compaction report on the required amount of 1 1/2-inch minus gravel on the road (5 inches for compacted or 8-inches for uncompacted road beds.) In addition, even if there is evidence that the District's criteria are satisfied, that would not necessarily be evidence that the Zoning Code criteria are satisfied, because the Zoning Code requires a load-bearing capacity greater than required by the District's criteria.

The appellant contends that the private road is unsuitable for heavy vehicles and stated that there was an incident during construction of the Shield's barn when a construction vehicle caused a partial collapse of the road. The appellant argues that the applicant's statement that the road is adequate is merely the applicant's opinion unsupported by an engineering study.

A letter was received from Scott Teitsworth and Deborah Buchanan, owners of the parcel directly to the west of Tax Lot 29, dated March 28, 1999. They argue in their letter that the applicant's statement that the road can "support a minimum gross vehicle weight of 52,000 pounds is merely an opinion of the Shields and not that of an engineer or other qualified professional. They state that there were problems with large heavy vehicles during the construction of the barn/arena. They said that a cement truck was forced to dump part of a load of wet cement to get up the hill which is quite steep, and that another heavy vehicle drove too close to the northern drainage ditch and collapsed about a 2-foot wide section of the road into the ditch. They also said that another vehicle was too long to negotiate the turns on the portion of the driveway crossing Tax Lot 30. Mr. Treitsworth stated that as an experienced firefighter he can assure that "no full sized fire engine will ever even attempt to negotiate the Shield's driveway.

The planning staff, in its administrative decision, did not request a written verification of the private road's or driveway's load-bearing capacity from an Oregon Professional Engineer because the fire district had twice evaluated the site and found that "Fire department access to all structures on property is adequate for fire suppression operations" and because a written verification of compliance with the 52,000 lb. GVW standard from

an Oregon Professional Engineer is required only for bridges or culverts and the applicant for E 1-99 does not request to construct a bridge or a culvert.

Although the Zoning Code requires written verification from a registered engineer only when an access road has bridges or culverts, there needs to be credible evidence, upon which a reasonable person would rely, that the Zoning Code's requirement that the access road has 52,000 pound load-bearing capacity is complied with. The applicants' evidence that the 52,000 pound load-bearing standard is satisfied consists of statements that trucks of or exceeding this weight have successfully used the access road. The opponents, however state that on at least one occasion the private road did not support the weight of a cement truck. The applicant responds that this was because the cement truck got too close to the edge of the road bed.

Imposing a condition of approval may satisfy compliance with a code standard to assure that the requirement will be satisfied. However, to satisfy a decision-making criterion by a condition of approval, the decision-maker must have evidence that satisfying the criterion is likely, or feasible. Here, the access to the structure includes approximately 800 feet of private road access across the south part of Tax Lots 28 and 30 plus more than 400 feet of access through Tax Lot 30. There is no evidence in the record that improving the access to meet the 52,000 pound load-bearing capacity is financially feasible. The Hearings Officer concludes that the applicants have failed to meet the burden to prove that the criterion is satisfied.

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

Findings and Conclusions. This criterion requires a private road to have an all-weather surface of 20-feet in width and a private driveway to have an all-weather surface of at least 12-feet in width. Here, the private road is the access easement across Tax Lots 28 and 30 and the driveway is the access across applicants' property from the private road to the structure. The Tualatin Valley Fire and Rescue district's adopted minimum access roadway design criteria requires an access road having an all-weather surface and an unobstructed width of not less than 20-feet. The District's criteria appear to apply to entire access - the private road and the driveway both need to be 20-feet in width meeting the District's load bearing requirements.

The applicants stated in their application that their driveway surface is covered with ¾-inch-minus gravel and has a minimum width of 12-feet. The applicant stated that they understood that TVF&R deemed their current access road acceptable for their fire suppression access. The County Planning Staff had an inspector for the Multnomah County Right-of-Way Division measure the width of the applicant's driveway and the turnaround area on March 17, 1999. On April 1, 1999, the Staff Planner visited the site and measured the driveway and the turnaround area. The driveway is approximately 9-feet in width for most of the length of the driveway. The applicant stated in a letter dated April 7, 1999, that they will meet the Code requirements for the driveway.

Staff recommended the Hearings Officer establish a Condition of Approval to require the applicant to construct the 12-foot wide driveway before the County issues a building permit.

The appellant contends that the applicant has not satisfied this criterion because the private access road is less than 20 feet in width. Mr. Treitsworth and Ms. Buchanan state in their letter that the Shields driveway is reached by driving approximately 800 feet along the private road which is used by 3 other households. They also said that this road is not 20-foot wide.

The record contains no evidence concerning the width of construction of the private road from which the Shield's driveway obtains access. The applicant has failed to meet its burden to prove that the criterion is satisfied.

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

Findings and Conclusions. The applicant stated that a minimum curve radii of 48 feet or more is provided. The staff concluded that the application meets this criterion. This conclusion is not challenged on appeal.

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

Findings and Conclusions. The applicant stated that an unobstructed vertical clearance of at least 13 feet 6 inches is provided. The staff concluded that the application meets this criterion. This conclusion is not challenged on appeal.

**(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments . . .**

Findings and Conclusions. The applicants stated in their application that the driveway does not exceed more than 8 percent grade except on short segments. They noted that the Tualatin Valley Fire and Rescue had stated in a letter, dated September 19, 1997, that the access to all structures on the property is adequate for fire suppression operations. The staff noted that the applicant does not state whether or not the driveway exceeds 12% grade at any given slope on the site. The staff concluded that the application partially meets the criterion.

The Fire District's adopted access design criteria requires the roadway grades to not exceed an average grade of 10 percent with a maximum grade of 15 percent for lengths of no more than 200 feet.

The Fire District's criteria permit a greater maximum grade than the Zoning Code allows. The District's criteria may be met while the County Code is not. There is insufficient evidence in the record from which the Hearings Officer can conclude that the grades of either the private road or the driveway meet this criterion. The applicant's statement that

the 8 percent grade is held not to be reliable evidence because other statements made by them have proved to be inaccurate, it is unsupported by any evidence and other evidence submitted by opponents suggests that the grade is steep.

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

Findings and Conclusions. In their application the applicants stated that they have provided turnarounds with a minimum radius of 48 feet. The appellant contends that the applicant has not provided turnarounds and stated that when a fire occurred at her house in February 1997, the Portland Fire Bureau refused to drive their trucks up the private road because it lacked turnaround space. The Right-of-Way Inspector, the Code Enforcement Inspector, and Planning Staff visited the site and found that the required turnaround does not currently exist.

The applicants responded that they have adequate space to provide the necessary turnaround with a minimum 48-foot radius at the end of their driveway. They stated that they would provide a turnaround, if required by Multnomah County. The County Planning staff visited the site and found that the portion of the property next to the barn/arena, on the east side of the subject parcel, contains room for the applicant to establish the required 48-foot radius turnaround. Mr. Treitsworth and Ms. Buchanan question whether they can provide an adequate turnaround in the area surrounding the barn. They say that this area is quite muddy even in dry weather because there are many springs on this hillside. They believe that a vehicle the size and weight of a fire engine would most likely sink into the mud and be stuck, although he doubts that an engine could even get to the turnaround.

The applicants responded to appellants' comments about the Portland Fire bureau's response to her fire in February 1997. They noted that it was the Portland Fire Bureau that responded to Ms. Nass' fire, not the Tualatin Valley Fire and Rescue District which is responsible for serving their fire needs because her property is within the City of Portland and theirs is in Multnomah County. The Hearings Officer note that fire equipment is dispatched according to which entity has the closest equipment, not according to jurisdictional boundaries. They also said that the Portland Fire Bureau did indeed bring trucks onto the private road from Skyline Blvd. and then into Ms. Nass' driveway.

The Staff recommended the Hearings Officer establish a condition requiring inspection of the site for compliance with the requirement to have a 48-foot radius turnaround before issuance of building permits. A condition of approval could satisfy this condition.

- (7) Provide for the safe and convenient passage of vehicles by the placement of:
  - (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or

- (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of ½ the driveway length or 400 feet whichever is less.

**Findings and Conclusions.** In their application the applicant stated that their driveway has appropriate turnouts for safe passage of vehicles along its length. The appellant contended that no turnarounds or turnouts exist. The staff confirmed on site visits that the applicants have constructed no turnouts the subject parcel. The applicants stated that if the current "turnout" places that already exist along the main driveway are not acceptable after additional review by Multnomah County and/or TVF&R, they will provide any necessary changes to allow for safe passage of vehicles. Mr. Treitsworth and Ms. Buchanan state that the two private driveways along the private road don't measure 20 feet by 40 feet. He believes that there are not adequate turnouts along the private road.

The turnout requirement applies to driveways, not to private roads. The Staff recommended the Hearings Officer establish a condition requiring inspection of the site for compliance with the requirement to have turnouts on the Shields' driveway, as required by subsection (7), before the county issues building permits.

The applicants did not address the requirement that a private road provide additional turnarounds at a maximum spacing of 500 feet. They addressed only requirements relating to their own driveway. The Hearings Officer notes that the fire access requirements apply to "a private road . . . accessing two or more dwellings, or a driveway accessing a single dwelling." The Hearings Officer does not believe that these requirements are meant to be in the alternative when both a private road and a driveway are involved in reaching a development. The Hearings Officer believes that private road standards apply to private roads and the driveway standards apply to driveways. Where there is both a private road and a driveway, the standards for both need to be satisfied.

There is no evidence that there is any turnaround along the private road which exceeds 800 feet in length. The Code requires at least one turnaround along the private road in addition to a turnaround at the end of the applicants' driveway. It appears that the additional turnarounds must also have a radius of 48-feet. As the private road easement is at most 50-feet in width, there is inadequate space within the easement to provide a turnaround having a 48-foot radius. Consequently, the applicant has failed to prove that this requirement could be satisfied.

#### **11.15.2075 Exceptions to Secondary Fire Safety Zones and Forest Practices Setbacks**

- (A) The secondary fire safety zone and forest practices tract setbacks for dwellings and structures may be reduced pursuant to the provisions of .2075(B) when:
  - (1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or

- (2) The dwelling or structure is proposed to be located within 130 feet of the centerline of a public or private road servicing two or more properties including the subject site, or
- (3) The proposed dwelling or structure is intended to be located within 130 feet of a legally existing dwelling or structure.

Findings and Conclusions. The average lot width and depth exceeds 330 feet. The barn/arena structure is located within 130 feet of a legally existing dwelling. To be eligible for an exception to the secondary fire safety zones and forest practices setback requirements, the applicant needs to meet one of the three listed criteria. The applicant meets two of the criteria for eligibility for approval of an exception. The criteria in .2075(B) apply to whether or not the County can approve such an exception.

(B) Exceptions to secondary fire safety zones and forest practices setbacks shall only be granted upon satisfaction of the following standards:

- (1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or
- (2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and

#### Definitions from the 1997 Urban-Wildland Interface Code:

**Ignition-Resistant Construction, Class 1,** is a schedule of additional requirements for construction in urban-wildland interface areas based on extreme fire hazard.

**Ignition-Resistant Construction, Class 2,** is a schedule of additional requirements for construction in urban-wildland areas based on high fire hazard.

Findings and Conclusions. According to the applicant, their secondary fire safety zone will be between 50 and 100 feet, therefore the structure will consequently need to comply with the International Fire Code Institute - Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction Standards. The applicant provided a letter from Drew DeBois of the Tualatin Valley Fire and Rescue (TVF&R) Department and has provided a narrative response to Section .2075 requirements - based on the review as a Class 2 structure:

**Roof Covering:** Roof covering material is predominantly metal with some fiberglass panels serving as skylights. Although Chapter 15 of the 1994 Uniform Building Code recognizes the metal panels as a Class B roof covering, it is not possible to confirm the fiberglass panels without the benefit of the manufacturers test data. Please forward this information to this office for review. If confirmation cannot be made, replace the panels with an approved Class B roof covering material.

**Protection of Eaves:** Not applicable. No eaves present.

**Gutters and Downspouts:** Gutters and downspouts are plastic and are presumed to be combustible. Remove plastic gutters and downspouts. If replaced, utilize non-combustible materials.

**Exterior Walls:** Approximately 60% of the structure is open with combustible wood structural members exposed to atmosphere. The balance of the building (south side) consists of wood studs covered with metal and fiberglass panels on the exterior side only. The upper 18" of the exterior wall covering near the intersection of the roof is fiberglass and serves as a light opening. The exterior walls, where present, are combustible and do not appear to meet the criteria for one-hour fire-resistive. Enclose the structure with one-hour fire-resistive construction on the exterior side. Such material shall extend from the top of the foundation to the bottom side of the roof sheathing.

**Unenclosed Underfloor Protection:** Not applicable. Structure rests on grade.

**Appendages and Projections:** Not applicable. No projections beyond the exterior walls.

**Windows:** Not applicable. No conventional windows were observed.

**Exterior Doors:** The exit door near the southwest corner of the building is a 1 ¾" hollow metal door. The sliding doors (livestock entrance) along the south and east sides of the building are framed with metal cladding on the exterior side only. Replace the sliding doors with noncombustible or solid core wood doors not less than 1 3/8" thick.

**Vents:** Not applicable. No conventional attic or foundation vents were observed.

**Spark Arrestors:** Not applicable. No wood or solid burning appliances were observed.

The applicant stated that if the roof panels prove to be non-compliant, they will replace them with metal similar to the existing roof or with a conforming light panel. A letter from Econ-O-Fab Buildings, Inc., dated August 6, 1998 states:

"Enclosed is data and specifications for a light panel that could be used to replace existing light panels in the Shields arena. The panel is not a stock item and would have to be special ordered out of Canada. It has a fire rating of Class A. Cost for materials and labor to replace panels would be approximately \$1,800.00 - 30 12' panels in roof, 32 2' panels in side walls."

The applicant stated that they will make the exterior walls to be one-hour fire resistive by use of the conforming light panel noted in #1 above, replace the plastic gutters and downspouts with non-combustible materials and make the exterior doors non-combustible or remove them if necessary.

The appellant contends that the secondary fire safety zone on the east side of the barn is 34 feet, not between 50 feet and 100 feet as proposed by the applicant. The Hearings Officer has found that, based on the evidence in the record, the secondary fire safety zone would be at most 16 feet on the east side of the barn/arena structure. Thus, the criterion is MCC .2075(B)(2) section is applicable.

According to this subsection (2) the structure must be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 as a structure classified by Class 1 Ignition Resistant Construction. Exhibit #3 is the Ignition Resistant Construction Categories from the International Fire Code Institute 1997 Urban - Wildland Interface Code. Exhibit #5 is the letter from TVFR showing the evaluation of the barn/arena as a Class 2 structure. Staff contacted DeBois, who reviewed the site in 1998 and wrote the letter attached as Exhibit #5, at TVFR. Staff asked why the barn/ arena was reviewed under Ignition Class 2 standards and DeBois said the request to TVFR was to review the site as a Class 2 structure.

The Ignition Resistant Construction Categories show the differences between Class 1 and Class 2. The main differences, as they concern this structure, is that Class 1 requires Class A roof Covering rather than Class B; Class 1 requires a structure to have a Central Station monitored 13D sprinkler system rather than a Central Station monitored approved alarm system; the Class 1 exterior door requirement is for 1 3/4" thick rather than a 1 3/8" thick noncombustible or solid core; and class 1 requires 1-hour fascia protected on backside or 2" thick for Class 1 rather than 3/4" thick and no exposed rafters unless heavy timbers. See Exhibit #3.

The June 1, 1998 letter from DeBois states that no eaves are present, so this requirement is not applicable. The June 1st letter states "the exit door near the southwest corner of the building is a 1 3/4" hollow metal door. The sliding doors (livestock entrance) along the south and east sides of the building are wood framed with metal cladding on the exterior side only. Replace the sliding doors with noncombustible or solid core wood doors not less than 1 3/8" thick."

At the applicants' request the Tualatin Valley Fire and Rescue District reviewed the structure for compliance with Class 2 standards. The Tualatin Valley Fire and Rescue District found that there is no Central Station monitored alarm system at the barn/arena

structure. The district recommended that the County should require the applicant to provide a fire alarm system that is monitored by an approved Central Station service. The applicant stated that they will extend the Central Station Monitored alarm system in their home to the barn/arena structure. However, Class 2 construction standards do not apply here, Class 1 standards apply. A sprinkler system is required for Class 1 construction.

The staff recommended the Hearings Officer establish a condition of approval to require the applicant to install the necessary items to meet the Class 1 Ignition Resistant Construction Category including roofing materials, the exterior door standard and the automatic fire sprinkler system. The staff also recommended the Hearings Officer establish a condition to require the applicant to show the slope on the subject property around the building site for each direction (west, east, north, south) a distance of 30 feet out from the structure. Finally, the Staff recommended the Hearings Officer establish a condition to require the applicant to show they have met the requirements for a Class 1 structure, as described by the International Fire Code Institute 1997 Urban-Wildland Interface Code.

In the alternative, the structure could be constructed to Class 2 standards if the structure were moved further east or if the east portion of the structure were removed, to provide at least 50-feet of secondary fire safety zone. A central station monitored alarm system would then be required, but a sprinkler system would not. The applicants testified that they would remove the east part of the structure if necessary to provide a 50-foot secondary fire safety zone and connect the structure to the dwelling's central station monitored alarm system. The Hearings Officer understands from that testimony that the applicant does not wish to meet the Class 1 construction standards, presumably because the installation of a sprinkler system is financially infeasible. They would rather remove part of the structure to comply with a 50-foot secondary fire safety zone than meet the Class 1 construction standards.

The criterion can be satisfied by the recommended conditions of approval requiring the applicant to provide at least 50-feet of secondary fire safety zone or meet the Class 1 construction standards.

- (4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of MCC .2075(B)(1) are utilized, or
- (5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of MCC .2075(B)(2) are utilized. Exception: Expansions of existing single family dwellings as allowed by MCC .2048(D) shall not be required to meet this standard, but shall satisfy the standard of MCC .2074(B)(4) above.

Findings and Conclusions. The structure is not a dwelling, therefore the requirements in (4) and (5) do not apply.

- (6) All accessory structures within the fire safety zone setbacks required by MCC .2074 shall have a central monitored alarm system.

Findings and Conclusions. The primary use of the property is residential. The barn/arena structure is accessory to the primary use. The accessory structure is located within the secondary fire safety zone setbacks required by MCC .2074. This code section requires the accessory structure to have a central monitored alarm system. The applicants stated that they would connect the structure to the dwelling's central monitored alarm system. This criterion can be satisfied with a condition of approval.

- (8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban-Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication.

**Exception:** The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour-rated fire-resistive construction or heavy-timber construction.

Findings and Conclusions. The structure rests on grade on a concrete slab. This criterion is not applicable.

### **Conclusion:**

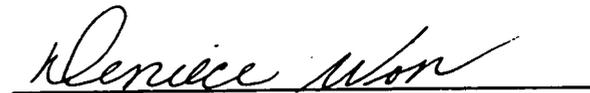
1. Lot of Record (11.WH.2062(A)(2) and .2058). The CFU-2 zone specifically requires large acreage dwellings and template dwellings to meet the lot of record standards. However, farm uses are not specifically required to meet the lot of record standards. Section .2062 is essentially a definition of a lot of record applicable in those circumstances where a use is required to comply with the lot of record provisions. However, MCC .2058 provides that the minimum lot size in the CFU-2 zone shall be 80 acres except as set forth in the provisions for lots of exception (MCC .2060), lot line adjustments (MCC .2060), lots of record (MCC .2062) and lot size for conditional uses (MCC .2064). None of the exceptions to the minimum lot size applies to this application. Therefore, to be eligible for a land use approval, the parcel must have been legally created meeting the zoning requirements at the time the parcel was created. The evidence in the record does not prove that the parcels were legally created.

2. Least Impact (11.WH.2074(A)(1)). The applicants have failed to demonstrate that the proposed location has the least impact on adjoining forest or agricultural lands when compared to other possible locations on their own property and considering different building sizes and construction methods.
3. Amount of Forest land used is minimized (11.WH.2074(A)(3)). The applicants failed to meet their burden to prove that the land area used to site structure and its service corridor was minimized.
4. Access Length is minimized (11.WH.2074(A)(4)). The applicant has provided no evidence that the access length is the minimum required.
5. Primary and Secondary Fire Safety Zones (11.WH.2074(A)(5) and 11.WH.2075). The zoning code contains new provisions allowing the County to approve an exception to the setback and secondary fire safety zone standards. The applicant meets the exception criteria and the structure will have to meet the Class 1 construction requirements including a sprinkler system. In the alternative, the structure could be constructed to Class 2 standards if the structure were moved or the east part of the structure were removed, to provide at least 50-feet of secondary fire safety zone. Consequently the applicants could comply with the primary and secondary fire safety zone standards upon compliance with conditions of approval to assure such compliance.
6. Access Rights (11.WH.2074(D)). The access to the barn/arena structure is a private road. However, the site of the structure does not have any demonstrated easement rights to this access. This criterion implicitly requires that the land subject to the land use action have access rights. The site of the structure does not.
7. Load Bearing Capacity of 52,000 pounds (11.WH.2074(D)(1)). The applicant's only evidence tending to show that the load bearing capacity of the road will support a vehicle weighing 52,000 pounds is that the road has supported vehicles of or exceeding that weight. The opponents state that the road has on at least one occasion failed to support a heavy vehicle. The applicant provides no evidence concerning the structure of the road bed to demonstrate that in fact has the required load bearing capacity.
8. Private Road has 20-foot width and driveway has 12-foot width (11.WH.2074(D)(2)). The applicants evidence on this criteria addresses only their driveway, which has 9 feet, not the required 12-feet of width. The record contains no evidence concerning the width of construction of the private road from which the Shield's driveway obtains access. The applicant failed to meet their burden to prove that the criterion is satisfied.

9. Road Grades (11.WH.2074(D)(5)). There is insufficient evidence in the record from with the Hearings Officer can conclude that the grades of either the private road or the driveway meet this criterion.
10. Turnarounds (11.WH.2074(D)(7)(a)). The applicants did not address the requirement that a private road provide additional turnarounds at a maximum spacing of 500 feet. They addressed only requirements relating to their own driveway. The Hearings Officer notes that the fire access standards apply to "a private road . . . accessing two or more dwellings, or a driveway accessing a single dwelling." The Hearings Officer does not believe that these requirements are meant to be in the alternative when both a private road and a driveway are involved in accessing a development. The Hearings Officer believes that private road standards apply to private roads and the driveway standards apply to driveways. Where there is both a private road and a driveway, the standards for both need to be satisfied.

There is no evidence that there is any turn around along the private road which is approximately 600 feet in length and which the Code requires at least one turnaround in addition to the turnaround at the end of the applicants' driveway. It appears that the additional turnarounds must also have a radius of 48-feet. As the private road easement is at most 50-feet in width, there is inadequate space within the easement to provide a turnaround having a 48-foot radius. Consequently, the applicant has failed to demonstrate that this requirement could be satisfied.

Dated this 6<sup>th</sup> Day of May, 1999



Deniece B. Won, Attorney at Law  
Hearings Officer

**List of Exhibits:**

1. Reduced copy of applicant site plan
  2. Elevation of barn/ arena
  3. Ignition Resistant Construction Categories
  4. September 19, 1997 letter from Tualatin Valley Fire & Rescue (TVFR)
  5. June 1, 1998 letter from TVFR
  6. Vicinity Map
  7. Easement for Access through Tax Lot 28 of Section 32, 2N, 1W
  8. Statutory Warranty Deed for Tax Lot 29 of Section 32, 2N, 1W (dated March 31, 1993).
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- H1 Affidavit of Posting
  - H2 Tracy Waters telephone call notes dated April 19, 1999
  - H3 Scott Teitsworth letter dated March 28, 1999
  - H4 Paul Norr Letter dated April 14, 1999
  - H5 Paul Norr letter dated April 13, 1999
  - H6 Staff proposed conditions of approval
  - H7 Legal description of Tax Lot 30
  - H8 Paul Norr letter dated April 19, 1999