

ANNOTATED MINUTES

Tuesday, February 3, 1998 - 9:30 AM
Portland Building, Second Floor Hearing Room
1120 SW Fifth Avenue, Portland

LAND USE PLANNING MEETING

Chair Beverly Stein convened the meeting at 9:31 a.m., with Vice-Chair Sharron Kelley and Commissioners Gary Hansen present, and Commission District 1 and 3 positions vacant.

P-1 HV 13-97/SEC 23-97 DE NOVO HEARING WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE and Consideration of FINAL ORDER on the Appeal of the Hearings Officer Decision Regarding Denial of a Request for a Major Variance from the Minimum Yard Setback Requirement of the Commercial Forest Use Zone and Significant Environmental Concern Permit for an Accessory Building and Arena on Property Located at 11272 NW SKYLINE BOULEVARD, PORTLAND.

CHAIR STEIN EXPLAINED QUASI-JUDICIAL PROCESS. AT CHAIR STEIN'S REQUEST FOR DISCLOSURE, NO EX PARTE CONTACTS WERE REPORTED. AT CHAIR STEIN'S REQUEST FOR CHALLENGES AND/OR OBJECTIONS, NONE WERE OFFERED. PLANNER PHIL BOURQUIN PRESENTED CASE HISTORY. HEARINGS OFFICER DENIECE WON PRESENTED CONDITIONS, FINDINGS OF FACT AND CRITERIA USED IN DETERMINATION TO DENY APPLICATION AND RESPONDED TO BOARD QUESTIONS. APPELLANT'S ATTORNEY CHRISTOPHER BRAND AND CLIENTS FLORENCE SHIELDS AND LES SHIELDS TESTIFIED IN SUPPORT OF REVERSAL OF HEARINGS OFFICER DECISION. ATTORNEY PAUL NORR AND CLIENT KAREN ANDERSON TESTIFIED IN OPPOSITION TO REVERSAL. BRIAN LIGHTCAP TESTIFIED IN OPPOSITION TO ALLOWING BARN TO REMAIN AT PRESENT SITE. MR. BRAND PRESENTED REBUTTAL AND REQUESTED THAT RECORD BE KEPT OPEN TO

ALLOW HIM TO RESPOND TO LETTER FROM DEBORAH WALTERS REGARDING DEED AND EASEMENT FOR ACCESS TO TAX LOT 29 SUBMITTED BY MR. NORR. MR. BRAND RESPONSE TO BOARD QUESTIONS. COUNTY COUNSEL SANDRA DUFFY RESPONSE TO QUESTIONS OF CHAIR STEIN CONCERNING 120 DAY RULE AND APPROVAL CRITERIA. HEARING CLOSED. COMMISSIONER KELLEY MOVED, SECONDED BY COMMISSIONER HANSEN, TO AFFIRM THE HEARINGS OFFICER DECISION. BOARD COMMENTS. CHAIR STEIN DENIED MR. BRAND'S REQUEST FOR A CONTINUANCE. MOTION TO AFFIRM HEARINGS OFFICER DECISION UNANIMOUSLY APPROVED (FINAL ORDER 98-11). CHAIR STEIN ADVISED ALL PARTIES WILL RECEIVE A COPY OF THE BOARD'S WRITTEN DECISION, WHICH MAY BE APPEALED TO LUBA.

The meeting was recessed at 10:39 a.m. and reconvened at 10:40 a.m.

P-2

CS 1-97 DE NOVO HEARING WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE on the Appeal of the Hearings Officer Decision Regarding Approval of a Community Service Use, Subject to Conditions, to Construct a Communications Monopole and Electronics Building on Sauvie Island Property Located at 14443 NW CHARLTON ROAD, PORTLAND.

CHAIR STEIN EXPLAINED QUASI-JUDICIAL PROCESS. AT CHAIR STEIN'S REQUEST FOR DISCLOSURE, COMMISSIONERS HANSEN, KELLEY AND CHAIR STEIN DISCLOSED EX PARTE CONTACTS IN THE FORM OF FAX AND MAIL COMMUNICATIONS AND BEING APPROACHED BY A SAUVIE ISLAND RESIDENT, AND ADVISED SAID COMMUNICATIONS WILL NOT AFFECT THEIR DECISION. AT CHAIR STEIN'S REQUEST FOR CHALLENGES AND/OR OBJECTIONS, NONE WERE OFFERED. IN RESPONSE TO COMMISSIONER HANSEN'S QUESTION CONCERNING A MANDAMUS SUIT FILED IN CIRCUIT COURT, COUNTY COUNSEL SANDRA DUFFY ADVISED THE BOARD SHOULD

PROCEED WITH TODAY'S HEARING. PLANNER ROBERT HALL PRESENTED CASE HISTORY. HEARINGS OFFICER JOAN CHAMBERS PRESENTED CONDITIONS, FINDINGS OF FACT AND CRITERIA USED IN DETERMINATION TO APPROVE APPLICATION. APPELLANT'S ATTORNEY JEFF KLEINMAN AND URSULA DAVIS AND CITIZENS UNITED FOR SAUVIE ISLAND PLANNING CLIENTS ADRIENNE KEITH AND DONNA MATRAZZO TESTIFIED IN SUPPORT OF PROPOSED FINAL ORDER SUBMITTED BY MR. KLEINMAN, AND IN OPPOSITION TO PROPOSED SITE. ATTORNEYS TIM RAMIS AND DAN CHANDLER AND CLIENT REPRESENTATIVES SPENCER VAIL AND CAROL FRIZ TESTIFIED IN SUPPORT OF HEARINGS OFFICER DECISION, AND PROPOSED SITE. MR. VAIL AND MR. RAMIS RESPONSE TO BOARD QUESTIONS. MR. KLEINMAN REBUTAL AND RESPONSE TO BOARD QUESTIONS. IN RESPONSE TO CHAIR STEIN'S REQUEST FOR CONTINUANCE OR OBJECTION TO HEARING, NONE WERE OFFERED. HEARING CLOSED. MR. HALL RESPONSE TO BOARD QUESTIONS. FOLLOWING DISCUSSION, COMMISSIONER HANSEN MOVED, SECONDED BY COMMISSIONER KELLEY, TO AFFIRM THE HEARINGS OFFICER DECISION. BOARD COMMENTS IN SUPPORT. MOTION UNANIMOUSLY APPROVED (FINAL ORDER 98-12). CHAIR STEIN ADVISED ALL PARTIES WILL RECEIVE A COPY OF THE BOARD'S WRITTEN DECISION, WHICH MAY BE APPEALED TO LUBA.

There being no further business, the meeting was adjourned at 11:47 a.m.

Thursday, February 5, 1998 - 9:30 AM
Portland Building, Second Floor Hearing Room
1120 SW Fifth Avenue, Portland

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:34 a.m., with Vice-Chair Sharron Kelley and Commissioner Gary Hansen present, and Commission Districts 1 and 3 positions vacant.

CONSENT CALENDAR

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, CONSENT CALENDAR ITEMS C-1 THROUGH C-3 AND C-5 THROUGH C- 16 WERE UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

- C-1 Appointment of Muriel Goldman to the DEPARTMENT OF COMMUNITY AND FAMILY SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
- C-2 Appointment of Gordon Euler to the DEPARTMENT OF ENVIRONMENTAL SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
- C-3 Appointments of Helen Ellison and Winzel Hamilton to the NON-DEPARTMENTAL CITIZEN BUDGET ADVISORY COMMITTEE
- C-5 Appointments of Cindi Cushing, Steven Novick, Donald Dumont and Wade Price to the DEPARTMENT OF SUPPORT SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
- C-6 Appointment of Frank Shields to the DUII COMMUNITY ADVISORY BOARD
- C-7 Intergovernmental Agreement 500948 with Washington County and Portland Development Commission for Portland Development Commission to Act as the Administering Agency for Regional Strategies Funding through August 31, 1998

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

- C-8 ORDER Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody

ORDER 98-13.

- C-9 Intergovernmental Agreement 101888 with Oregon Survey Research Laboratory Purchasing Follow-up Interviews and Related Data Services for the Target Cities Evaluation
- C-10 Intergovernmental Revenue Agreement 103208 with Oregon Health Science University, Funding Out-patient Psychiatric Services for Children and Adult CAAPCare Members

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-11 Findings of Fact, Conclusions of Law and FINAL ORDER Regarding an Application by Tim and Angela Schillereff for the Alteration of an Existing Nonconforming Dog Kennel Use to Allow up to 75 Dogs

ORDER 98-14.

- C-12 ORDER Authorizing Execution of Deed D981537 Upon Complete Performance of a Contract with Jeffrey Paul Fish

ORDER 98-15.

- C-13 Amendment 1 to Intergovernmental Agreement 301267 with the Oregon Department of Transportation for Phase II of the Westside Transportation System Plan

DEPARTMENT OF HEALTH

- C-14 Budget Modification HD 14 Approving Increase of \$358,000 and 1.3 FTE in the Tobacco Cessation Program Funded with Increased State Grant Funds
- C-15 Renewal of Intergovernmental Agreement 201168 with the Oregon Health Division for Research and Evaluation Services Required for the Health Department's Various Grants

DISTRICT ATTORNEY'S OFFICE

- C-16 Amendment 4 to Intergovernmental Agreement 500447 with the State Office for Services to Children and Families Funding the CAMI Child Abuse Program for 1998

REGULAR AGENDA

NON-DEPARTMENTAL

- C-4 Appointment of Shannon Gustafson to the DEPARTMENT OF SOCIAL SERVICES CITIZEN BUDGET ADVISORY COMMITTEE

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, C-4 WAS UNANIMOUSLY POSTPONED INDEFINITELY.

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

SHERIFF'S OFFICE

- UC-1 Package Store with Pumps Liquor License Renewal for LARSON'S MARINA, 144444 NW LARSON ROAD, PORTLAND

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE LICENSE RENEWAL WAS UNANIMOUSLY APPROVED.

PUBLIC COMMENT

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

NO ONE WISHED TO COMMENT.

AGING AND DISABILITY SERVICES DEPARTMENT

- R-2 RESULTS in the Public Guardian Office Presentation by Public Guardian Staff.

SUE LONGAKER, MARK SANFORD, PHILIP BOSS AND PHYLLIS NASH PRESENTATION AND RESPONSE TO BOARD QUESTIONS. BOARD COMMENTS IN APPRECIATION OF STAFF IMPROVEMENTS AND EFFICIENCIES.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-3 First Reading of an ORDINANCE Amending the Multnomah County Comprehensive Framework Plan and the Multnomah County Zoning Ordinance Regarding the Provisions for Home Occupations

ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF FIRST READING. SUSAN MUIR EXPLANATION AND RESPONSE TO BOARD QUESTIONS. SETH TANE WRITTEN AND ORAL TESTIMONY IN OPPOSITION AND SUGGESTED AMENDMENTS. CHRIS FOSTER TESTIMONY IN SUPPORT AND RESPONSE TO QUESTIONS OF COMMISSIONER HANSEN. AT THE DIRECTION OF CHAIR STEIN, MS. MUIR RESPONDED TO CONCERNS OF MR. TANE REGARDING DEFINITIONS, SIGN OFF FROM ZONING OFFICE AND FEE DEPOSIT. FOLLOWING BOARD DISCUSSION WITH COUNTY COUNSEL SANDRA DUFFY, BOARD CONSENSUS TO DROP FEE AS PART OF ORDINANCE. STAFF DIRECTED TO PREPARE OPTIONS FOR BOARD CONSIDERATION. FIRST READING UNANIMOUSLY APPROVED. SECOND READING THURSDAY, FEBRUARY 12, 1998.

NON-DEPARTMENTAL

- R-4 Community Power Buying Group Briefing. Presented by Serena Cruz, Staff to Portland City Commissioner Erik Sten, and Phil Welker of the Portland Energy Office.

SERENA CRUZ, PHIL WELKER AND AMY JOSLIN PRESENTATION AND RESPONSE TO BOARD QUESTIONS, COMMENTS AND DISCUSSION.

- R-6 Briefing on Issues Addressed During the Term of Out-going Columbia River Gorge Commissioner Blair Batson and Discussion of Issues to be Addressed During the Next Four Years.

BLAIR BATSON INTRODUCED GORGE COMMISSIONERS IN AUDIENCE, AND

**PRESENTED GORGE COMMISSION UPDATE AND
RESPONDED TO BOARD QUESTIONS AND
DISCUSSION. BOARD COMMENTS IN
APPRECIATION OF MS. BATSON'S EFFORTS.**

R-5 Appointment of Anne W. Squier to the COLUMBIA RIVER GORGE
COMMISSION

**COMMISSIONER KELLEY MOVED AND
COMMISSIONER HANSEN SECONDED,
APPROVAL OF R-5. ANNE SQUIER COMMENTS
IN APPRECIATION OF APPOINTMENT. CHAIR
STEIN COMMENTS IN RESPONSE.
APPOINTMENT UNANIMOUSLY APPROVED.**

There being no further business, the meeting was adjourned at 11:39 a.m.

OFFICE OF THE BOARD CLERK
FOR MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad

Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

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

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

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

AGENDA

FOR THE WEEK OF
FEBRUARY 2, 1998 - FEBRUARY 6, 1998

Tuesday, February 3, 1998 - 9:30 AM - Land Use Planning..... Page 2

Thursday, February 5, 1998 - 9:30 AM - Regular Meeting Page 2

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

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

Friday, 10:00 PM, Channel 30

Sunday, 1:00 PM, Channel 30

Produced through Multnomah Community Television

INDIVIDUALS WITH DISABILITIES MAY CALL THE BOARD CLERK AT (503) 248-3277, OR MULTNOMAH COUNTY TDD PHONE (503) 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

AN EQUAL OPPORTUNITY EMPLOYER

Tuesday, February 3, 1998 - 9:30 AM
Portland Building, Second Floor Hearing Room
1120 SW Fifth Avenue, Portland

LAND USE PLANNING MEETING

- P-1 HV 13-97/SEC 23-97 DE NOVO HEARING WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE and Consideration of FINAL ORDER on the Appeal of the Hearings Officer Decision Regarding Denial of a Request for a Major Variance from the Minimum Yard Setback Requirement of the Commercial Forest Use Zone and Significant Environmental Concern Permit for an Accessory Building and Arena on Property Located at 11272 NW SKYLINE BOULEVARD, PORTLAND. 1 HOUR REQUESTED.
- P-2 CS 1-97 DE NOVO HEARING WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE on the Appeal of the Hearings Officer Decision Regarding Approval of a Community Service Use, Subject to Conditions, to Construct a Communications Monopole and Electronics Building on Sauvie Island Property Located at 14443 NW CHARLTON ROAD, PORTLAND. 1 HOUR REQUESTED.
-

Thursday, February 5, 1998 - 9:30 AM
Portland Building, Second Floor Hearing Room
1120 SW Fifth Avenue, Portland

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

- C-1 Appointment of Muriel Goldman to the DEPARTMENT OF COMMUNITY AND FAMILY SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
- C-2 Appointment of Gordon Euler to the DEPARTMENT OF ENVIRONMENTAL SERVICES CITIZEN BUDGET ADVISORY COMMITTEE

- C-3 Appointments of Helen Ellison and Winzel Hamilton to the NON-DEPARTMENTAL CITIZEN BUDGET ADVISORY COMMITTEE
- C-4 Appointment of Shannon Gustafson to the DEPARTMENT OF SOCIAL SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
- C-5 Appointments of Cindi Cushing, Steven Novick, Donald Dumont and Wade Price to the DEPARTMENT OF SUPPORT SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
- C-6 Appointment of Frank Shields to the DUII COMMUNITY ADVISORY BOARD
- C-7 Intergovernmental Agreement 500948 with Washington County and Portland Development Commission for Portland Development Commission to Act as the Administering Agency for Regional Strategies Funding through August 31, 1998

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

- C-8 ORDER Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody
- C-9 Intergovernmental Agreement 101888 with Oregon Survey Research Laboratory Purchasing Follow-up Interviews and Related Data Services for the Target Cities Evaluation
- C-10 Intergovernmental Revenue Agreement 103208 with Oregon Health Science University, Funding Out-patient Psychiatric Services for Children and Adult CAAPCare Members

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-11 Findings of Fact, Conclusions of Law and FINAL ORDER Regarding an Application by Tim and Angela Schillereff for the Alteration of an Existing Nonconforming Dog Kennel Use to Allow up to 75 Dogs
- C-12 ORDER Authorizing Execution of Deed D981537 Upon Complete Performance of a Contract with Jeffrey Paul Fish

- C-13 Amendment 1 to Intergovernmental Agreement 301267 with the Oregon Department of Transportation for Phase II of the Westside Transportation System Plan

DEPARTMENT OF HEALTH

- C-14 Budget Modification HD 14 Approving Increase of \$358,000 and 1.3 FTE in the Tobacco Cessation Program Funded with Increased State Grant Funds
- C-15 Renewal of Intergovernmental Agreement 201168 with the Oregon Health Division for Research and Evaluation Services Required for the Health Department's Various Grants

DISTRICT ATTORNEY'S OFFICE

- C-16 Amendment 4 to Intergovernmental Agreement 500447 with the State Office for Services to Children and Families Funding the CAMI Child Abuse Program for 1998

REGULAR AGENDA

PUBLIC COMMENT

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

AGING AND DISABILITY SERVICES DEPARTMENT

- R-2 RESULTS in the Public Guardian Office Presentation by Public Guardian Staff. 10 MINUTES REQUESTED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-3 First Reading of an ORDINANCE Amending the Multnomah County Comprehensive Framework Plan and the Multnomah County Zoning Ordinance Regarding the Provisions for Home Occupations. 30 MINUTES REQUESTED.

NON-DEPARTMENTAL

- R-4 Community Power Buying Group Briefing. Presented by Serena Cruz, Staff to Portland City Commissioner Erik Sten, and Phil Welker of the Portland Energy Office. 30 MINUTES REQUESTED.
- R-5 Appointment of Anne W. Squier to the COLUMBIA RIVER GORGE COMMISSION
- R-6 Briefing on Issues Addressed During the Term of Out-going Columbia River Gorge Commissioner Blair Batson and Discussion of Issues to be Addressed During the Next Four Years. 30-45 MINUTES REQUESTED.

MEETING DATE: FEB 05 1998
AGENDA NO: C-1
ESTIMATED START TIME: 9:30 Am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Appointment to Community & Family Services Citizen Budget Advisory Committee

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

REGULAR MEETING: DATE REQUESTED: 2/5/98
AMOUNT OF TIME NEEDED: Consent Calendar

DEPARTMENT: Nondepartmental DIVISION: Chair's Office

CONTACT: Delma Farrell TELEPHONE #: 248-3953
BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Appointment of Muriel Goldman to Position 3 on the Department of Community & Family Services Citizen Budget Advisory Committee for a term ending September 30, 2000.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Steind
(OR)
DEPARTMENT
MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

BOARD OF
COUNTY COMMISSIONERS
JAN 14 AM 11:29
MULTNOMAH COUNTY
OREGON

MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
CBAC INTEREST FORM

NAME MURIEL GOLDMAN
HOME ADDRESS 01280 SW MARY FAYING DR. ZIP 97219 PHONE 636-2283
EMPLOYER _____

OCCUPATION VOLUNTEER - COMMUNITY ACTIVITIES

OPTIONAL: Age 65 Sex F
African American _____ Native American _____ Hispanic _____
Asian/Pacific _____ White X Other _____

ARE YOU A RESIDENT OF MULTNOMAH COUNTY? YES X NO _____

AREAS OF INTEREST:

Human Services X Youth X
Justice Services X Aging _____
Environmental Services _____ Health X
Facilities, transportation _____ General government X

Other SYSTEMS BOARD; INTER-GOVERNMENTAL

COORD. & COOPERATION; STRAT. PLNG

Current: DHS CAB since 9/88, current chair;

VOLUNTEER/BOARD/COMMITTEE EXPERIENCE Mult. Child. & Youth Serv. Comm; Morrison Cent.
Board (past Pres.); MHAO (past Pres., current Chair, Child. Comm.); Lay appointee & Chair, state
Juv. Corr. Council; Gov. appointee, OR Coord. Council for C & F (co-authored legislation); OR
Mental Health Div. Planning & Adv., Assembly for Child. Mental Health & Systems Mgt Committees;
chair, OR Agenda for C, Y & F since '87; United Way committees since '75 on budget alloc., comm.
org. & plng, strategic plng., currently on Public Policy.

OTHER RELEVANT EXPERIENCE Two Gov. Task Forces, one resulting in leg. est. local Juv.
Services Comm. (now Ch & Youth); county T.F. on dangerous & chronically mentally ill, and plng
for Westside services; previous service on Juv. Ct. Adv. Council (10/77-12/90); Waverly Children
Home (Treas., Personnel Ch.); Infant Hearing Resource Center (Pres.); City Club Law & Pub. Safet;
Comm.; founding member; Citizens for Children ('75-'82); Metropolitan Citizens League '82-'85
(Pres.); Boards of League of Women Voters of Oregon & Portland.

PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBERS OF TWO REFERENCES:

1. JOSEPH E. DEAN, STOEL RIVES BOLEY, 900 SW 5TH, 27TH FL, PDX 97204 ²⁹⁴⁻⁹⁴⁵⁹
2. CAROLYN SHELTON, 3033 NW QUIMBY, PDX 97210, 223-7984

WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST RELATIVE TO ANY COUNTY

DEPARTMENT? NO

SIGNATURE Muriel Goldman DATE 9/7/91

Please return to: Office of Citizen Involvement, 2115 SE Morrison
Portland, Oregon 97214; Phone: 248-3450

MEETING DATE: FEB 05 1998
AGENDA NO: C-2
ESTIMATED START TIME: 9:30 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Appointment to Department of Environmental Services Citizen Budget Advisory Committee

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

REGULAR MEETING: DATE REQUESTED: 2/5/98
AMOUNT OF TIME NEEDED: Consent Agenda

DEPARTMENT: Nondepartmental DIVISION: Chair's Office

CONTACT: Delma Farrell TELEPHONE #: 248-3953
BLDG/ROOM #: 106-1515

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Appointment of Gordon Euler to the Department of Environmental Services Citizen Budget Advisory Committee, Position 6, for a term ending September 30, 2000.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Steind
(OR)
DEPARTMENT
MANAGER: _____

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 14 AM 11:30

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

DES

MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
CBAC INTEREST FORM

NAME Gordon M. Euler
HOME ADDRESS 2811 NE Schuyler Portland, OR ZIP 97212 PHONE 503-249-046
EMPLOYER unemployed (at the moment)

OCCUPATION _____

OPTIONAL: Age 45 Sex M
African American _____ Native American _____ Hispanic _____
Asian/Pacific _____ White X Other _____

ARE YOU A RESIDENT OF MULTNOMAH COUNTY? YES X NO _____

AREAS OF INTEREST:

Human Services _____	Youth _____
Justice Services _____	Aging _____
Environmental Services <u>X</u>	Health _____
Facilities, transportation <u>X</u>	General government <u>X</u>
Other _____	

VOLUNTEER/BOARD/COMMITTEE EXPERIENCE current president, Portland Folklore Society
Board; Oregon Literacy Program/Volunteers of America GED tutor; KBOO radio
volunteer music programmer; Social Concerns committee, Rose City Park Presbyterian Church
OTHER RELEVANT EXPERIENCE Ph.D in Public Administration; General Background
in environmental programs; Masters in urban planning

PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBERS OF TWO REFERENCES:

1. Dr. Sy Adler Urban Studies and Planning, Portland State University 725-5172
2. Ned Rosch Portland State University 725-4974

WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST RELATIVE TO ANY COUNTY DEPARTMENT? NO

SIGNATURE Gordon M. Euler DATE 10-8-97

Please return to: Office of Citizen Involvement, 2115 SE Morrison
Portland, Oregon 97214; Phone: 248-3450

MEETING DATE: FEB 05 1998
AGENDA NO: C-3
ESTIMATED START TIME: 9:30 Am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Appointments to Nondepartmental Citizen Budget Advisory Committee

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

REGULAR MEETING: DATE REQUESTED: 2/5/98
AMOUNT OF TIME NEEDED: Consent Calendar

DEPARTMENT: Nondepartmental DIVISION: Chair's Office

CONTACT: Delma Farrell TELEPHONE #: 248-3953
BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Appointment of Helen Ellison, Position 1, to the Nondepartmental Citizen Budget Advisory Committee for a term ending September 30, 2001.

Appointment of Winzel Hamilton, Position 2, to the Nondepartmental Citizen Budget Advisory Committee for a term ending September 30, 1999.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Steind
(OR)
DEPARTMENT
MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
CBAC INTEREST FORM

NAME Heleen A. Ellison
HOME ADDRESS 2727 NE WYGANT Portland ZIP 97211 (503) 284-072
EMPLOYER - N/A -
OCCUPATION "Community Activist"
OPTIONAL: Age 57 Sex FEM
African American Native American Hispanic
Asian/Pacific White X Other
ARE YOU A RESIDENT OF MULTNOMAH COUNTY? YES X NO
AREAS OF INTEREST:
Human Services Youth
Justice Services Aging X
Environmental Services X Health
Facilities, transportation General government X
Other
VOLUNTEER/BOARD/COMMITTEE EXPERIENCE (Pres) Bd Mem - Housing Our Families Comm Dev
Bd Memb/Neighborhood Assn's; Comm Mem - NEIGHBORHOOD Livability & Pub
Safety Committees; Comm Member - MHRE Disabilities Comm;
OTHER RELEVANT EXPERIENCE Adv Volunteer for Several Non-Profit Community
in areas of Human Services, Housing & Comm Dev;
Prev work experience - Para Prof Asstnt & Bus. Office Mgr.
PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBERS OF TWO REFERENCES:
1. Ruthleen Todd 2229 NE CLACKAMAS ST PDY (H) 282-1283 (W) 248-
2. Don Mc Innis, P.C.C. 12000 SW 49TH Ave Pdx 97219 (W) (503) 977-4451
WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST RELATIVE TO ANY COUNTY-
DEPARTMENT? NO
SIGNATURE Heleen A. Ellison DATE January 25, 1997

Please return to: Office of Citizen Involvement, 2115 SE Morrison
Portland, Oregon 97214; Phone: 248-3450

INTEREST FORM FOR MULTNOMAH COUNTY
CITIZEN INVOLVEMENT COMMITTEE

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

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

NAME OF NOMINATING GROUP: Sabin Community Land Trust, Inc.
P. O. Box 55172, Airport Station, Portland, OR 97238

SECTION I

NAME: Winzel Hamilton HOME PHONE: (503) 284-1769

ADDRESS: 906 NE Siskiyou - 97212 WORK PHONE: (503) 643-5541

Is your residence located in Multnomah County?

YES ☒ NO ☐

SECTION II

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

I am interested in serving on the Multnomah County Citizen Involvement Committee because I want to take an active role in the political and civic affairs of my community. I believe this will give me the opportunity to

learn about the issues facing the county, and have a voice in the decision making process.

SECTION III

Please list three volunteer/civic activities:

ORGANIZATION:	1. <u>Sabin Community Land Trust, Inc.</u>	DATE: <u>October 1989 - Present</u>
	2. <u>Oroweat Food, Inc. Charity Club Committee</u>	DATE: <u>1984 - Present</u>
	3. <u>Maranatha Church Men's Fellowship, Secretary</u>	DATE: <u>1982 - Present</u>

RESPONSIBILITIES: 1) Set policies and assisted with public relation and community activities.

2) Recommend or select organizations for charitable funds.

3) Keep minutes and handle publicity and community outreach.

SECTION IV

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

Jean Hanson, 3807 N.E. 13th, Portland, Oregon 97212, (503) 287-0826

Harvey Garnett, 252-6693.

SECTION V

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

No conflicts of interest.

SECTION VI

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

BIRTH DATE: Month 4 Day 10 Year 41 SEX: Female Male ✓

ETHNIC ORIGIN: Asian Black ✓ Hispanic

Native American White

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

Signature: W. J. T. J. J. J. Date: 6-26-92

MEETING DATE: FEB 05 1998
AGENDA NO: C-4
ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Appointment to the Department of Social Services Citizen Budget Advisory Committee

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

REGULAR MEETING: DATE REQUESTED: February 5, 1998
AMOUNT OF TIME NEEDED: Consent Agenda

DEPARTMENT: Nondepartmental DIVISION: Chair's Office
CONTACT: Delma Farrell TELEPHONE #: 248-3953
BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: _____
ACTION REQUESTED: _____

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:
Appointment of Shannon Gustafson to the Department of Social Services Citizen Budget Advisory Committee, Position 7, for a term ending September 30, 2000.

SIGNATURES REQUIRED: _____
ELECTED OFFICIAL: Beverly Hest
(OR)
DEPARTMENT
MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

98 JAN 23 AM 11:03
MULTNOMAH COUNTY
BOARD OF
COUNTY COMMISSIONERS

~~SECRET~~

MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
CBAC INTEREST FORM

NAME Shannon R. Gustafson (W) 221-1054
HOME ADDRESS 5555 NE Ainsworth St. ZIP 97218 PHONE (503) 282-8028
EMPLOYER Ecumenical Ministries of Oregon
OCCUPATION Public Relations Coordinator
OPTIONAL: Age 24 Sex female
African American Native American Hispanic
Asian/Pacific White Other

ARE YOU A RESIDENT OF MULTNOMAH COUNTY? YES X NO

AREAS OF INTEREST:

Human Services <u>X</u>	Youth <u>X</u>
Justice Services <u>X</u>	Aging <u>X</u>
Environmental Services <u> </u>	Health <u>X</u>
Facilities, transportation <u> </u>	General government <u>X</u>
Other <u> </u>	

VOLUNTEER/BOARD/COMMITTEE EXPERIENCE work with EMO Board, various committees; So. Umpqua Valley Economic Development Committee; Univ. of Portland Campus Ministry Advisory Council; Cultural Arts Board

OTHER RELEVANT EXPERIENCE i have a sincere interest in continuing my education in public or nonprofit administration and desire an involvement that would provide an outlet for many of my talents and provide continued education in services - all facets.

PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBERS OF TWO REFERENCES:

1. Barbara M. Gayle, 5000 N Willamette Blvd, Portland, OR 97203; 283.7170
2. Jack Kennedy, 0245 SW Bancroft, Ste B, Portland, OR 97201; 221-1054

WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST RELATIVE TO ANY COUNTY DEPARTMENT? none that i am aware of

SIGNATURE Shannon R. Gustafson DATE 13 Oct 1997

Please return to: Office of Citizen Involvement, 2115 SE Morrison
Portland, Oregon 97214; Phone: 248-3450

BOGSTAD Deborah L

From: FORD Carol M
Sent: Friday, January 30, 1998 4:05 PM
To: BOGSTAD Deborah L; DELMAN Mike H; TRACHTENBERG Robert J
Subject: FW: Item C-4 on Next Week's Agenda

FYI

From: FARRELL Delma D
Sent: Friday, January 30, 1998 3:55 PM
To: FORD Carol M
Subject: Item C-4 on Next Week's Agenda

We going to pull the appointment to the Dept. of Soc. Services - the Shannon Gustafson appointment. It will be resubmitted for the next meeting. There's no problem w/Shannon, it's just the wrong CBAC

MEETING DATE: FEB 05 1998
AGENDA NO: C-5
ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Appointments to Department of Support Services Citizen Budget Advisory Committee

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

REGULAR MEETING: DATE REQUESTED: 2/5/98
AMOUNT OF TIME NEEDED: Consent Calendar

DEPARTMENT: Nondepartmental DIVISION: Chair's Office
CONTACT: Delma Farrell TELEPHONE #: 248-3953
BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Appointments to the Department of Support Services Citizen Budget Advisory Committee:
Cindi Cushing, Position 3, term ending September 30, 2000
Steven Novick, Position 4, term ending September 30, 2001
Donald Dumont, Position 5, term ending September 30, 2000
Wade Price, Position 6, term ending September 30, 2000

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT
MANAGER: _____

Beverly Stein

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 14 AM 11:25

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
CBAC INTEREST FORM

NAME CINDI CUSHING (0)731-3368 SS

HOME ADDRESS 131 S.E. 47th AVE ZIP 97215 PHONE (#) 236-9172

EMPLOYER State of Oregon / Oregon Health Division

OCCUPATION Health Care Planner

OPTIONAL: Age 45 Sex F
African American Native American Hispanic
Asian/Pacific White X Other

ARE YOU A RESIDENT OF MULTNOMAH COUNTY? YES X NO

AREAS OF INTEREST:
Human Services ✓ Youth ✓
Justice Services Aging
Environmental Services ✓ Health ✓
Facilities, transportation ✓ General government
Other

VOLUNTEER/BOARD/COMMITTEE EXPERIENCE Oregon Public Health Association - Member, Friends of Trans - Volunteer/Member

OTHER RELEVANT EXPERIENCE Former Board Member - Seaside Regional Girl Scouts, 15 yrs experience in program development in Human Services

PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBERS OF TWO REFERENCES:

1. CAROL ALLEN Director of Community Services Oregon Health Division - 731-4017
2. Nichelle Kemp Clackamas County Social Services 655-8312

WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST RELATIVE TO ANY COUNTY DEPARTMENT? (NONE)

SIGNATURE DATE

MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
CEAC INTEREST FORM

NAME Steven Novick

HOME ADDRESS 3724 SE Mill

ZIP 97214

PHONE 233-1429

EMPLOYER State of Oregon / Senate Democrats

OCCUPATION Legislative aide (caucus administrator)

OPTIONAL: Age 34 Sex _____

African American _____

Asian/Pacific _____

Native American _____

White ☒

Other _____

Hispanic _____

ARE YOU A RESIDENT OF MULTNOMAH COUNTY? YES ☒ NO _____

AREAS OF INTEREST:

Human Services _____

Justice Services ☒

Environmental Services ☒

Facilities, transportation ☒

Other _____

Youth _____

Aging _____

Health _____

General government ☒

VOLUNTEER/BOARD/COMMITTEE EXPERIENCE

ALMOST NONE! since I've been in
Portland (March 1996). I am part of a group
called the Budget Information Project, which looks for

OTHER RELEVANT EXPERIENCE

Working in the state legislature
I was fairly familiar with the state budget and
in passing learned something about local budgets.

PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBERS OF TWO REFERENCES:

1. Aivel Gordly, 1915 NE 15th, 287-6843

2. Chris Warner, 284-5661

WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST RELATIVE TO ANY COUNTY DEPARTMENT? _____

SIGNATURE Steven Novick

DATE 10/30/97

Please return to: Office of Citizen Involvement, 2115 SE Morrison
Portland, Oregon 97214; Phone: 248-3450

1755

MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
CBAC INTEREST FORM

NAME Donald N. Dumont

HOME ADDRESS 2312 NE 54th Ave. ZIP 97213 PHONE 288 6806

EMPLOYER Self employed

OCCUPATION Computer consultant

OPTIONAL: Age 53 Sex M
African American _____ Native American _____ Hispanic _____
Asian/Pacific _____ White X Other _____

ARE YOU A RESIDENT OF MULTNOMAH COUNTY? YES X NO _____

AREAS OF INTEREST:

Human Services _____	Youth _____
Justice Services _____	Aging _____
Environmental Services _____	Health _____
Facilities, transportation _____	General government <u>X</u>
Other _____	

VOLUNTEER/BOARD/COMMITTEE EXPERIENCE _____

OTHER RELEVANT EXPERIENCE Multnomah County ISD Director 1976-1986
Mesa County, CO IS Manager 1987-1995 (included 1 year period
supervising Budget Office)

PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBERS OF TWO REFERENCES:

1. John Rector 2031 NE 148th Place, 97230 503-408-7798
2. Dave Warren County Budget Office

WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST RELATIVE TO ANY COUNTY DEPARTMENT? _____

SIGNATURE _____

DATE _____

Please return to: Office of Citizen Involvement, 2115 SE Morrison
Portland, Oregon 97214; Phone: 248-3450

MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
CBAC INTEREST FORM

NAME WADE R PRICE

HOME ADDRESS 4207 N Gantenbein Ave ZIP 97217 PHONE 281-3198

EMPLOYER MAJestic Mortgage Services

OCCUPATION Loan Officer / Entrepreneur

OPTIONAL: Age 41 Sex M
African American ☒ Native American ☐ Hispanic ☐
Asian/Pacific ☐ White ☐ Other ☐

ARE YOU A RESIDENT OF MULTNOMAH COUNTY? YES ☒ NO ☐

AREAS OF INTEREST:

Human Services ☒

Justice Services ☒

Environmental Services ☐

Facilities, transportation ☐

Other CONSUMER Rights

Youth ☐

Aging ☐

Health ☐

General government ☐

VOLUNTEER/BOARD/COMMITTEE EXPERIENCE RED Cross, Youth Organization
CONSUMER ADVOCACY Neighborhood Committee

OTHER RELEVANT EXPERIENCE

PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBERS OF TWO REFERENCES:

1. DARNEIL J STRONG 83 NE HOLMAN Portland 97217 (503) 283-3250

2. NYSCE' PETERSON 6525 NE 33rd Ave - Portland, Oregon 97211

WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST RELATIVE TO ANY COUNTY-
DEPARTMENT? NO

SIGNATURE Wade R Price

DATE 27 OCT 96

Please return to: Office of Citizen Involvement, 2115 SE Morrison
Portland, Oregon 97214; Phone: 248-3450

MEETING DATE: FEB 05 1998
AGENDA NO: C-6
ESTIMATED START TIME: 9:30 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Appointment to DUII Community Advisory Board

BOARD BRIEFING:

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: 2/5/98

AMOUNT OF TIME NEEDED: Consent Calendar

DEPARTMENT: Nondepartmental

DIVISION: Chair's Office

CONTACT: Delma Farrell

TELEPHONE #: 248-3953

BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Appointment of Frank Shields to the Legislative Representative Position on the DUII Community Advisory Board for a term ending November 30, 1999

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT

MANAGER: _____

Beverly Stein

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

BOARD OF
COUNTY COMMISSIONERS
MULTI-COUNTY
OREGON
98 JAN 14 AM 11:29



MULTNOMAH COUNTY OREGON

BOARDS AND COMMISSIONS

INTEREST FORM FOR BOARDS AND COMMISSIONS

In order for the County Executive to more thoroughly assess the qualifications of persons interested in serving on a Multnomah County board or commission, you are requested to fill out this interest form as completely as possible. You are encouraged to attach or enclose supplemental information or a resume which further details your involvement in volunteer activities, public affairs, civic services, published writing, affiliations, etc.

- A. Please list, in order of priority, any Multnomah County boards/commissions on which you would be interested in serving. (See attached list)

DUII Task Force

- B. Name Frank Shields

Address 10932 SE Salmon St

City Portland State OR Zip 97216

Do you live in _____ unincorporated Multnomah County or ☒ a city within Multnomah County.

Home Phone 252-5956

- C. Current Employer Sunny-side-Centenary United Methodist Church

Address 3520 SE Yamhill

City Portland State OR Zip 97214

Your Job Title pastor

Work Phone 235-8726 (Ext) _____

Is your place of employment located in Multnomah County? Yes ☒ No _____

- D. Previous Employers _____ Dates _____ Job Title _____

Methodist Churches in the '70's

CONTACT: _____

E. Please list all current and past volunteer/civic activities.

Name of Organization	Dates	Responsibilities
Neighborhoods against Crime Chain (early '80s)		
Vol-in Homeless Shelter	1985-1995	

F. Please list all post-secondary school education.

Name of School	Dates	Degree/Course of Study
Slippery Rock State University	63-67	BS
Eastern Baptist Seminary	70-72	Master of Divinity
Drew University	72-81	Doctor of Ministries

G. Please list the name, address and telephone numbers of two people who may be contacted as references who know about your interests and qualifications to serve on a Multnomah County board/commission.

Rod Monroe	760-4310
Laura Mingo	235-8726

H. Please list potential conflicts of interest between private life and public service which might result from service on a board/commission.

None

I. Affirmative Action Information

M wh
sex / racial ethnic background

birth date: Month 3 Day 26 Year 45

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

Signature Frank Shields Date _____

MEETING DATE: February 5, 1998
AGENDA #: C-7
ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's use Only)

AGENDA PLACEMENT FORM

SUBJECT: IGA for PDC to Administer Regional Strategies Funding

BOARD BRIEFING:

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: Thursday, February 5, 1998

AMOUNT OF TIME NEEDED: 2 minutes

DEPARTMENT: Non-Departmental

DIVISION: Chair Beverly Stein

CONTACT: John Rakowitz

TELEPHONE #: 306-5797

BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: John Rakowitz

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Intergovernmental Agreement Between Multnomah and Washington Counties
and Portland Development Commission for PDC to Act as the
Administering Agency for Regional Strategies Funding Through August 31, 1998

2/5/98 ORIGINALS TO JOHN RAKOWITZ

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

Beverly Stein

(OR)

DEPARTMENT

MANAGER: _____

BOARD OF
COUNTY COMMISSIONERS
98 JAN 27 PM 4:42
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions? Call the Board Clerk @ 248-3277

SUPPLEMENTAL STAFF REPORT

TO: Board of County Commissioners

FROM: John Rakowitz, Chair's Office

DATE: January 28, 1998

RE: IGA for PDC to Administer Regional Strategies Fund

1. **Recommendation/Action Requested:**

The Board of County Commissioners is requested to renew and extend the expired Intergovernmental agreement providing for the continued legal existence, structure and authority of the Multnomah and Washington Counties Regional Strategies Board and the continued authority for the Portland Development Commission to act as the Regional Strategies Board's fiscal and administrative agent.

2. **Background/Analysis:**

The Regional Strategies Board administers funds from The State of Oregon's Regional Strategies and Rural Investment Funds. The Portland Development Commission (PDC) has acted as the fiscal and administrative agent for the Multnomah & Washington counties Regional Strategies Board since 1994. The legal authority for the Regional Strategies Board and PDC role was established in an Intergovernmental Agreement executed in 1994.

The action requested renews and modifies this IGA in the following manner:

- Reduces number of Board members from 12 to 10 equally among two counties
- Extends the effective date of the IGA to August 31, 1998
- Amends the amount of compensation for PDC to an amount not to exceed the adjusted State of Oregon allocation available for administration purposes
- Includes a provision for PDC to establish a reserve fund comprised of unexpended administrative funds and interest earnings from program funds

3. **Financial Impact:**

There is no financial impact upon the County. The associated State of Oregon economic development funds are distributed directly by the State of Oregon to Portland Development Commission.

4. Legal Issues:

There are no legal issues associated with the recommended action.

5. Controversial Issues:

None

6. Link to Current County Policies:

N.A.

7. Citizen Participation:

N.A.

8. Other Government Participation:

The Portland Development Commission has approved the renewed IGA and associated modifications. The Washington County Board of Commissioners is expected to approve the renewed IGA in the near future.

(See Administrative Procedure #2106)

Contract # 500948

Amendment #

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$25,000	<input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input checked="" type="checkbox"/> Intergovernmental Agreement APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # <u>C-7</u> DATE <u>2/5/98</u> <u>DEB BOGSTAD</u> BOARD CLERK

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

AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT
between
MULTNOMAH AND WASHINGTON COUNTIES
and
PORTLAND DEVELOPMENT COMMISSION

WHEREAS, on December 14, 1995, the Portland Development Commission (PDC), Multnomah County and Washington County entered in to the attached agreement for PDC to act as the administering agency for Regional Strategies; and

WHEREAS, the agreement provided that its provisions would be in effect from December 14, 1995 through June 30, 1997; and

WHEREAS, the agreement was amended July 10, 1997 by the attached amendment to provide that provisions of the original agreement and amendment would be in effect through August 31, 1997; and

WHEREAS, notwithstanding the above, PDC has continued to act as the administering agency for the Regional Strategy after the Strategy was prepared, but has not received any compensation beyond the amount agreed to in the July 10, 1997 amendment; and

WHEREAS, the agreement of July 10, 1997 expired on August 31, 1997; and

WHEREAS, the Region wishes to provide for the effective and efficient development and administration of a Regional Strategy in the Region through the designation of the PDC as the administering agency; and to compensate PDC work performed in administering the Regional Strategy under the previous original agreement and the previous July 10, 1997 amendment; and

WHEREAS, PDC is willing to be the administering agent of the Regional Board through August 31, 1998; now therefore

IT IS AGREED that the attached Intergovernmental Agreement and the associated amendment dated July 10, 1997 among PDC, Multnomah County and Washington County is amended as follows:

- A. Section 1, subsection (a), on page 2 is deleted and replaced by a new subsection (a) that reads, "The Regional Board for the Region shall consist of 10 members."
- B. Section 1 on page 2 of the original agreement and as amended by Section A of the July 10, 1997 amendment is further amended to delete the sentence reading "The terms of the members of the Board representing each County shall serve until August 31, 1997." and replaced by:

"The terms of the members of the Board representing each County shall serve until August 31, 1998."

- C. Section 3 on page 6 of the original agreement as amended by the addition of a subsection (d) by Section B of the July 10, 1997 amendment is further amended to include a new subsection (e) to read:

"Compensation to PDC from the State for its services during the period September 1, 1997 through August 31, 1998, as set forth in this Agreement, shall be an amount equal to the actual costs incurred by the PDC, but in no case more than \$76,583.

- D. Section 3 on page 6 of the original agreement is amended to include a new subsection (f) to read:

"On or before August 31, 1998 PDC shall establish a reserve account comprised of any of the \$76, 583 for compensation unexpended, and any interest earned on Regional Strategies and/or Rural Investment Fund monies received from the Oregon Economic Development Department during the 1997-1999 biennium."

- E. Section 4 on page 6 of the original agreement beginning with the words "This Agreement" and as amended by Section C of the July 10, 1997 amendment beginning with the words "This Agreement" is amended to read:

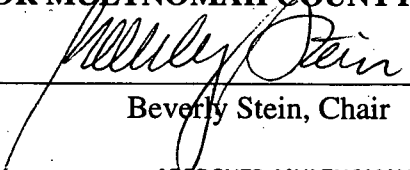
"This agreement shall commence upon execution by all parties and end August 31, 1998, unless earlier terminated as provided in this section."

IT IS FURTHER AGREED that , except as specifically amended herein, all provisions of the agreement shall remain in full force and effect as originally written.

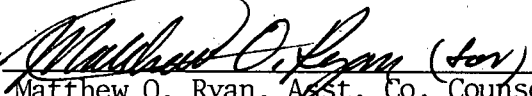
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed in their respective names by their duly authorized representatives.

DATED this 23th day of February, 1998.

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

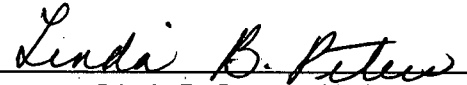

Beverly Stein, Chair

REVIEWED:
THOMAS SPONSLER, COUNTY COUNSEL
MULTNOMAH COUNTY, OREGON

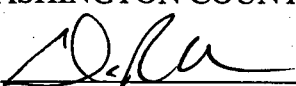
By  (for)
Matthew O. Ryan, Asst. Co. Counsel

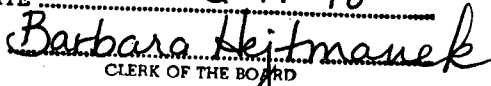
**APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS**
AGENDA # C-7 DATE 2/5/98
DEB BOGSTAD
BOARD CLERK

**BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON**

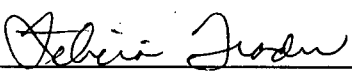

Linda B. Peters, Chair

REVIEWED:
DAN OLSEN, COUNTY COUNSEL
WASHINGTON COUNTY, OREGON

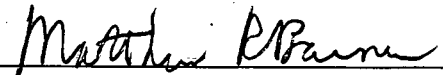
By 

**APPROVED WASHINGTON COUNTY
BOARD OF COMMISSIONERS**
MINUTE ORDER # 98-63
DATE 2-17-98
BY 
CLERK OF THE BOARD

PORTLAND DEVELOPMENT COMMISSION


Felicia Trader, Executive Director

REVIEWED:

By 
for Karen Williams, Legal Counsel

INTERGOVERNMENTAL AGREEMENT REGIONAL STRATEGIES

THIS AGREEMENT is made and entered into under the authority of ORS 190.010 by and between the Counties of Multnomah and Washington (herin referred to jointly as the "Region" or the Counties) and the Portland Development Commission (herein referred to as "PDC").

WITNESSETH

WHEREAS, ORS 285.630 to 285.650 as amended by Senate Bill 124 (1993) authorizes the Oregon Economic Development Department (OEDD) to designate two or more adjoining counties as a "Region" for the purposes of the OEDD's Regional Strategies Program; and

WHEREAS, ORS 285.650 as amended also authorizes the governing bodies of counties in a region to designate a Regional Strategy Board (Regional Board); and

WHEREAS, in accordance with the provisions of ORS 285.630 to 285.650 as amended, the OEDD has designated Multnomah and Washington Counties as a "Region"; and

WHEREAS, the counties and PDC previously entered into an agreement dated April 5, 1994, designating a Regional Strategies Board and designating the PDC as the administering agency for Regional Strategies; and

WHEREAS, the counties appointed representatives to the Regional Strategies Board and the Board prepared a Regional Strategy and Action Plan; and

WHEREAS, the agreement of April 5, 1994 authorized the PDC to be compensated in the amount of \$20,000 for assisting in preparing the 1993-95 Regional Strategy and Action Plan, but stated that, prior to October 1, 1994 the Region and PDC would review and discuss PDC's continuing as the administering agency for the Regional Strategy after the strategy was prepared, and if the counties agreed to PDC's continuing as the administrator, the Counties would negotiate a compensation with PDC; and

WHEREAS, the Counties and PDC did not review and discuss the PDC's continuing as the administering agency for the Regional Strategy by October 1, 1994 as called for in agreement of April 5 1994, and the Counties did not negotiate a compensation for those continuing services with PDC; and

WHEREAS, notwithstanding the above, PDC continued to act as the administering agency for the Regional Strategy after the Strategy was prepared, but has not received any compensation beyond the \$20,000 agreed to for preparing the Regional Strategy; and

WHEREAS, the agreement of April 5, 1994 expired on June 30, 1995; and

WHEREAS, the Region wishes to once again designate a Regional Strategies Board as called for in ORS 285.630 to 285.650 as amended; and

WHEREAS, the Region wishes to provide for the effective and efficient development and administration of a Regional Strategy in the Region through the designation of the PDC as the administering agency; and to compensate PDC work performed in administering the Regional Strategy under the previous agreement of April 5, 1994 and;

WHEREAS, PDC is willing to be the administering agency of the Regional Board;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, it is mutually agreed as follows:

TERMS AND CONDITIONS

1. Regional Strategies Board

- a. The Regional Board for the Region shall consist of 12 members.
- b. Each County in the Region shall appoint six (6) persons to the Regional Board. At a minimum, three (3) persons appointed by each County shall primarily represent the private economic sector, as defined in OAR 123-44-010. One (1) member appointed from each county shall be a representative of rural interests, including local government, as defined in OAR 123-45-010. Three (3) members appointed by each county shall serve until June 30, 1996. Three (3) members appointed by each County shall serve until June 30, 1997. Thereafter, each members term shall last for two (2) years. The three (3) members appointed by each county whose terms expire on June 30, 1996 shall be those persons initially appointed to serve until that date under the previous agreement of April 5, 1994. In the event of a vacancy on the Regional Board, the appointing County shall fill the vacancy within sixty (60) days.
- c. Each County shall designate a co-chair. The co-chairs shall serve for one (1) year and are eligible for reappointment. The co-chairs shall have the authority to call and preside over Regional Board meetings.
- d. Decisions of the Regional Board shall be by the vote of a quorum, which shall consist of a majority of the total members of the Regional Board, at any meeting of which all members were provided written notice. Each member shall have one (1) vote.
- e. The Regional Board may adopt bylaws for its operations. The bylaws may be amended by the vote of a quorum of the Regional Board. The

bylaws can provide for the creation of subcommittees that can act between meetings of the Regional Board. Subcommittees of the Regional Board may make recommendations regarding action to the full Board for consideration.

- f. The Regional Board shall be subject to the requirements of the Public Meetings Law, Public Records Law, and the Government Standards and Practices Laws of the State of Oregon. However, it is expressly understood that the Regional Board is not a separate legal entity, and is not authorized to enter into contracts or adopt a budget in accordance with Oregon Local Budget Law.
- g. The Regional Board shall meet regularly, but not less than four times a year. Special and emergency meetings and executive sessions may be called, upon notice as provided in the Public Meeting Law, by the co-chairs or by any three (3) members. As far as practicable, meeting shall be held alternately in Multnomah and Washington Counties.
- h. In carrying out its duties, the Regional Board shall:
 - 1) Develop the Region's Strategy and the Two-Year Action Plan (Action Plan) pursuant to ORS 285.630 to 285.655 and OAR 123-44-000 through 123-44-090, and Rural Action Plan pursuant to ORS 285.640 and OAR 123-45-000 through 123-44-090.
 - 2) In developing the Region's Strategy and the Action Plan, the Regional Board will undertake an analysis of the regional and sub-regional economies to identify regional and sub-regional need and programs to address those needs. As part of its work, the Regional Board will, at minimum, consider the following issues:
 - (a) Workforce development.
 - (b) Marketing and Business Recruitment.
 - (c) Business Retention.
 - (d) The use of performance measures to evaluate the effectiveness of the Region's strategy and programs.
 - 3) Submit the Strategy and Action Plan to the Boards of County Commissioners of the Counties for approval.
 - 4) Approve funding for all projects, activities, contracts, and amendments to contracts executed and administered by the PDC on behalf of the Region.

- 5) Modify the strategy if required by OEDD, the State Review Board or the Governor.
- 6) Refine the Strategy and recommend a two-year action plan in 1995 and 1997.
- 7) Develop criteria for awarding Regional Strategies funds to individual projects/activities pursuant to OAR 123-44-080.

2. PDC Services and Responsibilities

- a. PDC shall provide fiscal and administrative services to the Regional Board to perform its duties under this agreement consistent with ORS 285.630 to 285.651 and 285.655 and the Rules, including:
 - 1) Conduct research and other development work as necessary or requested by the Regional Board in preparation of the Regional Strategy.
 - 2) Prepare reports for the Region and the Regional Board, as requested.
 - 3) Under direction of the Regional Board, create committees and subcommittees to assist it in carrying out its duties under this Agreement.
 - 4) Draft and revise the Regional Strategy and Action Plans in accordance with the directions of the Regional Board.
 - 5) Provide reports and recommendations to the Regional Board on projects to be considered for funding from Regional Strategies funds.
 - 6) Establish and maintain public records of all Regional Strategies Program activities and proceedings. In the case of requests for disclosure of such public records, PDC shall determine which documents are to be released in its sole discretion after consultation with legal counsel and the Region.
 - 7) Contract with OEDD to receive all Regional Strategies Program funds allocated to the Region and account for all such funds in accordance with the conditions and terms imposed by OEDD in said contract and as provided in this Agreement.
 - 8) Prepare reports for the OEDD in accordance with the contract between PDC and the OEDD.
 - 9) Provide assistance to the Regional Board in advance of all public meetings including giving appropriate notice under the Public Meetings Law, taking

or providing for minutes of the meetings, providing agendas and other materials to members of the Regional Board.

- 10) Serve as the public relations contract for the Region and the Regional Board.
 - 11) Receive, distribute, and expend monies in accordance with the contract with OEDD, the applicable terms of this Agreement, and PDC's fiscal administrative system.
 - 12) Provide follow-up support to review strategy documents or to explain and defend strategy recommendations to the OEDD.
 - 13) Implement the policies and procedures of the Regional Board in the solicitation and award of funds from the Regional Strategy Fund.
 - 14) Draft application forms and develop standards for review of applications from potential recipients of Regional Strategies Funds, in accordance with directions provided by the Regional Strategies Board.
 - 15) Review applications and provide reports and recommendations pursuant to the review standards of the Regional Board on projects to be considered for funding Regional Strategies Funds.
 - 16) Draft appropriate documents to evidence awards from Regional Strategies Funds.
 - 17) Monitor recipients of Regional Strategies Funds for compliance with contract terms. Recommend actions to the Regional Board in the event of default by recipients.
 - 18) Disburse Regional Strategies Funds to recipients in accordance with contracts.
- b. PDC shall provide a quarterly financial report to the Regional Board and the two Counties, setting forth all Regional Strategy revenues received and expenditures made and such other financial information as may be relevant. At the end of the fiscal year, the PDC shall provide a report to the Board and the Region concerning the fiscal condition of the Regional Strategy Program in the Region during the preceding year.
- c. PDC agrees that, at the sole discretion of each County, a County, upon reasonable request, shall have access to PDC's records related to the PDC's financial

administration of Regional Strategy funds including all books, documents, and other information maintained in said records. PDC shall maintain all records related to this agreement for a minimum of three years after the termination of this Agreement.

- d. PDC shall have authority to enter and administer contracts for outside services necessary to its performance under this Agreement.
- e. PDC shall provide legal assistance to the Regional Board to assist the Board in the performance of their official duties pursuant to this Agreement.
- f. All PDC services provided by this Agreement to the Region shall be provided using PDC administrative rules and according to PDC policies and practices, except as specifically stated to the contrary in this Agreement. As an example, PDC will use its Public Contracting Rules to secure the services of consultants to assist in preparing the Regional Strategy.

3. Compensation to PDC

- a. All compensation to PDC for its services under this Agreement shall be as provided in a separate Agreement between PDC and the OEDD. Neither County shall be deemed to have incurred any obligation to compensate PDC for its services under this agreement.
- b. Compensation to PDC for services performed during the 1993-95 Biennium as described in the previous agreement dated April 5, 1994, but for which PDC has not yet received any compensation, shall be \$87,243. This represents the actual cost of providing those services.
- c. Compensation to PDC from the state for its services during the 1995-97 Biennium, as set forth in this Agreement, shall be an amount equal to the actual costs incurred by the PDC, but in no case more than \$150,000.

4. Duration and Termination

- a. This Agreement shall commence upon execution by all parties and end June 30, 1997, unless earlier terminated as provided in this section.
- b. Either County may terminate this Agreement upon thirty (30) days written notice to the other County and to the PDC.

- c. The PDC may terminate this Agreement upon thirty (30) days written notice to both Counties.
- d. PDC rights and responsibilities regarding compensation upon early termination are controlled by the agreement between PDC and OEDD.
- e. PDC shall account for all Regional Strategy Funds in its possession upon notice of termination as provided above, in a manner consistent with the agreement between PDC and the OEDD. Upon early termination, the Regional Board, shall provide direction to PDC regarding disposition of Regional Strategies Funds in PDC's possession not otherwise provided for by the PDC-OEDD Agreement. PDC shall comply with any such directives of the Regional Board.

5. Amendment

This Agreement may be amended by modification in writing by all parties.

6. Effective Date

This Agreement shall become effective when it has been signed by the authorized representative of each party.

7. Compliance with Laws

In connection with its activities under this Agreement, PDC shall comply with all applicable federal, state, and local laws and regulations.

8. Oregon Law and Forum

This Agreement shall be construed according to the law of the State of Oregon. Any litigation between the Counties and the PDC arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

9. Indemnification

Subject to the limitations and conditions of the Oregon Constitution and statutes, each party to this Agreement shall be solely responsible for any loss or injury caused to non-party's or its employees', officers', or agents' acts or omissions under this Agreement and further each party to this Agreement shall defend hold harmless and indemnify the other

parties to this Agreement with respect to any claim, litigation, or liability arising out of the acts or omissions of such party or its employees, officers, and agents under this Agreement.

10. Workers' Compensation Insurance

The PDC, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation insurance coverage for all their subject workers. the PDC further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

11. Subcontracting

The PDC shall require any subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the PDC as specified in this Agreement. The PDC shall remain obligated for full performance hereunder, and the Region shall incur no obligations, other than its obligations to the PDC hereunder. PDC agrees that if subcontractors are employed in the performance of this Agreement, PDC and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

12. Assignment

The PDC shall not assign this Agreement, in whole or in part, or any right or obligation here under, without the prior written approval of the Counties.

13. Independent Contractors

- a. The PDC is engaged as an independent contractor and will be responsible for any federal, state, and local taxes and fees applicable to payments hereunder.
- b. The PDC, its subcontractors, and their employees, are not employees of either County and are not eligible for any not eligible for any benefits through the Counties, including without limitation federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

14. Breach of Agreement

- a. The Counties or each of them or the PDC shall breach this Agreement if it fails to perform any substantial obligation under the Agreement, except as provided in subsection b. of this section.
- b. Neither the Counties nor the PDC shall have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state, or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. Should either the Counties or the PDC fail to perform because of a cause described in this subsection, the Counties and the PDC shall make a mutually-acceptable revision to this Agreement.

15. Ownership of Documents

- a. All work the PDC performs under this Agreement shall be considered work made for hire, and shall be the property of the Region. The Region shall own any and all data, documents, plans, copyrights, specifications, working papers, and any other materials the PDC produces in connection with this Agreement. On completion or termination of the Agreement, the PDC shall deliver these materials to the County governing bodies of the Region.

16. Severability

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.

17. Integration

This Agreement contains the entire agreement between the Region and the PDC and supersedes all prior written and oral discussion or agreements.

18. Nonwaiver

The Counties and the PDC shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express waiver

as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

19. Payments to Vendors and Subcontractors

The PDC shall pay timely all suppliers, lessors, and contractors providing it services, materials, or equipment for carrying out its obligations under this Agreement. The PDC shall not take or fail to take any action in a manner that causes the Region or any materials that the PDC provides hereunder to be subject to any claim or lien of any person without the Region's prior written consent.

20. Nondiscrimination

No person shall be subjected to discrimination in receipt of the benefits of any services or activities made by or resulting from this AGREEMENT on the grounds of sex, race, color, creed, marital status, age or national origin. Any violation of this provision will be considered a material violation of this AGREEMENT and shall be grounds for cancellation, termination or suspension in whole or in part.

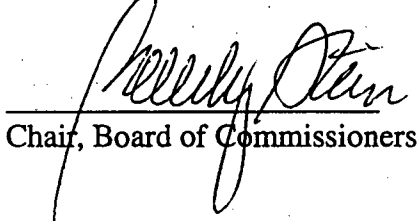
21. Multnomah County designates the Chair of the Board of County Commissioners and Washington County designates the County Administrator to be the official contracts for each County regarding notice to the Counties or any other action pursuant to this Agreement which requires the Consent of the Counties.

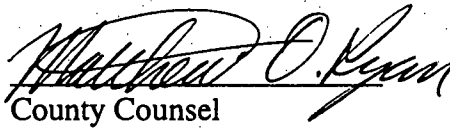
SUBSCRIBED TO AND ENTERED INTO by the appropriate officer(s) who are duly authorized to execute this Agreement on behalf of each party.

DATED this 14th day of December 1995.

MULTNOMAH COUNTY

REVIEWED BY:


Chair, Board of Commissioners

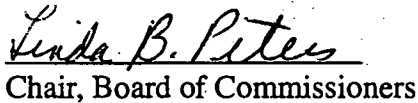

County Counsel

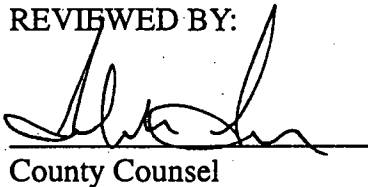
DATED this 14th day of December 1995.

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-6 DATE 12/14/95
DEB BOGSTAD
BOARD CLERK

WASHINGTON COUNTY

REVIEWED BY:


Chair, Board of Commissioners

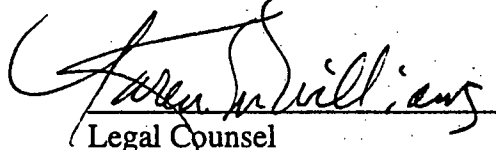

County Counsel

DATED this 12th day of December 1995.

PORTLAND DEVELOPMENT COMMISSION

REVIEWED BY:


Executive Director


Legal Counsel

APPROVED WASHINGTON COUNTY
BOARD OF COMMISSIONERS
MINUTE ORDER # 95-552
DATE 12/5/95
BY Quinn Divergood
CLERK OF THE BOARD

AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT
between
MULTNOMAH AND WASHINGTON COUNTIES
and
PORTLAND DEVELOPMENT COMMISSION

WHEREAS, on December 14, 1995, the Portland Development Commission (PDC), Multnomah County and Washington County entered into the attached agreement for PDC to act as the administering agency for Regional Strategies; and

WHEREAS, the agreement provided that its provisions would be in effect from December 14, 1995 through June 30, 1997; and

WHEREAS, PDC is willing to be the administering agent of the Regional Board through August 31, 1997; now therefore

IT IS AGREED that Intergovernmental Agreement 500466 between PDC, Multnomah County and Washington County is amended as follows:

- A. Section 1 on page 2 is amended to delete the remainder of the portion of subsection (b) beginning with the sentence reading "Three (3) members appointed by each County . . ." and replaced by:

"The terms of the members of the Board representing each County shall serve until August 31, 1997."

- B. Section 3 on page 6 is amended to include a subsection (d) to read:

"Compensation to PDC from the State for its services during the period July 1, 1997 through August 31, 1997, as set forth in this Agreement, shall be an amount equal to the actual costs incurred by the PDC, but in no case more than \$17,500."

- C. Section 4 on page 6 beginning with the words "This Agreement" is amended to read:

"This Agreement shall commence upon execution by all parties and end August 31, 1997, unless earlier terminated as provided in this section."

IT IS FURTHER AGREED that, except as specifically amended herein, all provisions of the agreement shall remain in full force and effect as originally written.

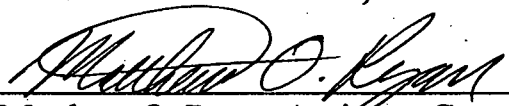
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed in their respective names by their duly authorized representatives.

DATED this 10th day of July, 1997.

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


Beverly Stein, Chair

REVIEWED:
THOMAS SPONSLER, COUNTY COUNSEL
MULTNOMAH COUNTY, OREGON

By 
Matthew O. Ryan, Assistant County Counsel

APPROVED WASHINGTON COUNTY
BOARD OF COMMISSIONERS

MINUTE ORDER # 97-272

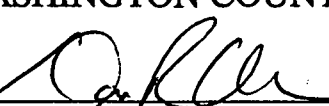
DATE 6-24-97

BY 
CLERK OF THE BOARD

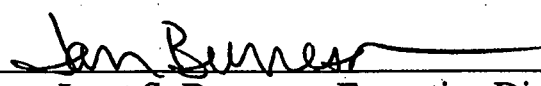
**BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON**


Linda B. Peters, Chair

REVIEWED:
DAN OLSEN, COUNTY COUNSEL
WASHINGTON COUNTY, OREGON

By 

PORTLAND DEVELOPMENT COMMISSION


Janet S. Bureson, Executive Director

REVIEWED:

By 
Karen Williams, Legal Counsel

MEETING DATE: FEB 05 1998
AGENDA NO: C-8
ESTIMATED START TIME: 9:30 Am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Director Custody Holds per ORS 426.215

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

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

DEPARTMENT: Community & Family Services DIVISION: Behavioral Health

CONTACT: Cathy Horey TELEPHONE #: 248-5464 Ext 24447
BLDG/ROOM #: 166/6

PERSON(S) MAKING PRESENTATION: Consent Calendar

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

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

2/5/98 copy to Cathy Horey

SIGNATURES REQUIRED:

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

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 22 PM 4:10

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

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

)
)
)
)
ORDER
98-13

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

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

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

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

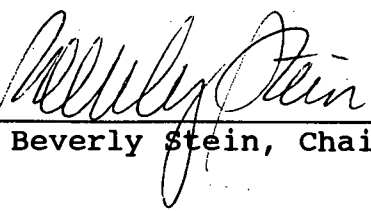
Added to the list of designees are:

Jennifer Crawford
Mark Soine
Christine de Kalbermatten Neston
Christine Garner
Mark Humpal



this 5th of February, 1998

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair,

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By 
Katie Gaetjens, Assistant County Counsel

MEETING DATE: FEB 05 1998
AGENDA NO: C-9
ESTIMATED START TIME: 9:30 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: _____

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

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

DEPARTMENT: Community & Family Services DIVISION:

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

PERSON(S) MAKING PRESENTATION: Consent

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Contract to purchase follow-up interviews and related data services for Target Cities evaluation.

2/5/98 originals to Jo Stoesberg

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT

MANAGER: _____

Lorenzo Poe

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 27 AM 11:42

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



MULTNOMAH COUNTY OREGON

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

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

TO: Beverly Stein, Multnomah County Chair

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

DATE: December 22, 1997

SUBJECT: Intergovernmental Agreement between the Department of Community and Family Services and the Oregon Survey Research Laboratory

- I. **Retroactive Status:** The Department of Community and Family Services is recommending that services for Oregon Survey Research Laboratory is retroactive to September 1, 1997. This date reflects the date they began follow-up interviews for the Target cities evaluation. Delays in contract processing were caused by negotiation of contract terms.
- II. **Recommendation Action Requested:** The Department of Community and Family Services recommends that Board of county Commissioner approval of the attached contract with Oregon Survey Research Laboratory for the period of September 1, 1997 through June 30, 1998.
- III. **Background/Analysis:** The Department of Community and Family Services is contracting with Oregon Survey Research Laboratory to purchase follow-up interviews and related dated services for the Target Cities evaluation. The funds come from the Target Cities Federal Grant.
- IV. **Financial Impact:** Funds for this contract are included in the Departmental budget. The total funding for this contract is \$152,425. This contract is for a period of ten months. The contract is covered under RFP #P952-06-0063 for Target Cities evaluation services, dated 4/95.
- V. **Legal Issues:** None.
- VI. **Controversial Issues:** None.
- VII. **Link to Current County Policies:** It directly linked to the benchmark of improving Government Accountability by utilizing data to look at results-oriented performance measures.
- VIII. **Client Participation:** None.
- IX. **Other Government Participation:** None.

S:\ADMIN\CEU\CONT98\OSRL98.BRM

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☒ [X]

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

Contract # **101888**

Amendment # 0

<p style="text-align: center;">CLASS I</p> <p><input type="checkbox"/> Professional Services under \$50,000</p> <p><input type="checkbox"/> Intergovernmental Agreement Under \$25,000</p>	<p style="text-align: center;">CLASS II</p> <p><input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCRB Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS III</p> <p><input checked="" type="checkbox"/> Intergovernmental Agreement</p> <p><input type="checkbox"/> Intergovernmental Revenue Agreement</p> <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p>AGENDA # <u>C-9</u> DATE <u>2/5/98</u></p> <p style="text-align: center;">DEB BOGSTAD</p> <p style="text-align: center;">BOARD CLERK</p>
---	--	---

Department: Community & Family Services

Administrative Contact: Jo Storsberg

Description of Contract:

Division: _____

Phone: 248-3691 ext. 33321

2231

Date: January 2, 1998

Bldg/Room 166/7th

This contract purchases follow-up interviews and related data services for Target Cities evaluation.

RFP/BID #: P952-06-0063

Date of RFP/BID: 4/95

Exemption Expiration Date: _____

ORS/AR # _____ Contractor is ☐ MBE ☐ WBE ☐ QRF ☐ JN/A ☐ None

Original Contract No. 123016 (Only for Original Renewals)

<p>Contractor Name: Oregon Survey Research Laboratory</p> <p>Mailing Address: Riverfront Research Park 5245 University of Oregon Eugene, OR 97403</p> <p>Phone: (503) 346-0824</p> <p>Employer ID# or SS#: 93-6001786</p> <p>Effective Date: September 1, 1997</p> <p>Termination Date: June 30, 1998</p> <p>Original Contract Amount: \$ _____</p> <p>Total Amt. of Previous Amendments: \$ _____</p> <p>Amount of Amendment: \$ _____</p> <p>Total Amount of Agreement: \$ 152,425.</p>	<p>Remittance Address (if different) <u>University of Oregon</u></p> <p>Attn: <u>Cashiers, PO Box 3237, Eugene, OR 97403</u></p> <p>Payment Schedule _____ Terms _____</p> <p><input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt</p> <p><input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30</p> <p><input checked="" type="checkbox"/> Other \$ <u>Per Invoice</u> <input type="checkbox"/> Other</p> <p><input type="checkbox"/> Requirements contract - Requisition Required</p> <p>Purchase Order No. _____</p> <p><input type="checkbox"/> Requirements Not to Exceed \$ _____</p> <p>Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></p>
--	--

REQUIRED SIGNATURES:

Department Manager: *Lorenzo Paez*

Date: 1/16/98

Purchasing Director: _____

Date: _____

(Class II Contracts Only) *Katie Gatzert*

County Counsel: _____

Date: 1/18/98

County Chair/Sheriff: *Marilyn Dean*

Date: 2/5/98

Contract Administration: _____

Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE: CS1746C				VENDOR NAME: Oregon Survey Rsch Lab				TOTAL AMOUNT: \$ 152,425.			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	Inc/Dec Ind.
									See Attached		

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

COMMUNITY AND FAMILY SERVICES DEPARTMENT
CONTRACT APPROVAL FORM SUPPLEMENT
Contractor : OREGON SURVEY RESEARCH LABORATORY

Page 1 of 1
12/22/97

Vendor Code : CS1746C

Fiscal Year : 97/98

Numeric Amendment : 00

Contract Number : 101888

LINE	FUND	AGEN	ORG CODE	ACTIVIY CODE	OBJECT CODE	REPORTING CATEGORY	LGFS DESCRIPTION	ORIGINAL AMOUNT	AMENDMENT AMOUNT	FINAL AMOUNT	REQT'S ESTIMATE
01	156	010	1671	A19E	6060	9115F 93.196	A&D Target City Evaluation A&D Target Cities Evaluation	\$152,425.00		\$152,425.00	
TOTAL								\$152,425.00	\$0.00	\$152,425.00	\$0.00

INTERGOVERNMENTAL AGREEMENT

#101888

THIS CONTRACT is between MULTNOMAH COUNTY, acting by and through its Department of Community and Family Services, hereafter called COUNTY, and

Oregon Survey Research Laboratory
Riverfront Research Park
5245 University of Oregon
Eugene, Oregon 97403

hereafter called CONTRACTOR.

THE PARTIES AGREE:

1. **DESCRIPTION OF SERVICES.** CONTRACTOR will provide follow-up interviews and related data services for the Target Cities evaluation in accordance with the Request for Proposal #P952-06-0063, dated 4/95, regarding these services, the CONTRACTOR's response, and the following requirements:

A. CONTRACTOR will participate in a two-day orientation to the program context, the evaluation design, the instrument, the population and the contract.

B. CONTRACTOR will conduct 6 and 12 month interviews with clients initially screened and selected by Target Cities evaluation staff. CONTRACTOR will interview and provide data for a minimum of 390 clients and a maximum of 455 clients at each of the 6 and 12 month interview occasions, on the following timelines:

<u>Cohort Groups</u>	<u>Interview Occasion</u>	<u>Time Frame for Interviews</u>
2 nd Cohort	6 month	September 1997 (begins)
(n=390 to 455)	12 month	March 1998 (begins)

The interview instrument will use the follow-up Addiction Severity Index (ASI) embedded in the Multnomah Clinical Assessment (MCA), and the client services summary. The questions will be in a comparable format with the initial MCA assessment and the assessment of the baseline cohort. The CONTRACTOR may, however, coordinate with Target Cities evaluation staff in arranging the questions to best meet interviewer needs without compromising comparable format.

The interviewees are expected to be approached for the follow-up interview in roughly the order in which they were originally assessed in order to equalize the interval between the initial and follow-up contacts.

C. CONTRACTOR will perform data functions for each interview, including: data entry of interviews; and descriptive data runs, as required by Target Cities evaluation staff.

D. CONTRACTOR will provide interview data in electronically transferable form to Target Cities Evaluation Project.

2. **COMPENSATION:** County will pay Contractor up to \$152,425. Rate includes 26% indirect charge on interview fee (\$100); 26% indirect charge on interviewee payment (\$25); and 10% administrative fee on interview fee (\$100). Interviews will be compensated at:

A. A maximum of \$76,212.50 for the first occasion starting September 1, 1997. Contractor will be paid \$167.50 per completed interview for 455 total interviews. \$167.50 per interview is \$31.50 (\$25 interviewee payment + \$6.50 indirect cost) for interviewee payment and \$136 (\$100 interview fee + \$26 indirect cost + \$10 administration fee) for interview fee.

B. A maximum of \$76,212.50 for the second occasion starting March 1998. Contractor will be paid \$167.50 per completed interview for 455 total interviews. \$167.50 per interview is \$31.50 (\$25 interviewee payment + \$6.50 indirect cost) for interviewee payment and \$136 (\$100 interview fee + \$26 indirect cost + \$10 administration fee) for interview fee.

C. **CONTRACTOR** will receive the following payments for each of the two occasions (September 1997 and March 1998):

1. Advance, upon invoice by Contractor, prior to the beginning of each occasion:

• \$31.50 x 455 subjects for interviewee payment	\$14,332.50
• 1/3 of interview fee*	\$20,626.00
• Total Advance	\$34,958.50

[* Interview fee figured as: \$136 (\$100 interview fee + \$26 indirect costs + \$10 administration fee) x 455 interviews = \$61,880 divided by 3 payments = \$20,626].

2. **CONTRACTOR** will receive the second 1/3 of administrative fee of \$20,627 upon invoice by **CONTRACTOR**, after 250 interviews are completed.

3. **CONTRACTOR** will be paid the final 1/3 of interview fee of \$20,627 upon invoice by **CONTRACTOR**, anytime after 455 interviews are completed or, due to client availability, the maximum number of interviews for each interview occasion are completed, reconciling for advances.

4. Invoices from **CONTRACTOR** shall include number of interviews, fee per interview, and total balance due. Invoices will be dated and signed by the agency signature authority.

3. **TERM.** The **CONTRACTOR'S** services will begin on September 1, 1997 and terminate when completed but no later than June 30, 1998.

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

MULTNOMAH COUNTY, OREGON

OREGON SURVEY RESEARCH LABORATORY

BY *Lolenz Poems* 11/6/98
Director, Department of Date
Community & Family Services

BY _____ Date
TITLE

BY *Beverly Stein* 2/5/98
Beverly Stein, Date
Multnomah County Chair

BY _____ Date
TITLE

REVIEWED:

THOMAS SPONSLER, County Counsel
for Multnomah County, Oregon

By *Katie Gaetjens* 1/28/98
Katie Gaetjens, Asst. Co. Date
Counsel

APPROVED AS TO FORM:

CONTRACTOR ATTORNEY (If Applicable)

By _____ Date

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-9 DATE 2/5/98
DEB BOGSTAD
BOARD CLERK

MULTNOMAH COUNTY CONTRACT NO. 101888
PART B: CONDITIONS OF INTERGOVERNMENTAL CONTRACT

The attached contract for services between Multnomah County, herein "COUNTY", and Oregon Survey Research Laboratory, 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 of insurance coverage showing compliance with this section.

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 thirty (30) 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.

CONTRACT FOR SERVICES
MULTNOMAH COUNTY COMMUNITY AND FAMILY SERVICES DEPARTMENT

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

Contractor Name : OREGON SURVEY RESEARCH LABORATORY Contractor Address : RIVERFRONT RESEARCH PARK 5245 UNIVERSITY OF OREGON EUGENE OR 97403-5245	Vendor Code: CS1746C
Telephone : 234-2395	Fiscal Year : 97/98 Federal ID # : 93-6001786

Program Office Name : DBH Local Management

Service Element Name : A&D Target Cities Evaluation (A19E); Follow-Up Evaluations

<u>Mod. #</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Payment Method</u>	<u>Payment Basis</u>	<u># of Units</u>	<u>Unit Description</u>	<u>Unit Rate</u>	<u>Amount</u>
0	9/1/97	6/30/98	Per Invoice	Fee for Service	910.00	Interviews	167.50	\$152,425.00
Total					910.00			\$152,425.00

MEETING DATE: FEB 05 1998
AGENDA NO: C-10
ESTIMATED START TIME: 9:30am

(Above space for Board Clerk's Use Only)
AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement with Oregon Health Science University Hospital to fund out-patient psychiatric services for children and adults who are members of CAAPCare.

BOARD BRIEFING

Date Requested: _____
Requested By: _____
Amount of Time Needed: 5 minutes

REGULAR MEETING

Date Requested: Next available
Amount of Time Needed: Consent

DEPARTMENT: Community and Family Services
CONTACT: Lorenzo Poe/Bill Thomas

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

PERSON(S) MAKING PRESENTATION: Lorenzo Poe/Bill Thomas

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE

Interagency Agreement with OHSU University Hospital psychiatric out-patient services for children and adults who are members of the MHO CAAPCare.

2/5/98 ORIGINALS to Irene Finley

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR
DEPARTMENT MANAGER: Lorenzo Poe mas

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 23 PM 4:27

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



MULTNOMAH COUNTY OREGON

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

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

TO: Board of County Commissioners

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

DATE: January 9, 1998

SUBJECT: FY 97-98 Contract for Capitation Services

I. Recommendation/Action Requested: The Department of Community and Family Services recommends Board of County Commissioner approval of CAAPCare contracts with the Department of Veteran's Affairs Medical Center and the Oregon Health Sciences University for the period January 1, 1998 through June 30, 1998.

II. Background/Analysis: Effective November 1, 1997, Multnomah County entered into an Intergovernmental Agreement with the State of Oregon Mental Health and Developmental Disability Services Division to provide capitated mental health services for children and adults as a Mental Health Organization (MHO) within the Oregon Health Plan Medicaid Demonstration project. An RFPQ process has been completed through which subcontractors have been selected to provide capitated child and adult mental health services.

III. Financial Impact: Effective November 1, 1997, State Medicaid funds for child and adult mental health services come to the County on a capitated rate per month, per eligible member enrolled in the County's plan.

IV. Legal Issues: None

V. Controversial Issues: None

VI. Link to Current County Policies: This agreement addresses the County benchmark to increase access to mental health services.

VII. Citizen Participation: N/A

VIII. Other Government Participation: None

caapiga.mem

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☐

Contract #103208

Prior-Approved Contract Boilerplate: Attached; xx Not Attached

Amendment #0

<p style="text-align: center;">CLASS I</p> <p><input type="checkbox"/> Professional Services under \$50,000</p> <p><input type="checkbox"/> Intergovernmental Agreement Under \$25,000</p>	<p style="text-align: center;">CLASS II</p> <p><input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCRB Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS III</p> <p><input type="checkbox"/> Intergovernmental Agreement over \$25,000</p> <p><input checked="" type="checkbox"/> Intergovernmental Revenue Agreement</p> <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p>AGENDA # <u>C-10</u> DATE <u>2/5/98</u></p> <p style="text-align: center;"><u>DEB BOGSTAD</u></p> <p style="text-align: center;">BOARD CLERK</p>
---	--	--

Department: Community & Family Services

Division: CEU

Date: January 12, 1998

Administrative Contact: Irene Finley

Phone: 248-3691 ext 26296

Bldg/Room 166/7th

Description of Contract:

Interagency Agreement Establishes CAAPCare Adult and/or Children's mental health services per RFPQ #R952-62-0313.

RFP/BID #: RFPQ R952-62-0313

Date of RFP/BID: _____

Exemption Expiration Date: 12/31/02

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

Original Contract No. _____ (Only for Original Renewals)

<p>Contractor Name: Oregon Health Science University</p> <p>Mailing Address: 3181 SW Sam Jackson Park Road Portland OR 97201</p> <p>Phone: (503) 494-4854</p> <p>Employer ID# or SS#: 93-1176109</p> <p>Effective Date: January 1, 1998</p> <p>Termination Date: June 30, 1998</p> <p>Original Contract Amount: \$ Requirements</p> <p>Total Amt of Previous Amendments: \$-0-</p> <p>Amount of Amendment: \$ Requirements</p> <p>Total Amount of Agreement: \$ Requirements</p>	<p>Remittance Address (if different) _____</p> <table style="width:100%;"> <tr> <td style="text-align: center;">Payment Schedule</td> <td style="text-align: center;">Terms</td> </tr> <tr> <td><input type="checkbox"/> Lump Sum \$ _____</td> <td><input type="checkbox"/> Due on Receipt</td> </tr> <tr> <td><input type="checkbox"/> Monthly \$ _____</td> <td><input type="checkbox"/> Net 30</td> </tr> <tr> <td><input checked="" type="checkbox"/> Other \$ <u>Per Invoice</u></td> <td><input type="checkbox"/> Other</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Requirements contract - Requisition Required</td> </tr> <tr> <td colspan="2">Purchase Order No. _____</td> </tr> <tr> <td colspan="2"><input checked="" type="checkbox"/> Requirements Not to Exceed \$ <u>see attached</u></td> </tr> <tr> <td colspan="2">Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></td> </tr> </table>	Payment Schedule	Terms	<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt	<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30	<input checked="" type="checkbox"/> Other \$ <u>Per Invoice</u>	<input type="checkbox"/> Other	<input type="checkbox"/> Requirements contract - Requisition Required		Purchase Order No. _____		<input checked="" type="checkbox"/> Requirements Not to Exceed \$ <u>see attached</u>		Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>	
Payment Schedule	Terms																
<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt																
<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30																
<input checked="" type="checkbox"/> Other \$ <u>Per Invoice</u>	<input type="checkbox"/> Other																
<input type="checkbox"/> Requirements contract - Requisition Required																	
Purchase Order No. _____																	
<input checked="" type="checkbox"/> Requirements Not to Exceed \$ <u>see attached</u>																	
Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>																	

REQUIRED SIGNATURES:

Department Manager: *Lorenzo Poe*

Date: 1/20/98

Purchasing Director:

Date: _____

(Class II Contracts Only)

County Counsel: *Katie Dait*

Date: 1/23/98

County Chair/Sheriff: *Melvin Stein*

Date: 2/5/98

Contract Administration:

Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE CAAP122				VENDOR NAME Oregon Health Science Center				TOTAL AMOUNT: \$ Requirements			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	Inc/Dec Ind.
									See attached		

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

DISTRIBUTION: Contracts Administration, Initiator, Finance

COMMUNITY AND FAMILY SERVICES DEPARTMENT
CONTRACT APPROVAL FORM SUPPLEMENT

Contractor : OHSU-OREGON HEALTH SCIENCES UNIVERSITY

Vendor Code : CAAP122

Fiscal Year : 97/98

Numeric Amendment : 00

Contract Number : 103208

Page 1 of 1
1/12/98

LINE	FUND	AGEN	ORG CODE	ACTIVI CODE	OBJECT CODE	REPORTING CATEGORY	LGFS DESCRIPTION	ORIGINAL AMOUNT	AMENDMENT AMOUNT	FINAL AMOUNT	REQT'S ESTIMATE
58	395	010	1662	K11X	6060	9001X <input type="text"/>	AMH SMHD Capitated Outpatient Services	Requirements		Requirement	\$300,000.00
59	395	010	1662	K11X	6060	9080A <input type="text"/>	AMH Mixed SMH/CGF Funds Capitated Outpatient Services	Requirements		Requirement	\$300,000.00
55	395	010	1662	K11X	6060	9601X <input type="text"/>	MH XIX Capitation Capitated Outpatient Services	Requirements		Requirement	\$300,000.00
57	395	010	1662	K11X	6060	9999L <input type="text"/>	County General Fund Capitated Outpatient Services	Requirements		Requirement	\$300,000.00
54	395	010	1663	K11X	6060	9323X <input type="text"/>	CMH SMHD Capitated Outpatient Services	Requirements		Requirement	\$300,000.00
51	395	010	1663	K11X	6060	9601X <input type="text"/>	MH XIX Capitation Capitated Outpatient Services	Requirements		Requirement	\$30,000.00
53	395	010	1663	K11X	6060	9699L <input type="text"/>	CC/CCPlus Capitated Outpatient Services	Requirements		Requirement	\$300,000.00
TOTAL								\$0.00	\$0.00	\$0.00	\$1,830,000.00

CONTRACT FOR SERVICES #103208
MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

TERM OF CONTRACT:	From January 1, 1998	To June 30, 1998
CONTRACTOR NAME:	Oregon Health Science University	TELEPHONE: (503) 494-4854
CONTRACTOR ADDRESS:	3181 SW Sam Jackson Park Road	IRS NUMBER: 93-1176109
	Portland, Oregon 97201	

This contract is between Department of Community and Family Services, acting on behalf of Multnomah County, a political subdivision of the State of Oregon, hereinafter referred to as "COUNTY", and Oregon Health Science University, hereinafter referred to as "CONTRACTOR".

This contract contains the following documents, which are herein incorporated by reference:

Part A	Statement of Work	Pages A1-A5
Attachment A	Service Elements and Contract Amounts	Attachment A, Page 1
Part B	General Conditions	Pages B1-B11
Part C	Program General Conditions	Pages C1-C8
Part D	Certifications Pages	Pages D1-D8

PART A. STATEMENT OF WORK

1. Services

Effective November 1, 1997, the COUNTY was awarded by the State Mental Health and Developmental Disability Services Division a contract as a Mental Health Organization for pre-paid mental health services provided to children, adults and geriatric clients living in Multnomah County. The Agreement, hereinafter referred to as the State MHO Agreement, is a component of the Oregon Health Plan (OHP) Medicaid Demonstration Project. The State MHO Agreement serves as the primary guideline for any contract relationships for mental health services with the COUNTY capitated mental health program, Multnomah County CAAPCare (Child, Adolescent and Adult Plan), hereinafter referred to as "CAAPCare." CONTRACTOR agrees to provide mental health services in accordance with the State MHO Agreement, which is attached and hereby incorporated in this Contract, including any subsequent revisions of the above referenced document. Applicable sections of the MHO Agreement include: a) Part VII, Statement of Work; b) Part XXIV, Non-Discrimination; c) Part XXVII, Professional Liability Insurance; d) Part XXVIII, Tort Claims; e) Part XXIX, Compliance with State Laws; f) Part XXX, Workers Compensation Coverage; g) Part XXXI, Additional Federal Requirements; or any other provision of the MHO Agreement that impose requirements upon the COUNTY for any activities being contracted under this Agreement.

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

A. CAAPCare/CAAPCare Plus Services

CONTRACTOR agrees to provide medically appropriate mental health services as described in the Multnomah CAAPCare Provider Manual, herein incorporated by reference and hereinafter referred to as the PROVIDER MANUAL, including any subsequent revisions to the PROVIDER MANUAL during the term of this agreement. CONTRACTOR agrees to provide services as summarized below and detailed in Attachment A: Service Elements and Contract Amounts. COUNTY agrees to reimburse CONTRACTOR for providing Title XIX-funded and/or non-Medicaid funded services under the payment terms and up to the amounts specified in Attachment A.

CONTRACTOR must have a State Certificate of Approval to provide these services.

As applicable, CONTRACTOR agrees to provide specialty services from Title XIX-funded and/or non-Medicaid funding source(s) as summarized below and detailed in Attachment A under the same Service Element name. All service standards and instructions that apply to services provided to CAAPCare clients, also apply to authorized specialty services.

B. Title XIX Open Card Services

As applicable, CONTRACTOR agrees to also provide Title XIX services within the service element(s) marked **State Payment** in Attachment A. For these Title XIX services, CONTRACTOR certifies that it is and agrees to maintain its Performing Provider Status under OAR 309-16-0000 through 0230 through the term of this Contract. All funds identified **State Payment** are disbursed by the Oregon Office of Medical Assistance Programs (OMAP).

BEHAVIORIAL HEALTH SERVICES	SERVICE DESCRIPTION (PROCUREMENT)
Children's Mental Health Services	Capitated Outpatient Services (R952-62-0313)
Adult Mental Health Services	Capitated Outpatient Services (R952-62-0313)

2. Service Standards

CONTRACTOR agrees to provide authorized CAAPCare covered services consistent and in compliance with all the applicable Federal, State, and local laws, and service definitions; COUNTY policies, procedures, program instructions, the PROVIDER MANUAL, (including the Quality Management Plan Section) and service manuals; with contract conditions; and special conditions, and any subsequent revisions to the above referenced documents.

This contract is personal between the parties, and CONTRACTOR shall not assign or subcontract in whole or in part, any contractual duties without prior approval by COUNTY. CONTRACTOR expressly acknowledges responsibility for performance of any subcontractor chosen without prior COUNTY approval. CONTRACTOR shall expressly require its subcontractors to comply with all terms of this agreement concerning provision of services and to provide the same assurances as the CONTRACTOR must in its use of federal and state funds. CONTRACTOR shall not be relieved of any responsibility for the performance of its duties under the contract, regardless of any subcontract it enters into.

CONTRACTOR will comply with the specifications and evaluation criteria contained in any applicable Request for Proposal or Request for Programmatic Qualifications and CONTRACTOR'S response to the request, contract renewal package, and any other program documents and manuals, all of which are incorporated herein by reference and are binding on the CONTRACTOR.

CONTRACTOR agrees to comply with service standards and conditions of contracting as applicable from the State MHO Agreement. Applicable specifications for integration and coordination of services are the responsibility of CONTRACTOR as defined on pages 16-20 of the State MHO Agreement. CONTRACTOR shall provide OMAP members with a Declaration for Mental Health Treatment form in accordance with State law with as per the State MHO Agreement.

CONTRACTOR shall follow criteria and protocols for inpatient mental health services, including emergency hospital holds, triage and admission as detailed in the PROVIDER MANUAL.

CONTRACTOR shall provide written notice and obtain written COUNTY approval prior to implementing any substantive program change and/or change in method of service delivery that affects level, scope, or outcome of client services funded under this Contract.

3. Quality Assurance/Quality Indicators

If a current written and approved Quality Assurance/Quality Improvement Plan is not on file with CAAPCare, CONTRACTOR shall develop and submit to COUNTY a written Quality Assurance/Quality Improvement Plan, within 30 days of contract execution, which includes development of and monitoring progress toward Measurable Objectives and Benchmarks for access to care; quality of care; integration and coordination of services; and, prevention, education and outreach according to the response to the RFPQ and the timelines specified in the Quality Management Plan Section of the PROVIDER MANUAL. COUNTY will notify CONTRACTOR within sixty (60) days of receipt of Plan if Plan is not approved.

CONTRACTOR shall collect and submit requested Quality Indicator data to CAAPCare for analysis within the timelines specified in the Quality Management Plan Section of the PROVIDER MANUAL. CONTRACTOR shall submit Performance Standards data in demonstrable behavioral language according to the standards of the Quality Management Plan Section of the PROVIDER MANUAL. CONTRACTOR shall participate in the identification and monitoring of utilization management and quality management indicators, in clinical reviews, in continuous quality improvement efforts and in problem resolution with respect to implementation of this Contract through regular meetings of a Quality Assurance/Quality Improvement Committee. If so requested by COUNTY, CONTRACTOR will participate on a CAAPCare Quality Assurance Committee. CONTRACTOR will comply with applicable quality assurance expectations as set out in the State MHO Agreement. CONTRACTOR shall report progress made through Quality Assurance/Quality Improvement Committee minutes, (due within thirty (30) days following the committee meeting) and submission of data upon request.

CONTRACTOR agrees to participate with the COUNTY in evaluation of contracted project/service outcomes or performance, and to make available all information required by such evaluation process. This includes providing COUNTY with data necessary to verify client counts, service provision, and outcome measures.

Quality Indicator	Target # or %
Percentage of members who complete the CSQ8 Satisfaction Survey who report being "generally to definitely satisfied" with services received.	90%
Percentage of members, whose clinical charts are reviewed, judged to have received medically appropriate services according to accepted standards	90%

4. Compensation and Payment

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

The COUNTY may withhold from payment up to ten percent (10%) of the approved amount for CONTRACTOR'S covered claims expenses. The amount withheld from all CAAPCare participating provider payments will be credited to an interest bearing Provider Withhold fund. If there is a surplus in the Provider Withhold fund following the settlement of all claims, or within six (6) months following the end of the contract period, the surplus will be disbursed proportionally among participating providers.

A. CAAPCare/CAAPCare Plus Services

CONTRACTOR agrees to submit claims for these services in accordance with the PROVIDER MANUAL.

For those CAAPCare authorized covered specialty services applicable to this Contract, CONTRACTOR agrees to submit claims in accordance either with the PROVIDER MANUAL or specific program instructions, whichever applies.

B. Title XIX Open Card Services

Payment rates and requirements are identified in the Oregon Mental Health and Developmental Disability Services Division's *Medicaid Rehabilitative Services Procedures Codes and Reimbursement Rates*, and are paid directly by the State Office of Medical Assistance Programs (OMAP). CONTRACTOR and subcontractors will follow OHP Administrative Rules when submitting Fee-for Service claims for Oregon Health Plan services provided to OMAP members which are not Covered Services of an MHO.

5. Utilization Management

CONTRACTOR shall complete Report C1: Mental Health Monthly Utilization Overview contained in the PROVIDER MANUAL and submit the completed report to the COUNTY within twenty (20) calendar days of the end of each calendar month.

CONTRACTOR will comply with utilization management expectations as set out in the State MHO Agreement. CONTRACTOR shall submit required reports contained in the PROVIDER MANUAL, according to the timelines established in the PROVIDER MANUAL.

6. Special Conditions

CONTRACTOR must assure that services provided under this Contract are accessible to CAAPCare Members. CONTRACTOR may not discriminate between CAAPCare Members and non-CAAPCare members as it relates to benefits to which they are both entitled.

CAAPCare Members served by CONTRACTOR must have individualized treatment plans which incorporate medically appropriate, flexible, culturally relevant and family-based and/or informal support/network-based service approaches.

Services and scheduling will take into account the needs of Members, their families and/or Member's informal support/networks. Services to CAAPCare Members may be delivered in the home or community, dependent on client needs.

CONTRACTOR shall provide services reflecting principles contained in the Multnomah County CAAPCare System of Care Values and Principles.

This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

7. SIGNATURES

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

MULTNOMAH COUNTY,

BY Lorenzo P. ... 1/20/98
Department of Community and Family Date
Services Director

BY Beverly Stein 2/5/98
Beverly Stein Date
Multnomah County Chair

REVIEWED:

BY Katie Galtjen 1/23/98
Thomas Sponsler, County Counsel for Date
Multnomah County, Oregon

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-10 DATE 2/5/98
DEB BOGSTAD
BOARD CLERK

OREGON HEALTH SCIENCE UNIVERSITY

BY _____
Authorized Signature Date

Title
Representing

BY _____
Authorized Signature (if 2nd required) Date

Title
Representing

CONTRACT FOR SERVICES
MULTNOMAH COUNTY COMMUNITY AND FAMILY SERVICES DEPARTMENT

Attachment A:
Service Elements and Contract Amounts

Contractor Name : OHSU-OREGON HEALTH SCIENCES UNIVERSITY		Vendor Code: CAAP122
Contractor Address : CAAPCARE 3181 SW SAM JACKSON PARK RD PORTLAND OR 97201		
Telephone : 494-4854	Fiscal Year : 97/98	Federal ID # : 93-1176109

Program Office Name : Mental Health Contracts A

Service Element Name : Capitated Outpatient Services (K11X)

<u>Mod. #</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Payment Method</u>	<u>Payment Basis</u>	<u># of Units</u>	<u>Unit Description</u>	<u>Unit Rate</u>	<u>Amount</u>
0	1/1/98	6/30/98	Per Invoice	Fee for Service	Reqt's			Reqt's
0	1/1/98	6/30/98	Per Invoice	Fee for Service	Reqt's			Reqt's
0	1/1/98	6/30/98	State Pymt	Fee for Service	Reqt's			Reqt's
0	1/1/98	6/30/98	Per Invoice	Fee for Service	Reqt's			Reqt's
0	1/1/98	6/30/98	Per Invoice	Fee for Service	Reqt's			Reqt's
Total					Reqt's			Reqt's

Program Office Name : Mental Health Contracts C

Service Element Name : Capitated Outpatient Services (K11X)

<u>Mod. #</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Payment Method</u>	<u>Payment Basis</u>	<u># of Units</u>	<u>Unit Description</u>	<u>Unit Rate</u>	<u>Amount</u>
0	1/1/98	6/30/98	Per Invoice	Fee for Service	Reqt's			Reqt's
0	1/1/98	6/30/98	Per Invoice	Fee for Service	Reqt's			Reqt's
0	1/1/98	6/30/98	Per Invoice	Fee for Service	Reqt's			Reqt's
Total					Reqt's			Reqt's

PART B. DEPARTMENT-WIDE GENERAL CONDITIONS

1. Amendments and Renewals

a. This contract, its conditions, statement of work, and budget may be amended by written mutual agreement of the parties. Amendments shall be valid only when reduced to writing, approved as required, and signed. CONTRACTOR shall not transfer contract funds from one service to another without a contract amendment and/or written COUNTY approval.

b. Subject to the approval of COUNTY and CONTRACTOR, this contract may be renewed for a period described in the Request for Proposal. Conditions within the Request for Proposal, Contract Renewal Package, and contract continue to apply. In the event of renewal, CONTRACTOR shall continue existing client load to this contract to ensure continuity of service.

2. Assignment and Subcontracting

This contract is personal between the parties, and CONTRACTOR shall not assign or sub contract in whole or in part, any contractual duties without prior approval by COUNTY. CONTRACTOR expressly acknowledges responsibility for performance of any subcontractor chosen without prior COUNTY approval. CONTRACTOR shall require its sub contractors to comply with the same terms and provide the same assurances as the CONTRACTOR must in its use of federal and state funds. CONTRACTOR shall not be relieved of any responsibility for the performance of its duties under the contract, regardless of any subcontract it enters into.

3. Authority of Designated Representatives

CONTRACTOR agrees to recognize the Director of the Department of Community and Family Services and designated representatives as COUNTY'S administrative authority for services provided under this contract.

4. Availability of Funds

Both parties agree that this contract is subject to the availability of funds. In the event that funds become unavailable to the COUNTY in the amounts anticipated, the COUNTY may, by amendment, reduce funding or terminate the contract as appropriate. COUNTY shall notify CONTRACTOR as soon as it receives notice of reductions from the fund source(s). Reduction or termination shall not affect payment for contract services provided prior to the effective date of such action. In addition, CONTRACTOR acknowledges that funding under this contract is conditional upon continued funding source approval of COUNTY'S work plans and the continued allowability of planned services under local, state or federal statutes, regulations, or policies. COUNTY makes no commitment to future support and assumes no obligation for future support of activities under this contract except as expressly set forth in this contract.

5. Compliance with Laws

a. CONTRACTOR agrees to comply with all applicable federal, state, COUNTY, and city statutes, rules, and funding criteria governing services, facilities, employment opportunities, and operations. This contract shall be governed and construed in accordance with the laws of the State of Oregon.

b. CONTRACTOR hereby certifies that, to the best of its knowledge, it is in compliance with all relevant portions of "Certificate of Compliance with Special State and Federal Requirements", "Certificate Regarding Nondiscrimination", and "Certificate Regarding Debarment, Suspension, and Other Responsibility Matters". These certificates are included in Part D of this contract.

c. CONTRACTOR further agrees to comply with all applicable licensing and certification requirements.

6. Confidentiality

a. CONTRACTOR shall keep all client records confidential in accordance with state and federal statutes and rules governing confidentiality and applicable provisions in Part C, Program General Conditions of this contract..

b. CONTRACTOR shall not require mandatory or universal HIV testing or discriminate against individuals with respect to their rights and entitlements on the basis of their actual or presumed HIV status. Such testing or discrimination will constitute grounds for immediate termination or withholding of contract funds by the COUNTY for this contract.

Records of HIV-related information shall be kept in a place with medical information only, separate from personal information. This information shall not be available to employees of the agency, except as provided by law or through consent. In most circumstances, it is presumed that only the agency executive and medical staff shall have access to information relating to the HIV status of individuals served. CONTRACTOR is responsible for employees' actions relating to control and/or unauthorized release or disclosure of information to others unless written consent is given. Consent for HIV testing or release of HIV-related information must be documented and must:

- 1) Be given voluntarily, without pressure or coercion;
- 2) Be informed (i.e., the person receives and can understand sufficient information);
- 3) Include the name of the specific persons or job title per agency to whom the information shall be released and the specific purpose for disclosure;
- 4) Include an expiration date.

7. Contract Between State and County

If CONTRACTOR is paid with funds COUNTY receives by contract from other funding sources, CONTRACTOR agrees to be bound by any applicable terms and conditions of those contracts. For alcohol and drug and mental health programs funded through the State, CONTRACTOR agrees that it will provide services to Care Oregon and other health plan clients, in accordance with applicable County, State, and federal contracts, statutes, and regulations.

8. Contractor Publicity

CONTRACTOR shall reference the Multnomah County Department of Community and Family Services as a funding source in all flyers and brochures that advertise the contracted services program. CONTRACTOR should also reference the specific program area or service system, e.g., Community Action; Behavioral Health; Child, Youth, and Family Programs, funding the contracted services. COUNTY reserves the right to approve the language used to reference Multnomah County.

9. Fiscal, Administrative, and Audit Requirements

a. CONTRACTOR agrees to use, document, and maintain accounting policies, practices, and procedures, and cost allocations, and to maintain fiscal, clinical, and other records pertinent to this contract consistent with Generally Accepted Accounting Principles (GAAP), Office of Management and Budget (OMB) Circulars, Oregon Administrative Rules, COUNTY financial procedures as contained in the Department of Community and Family Services *Subcontractors Financial Policy and Procedures Manual*, and applicable federal rules and regulations, including the Single Audit Act Amendment of 1996 (Public Law 104-156); other records shall be maintained to the extent necessary to clearly reflect any actions taken. Accounting records shall be up-to-date and shall accurately reflect all revenue by source, all expenses by object of expense, all assets, liabilities and equities consistent with Generally Accepted Accounting Principles, Oregon Administrative Rules, and COUNTY procedures. Reports and fiscal data generated by the CONTRACTOR under this contract shall be accessible to COUNTY upon request.

b. CONTRACTOR represents that prices and costs established for each service under this contract are reasonable and equitable. COUNTY shall have the right, at reasonable times during this contract, to conduct site visits and audits of all CONTRACTOR'S books, documents, papers, and records necessary to establish that such charges to COUNTY are reasonable in relation to costs incurred by CONTRACTOR in providing such services under this contract. CONTRACTOR further agrees to provide access to all books, documents, papers, and records of CONTRACTOR which are pertinent to this contract, including all centralized systems and records, and further, to allow the making of audits, examinations, excerpts, and transcripts. Such access shall be freely allowed to state, federal, and COUNTY personnel and their duly authorized agents. Contract costs disallowed as a result of such audits, reviews, or site visits shall be the sole responsibility of the CONTRACTOR. If a contract cost is disallowed after reimbursement has occurred, the CONTRACTOR shall make prompt repayment of such cost.

c. CONTRACTOR shall be subject to a COUNTY administrative review to monitor compliance with the COUNTY'S administrative qualifications requirements as contained in the current version of the "Application for Qualified Vendor Status." The review shall be conducted generally no more than once every two years, unless warranted by administrative changes by CONTRACTOR or deficiencies in results of a prior review.

d. CONTRACTOR shall be subject to a COUNTY fiscal compliance review to monitor compliance with the COUNTY'S financial reporting and accounting requirements. The review shall be conducted periodically, as described in the COUNTY'S financial procedures (*Subcontractors Financial Policy and Procedures Manual*). If CONTRACTOR'S corporate headquarters are out of state, CONTRACTOR agrees to pay travel costs incurred by COUNTY to conduct fiscal review. These costs include, but are not limited to, transportation to corporate headquarters, lodging, and meals.

e. CONTRACTOR shall be subject to Audit Requirements pursuant to the COUNTY financial procedures (Department of Community and Family Services' current *Subcontractor's Financial Policy and Procedures Manual*). Audits must meet criteria outlined in these Procedures. CONTRACTOR shall be allowed to conduct an external limited scope audit in lieu of a full scope audit under the following conditions:

- 1) Multnomah County contract funds exceed \$25,000 and total agency budget is \$150,000 to \$500,000; or
- 2) Multnomah County contract funds exceed \$100,000 and total agency budget is less than \$500,000.

f. CONTRACTOR shall be required to conduct an external full scope audit if the total agency budget exceeds \$500,000.

g. CONTRACTOR agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirements outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional conduct, and related interpretation and rulings), the Oregon State Board of Accountancy, the independence rules contained within Government Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over your organization. Those rules require that the Certified Public Accountant be independent in thought and action with respect to organizations who engage them to express an opinion on financial Statements or to perform other services that require independence.

h. CONTRACTOR, if it is a state, local government or non-profit organization and a Subrecipient of federal funds, will meet the audit requirements of OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organization", which implements the federal Single Audit Act Amendment of 1996, Public Law 104-156.

i. Limited Scope and Full Audits, including the Management Letter associated with the audit and all specifications identified in the COUNTY financial procedures (*Subcontractors Financial Policy and Procedures Manual*) shall be submitted to the COUNTY within two weeks from the date of the report, but in no case later than the 20th calendar day of the 6th month after the end of the CONTRACTOR'S fiscal year. If CONTRACTOR'S fiscal year ends during the term of this contract, the audit may cover the CONTRACTOR'S fiscal year. Failure to submit required audits and Management Letter by specified deadlines shall be cause for withholding of contract payments until audits are submitted.

j. CONTRACTOR shall submit annual Federal and State Tax Returns to COUNTY within 30 calendar day of their due date. Required tax returns are described in the COUNTY'S financial procedures (*Subcontractors Financial Policy and Procedures Manual*).

Katie Gentry 4/23/97

k. CONTRACTOR shall establish and maintain systematic written methods to assure timely and appropriate resolution of review/audit findings and recommendations.

10. Grievances

CONTRACTOR must establish a system of written procedures through which a client or family member may present grievances about the operation of CONTRACTOR'S services, consistent with applicable provisions in Part C., Program General Conditions, of this contract. CONTRACTOR shall provide these written procedures to the COUNTY and shall make them readily accessible and available to clients, such as through the posting or distribution of the procedures in areas frequented by clients. CONTRACTOR shall, upon request, provide advice to such persons as to the grievance procedure.

11. 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. If CONTRACTOR is a public agency, this indemnification is limited to the extent permitted by the Oregon Tort Claim Act and the Oregon Constitution.

12. Independent Contractor Status

CONTRACTOR is an independent contractor and is solely responsible for the conduct of its programs. CONTRACTOR, its employees and agents shall not be deemed employees or agents of COUNTY, State of Oregon, or the federal government for any purpose. CONTRACTOR is responsible for all federal, state, and local taxes and fees applicable to payments for services under this contract.

13. Insurance, Bonding, and Workers Compensation

a. By signing this contract, CONTRACTOR certifies that it has and shall at all times keep in effect, a Comprehensive or Commercial General Liability Insurance Policy issued by a company deemed acceptable by the COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated "B+ or better" by Best's Insurance Rating. The COUNTY reserves the right to reject all or any insurance carriers with an unacceptable financial rating. Such liability insurance shall have limits provided therein of at least \$50,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence, \$200,000 for injury to any one person, and \$500,000 for total injuries and/or damages arising out of a single accident or occurrence. These limits shall not limit indemnities under the Indemnification section of this contract. COUNTY, and the State of Oregon if contract funds come through that office, shall be named as an additional certificate holder on the insurance policy. CONTRACTOR shall not receive reimbursement under this contract until proof of current liability insurance coverage as defined in this section has been submitted to COUNTY. CONTRACTOR shall also submit proof of insurance renewal if the insurance period ends during the contract period.

b. While this contract continues in effect, the liability insurance policy shall provide for notice of nonpayment of premiums by the insuring carrier to COUNTY and a statement that such insurance shall not be canceled or released except upon thirty (30) calendar days prior written notice to COUNTY. In addition, in the event of unilateral cancellation or restriction by CONTRACTOR'S insurance company of any insurance required herein, CONTRACTOR shall notify COUNTY orally and in writing within three (3) working days of notification by the insurance company to the CONTRACTOR. CONTRACTOR shall promptly pay when due the cost of all such insurance. If it fails to do so, the COUNTY may, at its option, pay the same and CONTRACTOR shall reimburse COUNTY immediately upon demand. Failure to maintain liability insurance as provided in this contract may be cause, at COUNTY'S option, for immediate

termination of this contract.

c. In the event that ORS 30.270 is amended to increase the amount of liability, CONTRACTOR shall abide by any statutory changes.

d. All property and equipment purchased and received by CONTRACTOR under this contract must be insured by CONTRACTOR against fire, theft, and destruction to assure continuation of contract services.

e. CONTRACTOR (except City, County, and State Governments, municipalities, and public school districts) shall obtain and maintain at all times during the term of this contract a fidelity bond (dishonesty policy) of not less than \$50,000 effective at the time the contract commences, covering activities of all persons responsible for collection and expenditures of funds in accordance with OAR 309-13-020(7) EXPENSES, subsection (b)(C) Audit Guidelines. A certificate evidencing the existence of the bond shall be furnished within thirty (30) calendar days of contract approval; contract reimbursement after the thirty days will be dependent upon receipt by the COUNTY of the certificate.

f. CONTRACTOR shall maintain Workers Compensation insurance coverage for all non-exempt workers, employees, and subcontractors either as a carrier insured employer or a self-insured employer as provided in Chapter 656 of Oregon Revised Statutes. Contractors who perform the work without assistance or labor of any employee need not obtain such coverage. CONTRACTOR shall not initiate service nor receive reimbursement under this contract until proof of current workers compensation coverages defined in this section has been submitted to COUNTY.

g. If CONTRACTOR provides transportation under this contract, CONTRACTOR shall maintain in effect during the term of this contract, Automobile Liability Insurance with a combined single limit per occurrence of not less than \$500,000. In addition, CONTRACTOR shall maintain throughout the life of this contract, Automobile Collision and Comprehensive Insurance coverages on all vehicles purchased with COUNTY funds under this contract. Collision and Comprehensive coverages shall have amounts that will protect the interests of the COUNTY, state, and CONTRACTOR in case of damage or loss to vehicles purchased with COUNTY funds. COUNTY and state shall be named Loss Payee and such insurance shall be evidenced on a Certificate of Insurance sent to COUNTY within thirty (30) calendar days of contract execution. CONTRACTOR shall assure that its insurance carrier is aware that transportation is provided for payment, and the insurance policy covers these services. CONTRACTOR shall also assure that any drivers under this contract have a license in good standing with the Department of Motor Vehicles.

h. In lieu of filing the certificates of insurance, bonding, and Workers Compensation as required by COUNTY, CONTRACTOR may furnish to COUNTY a declaration that CONTRACTOR is self-insured with public liability and property damage coverage at least equivalent to the amounts set forth in this section. COUNTY reserves the right to request any additional documentation it deems necessary to assess CONTRACTOR'S self-insurance program.

14. Integration

The contract, including any documents incorporated by reference into this contract, contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements.

15. Litigation Notice

CONTRACTOR and COUNTY shall give each other immediate notice in writing of any action or suit filed and prompt notice of any claim made against CONTRACTOR or COUNTY by any subcontractor or vendor which, in the opinion of CONTRACTOR or COUNTY, may result in litigation related in any way to this contract.

16. Monitoring and Enforcement

a. COUNTY is responsible for monitoring and auditing the activities of CONTRACTOR to ensure that all services provided by CONTRACTOR under this contract conform to state, federal, and COUNTY standards and other performance requirements specified in the contract. COUNTY shall take all appropriate management and legal action necessary to

pursue this responsibility. This includes fiscal and program monitoring.

b. CONTRACTOR shall permit inspection of program, facilities, clinical, and fiscal records by authorized agents of COUNTY, State, and/or federal governments. CONTRACTOR shall also provide for program and facility reviews, including meetings with consumers, review of service and fiscal records, policies, and procedures, staffing patterns, job descriptions, and meetings with any staff directly or indirectly involved in the performance of this contract, when requested to do so by COUNTY for purpose of contract monitoring or audit performance. In cases of suspected fraud by applicants, employees, subcontractors, or vendors, CONTRACTOR shall cooperate with all appropriate investigative agencies and shall assist in recovering misappropriated funds.

c. If CONTRACTOR materially fails to comply with terms of this contract and all attempts to resolve the issue at the lowest possible administrative level have been exhausted, COUNTY may take one or more of the following actions:

- 1) Temporarily withhold cash payments pending correction of the deficiency by CONTRACTOR or pending more severe enforcement action by COUNTY.
- 2) Disallow all or part of the cost of the activity or action not in compliance.
- 3) Wholly or partly suspend or terminate the current award for the CONTRACTOR'S program.
- 4) Withhold further awards for the program.
- 5) Take other remedies that may be legally available.

17. Nondiscrimination and Cultural Competence

a. CONTRACTOR agrees to comply with all applicable requirements of federal, state, and local civil rights and rehabilitation laws, statutes, rules, and regulations, in accordance with Part D. Certificate of Nondiscrimination.

b. CONTRACTOR agrees to submit to COUNTY and implement a written plan in accordance with the Department of Community and Family Services' Cultural Competency Standards. The plan will outline policies and activities that promote culturally competent services. The plan must address, at a minimum, the following topics:

- 1) Non-Discrimination and Affirmative Action
- 2) Accessibility to Services
- 3) Training
- 4) Culturally Appropriate and/or Specific Programs and Services
- 5) Community Outreach
- 6) Plan Evaluation.

This plan shall be submitted to COUNTY no later than 120 days after contract execution. This plan must contain measurable objectives, timelines, and person's responsible for all elements.

18. Operating Hours

CONTRACTOR shall notify COUNTY ten (10) working days in advance of any change in operating hours, temporary closure of admissions to any service funded through this contract, or temporary closure for any reason other than CONTRACTOR'S standard holidays designated in the contract. In the case of unanticipated closures, CONTRACTOR shall immediately notify COUNTY.

19. Ownership of Work Product

Under fee-for-service contract conditions, property and work products provided by CONTRACTOR are property of CONTRACTOR, except for billing documentation (e.g., client files and client assistance invoices) and work products that are specifically purchased through this contract, which are the exclusive property of COUNTY. Under cost reimbursement or service capacity contract conditions, property and work products provided by CONTRACTOR are property of COUNTY. Work products include books, documents, papers, audits, and client and other records of the CONTRACTOR.

Nate Gault 4/23/97

which are directly pertinent to this contract. Upon termination of this contract, property and work products that are the property of the COUNTY shall be turned over to the COUNTY or, upon approval by COUNTY, the new provider of service.

20. Payment Terms and Reports: All Contracts

A. CONTRACTOR shall be reimbursed for specific services based upon the payment terms set forth under Attachment A. and Statement of Work of this contract. Payment terms and required reports for that payment method and basis shall apply to the CONTRACTOR.

b. Expenditures of the CONTRACTOR under service capacity or cost reimbursement contracts, may be charged to this contract only if they are: 1) in payment for services performed under this contract; 2) expensed in conformance with all applicable accounting standards, state and federal regulations and statutes; 3) in payment of an obligation incurred during the contract period; and 4) not in excess of one hundred percent of allowable program costs. For fee-for-service contracts, services of the CONTRACTOR may be charged to this contract only if the services are: 1) included in this contract; 2) performed in conformance with all applicable state and federal regulations and statutes; 3) rendered during the contract period; and 4) not in excess of one hundred percent of designated allocation. Any refunds to the state or federal government resulting from state or federal audits of CONTRACTOR'S program shall be the sole responsibility of CONTRACTOR. CONTRACTOR agrees to make all such payments within twenty working days of receipt of formal notification by COUNTY of disallowance of CONTRACTOR expenditures.

c. Any COUNTY funds spent for purposes not authorized by this contract shall be deducted from payments or refunded to COUNTY at COUNTY'S discretion. Payments by COUNTY in excess of authorized amounts shall be deducted from payment or refunded to COUNTY no later than thirty (30) calendar days after the contract's expiration or after notification by COUNTY. CONTRACTOR shall be responsible for any prior contract overpayments and unrecovered advances provided by COUNTY. Repayment of prior period obligations shall be made by CONTRACTOR in a manner specified by COUNTY. Except when CONTRACTOR is a city, county, or public school district, COUNTY shall be entitled to the legal rate of interest for late payment from the date such payments became delinquent, and in case of litigation, to reasonable attorney's fees.

d. All final requests for payment shall be received by the Department of Community and Family Services within thirty (30) calendar days following the end of this contract term. Final requests for payment documents not received by the Department of Community and Family Services within the specified time frame shall not be processed and the expense shall be the sole responsibility of the CONTRACTOR.

e. Notwithstanding any other payment provision of this contract, failure of CONTRACTOR to submit required reports when due, comply with federal audit standards, repay disallowed costs, perform or document the performance of contracted services, or maintain services at program standards, may result in the withholding and/or reduction of payments under this contract. Such withholding of payment for cause may continue until CONTRACTOR submits required reports, performs required services, or establishes, to COUNTY'S satisfaction, that such failure arose out of causes beyond the control and without the fault or negligence of CONTRACTOR.

21. Payment Terms and Reports: Fee for Service

a. COUNTY shall pay amounts due to CONTRACTOR upon receipt of properly executed payment requests submitted by CONTRACTOR on forms approved by COUNTY. At a minimum, forms shall document number of service units provided, contract rates, and amount requested per service. Fee-for-service billings for client services shall include dates of service, be supported by signed, dated documentation in the client file or chart for each unit of service billed.

b. Required fiscal, program, and progress reports, which support payment requests, shall be submitted according to timelines approved by COUNTY.

22. Payment Terms and Reports: Service Capacity

a. Service capacity program contracts may be paid on a per invoice payment method or in equal monthly allotments of annual contract amounts adjusted periodically to reflect:

- 1) Increases or decreases in annual contract amounts;
- 2) Amounts of client services contributions, if applicable;
- 3) Under-utilization of contracted capacity.

b. Payment of service capacity contracts is triggered by receipt by COUNTY of required utilization reports; where federal or state rules so require, other reports, such as annual budgets and expenditure reports, may also be required for payment. These requirements are included in the Department of Community and Family Services' *Subcontractor's Financial Policy and Procedures Manual*. CONTRACTOR shall have sole responsibility for submitting required reports in order to obtain contract payments. If required reports are received on time and are complete and correct, COUNTY agrees to process monthly allotments to be received by CONTRACTOR by the 10th calendar day of each month. For reimbursed (invoiced) costs, COUNTY agrees to process payment requests within ten working days of receipt of billing.

c. For Monthly Allotment payment methods, monthly Utilization Reports are due the 20th calendar day of the month following service.

d. Reported utilization shall be supported by properly executed client registers or files in accordance with COUNTY program instructions, Oregon Administrative Rules, and applicable federal requirements. Utilization shall be identified by service element.

23. Payment Terms and Reports: Cost Reimbursement

a. Cost Reimbursement contracts may be paid on a per invoice method or in equal monthly allotments of annual contract amounts, adjusted periodically to reflect:

- 1) Increases or decreases in annual contract amounts;
- 2) Amounts of client services contributions, if applicable;
- 3) Under-expenditures of reimbursement-based contract amounts.

b. Payment of monthly allotments or reimbursed costs is triggered by receipt by COUNTY of required expenditure reports. CONTRACTOR shall have sole responsibility to submit required reports in order to obtain contract payments. If required reports are received on time and are complete and correct, COUNTY agrees to process monthly allotments to be received by CONTRACTOR by the 10th calendar day of each month. For reimbursed costs, COUNTY agrees to process payment requests within ten working days of receipt of billing.

c. Monthly Expenditure Reports are due the 20th calendar day of the month following incurred expenditures. Quarterly Year-to-Date Budget Comparisons are due the 20th calendar day of the month following each calendar quarter. The initial Annual Budget is due within one month and twenty (20) calendar days of contract effective date; revised annual budget(s) is due within thirty (30) calendar days of COUNTY'S receipt of executed contract amendments if cumulative year-to-date dollar changes for that service element exceed 25%. If required, the Annual State MHDDSD Carryover Report is due November 20th following the end of the contract year or within thirty (30) calendar days of contract termination if prior to June 30. COUNTY shall provide notification, forms, and instructions to CONTRACTOR subject to carryover reporting at least thirty (30) days prior to the report due date.

d. Reported expenditures shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, and/or any other accounting documents pertaining in whole or in part to the contract, in accordance with Generally Accepted Accounting Principles (GAAP), Oregon Administrative Rules, and applicable federal requirements. Expenditures shall be segregated by service element within the agency accounting system and so reported on the required fiscal reports. All above-referenced accounting documents shall be maintained within a local facility of the CONTRACTOR, and contractual funds shall be maintained within local financial institutions. For cost-reimbursement programs, a final report is required at the end of the contract year, which documents expenditures up to the contract amount.

24. Program Reporting Requirements

a. CONTRACTOR shall prepare and furnish such plans, data, reports, and descriptive information as may be requested by COUNTY. CONTRACTOR grants the COUNTY the right to reproduce, use, and disclose all or part of these plans, reports, data, and technical information.

b. CONTRACTOR shall use the service definitions and the standardized forms provided by COUNTY for recording and reporting purposes.

c. Program reports shall be completed accurately in conformance with the guidelines and monitoring directions provided by COUNTY. Program reports which are not received by the time specified or are substantially incorrect may result in delayed reimbursement.

d. All final program reports shall be submitted to the COUNTY by the thirtieth (30th) calendar day following the end of the effective period for that program.

25. Property Management

CONTRACTOR shall be responsible for all property purchased with operational (expended through depreciation), specific award, and/or start-up funds awarded in this contract. All property purchased with funds awarded in this contract is the property of the COUNTY and/or State Division/Department awarding such funds. This does not include property purchased by CONTRACTOR under a fee-for-service arrangement, unless the funds were specifically allocated for the purchase of such property.

CONTRACTOR shall meet the following procedural requirements for all such property:

a. Property records shall be maintained accurately and provide for a description of the property; whether the item or property purchased was new or used; manufacturer's serial number; acquisition date and cost; source of the property; percentage of State and/or COUNTY funds used in the purchase of property; and location, use, and condition of the property.

b. A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of property. All such property shall be properly maintained and kept in good condition. Any loss, damage, or theft of the property shall be investigated, fully documented, and reported to the COUNTY within thirty (30) days of occurrence.

26. Quality Assurance

CONTRACTOR shall submit to the COUNTY a Quality Assurance Plan in accordance with procedures and timelines adopted by the COUNTY. This Quality Assurance Plan must meet standards adopted by the COUNTY. A review process adopted by the COUNTY will be used to determine whether the Plan submitted by CONTRACTOR meets these standards.

27. Record Retention

All books, documents, papers, or other records, including but not limited to client records, income documentation, statistical records, and supporting documents pertinent to this contract shall be retained for three years from the date of expiration or termination of this contract, unless otherwise specified in Part C. Program General Conditions or except as follows:

a. If any audit questions remain unresolved at the end of this three year period, all records shall be retained until resolution.

b. Records involving matters in litigation shall be kept no less than one year after resolution of all litigation, including appeals.

c. The retention period for real property and equipment records starts from the date of the disposition, replacement, or transfer at the direction of the federal government.

d. Records for any displaced person shall be retained for three years after such person has received final payment.

e. Records pertaining to each real property acquisition shall be retained for three years after settlement of the acquisition or until disposition of the applicable relocation records, in accordance with paragraph d above, whichever is later.

28. Religious Content

CONTRACTOR acknowledges that there will be no religious content or materials disseminated in any part of the programs or services funded under this contract. This is not intended to abridge a client's individual right to exercise freedom of religion and/or speech.

29. Severability

If any terms or provisions of this contract are held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

30. Termination

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

b. Immediate termination by COUNTY may occur under any of the following conditions:

- 1) Upon notice of denial, revocation, suspension, or nonrenewal of any license or certificate required by law or regulation to be held by CONTRACTOR to provide a service under this contract.
- 2) Upon notice if CONTRACTOR fails to start up services on the date specified in this contract, fails to continue to provide services for the entire contract period, or fails to comply with terms and conditions of contract, including submission of complete and accurate reports.
- 3) Upon notice if COUNTY has evidence that CONTRACTOR has endangered or is endangering the health and safety of clients/residents, staff, or the public.

- 4) If the contract between COUNTY and any funding source for provision of services is terminated in whole or in part by the funding source for any reason.
- 5) Evidence of CONTRACTOR'S financial instability which COUNTY deems sufficient to jeopardize customary levels and/or quality of services.
- 6) Upon evidence of improper or illegal use of funds provided under this contract.
- 7) If CONTRACTOR is suspended, debarred, proposed for disbarment, declared ineligible or voluntarily excluded from participating in agreement or contract with any federal agency.

c. For programs with fee-for-service and service capacity payment terms, COUNTY may require that all services be suspended upon delivery of a notice to terminate the contract, and any additional services must have prior approval by COUNTY. For contracts with cost-reimbursement payment terms, costs of CONTRACTOR resulting from obligations incurred by CONTRACTOR during a suspension or after termination of award are not allowable unless expressly authorized by COUNTY in writing. Other CONTRACTOR costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if they result from obligations properly incurred prior to suspension or termination, are not in anticipation of that action, are noncancellable, and would be allowable if the award were not suspended or terminated.

d. Upon termination, unless contract obligations are suspended, payment of CONTRACTOR shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by CONTRACTOR against COUNTY under this contract.

Notwithstanding the above, CONTRACTOR shall not be relieved of its liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this contract by CONTRACTOR. COUNTY may withhold any reimbursement to CONTRACTOR for the purpose of compensation for damages until such time as the exact damages due to COUNTY from CONTRACTOR are agreed upon or otherwise determined.

e. Termination under any provision of this section shall not affect any right, obligations, or liability of CONTRACTOR or COUNTY which accrued prior to such termination.

f. Upon termination, CONTRACTOR agrees to transfer back to COUNTY, the State of Oregon and/or the Federal Government any unexpended and unobligated funds and all unexpended and/or nonexpendable personal property purchased under this contract as directed by COUNTY, the State of Oregon or the Federal Government. All property purchased with COUNTY funds is the property of COUNTY.

g. COUNTY may withhold part or all of the unpaid contract balance upon contract termination pending receipt of final reports.

31. Transition of Services

In the event that a Request for Proposal conducted during the fiscal year results in the award of the contract to a different provider or COUNTY terminates or decides not to renew the contract for any reason, CONTRACTOR agrees to make every reasonable effort to assure a smooth transition. CONTRACTOR shall take steps to assure that necessary case files are transferred to the new CONTRACTOR, pursuant to federal/state regulations on confidentiality.

PART C. PROGRAM GENERAL CONDITIONS: MULTNOMAH COUNTY CAAPCare

The headings used in this document are for reference and convenience only, and in no way define, limit, or describe the scope or intent of any provisions or sections of the accompanying Contract or these Conditions.

1. Certificate of Approval

In order for a CONTRACTOR to provide Covered Services under CAAPCare, CONTRACTOR must maintain a Certificate of Approval from the State of Oregon Mental Health and Developmental Disability Services Division (MHDDSD), in compliance with pages 30 and 31 of the Oregon Health Plan Mental Health Organization Agreement, (the State MHO Agreement), under VII. Statement of Work, N. Credentialing Process. Individuals subcontractor must comply with the credentialing process and practice within the CONTRACTOR'S Certificate of Approval. CONTRACTOR will provide Covered Services, as defined in the State MHO Agreement, within the scope of its registration or licensure, or within the Certificate of Approval criteria if not required to be registered or licensed.

CONTRACTOR shall notify the COUNTY immediately if CONTRACTOR or its subcontractors are suspended or terminated from the Oregon Medical Assistance Program. The Covered Services provided by CONTRACTOR (or its subcontractors) may not be rendered by providers who are currently suspended or terminated from the Oregon Medical Assistance Program. COUNTY shall notify CONTRACTOR of any providers with suspended or terminated status of which COUNTY is made aware by MHDDSD. CONTRACTOR shall not refer OMAP members to such providers and shall not accept billings for services to OMAP Members submitted by such providers.

2. Complaints Process

When a CONTRACTOR has a concern regarding CAAPCare decisions regarding authorization of payment for treatment, the CAAPCare Medical Necessity Review Process is followed in accordance with procedures contained in the PROVIDER MANUAL. The process for resolving issues related to this Contract is contained in the PROVIDER MANUAL.

3. Coordination with COUNTY Care Management Services

Upon request, CONTRACTOR shall provide information necessary for COUNTY to perform care management (which is defined in the State MHO Agreement as "case management"), for CAAPCare Members and non-CAAPCare members, when they are receiving services required of the County under agreement with the State.

4. Coordination with Physical Health Care Providers

As medically appropriate and within laws governing confidentiality, CONTRACTOR shall assure that coordination of care, consultation and communication occur with the physical health care providers for CAAPCare Members receiving services from CONTRACTOR, within the standards specified in the Quality Management Plan Section of the PROVIDER MANUAL. CONTRACTOR shall assist CAAPCare Members receiving services from CONTRACTOR to gain access to physical health care providers. For CAAPCare Members aged 18 or older, who meet the criteria for Extended Care Services for adults, CONTRACTOR must be able to meet identified intensive or complex needs of clients. CONTRACTOR will communicate or collaborate with Exceptional Needs Care Coordinators of Oregon Health Plan Physical Health Care Contractors. CONTRACTOR will coordinate with the Health Plan Unit of the Mental Health and Developmental Disability Services Division to assure payment of covered services by Fully Capitated Health Plans.

5. Service Coordination and CAAPCare Member Referrals

CONTRACTOR shall assure coordination with other service providers in accordance with the PROVIDER MANUAL for the purpose of assuring access to mental health services under ORS Chapter 430, for CAAPCare Members and non-CAAPCare members, when they are receiving services required of the COUNTY under agreement with the State. CONTRACTOR shall coordinate with emergency service agencies in the community. CONTRACTOR shall communicate with community support and social service systems as necessary to link social and mental health services. CONTRACTOR shall coordinate and document all mental health service referrals made by CONTRACTOR on behalf of CAAPCare Members.

6. Post-Psychiatric Hospital and Post-Extended Care Program Follow-up Care

Upon accepting a referral for a CAAPCare Member discharged from psychiatric hospitalization or extended care programs (e.g. adult sub-acute care services, DARTS, JCAHO-certified residential treatment facilities, RES-MED programs), CONTRACTOR shall schedule appointments for Covered Services to occur within seven (7) working days of discharge or within the medically appropriate time-frame, whichever is shorter.

7. CAAPCare Members Rights and Complaints

CONTRACTOR shall:

- a. Develop treatment plans jointly with CAAPCare Members receiving mental health services on a continuing basis from the CONTRACTOR;
- b. Comply with COUNTY policies and procedures for accepting, processing and responding to complaints from or on behalf of CAAPCare Members. These policies and procedures are included in the PROVIDER MANUAL; and
- c. Complete and submit the Provider Complaint Log according to the procedures contained in the Quality Management Plan Section of the PROVIDER MANUAL.

8. Quality Assurance/Quality Improvement (QA/QI)

CONTRACTOR shall maintain a planned, systematic and ongoing process for monitoring, evaluating and improving the quality and appropriateness of Covered Services provided by the CONTRACTOR to CAAPCare Members.

The CONTRACTOR'S QA/QI System will be documented in the form of a written QA/QI Plan submitted for CAAPCare approval according to timelines and requirements established in the CAAPCare Quality Management Plan Section of the PROVIDER MANUAL.

- a. The CONTRACTOR'S QA/QI process shall be consistent with the particular National Committee on Quality Assurance (NCOA) Standards for Accreditation of Managed Behavioral Healthcare Organizations (National Committee for Quality Assurance, Washington, D.C., 1997), cited in the State MHO Agreement.
- b. The CONTRACTOR'S QA/QI process shall be consistent with the State Mental Health and Developmental Disability Services Division (MHDDSD) Guide to Quality Assurance and Quality Improvement.
- c. The CONTRACTOR shall have a formal and ongoing process for gathering and considering information from Stakeholders including but not limited to: OMAP Members, consumers, consumer advocates, families, parent advocates, local and/or regional allied agencies, child and adult psychiatrists, child and

adult advocates, and health care professionals.

- d. CONTRACTOR Quality Assurance/Quality Improvement program will contain a separate utilization review component from utilization management guidelines.

The CONTRACTOR shall establish a QA/QI Committee. The minimum requirements for membership of the QA/QI Committee are specified in the Quality Management Plan Section of the PROVIDER MANUAL.

In addition, CONTRACTOR shall fully coordinate and comply with the policies and procedures adopted by the COUNTY and contained in the PROVIDER MANUAL in accordance with the State MHO Agreement.

9. Critical Incidents

CONTRACTOR shall have written policies and procedures for reporting, gathering and analyzing data, as well as investigating reports of critical incidents as defined and consistent with CAAPCare Critical Incident Reporting Policies found in the Quality Management Plan Section of the PROVIDER MANUAL.

CONTRACTOR shall notify the CAAPCare Program Administrator or designee, according to protocols listed in the Critical Incident Reporting Procedures of the Quality Management Plan Section of the PROVIDER MANUAL, within twenty-four (24) hours of a critical incident that involves any CAAPCare provider staff member or subcontract provider in the following areas:

- A critical incident that involves the death or serious injury of a CAAPCare member, or
- A staff member or subcontractor charged with a crime involving a CAAPCare member.

COUNTY will conduct a fact-finding inquiry into all critical incident reports involving serious injury or death to CAAPCare Members.

CONTRACTOR will comply with all applicable local, Federal and State laws regarding abuse reporting that involves children and elders. CONTRACTOR and subcontractors will cooperate with all processes and procedures of abuse reporting, investigations, and protective services as described in State Law (including Abuse Reporting for the Mentally Ill and Abuse Reporting, Protective Services in Community Programs and Community Facilities and Adult Protective Services Reporting).

10. Client and Service Data Collection and Reporting Requirements

CONTRACTOR shall:

- a. Submit to the COUNTY encounter data in accordance with submission specifications, procedures and time frames contained in the PROVIDER MANUAL; and,
- b. Enroll all CAAPCare Members in the Client Process Monitoring System (CPMS) and submit this information to the State of Oregon Mental Health and Developmental Disability Services Division according to procedures developed by MHDDSD.

CONTRACTOR shall cooperate with the COUNTY in collection of information through encounter data, CPMS, consumer surveys, on-site reviews, clinical chart reviews, interviews with staff, utilization and financial reports, and other data or information as required for purposes of monitoring compliance with this contract, for research and evaluation purposes, and for the purpose of developing and monitoring performance objectives.

CONTRACTOR shall submit required reports contained in the PROVIDER MANUAL, according to the time frame specified therein. Failure to submit encounter and CPMS data in accordance with these requirements shall

Capconwp.doc

C-3

Reviewed:

Katie Dutz
Assistant County Counsel

11/12/98
Date

be grounds for the COUNTY withholding claims payment to CONTRACTOR.

11. State Mandated Requirements

- a. CONTRACTOR shall comply with the requirements of 42 CFR Part 489, Subpart I OBRA 1990, Patient Self Determination Act, and the provisions of Oregon Revised Statute 127 pertaining to advance directives.
- b. This contract shall be governed and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. Any action or suit involving this contract as it applies to the State MHO Agreement shall be filed and tried in Marion County, Oregon. Provided, however, if the action or suit must be brought in a federal forum, then it shall be brought and conducted solely and exclusively with the United States District Court for the District of Oregon. CONTRACTOR, by signature of its authorized representative, hereby consents to the *in personam* jurisdiction of said court.

12. State and CAAPCare Members Billing

CONTRACTOR may not request or obtain payment from the State of Oregon Mental Health and Developmental Disability Services Division (SMHDDSD) or any CAAPCare Member for Covered Services provided during the contract period for which capitation payments were made by SMHDDSD to the COUNTY through the Office of Medical Assistance Programs (OMAP), even if the COUNTY becomes insolvent.

Except as specifically permitted by this contract, CONTRACTOR shall not be compensated for work performed under this Contract from any other department of the State of Oregon, nor from any other source, including the Federal government. CONTRACTOR shall immediately report any funds received by CONTRACTOR through activities arising under this contract that would be constitute dual payment.

CONTRACTOR and subcontractor will follow State Law regarding Billing and Payment Under the Oregon Health Plan, when submitting Fee-for-Service claims for Oregon Health Plan Services provided to OMAP Members that are not Covered Services of the MHO. CONTRACTOR must be enrolled with OMAP as a Medicaid Performing Provider to receive payment for all Fee-For-Service claims submitted directly to OMAP for OMAP Members.

13. Credentialing Process

CONTRACTOR must maintain personnel files documenting academic credentials, licenses, and competencies of staff who provide services to CAAPCare Members. CONTRACTOR shall have policies and procedures for collecting evidence of credentials and screening the credentials of staff, programs and facilities used to deliver services, consistent with policies and procedures contained in the CAAPCare Quality Management Plan Section of the PROVIDER MANUAL, the State MHO Agreement and the Administrative Rules of the Oregon Health Plan Prepaid Health Plan Provision of Health Care for Services. Policies and procedures shall include validating possession of in force licenses or certificates, if required under any Federal, State, or local law, or regulation to deliver mental health services in the State of Oregon. These policies and procedures shall also include collecting proof of liability insurance and evidence of hospital privileges of physicians rendering services in Acute Inpatient Hospital Psychiatric Care settings.

- a. If CONTRACTOR is not required to be licensed or certified by a State of Oregon board or licensing agency, then CONTRACTOR shall

either: Assure that CONTRACTOR'S staff and subcontractors meet the definitions for Qualified Mental Health Associates (QMHA) and Qualified Mental Health Professionals (QMHP) appearing in the State MHO Agreement;

or: For staff and subcontractors not meeting either the QMHP or QMHA definition, CONTRACTOR shall document and certify that the person's education, experience, competence, scope of practice and supervision are within the standards specified in the State MHO Agreement and any applicable Federal or State law. CONTRACTOR shall have a staff development program for improving knowledge, skills and competency of staff in Psychiatric Rehabilitation principles and delivery of services.

- b. CONTRACTOR shall assure that all programs operated directly or by subcontract are accredited by nationally recognized organizations and/or are certified or licensed under State Law to deliver specified services.
- c. CONTRACTOR shall assure that all facilities used to deliver services, either directly or through subcontract, are certified or licensed as described in the State MHO Agreement, safe and adequately equipped and staffed for services provided.
- d. CONTRACTOR shall complete an initial Practitioner Report and provide subsequent on-going notification of changes, additions and deletions to the initial report according to the timelines and in the format specified in the Quality Management Plan Section of the PROVIDER MANUAL.

14. Third Party Resources

CONTRACTOR shall notify the COUNTY and State of CAAPCare members with Third Party Resources. CONTRACTOR shall attempt to collect Third Party Resources, and be responsible for maintaining records and reporting information related to Third party Resources as described in Section XII of the MHO Agreement.

15. Compliance Monitoring and Program Evaluation

CONTRACTOR agrees to cooperate fully with contract compliance monitoring and program evaluation activities of the COUNTY and SMHDDSD related to the Multnomah County Mental Health Organization Agreement.

16. Professional Liability Insurance

During the term of this contract, Contractor shall maintain in force, at its own expense, professional liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this contract. The coverage must remain in effect for at least two years after the contract is completed.

17. Record Retention

- a. All non-clinical records relevant to services delivered under this contract shall be retained for at least five years after final payment is made and all pending matters are closed.
- b. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the five year period, the records must be retained until all issues arising out of the action are resolved or until the end of the five year period, whichever is later.

- c. All clinical records relevant to services delivered under this contract shall be retained for at least seven years after the date of clinical services for which claims are made, encounters reported, final payment is made, or for such length of time as may be dictated by the generally accepted standards for record keeping within the applicable provider type and all pending matters are closed, whichever time period is longer. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven year period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven year period, whichever is later.

18. Administrative Access to Records

CONTRACTOR shall provide access to records and facilities as described in Oregon State Law. CONTRACTOR shall provide COUNTY, State of Oregon Mental Health and Developmental Disability Services Division, the Health Care Financing Administration (HCFA), the Comptroller General of the United States, the Oregon Secretary of State, the Office of Medical Assistant Programs (OMAP) and all their duly authorized representatives the right of access to facilities and to financial (including all accompanying billing records), clinical, and personnel records that are directly pertinent to mental health services.

- a. Records shall be made available for the purposes of:
- Monitoring and evaluating cost, performance, compliance, quality, appropriateness, and timeliness of services provided;
 - Monitoring and evaluating the capacity of providers to bear the risk of potential financial losses; and
 - Making audit examination, excerpts and transcriptions.
- b. Upon request and without charge, CONTRACTOR shall provide a suitable work area and copying capabilities to facilitate such a review or audit.

19. Confidentiality of Client Information

- a. CONTRACTOR shall keep records related to CAAPCare Members receiving services under this contract confidential in accordance with Federal Requirements and Oregon State law.
- b. CONTRACTOR shall not use, release or disclose any information concerning CAAPCare Members for any purpose not directly connected with the administration of Title XIX of the Social Security Act, or access, integration and coordination of services. CONTRACTOR shall obtain a written consent from the CAAPCare Member, or the legal guardian of a CAAPCare Member, allowing release of mental health service information to both mental health and non-mental health providers.
- c. CONTRACTOR shall release mental health service information required by the receiving provider in order to make appropriate service delivery decisions within the time frame specified by law.
- d. CONTRACTOR shall assure that the COUNTY and any subcontracted service components, as well as other cooperating mental health service providers, have timely access to the applicable contents of a CAAPCare Member's clinical record when necessary for use in the diagnosis or treatment of the CAAPCare Member, to the extent such access is permitted under law.

- e. CONTRACTOR shall provide the CAAPCare Member, or the legal guardian of a CAAPCare Member, access to the CAAPCare Member's clinical record within the time frame specified by law.

20. Record keeping

CONTRACTOR shall assure maintenance of all record keeping consistent with Oregon law including Oregon Health Plan Prepaid Health Plan Record Keeping, the State MHO Agreement, and as specified in the PROVIDER MANUAL.

21. Tort Claims

CONTRACTOR and its subcontractors, employees, and agents are performing the work under this contract as independent contractors and not as officers, employees, or agents of the State as those terms are defined by State law. It is understood, however, that if CONTRACTOR subcontracts with an Oregon public entity, officer or employee, that entity, officer or employee will be an independent subcontractor but may be subject to the Oregon Tort Claims Act.

22. Force Majeure

Neither CONTRACTOR nor COUNTY shall be held responsible for delay or default caused by fire, riot, war, major disaster, epidemic or acts of God which are beyond either CONTRACTOR'S or COUNTY'S reasonable control. CONTRACTOR or COUNTY 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 its obligations under this Contract.

If the rendering of services or benefits under this Contract is delayed or made impractical due to a labor dispute involving CONTRACTOR, care may be deferred until after resolution of the labor dispute except when care or service is needed for an emergency or urgent need or when there is a potential for a serious adverse mental health or medical consequence if treatment or diagnosis is delayed more than 30 calendar days. If a labor dispute disrupts normal execution of Contractor duties under this Contract, CONTRACTOR shall notify OMAP Members in writing of the situation and direct OMAP Members to bring serious health care needs to CONTRACTOR'S attention.

23. Ownership/Successors in Interest

CONTRACTOR shall notify COUNTY of any changes in the ownership of CONTRACTOR and provide COUNTY with the name(s) and address(es) of all owners of an equity interest in CONTRACTOR which equals or exceeds five (5) percent. CONTRACTOR shall not assign or transfer any of its interest in this Contract without the prior written consent of COUNTY. Subject to the immediately preceding sentence, the provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any. In addition to any other assignment or transfer of interest, for purposes of this Contract, all of the following fundamental changes shall be considered an assignment of an interest in this Contract subject to the COUNTY'S prior written consent.

- a. A consolidation or merger of CONTRACTOR, or of a corporation or other entity or person controlling or controlled by CONTRACTOR, with or into a corporation or other entity or person, or any other reorganization or transaction or series of related transactions involving the transfer of more than fifty percent (50%) of the equity interest in CONTRACTOR or more than fifty percent (50%) of the equity interest in a corporation or other entity or person controlling or controlled by CONTRACTOR, or

- b. The sale, conveyance or disposition of all or substantially all of the assets of CONTRACTOR, or of a

corporation or other entity or person controlling or controlled by CONTRACTOR, in a transaction or series of related transactions.

CONTRACTOR shall notify COUNTY at least forty-five (45) calendar days prior to any assignment or transfer of an interest in this Contract and shall reimburse COUNTY for all legal fees reasonably incurred by COUNTY in reviewing the proposed assignment or transfer and in negotiating and drafting appropriate documents.

24. Waiver

The failure of either party to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

PART D: CERTIFICATES

CERTIFICATE REGARDING COMPLIANCE WITH SPECIAL STATE AND FEDERAL REQUIREMENTS

CONTRACTOR hereby certifies that, to the best of its knowledge, it is in compliance with applicable federal and state laws, rules, and regulations governing services and programs under contract. CONTRACTOR agrees to comply with all applicable regulations regarding programs or services, including the following:

1. Accessibility

CONTRACTOR shall comply with the Americans with Disabilities Act of 1990 (P.L. 101.336), ORS 30.670 to ORS 30.685, ORS 659.425, ORS 659.430, and all regulations and administrative rules established pursuant to those laws, in the construction, remodeling, maintenance, and operation of any structures and facilities, and in the conduct of all programs, services, training, educational or otherwise, conducted by CONTRACTOR.

2. Application, Acceptance, Use and Audit of Federal and State Funds

CONTRACTOR agrees to comply with: a) OMB Circulars related to the application, acceptance, use, and audit of federal funds (Nos. A-87: Cost Principles for State and Local Governments; A-102: Grants-in-Aid to State and Local governments; A-128: Audits of State and Local Governments; A-110: Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations; A-122: Cost Principles for Non-profit Organizations; and A-133: Audits of Institutions of Higher Education and other Non-profit Organizations); b) 45 CFR Part 74 Subpart Q and 45 CFR Part 92, Subpart C as they relate to direct and indirect costs; and c) applicable sections of 24 CFR Part 85.

For State funds, CONTRACTOR agrees to comply with Oregon Administrative Rules OAR 309-13-020 Audit Guidelines, 309-13-075 through 309-13-105 Fraud and Embezzlement, and 309-14-030 Standards for Management of all Service Elements.

3. Department of Energy

a. In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with federal assistance extended to the CONTRACTOR by the Department of Energy, this assurance obligates the CONTRACTOR for the period during which federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the CONTRACTOR for the period during which it retains ownership or possession of the property.

b. CONTRACTOR agrees to compile and maintain information pertaining to programs or activities developed as a result of the CONTRACTOR'S receipt of federal assistance from the Department of Energy. Such information shall include, but is not limited to:

- 1) The manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;
- 2) The population eligible to be served by race, color, national origin, sex, age, and handicap;
- 3) Data regarding covered employment including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;

- 4) The location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of discrimination;
- 5) The present or proposed membership by race, color, national origin, sex, age, and handicap, in any planning or advisory body which is an integral part of the program; and
- 6) Any additional written data determined by the Department of Energy to be relevant to its obligation to assure compliance by CONTRACTOR with applicable laws.

c. CONTRACTOR agrees to submit requested data to the Department of Energy regarding programs and activities developed by the CONTRACTOR from the use of federal assistance funds extended by the Department of Energy. Facilities of the CONTRACTOR (including physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the CONTRACTOR'S compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Equal Opportunity, U.S. Department of Energy.

d. This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts (excluding procurement contracts), property, discounts, or other federal assistance extended after the date hereto, to the CONTRACTOR by the Department of Energy, including installment payments on account after such date of application for federal assistance which are approved before such date. The CONTRACTOR recognizes and agrees that such federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the CONTRACTOR, its successors, transferees, and assignees, as well as the person whose signature appears below and who is authorized to sign this assurance on behalf of the CONTRACTOR.

4. Displaced Persons

CONTRACTOR agrees to comply with the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.

5. Drug-Free Workplace

CONTRACTOR certifies that it will provide a drug-free workplace in compliance with the federal "Drug-Free Workplace Act of 1988" by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in CONTRACTOR'S workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing a drug-free awareness program to inform employees about 1) the dangers of drug abuse in the workplace; 2) CONTRACTOR'S policy of maintaining a drug-free workplace; 3) any available drug counseling, rehabilitation, and employee assistance programs; and 4) the penalties that may be imposed upon employees for drug abuse violations;

c. Making it a requirement that each employee to be engaged in the performance of this contract be given a copy of the statement required above;

d. Notifying the employee in the statement required above that as a condition of employment on such contract, the employee shall abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a

Katie Gault 4/23/97

violation occurring in the workplace no later than 5 days after such conviction;

e. Notifying the COUNTY within 10 days after receiving notice under paragraph d. above from an employee or otherwise receiving actual notice of such conviction;

f. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted, as required by section 5154 of the Drug-Free Workplace Act of 1988;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. through f. above.

6. Energy Conservation

CONTRACTOR agrees to comply with all standards and policies relating to energy efficiency which are contained in any approved State of Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-165).

7. Environmental Protection

a. CONTRACTOR ensures that if the sums payable under this contract exceed one hundred thousand dollars, CONTRACTOR shall comply with all applicable standards, orders, and requirements issued under Section 306 of the Clean Air Act (42 USC 1857 H), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR part 15). CONTRACTOR additionally agrees to promptly report all infractions to the state, federal grantor agency, and to the U.S. Environmental Protection Agency.

b. CONTRACTOR ensures that facilities under its ownership, lease, or supervision which shall be used in the accomplishment of services under this contract are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it shall notify the Department of Energy or Department of Health and Human Services of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

8. Federal Alcohol Drug Abuse and Mental Health Block Grant

CONTRACTOR shall comply with applicable federal rules and statutes pertaining to the Alcohol Drug and Mental Health and the Social Services (formerly Title XX) Block Grants, including the Public Health Services Act, especially sections 1914(b)(1-5), 1915(c)(12), 1916 (b)(2), and Public Law 97-35. COUNTY and CONTRACTOR agree that federal Alcohol Drug Abuse and Mental Health Block Grant monies, CFDA #93.992, will be restricted to only public or non-profit entities.

9. Flood Insurance

CONTRACTOR agrees to comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires purchase of flood insurance in communities where such insurance is available, as a condition for receipt of any federal financial assistance for construction or acquisition in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special floor hazards.

10. Historic Preservation

CONTRACTOR agrees to assist the Department of Energy or Department of Health and Human Services in their compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC Section 469a-1 et seq.) by: a. consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by activity under this contract and notifying the appropriate federal department of the existence of any such properties; and b. complying with all requirements established by the Department of Energy or Department of Health and Human Services to avoid or mitigate adverse effects upon such properties.

11. Lead-Based Paint Poisoning

Whenever funds under this contract are used directly or indirectly for construction, rehabilitation, or modernization of residential structures, CONTRACTOR shall comply with the HUD Lead-Based Paint regulations (24 CFR Part 35) issued pursuant to the Lead-Based Paint Poisoning Act (42 USC Sections 4831 et. seq.) requiring prohibition of the use of lead-based paint; elimination of immediate lead-based paint hazards in residential structures; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978.

12. Lobbying for Funds

Pursuant to the requirements of Section 1352 of Public Law 101-121, the CONTRACTOR certifies, to the best of its knowledge and belief, that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

13. Minimum Wage and Maximum Hours

CONTRACTOR agrees to comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of state and local governments, and ORS 279.312 (Concerning payment of Laborers and Materialmen, contributions to Industrial Accident fund, liens, and withholding taxes), 279.314 (Concerning payment of claims by public officers), 279.316 (Concerning hours of labor), and 279.320 (Concerning payment for medical care and attention to employees).

14. Oregon Tax Laws

CONTRACTOR assures, under penalty of perjury, that it is not in violation of any Oregon tax laws. For the purposes of this

certificate, "Oregon tax laws" includes the State inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Multnomah County Business Income Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self-Employment Tax).

15. Pro-Children Act of 1994

The Pro-Children Act of 1994 (P.L. 103-227) requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantees. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

16. Recycling

CONTRACTOR shall use recyclable products to the maximum extent economically feasible in the performance of services set forth in the contract.

CERTIFICATE REGARDING NONDISCRIMINATION

1. CONTRACTOR hereby certifies that, to the best of its knowledge, it is in compliance with federal, state, and local laws, rules, and regulations governing equal employment opportunity and nondiscrimination, including:

- a. 45 CFR, Part 74 and 24 CFR Parts 85 and 570.
- b. Executive Order 11063 and Executive Order 11246, "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Federal Acquisition Regulations 48 CFR part 1520 and Department of Labor Regulations 41 CFR Part 60
- c. Titles VI and VII, Civil Rights Act of 1964 (42 USC Section 2000d)
- d. Title VIII, Civil Rights Act of 1968 as amended by Fair Housing Amendments Act of 1988
- e. Title XIX, Social Security Act
- f. Section 16, Federal Energy Administration Act of 1974
- g. Section 401, Energy Reorganization Act of 1974
- h. Title IX, Education Amendments of 1972, as amended
- i. Section 504, Rehabilitation Act of 1973
- j. Age Discrimination Act of 1975
- k. Department of Energy Organization Act of 1977
- l. Energy Conservation and Production Act of 1976, as amended
- m. Americans With Disabilities Act of 1990, Public Law 101-336 and enacting regulations of the EEOC and Department of Justice
- n. Section 109, Housing and Community Development Act of 1974
- o. Section 3 of the Housing and Urban Development Act of 1968
- p. Multnomah County policy on nondiscrimination.

2. Concerning employment, CONTRACTOR assures it will not discriminate against any employee or applicant for employment. This includes refusal to hire, employ or promote, and barring, discharge, dismissal, reduction in compensation, suspension, demotion, or discrimination in work activities and training opportunities. Specific protections include: age, sex, marital status, race, creed, national origin, color, handicap, familial status, political affiliation, and sexual orientation.

3. Concerning program benefits, CONTRACTOR assures that no person in the United States shall, on the grounds of race, color, national origin, sex, age, marital status, familial status, political affiliation, sexual orientation, or handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the CONTRACTOR receives federal assistance. Where appropriate, CONTRACTOR shall take necessary and appropriate steps to prevent discrimination in federally assisted housing and lending practices related to loans insured or guaranteed by the federal government.

4. Concerning Subcontractors and Suppliers, no contractor, subcontractor, union, or vendor engaged in any activity under the Community and Family Services Department contract(s) shall discriminate in the sale of materials, equipment, or labor on the basis of age, sex, sexual orientation, marital status, familial status, race, political affiliation, creed, color, national origin, or handicap, nor shall any contractor, subcontractor, union, or vendor engage in discriminatory employment practices as described above.

5. In carrying out these assurances, CONTRACTOR assures that it will, by the effective date of this contract:

- a. Formally adopt a Nondiscrimination Policy, or its essential content, through Board of Director action;
- b. Assure that all programs, activities, and services are not exclusive but rather are open and accessible to all eligible participants;

c. Incorporate principles of the Nondiscrimination Policy in agency publicity and printed materials directed to program participants, employees, and applicants, including but not limited to: 1) statements of nondiscrimination, such as "Equal Opportunity Employer", in general information such as program brochures, annual reports, plans, and job announcements; and 2) posting Nondiscrimination Policy or its equivalent in a prominent public location;

d. Ensure that agency hiring practices eliminate pre-employment inquiries related to general health or disability questions;

e. Train staff or receive training for staff on needs of minorities and persons with speech, hearing, vision, and mobility impairments on issues such as: communication skills, community resources for minority elderly and persons with disabilities, availability and use of auxiliary aids, cross-cultural differences;

f. Develop internal procedures to ensure access to information on existence and location of services, activities, and accessible facilities to persons with speech, hearing, vision, or mobility impairments, and to persons with limited spoken English or reading skills;

g. Assure that no recipient or other persons shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privileges secured by this policy, or because he/she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this policy. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this policy.

Katie Gault 4/23/97

**CERTIFICATE REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS**

1. CONTRACTOR certifies to the best of its knowledge and belief that neither it nor any of its principles:

a. Are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;

b. Have within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in subparagraph 1. b. of this certification; and

d. Have within a three-year period preceding this agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

2. Where the prospective CONTRACTOR is unable to certify to any of the statements in this certification, such prospective CONTRACTOR shall attach an explanation to this proposal.

MEETING DATE: February 5, 1998

AGENDA NO: C-11

ESTIMATED START TIME: 9:30 AM

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Final Order for Land Use Case CU 4-95, MC 1-95

BOARD BRIEFING: DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: Thursday, February 5, 1998

AMOUNT OF TIME NEEDED: N/A

DEPARTMENT: Environmental Services DIVISION: Land Use Planning

CONTACT: Robert N. Hall TELEPHONE #: 248-3043, ext. 26797

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Sandra N. Duffy, if necessary

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Findings of Fact, Conclusions of Law and FINAL ORDER
Regarding an Application by Tim and Angela Schillereff
for the Alteration of an Existing Nonconforming Dog Kennel Use
to Allow up to 75 Dogs

2/5/98 copies to Robert Hall, Stuart Faemer & Sandra Duffy

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT MANAGER: Larry Nicholas

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

BOARD APPROVAL OF FEBRUARY 5, 1998

TIME

CASE NAME: Alteration of Nonconforming Use

NUMBER

1. Applicant Name/Address
Tim & Angela Schilleriff
c/o Daniel H. Kearns, Esq.
111 SW 5th, Suite 3200
Portland, OR 97204
2. Action Requested by Applicant

Approval of request for
alteration of their existing,
lawful, nonconforming dog
kennel with a capacity for 50
dogs to expand the kennel
capacity to accommodate 75
dogs pursuant to MCC
11.15.8810

ACTION REQUESTED OF BOARD

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

3. Planning Staff Recommendation

Approval

4. Hearings Officer decision:

Approval with conditions

5. If recommendation and decision are different, why?

Not different

6. The following issues were raised at the remand hearing (*who raised them?*)
 - a. Visual impact. (Marquam Farms, neighbor/opponent)
 - b. Noise problems (Marquam Farms, neighbor/opponent)
 - c. Applicants limited to continue nonconforming use at lowest level of intensity to which it has dropped over time. (Marquam Farms, neighbor/opponent)
 - d. Need for an evidentiary hearing on impacts of alteration. (Marquam Farms, neighbor/opponent)
7. Do any of these issues have policy implications? Explain.

No, all concern compliance with applicable approval criteria of the Zoning Code and compliance with the decisions of LUBA and Court of Appeals.

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

An application by Tim and Angela
Schillereff for the alteration of an existing
nonconforming dog kennel use to allow up
to 75 dogs.)
)
)
)
On remand from LUBA - LUBA No. 95-254)
County File No. CU4-95, MC1-95.)
_____)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW and
FINAL ORDER**

98-14

The Multnomah County Board of County Commissioners (the Board) hereby approves the applicants' request for an alteration of their existing, lawful, nonconforming dog kennel with a capacity for 50 dogs to expand the kennel capacity to accommodate 75 dogs pursuant to MCC 11.15.8810.

The Board finds as follows:

I. PROCEDURE AND PROCEDURAL HISTORY:

This matter originally came before us in the form of the following three alternative applications to allow the applicants' proposed 75-unit dog kennel:

- A. Authorization pursuant to MCC 11.15.8810 to allow the alteration of the applicants' existing nonconforming 50-unit dog kennel to a 75-unit dog kennel;
- B. A Conditional Use Permit pursuant to MCC 11.15.2028(B) to expand the applicants' existing, conforming 50-unit dog kennel to a 75-unit dog kennel; and
- C. A Conditional Use Permit to allow a new 75-unit dog kennel on high value farm land.

The applicants took this 3-part alternative approach due to ambiguities in the Multnomah County Code (MCC) as to the status of the applicants' existing 50-unit nonconforming kennel operation and uncertainty as to the avenues in the MCC for obtaining an increase in use to 75 units. In our original decision, we approved all three of the alternative applications based on the 110-page findings of fact and conclusions of law written by the Hearings Officer.

The opponent, Marquam Farms, appealed to LUBA, which remanded the decision back to this Board in a December 5, 1996 Final Opinion and Order for further consideration of the "nature and extent" of the applicants' existing kennel operation. We and the applicants appealed LUBA's decision to the Court of Appeals, which affirmed LUBA. Thus, this matter comes

before us on remand from LUBA for further consideration of the nature and extent of the applicants' existing nonconforming kennel use.

This matter was duly noticed and a public hearing was held before the Board of County Commissioners on December 16, 1997 (the "remand hearing"). Because we find the evidentiary record is adequate and compliance with LUBA's remand order does not require the evidentiary record to be re-opened, we did not allow the introduction of new factual evidence at the remand hearing. In this remand proceeding the applicants' representative was allowed to make summary legal arguments, based on the existing record, as were representatives from Marquam Farms. No other party has standing in this remand proceeding. That hearing was continued to allow staff to provide an excerpt of the record identifying the evidence in the record that supports the applicants' nonconforming use arguments. The hearing was reconvened December 30, 1997 for decision.

II. CONTROLLING LAW:

We note at the onset, the applicants' original set of 3 alternative requests, coupled with the Hearings Officer's lengthy decision addressing all issues raised by all parties, created a certain amount of confusion on the part of LUBA and the Court of Appeals as to what the applicants had requested and what this Board had approved. On remand, the applicants have endeavored to simplify and make more clear their request and we too simplify our decision.

A. New Dog Kennel on High Value Farm Land: LUBA and the Court of Appeals eliminated the applicant's third alternative approach to this application, *i.e.*, establishment of a new 75-unit dog kennel on high value farmland. OAR 660-33-120 prohibits the "establishment" of a new dog kennel on high value farmland, but allows local governments to approve the expansion of an existing dog kennel on high value farmland. According to the Supreme Court's decision in *Lane County v. DLCD*, 325 Or 569 (1997), this rule is valid and prohibits our consideration of the applicants' third request in this matter, but specifically authorizes the expansion of an existing dog kennel on high value farmland under MCC 11.15.8810. Thus, in this remand decision, the applicants' have abandoned, and we do not address, any request to establish a new dog kennel on high value farmland.

B. MCC 11.15.2028(B): In its remand order, LUBA expressed strong reservations about the validity of MCC 11.15.2028(B) and our interpretation of this code provision that converts a nonconforming use into a lawful, conforming conditional use by operation of law without a separate permit. This was the applicants' second alternative basis which we approved. The applicants have withdrawn this aspect of their application, and for that reason we do not address MCC 11.15.2028 further.

C. MCC 11.15.8810: This code provision allows the alteration, including an expansion, of any existing nonconforming use so long as the alteration will affect the surrounding area to a lesser negative extent, considering certain criteria. This was the applicants' first basis for their application, which we approved. We agree with applicants that MCC 11.15.8810, on its face, does not require an evaluation of the nature or extent of the underlying nonconforming use. We also agree with applicants' assertion that MCC 11.15.8810 does not

require an applicant to re-prove the nature and extent of the underlying nonconforming use each time there is an alteration of the nonconforming use. We find that once an applicant has proven to the county its entitlement to a nonconforming use in some prior proceeding at a particular level of intensity, we are entitled to rely upon that prior showing as a conclusive determination that the nonconforming use exists and allows us to proceed with the request to modify that lawfully existing nonconforming use. However, in this application, no prior proceeding set a baseline nonconforming use from which the impacts of the altered use are to be measured. We begin our Findings and Decision with a discussion of this aspect of the applicants' application.

III. FINDINGS AND DECISION:

A. Nature and extent of applicants' nonconforming use.

We reviewed the excerpted record prepared by the applicants which related to the kennel facility itself and to the number of dogs which have been housed in the kennel since the early 1950s.

(1) The nature and extent of the use at the time the zoning code changed.

While there is conflicting evidence in the record as to whether the zone change occurred in 1955 or 1958, we are satisfied that the record contains evidence that for at least several years prior to either of those dates, the kennel had the physical capacity to house 50-60 dogs and did, in fact, house 50-60 dogs during that time period. That record evidence includes:

- The County established F-2 (Agricultural) zoning over the property on either April 19, 1955 (Marquam Farms) or on July 10, 1958 (Schillereff) (County Record Tab B).
- The kennels were constructed on the subject site between the years 1954 and 1955.
- Letter and Affidavit of May Louise Rose: "My husband, Donald Rose, assisted Alport in building the kennels ... this was done in 1954." (County Record Tab J, pp. 2-4 and 27)
- Affidavit of George Douglas: "I personally remember there was a dog kennel on Schillereff's property well back into the 1950's." (County Record Tab J, p. 5)
- Letter of C. Dondo: "I know that the Lake Tree Kennels, of Rt. 1, Box 120B on Sauvie Island, Portland, Oregon have been in the business of boarding and training dogs since the year of 1952." (County Record Tab J, p. 7)
- Letter of Elden E. Persinger: "I have known the Lake Tree Kennels to have been in the business of boarding and training dogs since the year of 1954 located at Rt. 1 Box 120B on Sauvie Island, Portland, Oregon 97231." (County Record Tab J, p. 8)
- Assessor's record: "12' x 58' kennel 1954" and "12' x 20' [addition] 1955." (County Record Tab J p. 24)

- Affidavit of Neil Rose: "I remember my father, Donald Rose, helped Mr. Alport build the original dog kennels on the property and place the older 'heights home' in position during May 1953." (County Record Tab J p. 26)
- Affidavit of Mairi Holman: "I remember my father, Donald Rose, helped Mr. Alport build the original dog kennels and place the house on the property during May 1953." (County Record Tab J p. 26)
- 50 - 60 dogs were boarded in the facility between 1953 and 1958.
- Affidavit of Neil Rose: "My father operated the kennel for two year [after we moved in May of 1953]. We had between 50 and 60 dogs present at all times, including Labradors, pointers, short hairs, springer spaniels and Chesapeake Bay retrievers. I was a student in junior high and high school during those years and clearly remember these events. My family remained on the property until the summer of 1955, when we moved off the island. When we moved from the island, my father turned the kennel operation over to Roy Wallace, who ran it for several years and kept about as many dogs as my father did." (County Record Tab J p. 26)
- Affidavit of May Louisa Rose: "My husband operated the kennel for two years, and I helped him out sometimes. We had between 50 and 60 dogs present at all times...My family remained on the property until the summer of 1955, when we moved off the island. When we moved from the island, my husband turned the kennel over to another operator, who ran it for several years and kept about as many dogs as my husband did." (County Record Tab J. p. 27)
- Assessor's records: "Date from Aug 1957 to Dec 1962 Occupant Evelyn T. Blitz; Description of Use: Commercial Kennel up to 50 dogs -boarding, breeding and training. Bought as kennel - buildings were here." (County Record Tab J p. 23)

We are convinced that at the time of the zone change the applicants had established a non-conforming use for a 50 dog capacity facility being used at capacity.

(2) The nature of a dog kennel.

We find that this kennel, and all kennel businesses have a periodic nature that results in a variation in the number of dogs boarded over the course of seasons and years. (See County Record Tab J p. 1 - a chronology of use of the facility from 1953 to present.) This is similar to nonconforming schools, hotels, churches, campgrounds and similar facilities which have a basic set of facilities with a particular capacity, but the actual number of occupants varies over time.

(3) Interruption or abandonment of the nonconforming use.

As set out above, we have found that the applicants have established that the subject property was used to kennel 50-60 dogs for several years prior to the zone change which made

this kennel a nonconforming use. We also find that all of the basic facilities for boarding 50 dogs have been in place on the applicants' property since the early 50s, and have been actively maintained and used to the present. The following evidence in the record support this finding:

- County Business License records indicating the kennel on this property was constructed in 1954 and 1955 as a commercial breeding and boarding kennel facility with the capacity for 50 dogs. (County Record Tab A)
- Affidavits of George Douglas, Elden E. Persinger, Timothy Schillereff, Norman Crowe, Mildred Meifert, Marguerite Persinger, Neil Rose, Louisa Rose, Mairi Holman, (County Record Tab J)
- Personal testimony before the Hearings Officer at the August 16, 1995 hearing from Fred Granata, Peter Davis, Kent Meyer, Bruce Cabbellero, Doug Johnston, Patty Larsen, Myron Meifert, Linda Reeder Burns, Tim and Angela Schillereff. We are particularly persuaded by the testimony of the dog kennel's early owners, Red and Marguerette Persinger.¹ (County Record Tab B)
- Letters from Neil Rose, Pat Baggett, Elden E. Persinger, C. Dondo and George Cashdollar.(County Record Tab J)

We specifically agree with and adopt as our own the Hearings Officer's conclusions with regard to this evidence found at pages 91 through 95 of his September 15, 1995 decision.

There is also substantial evidence in the record that the present existing use of the property is for the boarding of 50 dogs. (County Record Tabs F, G and H)

Marquam Farms has asserted that the nonconforming use has diminished over the intervening years and must be established for purposes of MCC 11.15.8810 at its lowest historical use. We do not find that there is any controlling legal authority which requires us to find the lowest historical use and establish that as the nonconforming use baseline for purposes of measuring impacts of proposed alterations.

¹ Representatives of Marquam Farms have objected that none of the testimony presented on behalf of the applicants before the hearings officer is credible. We disagree. Not only is much of this evidence given under oath, but the majority of it is very specific and detailed, especially that of the Persingers, who owned and lived on the property from 1973 until the applicants purchased it in 1989. We also note that no representative from Marquam Farms attended the August 16, 1996 hearings officer hearing, despite direct mail notice. Therefore, we reject Marquam Farms' opinions about the credibility of this testimony. Moreover, the testimony that Marquam Farms submitted in the 1994 design review proceeding and had incorporated into this record is from duck hunters that were on the Marquam Farms property, at most a few days each year. When compared with the detailed evidence from day-to-day activities submitted in support of the applicants, we were not persuaded by the evidence provided by Marquam Farms and do not find it credible.

The fact that there were less than 50 dogs at various times over the last 40 years (and the applicants do not dispute that), only relates to whether or not the established lawful nonconforming use was ever abandoned. We find that in the kennel business, like a quarry business, a church, a campground, a school, a hotel or other similar uses which generally have a basic set of facilities with a particular capacity, the actual number of occupants varies over time. The facility has always kenneled dogs, there was no demolition or conversion of the facility to another use; and, there is no evidence of an intention to abandon that use. When the basic facility and capacity have been actively maintained continuously over time and occasionally filled to that capacity, we will conclude the "use" has persisted throughout and that the nonconforming use right has been maintained. Just because the number of dogs, students, hotel guests, parishioners, campers, etc. fluctuates over time, we do not measure or limit the extent of the nonconforming use right by the number of occupants, which in virtually all cases would be zero at some point during every year. This interpretation of MCC .11.15.8810 and state law is modeled on the Oregon Supreme Court's decision in *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1997).

(4) Conclusion.

We conclude that applicants have proved that a 50 dog kennel nonconforming use has been established and maintained; that the nonconforming use has not been interrupted or abandoned; and, that is the baseline against which the impacts of an alteration to a kennel with a 75 dog capacity must be measured under MCC 11.15.8810.

B. The applicants have a right to a nonconforming dog kennel with a capacity for 50 dogs by virtue of the County's prior approvals, representations made to the applicants by the County that such a right exists, and the applicants' detrimental reliance upon those representations:

In addition to the evidence in this record to support the applicants' claim that their kennel has maintained a capacity for 50 dogs since before 1958, we are persuaded by previous County land use decisions that are premised upon, and therefore confirm, the fact that the applicants have a right to a nonconforming dog kennel with capacity for 50 dogs. In particular, each of the following unappealed land use approvals by Multnomah County is legally premised upon the fact of this nonconforming use:

- March 2, 1989 building permit to remodel the applicants' original kennel building. As part of that process, County staff specifically informed that a separate conditional use permit was not required for the use because it was nonconforming.
- August 6, 1990 Planning director's design review decision approving a remodeling of the applicants' existing 50-unit dog kennel.
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence for the applicants' existing 50-unit dog kennel, including a determination by the Chief Assistant County Counsel and an

acknowledgment by the planning commission that the applicants had a right to the existing nonconforming 50-unit dog kennel.

- March 7, 1996 Planning director's design review decision approving the applicants' remodel of the existing 50-unit kennel and the design for an additional 25 kennel units.

Each of the design review approvals specifically stated that the capacity of the applicants' kennel was 50 dogs.² Marquam Farms received notice of each of these applications, and in each had the opportunity to refute the stated kennel capacity of 50 dogs. Yet, Marquam farms failed to appeal any of these design review decisions, including the underlying kennel use with a 50-dog capacity. Moreover, in each of these applications, County Counsel and planning staff advised the applicants they did not need to make a separate application to establish the underlying kennel use.³ The applicants justifiably relied upon that specific direction from County staff and upon the County's approval and continued to invest in and maintain their kennel facilities.⁴

With regard to the November 1990 conditional use, the permit approved was for a use accessory to the applicants' 50-dog kennel. The application for an accessory night watchman's residence, as a matter of law, could only be accepted and considered by Multnomah County if the underlying use existed, *i.e.*, a dog kennel with a capacity for 50 dogs. Again, Marquam Farms had notice of this application; its representatives participated in the Planning Commission hearing, yet Marquam Farms did not appeal. We find that Marquam Farms' failure to appeal the County's decisions and the applicants' reliance on those same decisions have resulted in the applicants' right to a nonconforming kennel use with a capacity for 50 dogs. We are estopped from concluding otherwise in this application even if we were inclined to do so.

Our acknowledgment of the applicants' right in this regard is also supported by the staff's position taken in 1994 when the applicants had applied for design review to expand their dog kennel from 50 to 75 units. At that time, planning staff again verified the applicants' legal right to a nonconforming 50-unit dog kennel with the same chief Assistant County Counsel, who again opined that the applicants' nonconforming use right was valid and need not be re-proven in the context of the 1994 design review application. On that basis, the applicants were advised to not submit any separate application or evidence to prove their existing nonconforming use right to a 50-unit kennel. This advice is memorialized in staff's February 2, 1994 Pre-application

² We acknowledge that only some portions, but by no means all, of the records for these prior proceedings are now before us. However, there is no requirement of state law or the MCC that requires us to first review the entire record of these prior decisions before acknowledging what these decisions approve.

³ That acknowledgment was first explicitly stated in the October 8, 1990 opinion of chief Assistant County Counsel John DuBay that the applicants had a lawfully existing nonconforming use predating restrictive zoning. We accept and agree with that determination.

⁴ Under our interpretation of MCC 11.15.8810, we find that, not only do the applicants have a right to continue the nonconforming use they claim based on prior County approvals and advice of staff, but that we are estopped from concluding at this late date that the right does not in fact exist.

Conference Notes. Because the record in the applicants' 1994 design review application did not include this evidence, which staff specifically advised the applicants to not include, the Hearings Officer denied the application without prejudice.⁵

We now have the full record before us; whereas, that does not appear to have been the case with the Hearings Officer in 1994. In light of the evidence in this record, we find the applicants have had a right to a nonconforming 50-dog kennel. We find that, had the Hearings Officer had before him the record which we do today, he would have had sufficient evidence of the applicants' nonconforming use right to approve the design review request. Regardless of the validity of that supposition, we find that today the applicants have established their nonconforming use right to a kennel with a capacity for 50 dogs, that the County acknowledged that fact on four occasions since 1989, and that none of those decisions were appealed by Marquam Farms despite its participation in those proceedings.

C. The Applicants have demonstrated compliance with the criteria in MCC 11.15.8810 to allow expansion of the capacity of their dog kennel from 50 to 75 dogs:

MCC 11.15.8810(A)&(E) provide 12 criteria that must be met before an alteration, such as the one proposed here, can be approved and specifically require findings on each of the following.

- (A)(1) A change in the use of no greater adverse impact on the neighborhood.
- (A)(2) A change in the structure of physical improvements of no greater adverse impact on the neighborhood.
- (E) An alteration of a non-conforming use may be permitted if the alteration will affect the surrounding area to a lesser negative extent than the current use, considering:
 - (1) The character and history of the use and of development in the surrounding area.
 - (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.

⁵ We place emphasis on the 1994 Hearings Officer's decision which made no particular determination about the applicants' nonconforming use claim, but instead said "if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore the applicant's request for Design Review is denied without prejudice." The future confirmation of the applicants' nonconforming use right anticipated by the Hearings Officer in 1994 is set forth in this decision.

- (3) The comparative numbers and kinds of vehicular trips to the site.
- (4) The comparative amount and nature of outside storage, loading and parking.
- (5) The comparative visual appearance.
- (6) The comparative hours of operation.
- (7) The comparative effect on existing vegetation.
- (8) The comparative effect on water drainage.
- (9) The degree of service or other benefit to the area, and
- (10) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

We address each criterion below separately. But first, we specifically find that MCC 11.15.8810(E) does not necessarily preclude an increase in the number of kennel units, and that an increase from 50 to 75 can meet this standard of a reduction in negative impacts. In particular, we find the applicants' specific proposal includes a redesign of kennel operation that, when taken as a whole, will achieve a reduction in overall negative impacts from that of the current 50 units.

1. A change in the use of no greater adverse impact on the neighborhood.

The primary impact from this proposal, and the one which Marquam Farms complains of, is noise. We find this proposal and the design features it entails will result in an overall reduction in noise from this dog kennel operation. The specific design features that will bring about this degree of protectiveness is explained in detail in subsection (4) below.

2. A change in the structure of physical improvements of no greater adverse impact on the neighborhood.

The physical improvements that will accompany the applicants' increase from 50 to 75 dogs will reduce the operation's overall impact on the neighborhood, which in this case is limited to the Marquam Farms hunt club. The specific ways in which this will happen are described in detail in the subsections that follow.

3. The character and history of the use and of development in the surrounding area.

As already noted, the starting point for our inquiry is the applicants' lawful, existing, nonconforming 50-unit dog kennel. The history of use at this 9.4 acre site is characterized by a commercial dog kennel with a capacity for 50 dogs. The property is too small to be productively or economically put to a farm use. We define the "surrounding" area to be the area likely to be impacted by this proposed use. We find that a circle with a radius of 1,500 feet exceeds the

distance likely to experience impacts from this proposed kennel operation. For purposes of the criteria in MCC 11.15.8810(E), we address potential impacts within this area.⁶

The surrounding area is rural and sparsely developed (only 3 residences within a quarter mile radius). The kennel compliments recreational use of the island for hunting since hunting dogs are frequently boarded and trained at the kennel. The nearest residence is approximately 800 feet from the kennel, separated by Reeder Road and a 15-foot dike covered with an expansive blackberry bramble. The following improvements are not part of the current kennel operation, but are proposed by the applicants in this proposal: insulated roof, walls, parking and circulation. With these improvements, we find that barking dogs will not be audible at the nearest residence, and this conclusion is supported by the sound study conducted by the applicants and included in the record.⁷

The only commercial farming operation within a 1,500 foot radius is a dairy operation which reports no adverse impacts to date from the current 50-dog kennel operation or any of the other dog kennels on this property. We find that, with the proposed improvements, this farm will not experience any impacts from the proposed use in the future.

The only possible impact identified in the record is with Marquam Farms - the hunt club that abuts the subject site. Marquam Farms shares a common access easement with the applicants' kennel. We find that any dog barking problems previously experienced by Marquam Farms will no longer exist because of the proposed redesign. The applicants propose a new configuration that prevents dogs housed in the kennels from seeing hunters arriving and leaving Marquam Farms. With the new design, the dogs will no longer bark at arriving and departing hunters, thus the proposal, when taken as a whole, will reduce the impacts presently experienced by Marquam Farms from 50 dogs.

4. The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.

With regard to noise, the applicants have submitted a credible, expert sound study that demonstrates that barking dog noise, even with the addition of 25 more dogs, will be reduced.⁸ In particular, the following design features will collectively reduce the noise below what is currently experienced with a 50 dog kennel:

⁶ In addition to the findings set forth herein, we also expressly accept and adopt as our own the compatibility analysis submitted by the applicant at pages 13-14 and 26 of their application narrative.

⁷ The noise study (conducted by Rose City Sound in 1990) is attached to the applicants' narrative as Attachment E. We accept this study and its conclusions as credible expert testimony on the subject of noise impacts.

⁸ In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicant at pages 26-28 of their application narrative.

- A 100' solid wall for the full length of the shared accessway that blocks the kennels' view of hunters entering and leaving the Marquam Farms hunt club,
- Kennels covered with an insulated roof to prevent sound transmission,
- A parking lot design that allows dogs to be taken to grooming, bathing, exercise and living facilities without being heard or seen by dogs in the kennel,
- A circulation design that allows dog owners to pick-up and leave-off dogs out of sight and sound of the kennels, thus not disturbing dogs housed in the kennels.

We find these measures will be adequate to prevent and, in fact, reduce noise impacts on all properties within the impact area. In light of the fact that the applicable zoning allows all of the surrounding properties to have up to 3 adult dogs with absolutely no mechanism to prevent any impacts, we find the applicants' proposal will prevent noise impacts.

With regard to dust, we find that the applicants' driveway is graveled and there is no evidence of dust from traffic on the driveway. Based on this record, we find that dust is not a factor that could adversely impact properties in the impact area. To the extent that dust from the gravel driveway could be construed to be a problem, we find that conventional tillage agricultural operations produce far more dust than could be produced from the applicants' driveway.

With regard to odor, we find no evidence of odor complaints in the record before us. Moreover, the applicants have installed an on-site septic system sufficient to handle all septic waste from a 75-unit dog kennel. Consequently, we find that odor from the proposed 75-unit kennel operation will not be a problem.

We find there will be no vibration, glare or smoke impacts from this proposed use. In summary, we conclude that the proposed alteration to expand the kennel to 75 dogs will affect the surrounding area to a lesser negative extent than the current 50-unit kennel considering noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line. Thus, we find that, pursuant to MCC 11.15.8810(E)(2), the alteration will have a reduced negative effect when compared to the current operation.

5. The comparative numbers and kinds of vehicular trips to the site.

We find that, with an increase from 50 to 75 kennels, vehicular traffic will necessarily increase; however, with the proposed modifications to the kennel's design, we find that the negative impacts from traffic will be less.⁹ The traffic benefits from the proposal are primarily from improved parking and circulation at the site - and issue discussed in the next subsection. Moreover, we find, based on evidence in the record, that none of the transportation facilities serving the applicants' kennel are near capacity, and thus there will be no capacity or safety impact from the proposed expansion. We also find to be persuasive the fact that the peak dog

⁹ In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicants at pages 28-30 of their application narrative.

boarding season (summer) does not overlap with the peak in duck club use at Marquam Farms (fall and winter). Accordingly, we find, pursuant to MCC 11.15.8810(E)(3), the alteration will have a reduced negative effect when compared to the current operation.

6. The comparative amount and nature of outside storage, loading and parking.

There is no outside storage associated with the current or proposed configuration, thus outside storage is not an issue. The proposal will improve the site's parking by adding wheel stops, thus maintaining better parking organization and by screening the parking and loading areas from dog kennels, thus limiting disturbance to boarded dogs. Also, the new parking configuration will prevent customer cars from blocking the access shared with Marquam Farms because of the proposed single office, replacing the current 2 offices, the location of circulation signs and the better organization of parking spaces marked with wheel stops. With these improvements, we find that, pursuant to MCC 11.15.8810(E)(4), the alteration will have a reduced negative effect when compared to the current operation.

7. The comparative visual appearance.

We find that the proposed improvements to the kennel will improve its visual appearance for the following reasons:

- The old Quonset huts on the property will be replaced with a new, state-of-the-art kennel building.
- The parking lot will be provided with wheel stops and signs to ensure that customer vehicles are parked in an orderly fashion.
- New landscaping and fencing will be installed as proposed which will enhance the appearance of the kennel and grounds.

With these improvements, we find that the expanded kennel will have a better visual appearance than does the present 50-dog operation. Accordingly, we find that, pursuant to MCC 11.15.8810(E)(5), the alteration will have a reduced negative effect when compared to the current operation.

8. The comparative hours of operation.

The hours of operation with the proposed expansion will not change; thus, MCC 11.15.8810(E)(6) is not a factor.

9. The comparative effect on existing vegetation.

With the proposed expansion of use to 75 dogs, the applicants propose new landscaping which will benefit and lessen the impacts to Marquam Farms. In particular, Marquam Farms will benefit from landscaping separating the parallel parking area from the northeast wall of the new

kennel building. With this improvement, we find that, pursuant to MCC 11.15.8810(E)(7), the alteration will have a reduced negative effect when compared to the current operation.

10. The comparative effect on water drainage.

The proposed alteration will increase slightly the impervious area and thus the runoff from the site. However given the site's 9.4-acre size, we find that the site's overall drainage will not be affected by the proposed expansion. As noted previously, the water quality of the runoff will not be negatively impacted by the use because of the septic system planned to serve the expanded operation. For these reasons, we find MCC 11.15.8810(E)(6) is not a factor.

11. The degree of service or other benefit to the area.

We find the alteration proposed by the applicants will benefit the surrounding area because of the substantial improvements in design, facilities and operations it represents. The only complaints received in this matter were from Marquam Farms, and we find that the proposed alteration, when taken as a whole, will not only eliminate those impacts that currently exist, but will benefit Marquam Farms. The expansion will allow the applicants to serve more of the dogs owned by hunt club members as well as dogs owned by other Sauvie Island residents. The proposal will reduce noise, improve the overall appearance of the property and buildings and improve parking and circulation. All of these improvements, and the increased capacity, stand to benefit the surrounding area. Thus, pursuant to MCC 11.15.8810(E)(9), the alteration will have a reduced negative effect when compared to the current operation

12. Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

As noted previously, we find the present use has no measurable impact on surrounding resource uses or its neighbors, with the possible exception of Marquam Farms. With the proposed expansion, those few impacts will be substantially reduced or eliminated. The applicants' proposal is designed specifically to reduce impacts with Marquam Farms and provide a better standard of service to current and future customers. We believe the insulated and completely contained building design, the solid wall along the shared access way, the improved circulation measures and landscaping will make this kennel more compatible with Marquam Farms and the other properties within the surrounding area. We find these measures, taken as a

whole will reduce the overall conflicts with surrounding uses, to the extent they exist at all, and will make the use in its altered form more compatible with its neighbors as required by MCC 11.15.8810(E)(10).

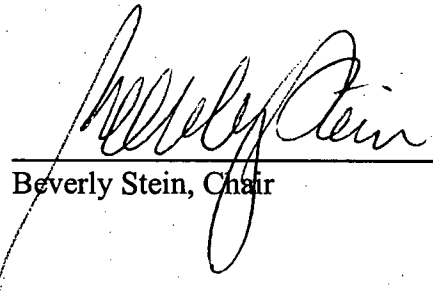
IV. CONCLUSION:

Based on the foregoing findings of fact and conclusions of law, we hereby approve the applicants' request for an alteration of their existing, lawful, nonconforming dog kennel with a capacity for 50 dogs to expand the kennel capacity to accommodate 75 dogs.

IT IS SO ORDERED this 5th day of February, 1998.

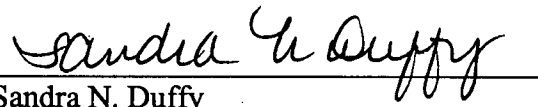


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:

THOMAS SPONSER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra N. Duffy
Chief Assistant County Counsel

J:\DHK\33536-00.003\BOCCFIND.DOC

Meeting Date: DEC 30 1997
Agenda No: R-8
Est. Start Time: 10:40 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Final Order in the Matter of a REMAND Hearing of the Board of County Commissioner's decision on CU 4-95 & MC 1-95.

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

REGULAR MEETING Date Requested: December 30, 1997
 Amt. of Time Needed: 10 minutes

DEPARTMENT: DES **DIVISION:** Transportation & Land Use Planning
CONTACT: Sandra Duffy **TELEPHONE:** 248-3138
 BLDG/ROOM: 412 / 109

PERSON(S) MAKING PRESENTATION: Sandra Duffy / Daniel Kearns

ACTION REQUESTED

☐ Informational Only ☐ Policy Direction ☒ Approval ☐ Other

SUGGESTED AGENDA TITLE

Final Order before the Board of County Commissioners regarding an approval of an expansion of a non-conforming use (dog kennel) from 50 dog capacity to 75 dog capacity on Exclusive Farm Use land.

SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: _____

KB Lawrence Nicholas

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 DEC 23 PM 3:01



CASE NAME : Schillereff Dog Kennel

NUMBER:

CU 4-95 & MC 1-95

1. Applicant Name/Address

Tim & Angella Schillereff
23200 NW Reeder Road
Portland, OR 97231

2. Action Requested by Applicant

Conditional Use approval to (1) expand the existing 50 dog kennel facilities to allow no more than 75 dogs; and (2) alternatively, approve request for the resumption and expansion of a non-conforming use.

3. Planning Staff Recommendation

Denial

4. Hearings Officer Decision

Approval

5. If recommendation and decision are different, why?

Evidence provided at the hearing that was not available at the time of the writing of the Staff report which convinced the Hearings Office that the kennel had been in continuous operation since its establishment in 1952.

ISSUES

(who raised them?)

6. The following issues were raised:

a. Procedure.

Applicant requested that the remand go directly to the Board of County Commissioners and that new proposed findings based on the record be adopted by the Board

Opponent Marquam Farms asked the Board to have the record opened for the taking of additional evidence before a Hearings Officer.

On December 16, 1997, the remand hearing was held before the Board, on the record, with both parties presenting argument.

The Board, after deliberating, asked the staff to marshal the evidence on the nature and extent of the kennel non-conforming use. The matter was continued to December 30, 1997, 11:30 a.m., for consideration of the marshaled evidence, further deliberation and voting on the requested action.

b. Evidence regarding nature and extent of non-confirming use.

Applicant has prepared an excerpt of the record in this case which is offered in support of a finding by the Board that applicant has established a non-confirming use for a 50-dog capacity kennel facility on the subject property.

In summary, the evidence in the record of the nature and extent of this non-confirming use is:

- October 18, 1967 County Business License records stating that the facility was constructed in 1954 and 1955 as a commercial breeding and boarding kennel facility with a capacity of up to 50 dogs. (Tab A of Excerpt of Record).
- March 2, 1989 building permit to remodel the applicants' original kennel facility with a capacity of 50 dogs. (Tab J).
- August 6, 1990 Planning Director's design review decision specifically for the "remodeling of a Kennel for 50 Dogs." The lot layout in the application and decision show the original pre-1958 buildings still intact with a capacity for 50 dogs. (Tab G).
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence, the decision for which specifically says the applicants' kennel has an approved capacity for 50 dogs. (Tab F).
- August 19, 1994 Design review denial maintaining facility at 50 dogs. (Tab H).
- Timeline from 1953-1989 of numbers of dogs in kennel facility showing fluctuating numbers of dogs. (Tab J).
- Affidavits supporting the information in the timeline:

(See Tab J).

George Douglas
Elden E. Persinger
Timothy Schillereff
Norman Crowe
Mildred Meifert
Marguerite Persinger
Neil Rose
Louisa Rose
Mairi Holman

- Letters from:

(See Tab I).

Neil Rose
Pat Baggett
Elden E. Persinger
C. Dondo
George Cashdollar

- Personal testimony before the Hearings Officer at the August 16, 1995 hearing from:

(See Tab B).

Fred Granata
Peter Davis
Kent Meyer
Bruce Cabbellero
Doug Johnston
Patty Larsen
Myron Meifert
Linda Reeder Burns
Tim and Angela Schillereff
Elden D. Persinger
Marguerette Persinger

c. Board options.

(1) Denial of application based on failure to prove that there have been 50 dogs kenneled at the subject property, with no breaks of more than two years, from 1958 to present. This option means that the Board has interpreted the "nature and extent" of a non-conforming use to be purely a numerical "counting of the dogs" over the relevant years.

(2) Approve the application based on a determination that the "nature and extent" of a dog kennel non-conforming use takes into consideration that the very nature of a kennel is to fluctuate in the number of dogs at the facility (like a school, hotel, church, campground, etc.). The approval would be first, a determination that the facility has always had the capacity for 50 dogs and that that use was never abandoned by disuse, demolition or conversion to another use; and, second, the approval would be a determination that the requirements of MCC 11.58.8810 (to expand a non-conforming use) have been met.

(3) The Board could still refer this matter to a Hearings Officer to open the record for more evidence. The applicant has indicated it has no further evidence to submit on the nature and extent of the non-conforming use. The applicant has the burden of proof. The opponent has indicated a desire to submit additional evidence on the issue of actual impact of 75 dogs. applicant asserts that there are not 75 dogs because no approval for 75 dogs has been obtained. The opponent had an opportunity to present evidence in prior hearings on impact, and did so.

WPS Memorandum

Post-It® Fax Note	7671	Date	12/22	# of pages	2
To	Dan Kearns	From	Eric		
Co./Dept.		Co.	WPS		
Phone #		Phone #	827-4422		
Fax #		Fax #			

TO: Dan Kearns
FROM: Eric Eisemann
SUBJECT: Schillereff - Kennel capacity issues
DATE: December 22, 1997

Greg Winterowd asked that I research the Schillereff record to determine the 'nature and extent' of the capacity of the dog kennels on the property over time. The record reveals the following:

The County established F-2 (Agricultural) zoning over the property on either April 19, 1955 (opponents) or on July 10, 1958 (Sullivan). The kennels were constructed on this site between the years 1954 and 1955.¹ They were operated as commercial kennels since their construction.² The kennels, as originally constructed, consisted of two buildings, measuring 12' x 58' and 12' x 20'.³ The footprint of these two buildings remained unchanged over time.⁴ The original capacity of the two kennel buildings was 50 dogs, more or less.⁵

¹ All records found in Tab J, Non-conforming Use, unless otherwise noted.

See: County record: "10-18-67". "Addition 12' x 58' 1954 Kennels 12' x 20' - 1955". Rose, May Louise affidavit: "My husband, Donald Rose, assisted Alport in building the kennels this was done in 1954." Vetch letter, Exhibit 8: "Peter Alport built in kennels in the 1950s."

Douglas, George, affidavit: "I personally remember there was a dog kennel on the Schillereff's property well back into the 1950s." Rose, Neil, affidavit: Setting the date of construction at 1953.

² Dondo, Persinger & Cashdollar letters, November 1967: "The kennels have been in the business of boarding and training dogs since the year ("1952", Dondo; "1954", Persinger; and "prior to 1958", Cashdollar.) And many others.

³ County record "10-18-67."

⁴ See: County record: "Aug. 1957 to Dec. 1962". Same Bldg bought from Roy Wallace who had rented it out to breeders for about 5 yrs (+/-)." County record: "Feb. 64 to Feb. 65". "Bldg same as now - alot^{sic} per lease." County record: "Oct. 65 to Oct. 1966". "Bldg same." County record: "10-18-67". "Corrugated metal. 60 x 15 (+/-) 25' x 15' (+/-). Actual 12' x 20', 12 x 58'."

⁵ See: County record: "Aug. 1957 - Dec. 1962. Evelyn Blitz." "Commercial kennel - up to 50 dogs - boarding breeding & training. Bought as kennels - Bldg were there." County record: "Feb. 64 to Feb. 65. Courtway." "Leased on basis it be a commercial kennel." County record: "Oct. 65 to Oct. 66. Victor Eaton." "15 - 20 dogs, 2 or 3 per run, but more likely one." County record: "10-18-67. Zone F-3, Non-conforming use "Approved". "Use: Boarding and breeding dogs. 30 runs in 60' bldg. 10 runs in 25' bldg. 5' wide. Bought from Evelyn Blitz. Limited to 50 dogs." Affidavit: Norman Crowe. "During the time I visited Eva Blitz's kennel, the kennel was always at or near capacity -- in the neighborhood of 50 dogs." "I remember the kennel owner, Myron Melfert, always operated at or near capacity of about 50 dogs." Affidavit: Pat Baggett. "Every time I visited the property when Eva Blitz owned it (1957 - 1962), she always had 25 dogs or so in the kennels." Affidavit: Mildred Melfert. "During most of the commercial kennel period (1950s through 1968) the kennel runs were often full."

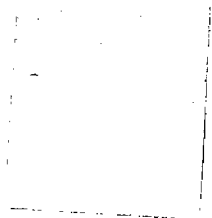
EXCERPT FROM THE RECORD

SCHILLEREFF DOG KENNEL APPLICATION

---NONCONFORMING USE DOCUMENTATION ---

ITEM	TAB
County Business License Records.....	A
Transcript of the August 16, 1995 Hearings Officer hearing.....	B
Nonconforming Use Documents (affidavits and documents).....	J
1990 CUP decision for Nightwatchman's Residence.....	F
1990 design review approval for kennel addition	G
1994 design review decision denying kennel addition	H
Letters and documents in support of nonconforming use.....	I

⑤



DATE 10-18-67

ZONE F-2

CONFORMING WPPKOURN

ASSESSOR'S RECORD

PRESENT STATUS

LAKE TRER KENNELS

Date Built HOUSE
1942

Location REEDER RD. RT 1 BX 120 B

Date Established MOVED IN 9-5-67

Addition 12'x58'

Owner MEIFERT, MYRON JR

1954 KENNELS

Address SAME

12'x20' - 1955

Occupant MEIFERT

WANTS

Use BOARDING & BREEDING DOGS

Description of Use 30 RUNS IN 60' BLDG

10 RUNS IN 25' BLDG - 5' WIDE

Personal Prop.

(List Equipment
and Dates)

BOUGHT FROM BUSBYN BUTZ

LIMITED TO 50 DOGS

Description of Buildings and Equipment CORRUGAT.

METAL 60'x15' 25'x15'

Assumed Name

Number of Employees NONE

Description of Signs ONE SIGN 18"x18" (ILL.)

Permit

THU OWN 3 DOGS

PREVIOUS USE

Date From OCT 65 To OCT 1966

Notes

Occupant VICTOR EATON - ZENTERS

Description of Use 15 TO 20 DOGS

Description of Equipment BLDGs SAME

Number of Employees NONE

Description of Signs SAME AS PRESENT

MAP

PREVIOUS USE

Notes

Date From FEB - 64 FEB 65

Occupant COURTWAY

Description of Use HAD DOGS - LEASED
ON BASIS IT BE A COMMERCIAL
KENNEL - ENG. BULLDOGS - BROOD
OWN STOCK - 4 TO 5 ADULTS &
8 OR 10 PUPPIES MOST OF TIME

Description of Equipment BLDGS - SAME
AS NOW

NOT USED ASPHALT LEASE

Number of Employees NONE

Description of Signs NONE

MAP

PREVIOUS USE

Notes

Date From AUG 1957 to DEC 1962

Occupant EVELYN T. BLITZ

Description of Use COMMERCIAL KENNEL
UP TO 50 DOGS - BOARDING,
BREEDING & TRAINING. BOYS,
AS KENNEL - BLDGS WERE HERE

Description of Equipment SAME BLDGS
BOUGHT FROM ROY WALLACE, WA
HAD RENTED IT OUT TO BREEDERS
FOR ABOUT 5 YRS (+)

Number of Employees ?

Description of Signs MARQUAM LANE
KENNELS - SIZE & NUMBER IN
4' SIGN IN BASEMENT STORED AT

MAP

66-15-3-24-11
K.C.N.R.
K.E. & D.T.C.
Rt. 1 Box 120 B Reeder Rd.

DATE 1-28-69

ZONE F-2

-CONFORMING

ASSESSOR'S RECORD

Date Built _____

Addition _____

Personal Prop.
(List Equipment
and Dates)

Assumed Name _____

PREVIOUS USE _____

Notes _____

MAP _____

PRESENT STATUS LAKE TREE KENNELS

Location REEDER RD RT 1 BX 120

Date Established SEE ATTACHED

Owner HENRY H. REEDER (PRIN (PRIN INV. CO

Address _____

Occupant M. EIFFERT, MYRON

Use DOG KENNEL

Description of Use PRIN BOUGHT FROM

M. EIFFERT. M. EIFFERT HAS BEEN
TRAINING & BOARDING DOGS

Description of Buildings and Equipment SEE ATTACHED

Number of Employees NONE

Description of Signs NONE

Permit 8.471 KENNEL HOUSE ALL OF 71-23-5

Date From _____ To _____

Occupant _____

Description of Use _____

8.4.71 HARRY REEDER NOW OWNS THIS & TELLS
39.34 A & 7C 15-3-24-24-1/2 AC TREE
WANT, BA FOR WATCHMAN

Board of Adjustment - Approval

Description of Equipment _____

Number of Employees _____

Description of Signs _____

Exhibit #132

B

**PROCEEDINGS BEFORE MULTNOMAH COUNTY HEARINGS OFFICER
AUGUST 16, 1995**

HEARINGS OFFICER

Okay, we took a five minute break. Does anybody in the room notice somebody who was here that should be here that has not returned from the break yet? Do we need to wait any longer? Okay. A couple of general matters first. My name is Barry Adamson. I'm the Hearings Officer for today. I've been determining whether or not the applicable Multnomah County . . . Provisions and Comprehensive Plan criteria apply to the applications that are before the County today. I am going to determine whether or not the applicants met the burden of demonstrating compliance with any of the pertinent criteria.

My procedures are . . . tend to fluctuate with the nature of the proceeding and the time that we have. First of all I going to have to tell you that the criteria to the matters to the County are set forth in the Staff Report. The staff report for today's proceedings are I believe in the back of the room. The pertinent criteria from the Zoning Ordinance and the Comprehensive Plan are listed in there. What I'm going to do generally is turn matters over to the staff, after I'm done with my spiel here, for a short presentation and a summary of the application. Following staff I'm going to allow the proponents to offer anything additional into the record. I'm not going to have set times for doing that, but I would ask the proponent take into account his rebuttal time. Following the proponent's comments or additional testimony I going to allow the opponents a fairly equal amount of time to state their views, following which the proponent is going to have a chance for rebuttal. I would caution you that I am fairly familiar with the staff reports in these matters. I would ask if you are going to comment on things not to be repetitive of what has already been in writing in the particular application. When you give your testimony, is that what you're going to give, testimony today, I'll ask you to try and remember. I'll help you if you forget to say who you are and where you live and what your relationship is to the application, what particular issue or issues you want to talk about. Be specific. I want to have people address the particular criteria that are pertinent to the application. And I will remind you of the raise it or waive it rule. If you don't mention it today it's going to be too late. So you will, anybody who wants to say something today will have an opportunity to do that.

The next matter on the agenda is CU 4-95/MC 1-95. It's a conditional use request. It's an alternative request, either a conditional use or an alteration of a non-conforming use. The applicant is Tim and Angela Schillereff. I will tell you that, I'm reading my notes here, I have received one letter, which I will get to in a minute. I got that yesterday, in terms of ex parte contact. That was from an opponent. I have not received anything from the proponent of any other late information pertaining to this. I have read the staff report and I'm familiar with this case. I happened to actually be here last July and sat through that hearing. I have not visited the site. With that in mind I think I'll turn it over to staff now for a description.

MR. HALL

I have some slides of the property, would you like to see them?

This is their property, excuse me sir is that in your way? This is the property located at 23200 NW. Reeder Road. This is looking northeasterly along the Reeder Road frontage. The little small sign that you see there is the sign for the kennel. The County car there is parked in the parking lot next to the dike that surrounds a portion of Sturgeon Lake. The area, all that area north of the end of Sturgeon Lake area, is a game preserve. The applicants' property is located to the right.

This is looking in the opposite direction, along Sauvie Island Road, showing the rural character of the surrounding area. I believe you can see there are just portions of the two residences that are closest to the subject property. They are located, I think, the nearest one is about a thousand feet from the kennel operation.

This was taken from up on the dike itself. The house that you see there to the left, that white house, is the house of the owner of the property. You can see here between the trees there on the right where you can see a portion of another home, and that is a building that was approved in 1990 as a watchman's residence. I'm not sure whether it was 1990 or 1993, I have to look in the book, anyway it was approved as a watchman's residence in conjunction with the kennel operation. The kennel operation itself is located almost in the center of the photo, as you can see it's obscured by the existing vegetation there.

There is a closer up view of the owners residence on the property. Again, this looks easterly and you can see the rural nature of the surrounding area. This is a better view of the watchman's residence. The kennel operation in this case is located to the left in that grove of trees.

This is looking directly into the kennel operation from Sauvie Island Road. As you can see, it's totally fenced with cyclone fence with slats, and again the vegetation virtually obscures what you see from at least this portion of Sauvie Island Road, Reeder Road.

This was taken from the dike across the road again looking into a common access, a common driveway that is shared between the kennel operation and the duck hunting club that's located on the left side of the driveway. The building you see there is a building that was approved as an agricultural accessory building to the duck hunting operation.

Here, we're going down the driveway into the property, again the building I mentioned is located to the left. You can see some of the fences surrounding the kennel there to the right. And here is where the driveway splits off and those are the gates to the duck hunting club.

Here you are looking right into a portion, the central portion of the kennel operation. It's hard to see but there are two Quonset type structures that have existed on the property since the early 50's and have been used for kennel purposes.

Again the duck hunting club road to the east of this property, the ... building I mentioned, and the building to the left of that is the clubhouse for the hunting club.

Here we're looking more into the kennel, again the cyclone slatting obscuring the view from the surrounding area. This is taken of the southerly portion of the property, of the parking lot for the kennel operation. The small portion of the building on the right is the office. The larger portion in the center, that's the highest peak area. It is a kennel addition that was done in 1990, and the lean-to portion of the building is an ag exempt structure that was approved for storage of agricultural equipment.

This is looking in the opposite direction from that parking area, again showing the...limited development and the agricultural character of the surrounding area.

Here we're looking into the kennel. This is a portion of the newer portion. You can see the dog run, and the landscaped interior of the kennel operation.

This is looking the other way into that same portion of the kennel.

This slide was taken on the southwest portion of the property, along Sauvie Island Road. The white house is the owner's house that I mentioned. You can see a portion of the caretakers residence and the newer portion of the kennel. From all outward appearances it looks like an agricultural building associated with many other similar agricultural uses on Sauvie Island. And that's it.

As you mentioned this request involves, actually, two requests. That's an expansion of an existing conditional use and an alteration of a non-conforming use. The staff report relied heavily on the most recent County decision in this matter which is DR 4-94. And with respect to the conditional use portion of the request, that decision found the dog kennel use of this property was not a legal use. Therefore we cannot consider this as an expansion of an existing conditional use, and we evaluated it as a new conditional use for a seventy-five dog kennel.

And the first consideration in a new conditional use on exclusive farm use property is the Oregon Administrative Rule regarding high value soils. The soils of this property are of high value. That rule would not allow new dog kennels on high value soil, so therefore we found no way that we could approve this expansion of this...

With respect to the alteration of a non conforming use, that same decision in DR 4-94 found that this use has lost its non-conforming status... Therefore, since we have no existing non-conforming use at least in the light of that decision, you can find that we have no use to alter it...

So the staff report concludes with respect to both items, that they would deny the request for the expansion of the non-conforming use and the request for the alteration of...and that the alteration of the non-conforming use also be denied.

I'll be glad to answer any questions.

HEARINGS OFFICER

I don't have any for now. I did receive late yesterday, again by fax at 4:30, a letter from the opponents, an opponent, asking me to do certain things. What I'm going to do briefly is, this is his letter,...I'll wait until copies are made.

While the copies are being made I can run through in effect what the gist of the letter is. It requests that I do certain things . . . that the Hearings Officer, some of which are procedural and some of which are substantive . . . only to the appropriate ruling. The first request, the first item in the letter is a request for a set over or a continuance. Mr. Josselson and Mr. Derr, on behalf of Marquam Farms Corporation have asked that I continue this matter until next months calendar, the reason being that they are both out of town. As I say I got this at 4:30 yesterday. I'm not terribly fond of late last minute requests like this for continuances that particularly when there is no what I call application-related reason why the continuance should occur, everybody knows what this decision is all about. There is no statutory right for a continuance under these circumstances, except where ORS 197.763 sub part 4B might apply, but I find that extension doesn't apply in this case to grant the right to a continuance made prior to the time that statue might otherwise result in a continuance. And the letter that I received, doesn't refer, for example, to any new evidence that was received late that might otherwise necessitate a continuance, so I'm going to deny the request for a continuance, but go ahead with the matter today.

The second portion of that initial request is for a, that I hold the record open for twenty-one days. ORS 197.763, sub 6 does say that if a participant requests the record be, remain open, before the hearing today, that this request shall be honored and the record shall remain open for seven days, at least seven days. What I'm going to do is this, in light of this situation to try and be as fair about this as possible under the circumstances. I'm not going to grant the continuance but I am going to say that the proponents are going to have until a week from today, until August 23rd at 4:30, to file anything further in support of the application. The opponents will have until August 30th at 4:30 to file anything further that they want. And then the proponents will have until September 6th at 4:30 to file any rebuttal to whatever the opponents file on August 30th. I anticipate that the rebuttal will be, if any, will be limited solely to whatever the opponents file by August 30th.

The second portion of the letter raises the possibility of a defective notice that the County sent out regarding this hearing. I've read the notice, I've read the one page April 11th application and I've read the February 23rd, what I call long form application, and I find that although there is a bit of an ambiguity there, that there is nothing substantive that is wrong with the notice. The April 11th, I believe, the one page application says the applicants seek a conditional use approval or alternatively an alteration of a non-conforming use for a seventy-five dog kennel. There is a February 23rd long form application submitted by the proponent

which says the application is to allow for expansion of the existing kennel operations, and in turn the notice that the County sent out recites that the applicant requests conditional use approval or approval for alter a non-conforming use to expand capacity at the existing dog kennel facility on this property from a maximum of fifty dogs to seventy-five dogs. Marquam Farms suggested it's not clear whether the request is for approval to expand a lawful 50 dog kennel to 75 dog kennel, or whether the request is for an approval in the first place of a 75 dog kennel where no lawful kennel use presently exists.

First of all I'm going to, I find that the notice was not ambiguous in light of the application materials submitted by the applicant. And particularly in light of the historical events in this case but the notice clearly paraphrases and summarizes the application materials submitted by the applicant. And I also find that, given the ruling last August I believe it was, by Mr. Grillo, which staff summarized a moment ago, there is no reasonable person who can comprehend this application that's predicated on a permitted conditional use. . . .necessarily implies this...original application, I shouldn't say original, an application to recognize it as a conditional use and get it permitted.

I'm going to deny Marquam Farm's request that we set this matter over and put new notice out.

The letter next raises an issue which, and legally...labeled "claim preclusion". In effect, the Marquam Farms says that the August '94 Hearings Officer decision renders this entire proceeding moot, or else dictates a result in this proceeding. My ruling is that's a substantive issue, it's not procedural. I'll deal with that in the decision that I'm going to make. That doesn't really raise a procedural question for now.

The next item mentioned in the letter is the issue of some pending litigation. Apparently there is a pending Multnomah County Circuit Court proceeding against the applicants. They've requested an injunction against an unlawful kennel use. I find that the, oh and Marquam Farms asks that I simply abate or stay this proceeding until that circuit court matter is determined. I don't know the contents of that lawsuit, I just know from what is said here it involves a request for an injunction. I don't know its status, but I do know this, based upon what I see in the file, the opponents themselves, Marquam Farms first objected to the lawfulness of this use in a land use proceeding, particularly the proceeding that took place last summer. And I concluded that they initially objected to the contents of the County proceedings and therefore these proceedings shall continue and in my estimation shall take priority.

I also quite frankly don't understand the relationship between the request for a ...perceived here to be a request here that the use be given a lawful, that it be ... a lawful use. I'm going to deny the request that I stay this matter pending the outcome of the Circuit Court matter.

The final matter mentioned in the letter I got yesterday speaks of the provisions of Oregon Administrative Rule 660-32-120 part 3, which staff summarized a moment ago as precluding

kennels on high value farm land. That raises a substantive issue, not a procedural issue. I'll deal with that in my decision. I'm not going to make any ruling on that particular issue today.

With those procedural issues out of the way, I going to open it up to the proponents who basically will tell us why we are here again.

MR. SULLIVAN

Good morning Mr. Adamson. My name is Ed Sullivan, my office address is 111 S.W. 5th, Suite 3200, Portland, 97204, and today I'm representing the applicants, Tim and Angela Schillereff. Tim and Angela have, for the last six years run the Sauvie Island kennel, and seek to expand and modernize their operations. As you know from reviewing the staff report and the file in this matter, there has been a long-standing dog kennel on this site owned and operated by Tim and Angela and before that, their relatives the Persingers. However the level of operations on this site has fluctuated since zoning was first applied to Sauvie Island in 1958.

In 1989, when Tim and Angela used the same property and the same buildings for a kennel, they set about making improvements and went to the County to see what they needed to do. They approached the planning staff and sought a conditional use permit for their operations. They even brought in a conditional use permit application filled out. County planning staff told Tim and Angela that no conditional use permit was necessary, that their situation came under Multnomah County Code 11.15.2028, sub b and c, which both the planning staff and County Counsel said meant that conditional uses listed in the EFU zone which existed before August 14, 1980 shall be deemed conforming and therefore do not require conditional use approval. On that advice, Tim and Angela did not file their conditional use permit. Instead, and again as advised by the staff, they sought and received design review approval for the structural improvements necessary to bring their kennels into operation. They also received a conditional use permit later that same year for their home as a watchman's residence in conjunction with the kennel use. During these 1990 proceedings the issue of the status of the kennel was raised and disposed of by the Multnomah County Planning Commission, which relied upon both the staff report and staff testimony that a conditional use permit was not needed.

You will hear from both Fred Granata, who represented the Schillereffs during those proceedings and from Eric Eisemann who reviewed the record and has excerpted portions of the record on those points.

HEARINGS OFFICER

I'm going to jump in here while we're . . .

MR. SULLIVAN

Sure.

HEARINGS OFFICER

. . .going through...

MR. SULLIVAN

That's okay.

HEARINGS OFFICER

You said that the status was determined in 1990, was it?

MR. SULLIVAN

Yes.

HEARINGS OFFICER

Okay, you said the status was determined. What in your estimation comprises "status"?

MR. SULLIVAN

You will hear testimony that the Planning Commission in adopting the staff report determined that this was a conditional use, by virtue of the then staff interpretation which was raised to a Planning Commission interpretation of 11.15.2028, sub b and c.

HEARINGS OFFICER

A kennel was determined . . .

MR. SULLIVAN

Yes. Without applying for it, by that interpretation and by the adoption of that interpretation by the Planning Commission, it received the status. We are as a prophylactic measure applying for a conditional use permit in any event. We are also asserting to you that not only do we have non-conforming status, but we also have a conditional use by virtue of those previous proceedings.

HEARINGS OFFICER

Okay, in 1990's particular proceedings, I believe there was a couple of them, maybe more.

MR. SULLIVAN

There were two.

HEARINGS OFFICER

Okay. One was a design review.

MR. SULLIVAN

Yes.

HEARINGS OFFICER

And the other was a conditional use for a watchman's house.

MR. SULLIVAN

That's correct. And I believe this occurred during the design review portion.

HEARINGS OFFICER

Okay.

MR. SULLIVAN

And you will get specific excerpts from the record in Mr. Eisemann's testimony today.

HEARINGS OFFICER

Okay. Fine, now what's your position on whether or not the lawfulness of the conditional use is something on which findings need to be made in the design review process? That's a long question, do you understand what I'm saying?

MR. SULLIVAN

Yes. Let me try to respond to it by saying that in both the design review processes, the 90 and the 94, there were findings made. Those findings are inconsistent. The first said that there was a conditional use there, and a lawful use there. The second, Mr. Grillo's said there was not.

HEARINGS OFFICER

Okay, the first that you're referring to, the design review.

MR. SULLIVAN

The 1990 design review.

HEARINGS OFFICER

Design review proceedings.

MR. SULLIVAN

That's correct.

HEARINGS OFFICER

Which you say, I just want to make sure I understand ...

MR. SULLIVAN

Sure. That's fine.

HEARINGS OFFICER

What I understand you to say is that the design review proceedings from the 1990, even though conditional use was not necessarily applied for.

MR. SULLIVAN

Was not applied for. That's correct.

HEARINGS OFFICER

Not applying for it. It simply assumes to exist.

MR. SULLIVAN

That is correct. And the Planning Commission did make that determination.

HEARINGS OFFICER

Okay. Can they make that determination...

MR. SULLIVAN

Well, no more than Mr. Grillo could have is my first response. And the second response is, if it is a necessary predicate to get to the design review, then they made that determination. And they made it not in the sense that there was a conditional use permit applied for, but by the operation and the interpretation of 11.15.2028, which said that any conditional use listed in the EFU zone which existed before August 14, 1980 is therefore deemed conforming. Staff said that makes it a conditional use. That was the basis for our not applying in the first place.

HEARINGS OFFICER

Okay, now what do you do with, I understand what you're saying,

MR. SULLIVAN

Sure.

HEARINGS OFFICER

How do you deal with Mr. Grillo's...within weeks of the appellant stage that the ordinance you just cited,

MR. SULLIVAN

Yes.

HEARINGS OFFICER

. . .is a use which is permitted, not just listed use.

MR. SULLIVAN

Right. I guess there are a couple of answers and I will probably repeat myself when I get to that portion in my remarks.

HEARINGS OFFICER

I'm sorry for interrupting.

MR. SULLIVAN

No, that's all right. That's all right and, as the spirit moves you, you ought to interrupt me.

HEARINGS OFFICER

I will.

MR. SULLIVAN

The first answer is that Mr. Grillo didn't need to reach that. He could have reached this by saying there was no conditional use permit that has been granted formally by the County, therefore it's impossible for me to deal with the design review. And he could have let that go there. He made some unfortunate ...remarks about the lawfulness of the use which weren't necessary, and which were incorrect in our view.

HEARINGS OFFICER

Would you agree that he found, I've read this decision a number of times . . .

MR. SULLIVAN

Yes, as have I.

HEARINGS OFFICER

I agree I guess with the result because...as of last August no permitted conditional use.

MR. SULLIVAN

That is correct.

HEARINGS OFFICER

And you see that as, tell me why you think this has a conditional use is lawful but not permitted.

MR. SULLIVAN

For two reasons. One is because of the staff's view that was adopted by the Planning Commission during the 1990 proceeding. And the second one is because of the applications which we are making now predicated upon two unappealed decisions, both made in 1990, which establish our non-conforming use and vested right.

HEARINGS OFFICER

Why did Mr. Grillo's decision protect those arguments?

MR. SULLIVAN

It was unfortunate. I think you could read Grillo's decision, except in one place where I think he needed a ..., to say I'm not deciding the validity of the underlying permits, but because I don't have a conditional use granted here, I can't use that as the operative predicate to go for additions to that use, via the design review process.

HEARINGS OFFICER

Okay. Mr. Grillo upheld the 1990 conditional use for the watchman's residence ... in limbo ...connected to... Would you say that.

MR. SULLIVAN

That both unappealed decisions are live decisions for lawful uses.

HEARINGS OFFICER

1990

MR. SULLIVAN

That is correct. And form the basis for our request for an expansion of the non conforming use. That's one of our alternative bases. For asking for the conditional use, we make it on two other bases. One is that the staff and Planning Commission indicated in 1990 that this was a lawful conditional use. I may disagree with that review and that ruling now, by the benefit of hindsight, but that was unappealed as well in 1990. And the second basis for asking for the conditional use is that we can now apply for a new conditional use, notwithstanding the high value crop, because we have some responses to that. But if all else fails we're asking you to grant us a new conditional use permit. So what we've tried to do is to get all of our bases covered in this application tonight.

HEARINGS OFFICER

Do you agree or disagree with...to some part...

MR. SULLIVAN

If 11.15.2028 did not exist, I would agree with it.

HEARINGS OFFICER

Did not exist.

MR. SULLIVAN

Right. That's the one that says that if it was there on August 14, 1980 and is listed as a conditional use in the EFU zone, it shall be deemed conforming. Let me try to respond a little further on that, Mr. Hearings Officer. Besides the usual stuff that, restrictions on land use being in derogation of common law and have to be construed strictly, and there is no limitation which says if there was a lapse in that provision then you'd lose whatever status you had.

HEARINGS OFFICER

I'm not sure I'm following you.

MR. SULLIVAN

Okay.

HEARINGS OFFICER

Maybe, I'm going to jump back here.

MR. SULLIVAN

Go ahead.

HEARINGS OFFICER

Mr. Grillo's, this decision I've read a number of times...I'm not sure I agree or fully disagree with everything he says but I think I'm bound by, I think I find his ...conclusion to be correct. How he got there ...

MR. SULLIVAN

I'm doing

HEARINGS OFFICER

He found that, assuming that if there is no conditional use,...non conforming use issue, he said that assuming you had that non conforming use ,there was that evidentiary gap that compelled me to conclude that the use discontinued, and I think it was 64.

MR. SULLIVAN

That's correct.

HEARINGS OFFICER

Okay. Tell me how, or tell me if, you're trying to leap beyond his findings.

MR. SULLIVAN

I am.

HEARINGS OFFICER

Okay. Tell me how.

MR. SULLIVAN

All right. For a couple of reasons. First of all, the words of the ordinance provision that I just read you does not provide for gaps. It says if it was there in 1980 it's deemed conforming.

HEARINGS OFFICER

Now he also interpreted this provision to mean this is not just listed, but permitted.

MR. SULLIVAN

And I take a stricter view of that which says that it is in the list of uses which are referred to in 2028 as a conditional use, as did staff.

HEARINGS OFFICER

I understand. I may agree with that interpretation, but it's sort of moot because -- tell me why I'm not bound.

MR. SULLIVAN

Because you're not bound by..., this is Administrative law.

HEARINGS OFFICER

Well tell me why...Mr. Grillo's decision, you're relying on a number of instances that are prior,...begins in 1990 that you say weren't appealed or ...

MR. SULLIVAN

Yes.

HEARINGS OFFICER

Well I'm saying that, by that same token, Mr. Grillo's decision unfortunately didn't make it through the appellate process, why doesn't that bind everybody by the same token that the 1990 proceedings would bind everybody.

MR. SULLIVAN

A couple of reasons. The first one is that Mr. Grillo did not have lawfully before him the issue of the underlying validity of the use.

HEARINGS OFFICER

Well now, he had design review procedures.

MR. SULLIVAN

Right.

HEARINGS OFFICER

An appeal from an administrative decision.

MR. SULLIVAN

Correct.

HEARINGS OFFICER

Is it not a precondition to design review that a conditional use be ...

MR. SULLIVAN

No. It could be a non-conforming use, and it could be allowed under this ordinance provision. See what Mr. Grillo did not do is to say that either of the 1990 approvals were invalid. He didn't have to reach that. But he did say that the use was unlawful, which was unfortunate and was dicta and was not necessary to decide that case.

HEARINGS OFFICER

Okay we sort of got to where we are now by my question about the non-conforming use and why I'm not bound by the finding of facts, you say, you disagree with his determination that there was an evidentiary gap in the proceedings...

MR. SULLIVAN

I do not disagree.

HEARINGS OFFICER

Okay, so there was an evidentiary gap that showed that up until 1964, it may have been a non-conforming use, but that because of that gap it discontinues. Do you agree or disagree that the use, assuming it's non-conforming use, discontinues.

MR. SULLIVAN

Except for 2028, I do.

HEARINGS OFFICER

So except for 11.15.2028 (b), (c) . . .

MR. SULLIVAN

C talks about changing uses.

HEARINGS OFFICER

Okay. That the use discontinued and therefore falls under the pertinent provisions of ORS Chapter 215.

MR. SULLIVAN

Yes. I'm also saying that by the grant of these two permits in 1990, of which may or may not under Mr. Grillo's view may have been mistaken, and Mr. Grillo would have redecided. However they were lawfully issued and unappealed. They formed the core of our vested right and our nonconforming use. And that is one of the two applications we are making. Which is to alter a non-conforming use. The other one is the conditional use. We have two bases for that, one is on the ordinance provision that we've just been discussing, 2028 . . .

HEARINGS OFFICER

Okay, let's talk about that issue.

MR. SULLIVAN

Sure.

HEARINGS OFFICER

I'm assuming that you read this ordinance as everybody except Mr. Grillo and Marquam Farms did last year. And you're telling me that I can revisit that notwithstanding the fact that there was a final decision which was not appealed.

MR. SULLIVAN

Yes.

HEARINGS OFFICER

Your authority for me doing that is simply

MR. SULLIVAN

...authority..., I would say that an administrative law, unlike our familiar court made law that we deal with, we are not bound by the normal principles...Just as the County

HEARINGS OFFICER

By the same token however . . .

MR. SULLIVAN

All right, go ahead.

HEARINGS OFFICER

Doesn't that cut against your argument that the 1990 proceedings bind everybody. You're saying in the 1990 proceedings even though didn't result in a permit, recognized it a conditional use and there was an opportunity to appeal and nobody did.

MR. SULLIVAN

There's a big difference between the 1990 proceedings, because permits were issued and can't be revisited. Now the County can change its mind on how the code applies to later proceedings, and that's what they are doing. And if there wereMr. Grillo would have been bound by the 1990 proceedings.

HEARINGS OFFICER

I understood Mr. Grillo's decision, he stated there was no permitted conditional use.

MR. SULLIVAN

And that is correct. And the argument was that it was done by operation of law. That's what the staff said, that's what County Counsel said.

HEARINGS OFFICER

Can that happen? Can you have a conditional use, which in the confines of the County's scheme requires a permit, and yet have a lawful use that was never permitted?

MR. SULLIVAN

I don't know whether it can happen, but that's what the County did.

HEARINGS OFFICER

...local government right from wrong, my question is does that bind everybody...

MR. SULLIVAN

It binds you if you don't appeal.

HEARINGS OFFICER

We're back to this binds you if you don't appeal.

MR. SULLIVAN

That's right.

HEARINGS OFFICER

On the permits

MR. SULLIVAN

They weren't appealed. We got the permits. The permits are lawful.

HEARINGS OFFICER

So you distinguish between the decision to grant permits and a non appeal from that decision binds people, but a non appeal from Mr. Grillo's decision which denied the permits. How come?

MR. SULLIVAN

We can't have the design review under the lights of the 94 appeal. That's why we've come back and asked for a conditional use and the alternative . . .

HEARINGS OFFICER

I perceived your application and I , in light of the objections that were raised yesterday...the notice, I've read the application a number of times. It's reasonably clear to me that the application presumes there is no permitted conditional use and that your application is to get permit for a conditional use, which presupposes that there is no conditional use. Is that a fair reading?

MR. SULLIVAN

We're also saying in these proceedings that we believe that the 1990 proceedings were correct. We made those observations in our long form as a conditional use.

HEARINGS OFFICER

I understand that. I'm just sort of hearing my, I want to make sure I understand this, because one of the questions is, and I have made a ruling, a procedural ruling that the notice was not ambiguous, but I did that based upon my reading that the application is in essence for a conditional use for a seventy-five dog kennel, as opposed to an expansion of an illegal permitted use. Now that's the way I read the application. Do you disagree with my reading?

MR. SULLIVAN

We have made two alternative applications.

HEARINGS OFFICER

Right. One for non-conforming ...

MR. SULLIVAN

Okay. And the other is for a conditional use permit. We are also suggesting to you that as part of the non-conforming use, we have to rely upon proceedings that occurred in 1990, and the lawfulness of the permits that were issued at that time. And the reliance and the interpretation . . .

HEARINGS OFFICER

That's the question. Were those permits, were the design review permits lawful at the time?

MR. SULLIVAN

Yes, if they weren't appealed. Whether they were right or wrong, they are final. And that distinguishes this from the 1994 proceeding where Mr. Grillo or the County continue to change their institutional mind on the interpretation of policies.

HEARINGS OFFICER

Okay. Let me make a note on that. Okay, so the proceedings in '94, you distinguished that they denied approved permit, a lack of appeal does not

MR. SULLIVAN

I said there was no permit issued as a result of it, which would vest the right.

HEARINGS OFFICER

[Request of staff for location of previous decisions]

MR. SULLIVAN

No, no, not at all. I would like and I know Mr. Hall brought them to make sure that the 1990 proceedings, the two of them, are part of this record, including the tapes of the proceedings.

HEARINGS OFFICER

I have a tape.

MR. SULLIVAN

Okay, is that all there would be?

MALE

Yes.

MR. SULLIVAN

Okay, then that tape be made part of this proceeding as well.

As I mentioned between 1990 and '94, Tim and Angela continued to build their business and make improvements on their property in relying and consistent with the 1990 approvals. In 1994 using the same process that staff advised Tim and Angela to use previously, they requested design review approval to add another twenty-five units to their kennel. Staff

recommended approval, but by this time the Hearings Officer denied the use interpreting MCC11.15.2028 b and c in a different way, a way in our view, not justified by it's language, to say that any break in the use for more than a year causes the conditional use to be lost. Because of that break the Hearings Officer said that design review is not the appropriate vehicle for the improvements that Tim and Angela sought. The Hearings Officer did...[comment] on the lawfulness of the underlying use, an issue which was not before him, except in the context of the design review application. That dicta was unfortunate as the Hearings Officer could have left that issue alone and said that the failure to have a written conditional use or to show the non-conformity was the problem, and that a mere request for design review approval in the absence of those permits, could not be granted without one of those other requests, either for a conditional use or a non-conforming use determination being granted.

However the Hearings Officer did say in another part of his decision that he was not authorized to nor did he make any legal observations in the 1990 approvals. Now the Staff, in its report in this case, relies upon the last of the decisions, the 1994 Hearings Officer determination in making its recommendation. Staff appears to say that the dicta in that decision, and the adoption of limitations on uses on some farm land by OAR 615, Chapter 33 was dispositive of both these applications. However the Hearings Officer did say that the door was open for him being convinced otherwise. We don't believe that the Hearings Officers decision is correct for a number of reasons. We would make a number of observations in the context of this case.

First of all as we've discussed in some length today, we believe the two 1990 approvals are beyond appeal and can not be collateral attacked. We believe that those approvals provide the bases for a lawful non-conforming use of vested right for the existing kennel and its improvements.

HEARINGS OFFICER

So you believe...vested right...

MR. SULLIVAN

No.

HEARINGS OFFICER

How could he ...

MR. SULLIVAN

He didn't make an observation on it. I'm not saying that. I'm saying this is our position, these are vested.

HEARINGS OFFICER

I understood you, going through now your version, I think that's in the 1994 decision.

MR. SULLIVAN

All right, and I'll be more careful in saying that you did not make an observation on the vested right status. We note for this case that no new kennel may be established in high value farm land; however expansion of existing kennels may be approved. And that's the basis for our expansion of non-conforming use. We believe that with the Conditions of Approval suggested by the applicant the . . . particularly those relating to noise barriers . . . the impact of the use on neighboring properties would be reduced.

We also believe that the baseline for calculating impacts on the neighborhood relates solely to lawful uses. The principle, and we believe the only objector, and I don't believe they are present here today, in the neighborhood, is a duck club next door, which we believe has unlawful structures and uses on its site. The structure that was applied for, that you saw in Mr. Hall's picture, was taken out as an agricultural barn. It's not being used for that. There is no conditional use for any sort of private recreational facility.

HEARINGS OFFICER

Are you talking about the duck club?

MR. SULLIVAN

That's correct.

HEARINGS OFFICER

Does that have anything to do with...

MR. SULLIVAN

It does when you have to look at its effect on uses in the neighborhood under 215.130 sub 6 through 9.

HEARINGS OFFICER

Okay.

MR. SULLIVAN

Staff finds that, with the exception of two peripheral policies, which we have since addressed in a supplemental report which you'll hear from Mr. Winterowd, that Tim and Angela meet the County's Conditional Use Permit standards and can convert their non-conforming use into a conforming use.

We also suggest to you that the conflict between OAR 660 Chapter 33, and ORS 215 283 Sub 2(m) is apparent. The statutes allow the uses, the OARs do not. We believe that LCDC cannot override the legislature's clear determination that it is for counties and not LCDC to decide on the location of non farm uses in EFU zones.

Now, I've switched our presentation around. There are a number of people here who have come a long way and beyond those of us who are paid to be here want to be able to speak.

HEARINGS OFFICER

Hold on. Hold on. Something has been rattling around in my head.

MR. SULLIVAN

Go ahead.

HEARINGS OFFICER

You say, as a general matter, if there is a denial of a permit and there is no appeal and no ...effect, what then would prevent an applicant such as yourself, from the day after Mr. Grillo denied the permit to apply again... Okay, is it your position that you can reapply the day after ...

MR. SULLIVAN

Unless there is...

HEARINGS OFFICER

So there has to be appropriate issues and your exclusive remedy is to appeal.

MR. SULLIVAN

Or putting a six month or a one year provision against reapplication...

HEARINGS OFFICER

So you can't read then anything out of the fact that your client tried to appeal.

MR. SULLIVAN

I would rather it hadn't happened.

HEARINGS OFFICER

Well, it's unfortunate.

MR. SULLIVAN

That's right

HEARINGS OFFICER

Those...happen.

MR. SULLIVAN

And that's why we're here.

HEARINGS OFFICER

I just want to understand, because what you're telling me is that if a permit is granted everybody has to appeal or that's it. But you're telling me on the other hand that if the permit is denied, you can just reapply the next day as though it's a new day.

MR. SULLIVAN

I'm saying that because once a permit grants and is acted upon, it receives a different status regardless of the rightness or wrongness of the interpretation of the law. On the other hand, if it's denied, there is no vested right. The County retains its ability to redetermine its policy.

HEARINGS OFFICER

...follow that argument. You're going to have to give me ...

MR. SULLIVAN

I'll do some research. You'll get something from us by the time that you decide. As I've said, the Schillereffs and Mr. Winterowd, Mr. Eisemann and myself will wait until the end for any further comments. I would like to have folks in the area testify. That's a little bit out of order.

HEARINGS OFFICER

One more thing.

MR. SULLIVAN

Yes.

HEARINGS OFFICER

...out of order, but we're here.

MR. SULLIVAN

Sure.

HEARINGS OFFICER

You started telling me reasons why Mr. Grillo's decision was wrong....And what I've got written down is that the 1990 permits bind everybody and we missed that fact. What else about his decision is analytically...

MR. SULLIVAN

I think we did, as I said before, I don't think we needed to reach the issue of the design review on anything except the fact that there was no written conditional use permit, and no non-conforming use proved in those proceedings. It didn't need to say that the underlying use was unlawful.

HEARINGS OFFICER

So he only needed to...

MR. SULLIVAN

A predicate, an operative predicate for the design review which was an underlying permit. Now he could also be running the law on the interpretation of 2028, and I've suggested that here. But there are three different

HEARINGS OFFICER

So he didn't, you're saying he didn't need to say it was unlawful.

MR. SULLIVAN

That's correct.

HEARINGS OFFICER

But that doesn't, but the fact that he did, according to your thesis, an appeal doesn't bind anybody.

MR. SULLIVAN

Correct.

HEARINGS OFFICER

Okay, I'm done upsetting you.

MR. SULLIVAN

Thank you very much. No that's all right. And whatever rebuttal time we'll make some observations on the Derr letter which I received this morning.

HEARINGS OFFICER

Okay. Anybody else in favor here?

FRED GRANATA

My name is Fred Granata, spelled G R A N A T A. My address is 700 S.W. Taylor, Suite 401, Portland, Oregon. I represented the applicant in 1993 [sic] concerning the watchman's house. Excuse me, I've got something caught in my throat. I don't know why.

In any case there, I can't add a lot to what has already been said without being duplicative. I can only say that the matter of the use of the property, the conditional use, the prior to 1964 use was thoroughly discussed by Marquam Farms who occupied most of the time at the hearing. And it's not a matter of first impression with them, either in the last hearing before Mr. Grillo or currently. And that's thoroughly hashed out and discussed. And that interpretation as stated in the report was the one adopted at that hearing and on which the eventual decision was predicated

HEARINGS OFFICER

There were two 1990 proceedings.

MR. GRANATA

I only one went to hearing, if I recall.

HEARINGS OFFICER

Okay, in the staff report, I'm looking on page three of the staff report . . .

MR. GRANATA

Mine was the one concerning the watchman's residence.

HEARINGS OFFICER

That would have been the conditional use.

MR. GRANATA

Yes. I believe that was the only one that went to hearing, but I'm not familiar with the other one.

HEARINGS OFFICER

Okay, I guess I've got that file here on that. What I'm interested in, I guess, from you would be something that's not, something that I can't read in there.

MR. GRANATA

Yes.

HEARINGS OFFICER

As opposed to your historical recollection or interpretation.

MR. GRANATA

I'll do my best from five years back.

HEARINGS OFFICER

Go ahead. Let me understand the, the conditional use proceeding in 1990, and I've read the '90 and '94 files but you know, they're sitting here and I ... Other than the watchman's residence, what sort of, was the question of the lawfulness of kennels themselves even debated or was it just the . . .

MR. GRANATA

Yes, it was debated.

HEARINGS OFFICER

It was debated ...

MR. GRANATA

And the report I believe was first . . .

HEARINGS OFFICER

Is that the hearing in which one of the Planning Commission members said is this a lawful use?

MR. GRANATA

In the first place, they described the history of the applicants application, going back to 1990, or '89, when they first filed a request for a conditional use, and how they explained that one was not needed because of their interpretation of the pertinent section cited by Mr. Sullivan, that this use existed previously and . . .

HEARINGS OFFICER

Okay. In your involvement did anybody raise the question, where is the permit for the kennel?

MR. GRANATA

I don't recall.

HEARINGS OFFICER

That was a . . .

MR. GRANATA

You mean the permit, by that . . .

HEARINGS OFFICER

It seems to me . . .

MR. GRANATA

Do you mean a building permit? What permit are you . . .

HEARINGS OFFICER

The conditional use permit for the kennel. If there is, if you've got a proceeding, I believe in 1990 . . .

MR. GRANATA

I believe the kennel was constructed before the zoning even existed.

HEARINGS OFFICER

But did the question come up about where is the permit?

MR. GRANATA

I don't think so, but I must say I don't recall.

HEARINGS OFFICER

Okay.

MR. GRANATA

Going back on my recollection, I don't think, the question was not propounded to me in any case.

HEARINGS OFFICER

Okay.

MR. GRANATA

So unless you have further questions . . .

HEARINGS OFFICER

Well I don't really. To me, that seems to be the beginning of when you were involved...

MR. GRANATA

Yes.

HEARINGS OFFICER

... The question is, was the... conditional use essentially given that everybody assumed the permits were issued. Or was it something that nobody thought about which to me is significantly different issue. If nobody thought about it . .

MR. GRANATA

It was thought about in terms of the historical use of this property.

HEARINGS OFFICER

I understand your testimony. Do you know of the order . . .

MR. GRANATA

And interpretation of the order.

HEARINGS OFFICER

...

MR. GRANATA

Certainly it was, the issue as such, the interpretation was part of a larger debatable issue brought out by Mr. Maring as I recall.

HEARINGS OFFICER

Did you assume those were valid conditional use permits...

MR. GRANATA

I assumed when I entered the hearing, yes sir.

HEARINGS OFFICER

And why was that?

MR. GRANATA

Because the issue was not joined at that time. No one was challenging us in respect of the validity of the use. We were concerned primarily with things such as design review. And the issue was then raised at the hearing for the first time, in my memory. And I had to familiarize myself with it as I was sitting there.

HEARINGS OFFICER

Okay.

MR. GRANATA

Thanks.

HEARINGS OFFICER

Thank you.

MR. GRANATA

And I believe ...my staff if I recall, explaining why this was a . . .

HEARINGS OFFICER

I remember something came up.

MR. GRANATA

I don't think Mr. Maring of Marquam Farms raised the issue, which is a rather sophisticated one, I believe it came up through staff.

HEARINGS OFFICER

That's what I recall. Thank you. Anybody else wish to speak? Now's your chance. You're speaking in favor now, is that what you're doing?

MR. DAVIS

Yes.

HEARINGS OFFICER

Let me remind you that I'm very familiar with the staff report and my cautionary reminder at the onset, so what I'd like you to do is to very specifically to, we've got sort of procedural substantive issues here.

MR. DAVIS

Okay.

HEARINGS OFFICER

If you're going to speak on substantive issues, the criteria issues, be very specific as to what criteria. If it's procedural issues be as specific as you can about that, too.

MR. DAVIS

Procedural issues I wouldn't attempt to get into. My name is Peter Davis. I'm a veterinarian, a Sauvie Island resident. I would like to speak as a resident.

HEARINGS OFFICER

Okay. What's your address?

MR. DAVIS

14213 NW. Charleton Road. I speak as an Island resident and as a person concerned with, very concerned with land use and development. As a small animal veterinarian boarding facility, as a wildlife rehabilitator and as a duck hunter, I have watched this kennel from the beginning.

HEARINGS OFFICER

Beginning when?

MR. DAVIS

From the beginning of Tim and Angela Schillereffs' involvement. I have been extremely impressed with animal service, but the quality of the service and the quality of the care. With the way this, as you can see that picture, the way this facility fits into the surrounding landscape, and in fact pretty well disappears into the surrounding landscape. It's a very small portion of land and is scarcely visible. And I know that the surrounding neighbors, except for the...noise, this sort of thing. The quality of the facility, as far as any regulations are concerned, they have always been first class. My association, as far as medical care and this sort of thing, Angela has always been first class. The opinion that I get from my clients who go there, everybody is extremely satisfied with the continued operation of the facility.

As a general philosophy I am extremely opposed to development or expansion. It's not an agricultural use. I find that this is really an appropriate use of the existing use on the

property. As a duck hunter and wildlife rehabilitator that the concern that this would somehow effectively surround a duck club, ... number of times during the duck season, have been able to look out the window of the kennel and see a flock of geese within shotgun range of the building... Dogs barking notwithstanding, vehicles coming and going, whatever, the geese are easily within the shotgun range of the facility and they are not bothered in the least. A duck club that hunts its property seven days out of the week, week in and week out during the duck season...because they never allow the birds to...and after a while those birds are going to show up there. If the duck hunting is being impacted, it's not being impacted by the presence of the kennel. It's being impacted by, really more than anything, the duck hunter.

HEARINGS OFFICER

Do you work for the other kennels in the area?

MR. DAVIS

Yes. Tim and Angela's business has taken off astronomically compared to anything you would have expected. And the quality of their care is as good or better as any I've ever...

HEARINGS OFFICER

Okay. Thank you.

KENT MEYER

My name is Kent Meyer, I live at 19544 NW. Sauvie Island Road, Portland Oregon.

HEARINGS OFFICER

Is it Kent or Ken?

MR. MEYER

Kent. K E N T. M E Y E R. My property is probably seven miles from where Sauvie Island Kennel is.

[end of side one tape 2]

[side two is blank through the end]

tape three

MALE

As I said, I'm not a personal friend of either Tim or Angela Schillereffs or either of their families. I know them both. Tim Schillereff went to school with one of my sons, that's the reason I know him. I know of the kennel because he worked, prior to owning his own kennel, he worked for one of the kennels on the Island where I used to board one of our pet dogs. And I knew Tim was there and I heard that Tim had started a kennel some seven or eight years ago, and I was sort of proud. Because I think whenever a young person ventures out to give up the weekly paycheck in pursuit of the American dream. I think they deserve some credit.

I've written a letter which I'd like to read and then make several comments if that would be permissible.

HEARINGS OFFICER

Sure.

MR. MEYER

It's to Multnomah County Planning Commission, regarding the case. Dear Sir, Please use this letter as my recommendation for the approval of the above application to increase the size of Sauvie Island Kennels. Tim and Angela Schillereff have operated Sauvie Island Kennels for the past eight years, and a kennel has been on the property since the early 1950's. Marquam Lake Farms, which owns the property adjacent to Sauvie Island Kennel, is opposing the expansion and operation of the kennel. This group is composed of lawyers, doctors, professionals and businessmen who do not reside on Sauvie Island. Their only connection to Sauvie Island is they operate a duck and goose hunting club. Marquam Lake Farms hunt their lake every day of this hunting season. This type of operation of a duck and goose club will ruin a duck lake in a very short time. I'm personally familiar with the owners of six duck lakes and duck clubs on Sauvie Island and none of those individuals who allow those who hunt their lake or rent their lake, hunt more than two to three days per week. Even the Oregon State Fish and Wildlife only allows hunting on their land three days per week. Marquam Lake Farms apparently has no regard for the proper wildlife management. Their only aim appears to be to kill as many ducks and geese as quickly as they can, and then when their lakes are hunted out, look for someone else to blame.

Our family has resided on Sauvie Island for 36 years. We own collectively 163 acres. For all of these thirty six years we have rented a portion of our property to Mr. Ed Minoggie, who operates Minoggie Kennels and has the capacity to board and train approximately 60 to 70 dogs. On our 163 acres we have two lakes, the largest encompasses approximately two and a half acres. We do not hunt ducks or geese on this lake, as it is located in the front of our property and is used primarily for scenic value. However, this lake is located approximately 150 to 175 feet from Minoggie Kennels. At any time during the winter, fall or part of the spring season there are from fifty to two hundred wild ducks or geese on the lakes and surrounding area. In addition there are ten to twelve deer that continuously feed and move around our lake, our neighbors property, into the Wapito Park across the road. The operation

of a dog kennel in no way effects the wildlife close by. I would urge your support of the application to enlarge the kennel.

HEARINGS OFFICER

And would you leave that.

MR. MEYER

There it is.

HEARINGS OFFICER

Okay.

MR. MEYER

I think what bothers me more than anything else, and it may not be legally right, is we've got Marquam Lake farms that's owned by, I find in here in the application, thirty people. They are trying to stop the Schillereffs out of business.

HEARINGS OFFICER

Now wait a minute, let's be specific on the criteria here because otherwise it's just going to . .

MR. MEYER

Okay, I understand. But that's what they are trying to do. They are trying to put them out of business by appeals. I'm a small businessman. I started my own business fifteen years ago. I know what it take to do it. I know the seventeen, eighteen hour days. I know all the problems of meeting the payroll and doing all the things that the Schillereffs have to do. And they have the Marquam Lake Farms after them. They are filing law suits on them, they are appealing all and anything they can to drive them out of business because they are trying to blame that the dogs bother their duck hunting. And I think it's unfair and I don't know whether you can consider that, I'm not saying that you have to consider that. But I think it's a travesty with what's being done. Because if somebody decides to come after me and my business and wants to do it bad enough and put up the money, they can drive me out of business just with legal fees, and a hundred dollars here for this assessment, and so much for each page of transcript, and on and on and on. And they'll run you right out of business. And that's what they are trying to do. I think it's a real shame. The Schillereffs have been there for a long time. There has been a kennel there for as long as I can remember. There's kennels all over the Island, I can think of at least five people that have kennels right now, and another five who train dogs on their property for sale to private individuals.

HEARINGS OFFICER

I understand what you're saying, let me just tell you that I'm, I'm not telling you I'm not sympathetic but I'm not sure ...

MR. MEYER

Sure.

HEARINGS OFFICER

Because regardless of what Marquam Farms has done, it's the Hearings Officers decision of last August that has sort of gotten us to this point.

MR. MEYER

Sure.

HEARINGS OFFICER

So the decision and not so much, the Hearings Officer might not have agreed with Marquam Farms, we might not be saying all this,

MR. MEYER

I understand.

HEARINGS OFFICER

It's not going to affect me.

MR. MEYER

I understand. Okay. I do think it's very important that being as much as Sauvie Island Kennels has been there, and very honestly I have to tell you this is the first time I've seen this application and read through it, thirty-one pages very quickly this morning, but it just appears that if you want to be fair about something, you have to take into consideration that they were there. What's gone on with the County I don't know, cause you hear all kinds of stories. But I actually feel that they should be there and my main concern was to be here today to tell you that we do have a kennel on our property and have had, it's been there for forty-one years, and it absolutely does not bother the wildlife. There is no, we have geese and ducks on our lake all year round.

HEARINGS OFFICER

Don't tell us your kennel's not permitted.

MR. MEYER

It's not my kennel, I don't own the kennel, thank God, I just own the property. Okay? Thank you very much.

BRUCE CAVELLRO

I'm Bruce Cabbellero. I live at 12408 NW Alderview, that's off of Highway 30, close to Sauvie Island. I sent you a letter.

HEARINGS OFFICER

Is it dated September 1st...?

MR. CAVELLERO

Yes and . . .

HEARINGS OFFICER

Hold on a second... staff report, I said in the onset I haven't received anything, and I hadn't directly. This is, however there is a letter from you, it's already in the file here. Just so everybody knows. Okay.

MR. CAVELLERO

Well, what I wanted to say, I'm friends with Angela and Tim. I've used their facilities also and I feel that for as long as I can remember there has been a, it seems to me there was a kennel on this site. We need facilities like this, and this seems to be a good location because it already exists. And I feel that should really be taken into consideration. And also I'm a duck hunter, I've hunted Sauvie Island and Scappoose for quite a few years and I have hunted in Scappoose with an adjacent property to Brown's Kennels and I have not ever noticed any problem with the wildlife or waterfowl coming in because of dogs barking and being in the kennel there. Also I have, I hunt in the vicinity, and have hunted in the vicinity of Schillereffs kennels and I don't feel that is a legitimate concern of noise of animals contributing to bad hunting on the adjacent property.

Basically I think the County should, I would like to see the County take into consideration that there has been kennel there and it has been existing, and to look at it on that in your decision on this permit.

HEARINGS OFFICER

Okay.

MR. CAVELLERO

Thank you.

HEARINGS OFFICER

Thank you.

DOUG JOHNSTON

Hello.

HEARINGS OFFICER

Hi.

MR. JOHNSTON

I'm Doug Johnston. I'm a customer and a friend of Sauvie Island Kennels. I am president of the Cascade Hunter Club and since I need to pay my bills, I'm also the Director of General Services for Clark County.

HEARINGS OFFICER

What is your address.

MR. JOHNSTON

My address is 4508 NW. 127th Street, Vancouver Washington. After listening to Mr. Sullivan and yourself thread your way through the ORS's and the code and the administrative code, I don't want to get into any depth there. However one of the reasons I, this application seems to be denied is a lack of proof for a one year period, after thirty-three years of continuous use on the non-conforming, based on the DR94-4. Granted the Multnomah County Code ORS, requires the burden of proof to fall on the applicants, but given the preponderance of documentation that was provided over thirty three years continuous use, failure to find documentation for one year back in 1962, I feel is an unreasonable demand on the part of the County.

HEARINGS OFFICER

Were you...early 60's?

MR. JOHNSTON

No I was not.

HEARINGS OFFICER

Unfortunately it's, you're free to say what you want now within certain limits. But I want it to be helpful and fruitful...It wasn't my decision last year, there was an evidentiary gap there and I don't...now

MR. JOHNSTON

No.

HEARINGS OFFICER

Okay.

MR. JOHNSTON

I feel though that the evidentiary gap, that long ago and that short of period is an unreasonable demand.

Secondly, given the history of Multnomah County's actions, based on the actions I've seen, my...across the river. I think I'd be very hesitant to exercise my right to be wrong at this point. I think the Board of Commissioners would support that.

And finally, and in a more philosophical approach, and I'll try to be brief, Sauvie Island and kennels of their type support responsible pet ownership. This is a stated goal of the Multnomah County Commissioners, it obviously helps them reduce costs for animal control, keeps the livability of Portland in a better light. Sauvie Island Kennels are part of the solution, not part of the problem. Portland needs more facilities like this. And I would hope, given the reasonableness of all three of these items, that you as a hearing examiner would feel that you have the latitude to use that reasonableness, as I believe the Board would, in finding in favor of the Schillereffs. Thanks for listening.

HEARINGS OFFICER

Thank you for your comments. Anybody else in favor, now is the time, it's an open mike.

PATTY LARSEN

My name is Patty Larsen, I live at 17929 NW. St. Helens Road. I am close personal friends with the Persingers. I consider Tim and Angela friends and I use their dog kennel. I have kind of a statement but I also have some observations that came to me while you were discussing all of the legalities of this case. And since this is my one chance to say it, I want to say it.

HEARINGS OFFICER

Okay.

MS. LARSEN

I'm just outraged that a nearly impossible burden of proof for the past life of the kennel is required by the applicant, when income tax records that could prove use are only required to be kept seven years, that many of the owners who could speak for the operations are deceased and that the applicable law...

HEARINGS OFFICER

Did you use the . . .

MS. LARSEN

No, I used . . .

(laughter)

Okay, again, how there can be any question of whether the Schillereffs have a vested interest in this property is beyond me. Even according to retirement plan laws, three years is a limit of time for necessary, to be given a vested interest. By relying on the County's interest they have put a lot money, not to mention their sweat effort into their place. And besides that, they have been damaged by their reliance on the County's decision. Nobody knows better than I do the mental and emotional damage that comes from a case like this. They have been damaged.

And in addition, speak to the noise. Last year Mr. Persinger was in the hospital and I spent the night with Mrs. Persinger, we were up most of the night. We slept some of the night. The dogs did not bark continuously and they didn't keep it up all night. And when I go to pick up my dog, yes, the dogs bark, when we walk out there Tim blows his whistle and addresses the dogs and they are quiet. They are well mannered even though they are not all his dogs. Okay.

This kennel is an asset to the Portland community, it's clean, it's attractive. It's located in an area that does not interfere with nearby home owners. It's used by many, many people as a community resource. Although I live in a rural area and I have a place for my dog, but I have

a dog that requires medical attention two times a day. If I want to go anywhere overnight, I have to make special arrangements for this dog. And I know that when I take my dog to Angela that my dog receives the best care possible. She wouldn't survive in a small box at a veterinarians because her medical condition requires her to be able to move around in a large dog run like the kennels have.

Further, the Schillereffs have been an asset to the Sauvie Island community. They take part in community activities and neighborhood organizations. I feel, and you should be charged to work with, Multnomah County needs to work with the Schillereffs to come up with a workable solution to allow them to continue in a service business that is needed and wanted, in a place that's been their home and their workplace with the Countys blessings, for six years. Thank you.

HEARINGS OFFICER

Any other proponents, anybody wishing to speak in favor?

MR. MEIFERT

My name is Myron Meifert.

HEARINGS OFFICER

How do you spell the last name?

MR. MEIFERT

M E I F E R T. I live at 52745 Honeyman Road in Scappoose Oregon. I used to own that kennel in 1966...grandfather...and before me, Evelyn Blitz had dogs and operated it. And before her, I'm not sure of the dates but, a guy named Scotty owned it. . . .

HEARINGS OFFICER

Okay, so you owned it in '66 you say?

MR. MEIFERT

Later part of '66 for 2 or 3 years, yeah...

HEARINGS OFFICER

You owned it as an active kennel?

MR. MEIFFERT

Yes.

HEARINGS OFFICER

How Many dogs did you run?

MR. MEIFFERT

Up to about 50.

HEARINGS OFFICER

Because of the ownership, what I'm interested in details about the status of the kennel in the '60s.

MR. MEIFERT

It was grandfathered, it wasn't required for a particular license. The only license was for a sign on the road.

HEARINGS OFFICER

Who told you that?

MR. MEIFERT

My attorney, Paul Reeder. That was all that was required.

HEARINGS OFFICER

So you went to the County?

MR. MEIFERT

That was all that was required was for a sign.

HEARINGS OFFICER

So you have a permit for a sign? For what year?

MR. MEIFERT

That was '66 or '67, something like that.

HEARINGS OFFICER

How long did you own it?

MR. MEIFERT

I'm not sure exactly, about 3 years.

HEARINGS OFFICER

So you sold the kennel?

MR. MEIFERT

to ...in about 1969. Something like that.

HEARINGS OFFICER

Did you own the real property too? Or did you just operate the kennels?

MR. MEIFERT

No, I owned the property...

HEARINGS OFFICER

Okay, I just wanted to break in and get that.

MR. MEIFERT

Well that was mainly what I wanted to say, the kennel was operated, it was operated prior to me by Evelyn Blitz. Like I say a guy named Scotty ran it before her. It was built by Roy Wallace and another gentleman out on Deer Island.

HEARINGS OFFICER

I'm listening to you as I do this.... say what you want.

MR. MEIFERT

That's basically it, and as far as my working relationship, I had a good relationship with the neighbors who had the duck club at that time... So that's it.

HEARINGS OFFICER

Okay, thank you.

LINDA REEDER BURNS

My name is Linda Reeder Burns. I currently reside at 23815 NW. ...Road. I have lived on the island all of my life, my family is the Reeder family. My grandfather has duck hunting clubs on Hershey Lake and Sauvie Island Lake since the early 1900s. I grew up around duck hunting and duck hunting management. At that time my grandfather was very conservationist and even though he was a hunter we only allowed people to hunt Monday, Wednesday and Friday, or Saturday, Sunday and Wednesday at that time. Because of bird management.

HEARINGS OFFICER

Where do you live?

MS. FERN

I now live about half a mile from Tim and Angela. I know them as neighbors because we're friends because of living next to them. They are responsible and courteous neighbors. They are responsive to anything that does happen at the kennel. Unless the wind is blowing just right on a quiet day I do not hear the dogs barking. If they do it is for a very limited period of time.

And one point that should be made in their behalf, as far as being part of the community and very involved in the community, is they play an asset and a role that they are across from that wildlife area parking lot that you showed in the slides. People are coming to Sauvie Island by the thousands, every year. It is encouraged by Portland and Multnomah County for people to recreate out on Sauvie Island. In doing so they bring animals to Sauvie Island, and all of us who reside out there currently find stray animals at our doorstep on many occasion. Tim and Angie having the kennel in the location that they are provide an asset to all of us who find animals, as well as those who lose animals, to be able to contact them to find their ...dog or to find a home for the animal. Tim and Angie will shelter those animals to make sure that those animals are not out on the wildlife that you noticed in that parking lot scene. Right across from it there is the lake and the wildlife area, and should those animals run wild...a lot more harm to the wildlife than what Marquam Farms is saying the dog kennel will do.

My husband is also a hunter and he hunts across the street from where Marquam Farms is. We observe their mismanagement and hunting seven days a week. It does upset the birds in their flying place but it does not affect them from the dog kennel. It is a direct result of shooting at birds seven days a week. When they are not allowed to lay in the fields, or not allowed to eat, and anytime you keep chasing them out of somewhere they are not going to return. So it's more poor management on the duck lake part, than any distraction that a dog kennel has in this area.

HEARINGS OFFICER

Thank you. Anybody else speaking in favor?

TIM SCHILLEREFF

I'm Angela Schillereff. This is my husband Tim. Also Elden and Marguerette Persinger are here.

ANGELA SCHILLEREFF

It's hard for me to understand this, I'm sorry (crying).

HEARINGS OFFICER

It's hard for me too.

MS. SCHILLEREFF

I have a stack of stuff here. I feel that there has to be something in here that says we're right.

HEARINGS OFFICER

Well we, the posture of it now is that you're applying for recognition on the conditional use. There are certain County requirements that apply to conditional uses. And if, there is the criteria which apply and I'm sure that you can document the criteria that apply. There is the procedural stuff that you may not be able to alter now, but that's something Mr. Sullivan and I can work out. So what I would focus on if I were you is what you need to do to convince me that the current criteria are fulfilled.

MS. SCHILLEREFF

I can address anything you want me to in the capacity that I have the knowledge to answer.

HEARINGS OFFICER

Well it's not so much what I want you to relate, I've read, I've read the application...I've read the staff report. If you want to add something to that, clarify something that you think is a little fuzzy, this is the time.

MS. SCHILLEREFF

I came prepared to talk about impacts because . . .

HEARINGS OFFICER

Okay.

MS. SCHILLEREFF

But I don't know if I need to. What I want to say, and I have with me here as part of the pile, Tim and I feel like some of the previous speakers have as part of the community. And we want to give back what they've given to us. And I've gone around, I can't physically talk to everybody, a lot of people are on vacation, a lot of people work during the day. And I physically went around the Island and I got over a hundred signatures from people and not one person opposed us. I never heard anyone say we were bad. (crying)

HEARINGS OFFICER

Okay, I'll . . .

MS. SCHILLEREFF

What I'm trying to say is

HEARINGS OFFICER

I'll put these in the record as exhibits.

MS. SCHILLEREFF

Those are all people that live and own property on the Island. I didn't, I could have had all my customers sign, the people that come from town or Vancouver, or from all parts of the State. Our business does not only affect the local community that we live in, but we have clients that fly their dogs to us for my husband's expertise, from Canada, from California and Arizona and all parts of the country. We're trying to do something good, we're not trying to hurt people, and the only person that has ever given us a single bit of grief is ...Marquam Farms. We want to work with people, we don't want to hurt people and . . .

TIM SCHILLEREFF

If I could just interject. I want you to understand that I don't know exactly how many houses there are out on Sauvie Island but getting over a hundred signatures in the week's time that you had, there is probably only like two hundred, two hundred and fifty houses on the Island, and like she's said we haven't had any objection to it. And I also want you to understand that I do train a lot of Marquam Farms...dogs. I've trained them for years, I know a lot of the guys in the club and I don't have any personal problem with any of the guys at the club. I don't know why we are where we are today. I just don't understand. We've complied with everything we've done up there, we've gotten permits for, we've applied for them and now we're the fall guy. And I just don't know how much longer we have to keep fighting. Obviously it has taken a toll on my life.

MS. SCHILLEREFF

All I can say is that everything that we've tried to do for all the properties concerned, we've tried to do everything right...permit, we talked to Bob and Mark Hess and staff here has been so cooperative, and they say this is what you need to do. Give us a hoop. We'll jump through the hoop. That's what we've been trying to do. Now there's no hoops, and we're still trying to jump. And that's why we're trying to do whatever we need to do, because we have everything on line, that's our life there. We did a lot of the work ourselves, we didn't hire people to build the buildings, we built them.

MR. SCHILLEREFF

One other thing that I'd like to say too, Myron Meifert, my uncle who spoke earlier, he knows the history of the kennel as well as anybody, how much do we have to dig up? Myron mentioned that there was a Scotty, the guy that operated the kennel. Nobody is for certain on those dates, okay Scott, this man is probably deceased. How could anybody you know, dig up this evidence. We're, apparently we were supposed to have the burden of proof, how is that? I'm not even as old as that. I can't come up with that kind of evidence. I mean, where do you draw the line? Do you understand what I'm saying?

HEARINGS OFFICER

Oh, I understand what you're saying. A lot of it is sort of water under the bridge. But you know, I will, I'll let you tell me anything you can about, for what it's worth, I'll let you tell me anything you can about the, what occurred in the 60's, early 60's, mid 60's

MR. SCHILLEREFF

All I know is . . .

HEARINGS OFFICER

Go ahead and do it. I'm not representing that I can do a lot with that at this point. That's something I'm going to decide. You know this is your chance so go ahead and tell me anything you know about this.

MS. SCHILLEREFF

I want you to read this letter from . . .

MR. SCHILLEREFF

No you go ahead. But again, you know, I wasn't even alive at that time but I do know that this Scotty person before Evelyn Blitz got the kennel, Evelyn Blitz owned it from Blitz

Weinhard. Okay, before that time I can't give you dates on it, like I said I wasn't around, but before that time Scotty had operated it and I had heard that he had bulldogs out there. Throughout this time I've had customers come out to the kennel and give me little bits and pieces of history. I don't even know these people who dragged them in here.

MS. SCHILLEREFF

I not sure, a concern I have is that you said you received no letters but then you recall receiving a letter from Mr. Cavellero.

HEARINGS OFFICER

No. What I received . . .

MS. SCHILLEREFF

Or was that in the record?

HEARINGS OFFICER

Okay, here's, it is, I'll explain exactly what happened. I got faxed to me yesterday one letter which I went over at the beginning of the hearing.

MS. SCHILLEREFF

Right.

HEARINGS OFFICER

I have the County's file here, and as I'm sitting here looking through it there is...file, there is a letter from a Mr. Rodney ..., dated the 12th...Mr. Cavellero dated the 13th, and there is a letter from a Jim Charlton dated the 12th. It's addressed to me here and I never received it until I got the file. So that's...then I looked at the dates and I was concerned that it post dated the date that the staff report was available. And they do, so I think what I'm going to do, there appears to be three. I guess these are already in the file. What...that was my only comment there, as I open the file up here they are there on top...I should like to tell you...

MS. SCHILLEREFF

Right.

HEARINGS OFFICER

I didn't know they were here until today.

MS. SCHILLEREFF

Well, there are more letters that we hand carried here. And one of the letters I'd like to read is from our next door neighbor, Evy Vetsch. Her and her husband, Richard and Evelyn Vetsch own and operate Vetsch Dairy. And I'll just read their letter real briefly. They've been on the Island a long time and they could tell you a lot of history. She says, "We are owners and operators of Vetsch Dairy located just south of the Schillereffs kennel and the Marquam Farms Corporate Duck Club. The duck club, and the duck club has been at this location since 1949. In the 1950's the dog kennels were built and established by Peter Alphort, (it's A L P H O R T). And the first manager that we can remember was a Scotchman by the name of Mr. Rose. Later Mr. Blitz purchased the property and also operated a dog kennel. Since that time it's always been known as the kennels and operated as such. The Marquam Farms duck club owners knew the kennel was there when they bought their property. We can see no reason that the Schillereffs use of their property as a kennel be terminated and forced to give up the means of making a living. The new plans for the kennel sound like it will make even less of an impact on the ducks, geese and neighbors. Certainly much less than the Marquam Farms duck club does with their trap shooting and wildlife hunting all year long. We recommend that the Planning Commission approve the Schillereffs' property as a non-conforming use as a kennel. As farmers the only option we can see for the use of this small acreage and the use of their present buildings as an exclusive farm use would be to operate a pig farm. In our opinion a good place to board dogs is needed much more. Very sincerely, Richard and Evelyn Vetsch."

Our planner has the original and you can see this is a copy.

HEARINGS OFFICER

It's just one page?

MS. SCHILLEREFF

Yes, it's just one page. They have a wealth of information because they've been living on the Island since the late 1940's. And operating that dairy. And I would feel that if they had a lot of concerns about a kennel that they would be opposed to it. And they are wholeheartedly for us. They know Tim and I are good people just trying to do a good thing. Do you have another one? Oh, okay, there is other letters in the record too that illustrate the fact that we have a lot of people that enjoy the kennel and enjoy wildlife and enjoy duck hunting on the Island. And see it as complimentary uses, and that's the only reason we're talking about duck hunting so much is because that's the only rational we can see that Marquam would oppose us.

MR. SCHILLEREFF

That's why we are sitting here today is because of pressure from the duck club, people who don't even live on Sauvie Island.

HEARINGS OFFICER

While I've got you here let me ask you this. You no doubt read the Hearings Officers decision last August and there was a core finding in there that, there was nothing basically, there was a void between December of '62 and February of '64, so that's just a little bit over a year period.

MS. SCHILLEREFF

I was going to say I don't understand

HEARINGS OFFICER

Well, what if anything can you tell me about that period of time? I mean he didn't, he didn't find that it wasn't used as a kennel. What he, what he concluded was that there was nothing in the record that said what was going on there.

MS. SCHILLEREFF

Right. What that whole basis was, was on this sheet of paper that was hand-written from the County that talked about the different uses. Tax uses, it was actually the assessors record and present status, and it was talking about the different uses. And there were different owners, and not all of them were even noted as such. I don't know how often, I'm not a, my business is dogs, not talking legal things.

HEARINGS OFFICER

Dogs are easier.

MS. SCHILLEREFF

Yeah.

HEARINGS OFFICER

That's for sure.

MS. SCHILLEREFF

And they love you.

MR. SCHILLEREFF

Could I just ask one thing? What is it . . .

HEARINGS OFFICER

You're not going to tell me the white mice joke are you?

MR. SCHILLEREFF

What is it that we're looking for? Are we looking for, are the kennels there or who operated them? Is that what you're looking for? Because those kennels had to be there for a reason. I mean they were used.

HEARINGS OFFICER

Tell me about that.

MR. SCHILLEREFF

There were kennels there in 1989 when I got there. Those kennels, it's obvious that they have been there since the '50s, by the year of the building.

MS. SCHILLEREFF

If you could see the buildings you'd see the older section are the original buildings.

MR. SCHILLEREFF

We have neighbors who say that they were there. I don't know what else we have to . . .

HEARINGS OFFICER

Well, the law is sort of goofy about this, but what it requires is, for a non-conforming use, I'm sure Mr. Sullivan can explain this to you in depth, ad nauseum. One of the issues last year was, even assuming there was no permitted conditional use, if it's been there since time began it can stay there, under certain circumstances. But, what happens is up to, I've got the record and I'm assuming what you've got in your hand is part of that record, but between December '62 when the Blitz operated the kennel and February '64 when Cortway (Pein) operated the kennel, there is no information in the record concerning the existence and scope of the use. And then he said the County record is silent during this period. So it's not that somebody is saying it wasn't there.

MS. SCHILLEREFF

Right.

HEARINGS OFFICER

What we're saying is we don't know. But the law requires that we account for that period in order to say

MS. SCHILLEREFF

Who is to say if during that period of time the kennels weren't be remodeled, but there were dogs there. Just because there is no record and the people are dead that, the record I show here, Mrs. Blitz is dead and the next occupant was Cortway, they are both deceased. We can't ask them, well who was in between you and how many animals did they have there. And I don't know that this would really help anyway because then Myron Meifert came after them, and he's documented in here as such too. And everything was made out here. It shows that they have the run and he bought it from Evelyn Blitz and he was limited to fifty dogs, and the type of the buildings is a corrugated metal building.

HEARINGS OFFICER

Okay what figure are your reading from?

MS. SCHILLEREFF

This is what County staff gave us.

HEARINGS OFFICER

May I have a copy of that?

MS. SCHILLEREFF

You have a copy of this. That's my copy.

HEARINGS OFFICER

County staff gave this to you?

MS. SCHILLEREFF

Yes.

HEARINGS OFFICER

Do you know whether this was part of an earlier record in last years proceedings?

MS. SCHILLEREFF

I don't know.

MR. SCHILLEREFF

I saw the one when I originally came down to apply for the conditional use permit. That is what the County showed me.

MS. SCHILLEREFF

But it's handwritten all at the same time.

HEARINGS OFFICER

Well, okay, for what it's worth I'm, is this your only copy?

MS. SCHILLEREFF

Yes.

HEARINGS OFFICER

Well I want to make it an exhibit. Cxan we get a copy of that.

MS. SCHILLEREFF

All I'm trying to say is see that's someone's handwriting from ledger cards, I don't know how, I don't know how County, I mean that's the County's business how they keep track of things. But if it was transcribed from one card to another card that's an explanation why there is a gap. Maybe the cards stuck together and he didn't write it down. Maybe it was remodeled. Everyone's dead at, I wasn't even born yet.

HEARINGS OFFICER

Unfortunately the law doesn't deal with maybes very well.

MR. SCHILLEREFF

How can the law account for these people saying that the kennel wasn't there. How can they account for that? That's really all we have to go on.

HEARINGS OFFICER

That's what I'm looking for. What I'm looking for is somebody to tell me that between December '62 and February '64, there was a kennel there in operation in roughly the same format as it was before and immediately after those times.

MS. SCHILLEREFF

Well I guess the hard part I have is trying to, you're saying that there is a gap here, but then we introduced someone here that was here after that gap and it was a proven use. He could tell you that he had the use there, and it's documented there on that same sheet, the paper I gave you.

HEARINGS OFFICER

I understand what you're telling me. What I'm telling you

MS. SCHILLEREFF

But why wasn't he, then why wasn't that use discontinued when he was there? You see, if that gap was a problem why wasn't that addressed back in '66 when Mr. Meifert got there?

HEARINGS OFFICER

Well, nobody raised it until last year. Now, in any event, we're getting, what will be extremely helpful to me is

MS. SCHILLEREFF

I guess the bottom line for me if I could, the one thing that I can relay for my husband and I, we've put our blood, sweat and tears into that place. Everything that we've ever wanted to do, it's kind of been our dream to have our own business and to be successful at that and I found we were.

MR. SCHILLEREFF

I just want to say one more thing, probably if anybody does know about the existence of that kennel it would be my uncle Red, and his 90th birthday is tomorrow. I really don't want to put him into this. And we did the same thing, when we were under Mr. Grillo and I felt that our decision swayed on that. I don't feel it's right to put him into this. This is stressful.

HEARINGS OFFICER

Well, the decision is yours and I am really interested in what happened in that time period, and all I can tell you, when it says, when this decision says the record is

MR. SCHILLEREFF

Well he was there, he knows that. That's all he, nobody is going to give you a record.

HEARINGS OFFICER

Maybe we ought to finish it off with this comment.

MR. SCHILLEREFF

Okay.

HEARINGS OFFICER

When he says the record is silent during this period, I can't do anything except be bound by that silence. I can't add anything. I can't surmise anything so if it's a mystery to you why we can't leap that chasm, it's just that I can't do it. And Mr. Grillo couldn't do it. And we've come to that point and if there is nothing there, there is nothing in the record. And that's sort of, that's the problem we've got. And that's why I'm interested in hearing if there is, you know, somebody can say, yeah, there was a kennel in operation during that time, it's only about a year period.

MR. SCHILLEREFF

That's all you're looking for him to say is that there was a kennel in operation during that time.

HEARINGS OFFICER

Well, somebody to say it. There is nothing, so far nobody has said anything.

MR. SCHILLEREFF

Okay, I'll sit with my uncle then and he'll talk about it. You'll have to speak loud if you have a question, he's real hard of hearing.

HEARINGS OFFICER

Okay. Can you give us your name?

MR. SCHILLEREFF

Tell them your name and your address.

MR. PERSINGER

Elden D. Persinger, 23200 NW Reeder Road.

HEARINGS OFFICER

What I'll do is, given the circumstances, you can ask him the pertinent question okay, rather than him having to deal with me. So you know what the pertinent questions are. If I have any questions I'll jump in.

MR. SCHILLEREFF

What they want to know is the history of the kennels. Were there always dogs in the kennels. And from what year did the kennel start?

MR. PERSINGER

Theres been dogs there, 3, 4, 5, dogs all the time.

HEARINGS OFFICER

When did you? What I would like to find out is his relationship with the kennels, when.

MR. SCHILLEREFF

How were you associated with the kennel, did you know these people that operated the kennel. Did you know the Scotchman?

MR. PERSINGER

Yes.

HEARINGS OFFICER

What time period?

MR. SCHILLEREFF

What, do you have any idea what year that was. Like '50, '55? Do you have any recollection of the year.

MR. PERSINGER

Not at that time

MR. SCHILLEREFF

Did you know Roy Wallace?

MR. PERSINGER

I met him.

MR. SCHILLEREFF

You farmed the property for him, is that what you did?

HEARINGS OFFICER

Okay, what would be really helpful is if he can recall what was going on in the early '60's, specifically '62 to '64.

MR. SCHILLEREFF

Do you remember when Blitz had the kennel? Do you remember Evelyn Blitz?

MR. PERSINGER

Yes.

MR. SCHILLEREFF

And the years that she was there, like from '62 to '64. Was that when she was there?

MR. PERSINGER

Longer than that.

HEARINGS OFFICER

Miss Blitz owned the kennel, she ran the kennel before 1962?

[end of tape three side one]

How many dogs were out there in the 50's or 60's?

MR. SCHILLEREFF

How many dogs would you say were out there in the late fifties, early sixties?

MR. PERSINGER

It was full.

HEARINGS OFFICER

What does that mean?

MR. SCHILLEREFF

At that time there was 32 kennels out there, they are the ones that made it...

HEARINGS OFFICER

32 kennel in the period of the 60's?

MR. SCHILLEREFF

There was 32 kennels in what years? What year was that?

MR. PERSINGER

I don't remember.

HEARINGS OFFICER

Does he know who Cortway (Pein) is?

MR. SCHILLEREFF

Did you know who Cortway (Pein) was? Bull dog guy?

MR. PERSINGER

He was a dog trainer.

HEARINGS OFFICER

I missed that, what did he say?

MR. SCHILLEREFFS

He was a dog trainer.

HEARINGS OFFICER

Was he familiar with Cortway (Pein)? Was it Mr. Pein...I was just looking at the decision, who was Pein, who is Pein . . .

MR. SCHILLEREFF

Do you know what Pein was, was it a person or? I don't.

HEARINGS OFFICER

Ask him if he remembers any transition in ownership between Blitz and Pein.

MR. SCHILLEREFF

Do you know any change at all in ownership between Blitz and Courtway?

MR. PERSINGER

...

MR. SCHILLEREFF

I'm not sure he understands.

HEARINGS OFFICER

I'm just interested in his recollection of the early 60's. Unfortunately you know, I can't make it any more specific.

MR. SCHILLEREFF

He's the bull dog guy.

MR. PERSINGER

Oh yeah...

MR. SCHILLEREFF

That's the Scotchman.

MR. PERSINGER

I was there during hunting season; see, I shot where Marquam Farms is now. For, well Pein had it, Dondo had it. It was built in '50. The barn in '50.

MR. SCHILLEREFF

Dondo was the adjoining neighbor.

HEARINGS OFFICER

Okay, was he hunting there in the '60's?

MR. SCHILLEREFF

Yes he just said he had hunted it since the 50s.

HEARINGS OFFICER

From what period?

MR. PERSINGER

Till about . . .

MR. SCHILLEREFF

He has an honorary membership, supposedly for life, from Marquam Farms, because of the works he's done for them.

HEARINGS OFFICER

But was he hunting there in the '60's?

MR. SCHILLEREFF

Yes. I know that for a fact.

MR. PERSINGER

Yes.

HEARINGS OFFICER

I need to know if he remembers a kennel being there in the early sixties.

MR. PERSINGER

Yes.

HEARINGS OFFICER

And what size?

MR. PERSINGER

I remember it when...

MR. SCHILLEREFF

What size was the kennel there?

MR. PERSINGER

It was as large as it is now.

MR. SCHILLEREFF

So, thirty-two kennels.

MR. PERSINGER

That's right. When it started, let's see, he had I think about...show dogs...

HEARINGS OFFICER

Okay, well that's somewhat helpful. If you can get more specific fine, if not that's what we can do.

MR. SCHILLEREFF

Well I really don't know what else he can say.

HEARINGS OFFICER

Yeah.

MR. SCHILLEREFF

Because he's saying he saw it.

HEARINGS OFFICER

I know it's a long time ago.

MR. SCHILLEREFF

What year did you start hunting the duck club? Do you remember that?

FEMALE

About 1948.

MR. SCHILLEREFF

Okay, were you out there all the years, from 1948 until now duck hunting?

FEMALE

Yes.

HEARINGS OFFICER

Now wait, we want your name in the record.

MARGUERETTE PERSINGER

I'm Marguerette Persinger. Same address as Elden.

HEARINGS OFFICER

Okay. Well have a seat here. Why don't you pull the microphone over. Tell me what you know about the period between December '62 and February '64, and I know you probably can't remember those exact times.

MRS. PERSINGER

I know he hunted, and I took care of the moorage while he was hunting. I remember it well.

HEARINGS OFFICER

In those years? Is it that you can remember that time span or was this some time ago?

MRS. PERSINGER

He bought the moorage in 1948 and I don't know if he started hunting in '48 or '50, but he hunted every year after that. And not only that, he took care of the duck club, he took care of the land, he saw that it was tilled, it was planted.

HEARINGS OFFICER

Okay, were you ever in a position where you saw the kennel?

MRS. PERSINGER

Oh yeah, I saw the kennels.

HEARINGS OFFICER

Did you see them? You tell me who Blitz was.

MRS. PERSINGER

Well, Evelyn Blitz, I remember when she was running the kennel and she wasn't too happy about duck hunters being around there. She didn't particularly like to have Red hunting over there, but he hunted just the same.

HEARINGS OFFICER

Okay, now tell me who Pein is.

MRS. PERSINGER

I don't know that.

HEARINGS OFFICER

As you're coming to the time when Blitz ceased to operate the kennel.

MRS. PERSINGER

Well she sold it to, Myron bought it from Blitz I think.

HEARINGS OFFICER

When was that?

MRS. PERSINGER

When was it?

MALE

19... Courtway was the scotchman...

MRS. PERSINGER

Yeah, well I heard about it.

MALE

...

HEARINGS OFFICER

Okay, I guess what's helpful to me is did you see the kennels in this critical time period between December '62 and February '64?

MRS. PERSINGER

I certainly did.

HEARINGS OFFICER

How many were there? How many dogs would it hold?

MRS. PERSINGER

Well I didn't count them. I didn't know at the time but they tell me was 32.

HEARINGS OFFICER

Who told you it was 32?

MRS. PERSINGER

Myron.

HEARINGS OFFICER

So you saw the kennels.

MRS. PERSINGER

Yes.

HEARINGS OFFICER

And it wasn't because you were using them, it was because you were assisting duck hunters.

MRS. PERSINGER

Because Red was hunting there and he enjoyed the hunting and I was over there from time to time and after Pein* bought it from Dondo I was over there a lot.

HEARINGS OFFICER

Okay. Well unless you can be more specific, and I understand...so that's all I'm interested in. If that's it, that's it and that's fine.

MRS. PERSINGER

Well, the kennels were there in '62.

HEARINGS OFFICER

You saw them there.

MRS. PERSINGER

They were there much before that.

HEARINGS OFFICER

Well, all right, everybody agrees on that.

MRS. PERSINGER

And they were called Lone Tree Kennel. Lake Tree Kennel or Lone Tree Kennel, something like that.

HEARINGS OFFICER

Okay, well thank you. We're going to take about a fifteen minute break here. It's five till one on that clock. Let's reconvene at ten after.

[Recess]

Okay, we're back on record. Could I get the spelling of your last name while you're here?

MRS. PERSINGER

P E R S I N G E R. S I N G E R.

HEARINGS OFFICER

Oh, I did it right okay. Okay we're back on the record. Mrs. Persinger do you have any additional comments that

MRS. PERSINGER

Yeah, I think there is a couple of points that I want to make clear. One is, did you know the Scotchman?

MR. PERSINGER

Yes.

MRS. PERSINGER

Okay, tell him about him.

HEARINGS OFFICER

Tell me who the Scotchman is.

MRS. PERSINGER

He wanted to know when it was that you knew him, he said I was there when the Scotchman got pinched for hunting on the reserve...find out.

HEARINGS OFFICER

Who is the Scotchman?

MR. PERSINGER

He's the owner, the owner of the kennel. Either owner or he leased. Maybe he leased.

MRS. PERSINGER

Right. He want's his last name. Did you ever hear his last name?

MR. PERSINGER

No, oh wait a minute.

MRS. PERSINGER

Was it Pein?

MR. HALL

Could staff interfere? You have a letter in your file from... who indicates the Scots last name was Rose.

HEARINGS OFFICER

Oh, okay. That's one of the exhibits...

MR. SCHILLEREFF

One thing that I might say is I've never in all the time that I've been there I've heard a lot of different people...I never heard of Courtway or whatever... I've never heard of that. And the other thing is two, that kind of conflicted here is that it looks, it appears to us that Evelyn Blitz ran that kennel between '62 and '64, the time in question, not the Scotsman. Roy Wallace built that kennel, but he never did operate the kennel. Roy Wallace's kennel was out on Deer Island. And from the time Roy Wallace built that kennel he leased it to the Scotsman, but that was not in the time in question. Evelyn Blitz ran that kennel during that time. Is that right?

MR. PERSINGER

Right.

MR. SCHILLEREFF

So I don't . . .

HEARINGS OFFICER

Was that during the early '60's?

MR. SCHILLEREFF

During, yes . . .

MR. PERSINGER

There was another guy, I don't know what his name was, before Evelyn.

HEARINGS OFFICER

Well, we may have a problem between ownership and operation.

MR. SCHILLEREFF

Yeah, and that's true too because there may have been people running the kennel, although people may have owned it, there may have been different people running it. There is no way to find that out.

HEARINGS OFFICER

Okay, so what's the significance of the Scotsman? Why is he significant?

MR. SCHILLEREFF

The Scotsman is the one who originally ran that kennel from day one. Roy Wallace built it. Roy Wallace put it there.

HEARINGS OFFICER

Well the Scotsman ran it until . . .

MR. SCHILLEREFF

He rented the kennel and ran it until probably I would say 1960. Now that's a guess, but the time in question Evelyn Blitz ran it, between 1962 and '64.

MR. PERSINGER

...

MR. SCHILLEREFF

Well between the time in question.

MR. PERSINGER

Oh, yeah.

HEARINGS OFFICER

That's sort of repetitive for what the prior record seems to show... there's a fourteen month gap That's why I am. I know its really hard at this late date.

MR. SCHILLEREFF

Right.

MRS. PERSINGER

I want to ask him one more question.

HEARINGS OFFICER

Okay.

MRS. PERSINGER

All the time that you were hunting there, the kennel was there, were there dogs in the kennel?

MR. PERSINGER

Not the first year.

MR. SCHILLEREFF

You were there.

MR. PERSINGER

Yeah, I was there, 1950.

MR. SCHILLEREFF

Right.

MRS. PERSINGER

Were you there?

MR. SCHILLEREFF

The kennel was put there in about '54.

MR. PERSINGER

...built the barn in 1950, a pole shed.

HEARINGS OFFICER

Okay, so I understand that the kennels were always there.

MR. PERSINGER

The kennel was there then if I'm not . . .

HEARINGS OFFICER

But when did you last hunt there?

MR. PERSINGER

...

MR. SCHILLEREFF

When did you last hunt there?

MR. PERSINGER

About five years ago.

HEARINGS OFFICER

Five years ago?

MR. PERSINGER

When Marquam Farms traded men, they traded me too.

MRS. PERSINGER

And then their hunting went down hill and they blamed it on the dog kennel. But all the people that know, know the reason they had good hunting was because Red run the farm for them.

MR. PERSINGER

Well, here's the thing. I hunted down there when the Scotchman was there, and there was another young fellow had that, well I never got his name.

MR. SCHILLEREFF

That was probably just an operator, not the owner. The Scotsman is the one that owned the ...kennel.

MR. PERSINGER

Well...

HEARINGS OFFICER

Well, I don't want to cut you off but I think we sort of beat this one to death here.

MRS. PERSINGER

One more thing. He wanted to know if the kennel was there in '62, was there dogs in the kennel, was somebody running the dogs...

MR. PERSINGER

It was full...

HEARINGS OFFICER

Okay, thank you.

ERIC EISEMANN

Good afternoon.

HEARINGS OFFICER

Hi. Good afternoon. It is after noon.

ERIC EISEMANN

My name is Eric Eisemann. I work for Winterowd Planning Services.

HEARINGS OFFICER

How do you spell your last name?

MR. EISEMANN

My last name is spelled E I S E M A N N . I work for Winterowd Planning Services, 700 N. Hayden Island Drive. Suite number 385, Portland, 97217.

What I'd like to address is something that we touched on at the very beginning of the hearing. And I'd like to focus my comments very narrowly on that. And what I would like to try to accomplish for you is to show you and for the record that conditional use permit 23-90 and its relationship to the Hearings Officers decision, in DR 9-94, have a direct bearing on this case. And that they do provide an avenue to solve this case favorably for Tim and Angela Schillereff.

In DR 9-94 the Hearings Officer denied design review, and again this is not a design review application that is before us, this is a conditional use. It's a different type of an animal. But he denied design review without prejudice. And specifically the Hearings Officer said that if the Schillereffs were able to obtain a conditional use permit or otherwise establish the use as a lawful use, his decision in 9-94 should no way prejudice such an action. And that's found on page seven of the Hearings Officers decision.

HEARINGS OFFICER

Okay.

MR. EISEMANN

In addition, staff in its report on page ten, also indicates that if it is determined that the Planning Commission decision in CU 23-90 is valid, then we can consider this as a legally established dog kennel.

HEARINGS OFFICER

Where are you on page ten?

MR. EISEMANN

I'm on the second full paragraph, the sentence that begins: Therefore, unless the Hearings Officers decision in DR 4-94 is validated or it is determined that the Planning Commissions decision on CU 23-90 is valid, this application must be considered as requested...

What I'd like to do is demonstrate that in CU 23-90 the validity was established by looking at the record. By looking at the actual testimony. I've reviewed the tapes very carefully. I'd like to present some of the relevant sections of that here for your information.

As the Hearings Officer said in application DR 4-94. The Commission reviewed and approved, excuse me, let me back up. The Commission reviewed and approved a conditional use permit for the Schillereffs' application to place a watchman's residence next to the kennel area. In reviewing DR 4-94 the Hearings Officer properly found that because CU 23-90 was not appealed beyond the Planning Commission, in quote, is therefore a final decision, not subject to collateral attack. That's on page 8 of the Hearings Officers opinion. In fact, the Hearings Officer lacked, acknowledged that he, quote, lacked authority in this proceeding to determine the validity of 23-90. Again, this is the Hearings Officers decision DR 4-94 page 10. Therefore, the conclusions by the Hearings Officers admission in 1994 of 23-90 are fully in effect today.

Now what did 23-90 accomplish? And that's why we need to look at the testimony that was established. 23-90 represents the Schillereffs' application to establish a conditional use for a watchman's residence on the kennel property. Their application was approved in 1990, subject to conditions. Tim and Angela have met all of the applicable conditions, one of which is continuation and licensing of the primary use, the kennel. Now at the 1990 hearing, for Conditional Use 23-90, the public hearing before the Planning Commission, an opponent to that application, the Conditional Use application for the watchman's residence, Mr. John Maring, who identified himself as representing Marquam Farms, rose in opposition to the application. At that hearing in 1990, among other things, Mr. Maring raised the issue as to whether the underlying kennel use was a lawful non-conforming use. That's on Side A of the tapes of that hearing. In fact, what Mr. Maring did suggest, and he did raise at that time, is why there had never been a hearing on the underlying use of the property.

HEARINGS OFFICER

Who asked that?

MR. EISEMANN

Mr. Maring asked that question on side A of the tape. The staff at the end of the tapes on side B, after the record was closed and during the discussion of the Commissioners, the staff answered that question, why was there not a hearing on the underlying use? The answer, which I'll tell you in a moment, is that there wasn't a requirement for one, because of operation of .2028. So at the close of the public testimony . . .

HEARINGS OFFICER

Were you there?

MR. EISEMANN

No, I was not. Like I said, I reviewed the tapes.

HEARINGS OFFICER

You've listened to the tapes. Does anybody mention the word permit?

MR. EISEMANN

No.

HEARINGS OFFICER

That strikes me as odd. that no one said: Where is the permit?

MR. EISEMANN

Mr. Maring did say why hasn't anybody held a hearing on the underlying use.

HEARINGS OFFICER

And the response was?

MR. EISEMANN

Well, I can jump ahead, but the response, to quote staff from that hearing is that: there hasn't been a hearing, Commissioner Fry asked of staff, and the only reason there hasn't been a hearing on Mr. Maring question, is that when it was originally established, meaning the kennel, there was no requirement for a hearing? Staff Planner Hess. That's right there is no requirement for a hearing.

Okay, I'd like to take a little bit more time and just talk about that staff answer, because I find it fairly illuminating.

HEARINGS OFFICER

Now, what if staff were wrong?

MR. EISEMANN

Because the Commission adopted the Staff Report, adopted staff findings, closed the hearing. The hearing was reported to the Board and was acknowledged and was never appealed.

HEARINGS OFFICER

Did the Commission make a finding that there was a lawfully established Conditional Use or was it just an assumption?

MR. EISEMANN

I can't answer that. Commissioner Fry, questioning Mark Hess, the Planner, at that meeting at the close of public testimony

HEARINGS OFFICER

Well now, hold, okay. Again, I interrupt you only because I'll do that as things occur to me...Did the findings talk about it, because as we all know, at least land use lawyers and appellate lawyers, that what was said preceeding a decision doesn't really impact the resulting decision if there is a conflict or something is said and left out of a written decision...so I want to know what's in the written decision that deals with what we are talking about.

MR. EISEMANN

I have to answer that in two ways.

HEARINGS OFFICER

Okay.

MR. EISEMANN

The staff report, as staff testified at the hearing, was based upon their understanding of the County Code at that time, and the representation by the County Counsel as to what the effect of .2028 was. The staff then wrote its report based upon their understanding. The Commission then adopted staffs report. The second part of the answer to your question is that Commissioner Fry asked this question, quote, So basically, he's talking to Mr. Mark Hess, quote, basically your finding is that this is established as a conditional use, not a non-conforming use. End quote. Hess interrupted, That's correct. Staff testified, in effect that their report which underlies this whole issue, is based upon their assumption that there is a conditional use established on this property. The Commission then went on, later on, to adopt the staff report and the underlying in what I view assumptions on that report.

HEARINGS OFFICER

All right.

EISEMANN

Just to sort of, we've gotten to the highlight that I wanted to make, but I'll just finish up real briefly on this. Staff reported, this is the history of that decision, which is also on the tape. Staff reported that there had been discussion amongst the staff and between the staff and counsel as to whether the underlying use was a non-conforming use or a conditional use. Staff reported in the record that County Counsel advised and staff adopted as its position that .2028(b) operated to elevate the kennel, a lawful prior pre existing use, to a conforming conditional use status. Quote from Mr. Hess is that: At that conference, the pre-application conference, there was the interpretation of the pre-existing non-conforming use exemptions with EFU, which said that uses that are now called conditional in EFU, excuse me ...which says that uses that are now called conditional in EFU but which were non-conforming before are now conforming conditional uses. And I, insert now Mark Hess saying, have an opinion from my County Counsel which tells me that a conditional use, once it's been established by way of construction or building or whatever, that that use continues forever. And, so one of the staff members, Mr. Hall, who is my superior, took that interpretation. I took a different interpretation and he prevailed. End of quote. Again Mr. Hess is outlying the basis for his staff report.

Four years later in DR 4-94, Hearings Officer Grillo reached a different conclusion as to the legal effect of .2028(b), but that was as to a different application all together, an application for a design review, not an application for a conditional use permit. So once the underlying use was lawfully established as a conditional use the staff concluded on advice of the counsel, the conditions of that use, the conditional use could not be terminated as a result of this continuance.

HEARINGS OFFICER

You know for me to accept that argument, I have to accept the proposition that you can have a lawfully, in the language of 2028(b) a legally established conditional use doesn't require a permit...

MR. EISEMANN

That was the opinion at the time.

HEARINGS OFFICER

Now tell me how you can do that. How can you have a legally established conditional use with no permit when the ordinances plainly require you to have a permit to have a conditional use?

MR. EISEMANN

The answer to that is in the words of staff planner at the time, Mark Hess. Because Commissioner, I think it was Commissioner Fry again was asking this question, why, in response to Mr. Maring's question, why wasn't there a hearing on this thing, getting to your point, where is the permit. And the quote is, from planner Hess, is that, well excuse me, Commissioner Fry says, quote, And the only reason that there hasn't been a hearing, is that when it was originally established there was no requirement for a permit. And the answer is yes, that's correct. The reason is that Mark Hess is relying upon an interpretation of County Counsel of .2028(b) that says that a conditional use can be deemed a conforming conditional use. And that there there is no process in the County Code for procedure. There's no procedure that has been set up for that to happen.

HEARINGS OFFICER

Let me ask you this, and tell me if its outside your real or comfort level here, let's assume that in 1958 there is a club, I can't remember the exact date...on a particular day, yesterday, I'm running a kennel, today the County passes a zoning ordinance that makes kennels a conditional use, do I have a legally established use today even though I haven't applied for a permit.

MR. EISEMANN

I think there's a parallel in .2028(b) right now and that is if because you're hypothetical doesn't establish a process, it simply says we deem it by operation of the statute...to be a conditional use, therefore it is.

HEARINGS OFFICER

Okay, well the only logical impediment to that argument that I can see at some point in the future is that, if the County adopts a Zoning Ordinance in 1958 that says kennels are a conditional use, regardless of where they are, and if on that day I have a kennel that's been there and it's of course a type of permitted conditional use, but I don't have a permit for it, you say I don't need a permit on today zoning occurs... if its a legally established conditional use today, without a permit that I would never need to get a permit. That's the logical extension of what you're saying and that's the problem. So tell me why I shouldn't be concerned with it.

MR. EISEMANN

I think it was a good observation on your part and it's parallel to exactly what the Planning Commission members were wrestling with on November 6th, 1990. Listen to the tape. There is a question from a Planning Commission member, and I don't know the name,...I suspect it was Commissioner Smith, I'm not sure, which raised the question, Isn't there a way for us to

determine this ...conditional use if it discontinues. Isn't there some other way we can get a handle on this if what you're saying is true. And staff's response was that: We thought about that, right now there is no way but we're looking into the possibility of amending the County Code, when they do that I think someone said within the next year to address that problem but at present there is no mechanism.

HEARINGS OFFICER

You said these discussions all took place in the tape of the 1990 hearing?

MR. EISEMANN

That's correct. On my tape recorder, I would encourage you to look at side B, tape length 375 to 500. Well, it's my point

HEARINGS OFFICER

Did anybody transcribe that tape?

MR. EISEMANN

I did, for my own use.

MR. HALL

I've got the tape.

HEARINGS OFFICER

Okay. ...

MR. EISEMANN

No, that's fine. That's okay. So again, back to the question that you were just asking me, and we seem to be cracking kernels again, it was the staff's opinion, in the final opinion that was reflected in the staff report in the public testimony and adopted by the Planning Commission that the kennel was quote, A well established operation. That's on page 8 of the CU decision of 1990. In fact, both staff and Mr. Maring agreed at that hearing that the kennels, although they agreed in separate conversations, that the kennel was established some time during the 1950's. That's on side A. Whether the use was intermittent or continuous was immaterial once the validity of the use was established, per the advice of County Counsel. And so once established, the use could not be discontinued by operation of law. As I said earlier Commissioner Fry raised the question explicitly, which had been introduced by Mr. Maring from Marquam Farms, about the illegality of the underlying use. And again, let me

remind to, Mr. Fry, Commissioner Fry's comment or question was, quote, So basically, according to Mark Hess, your finding is that this is established as a conditional use, not a non-conforming use. Mark Hess, correct. Fry, and the only reason that there hasn't been a hearing is that when it was originally established there was no requirement for a hearing? Hess: correct. Fry: okay, that in my mind solves the problem. End of quote. Side B, about 400 on the tape.

HEARINGS OFFICER

Okay, well I'm going to have to listen to this tape but I understand you to put most of your eggs in a basket . . . or remains valid. And what I hear you saying is if that decision is valid and all this is sort of academic.

MR. EISEMANN

Yes, in some ways that's what I'm saying. I'm saying 23-90 is valid. Hearings Officer Grillo acknowledges that, because he said that he did not have the authority to overturn that. And in fact he did not.

HEARINGS OFFICER

Okay. 23-90 did not seek conditional use designation for the kennel.

MR. EISEMANN

Initially the application was filed for a conditional use permit. Staff, for a underlying conditional use, staff turned and said because you're trying to expand a well established underlying use, you don't want to go for a conditional use application. And, in fact that's what they did. Staff then interpreted 2028(b) to say that it had been deemed a conforming use. That's what Mark Hess based his staff report upon, and that report was adopted by the Planning Commission, and that finding...Therefore an answer to your question is yes all of those things are true. What we're trying to do though is to show that Hearings Officer Grillo and staff are both recognizing that there is a way to solve this problem. If there is a way, one of the ways is to establish that the non-conforming use was not discontinued, and I believe that the person or persons have done that now at this hearing. The second way is to show that there is another lawful use, 23-90 establishes the use lawful. And, that use runs indefinitely. So from our point of view, in approving the conditional use permit for the watchman's residence, the Planning Commission addressed the issue of validity that was raised by the opponent and decided that issue once and for all. And, therefore that has not been challenged, we now have a way to establish a permitted use.

HEARINGS OFFICER

I understand all that. Staggering.

MR. EISEMANN

Staggering. Thank you.

HEARINGS OFFICER

Thank you.

GREG WINTEROWD

My name is Greg Winterowd. I am the President of Winterowd Planning Services. I have a great deal to do with these staff reports, with the application sent in to you. Our address is 700 N. Hayden Island Drive, Portland, 97217.

I'd like to take a moment to qualify myself. For the record I have been planning in Oregon for twenty years. I've been Planning Director for six years. I worked at LCDC reviewing plans for five years. I've been in private practice for about four years now. I worked the City of Ashland also. I have processed and prepared hundreds of conditional use permits in my life and while at the State of Oregon and in my private practice I've reviewed virtually every code in the State of Oregon.

What the County did, I'd like to first begin to amplify what Ed has talked about. What the County is clearly trying to do in adding a section deals with basically legitimizing pre-existing conditional uses. If they wanted to avoid exactly the kind of procedure that we're going through today, having to go through and ask people what they remember twenty years ago, because it's at best a torturous process. They wanted to legitimize a whole series of pre-existing conditional uses without having to go through a new conditional use permit. An example that comes readily to mind is churches. Churches are universally allowed in low density residential, medium density residential zones, agricultural zones as conditional uses.

HEARINGS OFFICER

Okay. Let's stop right here. I understand that you are of the opinion that .2028(b), when it talks about listed uses so long as a conditional use is listed they don't have to get a permit for it?

MR. WINTEROWD

Exactly. And that's an unusual provision, but also a provision that I wrote into a code for a city in the State of Washington, this year, exactly to deal with this problem. With all respect to the County I wrote it more artfully, because there is a contradictory section, says you got to go get a permit, for what that means.

HEARINGS OFFICER

There's a section in here...

MR. WINTEROWD

That's right. And so, and I think LUBA has looked . . .

HEARINGS OFFICER

How do you read those two together?

MR. WINTEROWD

When they contradict, that's unfortunate.

HEARINGS OFFICER

...maybe they are read together.

MR. WINTEROWD

If they are read together, one says you have to go through the permit process that you've talked about, the other says you don't. The other says you just exist and that's fine, as if you were a permitted outright use. If they don't conflict in your mind that's great. Let's say they do conflict in your mind, you still have the authority to say we have conflicting provisions. We can interpret them in a way that

HEARINGS OFFICER

It's this word legally that gets me. Conditional uses versus legal uses. If it's been established...to get to where you want to go, and I'm not saying...legally...

MR. WINTEROWD

If I may . . .

HEARINGS OFFICER

What's your view. . . legally...

MR. WINTEROWD

Legally, at the time this kennel was established in the early '50's, it was legally established. What the provision .2028 gets rid of, is it gets rid of the requirement to show that it was used continuously. It takes us completely out of the realm of non-conforming use law, that's what its specific intent was to do.

HEARINGS OFFICER

...

MR. WINTEROWD

Because I've written ordinances like that and I've also talked with Bob Hall.

HEARINGS OFFICER

I say that semi-seriously.

MR. WINTEROWD

I say that as someone who has looked at a lot of codes over the years, and why else would it be there? And also the meaning of it, the only possible meaning it can have is that it gives you automatic legal status for previously existing uses that are listed as conditional uses. Take an analogy, permitted outright uses, the Code changes. In the old days they site a church as a conditional use, they change the code and make it a permitted use.

HEARINGS OFFICER

I understand what you're saying. I understand both sides of the argument totally. It's just . .

MR. WINTEROWD

The question in my mind, what else could it be?

HEARINGS OFFICER

...

MR. WINTEROWD

Which means it would have no effect at all. It would be absolutely meaningless. You created a null step with this interpretation. And we're not arguing that interpretation of '94, but we are arguing it in 1990. Do you see what I'm saying, why I said a null step.

HEARINGS OFFICER

Well yeah.

MR. WINTEROWD

Okay. So to me this is again using

HEARINGS OFFICER

Hearings Officers would like to feel their decisions have some finality.

MR. WINTEROWD

And, in that sense too...we've talked a lot about this. If somehow the effect of Grillo's, Hearings Officer Grillo's decision had some lasting judicial effect, then clearly by the same terms that...might apply to Grillo's. It certainly applied in 1990...Commission. But you can't have it both ways. You can't say that my decision is final in 1994, but the 1990 decision which clearly addresses the same issues, same...as Mr. Maring objected.

HEARINGS OFFICER

Well I think Mr. Grillo's decision said that the watchman's residence is not salable.

MR. WINTEROWD

Yes. And I would argue this one through planning logic, which is not law, but how can you possibly

HEARINGS OFFICER

They are unrelated you know.

MR. WINTEROWD

I won't argue that point, but how could you possibly have an accessory use when there is no primary use. That's basic planning.

HEARINGS OFFICER

I know. I understand that...

MR. WINTEROWD

So it seems, we'll leave that issue where it sits.

Now what I'd like to do is spend some time addressing impacts which were...law. What I'd like to do is hand to you something that's already in the record, it's in the application. Just a map of the existing plans and the opposed plans. The application was put together with the Schillereffs with the clear intention of minimizing or to the point of insignificance, any possible impact on any neighborhood.

We did, as required by law, create an impact area based on possible sounds and we have documentation on how far sound from the kennel, dogs barking... how far away it is. We drew the impact line based on that. We surveyed every surrounding property, crops grown, the agricultural methods as required by law. As the record shows the people who actually do farm in the area, all not some, but all support this application. Barking dogs has no adverse impact on surrounding property. We've established that the Schillereffs are excellent managers of dog kennels, the dogs don't escape to chase somebody's chickens or cows. They are retained in the facility. We established that contrary, and I emphasize contrary to what the Marings were arguing, is that this kennel has no adverse effect, in fact on their hunting operation. And that's why we had, that was the only argument that they really had, was somehow we're putting them out of business by having a dog kennel. And yet expert after expert, veterinarian, hunters, managers of other dog kennels on the island say the dogs don't scare away the ducks. What scares away the ducks is overuse of the facility.

If you look for specific design improvements that we're making to the kennel, where once there was open areas that faced to the East, Southeast toward the Marring property there are no open spaces. There is now a ...closed solid wall separating the dogs from the, look at the proposed site plan. The solid wall separating where the dogs are maintained and held from the adjoining property. There is also, they are more covered by roofs, the facility will be integrated so you don't have to take dogs in and out of one side to another, so that dogs are not exposed to sights and sounds that might cause them to bark. The 75 dogs versus 50 dogs, which I think has been more than mitigated, that increase, by the fact that when people drive into the facility, that's when dogs bark. If the dogs cannot see the people driving in and don't watch them getting out their cars, they are much more likely to bark. And this is based on Tim's and Angela's comments to me, and I believe that they know what they are talking about. The tree cover is all being retained. Additional landscaping is being installed so that the use is virtually invisible from the outside. The parking lot is being arranged in a manner that means the people don't have to stop, get out of their car, ask what's going on, park,...two opportunities. Now the dogs will bark, now they'll be directed to where to go, they'll have plenty of back up space. There will be one single entrance to the facility which minimizes dogs contact with people which is what causes them to bark. Everything that we have done in this facility we believe minimizes the impacts on the Marquam operation. And we believe there are no impacts on agricultural lands.

It's chiefly interesting that we are not proposing to take one square foot of agricultural land out of production to make this operation work. It is simply redesigning the project on where it is currently built. The irony is that the administrative rule that the Marquams relied so heavily

on, that says you can't do a new conditional use, which we don't believe we need a new conditional use. That Administrative Rule is intended to preserve agricultural land, this use has no impact on agricultural land, not a square foot of agricultural land. I'd also note that the record of 1990, Mr. Maring in his testimony said the land couldn't be farmed. I think they are clearly talking out of both sides of their mouths, when you're talking about preservation of ag land and the added impact of this on preservation of ag land which will have no impact. And everyone here has acknowledged that today including the staff report.

We went through every policy in the Comprehensive Plan.

HEARINGS OFFICER

Okay, hold on a second. On that point, on page eleven of the staff report, there are two...pages 22 and 40 that said the applicant provided no . . .

end of tape three

What you are saying on that...page 4 of the supplemental report...

MR. WINTEROWD

They are only marginally applicable in my judgment. They didn't apply in staffs...We also note for the record that for every conditional use standard, staff agrees...analysis and believes that we adequately addressed the criteria. In particular, there are no adverse effects on agriculture, we are minimizing or reducing impacts on surrounding properties. And that this use is very valuable to the County...especially. For example, if you don't have kennels in Sauvie Island, in the country, close to UGB where people live, where do you have them? You either have them farther out or you have them in areas that are much more likely to adversely effect the people who live around them. So we think that...applicable approval criteria.

HEARINGS OFFICER

Let me ask you this. Non-conforming use issues, assuming that you...

MR. WINTEROWD

Okay, ORS 215.130(7) Any use described in subsection 5, which is non-conforming use, may not be resumed after a period of interruption. What Phil Grillo said was there must be a period of interruption. You can't call it... you can't call it anything else. Unless the resumed use conforms with the requirements of the Zoning Ordinances or regulations applicable at the time of the resumption.

HEARINGS OFFICER

Can you in your opinion revive a lost non-conforming use...

MR. WINTEROWD

Normally, no.

HEARINGS OFFICER

Can you issue a permit?

MR. WINTEROWD

Normally you would have to pick some form of County authorization to do so, which in our position in 1990 we had repeated County authorizations that basically said this use now exists in some form or another. Normally you'd have to go through a special process which we're attempting to do now to clarify the issue, to show that you resumed your non-conforming use...

HEARINGS OFFICER

Can you ever resume I guess a non-conforming use or doesn't it really have to become something else?

MR. WINTEROWD

We argue I think two... One is certainly did not resume non-conforming use or as a previously approved conditional use...

HEARINGS OFFICER

I'll agree with you there. Okay. Anything else?

MR. WINTEROWD

We did, in this proposal address criteria in the code...expansion of an existing non-conforming use which are different from those for a conditional use. And we believe that we have demonstrated well, and no evidence exists to my knowledge which contraverts our testimony that...also. They basically say do we have no greater impact on expansion on surrounding properties...Does the Hearings Officer have any questions about any of the facts we presented?

HEARINGS OFFICER

Nothing comes to mind...

MR. SULLIVAN

...

HEARINGS OFFICER

Okay, anybody want to speak in opposition? Well I guess we don't need any rebuttal then. I have not received since the new information has come in, any request from anyone to continue the matter. I'm not going to for that reason. The hearing will be closed according to the time frame that I set up in the outset. I'm going to give the proponents until next Wednesday to submit anything further. I'm going to permit the opponents two weeks to respond to both matters submitted today and anything within the next week and then proponents will have until I believe it will be September 6th, three weeks from today to respond to whatever the opponents submit. I really don't want to see anything new, last minute stuff nobody thought of, and I will have a written decision within ten days from September 6th.



DOCUMENTATION OF SAUVIE ISLAND KENNEL'S NONCONFORMING USE

Time Period	Number of Dogs	Source of Information
1953-1955	50-60	Neil Rose, whose father Donald Rose helped build the kennel and ran it for two years.
1953-1955	50-60	May Louise Rose, who assisted her husband in operating the kennel for two years and who lived on the property during that time.
1953-1955	50-60	Dr. Joseph McFarland, friend of Neil Rose since 1953 and Sauvie Island resident.
1955 - present	always been 3, 4, 5 dogs	Red Persinger (in 1995)
1950s - present	unknown, but continuously used as a kennel	George Douglas, a Planning Commissioner in 1990.
1952 - present	unknown, but continuously used as a kennel	C. Dondo (in 1967)
1954 - present	unknown, but continuously used as a kennel	Red Persinger (in 1967)
late 1950s - 1969	unknown, but kennel usually full; at least four dogs always boarded	Mildred Meifert, whose son owned kennel from 1969 to 1973, remembers Evelyn Blitz's tenure as kennel owner.
1958 - 1969	at least 25, continuously	Pat Baggett remembers Evelyn Blitz had at least 25 dogs continuously in the kennels.
1958 - 1967	unknown, but in continuous use	George Cashdollar (in 1967)
1961-1965	about 50	Norman Crowe says Evelyn Blitz operated a kennel with about 50 dogs, the kennel's capacity.
1964 - present	continuous use as a kennel	Norman Crowe says kennel in continuous use during these years.
1966 - 1969	continuous use, about 50	Myron Meifert
1968 - 1976	unknown, but always several dogs present	Mairi Holman, daughter of Donald Rose (the kennel's first operator) and former island resident.
1969	about 50	Norman Crowe remembering Myron Meifert's operating the kennel.
1969 - 1973	10 kennels open; at least four dogs	Mildred Meifert describing kennel operation during Pein's ownership.
1969 - 1973	at least six	Pat Baggett remembers the Peins had at least six dog continuously boarded.
1969 - 1973	owner's three dogs; boarded friends' dogs; at least four dogs	Marguerite Persinger
1970 - 1973	owner's three dogs and Red's two dogs; at least five dogs	Red Persinger (in 1994)
1973 - 1989	owner's three dogs; boarded friends' dogs; at least four dogs	Mildred Meifert
1973 - 1989	owner's three dogs; boarded friends' dogs; at least four to six dogs	Marguerite Persinger
1973 - 1989	between three and ten	Pat Baggett remembers the Persingers always had several dogs boarded.

Reming's
July 10
1958

Peter Allport, owner ①
of NORM THOMPSON, INC
purchased this property -
in 1954 / ~~1955~~ - I believe
he purchased it from the
couple who had the
Teeck farm to the immediate
East. They were Italian.
But I cannot recall the
name my father Donald
Rose assisted Allport
in building the kennels
and in positioning the
"heights home" in position.
this was done in the
Spring of 1954. My dad
had rented the property
from Allport. we moved
in May of 1954. I was
in the 6th High School

Mr. & Mrs.
Done →

Lila
May's House →

in Hillsboro, & my brother²
dione me there each
morning until June
and graduation.
I then attended Seaford
high school, my sister
Mairi Holman. I attended
Savies Island School
until the summer
of 1955, when we
moved to Teleda
Workington. My father
purchased property at
Alport then moved the
property to someone
else - I do not know
who - But I do know
the kennel was here
prior to May 1954.

Alport died in the
early / mid sixties -
his son Mark Alport
is / was a stock broker
in Portland -

Dr. Joseph McFarland
who resides in Vancouver
can attest to these facts

NEIL ROSE
10517 NE 50th AVE
VANCOUVER -
360-694-7321
office PDX 223-1061

MARI HOLMAN -

MAY ROSE (my mother
86 yrs old)
360-573-2449

360-573-2449

AFFIDAVIT OF GEORGE DOUGLAS

STATE OF OREGON)
) ss.
County of Multnomah)

I, George Douglas, being first duly sworn, depose and say:

1. I have been a resident of Sauvie Island for nearly 50 years and am very familiar with many of the people, families and businesses which have been on the Island during my time here. I am acquainted with Tim and Angela Schillereff. I am neither a business associate nor a close family member of theirs.

2. I personally remember there was a dog kennel on the Schillereff's property well back into the 1950's. I believe the kennel has been in continuous use since the 1950s. I particularly remember Mrs. Blitz who operated a kennel there from the late 1950's until she sold the property to Myron Meifert. During that time there were always many dogs at the kennel.

3. I served as a member of the Multnomah County Planning Commission. I was a member of the Commission and was present at the public hearing on November 6, 1990 when CU 23-90 was brought before the County Planning Commission. I voted in favor of the Schillereffs' request for conditional use approval.

4. When I voted to approve the conditional use permit for the watchman's residence in 1990, my intention was that the permit would be good for both the residence and the dog kennel from then on. I thought the conditional use permit for the residence would validate the dog kennel as well. I thought we were approving a residence and that we were laying to rest any

future concerns about the legality of the kennel. I was certain, in 1990, that I was voting to create a permanent right to a dog kennel.

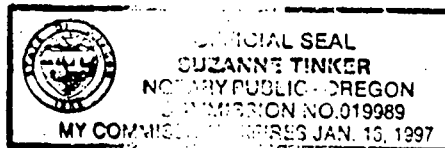
DATED this 23 day of August, 1995.

George Douglas
George Douglas

Subscribed and sworn to before me this 23 day of August, 1995.

Suzanne Tinker
Notary Public for the State of Oregon
My Commission Expires: 1/16/97

J:\EJS\33536-00\15YO27T.DOC



To whom it may concern:

I know that the Lake Tree Kennels,
of Rt 1, Box 120 B on Sauer Island, Portland, Oregon,
have been in the business of boarding
and training dogs since the year
of 1952.

Yours truly,

E. E. E. E.

Rt 1 Box 113 BB

RECEIVED

DEC 1 1967

Metropolitan County Planning Comm.

Nov 37, 1967

To whom it may concern:

I have known the Lake Tree
Kennels to have been in business; of
Boarding & training dogs since the
year of 1954 located at Rt 1 Box 120 B
on Sawies Island, Portland Oregon 97231

Yours Truly,

Elden E Persinger
Rt 1 Box 70 Portland, Oregon

RECEIVED

DEC 1 1967

Multnomah County Planning Comm.

AFFIDAVIT OF ELDEN E. PERSINGER

State of Oregon)
County of Multnomah) ss:

I, Elden E. Persinger, being first duly sworn, depose and say:

1. My wife, Marguerite Persinger, and I owned the Sauvie Island Kennel property from 1973 until recently, when we sold it to Tim and Angela Schillereff. From 1970 to 1973, the place was owned by Henry and Irene Pein, both now deceased. They purchased the kennel from Myron Meifert. They also owned some of the adjoining property currently owned by Marquam Farms Corporation.

2. I knew Henry and Irene Pein while they owned the kennel; in fact, my wife and I often spent weekends on the place with the Peins. At the time, I owned and operated Red's Moorage at the foot of the Sauvie Island Bridge (it is now known as Larson's Moorage).

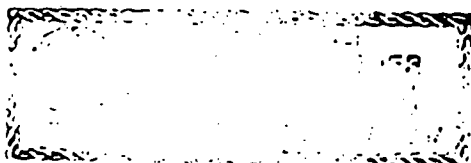
3. Myron Meifert had operated the kennel commercially as Lake Tree Kennels. The Peins did not operate the kennel commercially, but they kept their own three dogs (Sam, Betsy and Pat) on the place. In addition, as favors for their friends, they boarded dogs without charging any money. Marguerite and I had three dogs (Duke, Toby and Charlie). We kept Charlie at the moorage. The Peins regularly boarded Duke and Toby in the kennels on their place. Therefore, just considering our dogs and theirs, the Peins kept four to five dogs on the place on a regular basis during the years they owned it.

4. Henry preceded his wife in death. Irene Pein sold the property to us in early 1973. We sold Red's Moorage and brought all three of our dogs with us to the kennel property. We also kept dogs for friends and relatives at no charge. Our friend, Bill Warrington, and his son Michael boarded their dogs, which they named for brands of beer (for example, Oly and Henry) for weeks or even months at a time, generally during the summer, but also at other times of the year. We never charged the Warringtons, but they did give us another dog, Bud, who still lives with us.

5. In addition, Frank Meifert, a relative of mine, frequently left his dogs (Tuck and Mitzi) with us. He had several dogs name Tuck over the years. In other words, although we never operated the kennel commercially, we did operate the kennel continuously for our own dogs and as a courtesy to friends and relatives from 1973 until my great-nephew Tim Schillereff and his wife Angela took over operation of the kennel. We regularly cared for 4-5 dogs at the kennel.

E Elden E. Persinger
Elden E. Persinger

Sworn to and subscribed before me on this 27th day of July, 1994.



Danice K. Reader
Notary Public for Oregon

My Commission Expires: May 2, 1997

STATE OF OREGON)
) ss.
County of Multnomah)

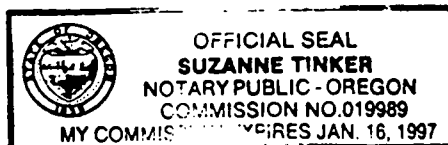
My first memories of the property that Angela and I now operate Sauvie Island Kennels on is in the year 1973. My great-uncle Elden Persinger aka Red Persinger owned the kennel property. My grandfather and I would come and visit Uncle Red and train dogs together during the off times of hunting season. This occurred every year until my grandfather's death in 1992.

I also remember the summer trapshoots in which 75-100 people would attend, all their family and friends. These occurred during the years that the Persingers owned the property. I recall the bird dogs barking at the shooting and Uncle Red would quiet them down..

As long as I can remember, there have been dogs in the kennel. In fact, in the late 1970's and early 1980's the Marquam Lake duck club was managed by Bill Warrenton, who boarded several of his dogs, and his son's dogs in the kennel while he was in Canada for the summer. I still board Bill Warrenton's dogs today. He owns a black Lab currently, and his son has a Brittany in which we take care of when they go out of town.

Timothy Schillereff
Timothy Schillereff

Suzanne Giesler
Notary Public for Oregon



AFFIDAVIT OF NORMAN CROWE

STATE OF OREGON)
) ss.
County of Multnomah)

I, Norman Crowe, being first duly sworn, depose and say:

1. I have been a resident of Sauvie Island since 1964. Prior to that time I worked on the Island training dogs for Mr. Norm Brown from the early 1950s until 1961 when Mr. Brown ended his kennel operation.

2. I remember Eva Blitz owned a commercial dog kennel on the property now owned by Tim and Angela Schillereff. Mr. Brown would regularly send his overflow boarders to Eva Blitz' for boarding. That was common practice among all the kennel operators on the Island.

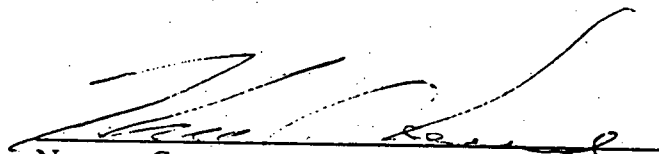
3. In 1961 I bought a miniature poodle from Eva Blitz. I took the poodle to Eve's several times a year for grooming up until the poodle died in 1965. During the times I visited Eva Blitz's kennel, the kennel was always operating at capacity or near capacity -- in the neighborhood of 50 dogs.

4. I remember the kennel owned by Myron Meifert always operated at near capacity of about 50 dogs.

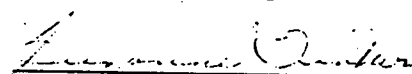
5. After Meifert sold the property, I recall the Peins and Persingers as owners of the land and kennel. I travel the island roads regularly and am very familiar with that property. Since 1964 through the present, I cannot recall a time when there were not barking dogs in the kennel every year. To the best of my knowledge, not a year has gone by when there were not four or

more dogs boarding in the kennel the entire time I have been on the island. During the past 40 or so years, I cannot recall a time when there were not dogs boarding or living at that kennel.

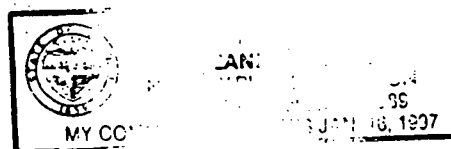
DATED this 23 day of August, 1995.


Norman Crowe

Subscribed and sworn to before me this 23 day of August, 1995.


Notary Public for the State of Oregon
My Commission Expires: 1/16/97

J1EJS33536-00 00115YO27U.DOC



AFFIDAVIT OF MILDRED MEIFERT

STATE OF OREGON)
) ss.
County of Multnomah)

I, Mildred Meifert, being first duly sworn, depose and say:

1. I have been a resident of Sauvie Island for nearly ~~50~~ years and am familiar with the Sauvie Island Kennel, having observed the land regularly and frequently for the last 45 years.

2. I remember that Eva Blitz once owned the property now owned by Tim and Angela Schillereff. Eva Blitz owned the property and operated a dog kennel on the property from the late 1950s until she sold the land and kennel to my son, Myron Meifert in 1969.

3. I remember that from the late 1950s through approximately 1969, the property was continuously operated as a commercial dog kennel. The commercial dog kennel was operated by either Eva Blitz or a tenant of Eva Blitz.

4. During most of the commercial kennel period the kennel runs were often full. I cannot recall any time during that period when there were fewer than four adult dogs boarded at the kennel.

5. I am personal friends of Red and Marguerite Persinger and have visited them on their property many times. I recall that between the time Myron Meifert sold the property until the Persingers bought the property, approximately 1969 to 1973, the land was owned by the Pein family. The Peins also owned the neighboring property now held by the Marquam Duck Club. The Peins left at least 10 kennel runs open and occasionally boarded dogs. I believe that Red Persinger sometimes kept his dogs there during hunting season. I do not recall a single year during that period when there were not at least four dogs staying on the property.

6. I recall that from the time Red Persinger bought the property in 1973 until 1989, the Persingers had three of their own dogs on the property and often boarded other dogs in the

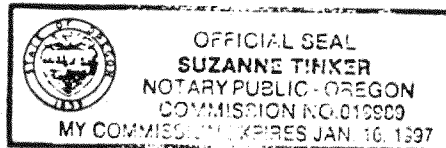
kennels as personal favors to their friends. I remember that the Persingers always had four or more dogs staying in the kennels at some point each and every year even though they were not operating a commercial kennel.

DATED this 23 day of August, 1995.

Mildred Meifert
Mildred Meifert

Subscribed and sworn to before me this 23 day of August, 1995.

Suzanne Tinker
Notary Public for the State of Oregon
My Commission Expires: 1/10/97



AFFIDAVIT OF MARGUERITE PERSINGER

STATE OF OREGON)
) ss.
County of Multnomah)

I, Marguerite Persinger, being first duly sworn, depose and say:

1. My husband Eldon "Red" Persinger, and I owned Sauvie Island Kennel from 1973 until recently when we sold it to Tim and Angela Schillereff.

2. My husband and I kept three dogs on our own on that property the entire time we lived there. In addition, every year we kept other dogs on the property as favors to hunters and friends, such as Bill Warrenton. Bill Warrenton owned two to three dogs:

3. At a minimum there were always four to six adult dogs living or boarded on our property each year from 1973 until the time we sold the property and kennel.

4. Prior to purchasing our property in 1973, my husband and I visited the property and kennel when it was owned by the Peins. We visited the Peins every year they owned that kennel property. The Peins owned three dogs. In addition to their dogs, the Peins commonly kept dogs owned by hunters each and every year. I cannot recall a year when there were not at least four or more adult dogs living or boarding on the Pein's property.

Dated this 23 day of August, 1995.

Marguerite Persinger
Marguerite Persinger

Subscribed and sworn to before me this 23 day of August, 1995.

Suzanne Tinker
Notary Public for the State of Oregon
My Commission Expires: 1/6/97

J\EJS33536-00.001\SYO27X.DOC



August 22, 1995

Mr. Robert Hall
Multnomah County Planning Department
2115 SE Morrison St.
Portland, OR 97214

RE: Schillereff case: CU 4-96 & MC1-95,23

Dear Mr. Hall:

My name is Mrs. Pat Baggett. I reside at 18120 NW Sauvie Island Road. I have personal knowledge of the following facts:

1. I first met Evelyn Blitz in 1946 when she was married to Bill Blitz. I remember when Evelyn Blitz moved to the property now owned by Tim and Angella Schillereff. My mother and father were dog trainers, and I remember going to the opening of Evelyn's Blitz's kennel. That was about 1958.
2. I remember that Evelyn used to hold social gatherings (picnics, holiday parties, etc.) on her property every year she owned the land, including when she leased the kennel operation to others. I attended these events every year, from the time Evelyn Blitz bought the property until the time she sold the property to Myron Meifert.
3. Every time I visited the property when Evelyn Blitz owned it, she always had 25 dogs or so in the kennels.
4. I recall the Peins ownership of the property and kennel. At the time I thought they were running dogs on the old Blitz place and on the place now owned by the Duck Club. The Peins always let hunters use the old Blitz place. I visited the Peins several times every year they lived on the Blitz place. The Peins never ever shut down the kennel. There were always at least 6 dogs in those kennels every year they owned the Blitz place.
5. I know Red & Marguerite Persinger very well. I have visited them on their property every year since they bought their land from the Peins in 1973. Every year since they owned the property I attended a picnic, turkey shoot or other social events on their land. Red and Marguerite always had between 3 to 10 dogs in their kennels every time I visited them. I can not remember a time when they did not have several dogs in the kennels.

Please enter this letter into the public record.

Thank you.

Respectfully,

Pat Baggett

AFFIDAVIT OF ELDEN E. PERSINGER

State of Oregon)
County of Multnomah) ss:

I, Elden E. Persinger, being first duly sworn, depose and say:

1. My wife, Marguerite Persinger, and I owned the Sauvie Island Kennel property from 1973 until recently, when we sold it to Tim and Angela Schillereff. From 1970 to 1973, the place was owned by Henry and Irene Pein, both now deceased. They purchased the kennel from Myron Meifert. They also owned some of the adjoining property currently owned by Marquam Farms Corporation.

2. I knew Henry and Irene Pein while they owned the kennel; in fact, my wife and I often spent weekends on the place with the Peins. At the time, I owned and operated Red's Moorage at the foot of the Sauvie Island Bridge (it is now known as Larson's Moorage).

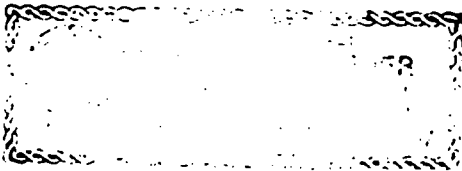
3. Myron Meifert had operated the kennel commercially as Lake Tree Kennels. The Peins did not operate the kennel commercially, but they kept their own three dogs (Sam, Betsy and Pat) on the place. In addition, as favors for their friends, they boarded dogs without charging any money. Marguerite and I had three dogs (Duke, Toby and Charlie). We kept Charlie at the moorage. The Peins regularly boarded Duke and Toby in the kennels on their place. Therefore, just considering our dogs and theirs, the Peins kept four to five dogs on the place on a regular basis during the years they owned it.

4. Henry preceded his wife in death. Irene Pein sold the property to us in early 1973. We sold Red's Moorage and brought all three of our dogs with us to the kennel property. We also kept dogs for friends and relatives at no charge. Our friend, Bill Warrington, and his son Michael boarded their dogs, which they named for brands of beer (for example, Oly and Henry) for weeks or even months at a time, generally during the summer, but also at other times of the year. We never charged the Warringtons, but they did give us another dog, Bud, who still lives with us.

5. In addition, Frank Meifert, a relative of mine, frequently left his dogs (Tuck and Mitzi) with us. He had several dogs name Tuck over the years. In other words, although we never operated the kennel commercially, we did operate the kennel continuously for our own dogs and as a courtesy to friends and relatives from 1973 until my great-nephew Tim Schillereff and his wife Angela took over operation of the kennel. We regularly cared for 4-5 dogs at the kennel.

Elden E. Persinger
Elden E. Persinger

Sworn to and subscribed before me on this 27th day of July, 1994.



Janice K. Reeder
Notary Public for Oregon

My Commission Expires: May 2, 1997

5000 2071101
To whom it may concern:

I know that the Lake Tree Kennels,
of Rt 1, Box 120B on Sauris Island, Portland, Oregon,
have been in the business of boarding
and training dogs since the year
of 1952.

Yours truly,

C. L. Lando

Rt 1 Box 113BB

RECEIVED

DEC 1 1967

Multnomah County Planning Comm.

Nov 27, 1967

To whom it may concern:

I have known the Sake Inn
Kennels to have been in business; of
Boarding & training dogs. since the
year of 1954 located at Rt 1 Box 120 B
on Sawies Island, Portland Oregon 97231

Yours Truly,

Elden E Persinger
Rt 1 Box 70 Portland, Oregon

RECEIVED

DEC 1 1967

Hatnomah County Planning Comm.

November 28, 1967

To whom it may concern:

I have known the Lake Tree
Kennels to have been in business,
of boarding and training dogs,
prior to 1958 located at Rt 1 Box 1201
on Sauvie Island, Portland
Oregon 97231.

Yours truly,
George Cashdollar
Gilligan Rd.

RECEIVED

DEC 1 1967

Multnomah County Planning Comm.

PREVIOUS USE

Notes

Date From FEB - 64 to FEB 65

Occupant COURTWAY

Description of Use HAD DOGS - LEASED
ON BASIS IT BE A COMMERCIAL
KENNEL - ENG. BULLDOGS - BREED
OWN STOCK - 4 TO 5 ADULTS &
8-10 PUPPIES MOST OF TIME

Description of Equipment BLDGS - SAME
AS NOW

NOT USED ASPHALT GRASS

Number of Employees NONE

Description of Signs NONE

MAP

PREVIOUS USE

Notes

Date From AUG 1957 to DEC 1962

Occupant EVELYN T. BLITZ

Description of Use COMMERCIAL KENNEL
UP TO 50 DOGS - BOARDING,
BREEDING & TRAINING. BOUGHT
AS KENNEL - BLDGS WERE HERE

Description of Equipment SAME BLDG
BOUGHT FROM ROY WALLACE, WH.
HAD RENTED IT OUT TO BREEDERS
FOR ABOUT 5 YRS (+)

Number of Employees ?

Description of Signs MARQUAM LANE
KENNELS - SIZE & NUMBER UNKNOWN

ASSESSOR'S RECORD

PRESENT STATUS

LAKE IRRE KENNELS

Date Built HOUSE
942

Location REEDER RD. RT 1 BX 120 B

Addition 12'x58'
1954 KENNELS
12'x20' - 1955

Date Established MOVED IN 9-5-67

Owner MEIFERT, MYRON JR

Address SAME

Occupant MEIFERT

Use BOARDING & BREEDING DOGS

Description of Use 30 RUNS IN 60' BLDG
160' CYCL FENCE
10 RUNS IN 25' BLDG - 5' WIDE

Personal Prop.
(List Equipment
and Dates)

BOUGHT FROM EUGENIE BUTZ

LIMITED TO 50 DOGS

(ACTUAL)
12'x20'
12'x58'

Description of Buildings and Equipment CORRUSATI

METAL 60'x15(I) 25'x15(I)

Assumed Name

Number of Employees NONE

Description of Signs ONE SIGN 18"x18" (10')

Permit

THU OWN 3 DOGS

PREVIOUS USE

Date From OCT 65 To OCT 1966

Notes

Occupant VICTOR EATON - ZENTERS

2-0123 PER
RUN BUT MORE
LIKELY ONE

Description of Use 15 TO 20 DOGS

Description of Equipment BLDG SAME

Number of Employees NONE

Description of Signs SAME AS PRESENT

MAP

ASSESSOR'S RECORD

PRESENT STATUS LAKE TREE KENNELS

Year Built _____

Location REEDER RD RT 1 BX 120 L

Date Established SEE ATTACHED

Addition _____

Owner HENRY H. PEIN (PEIN INV. CO)

Address _____

Occupant MEIFFERT, MYRON

Use DOG KENNEL

Description of Use PEIN BOUGHT FROM

MEIFFERT. MEIFFERT HAS BEEN TRAINING & BOARDING DOGS

Personal Prop.
(List Equipment
and Dates)

Description of Buildings and Equipment SEE ATTACH

Assumed Name _____

Number of Employees NONE

Description of Signs NONE

Permit R. 471 KENNEL HOME ALL OF 71-2305

PREVIOUS USE IN 1970

Date From _____ To _____

Notes _____

Occupant _____

Description of Use _____

R. 471 HARRY PEIN NOW OWNS THIS & TELLS
39.34 A & 7C 15-3-2N-2W- HAS TRAINED
WANT BA FOR WATCHMAN

Board of Adjustment - Approval

Description of Equipment _____

Number of Employees _____

Description of Signs _____

AFFIDAVIT OF NEIL ROSE

State of Washington)
) ss:
County of Clark)

I, Neil Rose, being first duly sworn, depose and say:

1. I believe that Peter Alport, one time owner of Norm Thompson, Inc., purchased the property now known as Sauvie Island Kennel in 1953.

2. I remember my father, Donald Rose, helped Mr. Alport build the original dog kennels on the property and place the older "heights home" in position during May 1953. My father leased the property from Mr. Alport and we moved into the "heights home" in May of 1953.

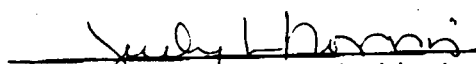
3. My father operated the kennel for two years. We had between 50 and 60 dogs present at all times, including Labradors, pointers, short hairs, springer spaniels, and Chesapeake Bay retrievers. I was a student in junior high and high school during those years, and clearly remember these events. My family remained on the property until the summer of 1955, when we moved off the island.

4. When we moved from the island, my father turned the kennel operation over to Roy Wallace, who ran it for several years and kept about as many dogs as my father did.

5. I have visited the island every year since my family moved away. As long as I was in school, I returned to the island to visit friends. I am a pilot, and I used to fly over the island and especially enjoyed flying over the kennel where I used to live. When my two sons were younger, I took them to the island to fish and bird watch. During my visits I have stopped to observe the kennel, and there have always been at least several dogs there.


Neil Rose

Sworn to and subscribed before me on the 21st day of November, 1995.


Notary Public for Washington

My Commission Expires

10-1-99

AFFIDAVIT OF MAY LOUISA ROSE

State of Washington)
) ss:
County of Clark)

I, May Louisa Rose, being first duly sworn, depose and say:

1. I believe that Peter Alport, one time owner of Norm Thompson, Inc., purchased the property now known as Sauvie Island Kennel in 1953.

2. I remember my husband, Donald Rose, helped Mr. Alport build the original dog kennels on the property and place the older "heights home" in position during May 1953. My husband leased the property from Mr. Alport and we moved into the "heights home" in May of 1953. Red and Marguerite Persinger now live in this house.

3. My husband operated the kennel for two years, and I helped him out sometimes. We had between 50 and 60 dogs present at all times, including Labradors, pointers, short hairs, springer spaniels, and Chesapeake Bay retrievers. My family remained on the property until the summer of 1955, when we moved off the island.

4. When we moved from the island, my husband turned the kennel over to another operator, who ran it for several years and kept about as many dogs as my husband did.

May L. Rose
May Louisa Rose

Sworn to and subscribed before me on the 21 day of November, 1995.

Judy L. Harris
Notary Public for Washington

My Commission Expires 10-1-99

AFFIDAVIT OF MAIRI HOLMAN

State of Oregon)
) ss:
County of Multnomah)

I, Mairi Holman, being first duly sworn, depose and say:

1. I believe that Peter Alport, one time owner of Norm Thompson, Inc., purchased the property now known as Sauvie Island Kennel in 1953.

2. I remember my father, Donald Rose, helped Mr. Alport build the original dog kennels and place the house on the property during May 1953. My father leased the property from Mr. Alport and we moved into the residence in May of 1953.

3. My father operated the kennel for two years. My family lived on the property until the summer of 1955, when we moved off the island.

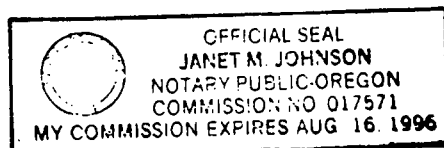
4. Since that time, I have visited the island on numerous occasions. When my children were young, during the years 1968 to 1976, we visited several times a year because my family enjoyed Sunday drives to the island. We always went by the kennel, because I used to live there. I remember that during those years there were always dogs in the kennel, jumping up against the fence, and that the kennel sign was always in place.

5. On my other visits to the island over the years, I have always gone by the kennel, and there have always been several dogs there.

Mairi Holman
Mairi Holman

Sworn to and subscribed before me on the 21st day of November, 1995.

Janet M. Johnson
Notary Public for Oregon
My Commission Expires 8/16/96.



F

REQUEST FOR A CONDITIONAL USE PERMIT

at
Appt
per B. Hall
Feb 89

Reference
MCC 11.15.2028
B and C

DR 9A-07-02

ed; and

- (c) Which satisfies the minimum lot size requirements of MCC .2016, 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 .2016; 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 .2016, but, when considered in combination, comply as nearly as possible with a minimum lot size of nineteen acres, without creating any new lot line; and

- (d) Which are held under the same ownership.

(B) For the 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 .2016; 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.

[Amended 1990, Ord. 643 § 2]

11.15.2020 Lot Size for Conditional Uses

- (A) The minimum lot size for a conditional use permitted pursuant to MCC .2012(A) and (B)(2) shall be based upon:

- (1) The site size needs of the proposed use;
- (2) The nature of the proposed use in relation to its impact on nearby properties; and
- (3) Consideration of the purposes of this district.

- (B) Except as otherwise provided by MCC .2018, no sale or conveyance of any portion of a lot, for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

11.15.2022 Off-Street Parking and Loading

Off-street parking and loading shall be as required by MCC .6100 through .6148.

11.15.2024 Signs.

Signs, pursuant to the provisions of MCC 11.15.7902-.7982. [Amended 1986, Ord 543 § 2]

11.15.2026 Access

Any lot in this district shall abut a street, or shall

have other access determined by the Hearings Officer to be safe and convenient for pedestrians and for passenger and emergency vehicles.

(1) The cost of plan preparation; or

(2) The value of the land.

11.15.2028 Exemptions from Non-Conforming Use Provisions

(A) A single family dwelling not in conjunction with farm use, legally established prior to August 14, 1980, shall be deemed conforming and not subject to the provisions of MCC .8805.

(C) The value of actual construction commenced prior to February 20, 1990 shall be \$1,000 or more, for each \$20,000 of the total estimated value of the proposed improvements as calculated under the Uniform Building Code.

[Amended 1990, Ord. 643 § 2]

(B) Conditional uses listed in subpart MCC .2012 legally established prior to August 14, 1980, shall be deemed conforming and not subject to the provisions of MCC .8804, provided, however, that any change of use shall be subject to approval pursuant to the provisions of MCC .2012.

(C) The term "change of use", as used in this Section means the change from one conditional use listed in MCC .2012 to another such conditional use.

The Persinger Kennel is therefore a Conforming CU - therefore does not expire per October 8, 1990 opinion from John DeBay.

11.15.2030 Right To Complete Single Family Dwelling

A single family dwelling, uncompleted prior to August 14, 1980, but which meets the tests stated in this subsection, may be completed although not listed as a primary use in this district.

(A) Actual construction shall have commenced prior to February 20, 1990, under a sanitation, building or other development permit applicable to the lot. "Actual construction" means:

- (1) Placement of construction materials in a permanent position;
- (2) Site excavation or grading;
- (3) Demolition or removal of an existing structure;
- (4) The value of purchased building materials; or
- (5) Installation of water, sanitation or power systems.

(B) Actual construction shall not include:

M E M O R A N D U M

TO: Mark Hess
Planning

FROM: John L. DuBay
Chief Assistant
County Counsel

DATE: October 8, 1990

SUBJECT: CUP termination

I agree with you that the zoning code provides no way to terminate CUPs because of non use where the permit sets no expiration date.

However, nothing prevents an amendment to the zoning code to establish a procedure to terminate permits not being used for the permitted use, even permits issued before the amendment. MCC 11.15.7135(A) could be amended to add "non-use for the permitted purpose for ___ months" to the list of reasons for termination. Alternatively, a new provision could be added to establish a shorter termination period than provided in .7135.



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

Decision

This Report consists of a Recommended Decision, Findings of Fact, and Conclusions

November 6, 1990

CU 23-90, #22 and #23

**Conditional Use Request
(Watchman's Residence for Dog Kennel)**

Applicant requests conditional use approval to add a watchman's residence to an existing dog kennel. Tim and Angela Schillereff (the kennel operators) request approval to place an 1800 square foot manufactured house on the site in order to oversee the security and well-being of the dogs housed in the kennel and provide security for the kennel buildings and equipment.

Location: 23200 NW Reeder Road.
Legal: Tax Lot '15', Section 3, 2N-1W, 1990 Assessor's Map
Site Size: 9.41 Acres
Size Requested: Same
Property Owner: EE and MF Persinger
23200 NW Reeder Road, 97231
Applicant: Tim and Angela Schillereff
18149 NW Sauvie Island Road, 97231

Comprehensive Plan: Exclusive Farm Use

Present Zoning: EFU, Exclusive Farm Use District

_____	Notices
8	Decision Notices
mailed on	11-14-90
by	M.B.

PLANNING COMMISSION

DECISION: Approve, subject to conditions, the requested watchman's residence based on the following Findings and Conclusions.

CU 23-90

MUA-20
SEC
CS FF

Zoning Map
Case #: CU 23-90
Location: 23200 NW Reeder Road
Scale: 1 inch to 400 feet
Shading indicates subject property

Lot 8
FU
FF

MUA-20
SEC
CS FF

EFU

MUA-20
SEC
CS FF

EFU

Lot 5
FU
FF

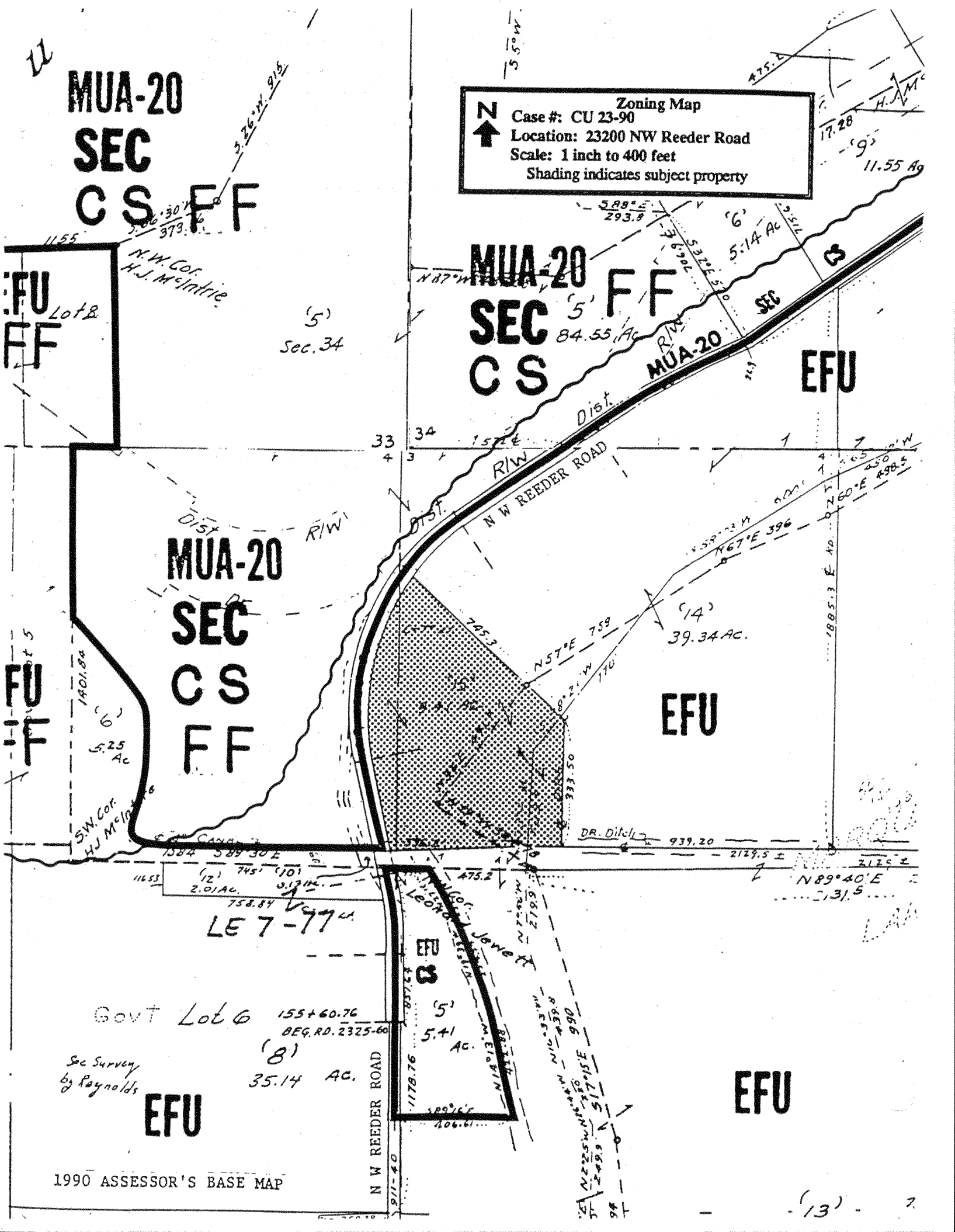
LE 7-77

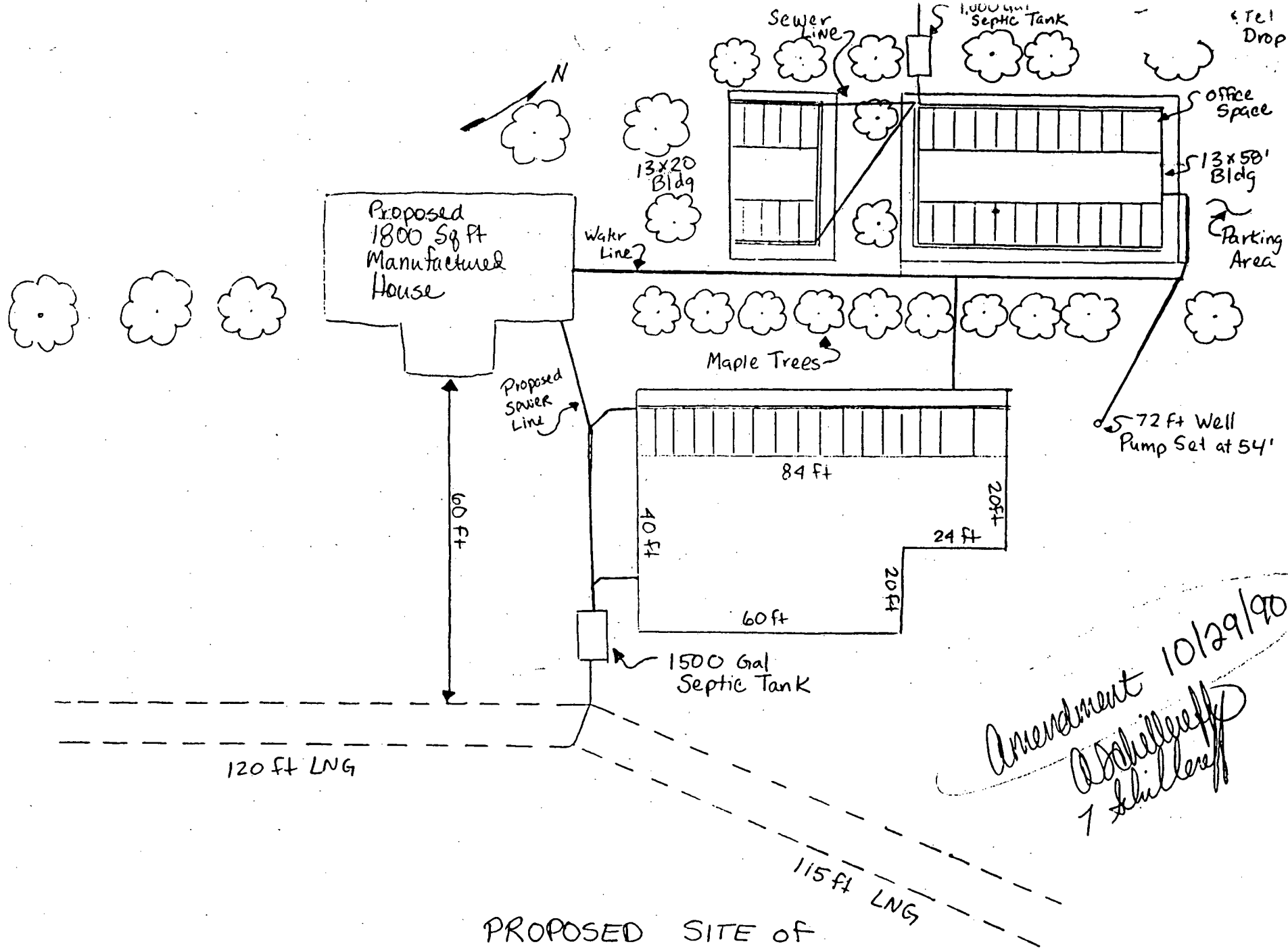
Govt Lot 6

EFU

EFU

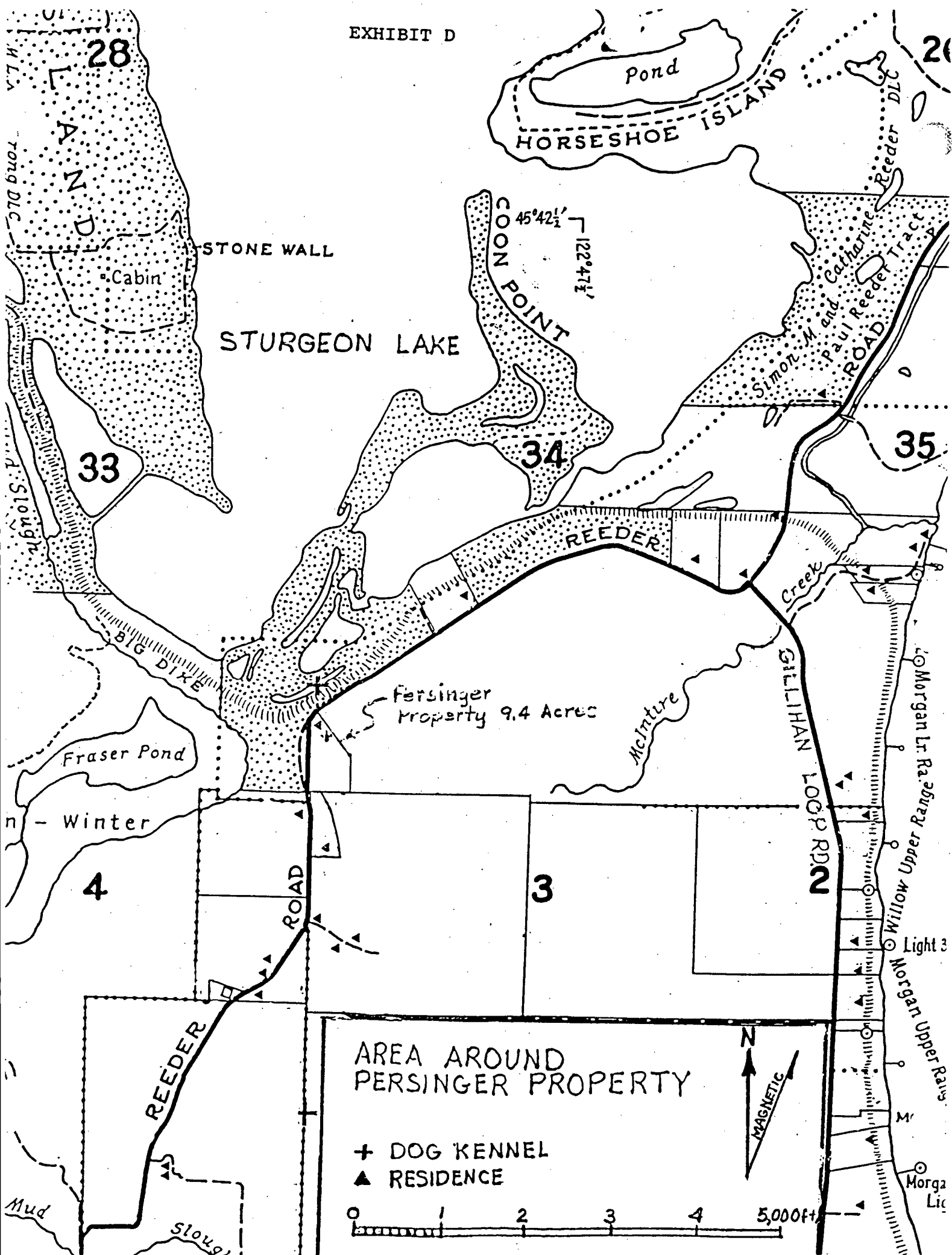
EFU





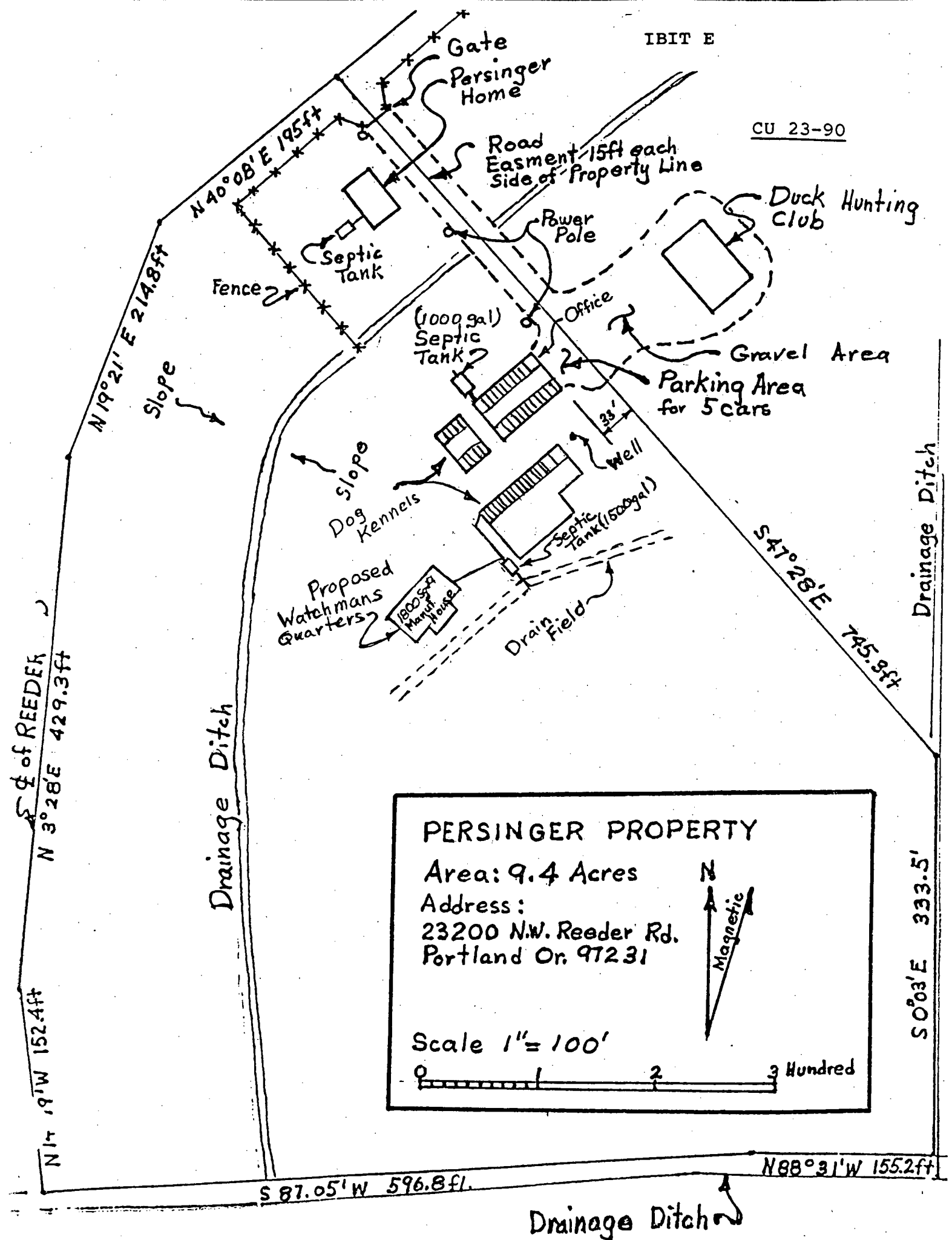
Amendment 10/29/90
A. Schell
7 Schell

PROPOSED SITE OF
WATCHMAN'S QUARTERS
Scale 1" = 30'-0"



IBIT E

CU 23-90



Conditions of Approval

1. Obtain Design Review approval prior to issuance of a placement permit for the new house. Complete Design Review requirements prior to occupancy of the house.
2. Obtain permits and install the subsurface disposal system prior to occupancy of the residence.
3. This approval terminates — and one of the two residences shall be removed from the property — if the property ceases to be licensed and used as a kennel, or within six (6) months after the Persingers' life estate interests cease, whichever occurs first.
4. The watchman's residence shall be placed as shown on the applicant's revised site plan, dated October 29, 1990.

Findings of Fact:

1. Proposal Summary:

The applicant requests permission to add a watchman's residence to an existing kennel facility at 23200 NW Reeder Road. The house would be an 1800 square foot manufactured home. Applicant provides the following description of the request.

"Detailed Request Description:

The use of this watchman residence will be of the nature of overseeing the security and well-being of the kennel operation during and after business hours. Since we are a breeding, boarding and training kennel, we feel the use is necessary for three reasons:

First, as a professional breeder of English Pointers, we plan in our breeding program to have three litters of pups a year. With a watchman residence nearby we could check on our litters and dogs throughout the day and night. For example, last October, one of our pregnant brood bitches was having severe labor difficulties, requiring us to be with her throughout her delivery. Having the watchman residence close by the whelping areas would enable us to keep an eye on such things.

Second, as a professional boarding kennel, we receive pets of all sizes and all ages for our care. Some require medication, and even medical attention during their stay with us. Thus, the watchman residence would allow us to oversee the boarding operation in the best manner possible.

Decision

November 6, 1990

Third, as a professional trainer, we frequently take training dogs and their owners to outside training grounds in the course of their learning. For example, in training retrievers one must teach the dog to swim and to retrieve from the water. We have brought our dogs down to the West End game management area to work in the lakes and ponds there. Therefore, when the trainer is gone training during business hours, the watchman would oversee the kennel operation (answer the phone, help customers, care of animals, clean their pens, and maintain the security of the premises.)"

2. Site and Vicinity Information:

The 9.41 acre site is within an EFU district on Sauvie Island. The property fronts onto NW Reeder Road. The "Sauvie Island Kennels" facility license authorizes boarding of up to 50 dogs; this request (for the residence) would not increase the capacity of the kennel. An existing residence on the site was built in 1942. It houses Mr. and Mrs. Persinger, the property owners since 1973. The Schillereffs – the kennel owner/operators – are leasing the property, with an option to purchase. The lease/option contract provides that Mr. or Mrs. Persinger may reside in the existing house for the rest of their lives.)*

Surrounding properties are primarily agricultural or natural in character. A duck hunting club operates on a 39-acre property east and north of the Persinger's site. The club site contains a barn and a small parking area. Most of the duck club's site is open crop land with some wetland/riparian wooded areas in low areas and along drainageways.

Properties to the south and southwest are generally flat, open field and crop lands with scattered farm houses and barns. A few large trees are located near the houses and along stream bank–riparian corridors.

The Sturgeon Lake Wildlife Refuge property to the northwest (across Reeder Road) is owned by the Oregon Department of Fish and Wildlife. The refuge is a several thousand acre natural area characterized by wetlands, a large shallow lake, and riparian woods. A grass covered dike separates the refuge from Reeder Road and the subject site.

3. Zoning and Comprehensive Plan Designations.

The plan designation of the site is Agriculture. The zoning is EFU, Exclusive Farm Use.

4. Ordinance Considerations:

Conditional uses allowed in EFU areas are specified in MCC 11.15.2012. Subsection (B)(11) specifies "*Dog Kennels*", and MCC .2014(E) provides for structures or uses *customarily* accessory to a dog kennel. Such uses may be permitted when found to satisfy *Conditional Use Approval Criteria* in MCC .7105 – .7640.

Applicant requests that the Commission determine a watchman's residence is a customarily provided accessory use for a kennel.

"We feel the watchman residence is of the nature in which its 'uses or structures incidental and accessory to the uses permitted under MCC 2012 (B)(II).' Cited from the Exclusive Farm Use section page 3-5. With the provision (E) 'Other structures or uses customarily incidental to any use permitted or approved in this district' allowing for a structure such as a watchman residence to be permitted in this manner."

The following section presents findings regarding the proposed Conditional Use; the applicable standard is in ***bold italics***, applicant's responses are presented first in *italics*, followed by staff comments.

A. Conditional Use Criteria (MCC .7120)

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

"A watchman residence to oversee the security and well-being of all the kennel animals and the kennel buildings and equipment is an accessory use to the well-established kennel operation. Therefore such an expansion would be consistent with the character of the land."

In looking at a few of the other kennel operations on and around Sauvie Island, you can see that they too, have a watchman residence for the business. Here is a list of several:

On Sauvie Island-

Blackthorn Kennels- now inactive, yet had a watchman residence when it was an active kennel operation.

Charlton Kennels- active with a watchman res.

Minoggie Kennels- active with a watchman res.

Outside Sauvie Island-

Green Acres Kennels- active with a watchman res.

Meifert Kennels- active with a watchman res.

Rock Creek Kennels- active with a watchman res.

Twin Willows Kennels- active with several watchman residences.

You can see the need is consistent throughout the Portland area, not only for Sauvie Island.

The following describes similar uses on the adjacent properties:

The area adjacent to the northeast is owned and operated by Marquam Farms, Inc., a multi-partner hunting club, used exclusively for the hunting of ducks and geese during the waterfowl season, and the maintenance of such. (Please see Exhibit C and D.) Both the duck hunting club and the kennel operations would benefit from a watchman's residence to oversee the security of the properties and buildings. This would be a compatible use to the duck club.

The area adjacent to the northwest is owned and operated by the Oregon Department of Fish and Wildlife. It is part of the Sturgeon Lake wildlife refuge area on Sauvie Island. (Please see Exhibit C.)

The area adjacent to the south is rural farmland, the property line is bounded by a drainage ditch. Our neighbors to the south operate a dairy farm and also maintain several watchman residences to oversee their operations. Therefore this would be a compatible use as well."

Staff Comment: Applicant's above findings demonstrate that watchman's residences are customarily provided in conjunction with kennel operations. The addition of a watchman's house to an existing kennel is not inconsistent with nearby agricultural lands, wildlife conservation lands, or rural residential uses.

A(2) *Will not adversely affect natural resources;*

"There are no unforeseen adverse affects on the natural resources."

Staff Comment: Condition #2 requires installation of a subsurface disposal system for the new residence. This will insure against any potential adverse effects to water quality. No other natural resource effects from the watchman's residence have been identified.

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

"The use is consistent with the farm and forest uses in the area and thereby will not conflict. The watchman residence is an accessory use to the established kennel operation."

Staff Comment: Staff concurs that the proposal's effects on farm or forest uses in the area are negligible.

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

"Current public services such as electricity, telephone and etc... are already programmed."

Staff Comments:

a. Water Supply.

The site is supplied water through a private well.

b. Sewage Disposal.

Sewage would be disposed through an on-site septic system. Condition #2 requires installation of a sub-surface disposal system for the house.

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

Staff Comment: The site is not identified as a big game habitat area in the Comprehensive Plan or by the Oregon Department of Fish and Wildlife.

A(6) *Will not create hazardous conditions;*

"There are no unforeseen hazardous conditions."

Staff Comment: This and surrounding properties on this part of Sauvie Island are protected from flood hazards by a dike structure maintained by the U.S. Army Corps of Engineers. The site is not designated a Flood Hazard or Flood Fringe area by the County.

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

The following policies of the County's Comprehensive Plan are found applicable to this request: Policy 9 (Agricultural Lands), Policy 13 (Air, Water and Noise Quality), Policy 14 (Development Limitations).

a. Policy 9 – Agricultural Lands.

"The Comprehensive Plan wishes to maintain the agricultural uses or conditional uses in the EFU areas as permitted in ORS 215.213. The watchman residence would exist to better facilitate the existing conditional use, our dog kennel, and would not adversely affect the natural resources in the surrounding areas."

Staff Comment: Based on findings above in finding 4.-A(1)], a watchman's residence is a customarily provided accessory use to a dog kennel. Kennels

are allowed as within agricultural areas. Therefore the proposal does not conflict with this policy.

b. Policy 13 – Air, Water, and Noise Quality.

The expansion of the conditional use to include a watchman's residence will not adversely affect the air or water quality, and will reduce the noise levels in the surrounding area by:

- 1. The placement of the watchman residence on the site as to reduce the noise level disruptions from the kennel, acting as a buffer.*
- 2. Further adding more landscaping and trees surrounding the watchman residence to lessen noise generation to levels compatible with surrounding land uses.*
- 3. Perimeter fencing with the additional vinyl slats and more landscaping in the immediate kennel courtyard would also lessen noise generation.*
- 4. Pertaining water and air quality, there are no unforeseen affects from the expansion to include a watchman residence.*

Staff Comment: Policy 13 seeks to minimize negative air, water and noise quality impacts from new developments. It states that “*..If the proposed use is a noise generator, the following shall be incorporated into the site plan:*

- 1. Building placement on the site in an area having minimal noise level disruptions,*
- 2. Landscaping or other techniques to lessen noise generation to levels compatible with surrounding land uses.*
- 3. Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.”*

The placement of a watchman's residence would not likely generate significant noise increases; however, the proposal responds to this criteria by placing the watchman's residence southwest of the “kennel court”, where it would block the existing noise generating use (barking dogs). The house location helps shield the closest neighboring residences from the kennel. The closest houses are approximately 500-feet southwest and 600-feet south of the proposed watchman's house. This policy is also addressed through Design Review requirements (Condition #1). Design Review typically requires landscape plantings to buffer noise generating uses from neighboring residences.

b. Policy 14 - Development Limitations.

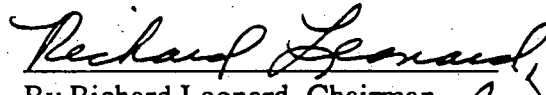
"There are no unforeseen developmental limitations for this proposed watchman residence. (ie; Slopes do not exceed 20%, nor is there a potential for soil erosion on this site.)"

Staff Comments: Staff concurs. Reference comments above in finding 4.-A(6) regarding flood hazards.

Conclusions:

1. The proposed watchman's residence for the existing kennel satisfies Conditional Use approval criteria.
2. Conditions of approval are imposed to assure compliance with applicable Design Review provisions, and with sub-surface system requirements for the new residence.

Signed November 6, 1990


By Richard Leonard, Chairman

Filed With the Clerk of the Board on November 15, 1990

Appeal to the Board of County Commissioners

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:30 PM. on Monday, November 26 1990 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, November 27, 1990 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

G

** MULTNOMAH COUNTY DIVISION OF A&T *** R001-NALMOD 07/13/90 9:06 PAGE 1
DCT. NUMBER R-97103-0150 L/C 049 REQUEST BY

NAME PERSINGER, ELDEN E & PROP 23200 NW REEDER RD
MARGUERETTE F PORTLAND, OR 97231
YR-AQ 73 BK/PG 0906/1445 ----- STATUS -----
23200 NW REEDER RD PARTIAL REAPPRAISAL - APPR
PORTLAND, OREGON 97231 YR APPR 84 VCHR # ACTION 828072
MAP 32N1W CENSUS TRACT 071100 VCHR # DIVISION
SID TAT RES DEF CANCEL 081182

----- LEGAL DESCRIPTION -----
SD SECTION 03 2 N 1 W LOT BLOCK
15 9.41 ACRES

----- LAND AND IMPROVEMENT CHARACTERISTICS ----- *** 07/10/89 ***
ATID CODE 546 6 APPR DISTRICT AREA 9.41 A ZONING EFU
CLASS 4 ONE STORY W/ BSMT % IMP GOOD NEIGHBORHOOD 230
TE DWG SGL YR BUILT 1942 BDRMS 3 STORIES 1.0
IVING AREA 816 ARCH RESIDENCE CONS

BUILDING PERMIT
CENSUS DATA
TH81

09:39:16 03/02/81

E OF WORK:

NO ALT X TEN IMP REPAIR ADD CONV DEMO TEMP FILL MOVE
OWNER PRIVATE X GOVERNMENT/PUBLIC
LAND USE COUNT MAP 3-2N-2 ZONE EFU COMP PLAN EFU SITE SIZE 409899 SF
USE BEFORE PERMIT (FOR USE CATEGORIES PRESS PF12)
USE CODE 510
IF CONV THEN CURRENT # OF RES UNITS OR NON-RESIDENTIAL SQ.FT.
USE AFTER PERMIT RESIDENTIAL RESIDENTIAL/NON-RESIDENTIAL
USE CODE 510 CHANGE IN UNITS CHANGE IN SQ. FT.
USE CODE CHANGE IN UNITS CHANGE IN SQ. FT.
PREVIOUS LAND USE CASES

CU

VZ

REQUIRED LAND USE APPROVALS

ZONING COMMENTS: THE DOG KENNEL USE AND STRUCTURES PRE-DATE THE ZONING ORDINANCE; THE USE IS A CONFORMING CONDITIONAL USE WHICH MAY BE REMODELED & IS PROPOSED; LIMITED TO 50 DOGS MAX; DR IS WAIVED DUE TO MINOR NATURE
PF1 PERMIT APPL PF4 APPLICATION MENU PF6 FEE CODE MENU PF8 CAVEATS PF16 TAX
PF3 SUPPLEMENT PF5 ASSIGN PLAN CHECK PF7 APPROVALS PF9 NOTES PRMTA002

T.C. '15' Section 3-2N-1W

BUILDING PERMIT APPLICATION
TH81

09:39:46 03/02/81

STR NO 23200 DIR NW NAME REEDER TYPE RD BLDG FLR
BETWEEN AND
LOT BLK ADDITION
TAX LOT 015 SECTION 03 TOWN/RANGE 971 OCCUP GRF
TAX ACCT R971030150 CONST TYPE
MAP 3-2N-2 ZONE EFU COMP PLAN EFU FIRE EXT DETECTION
JOB NAME UNINCORPORATED MULTNOMAH COUNTY Y
DESCRIPTION #2W REMODEL EXISTING DOG KENNEL BUILDING.ADD RUNS.INTERIOR PARTITI
ONS.ETC.
PRELIM MEETING WITH
PLANS SPECS CALCS SOILS RPTS
ADDITIONAL PERMITS REQUIRED FOR PLUM ELEC MECH
OWNER ELDEN PERSINGER DATE 03/02/81
OWNR ADDR 23200 NW REEDER RD CITY,ST PORTLAND, OREGON ZIP 97231
BUILDER LIC #
APPLICANT TIM SCHILLEREFF PHONE 289-4854
APPL ADDR CITY,ST ZIP
PF2 CENSUS DATA PF4 APPLICATION MENU PF6 FEE CODE MENU PF8 CAVEATS PF16 TAX
PF3 SUPPLEMENT PF5 ASSIGN PLAN CHECK PF7 APPROVALS PF9 NOTES PRMTA001

GENERAL APPLICATION FORM

OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
AND DEVELOPMENT SECTION

2115 S.E. MORRISON ST.
PORTLAND, OREGON 97214
(503) 248-3043



PROPERTY ADDRESS 23200 NW Reeder Road, Portland, Oregon 97231

LEGAL DESCRIPTION Please see attached Deed with the legal description.

Tax Lot 15, 9.41 Ac, NW 1/4 SEC 03, T2N, R1W

SITE SIZE 9.41 Acres on Sauvie Island, Oregon

PROPERTY OWNER/DEED HOLDER Elden E. Persinger and Margurette F. Persinger

ADDRESS 23200 NW Reeder Rd, Portland PHONE 621-3249

CITY Portland, OR ZIP 97231

APPLICANT Tim and Angela Schillereff 621-3204 (w)

ADDRESS 18149 NW Sauvie Island Road PHONE 6213646

CITY Portland, OR ZIP 97231

TO BE COMPLETED BY APPLICANT ONLY IN THE PRESENCE OF A NOTARY PUBLIC

OF OREGON
COUNTY OF MULTNOMAH

I, Angela Schillereff

EACH BEING FIRST DULY SWORN, DEPOSE AND SAY THAT I AM (ONE OF) THE APPLICANT(S) IN THE FOREGOING APPLICATION AND THAT THE SAME IS TRUE AS I VERILY BELIEVE.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 19th DAY OF September, 19 90

NOTARY Judy R. Green

MY COMMISSION EXPIRES 8-28-92

GENERAL DESCRIPTION OF APPLICATION: (To Be Filled In By Applicant and Reviewed by Staff)

Expand existing kennel to include a watchmans residence.

FOR STAFF USE ONLY

CASE NUMBER:

CU-23-90

ASSOCIATED CASES:

DR-90-07-02

INTERNAL PROCESSING

ACCEPTED FOR PRE-APP:

21 SEP 90

BY Chris H. Ewer

PRE-APP:

PA 40-90

DATE AND TIME:

27 SEP 90, 10:40A

ACCEPTED FOR DECISION:

9/28/90

BY:

M. Herr

HEARING DATE:

11/5/90

DECISION FILED:

DECISIONS/S.R. BY:

ACCEPTED FOR APPEAL:

BY:

DATE OF HEARING:

DESCRIPTION

COMP. PLAN DESIG:

Rural

COMMUNITY:

Sauvie Isl

ZONING DISTRICT:

EEJ

ZONING MAP NO:

22 & 23

QUARTER SECTION NO:

N/A



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING
AND DEVELOPMENT
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

BOARD OF COUNTY COMMISSIONERS
GLADYS McCOY • CHAIR OF THE BOARD
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER
GRETCHEN KAFOURY • DISTRICT 2 COMMISSIONER
RICK BAUMAN • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

Notice of Planning Director Decision

Design Review Case No. 90-07-02

August 6, 1990

The Planning Director has approved **remodeling plans for an existing 50-dog kennel ; no additional dogs are authorized by this permit.** The kennel is located at 23200 NW Reeder Road. * |

You have received notice of this decision because our records indicate you own property near the project site.

The approved plans include relocating some of the dog runs to an existing pole building on the property. Conditions of approval have been imposed regarding landscaping and saving existing trees, and requiring sight obscuring fencing around the dog runs.

This decision will become effective ten days from the above date, unless an appeal is filed. An appeal requires a \$150.00 fee and must state the specific legal grounds on which it is based. Contact the County Planning Division at 248-3043 if you have questions regarding the project design or to obtain appeal forms or information.

5 notices mailed

8-06-90

M.B



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING
AND DEVELOPMENT
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

BOARD OF COUNTY COMMISSIONERS
GLADYS McCOY • CHAIR OF THE BOARD
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER
GRETCHEN KAFOURY • DISTRICT 2 COMMISSIONER
RICK BAUMAN • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

Tim Schillereff
23200 NW Reeder Road
Gresham, Oregon 97030

FINAL DESIGN REVIEW

Decision Date: August 6, 1990

Design Review #90-07-02

Reviewer: Mark R. Hess

Date Plans Received: July 13, 1990

The final design plans submitted for **remodeling a Kennel for 50 Dogs** have been reviewed. The following applies to your plans:



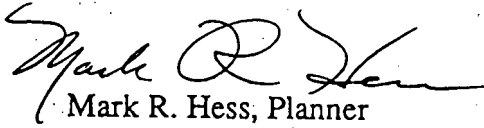
DESIGN REVIEW COMPLETED WITH CONDITIONS

Based on review of submitted drawings, site visits by staff and analysis of applicable criteria, the final Design Review plans conform with the Design Review provisions of MCC .7805-.7865 if the following conditions are applied:

1. Construct building and install site improvements and landscaping as illustrated and specified on approved plans dated 8/6/90.
2. Landscaping and site improvements shall be completed and approved by Design Review Staff prior to occupancy or final approvals for the remodeled kennel facilities.
3. Disturbed areas associated with construction shall be replanted.
4. Retain the existing Birch trees north and west of the kennels and between the new pole building and the existing kennels.
5. The perimeter fencing for all the runs shall include vinyl or aluminum slats (slats are not required between runs) or other approved means to meet the "...constructed of...opaque material" requirement of MCC 11.15.7230(B).

IN THE MATTER OF DR 90-07-02

MULTNOMAH COUNTY DIVISION OF PLANNING AND DEVELOPMENT



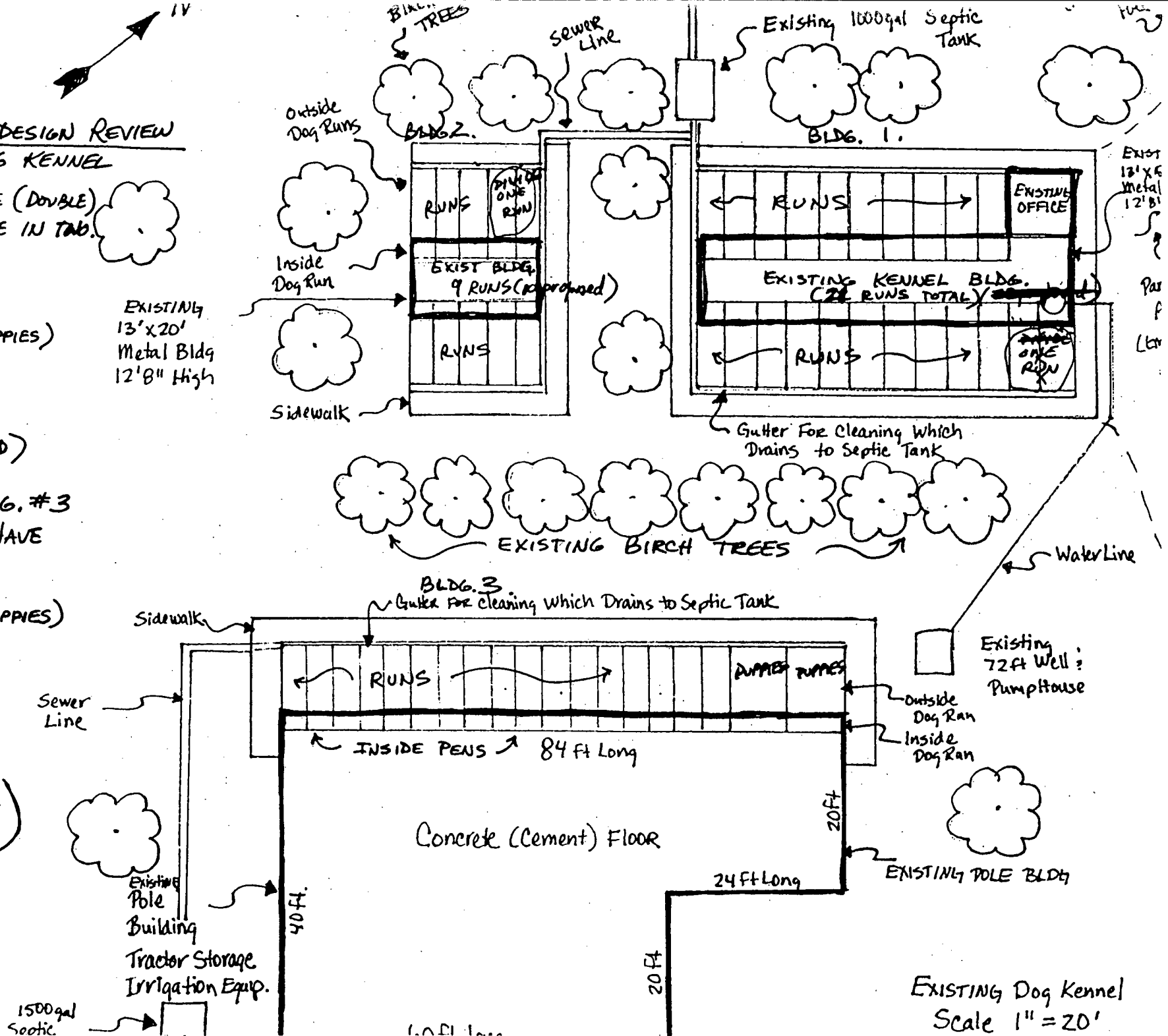
Mark R. Hess, Planner

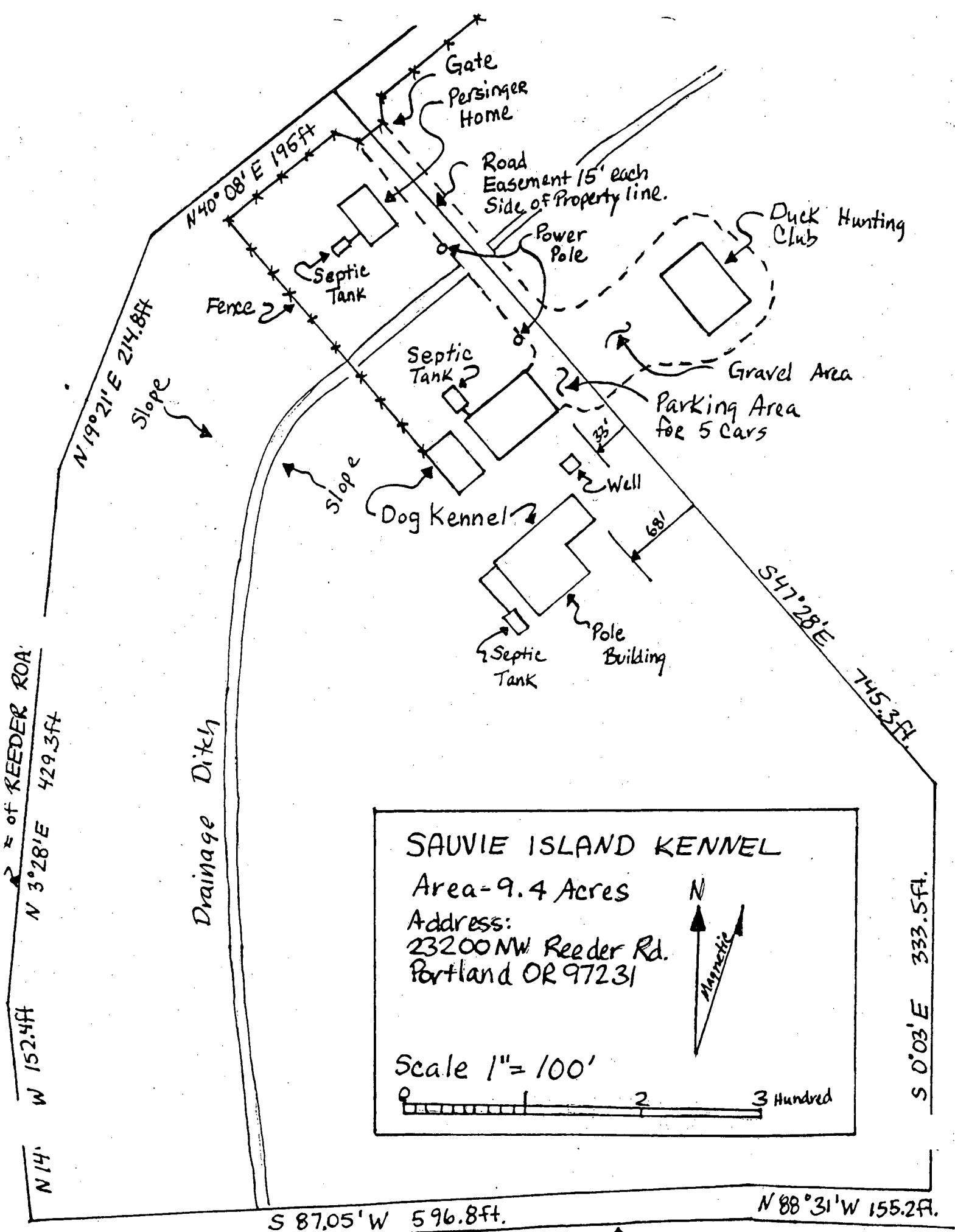
This decision shall become final in 10 days (August 16, 1990) unless an appeal of the decision is filed pursuant to MCC 11.15.8290. An appeal requires a \$150.00 fee and must state the specific legal grounds on which it is based. Contact the County Planning Division at 248-3043 for appeal forms and information.

EXISTING
13'x20'
Metal Bldg
12'8" High

EXISTING BIRCH TREES

50 RUNS
(3 may be for puppies)





DESIGN REVIEW APPLICATION

Department of Environmental Services
Division of Planning and Development
2115 S.E. Morrison St.
Portland, Oregon 97214

(503) 248-3043



Property Location & Description

Street Address 23200 NW Reeder rd
Legal Description Dog Kennel (Commercial)
Community Sauvie Island
Zoning FFU
Site Size 9.4 acres

Property Owner

Name Elden E. Persinger
Address 23200 NW Reeder rd.
Phone 503 621-3249
Owner's Authorization _____

Contact Person

Name Tim Schilleroff
Address 23200 NW Reeder rd.
Phone 503 621-3204

Project Description

Project Title Commercial Dog Kennel
Proposed Use Boarding & training dogs
Square Footage Of Landscaping _____
Square Footage of Landscaping in Parking Lot(s) _____

If Residential

Number of Units _____
Number of Units with Three or more Bedrooms _____
Square Footage of Useable Outdoor Space _____
Square Footage of Private Outdoor Space _____

Staff Use Only

Design Review #

90-07-02

Fee

\$75.00

Accepted

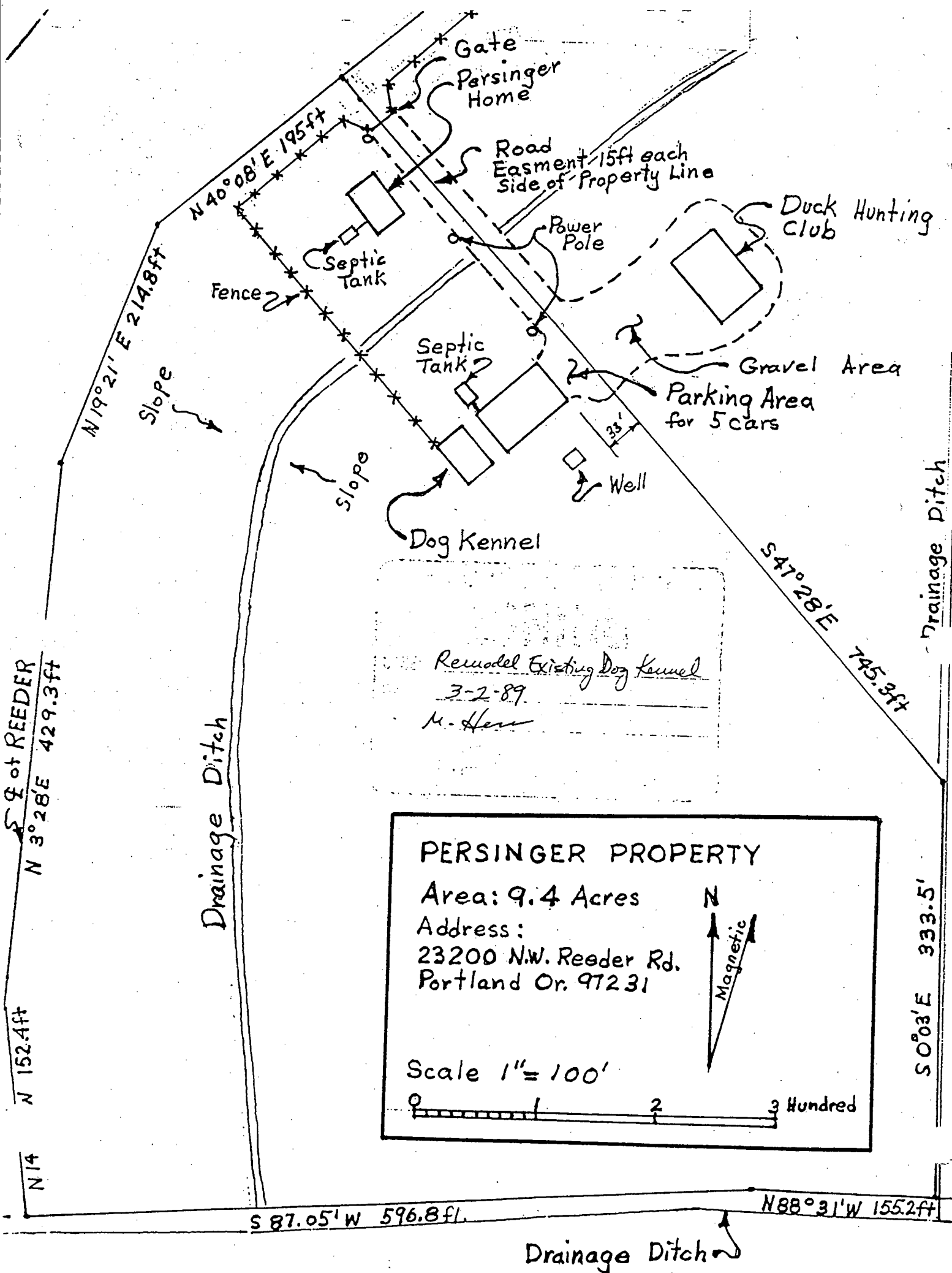
Date

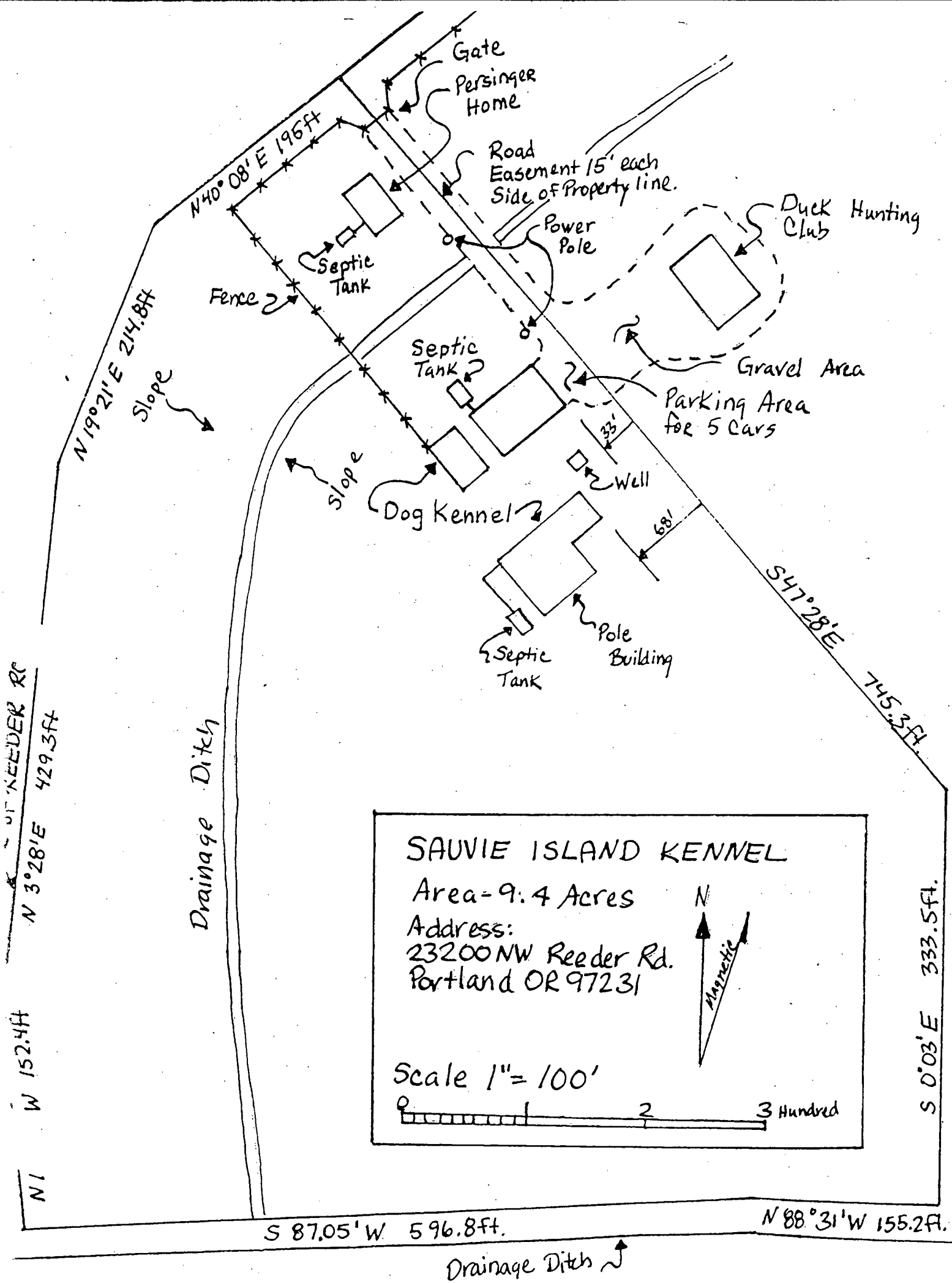
7/13/90

By

M. Hen

Associated Cases





SAUVIE ISLAND KENNEL
Area-9.4 Acres
Address:
23200 NW Reeder Rd.
Portland OR 97231
Scale 1" = 100'
0 1 2 3 Hundred

February 24, 1989

Tim Schillereff
7218 N Wayland Avenue
Portland, OR 97203

Dear Tim,

We, the owners of said property in Exhibit A, street address known as 23200 NW Reeder Road, do hereby authorize you, Tim Schillereff dba Sauvie Island Dog School, to apply for a conditional use permit for the dog kennel located on our property.

With the approval of such a permit, we authorize you to perform such actions necessary for the operation of the business of a dog kennel, in addition to your current business, Sauvie Island Dog School.

Sincerely,

Elden E. Persinger
Elden E. Persinger

Marguerette F. Persinger
Marguerette F. Persinger

I concur with the above authorization.

Tim Schillereff
Tim Schillereff, dba Sauvie Island Dog School

DR 90-07-02

C 2423-90

ST. JOHNS VETERINARY CLINIC
4818 N. LOMBARD
PORTLAND, OR 97203
503-289-4996

November 5, 1990

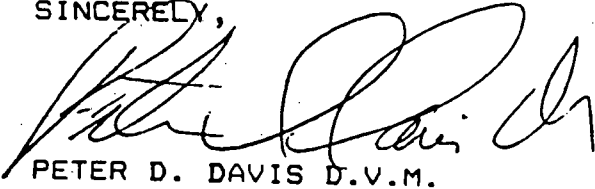
TO WHOM THIS MAY CONCERN:

I WOULD LIKE TO GO ON RECORD AS FAVORING A DECISION ALLOWING TIM AND ANGELA SCHILLEREFF TO BUILD A HOME ADJACENT TO THEIR SAUVIE ISLAND KENNEL. AS A RULE, I AM NOT IN FAVOR OF MORE HOUSING ON SAUVIE ISLAND, SINCE ADDING HOUSES ENHANCES NEITHER THE RURAL NATURE OF THE ISLAND NOR THE WILDLIFE HABITAT. HOWEVER, IN THIS CASE, A HOUSE SHOULD FIT IN WELL WITH THE EXISTING BOARDING AND DOG TRAINING FACILITY.

THERE ARE SEVERAL BENEFITS GAINED BY HAVING THE OWNERS LIVE ADJACENT TO THE KENNEL. IT WILL ALLOW THEM TO MORE CLOSELY MONITOR THE ANIMALS AT THEIR FACILITY. BARKING DOGS CAN BE CHECKED ON, NOISE PROBLEMS CONTROLLED, MEDICAL EMERGENCIES ATTENDED TO, ETC. IT IS MY OPINION THAT THE ANIMALS WILL BENEFIT THROUGH CLOSER OBSERVATION AND MORE IMMEDIATE ATTENTION TO ANY MEDICAL PROBLEMS IF THE OWNERS LIVE AT THE FACILITY. THIS WILL ALSO ALLOW THEM TO BETTER MONITOR AND CONTROL ANY BARKING OR OTHER NOISE PROBLEMS THAT OCCUR, WHICH SHOULD PLEASE THE ADJACENT NEIGHBORS.

FOR ALL OF THE ABOVE REASONS I AM IN FAVOR OF ALLOWING TIM AND ANGELA SCHILLEREFF TO BUILD A HOME ADJACENT TO SAUVIE ISLAND KENNEL. I SAY THIS BOTH AS A VETERINARIAN CONCERNED ABOUT THE CARE GIVEN TO ANIMALS AT THEIR KENNEL, AND AS AN ISLAND RESIDENT CONCERNED ABOUT MAINTAINING THE QUALITY OF OUR SAUVIE ISLAND LIFE.

SINCERELY,



PETER D. DAVIS D.V.M.

H



Planning and Development
2115 S.E. Morrison St.
Portland, Oregon 97215
(503) 248-3043

File in case
DR4-94

Pre-Application Conference Notes

Staff: Hae

Date: 2/2/94

PA # 6-94

Property Location: 23200 NW Reeder Road

Legal Description: T.L. 15'; Section 3, 2N-1W

Request: Expansion of dog kennel

Applicant: Tim & Angela Schillereff

Address: 23202 NW Reeder Road

Zoning: EFU Comprehensive Plan: Ag.

Closing Date: _____ Hearing Date: _____

Fees: _____

Action fees: \$ _____

Sign fees: _____

Total: \$ _____

The Staff suggests addressing the following issues or items to improve your application:

Conservation with John DeBay
determined that the use exists without
limitation & may be expanded per
MCC 11.15.2028(B). Will require Design
Review with notice.

(over)

PA 6-94 - Shillereff's Dog Kennel expansion

Soils: 45 - Savie silt loam, protected (subclass IIw,
28 - Hoag silty clay loam, protected
subclass IIIw.

This use pre-dated zoning. It is a conditional use recognized by zone & exempted from the Non-Conforming Use provisions of the Code. No Approval Authority has ever placed a size limitation on a Conditional Use Permit (none has ever been issued). Expansion is not a change of use.



Department of Environmental Services
Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214 (503) 248-3043

**DECISION
OF THE HEARINGS OFFICER**

This decision consists of Findings and Conclusions

August 19, 1994

Concerning an appeal by Marquam Farms Corporation from an Administrative Decision, approving final design review for an expansion of the Sauvie Island Kennel, operated by the applicants, Tim and Angela Schillereff.

DR 4-94 Appeal of An Administrative Decision

Location: 23200 NW Reeder Road

Legal: Tax Lot '15', Section 3, 2N-1W, 1990 Assessor's Map

Site Size: 9.41 acres

Property Owner: EE and MF Persinger
23200 NW Reeder Road, 97231

Applicant: Tim and Angela Schillereff
23202 NW Reeder Road
Portland, Oregon 97231

Comprehensive Plan: Agricultural Land

Present Zoning: EFU, Exclusive Farm Use District


Hearings Officer Decision: Marquam Farm's Inc.'s appeal of the Administrative Decision approving Final Design Review in DR 4-94 is Granted. The Applicant's request for Final Design Review is Denied without Prejudice.

FINDINGS AND CONCLUSIONS

A. BACKGROUND

1. Applicant's Proposal:

The applicants, Tim and Angela Schillereff, operators of the Sauvie Island Kennels since 1989, request approval to demolish two existing kennel buildings and replace them with one, larger structure, designed to house 55 dogs. The other existing kennel structure would remain and would house up to 20 dogs. Overall, the applicant is requesting an expansion of the kennel from its existing license parameter of 50 dogs, to up to 75 dogs.

N


Zoning Map
Case #: DR 4-94
Location: 23200 NW Reeder Road
Scale: 1 inch to 400 feet (approx)
Shading indicates subject property
SZM 23; Sec 3, T2N, R1W, WM.

EFU
FF

MUA-20
SEC '5' FF
CS 84.55 AC
R/L
MIT

EFU

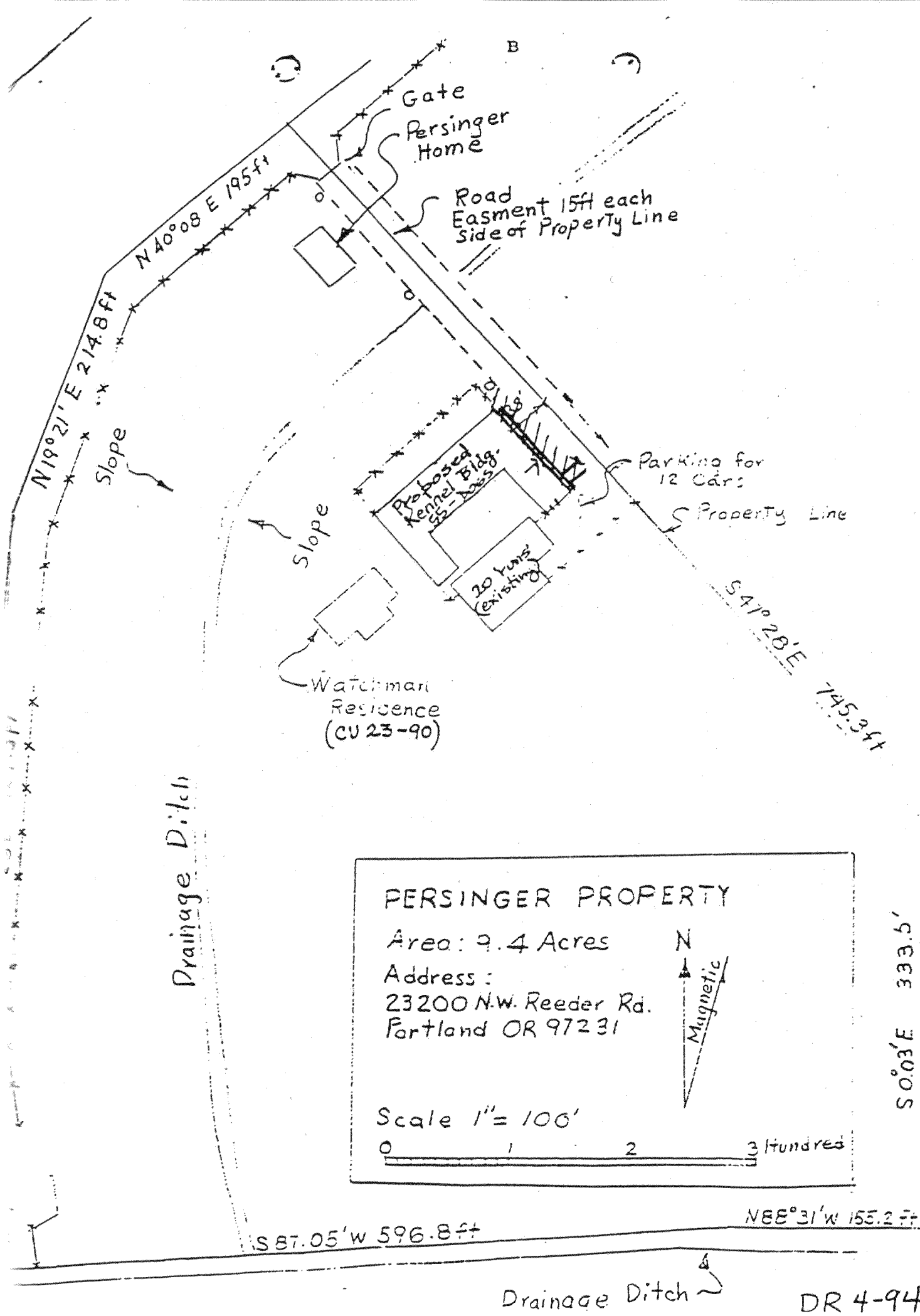
MUA-20
SEC
CS
FF

EFU

EFU

EFU

1990 ASSESSOR'S BASE MAP

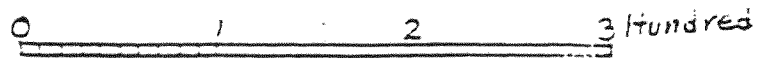


PERSINGER PROPERTY

Area: 9.4 Acres

Address:
23200 N.W. Reeder Rd.
Portland OR 97231

Scale 1" = 100'



S0°03'E 333.5'

N8E°31'W 153.2 ft

2. Site and Vicinity Characteristics:

The 9.41 acre site is located in an EFU district on Sauvie Island. The property fronts on NW Reeder Road. Surrounding properties are primarily agricultural or open space in character.

The Sturgeon Lake Wildlife Refuge property lies to the northwest, across Reeder Road. This refuge is owned by the Oregon Department of Fish and Wildlife. The refuge is several thousand acres in size and serves as an important stop on the Pacific Flyway. It is also the home to many species of animals, and serves as an important local and regional recreational and open space resource.

Properties to the south and southwest contain agricultural uses with scattered farm houses and barns.

A duck hunting club operates on a 39-acre parcel east and north of the kennel site. The duck hunting club is owned by the appellant corporation, Marquam Farms Corp..

3. Land Use History

On August 6, 1990, the Planning Director approved Final Design Review (DR 90-07-02), authorizing remodeling plans for an existing 50-dog kennel.) *

On November 6, 1990, the Planning Commission approved a conditional use request for a watchman's residence for the dog kennel.

Both of the above mentioned approvals were issued to the present applicants, Tim and Angela Schillereff.

On or about January 10, 1994, the Schillereff's submitted a letter to the county planning department requesting a conditional use permit to expand and remodel the existing kennel. This request was consistent with a previous request made by Tim Schillereff in his February 24, 1989, letter to the county where he requested a conditional use permit for the kennel. It is of some note that Mr. Schillereff in his February 24, 1989 letter stated that:

"Please note that this request is pertaining to an existing kennel site, in other words, the buildings and structures are intact. However, the permits have lapsed for over 15 years, therefore a new request is now being sent."

In both 1989, and in 1994, the county advised the Schillereff's that a conditional use permit would not be necessary, and that the respective expansions could be accomplished through design review. In the file pertaining to DR 90-07-02 (the initial remodel for 50 dogs), a notation appears beside a copy of code section 11.15.2028, indicating that pursuant to this section "The Persinger Kennel is therefore a conforming CU [conditional use] therefore (sic) does not expire per October 8, 1990 opinion from John DuBay.". Also, in the file pertaining to this case (DR-4-94), it is apparent that the county based its administrative decision to approve the kennel expansion through Design Review (as opposed to through a conditional use process as originally requested by the applicant) on staff's legal interpretation that MCC 11.15.2028 (B) results in the kennel being a "pre-existing" *

conforming conditional use, permitted to continue in the EFU District, and which may expand on its original lot without a CU hearing." (See staff report and notice of public hearing for DR 4-94).

The outcome of this case turns on whether or not staff's interpretation of MCC 11.15.2028 (B), is correct. If staff's interpretation of MCC 11.15.2028 (B) is wrong, and if the use is not otherwise a lawful use in the EFU zone, then the Hearings Officer lacks authority to approve this Design Review request, unless or until the underlying kennel use receives appropriate land use approval to make it a lawful use in the zone. See MCC 11.15.2006.

4 . Relevant Approval Criteria

Design review is governed by the criteria in MCC 11.15.7850.

MCC 11.15.2008 lists the uses permitted in the EFU zone. Dog kennels are not permitted uses in the EFU zone. The statutory corollary to this code provision is ORS 215.283(1). This statutory provision guides the county's ability to interpret its own ordinance with regard to its EFU provisions. The county cannot interpret its ordinance in a manner that provides less protection to EFU lands, or in a way that allows other uses outright in the EFU zone which are not listed in the statute.

MCC 11.15.2010 lists the relevant conditional uses permitted by the county in its EFU zone. Dog kennels are listed as conditional uses in this zone. The statutory corollary to this code provision is ORS 215.283(2).

MCC 11.15.0010 defines a kennel as follows: "Kennel-Any lot or premises on which four or more dogs, more than six months of age, are kept."

MCC 11.15.2028 lists the exemptions from Non-conforming Use Provisions.

MCC 11.15.8805 and .8810 are the county's existing non-conforming use provisions. The statutory corollary to these provisions are found in ORS 215.130.

B. ANALYSIS

1. Lawfulness of the Existing Kennel

a. Status Under MCC 11.15.2028(B)

As noted above, the staff and the applicant have argued that MCC 11.15.2028(B) should be interpreted to mean that so long as the dog kennel was listed as conditional use in subpart .2012 prior to August 14, 1980, and since the kennel was lawfully established by any means, prior to the enactment of zoning in the county, then, under .2028(B), the kennel becomes a lawful permitted use in the EFU zone. The appellant disagrees with the applicant's and staff's interpretations. The applicant's interpretation is set out in the their various submissions.

The Hearings Officer finds that .2028(B) cannot be interpreted in the manner suggested by the applicant and the staff, without directly conflicting with ORS 215.283. Under the statutory scheme,

permitted uses and conditional uses are a static list. After 1958, when zoning was first applied in this area of the county, kennels were never allowed as outright permitted uses. Kennels were listed as conditional uses in the agricultural zone, but this particular kennel never received a conditional use permit. Therefore, the only way in which this particular kennel could have been lawful in 1958, when zoning came into effect, was if the use was a lawfully established non-conforming use.

The state statute that governs non-conforming uses does not permit a use that may have been a lawful non-conforming use to become an outright permitted use, simply because it was listed by the county as a conditional use prior to some arbitrary date. Under the statutory scheme, the only way a non-conforming use can expand is to satisfy the provisions of ORS 215.130, and any other relevant county ordinances not in conflict with the statutory scheme. Under the statutory scheme, in EFU zones, non-conforming uses never become conforming uses, unless the local ordinances and the state statutes governing exclusive farm uses are both amended to allow such uses outright, or unless both the local ordinance and the statute eventually list such uses as conditional uses, and if the governing body of the county, or its designate, actually issues an approval for such a use. Therefore, the only way that .2028(B) can be construed in such a way so as not to be in conflict with the statutory scheme, is to interpret the ordinance to mean that the kennel use must not only have been listed as a conditional use, but it must have been legally established as such, prior to August 14, 1980 (i.e. it must have actually obtained a conditional use permit).

In this case, the county issued Design Review approval for the kennel in 1990. However, the county did not issue a conditional use permit for the kennel operation itself. Since the county did not issue a conditional use permit for the kennel prior to August 14, 1980, the applicant cannot take advantage of whatever benefit MCC 11.15.2028(B) might confer. Therefore, the kennel did not become a lawful use pursuant to .2028(B), because it never received a conditional use permit. Under the statutory scheme, MCC.2028(B) cannot be read in such a way so as to elevate a non-conforming use to a permitted use in the EFU zone. The fact that the use was listed as a conditional use prior to August 14, 1990, is irrelevant under the statutory scheme, because the use did not actually obtain a conditional use permit. Therefore, since the kennel has never passed muster under the statutory scheme, which ultimately governs all uses permitted in exclusive farm use zones, it cannot be considered to have been a lawful use in the EFU zone, unless it was lawfully established as a non-conforming use, and if its status as such was maintained over time.

b . Non-Conforming Use Status

A considerable amount of evidence was received concerning the non-conforming use status of the kennel. Before the factual findings on this issue are discussed, the applicable law needs to be set out.

In Oregon, non-conforming uses are governed by state statutes and by local ordinances. ORS 215.130 provides that a "lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance may be continued." That same statute provides that a non-conforming use "may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of the zoning ordinances or regulations applicable at the time of the proposed resumption." MCC 11.15.8805(B) currently provides that: "If a non-conforming use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms with the requirements of this code at the time of the proposed resumption."

The proponent of non-conforming use status has the burden of proving both that the use was "lawfully established", and must also establish the level or scope of the use that existed at the time the use became non-conforming. See Warner v Clackamas County, 25 Or LUBA 82 (1993). The code defines a "kennel" as "any lot or premises on which four or more dogs, more than six months of age, are kept." Therefore, in order to be a "kennel", four or more adult dogs must be kept on the site. If less than four adult dogs are kept, for the "discontinuance" period, the non-conforming use expires.

As noted above, a non-conforming use can be lost if it is discontinued for the "discontinuance" period. Also, a partial discontinuance can occur during the life of the non-conforming use. In such a situation, "factors such as intermittency and infrequency are relevant to the scope of the [nonconforming] use, not its existence." See Warner v. Clackamas County, 111 Or. App. 11, 824 P2d 423 (1992). See Also Rhine v. City of Portland, 120 Or. App. 308, P2d 874 (1993).

Based upon all the evidence and testimony in the record the Hearings Officer makes the following findings with regard to the status of the kennel as a non-conforming use:

1. County records indicate that from 1952 to August 1957, Roy Wallace had a kennel on the site. From August 1957 to December 1962, Evelyn Blitz operated the kennel, then known as Marquam Lake Kennel.
2. On April 19, 1955, the county enacted its first zoning ordinance. The ordinance was applied to the Northwest portion of the county, including this site, on July 10, 1958.
3. On July 10, 1958, the county placed this site in its F-2 zoning district. F-2 zoning did not permit kennels as allowed uses.
4. The kennel was lawfully established prior to July 10, 1958, when the county's first zoning code was amended. It was lawfully established because prior to July 10, 1958, the county did not restrict the use of this property. Prior to July 10, 1958, the county did not require zoning or other land use permits to be issued for the kennel. Therefore, the evidence in the record demonstrates that the Marquam Lake Kennel, operated by Evelyn Blitz became a lawful non-conforming use on July 10, 1958.
5. The level of the use that existed on July 10, 1958, is difficult to precisely determine. The best evidence is a county record which indicates that between August 1957 and December 1962, the use consisted of a "commercial kennel [of] up to 50 dogs-boarding breeding and training.....". This county record is corroborated by other evidence in the record, particularly the "Brief history of Sauvie Island Kennels" (history), submitted by the applicant. This history is particularly helpful in that it describes the level and type of improvements constructed by the original owner, Roy Wallace, which were still in existence on July 10, 1958, when Mrs. Blitz operated the kennel. In short, the best evidence indicates that on July 10, 1958, the kennel consisted of a set of refurbished Army buildings which were moved to the site and located on concrete pads. Outside dogs runs were constructed with concrete bases, and a sloped drainage system connected the runs to a drainage system. A set of chain link fence dividers separated individual dog runs. The kennel operation was in active commercial use between 1952 and 1962, during the tenure of Mr. Wallace, and later, Mrs. Blitz. The best evidence indicates that on July 10, 1958, the active commercial operation housed up to 50 dogs. (Note: The code definition of the term "kennel" does not require that any commercial

activity occur. It merely requires that 5 or more dogs, aged six months or older, be kept on the premises. The Hearings Officer's reference to commercial activity is merely a reflection of what the evidence indicated.)

6. Between December, 1962, when Blitz operated the kennel, and February 1964, when Courtway operated the kennel, there is no information in the record concerning the existence and scope of the use. The county record is silent during this period. The applicant in their "history", does not mention the Courtway operation, and their discussion of Blitz's use of the property during this time period in the early 1960's is vague, and conclusory at best. During this period of time, the applicant's "history" is not based on any direct knowledge. The Persinger affidavit does not include this time period and is therefore of no help either. This lack of evidence does not meet the legal standard for "substantial evidence". Therefore, the Hearings Officer concludes that between December 1962 and February 1964, the applicant has not carried its burden of proof regarding the continued operation of the kennel.

7. Since the applicant has not provided substantial evidence in the record that the kennel use was maintained between the time period mentioned above, (December 1962 through February 1964), the Hearings Officer cannot find the kennel was in operation during that time (i.e. that 4 or more adult dogs were kept on the site). Therefore, the Hearings Officer must conclude that the kennel use, as that term is defined by the code, was discontinued between December 1962 and February 1964.

8. On November 15, 1962, the county adopted a new zoning ordinance (Ordinance #100). Section 8.23 of the 1962 code provided that: "If a non-conforming use is abandoned or discontinued for any reason for more than one year, it shall not be re-established unless specifically approved by the Planning Commission.". In other words, the "discontinuance" period in 1962 was 1 year, rather than 2 years as it is now. Therefore, under the then applicable law, since the non-conforming kennel use was discontinued for more than one year, (from December 1962 to February 1964), the non-conforming status of the kennel expired. Specifically, the non-conforming use status of the kennel expired on or about January 1, 1964, one year and one day after the use was discontinued in December of 1962.

9. Since the Hearings Officer finds that the non-conforming status of the kennel expired on or about January 1, 1964, the subsequent history of the kennel is not material. Under the law that was applicable in 1964, once a non-conforming use expires, either by discontinuation or abandonment, the use could not re-establish its non-conforming status, unless specifically approved by the Planning Commission. See MCC 8.23 (circa 1962). Under the current county code, once a non-conforming use is abandoned or discontinued, the use cannot be re-established unless the resumed use conforms with the requirements of the code at the time of the resumption. See MCC .11.15.8805(B).

2. Estoppel

In the Applicant's brief, submitted July 27, 1994, the Schillereff's raise the affirmative defense of estoppel. The defense of estoppel seeks to prevent a party, in this case the county and the appellant, from re-raising an issue that was previously decided in a different case involving the same parties. The applicable law with regard to the estoppel defense in land use proceedings is set out in Schoppert v. Clackamas County 23 Or LUBA 138 (1992), and Clackamas County v. Emmert, 14 Or App 493, 513 P2d 532 (1973). In those cases, it was established that in order for the petitioner to

establish estoppel, the petitioner must show (1) the county made a false representation with knowledge of the facts, (2) petitioner was ignorant of the truth, (3) the county intended that petitioner act upon the false representation, and (4) petitioner in fact acted upon the false representation.

The Hearings Officer finds the applicant's have not met their burden of proof concerning the estoppel defense. Based upon the evidence in the record, the only misrepresentation made by the county was a mistake of law, not fact. The fact that certain members of the planning staff advised the applicant and the Planning Commission that they considered the kennel to be a "conforming conditional use" under MCC 11.15.2028, and that the applicant and Planning Commission relied on this mistake, does not amount to the type of false factual representation required to establish estoppel. In short, mistake of the law is no defense. See Coos County v. State of Oregon, 303 Or 173, 743 P2d 1348 (1987).

Furthermore, the evidence in the record demonstrates that the applicant's themselves, on more than one occasion, doubted the continuing legality of the prior kennel use. The record shows that the applicants initially requested a conditional use permit for the remodelling and expansion of the kennel in both 1989 and in 1994. The 1989 request was accompanied by a February 24, 1989 letter from Mr. Schillereff, which stated:

"Enclosed you will find the following request for a conditional use permit for a dog kennel on Sauvie Island, Oregon.

"Please note that his request is pertaining to an existing kennel site, in other words, the buildings and structures are intact. However, the permits have lapsed for over 15 years, therefore a new request is now being sent."

This letter of February 24, 1989 demonstrates that the applicant either had knowledge or at least suspected that the prior kennel use had "lapsed". Therefore, the second element of the estoppel defense has not been met because the evidence indicates that applicant was not ignorant of the law. Furthermore, even if the second element of the defense had been met, the misrepresentation that was made by the county was as mistake of law, not a factual misrepresentation. Estoppel cannot be established based upon a mistake of law; the misrepresentation must be one of an existing material fact. The applicant has not demonstrated that the county made a misrepresentation of an existing material fact. Therefore, the estoppel defense has not been established.

C. CONCLUSION

Because the Hearings Officer finds that the kennel use is currently not a lawful use in the zone, the appeal of Marquam Farms Inc. is granted, and the Administrative Decision granting Final Design Review in DR 4-94, is reversed. Because the use has been found to be unlawful at the present time, a request for Design Review for such a use cannot be granted. However, if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore, the applicant's request for Design Review is denied, without prejudice.

The Hearings Officer expressly declines to reach any of the other issues raised by the appellant in their May 6, 1994 Notice of Appeal. Specifically, the Hearings Officer lacks authority to determine whether the use is a public nuisance, or whether the 1990 permit for the watchman's

residence was obtained by fraud. Also, the Hearings Officer lacks authority in this proceeding to determine whether or not the 1990 conditional use permit for the watchman's residence (CU 23-90) is still valid. CU 23-90 was not appealed beyond the planning commission and it is therefore a final decision, which cannot be collaterally attacked in this proceeding. Depending upon the final outcome of this particular case, the County may chose to examine the continued validity of CU 23-90, in a separate appropriate action.

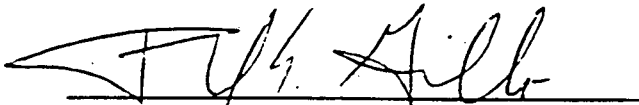
As to the defense of estoppel, the mistaken legal interpretation provided by the county staff to the applicant does not, upon careful examination of the law and the facts, rise to the kind of mistake that results in a successful estoppel defense against the county in this case. Furthermore, the evidence indicates that as early as 1989, when the applicant was initially seeking county permits for the kennel remodelling and expansion, Mr. Schillereff stated that he believed that a conditional use permit would be required because whatever other rights may have existed for the kennel use had previously lapsed. It should be noted that even if Mr. Schillereff had not made this statement in his 1989 letter concerning the need for a conditional use permit and the "lapse" of the prior use, the estoppel defense still could not have been maintained against the county, based upon the theory that the county took prior action based upon a mistake in law. Estoppel will not lie against a local government based upon a mistake of law, because the county has a continuing obligation to the public to apply the law correctly.

In conclusion, the Hearings Officer finds that although the kennel was lawfully established prior to the enactment of zoning in 1958, and therefore became a lawful non-conforming use on July 10, 1958, the kennel lost its non-conforming use status on or about January 1, 1964, because the applicant has not provided substantial evidence that the site was being used as a kennel during the period from December 1962 through February 1964. Because there is a lack of substantial evidence in the record concerning the continued operation of kennel during this period of time, the Hearings Officer concludes that the then applicable one year period of discontinuance ran, and the kennel's non-conforming use rights therefore expired on or about January 1, 1964. Once the kennel lost its non-conforming use rights, it could no longer expand through the Design Review process, because the use itself was no longer lawful. As a result of the determination that the kennel use is not presently lawful, the Hearings Officer concludes that he does not have authority to grant Design Review for this use at this time.

D. DECISION

The appeal of the Administrative Decision approving Final Design Review for DR-4-94 is granted. The applicant's request for Final Design Review is denied, without prejudice.

It is so Ordered this 19th day of August, 1994.



Phillip E. Grillo
Hearings Officer

In the matter of DR 4-94:

Signed by the Hearings Officer: August 1994
[date]

Decision mailed to parties: September 1, 1994
[date]

Submitted to Clerk of the Board: September 2, 1994
[date]

Last day to Appeal to the Board: 4:30. Monday. September 12, 1994

Decision Reported to the Board 1:30 p.m., Tuesday, September 13, 1994
[date]

Appeal to the Board of County Commissioners

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in Portland).

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



Sauvie Island Grange

Number 840

August 15, 1995

Barry Adamson
County Hearings Officer
Multnomah County
2115 SE Morrison St, Room 111
Portland, OR 97214

RE: Conditional use approval for Sauvie Island Kennels (Tim and Angela Schillereff) 23200 NW Reeder Rd.

Dear Sir,

I am writing this letter on behalf of the Sauvie Island Grange #840 consisting of 363 members. We the members of Sauvie Island Grange are in support of the dog kennel expansion at 23200 NW Reeder Road. Tim and Angela Schillereff are active members of the community and have proven to Sauvie Island residents and grange members to be responsible neighbors and business owners.

Tim and Angela have invested much of themselves in their business and not just monetarily. They have continuously made improvements to the property since they took over in 1989. These improvements were made with future investment in mind and at that time with the approval of the county. We feel that these prior approvals be given the consideration they deserve. If the county can years later change zoning, or change their minds as to the decisions they have made in the past on zoning, we all could be at your mercy. It is a real shame that good honest people such as the Schillereffs have had to go through this ordeal due to inconsistency on the County's part.

Sauvie Island currently has three kennels operating on Sauvie Island. One of them just received permits to remodel his kennel. All of these kennels have been on the island for over 35 years. They are well respected by the dog industry as well as island residents. All of these kennels are located by duck clubs, however how can it be that only the Schillereff's kennel will harm the wildlife?

Tim and Angela's expansion should be considered a positive attempt on their part to eliminate any sound that may come from the dogs barking. By having new insulated buildings and covered runs the sound and noise reduction to the neighborhood would be significant. Their kennel is already well maintained and clean however, the remodel can only improve the quality of service that the Schillereff's provide to the dogs and their owners some of which are members of the Marquam Lake Duck Club.

We the members of the Sauvie Island Grange hope that you will support Tim and Angela in their expansion. This is clearly not a new kennel and the time period that is missing in 1962 is insignificant to everyone other than Marquam Farms and the county. Unfortunately for the Schillereff's some of the island's older pioneer residents who could help provide the missing information have passed away in the past year. We as a grange recommend that you visit the sight to see the commitment that the Schillereff's have made to Sauvie Island and their business.

Fraternaly yours,

Linda Burns
Secretary,
Sauvie Island Grange #840

RECEIVED
AUG 21 1995

Multnomah County
Permits Section

August 15, 1995

Barry Adamson
County Hearings Officer
Multnomah County
2115 SE Morrison St., Room 111
Portland, OR 97214

Dear Sir,

I am writing to you regarding the expansion request for Tim and Angela Schillereff dba Sauvie Island Kennels.

Our home is located 1/2 mile Northwest of the kennel. We have lived here for four years, however we have both lived on the Island for over 30 years. We have enjoyed being neighbors with Tim and Angela. They are extremely considerate and conscientious neighbors as well as business owners. They are well liked and respected in the community.

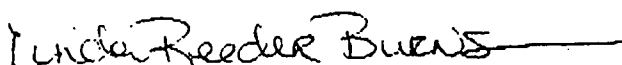
Having lived on the island for the majority of our lives, we have been aware of the kennel's existence the whole time. That property has always been referred to as the "kennel". When Tim and Angela purchased the kennel, the improvements were noticeable immediately. They were done first rate with much thought and effort on their part. The improvements continue to this day. This clearly shows the dedication and responsibility to their business and their long term goals.

When the Schillereff's shared with us their plans to remodel/expand we were excited for them. Their new business had surely gotten off on the right foot and they were expecting only the best to come. They were continuing in their efforts to improve the facility and conditions for the dogs while taking in the neighbors and the dog barking situation. We seldom hear the dogs barking at present except occasionally when the wind conditions are just right and a disturbance at the kennel sets off the dogs. Angela shared with us that the way the expansion is designed the dogs would be shielded from being able to see the parking lot and visitors. This is sometimes the cause of the disturbance and eliminating their view as well as constructing more sound proof buildings with covered runs could only improve the noise conditions for their neighbors.

Many residents and visitors to the island rely on the support the kennel gives to help lost dogs and owners find one another. Hundreds of thousand of people visit Sauvie Island each year. Many of these people bring their pets with them to the island. On many occasions these pets are either left or lost. Stray dogs roaming the wilderness are a major concern of the duck club. Tim and Angela's dogs do not escape and in the event this could happen their dogs are well trained. Lost dogs with no supervision are a potential problem to the wildlife. Tim and Angela have in the past taken these strays dogs in hoping to reunite them with their owners. They provide a resource for Island residents as well as lost pet owners. They should be commended for their efforts to help anyone or any living thing that is in need of their help.

I hope that you will find in favor of the expansion and give them the Conditional Use approval they require to continue with their business. Tim and Angela are good people who run a good business and definitely know how to be good neighbors.

Sincerely,


Linda Reeder-Burns
23815 NW Reeder Road
Portland, OR 97231

RECEIVED
AUG 21 1995

Multnomah County

August 15, 1995

Multnomah County Planning Division
Department of Environmental Services
2115 S.E. Morrison St.
Portland, Or 97214

Regarding: Case CU 4-95 and MC 1-95
Sauvie Island Kennels, Tim and Angela Shillereff

Dear Sirs,

Please use this letter as my recommendation for the approval of the above application to increase the size of Sauvie Island Kennels.

Tim and Angela Shillereff have operated Sauvie Island Kennels for the past eight years and a kennel has been on the property since the early 1950's. Marquam Lake Farms (which owns the property adjacent to Sauvie Island Kennels) is opposing the expansion and operation of the kennel. This group is composed of lawyers, doctors, professionals and businessmen who DO NOT reside on Sauvie Island. Their only connection to Sauvie Island is to operate a Duck and Goose hunting club. Marquam Lake Farms hunt the lake every day of the hunting season. This type of operation of a Duck and Goose club will ruin a duck lake in a very short time.

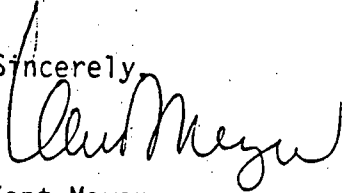
I am personally familiar with the owners of six duck clubs and duck lakes on Sauvie Island and none of those individuals will allow those who hunt their lakes or rent their lakes, to hunt ducks and geese more than 2 to 3 days per week. Even the Oregon State Fish & Wildlife only allows hunting on their land 3 days per week. Marquam Lake Farms apparently has no regard for proper wildlife management. Their only aim appears to be to kill as many ducks and geese as quickly as possible and then when their lakes are "hunted out" to look for someone else to blame.

Our family has resided on Sauvie Island for the last 36 years. We own 163 acres. For all of these 36 years, we have rented a portion of our property to Mr. Ed Minoggie who has operated Minoggie Kennels which has the capacity to board and train 60 to 70 dogs. On our 163 acres we have 2 lakes, the largest encompasses approximately 2 1/2 acres. We do not hunt ducks or geese on this lake as it is located in the front part of our property and is used for scenic value. However, it is located approximately 150' to 175' from the Minoggie Kennels. At any time during the fall, winter and part of

the spring seasons, there are from 25 to 200 wild ducks or geese on the lake and surrounding area. In addition, there are 10 to 12 deer that continuously feed and move around our lake, our neighbors property into the Wopato Park across the road. The operation of the dog kennel in no way effects the wildlife close by.

I urge you to support the application to enlarge the kennel operation of Sauvie Island Kennel.

Sincerely

A handwritten signature in cursive script, appearing to read "Kent Meyer". The signature is written in dark ink and is positioned below the word "Sincerely".

Kent Meyer
19544 N.W. Suavie Island Rd.
Portland, Oregon 97231

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. <u>Elinor D. Odey</u>	<u>Elinor D. Odey</u>	<u>13821 NW Charleston Rd</u>	<u>8/14/93</u>
2. <u>Karen M. Losen</u>	<u>Karen M. Losen</u>	<u>15227 NW Gilman Rd</u>	<u>8/14/93</u>
3. <u>Clara M. Meyer</u>	<u>Clara M. Meyer</u>	<u>19544 NW SI Rd</u>	<u>8/14/93</u>
4. <u>Robert Wiley Jr.</u>	<u>Robert Wiley Jr.</u>	<u>13835 NW Charleston Rd</u>	<u>8/14/93</u>
5. <u>Karlyn Jane Brunner</u>	<u>Karlyn Jane Brunner</u>	<u>14214 N.W. Charlton Rd</u>	<u>Port 9723</u>
6. <u>Marquett E. Persinger</u>	<u>Edson E. Persinger</u>	<u>23200 NW Pease Rd</u>	<u>Port 9723</u>
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____
10. _____	_____	_____	_____

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

<u>PRINTED NAME</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>DATE</u>
1. <u>Gail Murray</u>	<u>Gail Murray</u>	<u>17236 NW Lucy Reeder Rd.</u>	<u>8-14-95</u>
2. <u>MARY Anne WOLFE</u>	<u>Mary Anne Wolfe</u>	<u>14037 NW Gillette Kn</u>	
3. <u>Zilpha Allison</u>	<u>Zilpha Allison</u>	<u>33801 NW Reeder Rd -</u>	
4. <u>Millie Lerch</u>	<u>Millie Lerch</u>	<u>22205 NW Gillette Rd</u>	
5. <u>Anita M. Bender</u>	<u>Anita M. Bender</u>	<u>19757 N.W. Laurie Ln. Rd.</u>	<u>8-14-95</u>
6. _____	_____	_____	_____
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____
10. _____	_____	_____	_____

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

<u>PRINTED NAME</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>	<u>DATE</u>
1. <u>Betty Brown</u>	<u>Betty E. Brown</u>	<u>18655 N.W. Sauvie Rd.</u>	<u>8-13-95</u>
2. <u>James B. Varn</u>	<u>James B. Varn</u>	<u>21005 NW Sauvie 1st Rd</u>	
3. <u>ROBERT C. HECKMAN</u>	<u>Robert C. Heckman</u>	<u>17414 N.W. Lucy Reeder Rd</u>	
4. <u>RONALD J. MURPHY</u>	<u>Rona J. Murphy</u>	<u>17236 NW Lucy Reeder</u>	<u>8-14-95</u>
5. <u>Pamela J. HANSEN</u>	<u>Pamela J. Hansen</u>	<u>17235 NW Lucy Reeder</u>	<u>8-14-95</u>
6. <u>Donna J. Churchill</u>	<u>Donna J. Churchill</u>	<u>17345 N.W. Lucy Reeder</u>	<u>8-14-95</u>
7. <u>Christine Hoffart</u>	<u>Christine Hoffart</u>	<u>17335 NW Lucy Reeder</u>	<u>8-14-95</u>
8. <u>RICHARD L. PARKER</u>	<u>Richard L. Parker</u>	<u>18520 NW Sauvie Rd</u>	<u>8/14/95</u>
9. <u>Tim Boyer</u>	<u>Tim Boyer</u>	<u>17235 NW Lucy Reeder Rd</u>	<u>8-14-9</u>
10. <u>Marilyn Parker</u>	<u>Marilyn Parker</u>	<u>18520 N. W. Sauvie Rd</u>	<u>8/14/95</u>

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. <u>MARY A. DOUGLAS</u>	<u>Mary A. Douglas</u>	<u>15105 N.W. Sauvie Is. Rd. Portland, OR 97231</u>	<u>8/8/95</u>
2. <u>GEORGE E DOUGLAS</u>	<u>George E. Douglas</u>	<u>15105 N.W. Sauvie Is. Rd. Portland, OR 97231</u>	<u>8/8/95</u>
3. <u>TERRY M. HOTFART</u>	<u>Terry M. Hoffart</u>	<u>17335 NW Lucy Reeder Rd</u>	<u>8/9/95</u>
4. <u>LESLIE J DOUGLAS</u>	<u>Leslie J. Douglas</u>	<u>12954 NW HOWELL</u>	<u>8-9-95</u>
5. <u>Dorothy J. Rick</u>	<u>DOROTHY J RICK</u>	<u>18319 N.W. Reeder</u>	<u>8/4-95</u>
6. <u>Leonard L. Smith</u>	<u>Leonard Smith</u>	<u>18319 NW Reeder Rd</u>	<u>8/14/95</u>
7. <u>LARRY LARSON</u>	<u>Laurence Larson</u>	<u>18325 NW Reeder Rd</u>	<u>8/14/95</u>
8. <u>SHIRLEY C. LARSON</u>	<u>Shirley C. Larson</u>	<u>18325 NW Reeder Rd</u>	<u>8/14/95</u>
9. <u>Robert W. Wiley</u>	<u>Robert W Wiley</u>	<u>P.O. Box 408 Oceanside, Ore 97136</u>	
10. <u>Louis F. Larson</u>	<u>Louis F. Larson</u>	<u>15227 NW Adeline Rd</u>	<u>8/14/95</u>

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. Rita Jean Fears	<i>Rita J. Fears</i>	18143 NW Reeder	8/9/95
2. Clyde D. Fears	<i>Clyde D. Fears</i>	18143 NW Reeder Rd	8/9/95
3. Dale Johnston	<i>Dale Johnston</i>	19941 NW Reeder	8-9-95
4. DONALD E. ANDERSON	<i>Donald E. Anderson</i>	22005 NW Gillihan	8/9/95
5. Kathleen M. Anderson	<i>Kathleen M. Anderson</i>	22005 NW Gillihan	8/9/95
6. Linda M. Reeder Bueas	<i>Linda Reeder Bueas</i>	23815 NW Reeder Rd	8/9/95
7. RYAN W. BUEAS	<i>Ryan W. Bueas</i>	23815 NW Reeder Rd	8/9/95
8. GAINOR RIKER	<i>Gainor Riker</i>	14019 N.W. Gillihan Rd	8/9/95
9. JOE DREILING	<i>Joe Dreiling</i>	14019 N.W. Gillihan Rd	8/9/95
10. NORMAN SHARP	<i>Norman Sharp</i>	20230 NW. Sauvie Is. Rd.	8-14-95

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. <u>Gondie K. Wolfe</u> MARY ANNE WOLFE	<u>[Signature]</u>	14037 NW GILLHAM	8-9-95
2. <u>Mary Anne Wolfe</u>	<u>[Signature]</u>	14037 NW Gillham	8-9-95
3. <u>Richard T. Walton</u>	<u>[Signature]</u>	15910 N.W. Gillham Road	8-9-95
4. <u>LYNNE M. BARNE</u>	<u>[Signature]</u>	16140 N.W. Gillham	8-9-95
5. <u>JANICE K. REEDER</u>	<u>[Signature]</u>	26214 NW Reeder Rd	8-9-95
6. <u>ROBERT J. REICH</u>	<u>[Signature]</u>	26048 NW Reeder Rd	8-9-95
7. <u>JAMES E. REEDER</u>	<u>[Signature]</u>	26214 N.W. Reeder Rd	8-9-95
8. <u>MARIE L. COLASURDO</u>	<u>[Signature]</u>	26504 NW Reeder Rd	8-9-95
9. <u>A.J. Colasurdo</u>	<u>[Signature]</u>	26504 NW Reeder Rd	8-9-95
10. <u>JOHN. BRUNNER</u>	<u>[Signature]</u>	14214 NW Gillham Rd P.O. Box 97231	8-14-95

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME

SIGNATURE

ADDRESS

DATE

1. Rebecca Brugh Rebecca Brugh 26610 NW Reeder 8/9/95
2. TIM C. BIRGH TROY C. BIRGH 26610 NW Reeder 8/9/95
3. John M. Hanselman John M. Hanselman 27731 NW Reeder Rd. 8-9-95
4. P. Hanselman P. Hanselman 27731 NW Reeder 8/9/95
5. Evelyn S. Vetsch Evelyn S. Vetsch 22670 NW Reeder Road Aug. 10/95
6. Richard W Vetsch Richard W Vetsch 22670 NW Reeder Rd
7. Robert R. Vetsch Robert R. Vetsch 22700 NW Reeder Rd
8. Don J Posvar Don Posvar 22656 NW Reeder Rd
9. Christeen A Egger Christeen A Egger 19430 NW Reeder Rd
10. Gerry P Allard Gerry P. Allard 19521 NW Reeder Rd

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. JOHN STEVENS	<i>John Stevens</i>	15942 N.W. Lucy Reeder Rd.	8-8-95
2. JERICHEN STEVENS	<i>Jerichen Stevens</i>	15942 W.W. Lucy Reeder Rd	8-8-95
3. Margaret Stevens	<i>Margaret Stevens</i>	15700 N.W. Lucy Reeder Rd	8-8-95
4. David Fazio	<i>David Fazio</i>	16415 N.W. Lucy Reeder Rd	8-8-95
5. Kristi Fazio	<i>Kristi Fazio</i>	16415 N.W. Lucy Reeder Rd	8-8-95
6. Cynthia L Sharp	<i>Cynthia L Sharp</i>	26230 N.W. Sauvie Island Rd.	8-8-95
7. Patricia Jean Todd	<i>Patricia Jean Todd</i>	1836 N.E. Grand Ave	8-8-95
8. GERALD SC ^(Reeder) HILLEREFF	<i>Gerald Schiller</i> ^(Reeder)	18200 N.W. Sawin Rd.	8-8-95
9. Jan A. Charlton	<i>Jan A. Charlton</i>	13825 N.W. Charlton Rd	8-9-95
10. ELEANOR CHARLTON	<i>Eleanor Charlton</i>	13825 N.W. Charlton Rd	8-9-95

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. Anne K. JONES	<i>Anne K. Jones</i>	15140 N.W. Burlington Ct	8/8/95
2. LESLIE FORKNER	<i>Leslie Forkner</i>	19240 NW Gilliker	8/8/95
3. <i>Jim Regan</i>	<i>Jim Regan</i>	15120 N.W. BURLINGTON CT	8/8/95
4. <i>Beverly Burger</i>	<i>Beverly Burger</i>	15115 NW Burlington	8-9-95
5. LORA CRESWICK	<i>Lora Creswick</i>	15203 NW Burlington Ct	8-9-95
6. Polly C.F. Holbrook	<i>Polly Holbrook</i>	15200 NW Burlington Ct	97231
7. VIRGINIA M. Lammers	<i>Virginia M. Lammers</i>	18600 N.W. Sauvie Isl. A	97231
8. John W. BEZLEY	<i>John W. Bezley</i>	18640 N.W. SAUVIE IS	97231
9. GREGORY GRAETTER	<i>Gregory Graetter</i>	20905 NW SAUVIE IS	97231
10. Erma Dufour	<i>Erma Dufour</i>	18830 NW Sauvie	97231

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. Kari D Egger	Kari Egger	16525 NW Gillihan Rd	8/15/95
2. Sarah Meredith	Sarah Meredith	16144 NW Gillihan	8/15/95
3. Kendra Lisignori	KENDRA LISIGNORI	16453 NW Gillihan	8-15-95
4. Robert M. Schick	Robert M. Schick	16205 NW Gillihan	8-15-95
5. Matt Lisignori	Matt Lisignori	16453 NW Gillihan	
6. Bob Egger	Bob Egger	16525 NW Gillihan Rd	
7. Mark B Tate	Mark B Tate	2714 NW Redwood St	
8. James Raynor	James Raynor	16530 NW Gillihan Rd	
9. Sheila Raynor	Sheila Raynor	16530 NW Gillihan	8-15-95
10. Mary Houle	Mary Houle	16600 NW Gillihan	8-15-95
11. John M Houle	John Houle	16600 NW Gillihan	8-15-95

SAUVIE ISLAND KENNEL PETITION

Petition No. _____

WE, THE UNDERSIGNED, LIVE OR OWN PROPERTY ON SAUVIE ISLAND. BY SIGNING THIS PETITION, WE EXPRESS OUR SUPPORT FOR TIM AND ANGELA SCHILLEREFFS' PROPOSAL TO EXPAND SAUVIE ISLAND KENNEL AS SHOWN ON THE ATTACHED SITE PLAN. THE REMODELED KENNEL WILL REDUCE NOISE IMPACTS TO SURROUNDING PROPERTIES. WE URGE THE COUNTY TO APPROVE THE SCHILLEREFFS' LAND USE APPLICATION.

SAUVIE ISLAND KENNEL HAS BEEN A WELCOME PART OF SAUVIE ISLAND SINCE THE 1950'S. WE BELIEVE THAT EXPANSION OF THE KENNEL AS PROPOSED WILL HAVE NO ADVERSE IMPACTS ON SURROUNDING PROPERTIES OR THE ISLAND'S RECREATIONAL OR AGRICULTURAL ECONOMY. QUITE THE CONTRARY. BECAUSE SAUVIE ISLAND KENNEL SPECIALIZES IN THE BOARDING AND TRAINING OF HUNTING DOGS, WE BELIEVE THAT THE KENNEL COMPLEMENTS HUNTING ACTIVITIES.

WE SPECIFICALLY REJECT THE NOTION THAT EXPANSION OF SAUVIE ISLAND KENNEL SOMEHOW WOULD HARM HUNTING ON NEIGHBORING PROPERTIES. THE KENNEL OPERATED AT THIS SITE FOR YEARS WITHOUT CAUSING PROBLEMS FOR DUCK AND GEESE HUNTERS. TWO OTHER KENNELS ON THE ISLAND OPERATE HUNT CLUBS ON THE SAME PROPERTY. THE MINIMAL INCREASE IN TRAFFIC THAT WOULD RESULT FROM KENNEL EXPANSION IS SMALL IN COMPARISON WITH THE AMOUNT OF RECREATIONAL TRAFFIC THE ISLAND EXPERIENCES ON A DAILY BASIS.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
1. ELIZABETH R ANDERSON	<i>Elizabeth R Anderson</i>	21445 NW Guelston Rd	8-14-95
2. Helen Cholick	<i>Helen Cholick</i>	27338 N.W. Sammie Dr. Rd Portland OR 97231	
3. DANE KUNKER	<i>Dane Kunker</i>	7080 NW REEDER	8-15-95
4. Walt Burger	Walt Burger	18100 NW SAUVIE ISLAND	8-15-95
5. June Parker	<i>June Parker</i>	18015 N.W. Sauvies Rd.	
6. Dale R. Burger	<i>Dale R. Burger</i>	18105 NW Reeder Rd.	
7. Bonnie L. Burger	<i>Bonnie Burger</i>	18105 NW Reeder Rd.	
8. Giki Gager	<i>Giki Gager</i>	19818 NW Sauvies Rd Portland OR	8-15-95
9. Dennis Grande	<i>Dennis Grande</i>	13743 N.W. Chul-ton Rd	97231
10. Nancy Grande	<i>Nancy Grande</i>	13743 NW Chul-ton Rd	97231

August 14, 1995

Scott Peneble, Planning Director
Multnomah County Planning and Development
2115 SE Morrison
Portland, OR 97214

Dear Mr. Peneble:

This is a letter in support of the expansion of Sauvie Island Kennels.

My wife and I are active in the sport of dogs. I am a Veterinarian by occupation, but I enjoy training dogs for competitive field trials and for hunting. My wife is a certified American Kennel Club conformation judge. Together, we have been breeding, raising, showing and trialing Brittanys for over 15 years.

We started out just showing dogs, but over the years realized the importance of the duality of the Brittany and decided to become involved in the trialing of dogs. After using a professional handler for several years, I finally became involved personally with the handling of my own dogs. I have placed an Amateur Field Championship on our primary stud dog, but only through the knowledge and support of Tim Schillereff. I have spent many weekends with Tim training dogs and can personally attest that Tim knows how to train dogs and to make them happy to perform at their best.

We have been using Sauvie Island Kennels for nearly 3 years. We usually have at least one dog being boarded and under Tim's training for 6 months each year. When we travel on vacation for 2 weeks each summer, we have no concern in leaving our entire kennel of 8-10 dogs with the Schillereff's. The kennel is well-managed and we have recommended several others on the quality of care the dogs receive while being boarded.

I have arrived at the kennels several times early in the mornings to train with Tim on the Island. When you drive up, some of the dogs bark, but the ducks and geese in the pasture ignore the dogs barking. Birds are smart and realize that the dogs barking is not a threat. However, overhunting an area, as is done on the adjacent property, soon makes the birds wise and causes them to look for some place else to rest and graze. If there are complaints of reduced numbers of birds, it is not due to barking dogs.

Sauvie Island Kennels has been around since the 1950's and since the Schillereff's have taken management, the kennel is a first class operation. Multnomah and adjacent counties need good quality kennel care. The population of the tri-county area is growing rapidly and with the human influx is also a dog population. People need to have some place to board their dogs and feel secure that their "family members" will be treated with great care. We drive from Benton county to board our dogs at this facility.

Sauvie Island Kennels should be allowed not only to continue to operate, but should be allowed to expand their facilities to accommodate the potential growth in the area. The Schillereff's land use request should be approved.

Sincerely,



H. N. Engel, DVM, PhD

Professor

College of Veterinary Medicine

Oregon State University

Corvallis, OR 97331

To the Multnomah Co Planning Commission
Regarding Case File CV4-95 MC 1-95, #23

Dear Multnomah Co Commissioners,

We are owners and operators of Vetsch Dairy located just South of the Schillereff's Kennels and the Marquam Farms Corp. Duck Club and have been at this location since 1949. In the 1950's the dog kennels were built and established by Peter Alpert and the first manager that we can remember was a Scotchman by the name of Mr. Rose. Later Evelyn Blitz purchased the property and also operated a dog kennel. Since that time it has always been known as the dog kennels and operated as such off and on.

The Marquam Farms Duck Club owners knew the kennel was there when they bought their property. We can see no reason that the Schillereff's use of their property as a kennel be terminated and forced to give up their means of making a living. The new plans for the kennel sound like it will make even less of an impact on the ducks, geese and neighbors. Certainly, much less than the Marquam Farms Duck Club does with their trap shooting and wildlife hunting all year long.

We recommend that the planning commission approve the Schillereff's property as a non conforming use as a kennel. As farmers the only option we can see for use of this small acreage and the use of the present buildings as exclusive farm use would be to operate a pig farm. In our opinion a good place to board dogs is needed much more.

Sincerely,

Richard W + Evelyn Vetsch
22670 NW Reeder Rd. Portland, Oregon 97221

8/95

To Multnomah County Planning and Development,

We represent the largest farm market on Sauvie Island, the Pumpkin Patch, and we farm about 2.5 miles from Sauvie Island Kennels. The Pumpkin Patch grows about forty different crops on 400 acres here in the island.

We find it necessary for you to understand how incomprehensible it is to think that the use of dog kennels are incompatible with agricultural uses. For years, animals have been raised for personal as well as business purposes here on the island, right along side the agricultural practices that take place year around. Together, these two ventures have made good use of and have conserved the land for decades.

Just as it would be absurd to farm in the city, it, too, is absurd to think that dog kennels don't belong in the "country" on Sauvie Island. There is no better place for either than here on the island.

In consideration that the kennel has operated since the 1950's without problems, why should its requests not be granted when it in fact does no harm to Multnomah County's stated policy of agricultural land preservation? The Schillereff's daily preserve the land on which they live. They are good people, great neighbors, and concerned about the environment. Their proposed changes to the kennels prove this.

In light of the above information, we here at the Pumpkin Patch on Sauvie Island urge the county to approve the Schillereff's request.

Sincerely,
Kari Egger

partner and co-owner
of the Pumpkin Patch

The Charlton Kennels and Farm

SAUVIES ISLAND
13825 N.W. CHARLTON ROAD
PORTLAND, OREGON 97231
TELEPHONE (503) 621-3675

EXHIBIT

10

August 12, 1995

Mr. Barry Adamson
Department of Environmental Services
Division of Planning and Development
2115 S. E. Morrison Street
Portland, Oregon 97214

Dear Mr. Adamson:

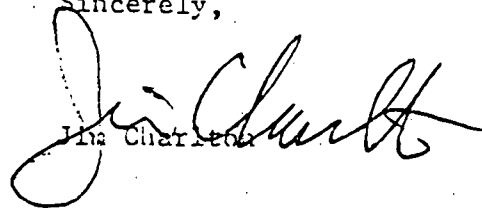
Re: Case File CU 4-95 & MC 1-95
Applicants, Tim and Angela Schilleroff

We have managed a 64-run dog boarding facility here on our family farm for the past 29 years. We own approximately 150 acres and for three generations have operated one of the most, if not the most successful duck hunting clubs on Sauvie Island. We find absolutely no conflict between our kennel operation and duck hunting.

Marquam Lake Farms shoots almost every day of the season and any wildlife manager will tell you that you cannot put that much pressure on waterfowl and expect decent hunting. Most of the private clubs in our area hunt only two and one half days a week, Wednesday, Saturday until noon and Sunday. Speaking for three generations of duck club owners, it takes only about three years to ruin a good hunting lake by overshooting it and four to five years to bring it back.

While the Sauvie Island Kennel is a competitor, they are also our neighbors and friends who run a good operation. Therefore, I recommend they be allowed to increase their capacity from 50 to 75 runs.

Sincerely,


Jim Charlton



MULTNOMAH COUNTY ANIMAL CONTROL
1700 W. Columbia River Hwy.
Troutdale, OR 97060

248-3066

FACILITY LICENSE NO. 108 Expires: 8/98 Fee: \$300.00

Number of Cats _____ Number of Dogs 45/50 Number of Exotics _____

Business Name Sauvie Island Kennel Phone _____

Name of Owner Tim/Angela Schillereff Phone 621-3204

Address 23200 N.W. Reeder Rd City Portland Zip 97231

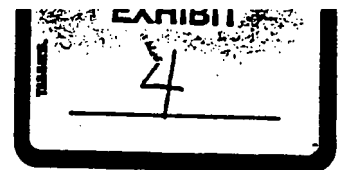
CONDITION OF APPROVAL:


David R. Flagler, DIRECTOR

Ordinance No. 8.10.110(G) states this license must be conspicuously displayed on the facility premises.

A/C-103, Rev. 6/94

ALDO ROSSI
3701 NE 122nd Avenue
Portland, OR 97230



August 12, 1995

Mr. Scott Preamble
Planning Director
Multnomah County Planning & Development Commission
2115 SE Morrison Street
Portland, OR 97214

Subject: SAUVIE ISLAND KENNELS

Dear Mr. Preamble:

For many years, I have been a duck hunter on Sauvie Island. I belong to Jim Charlton's Duck Club and in the past have boarded my dogs at Charlton Kennels located on the same piece of property. In those past years, Tim Schillereff was a dog-trainer for Jim Charlton and trained my hunting dogs for me.

Since Tim Schillereff now has his own kennel, I continue to take my dogs for training and boarding to Tim's kennel, which is known as *Sauvie Island Kennels*. I understand there is a question regarding whether a kennel and a duck club are compatible and you also question the existence of *Sauvie Island Kennels*.

I do not understand why Jim Charlton is able to make a good living with both a kennel and hunting club on his place side by side for 50 years and you should question the existence of *Sauvie Island Kennels* because of Marquam Farms Duck Club. What is the difference?

Tim Schillereff is a quiet, hard-working, very polite and respectful gentleman. He minds his own business and only wants to make a living at something he does so well. I am a 75-year old businessman and feel a person with Tim Schillereff's integrity should not be denied doing a job he does so successfully. I also understand Tim trains hunting dogs for some of the members of Marquam Farms, such as my friend, Eric Hoffman.

Please read this letter into your records and give it some consideration. We urge you to APPROVE the Schillereff land use application coming up on Wednesday, August 16, 1995.

Respectfully,

Aldo Rossi
Aldo Rossi

RECEIVED
AUG 14 1995

i. Multnomah County
Permits Section

August 13, 1995

ATTN: BARRY ADAMSON, HEARINGS OFFICER
DIVISION OF PLANNING AND DEVELOPMENT
2115 SE MORRISON ST
PORTLAND OR 97214

Re: Land Use Request by Tim & Angela Schillereff; Sauvie
Island Kennel, 23200 NW Reeder Rd., Portland, OR

Dear Mr. Adamson:

My name is Bruce Cavallero. I am 43 years old and have lived in Linnton all of my life. Linnton is approximately 2 miles from Sauvie Island and I've spent a great deal of time on Sauvie Island. I've duck hunted on the Island since I was 11 years old. For 10 years I also hunted in Scapoose around the old Brown Kennel on Dike Road, and found that the dogs kenneled there never disrupted my hunting in any way. Even though their barking was quite audible, it never prevented the ducks from working into the duck lake. I've also hunted at Vetch's Dairy which borders the Sauvie Island Kennel. The dogs boarded there never impacted my hunting at all. I currently hunt across the road from the Sauvie Island Kennel, at the R.W. Burns property, and have never experienced any problems with noise from the kennel disturbing or otherwise deterring the ducks from coming in.

Tim and Angela run an excellent kennel. I have boarded and had my dog trained at their kennel. I feel it would be very beneficial to the area for them to expand. Angela and Tim are very hard-working people and are a great asset to the community. I feel that any complaints about noise from their kennel interfering with duck hunting is unwarranted and just plain absurd. Sauvie Island is a place for dog kennels as well as duck hunting. As long as I can remember, there have always been three dog kennels on Sauvie Island: Minogue, Charleton, and Sauvie Island. My family owns the Linnton Feed Store and when I worked at the store I delivered lots of feed all over the Island so I'm well aware of its history.

I feel that the expansion of the Sauvie Island Kennel would be of benefit to everyone in the community as well as for anyone else who would wish to board their dog at a clean, well-run establishment operated by caring, competent people. I urge that the Schillereff's land use request be approved.

Sincerely,

Bruce Cavallero

Bruce Cavallero
12408 NW Alderview Dr.
Portland, OR 97231
286-5989

RECEIVED

AUG 15 1995

Multnomah County
Permits Section

Multi Services, Inc.

providing a complete range of services
to commercial and residential buildings

5200 s.w. macadam ave., suite 160 • portland • or 97201

222-7073

February 23, 1995

RECEIVED
FEB 27 1995

Multnomah County
Zoning Division

Mr. Scott Preamble
Multnomah County Planning Director
Division of Planning and Development
2115 S.E. Morrison
Portland, OR 97214

Dear Mr. Preamble:

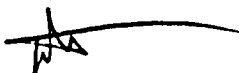
I am writing to you regarding Sauvie Island Kennels located at 23200 N.W. Reeder Road on Sauvie Island. I understand that Marquam Farms has taken issue with not only the proposed expansion of the kennels but the kennel as it exists. I am and have been a member of the Marquam Farms Corporation for the past eight years and an active duck hunter on the island for thirty years. Quite honestly I do not understand what the problem is. This particular piece of property has been used as a dog kennel off and on for many years. I have used the existing kennel for training my hunting dogs and boarding them during the hunting season. My family enjoys our trips out to our duck club even during the off-season, as they enjoy seeing the dogs at the kennel and Tim and Angela are very generous to us.

I personally appreciate the fact that I have a place to train and board my dogs right next to my duck hunting club. I know of several members of Marquam Farms that have had their dogs trained there and boarded there. The two uses compliment each other and I for one appreciate it.

Tim and Angela have worked very hard to make their kennels one of the best in Oregon and have been successful in operating a top class kennel. I know there are members of Marquam Farms who take issue with the kennel's existence, but I wanted you to know that there are also members who appreciate having this amenity available to us.

If you wish any further information, feel free to contact me.

Sincerely,



David L. Stephens
President

DLS:lgf/s

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 MARQUAM FARMS CORPORATION,)

5)

6 Petitioner,)

7)

8 vs.)

9)

10 MULTNOMAH COUNTY,)

LUBA No. 95-254

11)

12 Respondent,)

13)

ORDER ON COSTS

14 and)

15)

16 TIM SCHILLEREFF and ANGELA)

17 SCHILLEREFF,)

18)

19 Intervenors-Respondent.)

20

21 Petitioner, the prevailing party in this appeal, filed a
22 cost bill requesting award of the cost of its filing fee, in the
23 amount of \$50. Petitioner also request return of its \$150
24 deposit for costs.

25 Respondent and intervenors-respondent do not object to
26 petitioner's cost bill.

27 Petitioner is awarded the cost of its filing fee, in the
28 amount of \$50, to be paid by respondent and intervenors-
29 respondent. The Board shall return petitioner's \$150 deposit
30 for costs.

31 Dated this 4th day of November, 1997.
32
33
34
35

36 *Virginia L. Gustafson*
37 Virginia L. Gustafson
38 Chief Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Order on Costs for LUBA No. 95-254, on November 4, 1997, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Lawrence R. Derr
Josselson, Potter & Roberts
53 SW Yamhill Street
Portland, OR 97204

Sandra N. Duffy
Chief Assistant County Counsel
Suite 1530
1120 SW Fifth Avenue
Portland, OR 97204

Edward J. Sullivan
Preston Gates & Ellis
Suite 3200
111 SW Fifth Avenue
Portland, OR 97204-3688

Dated this 4th day of November, 1997.

D. Renee Young
D. Renee Young
Administrative Specialist

RECEIVED

NOV 05 1997

COUNTY COUNSEL FOR
MULTNOMAH COUNTY, OR

224-97

al matter, post-conviction cases are "criminal" in nature and that appellate costs are not recoverable in criminal proceedings. Whatever the arguable merits of petitioner's minor premise that appellate costs are not taxable in criminal matters, petitioner's argument rests on a false major premise: Except as specified by statute, *see* ORS 138.650, post-conviction proceedings are civil, not criminal, in character. *See Kumar v. Schiedler*, 128 Or.App. 572, 577, 876 P.2d 808 (1994) (De Muniz, J., concurring) ("Post-conviction is a civil proceeding[.]").

[5] Petitioner attempts to avoid the generally civil nature of post-conviction proceedings by invoking ORS 138.650, which provides that, in post-conviction proceedings,

"[t]he manner of taking the appeal and the scope of review by the Court of Appeals and the Supreme Court shall be the same as that provided by law for appeals in criminal actions, except that:

"(1) The trial court may provide that the transcript contain only such evidence as may be material to the decision of the appeal; and

"(2) With respect to ORS 138.081(1), if petitioner appeals, petitioner shall cause the notice of appeal to be served on the attorney for defendant; and, if defendant appeals, defendant shall cause the notice of appeal to be served on the attorney for petitioner or, if petitioner has no attorney of record, on petitioner." (Emphasis supplied.)

¹³⁵⁶Petitioner argues that "the manner of taking the appeal" encompasses the taxation of appellate costs and disbursements. We disagree. As used in this context, as an appellate term of art, the "manner of taking the appeal" refers to the procedures for filing

3. ORS 138.081 provides:

"(1) An appeal shall be taken by causing a notice of appeal in the form prescribed by ORS 19.029 to be served:

"(a)(A) On the district attorney for the county in which the judgment is entered, when the defendant appeals, or if the appeal is under ORS 221.360 on the plaintiff's attorney; or

"(B) On the attorney of record for the defendant, or if the defendant has no attorney of record, on the defendant, when the state appeals; and

and prosecution of an appeal. *See, e.g.,* ORS 138.081."

Petitioner has not identified, and we have not found, any statute that so qualifies ORS 20.190 and ORS 20.310(1) as to limit or bar the state's recovery of printing costs or a prevailing party fee in appeals in post-conviction proceedings. Accordingly, the state is entitled, in this appeal, to recover printing costs of \$102.50 and a prevailing party fee of \$100.

Statement of costs and disbursements denied with respect to appearance fee; otherwise allowed.



147 Or.App. 368

¹³⁵⁸MARQUAM FARMS CORPORATION,
Respondent,

v.

MULTNOMAH COUNTY, Tim Schillereff
and Angela Schillereff, Petitioners.

LUBA No. 95-254; CA A95801.

Court of Appeals of Oregon.

Argued and Submitted Feb. 19, 1997.

Decided April 16, 1997.

Landowners and county sought judicial review of decision of Land Use Board of Appeals (LUBA) that remanded for further findings county's decision granting application to increase permissible number of dogs at kennel. The Court of Appeals, Deits, P.J.,

"(b) On the trial court reporter if a transcript is required in connection with the appeal; and

"(c) On the clerk of the trial court.

"(2)(a) The original of the notice shall be filed with the clerk of the court to which the appeal is made.

"(b) Proof of service of the notice of appeal shall be indorsed on or affixed to the original filed with the Court of Appeals."

held that: (factual finding of court. ute.

Affirm

1. Zoning :

Rules :
lishes new land, and a related per ing facilities and Development authority and counties to farm use whether the enlargement ORS 215.233-120, 660

2. Zoning :

County tional uses date would either define rather, rol nance was dent to co forming u were subje county's l Or., Code §

3. Countie

Althou legislation provisions, tent with s

4. Zoning

In, co number of did not sa viding tha could be the use, by had endure legislation nel use; c

1. The Sch jointly in opinion,

MARQUAM FARMS v. MULTNOMAH COUNTY

Cite as 936 P.2d 990 (Or.App. 1997)

Or. 991

held that: (1) county failed to make requisite factual findings, and (2) county's interpretation of county ordinance violated state statute.

Affirmed.

1. Zoning and Planning ¶86

Rules making it impermissible to establish new kennel uses on high-value farmland, and allowing counties to issue kennel-related permits only in connection with existing facilities, are within Land Conservation and Development Commission's (LCDC) authority and do not violate statute allowing counties to permit dog kennels in exclusive farm use (EFU) zones without specifying whether they are new uses or continuations, enlargements, or changes of existing ones. ORS 215.283(2), 215.304; Or.Admin.R. 660-33-120, 660-33-130.

2. Zoning and Planning ¶321

County ordinance providing that conditional uses legally established prior to certain date would be deemed conforming did not either define or regulate nonconforming uses; rather, role of nonconforming uses in ordinance was simply that of a condition precedent to conversion of pre-existing nonconforming uses that, after their conversion, were subject to conditional use regulations in county's legislation. Multnomah County, Or., Code § 11.15.2028(B).

3. Counties ¶24

Although counties may adopt certain legislation that refines or amplifies statutory provisions, county legislation must be consistent with state statute.

4. Zoning and Planning ¶331

In considering application to expand number of dogs permitted at kennel, county did not satisfy requirements of statute providing that alteration of nonconforming use could be permitted to reasonably continue the use, by finding only that some kennel use had endured on land since passage of zoning legislation disallowing prior commercial kennel use; county had to ascertain actual past

1. The Schillereffs and the county have appeared jointly in this court. In the balance of this opinion, we will refer to them jointly, in their

and present scope of use and compare them with effects of proposed enlarged future use. ORS 215.130(5, 9).

5. Zoning and Planning ¶321

Under county ordinance providing that conditional uses legally established prior to certain date would be deemed conforming, kennel could not be permitted in area zoned for exclusive farm use unless county found that use would not force significant change in farm or forest practices on surrounding lands and would not significantly increase cost of accepted farm or forest practices. ORS 215.283(2), 215.296(1); Multnomah County, Or., Code § 11.15.2028(B).

Edward J. Sullivan argued the cause, Portland, for petitioners. With him on the brief were Sandra N. Duffy, Chief Deputy County Counsel for Multnomah County, Daniel Kearns and Preston Gates and Ellis.

Lawrence R. Derr argued the cause, Portland, for respondent. With him on the brief was Josselson, Potter & Roberts.

Before DEITS, P.J., and De MUNIZ and HASELTON, JJ.

DEITS, Presiding Judge.

In 1995, petitioners Schillereff applied to petitioner Multnomah County for "conditional use approval, or, alternatively, an alteration of a non-conforming use," to allow the Schillereffs to enlarge a kennel use on high-value farmland in an exclusive farm use (EFU) zone. The applicants sought to increase the use from its ostensible existing level of 50 dogs to 75.¹ The county treated the filing as three separate applications, respectively for (1) an "initial" (i.e., new) conditional use permit, (2) an expansion of an existing conditional use, and (3) an expansion of a nonconforming use. The county hearings officer approved all three variations, and, on respondent's appeal, the county governing body effectively adopted the hearings officer's opinion and approved the expanded

capacity as parties, as "petitioners." Where differentiation is necessary, we will call them the "applicants" and the "county," respectively.

use. Respondent appealed to LUBA. LUBA disagreed with the county's disposition of each application and remanded the decision to the county. Petitioners seek review, and we affirm.

The applicants acquired the affected property and began operating a commercial kennel on it in 1989. Their various predecessors had at times operated a commercial kennel on the property and, apparently, were doing so in the mid-1950s, when the county enacted zoning legislation disallowing the kennel use. Thereafter, the continuity and exact extent of the use varied considerably, as the property was transferred among the various owners. As LUBA explained, the "parties appear to agree that prior to 1989 there had not been a commercial kennel on the property for at least 15 to 20 years." However, under relevant county legislation, a facility with as few as four adult dogs is defined as a "kennel"; hence, the county's designation could apply to kennel uses that, depending on the specific nature of the use, could fall well short of commercial or other quantitative levels that might nevertheless be relevant to the determination of the nature and extent of the use.

evidence? [37] The evidence here was in conflict as to how many dogs occupied the property at various times between the enactment of restrictive zoning and the present. There was some evidence that only the owner's own dog or dogs inhabited the facility at some times, and there was even evidence that periods elapsed when no kennel activity was occurring on the property. However, the applicants presented evidence to the effect that there was a minimum of at least four dogs on the property at all relevant times. The county found that "some degree of kennel operations has persisted unabated from 1952 forward." However, it made no findings concerning the level of kennel activity at the time that the restrictive legislation became effective or at any subsequent time.

2. The applicants attempted to apply for a conditional use permit in conjunction with the kennel remodeling but were advised by county personnel, apparently on the basis of section 2028(B), that a conditional use permit was unnecessary. No argument based on estoppel, vested rights or related principles is made to us.

It is important to emphasize that the design review approval is not the equivalent of a condi-

In 1977, the county enacted what is now Multnomah County Code (MCC) 11.15.2028(B) (section 2028(B)). As amended in 1980, it provides:

"Conditional uses listed in subpart MCC.2012 legally established prior to August 14, 1980, shall be deemed conforming and not subject to the provision of MCC.880[5], provided however, that any change of use shall be subject to approval pursuant to the provisions of MCC.2012."

Same use

Section .2012 of the code contains a list of uses that "may be permitted when approved by the [county] pursuant to the county conditional use procedures." Kennel uses were added to that list in 1986. Section .8805 prohibits the resumption of a nonconforming use that has been discontinued or abandoned for a two-year period, unless the use meets applicable code requirements at the time of its proposed resumption.

In 1990, the applicants sought design review approval from the county for "remodeling a kennel for 50 dogs" and also sought a conditional use permit for a watchman's residence. Both applications were approved by the planning commission, and neither decision was appealed.² In [37] 1994, the applicants again sought a design review approval from the county, this time to increase the kennel from a 50-dog to a 75-dog capacity. As described by LUBA, the county hearings officer concluded in 1994 that, notwithstanding the 1990 decisions, he could not approve the applicants' request because the applicants could not demonstrate that the underlying 50-dog use was authorized either by a "valid conditional use permit" or as the product or byproduct of a "valid, nonconforming use [existing] in 1980, which could become a 'conforming conditional use' under [section 2028]." The hearings officer denied the 1994

conditional use permit, either in terms of the procedures or the substantive criteria that must be satisfied in order to obtain it. We also emphasize that the 1990 design review concerned the augmentation of the kennel's capacity to 50 dogs; conversely, in the main, the present decisions involve applications to increase a use from 50 dogs to 75.

Seeking Permit on this Design Review Approval?

appli
was
Th
pres
coun
tinue
the
had
form
sion
The
plica
dog
there
pans
cond
mini
turn,
inter
"I
ble
20
us
tio
tio
'cc
be
'cc
tai
sa
un
or
wi
"T
fo
ex
lat
pr
a
de
M
us
th
pe
fo
co
"N
fo
w
lat
OI

MARQUAM FARMS v. MULTNOMAH COUNTY

Or. 993

Cite as 936 P.2d 990 (Or.App. 1997)

application "without prejudice." His decision was not appealed.

The next year, the applicants tendered the present applications to the county. The county found that *some* kennel use had continued on the property from 1952 through the present and, therefore, the applicants had established the existence of a nonconforming use on which the requested expansion of a *commercial* use could be predicated. The county further determined that the applicants enjoyed a conditional use for the 50-dog kennel by virtue of section 2028(B), and therefore also qualified for the requested expansion, as an enlargement of an existing conditional use, on that basis. In so determining, the county hearings officer and, in turn, the governing body made the following interpretation of section 2028(B):

"I therefore conclude that the most probable and reasonable meaning to be accorded 2028(B) is this: It purports to apply to a use that, but for the absence of a conditional use permit, *would be* a true conditional use. The resulting use comprises a 'conforming' conditional use or what might be described as a '2028(B)' use. Such a 'conforming' conditional use may be curtailed or discontinued and resumed in the same manner as a true conditional use, unburdened by notions of 'abandonment' or 'discontinuance' normally associated with *non-conforming* uses.

"That interpretation also resolves a profound dilemma for a use that had, for example, been a non-conforming use and later became a 'listed' conditional use. A pre-existing use ¹³⁷that suddenly becomes a 'listed' conditional use can scarcely be described as a 'nonconforming use.' * * * MCC 11.15.2028(B) renders that species of use a 'conforming' conditional use without the need to apply for a conditional use permit in order to maintain a use that, but for the absence of a permit, is *already* a conditional use.

* * * * *

"MCC 11.15.0010's definition of 'non-conforming use,' for instance, describes a use 'which does *not* conform with the use regulations of the district in which it is located.' Obviously, a 'non-conforming use' that sud-

denly attains a new status as a 'listed' conditional use falls outside that definition. Even if the definition of 'non-conforming use' said '*did not conform*' instead of '*does not conform*,' it would defy logic or reason to describe a 'listed'-but-never-formally-approved conditional use as a 'nonconforming' use." (Emphasis in original.)

Finally, the county concluded that, independently of the preceding grounds for the *expansion* of an existing use, the applicants had "fulfilled all of the applicable conditional use criteria" in the county's land use legislation and qualified for an "*initial*" conditional use permit to operate a 75-dog facility.

Respondent appealed the county's decisions to LUBA, which rejected the county's analysis and conclusions concerning each of the alternative applications that it granted. With respect to the expansion of the putative nonconforming use, LUBA reasoned that the county had failed to make necessary findings regarding the initial scope of the use at the time that it became nonconforming and had also not adequately defined the extent of the nonconforming use that continued to exist thereafter. LUBA accepted the county's finding that there was *some* ongoing kennel use throughout the 40-year period as being supported by substantial evidence. However, it noted that the county

"apparently concluded, without analysis, that since [the applicants had] established the continued existence of a kennel, i.e., at least 4 adult dogs on the property since the 1950's, they had somehow established a nonconforming use to operate and expand a 50-dog kennel. Such a conclusion is not legally justified." (Footnote omitted.)

¹³⁷See ORS 215.130(5), (9). Accordingly, LUBA remanded the nonconforming use expansion issue for further county findings and evaluation concerning the "level of intensity" of the use at the time it became nonconforming and at subsequent times to the present.

LUBA also concluded that the granting of the "initial" conditional use permit for a 75-dog facility was erroneous, because it was contrary to OAR 660-33-120 and OAR 660-33-130, the pertinent state administrative rules promulgated by the Land Conservation and Development Commission (LCDC).

can
applicant
provide
substantial
evidence
to
support
such
a finding
?

LUBA explained that kennels are expressly prohibited on high-value farmland by OAR 660-33-120. Although OAR 660-33-130(18) allows "[e]xisting facilities [to] be maintained, enhanced or expanded, subject to other requirements of law," LUBA reasoned that the initial permit was not for an existing use.

Next, LUBA turned to the county's conclusion that the application could be granted as an expansion of an existing conditional use established pursuant to section 2028(B). LUBA first rejected petitioners' arguments positing that the county's 1990 decisions had already resolved the pertinent issues. LUBA concluded that those decisions contained no interpretation of section 2028(B). LUBA then addressed petitioners' argument that they enjoyed the necessary underlying conditional use under the county's interpretation of section 2028(B) in the present decision, and that LUBA was required to defer to that interpretation by ORS 197.829 and *Clark v. Jackson County*, 313 Or. 508, 836 P.2d 710 (1992). After observing that it found the substance of the county's interpretation somewhat obscure, LUBA said:

"With regard to the county's explicit interpretation in its 1995 decision, as we read the hearings officer's analysis, he concludes that a nonconforming use can become permitted outright as a 'conforming conditional use' if the use is listed in the county's code as being a conditional use. It is unclear to us whether the county's explicit interpretation of 2028 allows abandoned nonconforming uses to 'spring' back into existence as permitted uses when those uses are listed as conditional uses, or whether it interprets 2028 to permit only valid existing nonconforming uses to become 'conforming conditional uses.'

¹³⁷⁵ " * * * * "

"As we understand the narrowest interpretation of 2028(B) that the county could have made in this decision, kennels in existence in 1986 are legislatively established as permitted uses (conforming conditional uses) without a showing of compliance with

3. We understand the point of LUBA's holding, and the target of petitioners' argument, to be that the county's interpretation of its own conditional use legislation, under which it granted the initial

the ORS 215.296 farm impact standards. Such a showing is required for dog kennels to be established as permitted uses under ORS 215.283(2). To the extent the interpretation also allows abandoned nonconforming uses to 'spring' back, the interpretation also violates OAR 660-33-120, which prohibits new kennels on high-value farm land." (Footnote omitted.)

Consequently, LUBA remanded the decision to the county for it "to interpret 2028 in a manner consistent with ORS 215.283 and OAR 660-33-120."

Petitioners seek our review and assign error to each of the bases for LUBA's remand. We first consider their contention that LUBA was incorrect in holding that state law precluded the granting of an "initial" conditional use permit, i.e., one authorizing a 75-dog kennel as a "new" use, without reference to any underlying nonconforming use or permitted conditional use status under section 2028(B).³

Petitioners do not appear to dispute that, by their terms, OAR 660-33-120 and OAR 660-33-130 make it impermissible to establish new kennel uses on high-value farmland and allow counties to issue kennel-related permits only in connection with existing facilities. They contend, however, that the rules are contrary to ORS 215.283(2)(m), which allows counties to permit dog kennels in EFU zones, without specifying whether they are new uses or continuations, enlargements or changes of existing ones. Petitioners therefore reason that the rules are invalid and cannot be given effect here. They rely on *Lane County v. LCDC*, 138 Or.App. 635, 910 P.2d 414, on recons. 140 Or.App. 368, 914 P.2d 1114, rev. allowed 324 Or. 305, 925 P.2d 908 (1996), where we invalidated parts of ¹³⁷⁶ OAR 660-33-120 and OAR 660-33-130 as conflicting with ORS 215.213.

ORS 215.213 pertains to nonfarm and ancillary farm uses in EFU zones in the counties—Lane and Washington—that have adopted "marginal lands" provisions. ORS 215.283 applies to uses in counties, like the

permit, was inconsistent with the two state administrative rules, OAR 660-33-120 and OAR 660-33-130, and was therefore reversible under ORS 197.829(1)(d).

remand
1550e

count
lands
215.2
there
the t
146 C
opini
we ei
only
215.2
that
ly lef
confi
at 37

Pe
simil
concl
not
Or.A
ever,
sonir
Both
perm
Neitl
land
Coun
high-
to th
legis
that
LCD
farm

As
statu
tural
LCD
* *
ORS
empl
that
prec
of or

th
tic

4. 1
far
exi
fur
sta
OF
Fu
pa

Cite as 936 P.2d 990 (Or.App. 1997)

impact standards.
red for dog kennels
mitted uses under
e extent the inter-
abandoned noncon-
back, the interpre-
660-33-120, which
on high-value farm
d.)

anded the decision
nterpret 2028 in a
ORS 215.283 and

view and assign er-
r LUBA's remand.
r contention that
lding that state law
an "initial" condi-
e authorizing a 75-
e, without reference
forming use or per-
atus under section

ear to dispute that,
-33-120 and OAR
rmissible to estab-
gh-value farmland
sue kennel-related
with existing facil-
ever, that the rules
5.283(2)(m), which
it dog kennels in
fying whether they
ions, enlargements
ones. Petitioners
e rules are invalid
t here. They rely
188 Or.App. 635,
40 Or.App. 368, 914
4 Or. 305, 925 P.2d
validated parts of
MAR 660-33-130 as
13.

o nonfarm and an-
zones in the coun-
ngton—that have
provisions. ORS
counties, like the

ith the two state ad-
60-33-120 and OAR
fore reversible under

county here, that have not adopted marginal lands provisions. ORS 215.213 and ORS 215.283 are similar in many respects, but there are some distinct differences between the two. See *Nichols v. Clackamas County*, 146 Or.App. 25, 932 P.2d 1185 (1997). In our opinion on reconsideration in *Lane County*, we emphasized that our holding there related only to the validity of the rules under ORS 215.213 and in the "marginal lands" counties that are subject to that statute. We expressly left open the question of whether the rules conflict with any other statute. 140 Or.App. at 370-71, 914 P.2d 1114.

Petitioners' contention here is arguably similar to certain reasoning that led to the conclusion in *Lane County* that the rules are not consistent with ORS 215.213. See 138 Or.App. at 638 and n. 2, 910 P.2d 414. However, petitioners' effort to transport that reasoning to ORS 215.283 does not succeed. Both ORS 215.213 and ORS 215.283 relate to permissible uses in EFU zones generally. Neither deals with uses on high-value farmland specifically. As we explained in *Lane County*, the promulgation of LCDC's original high-value farmland rules (the predecessors to those involved in this case) preceded the legislature's 1993 adoption of certain statutes that do relate specifically to uses on—and LCDC rules regulating uses on—high-value farmland. *Id.* at 638-39, 910 P.2d 414.

As we observed in *Lane County*, the 1993 statutes rejected some of the other agricultural land categories established by the LCDC rules, but the legislature "recognized . . . the high-value farmland category. ORS 215.304(1); ORS 215.710." *Id.* We emphasized in particular in *Lane County*, *id.*, that ORS 215.304(3), one of the 1993 statutes, precludes the implementation or enforcement of or the giving of legal effect to

"[a]ny portion of a rule inconsistent with the provisions of ORS 197.247 (1991 edition), 215.213, 215.214 (1991 Edition),

4. The legislature's intention that the high-value farmland rules be subordinated only to the pre-existing statutes relating to marginal lands is further illustrated by the fact that the list of statutes in ORS 215.304(3) also includes former ORS 215.288, ORS 215.317 and ORS 215.327. Further, ORS 215.316 *et seq.* establish a general pattern in which the regulation of marginal lands

215.288 (1991 Edition), 215.317, 215.327 and 215.337¹³⁷ (1991 Edition) or 215.705 to 215.780 * * *." (Emphasis supplied.)

That critical point in our analysis in *Lane County* also constitutes the critical difference between *Lane County* and this case: ORS 215.304 expressly prohibits the implementation of LCDC high-value farmland rules insofar as they conflict with the general EFU use provisions of ORS 215.213, but it contains no prohibition against the implementation of the rules insofar as they affect the operation of ORS 215.283 or the uses generally allowed by that statute.

That distinction made no difference in *Lane County*, because ORS 215.304, one of the high-value farmland provisions, *itself* requires the LCDC rules to be consistent with ORS 215.213. However, because ORS 215.304 does not require that the rules be consistent with ORS 215.283, the general statute involved here, the distinction is decisive in this case. Given that ORS 215.213 and ORS 215.283 are both concerned generally with permissible uses in EFU zones, the fact that ORS 215.304 expressly requires LCDC's high-value farmland rules to be consistent with ORS 215.213, but contains no requirement of consistency with ORS 215.283, clearly means that the legislature intended for the rules to operate independently of ORS 215.283 in counties where that statute rather than ORS 215.213 is applicable.

Our distinction between these statutes is not a word game, nor is there any likelihood that the difference in treatment is the result of a legislative omission. The state legislature may and has chosen to regulate uses on agricultural lands differently in marginal lands and non-marginal lands counties. Indeed, that is the reason why the largely similar ORS 215.213 and ORS 215.283 both exist.⁴

and high-value farmland are treated separately and differently.

The 1993 legislation eliminated the option for counties to adopt marginal lands provisions, but allowed counties that had already adopted such provisions to continue to apply them. ORS 215.316; see *Lane County*, 138 Or.App. at 639, 910 P.2d 414.

[1] ¹³⁷⁸We hold that the limitations that OAR 660-33-120 and OAR 660-33-130 place on uses on high-value farmland are within LCDC's authority under ORS 215.304, and are not subject to and therefore cannot violate ORS 215.283(2).⁵ It follows that LUBA did not err in remanding the county's approval of the "initial" conditional use permit, which purports to allow a new use that the rules prohibit.

We turn to petitioners' assignments that respectively challenge LUBA's remands of the county's allowance of the expansion of the nonconforming use and of the "section 2028(B) conditional use." Petitioners argue, correctly, that they were entitled to file three applications for the same use, as alternatives to one another that need not necessarily be consistent with each other. The initial problem with petitioners' position, however, is that their arguments regarding the two theories in question treat them as being interrelated in ways that we do not think they are.

For example, petitioners argue that, rather than applying "general principles of nonconforming use law," LUBA should have treated section 2028(B) as controlling on the *nonconforming use issue*, and should have deferred to the county's interpretation of that local provision pursuant to ORS 197.829(1)(a)-(c) and *Clark*. Beginning with that premise, petitioners develop a complex defense of the county's decision allowing the expansion of the nonconforming use, in which section 2028 and "traditional" nonconforming use concepts are intertwined. The essence of petitioners' argument is that, (1) regardless of any diminutions in the use that may have occurred between 1952 and 1990, the commercial-level kennel use was "resumed" under section 2028(B) through the two 1990 decisions; and (2) whatever the requirements of "general" nonconforming use law may be regarding continuity and extent as prerequisites to an alteration or expansion of a nonconforming use, section 2028 contains no similar requirements. Accordingly, petitioners conclude, LUBA was ¹³⁷⁹wrong in holding that further

definition of the extent of the original and continuing nonconforming use was a necessary precursor to the consideration or allowance of its expansion.

Petitioners rely on *deBardelaben v. Tillamook County*, 142 Or.App. 319, 922 P.2d 683 (1996), where we held that LUBA erred in basing its reversal of a county decision allowing a variance on general principles of variance law rather than examining the county's interpretation of the specific variance provisions in its own ordinance and applying the deferential *Clark* review standard to that interpretation. After quoting the pertinent language in *deBardelaben*, petitioners assert:

"Simply exchange the word[s] 'nonconforming uses' for the word 'variance' in the above quote from the *deBardelaben* decision, and one sees LUBA's error in this case. LUBA remanded the county's approval of an expansion of the Schillereffs' nonconforming kennel operation for fact finding as to the 'nature and extent' of the dog kennel use over the years since its beginning in 1952. This notion is central to 'traditional nonconforming use law but has nothing to do with MCC 11.15.2028(B) or the resumption of the Schillereffs' nonconforming use. * * * MCC 11.15.2028(B) establishes a less restrictive standard than traditional nonconforming use law." (Emphasis petitioners'; footnote omitted.)

[2] Petitioners' attempt to analogize this case to *deBardelaben*, and their argument as a whole, fails for two reasons. First, in contrast to the variance provisions in *deBardelaben*, section 2028(B) does not and cannot be interpreted to say anything that either defines nonconforming uses or regulates them. Rather, the role of nonconforming uses in the section is simply that of a condition precedent to the operative provisions, i.e., the "conversion" of pre-existing nonconforming uses to conditional uses that, after their conversion, are subject to the conditional use regulations in the county's legislation.

5. In its present posture, this case directly involves only the asserted inconsistency of the rules with ORS 215.283(2) generally and with paragraph (m) of that subsection specifically. We neither hold nor imply a view about whether

LCDC's high-value farmland rules are subject to ORS 215.283(1). Compare *Brentmar v. Jackson County*, 321 Or. 481, 900 P.2d 1030 (1995); but see *Nichols v. Clackamas County*, 146 Or.App. 25, 34, 932 P.2d 1185 (1997).

To the e
the sect
assert, th
under th
test tha
Hollow
117 Or.
(explaini
regulati
2028(B)
conform
different
nonconfo

[3] S
involved
uses are
statute,
may ad
amplifies
v. Bake
P.2d 988
tion mu
ute.

More
volved,
assignm
applied
197.829
ment's i
tion is r
an appe
sion, if
[state] s
[local] l
held the
or rules
is limite
of the lo
state pr
v. City
P.2d 35
(1996).
statutes
to local
legislati
ORS 19
statewic
also hel

6. The
may al
showir
A. 10

MARQUAM FARMS v. MULTNOMAH COUNTY

Cite as 936 P.2d 990 (Or.App. 1997)

Or. 997

To the extent that the county has interpreted the section in the manner that petitioners assert, the interpretation cannot survive even under the less than stringent "clearly wrong" test that inheres in *Clark*. See, e.g., *Goose Hollow Foothills League v. City of Portland*, 117 Or.App. 211, 217, 843 P.2d 992 (1992) (explaining test). Far from §30 defining or regulating nonconforming uses, section 2028(B) provides that certain existing nonconforming uses are metamorphasized into a different kind of use to which the county's nonconforming use regulations do not apply.

[3] Second, and also unlike the variances involved in *deBardelaben*, nonconforming uses are substantively regulated by a state statute, ORS 215.130. Although counties may adopt certain legislation that refines or amplifies the statutory provisions, see *Bither v. Baker Rock Crushing*, 249 Or. 640, 438 P.2d 988, 440 P.2d 368 (1968), county legislation must be consistent with the state statute.

Moreover, because a state statute is involved, our scope of review of the present assignment of error differs from the one that applied to the previous assignment. ORS 197.829(1)(d) provides that a local government's interpretation of local land use legislation is reversible by LUBA, or implicitly by an appellate court reviewing LUBA's decision, if the interpretation is "contrary to a [state] statute, land use goal or rule that the [local legislation] implements." We have held that, in the case of the statewide goals or rules, the inquiry under ORS 197.829(1)(d) is limited to whether the local interpretation of the local provisions is inconsistent with the state provisions. *Friends of Neabeack Hill v. City of Philomath*, 139 Or.App. 39, 911 P.2d 350, rev. den. 323 Or. 136, 916 P.2d 311 (1996). However, because relevant state statutes retain their independent applicability to local land use decisions after the local legislation has been acknowledged under ORS 197.251, while generally speaking the statewide goals and rules do not, we have also held that local land use decisions as a

6. The additional facts that the county must find may also affect the sufficiency of the applicants' showing under ORS 215.130(7), as well as sub-

whole, rather than only the interpretations of local legislation that the decisions may contain, are reviewable for statutory compliance in appeals from the decisions to LUBA and us even after the local land use legislation has been acknowledged. *Forster v. Polk County*, 115 Or.App. 475, 839 P.2d 241 (1992), and authorities there cited; see also *Friends of Neabeack Hill*, 139 Or.App. at 46 n. 3, 911 P.2d 350. Accordingly, even if section 2028(B) were pertinent to the nonconforming use expansion issue by its terms, neither the local provision itself nor the county's interpretation of it could provide a basis for affirming the county's decision if the decision is contrary to ORS 215.130.

[4] §31 For largely the reasons expressed by LUBA, we conclude that the county's present decision on the nonconforming use issue does not satisfy ORS 215.130. Without further findings by the county to particularize the nature and extent of the original and continuing nonconforming use, in the face of evidence that the use has historically receded from commercial to fairly minimal levels, the requested expansion cannot be justified under ORS 215.130(5) and (9). Subsection (5) provides that an "[a]lteration of any such [nonconforming] use may be permitted to reasonably continue the use." Subsection (9) defines "alteration" to include a "change in use of no greater adverse impact to the neighborhood." Whether the requested expansion meets that statutory standard cannot be ascertained unless the actual past and present scope of the use is identified and can be compared with the extent and effects of the proposed enlarged future use. Moreover, it cannot be known what is necessary and, therefore, permissible to "continue the use" in the absence of a prior determination regarding the nature and scope of the original and present use that have acquired and retain nonconforming status. The statutory test cannot be applied or passed on the basis of the county's present unquantified finding that some kennel use has endured throughout the 40-year period.⁶ We hold that

sections (5) and (9). That question, too, is before the county on remand.

In the present posture of the case, we cannot now decide whether the findings the county has

t of the original and
ing use was a neces-
consideration or allow-

deBardelaben v. Tilla-
app. 319, 922 P.2d 683
that LUBA erred in
county decision allow-
ral principles of vari-
examining the county's
specific variance provi-
nce and applying the
ew standard to that
quoting the pertinent
en, petitioners assert:

the word[s] 'noncon-
word 'variance' in the
e *deBardelaben* deci-
LUBA's error in this
ded the county's ap-
on of the Schillereffs'
el operation for fact
ure and extent' of the
r the years since its
This notion is central
forming use law but
th MCC 11.15.2028(B)
'the Schillereffs' non-

* * * MCC
shes a less restrictive
tional nonconforming
petitioners'; footnote

empt to analogize this
and their argument as
o reasons. First, in
e provisions in *deBar-*
:) does not and cannot
anything that either
; uses or regulates
ole. of nonconforming
imply that of a condi-
operative provisions,
f pre-existing noncon-
tional uses that, after
bject to the condition-
e county's legislation.

land rules are subject to
are *Brentmar v. Jackson*
10 P.2d 1030 (1995); but
County, 146 Or.App. 25,
).

LUBA was correct in remanding the county's allowance of the application to expand a nonconforming use.

In their remaining assignment, petitioners contend that LUBA erred by remanding the county's granting of the application to expand the 50-dog kennel that putatively exists as a conditional use under section 2028(B). As in the previous assignment, the principal question here is whether the county was correct in concluding that a validly recognizable underlying 50-dog use existed, upon which the requested expansion could be predicated. In this assignment, ¹³³²however, the specific question is whether that use was a conditional use established pursuant to section 2028(B) rather than a nonconforming use.

Some of petitioners' arguments in this connection nevertheless resemble their previous arguments regarding the expansion of the nonconforming use, and share the premise that the nonconforming use and the section 2028(B) issues are interrelated in ways that are mutually supportive of petitioners' positions on the respective issues.⁷ As we have indicated, we disagree with that premise. Indeed, to the extent there is a relationship, LUBA's and our remand on the nonconforming use issue, in itself, requires that the

made, if supplemented by the required additional ones, could suffice to establish compliance with the statute. However, if we correctly understand petitioners to argue that the existing findings are sufficient to demonstrate compliance in themselves, we disagree with them.

7. Again, for example, petitioners contend that the earlier nonconforming commercial kennel use was "resumed" pursuant to section 2028(B) through the 1990 proceedings. If that were a correct understanding of those proceedings, it would be open to serious doubt whether the 1990 decisions, or section 2028(B) itself, are consistent with the limitations that ORS 215.130(7) places on the resumption of discontinued nonconforming uses. However, we again disagree with petitioners' reading of section 2028(B). The section cannot be understood as simultaneously establishing the conditional use and revitalizing the nonconforming use that is a condition precedent to the establishment of the conditional use. The 1990 decisions that petitioners say resumed the nonconforming use were made 10 years after the date on which the section requires a nonconforming or other "legally established" use to have existed in order for a conditional use to come into being. In any event, the section does

section 2028(B) issue also be remanded to the county. The establishment of a conditional use under section 2028(B) is dependent on the existence of the nonconforming use which the county's decision has not satisfactorily defined.

However, as described earlier, the basis for LUBA's remand on the section 2028(B) issue was different from and broader than the one noted in the preceding paragraph. ORS 215.296(1) permits counties to approve uses under ORS 215.283(2) "only where the local governing body or its designee finds that the use will not:

"(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

"(B) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."

[5] ¹³³³LUBA concluded that the county's decision violates that state statute by interpreting and applying section 2028(B) in a way that allows a use subject to ORS 215.283(2) to achieve permitted status without being tested against the standards that ORS 215.296(1) requires it to satisfy.⁸ We

not deal with the creation—or resumption—of nonconforming uses but requires their *antecedent* existence. Section 2028(B) is a savings clause of sorts, but it does not purport to revive the dead.

8. The terminology here can be confusing. Although section 2028(B) refers to "converted" former nonconforming uses as "conditional" ones, the section as the county interpreted it would confer that new status upon them without a conditional use permit requirement. Accordingly, the newly denominated "conditional" uses would *actually* be "permitted," whatever section 2028(B) may call them.

LUBA explained why there is a significant difference between that permitted status and the nonconforming status that the use ostensibly enjoyed before its "conversion" under section 2028(B):

"Permitted use status, as opposed to nonconforming use status, is not without legal [e]ffect. As a permitted use, the operation of a kennel could be altered or abandoned and resumed without addressing the nonconforming use limitations of ORS 215.130."

Although LUBA's observation is phrased sub-junctively, it is far from an academic point. A

FAULCONER v. WILLIAMS

Cite as 936 P.2d 999 (Or.App. 1997)

Or. 999

agree with LUBA, and we reject petitioners' arguments that challenge LUBA's reasoning directly.

However, petitioners also appear to contend that the county's 1990 design review for the 50-dog facility and its permit for the watchman's residence were based on section 2028(B). Although petitioners understand the 1990 decisions to have interpreted and applied the section in essentially the same way that the county's present decision does, petitioners assert that the earlier decisions are nevertheless independently relevant.

As a matter of *substance*, it is immaterial whether the county's impermissible application of section 2028(B) first occurred in 1990 or in 1995. ORS 215.296(1) existed in its present form at both times, and the way in which petitioners assert that section 2028(B) was applied in 1990 was as inconsistent with the requirements of the statute as the present decision was. Nevertheless, petitioners maintain that section 2028(B) was explicitly or implicitly interpreted by the local decision-maker in 1990, and that a form of "issue preclusion" therefore bars its reconsideration now. Whether or not any such preclusive effect would have resulted if the section had in fact been interpreted as part of one or both of the 1990 ¹³⁸⁴county decisions, we agree with LUBA that the county made no such interpretation. Petitioners base their contrary argument, *inter alia*, on the asserted fact that references to the section were made in the course of the 1990 county *proceedings*. However, they point to nothing in a 1990 *decision* that sets forth or suggests an interpretation of section 2028(B). We accordingly reject their issue preclusion argument.

We do not understand petitioners to argue that the 1990 decisions, or either of them, are preclusive or dispositive in any other way or for any other reason. Before LUBA, petitioners advanced an argument to the effect that the applicants had acquired a vested right to the 50-dog use through the 1990 decisions. Petitioners have chosen not to repeat that argument to us.

case could be made that the combined success of the various arguments that petitioners make here

We have considered petitioners' other arguments and conclude that they do not require discussion.

Affirmed.



147 Or.App. 389

¹³⁸⁹Jay FAULCONER and Sheila Faulconer, husband and wife, Appellants,

v.

Billie J. WILLIAMS; John C. Mackey and Jeanne L. Mackey; Robert D. Webb and Carolyn L. Webb; Randy L. Bahler and Donna J. Bahler; Kenneth J. Stevenson and Joanne Stevenson; Jerry L. Lasater and Dawn Lasater; Elmer C. Williams and Marie E. Williams; and Michael A. Revelle and Sandra A. Revelle, Respondents.

95-10169; CA A93542.

Court of Appeals of Oregon.

Argued and Submitted Jan. 15, 1997.

Decided April 16, 1997.

Current owners of servient estate brought action to quiet title, on theory that roadway easement had been extinguished either by abandonment or by adverse possession. The Circuit Court, Benton County, Robert S. Gardner, J., entered judgment in favor of defendants, and plaintiffs appealed. The Court of Appeals, Riggs, P.J., held that: (1) defendants' nonuse of easement, due solely to their mistake as to location of roadway, did not result in abandonment of easement; (2) easement was extinguished by adverse possession of plaintiffs' predecessor in interest; and (3) easement was not recreated, at least not in favor of owners of dominant

would accomplish precisely what LUBA describes.

also be remanded to the court for the determination of a conditional use which has not satisfactorily

been earlier, the basis for the section 2028(B) is broader than the preceding paragraph. The counties to approve ORS(2) "only where the owner or its designee finds

a significant change in agricultural practices on land used to farm or forest

to increase the cost of agricultural practices on land used to farm or forest

included that the county's state statute by interpreting section 2028(B) in a way subject to ORS permitted status without the standards that require it to satisfy.⁸ We

action—or resumption—of a use requires their antecedent ORS(2) is a savings clause of support to revive the dead.

can be confusing. All refers to "converted" forms as "conditional" ones. The county interpreted it would be upon them without a requirement. According-nated "conditional" uses permitted, whatever section

there is a significant difference in permitted status and that the use ostensibly envisions "under section

us, as opposed to nonconforming use without legal effect. The operation of a kennel abandoned and resumed the nonconforming use 5.130."

ervation is phrased substantially in an academic point. A



DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 S.E. Morrison Street
Portland, Oregon 97214 (503) 248-3043

HEARINGS OFFICER DECISION

This Decision consists of Conditions, Findings of Fact, and Conclusions

September 15, 1995

CU 4-95 and MC 1-95, #23

Conditional Use Request

(Conditional Use and Alteration of a Non-Conforming Use)

Applicant requests "conditional use approval, or, alternatively, an alteration of a non-conforming use, for a 75-dog kennel"

Location:	23200 N.W. Reeder Road
Legal:	Tax Lot 15 / Section 3, T2N, R1W
Pertinent Site Size:	9.41 acres
Applicant:	Tim & Angella Schillereff 23200 N.W. Reeder Road Portland, Oregon 97231
Property Owner:	<same as applicant>
Comprehensive Plan/Zoning:	Exclusive Farm Use/EFU

HEARINGS OFFICER DECISION:

Approved, with conditions set forth below, Applicant's request for conditional use approval to (1) operate and maintain a dog kennel facility in an EFU district, and (2) expand the existing 50-dog kennel facilities to allow no more than 75 dogs, based upon the following "Findings" and "Conclusions" with respect to conditional use approval.

Alternatively, Approved, with conditions set forth below, Applicant's alternate request for the resumption and expansion of a non-conforming use, based upon the following "Findings" and "Conclusions" with respect to non-conforming use approval.

CONDITIONS OF APPROVAL:

1. Approval of the conditional use shall expire two years from the date of Board final order unless substantial construction has taken place in accordance with MCC 11.15.7110(C).
2. Prior to the commencement of any site development or the issuance of any building permit, Applicant shall comply with, and fulfill, applicable Design Review standards and criteria with respect to all construction, landscaping, fencing, paving, and all other improvements.
3. The kennel capacity shall not exceed 75 dogs.

TABLE OF CONTENTS

I.	ANALYSIS OF THE PROPOSAL	7
A.	Proposal Summary	7
B.	Site and Vicinity Descriptions	10

C.	Comprehensive Plan and Zoning Ordinance Considerations	11
D.	Background / History	12
(1).	General	12
(2).	1989 Proceedings	12
(3).	1990 Proceedings	13
(4).	1994 Proceedings	15
(a).	Application / Initial Decision	15
(b).	Appeal	17
(c).	Staff's Interpretation of MCC 11.15.2028(B)	18
(d).	Hearings Officer's Decision	19
(5).	1995 Proceedings	23
II.	PROCEDURAL ISSUES	24
A.	Request for setover or continuance	24
B.	Clarity or adequacy of notice	26
C.	Issue and claim preclusion	29
D.	Pending litigation	29
E.	Precedential impact of OAR 660-33-120	30
III.	APPLICABLE CRITERIA — CONDITIONAL USE	30
IV.	PRECLUSION ISSUES — CONDITIONAL USE	38

A.	Because it <i>denied</i> a requested approval, the hearings officer's 1994 decision does not preclude a reconsideration of either legal or factual "conditional use" issues	39
B.	There exists no "identity of issues" such that "claim preclusion" or "issue preclusion" might otherwise apply	40
(1).	"Claim preclusion" and "issue preclusion" serve no purpose in this particular proceeding	41
(2).	Within an administrative context, I cannot bestow <i>stare decisis</i> status upon a prior interpretation of a local enactment that misinterprets the enactment	41
(3).	The issues in DR 4-94 and this proceeding, and the manner in which the issue arose in DR 4-94, do not squarely align ...	42
C.	The County's sequential, uniform determinations in 1989 and 1990 that Applicant's kennel facilities did <i>not</i> require "conditional use" approval connotes implicit interpretations of MCC 11.15.2028(B) in a manner that long ago resolved the issue	44
(1).	1990 condition use proceedings	44
(2).	1990 Design Review proceedings	46
(3).	The County itself has "interpreted" MCC 11.15.2028(B) in dispositive fashion	46
D.	Marquam Farms' failure to appeal the 1990 decision that specifically rejected the identical "legality-of-use" argument that it now makes precludes it from relitigating that issue	48
V.	DO THE KENNEL FACILITIES ALREADY COMPRISE A ".2028(B)" USE?	50
A.	Do the Applicant's kennels comprise a "listed use" at all?	52
B.	Were the kennels " <i>legally established</i> prior to August 14, 1980"? ..	53

(1).	Does the term "legally established" differentiate uses that were " <i>illegally</i> " established?	54
(2).	Does the term "legally established" necessarily incorporate notions of "abandonment" or "discontinuance," as though it pertained solely to non-conforming uses?	55
(3).	There exists no substantial evidence of "abandonment" or "discontinuance" in any event	57
C.	What overall purpose does .2028(B) serve?	57
(1).	The "literal" approach	57
(2).	The "saving grace" approach	58
(3).	The " significance-of-the-exemption-vis-a-vis-11.15.8805 " approach	59
(4).	The "quasi-conditional use" (or "what else could it mean?") approach	61
(5).	Summary of probable meanings	62
VI.	DOES THE CONDITIONAL USE PROCESS APPLY AT ALL TO AN <i>EXISTING</i> "CONDITIONAL USE"?	63
VII.	FINDINGS — CONDITIONAL USE	65
A.	ORS 215.283	66
B.	ORS 215.296 / MCC 11.15.7122	67
C.	OAR 660-33-120 / 660-33-130	69
(1).	OAR 660-33-120 and 660-33-130 expressly allow "existing" kennel uses to continue, and to be "maintained, enhanced or expanded"	69

(2).	To the extent that OAR 660-33-120 and 660-33-130 differ with state law, state law controls	71
D.	MCC 11.15.2012(B)	73
E.	MCC 11.15.7120(A)	74
F.	MCC 11.15.7205-.7240	78
G.	Comprehensive plan provisions	80
VIII.	CONCLUSIONS — CONDITIONAL USE	85
IX.	PRECLUSION ISSUE — NON-CONFORMING USE	87
A.	The hearings officer lacked the authority to proceed beyond the jurisdictional question in the Design Review proceedings in DR 4-94, and to determine non-conforming use issues	88
B.	There exists no evidentiary gap in kennel usage	89
C.	Because it <i>denied</i> a requested approval, the hearings officer's 1994 decision does not preclude a reconsideration of either legal or factual "non-conforming use" issues	96
D.	"Claim preclusion" and "issue preclusion" serve no purpose within this proceeding	96
X.	APPLICABLE CRITERIA — NON-CONFORMING USE	97
XI.	FINDINGS — NON-CONFORMING USE	101
XII.	CONCLUSIONS — NON-CONFORMING USE	110

I. ANALYSIS OF THE PROPOSAL

A. PROPOSAL SUMMARY

On April 11, 1995, Tim and Angella Schillereff ("APPLICANT") filed an application worded as follows:

"Applicants seek [1] conditional use approval, or, alternatively, [2] an alteration of a non-conforming use, for a 75-dog kennel. . . ." (Enumeration added.)

In a February 23, 1995, narrative, Applicant declared:

- ◆ "The [Applicant] seek[s] land use approval for a 75-dog kennel." (February 23, 1995, "SAUVIE ISLAND KENNELS LAND USE APPLICATION," at 3.)
- ◆ "The purpose of this application is to allow the *expansion* of the existing kennel operation on the property." (February 23, 1995, "SAUVIE ISLAND KENNELS LAND USE APPLICATION," at 4 [emphasis added].)
- ◆ "In this case, [Applicant is] applying to *modify* a 'conforming conditional use' [.] " (February 23, 1995, "SAUVIE ISLAND KENNELS LAND USE APPLICATION," at 13 [emphasis added].)

In an August 16, 1995, supplemental report, Applicant declared:

- ◆ "The applicant *presently* holds a lawful conditional use approval for a 50-dog kennel on their property." (August 16, 1995, "SAUVIE ISLAND KENNELS SUPPLEMENTAL LAND USE REPORT," at 1 [emphasis added].)

In an August 23, 1995, a supplemental memorandum Applicant declared:

- ◆ "In the instant proceedings, the [Applicant] request[s] conditional use approval of their kennel so they may have [1] formal recognition of their operation by the County *and* [2] a total of 75 kennel runs." ("APPLICANT'S SUPPLEMENTAL MEMORANDUM," at 2 [emphasis and enumeration added].)

Applicant's approval request raises a mind-numbing array of issues and questions, although the peculiar chronology of land use proceedings has contributed substantially to the complexity of the issues.

At the outset, I perceive some ambivalence in Applicant's descriptions of the scope of the conditional use approval request. The various descriptions could encompass:

- ◆ a request for conditional use approval for the expansion of the kennel facilities from 50 to 75 dogs, in which case Applicant would need to demonstrate a pre-existing conditional use — which, under the circumstances, could only derive from MCC 11.15.2028(B); *or*
- ◆ a request for pro forma conditional use approval of a 75-dog kennel facility employing only the conditional use criteria in MCC 11.15.7105, *et seq.*
- ◆ a combination of both of the above, *viz*, a request for conditional use approval for a long-standing use, upon which a further request to expand the conditional use would be based.

In any event, I assume from Applicant's detailed discussion of the various conditional use criteria and issues *in conjunction with* the non-conforming use criteria and issues, that Applicant anticipates the following chronology with respect to the substantive "use" issues:

- ◆ If I conclude that Applicant has a "conforming" conditional use pursuant to MCC 11.15.2028(B), and I conclude that any expansion or modification of an *existing* conditional use *does* require additional conditional use approval, then I must evaluate the current approval request

in order to determine whether Applicant fulfills the conditional use criteria with respect to the additional 25-dog capacity. ^[1]

- ◆ If I conclude that Applicant has a "conforming" conditional use pursuant to MCC 11.15.2028(B), and I conclude that any expansion or modification of an *existing* conditional use would *not* require additional conditional use approval, then I will make a declaration to that effect. In that event, I can go no further because the present application would comprise a request for conditional use approval that would be unnecessary under those circumstances; only Design Review approval would be required.
- ◆ If I conclude that Applicant lacks a "conforming" conditional use pursuant to MCC 11.15.2028(B), then I will need to determine whether Applicant can now seek conditional use approval for a pre-existing use that does indeed comprise a "listed" conditional use.
- ◆ If I conclude that, notwithstanding the use's status as a "listed" conditional use, Applicant does not or cannot fulfill all of the conditional use criteria, then I must determine whether Applicant possesses a valid, enduring non-conforming use.
- ◆ If I conclude that Applicant possesses a valid, enduring non-conforming use (by reason of continuity or vested right), then I must determine whether Applicant fulfills the criteria that control any alteration or expansion of that use.

¹ As I explain in the discussion beginning at page 63, the conditional use provisions in MCC 11.15.7105, *et seq.*, do not plainly resolve whether an *expansion* of a use that might *already* be a conditional use (via a prior approval or via the "conforming" conditional use provisions in MCC 11.15.2028(B)) must *again* proceed with conditional use approval.

- ♦ If I conclude that Applicant does not possess a valid, enduring non-conforming use, then I must finally determine whether Applicant fulfills the criteria that control any resumption of such a use. ^[2]

B. SITE AND VICINITY DESCRIPTIONS

Applicant maintains dog kennel facilities on Sauvie Island situated on roughly 9½ acres in an EFU district. Approximately six acres comprise horse pasture, and Applicant raises some horses. Although composed of agricultural land, the property presents farming difficulties arising from its shape, inadequate drainage, and limited access.

The property contains an existing 50-dog kennel, which Applicant has operated for approximately six years as "Sauvie Island Kennels." According to Applicant,

"Sauvie Island Kennel[s] is considered by many to be one of the premiere [*sic*] boarding, training and breeding kennel operations in the Portland/Vancouver metropolitan area."

Nothing in the lengthy historical record seems to dispute that characterization.

Applicant seeks authority to upgrade the facility in order to house up to 75 dogs, and to replace the two older kennel buildings with one large building that would

² I conclude that, because MCC 11.15.8805(B) provides that a discontinued use may be "re-established" if it "conforms with the requirements of this code at the time of the proposed resumption," and because Applicant's kennel facilities do indeed qualify as a "conditional use" listed in MCC 11.15.2012(B)(11), I find nothing in the Zoning Ordinance that would preclude the "re-establishment" of a discontinued use via a request for conditional use approval under the peculiar circumstances of this case.

In fact, if Applicant fulfills the criteria for the belated recognition of a conditional use, the resumption issue disappears. On the other hand, if Applicant cannot, in the words of MCC 11.15.8805(B), prove "conform[ance] with the requirements of this code," and if those requirements now mandate the conditional use process (which indeed they do; see MCC 11.15.2012(B)), then the resumption similarly disappears.

incorporate state-of-the-art construction techniques and amenities for kennel operations. The new building would then be connected to an existing third building, resulting in a kennel facility of one continuous design, as opposed to disparate, unconnected units.

The property contains two residences: a kennel-related "watchman's" residence occupied by Applicant — which the County approved in 1990 (CU 23-90) — and an older residence occupied by Elden and Marguerite Persinger, the former owners. The Persingers purchased the property in 1973, and still reside there pursuant to an agreement between Applicant and themselves. Applicant entered into a lease/purchase agreement with the Persingers in 1989, and that agreement allows the Persingers to reside on the property for the remainder of their lives.

Surrounding properties comprise agricultural or open space uses. A duck hunting club (Marquam Farms) operates on a 39-acre parcel to the east and north of the subject property. To the west and south lie open fields and crop lands with scattered farm houses and accessory structures, plus a large dairy farm. The several-thousand-acre Sturgeon Lake Wildlife Refuge owned by the Oregon Department of Fish and Wildlife lies to the northwest, separated from both the subject property and N.W. Reed-er Road by a grass-covered dike.

As least as of 1990, the island contained (and appears to still contain) two other active kennels.

C. COMPREHENSIVE PLAN AND ZONING ORDINANCE CONSIDERATIONS

The Comprehensive Plan designates the site as "Exclusive Farm Use," and it lies within an EFU zoning district.

D. LAND USE BACKGROUND / HISTORY

(1). GENERAL

The current kennel operation uses two of the original buildings that the original kennel owner (Wallace) constructed when kennel operations first began on Sauvie Island at this location in 1952. The existing kennel facility comprised the first such facility on Sauvie Island; at least three other kennels followed, two of which remain active.

At some point in the 1960s, the kennel facility became known as "Lake Tree Kennels." From the original "Wallace" operation, the kennel facility proceeded through a number of owners/operators in the 1960s and 1970s, which the record identifies (by last name of the owner/operator) as Blitz, Courtway, Eaton, Melfert, Pein, Persinger.

(2). 1989 PROCEEDINGS

In 1989, Applicant filed an application for a conditional use permit, apparently to remodel the dog kennel operations, but did not seek approval to increase the number of allowed dogs.

Applicant's cover letter to the County recited:

"Please note that this request is pertaining to an *existing* kennel site, in other words, the buildings and structures are intact. However, *permits have lapsed* for over 15 years, therefore a new request is now being sent."

The application does not otherwise identify or describe what "permits" might have "lapsed."

Although the historical record suggests that at least two kinds of "permits" might apply (or have applied) to the kennel facilities (*viz*, land use permits and animal control permits for commercial kennel operations), I can find nothing in the record

from 1989 forward to confirm that Applicant understood or intended the reference to "permits" to mean *land use* permits. Indeed, no entity had ever issued a land use (*viz*, conditional use) permit before that time, thus the reference to "permits" in a technical sense could only have meant animal control permits. Applicant's February 23, 1995, application narrative confirms that the reference to "permits" in the 1989 application meant the permits necessary to operate "commercial" kennel facilities. ("SAUVIE ISLAND KENNELS LAND USE APPLICATION", February 23, 1995, at 5.)^[3]

In any event, the County informed Applicant that it considered a conditional use permit to be unnecessary or not required at that juncture. No one questions this historical fact. On the front page of Applicant's narrative appears the following notation: "Not req'd per B. Hall Feb. '89." The County ultimately approved a proposed remodeling of the kennel facilities, and issued a corresponding building permit. No one appealed that decision.

In reliance on the County's approval the Applicant then entered into a five-year lease/purchase agreement with the Persingers. The Applicant spent considerable sums remodeling the kennel facilities and began operations as "Sauvie Island Kennels."

(3). 1990 PROCEEDINGS

In 1990, Applicant (again) sought conditional use approval for additional remodeling of the kennel facilities, but (again) did not seek approval to increase the number of allowed dogs.

The County (again) informed Applicant that it considered a conditional use permit to be unnecessary under the circumstances. No one questions this historical fact. The County informed Applicant that it needed only to proceed with the Design

³ A "kennel" need not qualify as a *commercial* operation. See MCC 11.15.0010 (definition of "kennel"). The hearings officer's decision in DR 4-94 recites that Applicant's reference to "lapsed" permits "demonstrates that the applicant either had knowledge or at least suspected that the prior kennel *use* had 'lapsed.'" (DECISION at 7 [emphasis added].) To the extent that the hearings officer's reference to "kennel use" meant "*commercial* kennel use," then the reference would be correct. To the extent that it meant "*non-conforming* kennel use," it would be an assumption not otherwise supported by the record.

Review process, and the County subsequently issued the desired remodeling permit in August, 1990, after the Applicant completed the requisite Design Review proceedings. (See DR 90-07-02.)

In the County's file in DR 90-07-02, there appears a copy of the page in the County's Zoning Ordinance that contained MCC 11.15.2028(B), which then (as now) provided, in pertinent part:

"Conditional uses *listed* in subpart MCC [11.15].2012 *legally established* prior to August 14, 1980, *shall be deemed conforming* and not subject to the [non-conforming use] provisions of MCC [11.15].8804 [*sic*; '.8805'] . . ."
(Emphasis added.)^[4]

On that same page, and directly adjacent to MCC 11.15.2028(B), there appears someone's handwritten notation — in red ink — that reads as follows:

"The Persinger Kennel is therefore a Conforming CU — therefore does not expire per October 8, 1990, opinion from John DuBay [chief Assistant County Counsel for land use matters at the time]."

It seems reasonably apparent that the reference to "CU" in that handwritten passage presumably means "conditional use."

The record also contains Mr. DuBay's October 8, 1990, memorandum on the same subject, which declares, in pertinent part:

"I agree with you that the zoning code provides no way to terminate CUPs^[5] because of non[-]use where the permit sets no expiration date."

However, the historical record sheds no light on the question why Mr. DuBay's opinion *post-dates* the 1990 Design Review permit approval by two months. In

⁴ At the time (as now), "dog kennels" comprised a conditional use "listed" in MCC 11.15.2012(B)(11).

⁵ Nothing in the memorandum suggests what the "P" stands for in the term "CUP." I have inferred from the remainder of the 1990 file that it likely stands for "Permit."

any event, the existence of a "conditional use" formed a condition precedent to Design Review. (See MCC 11.15.7820.)

Also in 1990, Applicant sought separate conditional use approval to expand kennel operations in order to construct or maintain a "watchman's residence" on the property, as an "accessory" use related to an existing conditional use, *viz*, the kennel facilities. (See CU 23-90.)

During a November, 1990, Planning Commission hearing on this particular request, a neighboring property owner (Marquam Farms) urged that the kennel facilities comprised an "illegal" operation because the facilities had apparently been "abandoned" in 1971. At that hearing, the Planning Commission wondered how (or whether) it could approve the watchman's residence if the underlying use was not legal or authorized. Staff at the hearing described the history of prior kennel approvals and opined that the County considered the kennel operation to be authorized as a "conforming" conditional use" pursuant to MCC 11.15.2028(B).

The Planning Commission thereafter approved a conditional use permit for the watchman's residence in November, 1990, for all practical purposes interpreting MCC 11.15.2082(B) in a manner that rendered the existing kennel operations a "legally established" — and thus a "conforming" — use upon which the Planning Commission could then predicate the approval of an "accessory" use.

No one appealed that decision. The Applicant thereafter added a third building and a perimeter fence to the kennel facility, and constructed a watchman's residence.

(4). 1994 PROCEEDINGS

(a). Application / Initial Decision

In 1994, Applicant sought conditional use approval for an "expansion of an existing approved conditional use of the dog kennel." (Undated letter received by the

County with the application on 1-10-94.) Applicant sought to demolish two existing kennel buildings and replace them with one or more structures designed to house 75 dogs. At the time, Applicant housed up to 50 dogs.

The County (again) informed Applicant that it considered a conditional use permit to be unnecessary or not required. No one questions this historical fact. Staff apparently again contacted John DuBay about the matter, and Mr. DuBay reiterated his 1980 opinion, *viz*, the kennel comprised a

“use that existed without limitation, could be expanded per MCC 11.15.2028(B), and that only Design Review with notice would be required.” (10-6-94 memo from Bob Hall to Scott Pemble.)

The County thereafter informed Applicant that it needed only to proceed with the Design Review process. (See DR 4-94.)

In April, 1994, the County issued its “Administrative Decision” approving Applicant’s Design Review Plan:

“... [Applicant] propose[s] to demolish two exiting kennel buildings and replace them with one, larger structure, designed to house 55 adult dogs. An existing kennel building for 20 adult dogs would remain. The facility is licensed to board up to 50 dogs; the proposed expansion would increase the kennel size to 75 dogs. . . .” (April, 1994, ADMINISTRATIVE DECISION at 1.)

After Applicant received administrative Design Review Plan approval in April, 1994, but before anyone had appealed, Applicant exercised the purchase option on the property and bought it from the Persingers.

(b). Opponents' Appeal

A number of persons — who for convenience will simply be identified as “Marquam Farms” — then appealed the Planning Director's administrative Design Review approval. Marquam Farms urged, among other things, that:

- ◆ “The dog kennel . . . was not operated for one or more periods exceeding one year apiece^[6] after the property on which the kennel is situated was zoned. Dog kennels have not been permitted uses on Applicants' property since zoning was applied. Accordingly, use of the dog kennel was ‘interrupted’ and ‘abandoned’ and its nonconforming use status no longer exists under both Oregon state law and the Multnomah County Code.” (§ 1, “Grounds For Reversal,” May 6, 1994, “NOTICE OF APPEAL” [emphasis added])
- ◆ “Assuming the dog kennel was a nonconforming use, . . . an application for Final Design Review Plan is the wrong way to seek its expansion or alteration. State law and the county code establish standards and procedures for alterations/ expansions of nonconforming uses, none of which was sought, satisfied, or applied in DR 4-94.” (§ 3, “Grounds For Reversal,” May 6, 1994, “NOTICE OF APPEAL.”)

The record contains nothing to suggest that Marquam Farms' NOTICE OF APPEAL itself specifically challenged the manner in which the County had previously interpreted MCC 11.15.2028(B) to allow the kennel facility as a conditional use. Indeed, the May, 1994, NOTICE OF APPEAL contained no mention of MCC 11.15.2028(B). Marquam Farms did, however, submit, a written memorandum dated July 27, 1994, that discussed MCC 11.15.2028(B) in detail. Ultimately, I find nothing in the record to suggest that the discrepancy between the issues raised within the NOTICE OF APPEAL itself and the appellants' written arguments made any difference to anyone in the course of the 1994 proceedings.

⁶ Until 1990, the County's non-conforming use ordinance codified a *one-year* period for determining “abandonment” or “discontinuance” issues. The ordinance now codifies a two-year period. See MCC 11.15.8805(B).

—•••••—

(c). Planning Director's Interpretation of MCC 11.15.2028(B)

At a July, 1994, hearing on that appeal, the hearings officer concluded that he would first resolve the question whether the kennel operations comprised a lawful conditional use in the first place — a question that the Design Review process itself makes jurisdictional and thus determinative. (See MCC 11.15.7820 ["The provisions of MCC .7805 through .7865 shall apply to all *conditional* . . . uses in any district[.]"] (Emphasis added.))

To foster the resolution of that question, the hearings officer requested an interpretation of MCC 11.15.2028(B) from the County. In a July 29, 1994, memorandum, the County's Planning Director interpreted MCC 11.15.2028(B) as follows:

"[I]f the use was [1] *legally established* prior to August 14, 1980[,] and [2] was *not abandoned or discontinued* for any reason for more than one year . . . , then the provisions of § 2028[B] apply. . . ." (Emphasis and enumeration added.)

As so construed, the Planning Director appended the "abandoned"/"discontinued" phraseology to MCC 11.15.2028(B) and, in effect, added a condition that the ordinance provision does not make explicit. The Planning Director's interpretation would mean that a species of "'conforming' conditional use"^[7] could lapse by reason of nonuse for a prescribed period of time.

Accordingly, the Planning Director further concluded that

"[the kennel operation] *was an established non[-]conforming use which lost its legal status in 1971* because it was not used as a Kennel for more than one year . . . Therefore, it was *not* a legally established use as of August 14, 1980." (Emphasis added.)

⁷ MCC 11.15.2028(B) makes a very plain connection between "conditional uses" and "conforming" uses. Thus, the phrase "'conforming' conditional use" succinctly describes the type of use that results from an application of that provision.

(d). Hearings Officer's Decision

In his August 19, 1994, decision (the "DECISION"), the hearings officer concluded that his authority to proceed with the Design Review appeal depended at the outset on the question whether the underlying use comprised a lawful "conditional" use:

"The outcome of this turns on whether or not staff's interpretation of MCC 11.15.2028(B) is correct. If staff's interpretation of MCC 11.15.2028(B) is wrong, and if the use is not otherwise a lawful use in the EFU zone, then the Hearings Officer *lacks authority to approve the Design Review request, unless or until the underlying kennel use receives appropriate land use approval* to make it a lawful use in the zone." (DECISION at 3 [emphasis added].)

Although the hearings officer's decision does not specifically describe the Applicant's interpretation of MCC 11.15.2028(B), in a July 28, 1994, memorandum (denominated "APPLICANT'S BRIEF") Applicant interpreted that provision as follows:

"Applicants believe that this provision means precisely what it says: if (1) a use such as a kennel is listed in MCC 11.15.2012; and (2) the use was legally established prior to August 14, 1980, it is as if the county gave the use a conditional use permit on the day it was established. The use is expressly deemed 'conforming,' and the right to continue the use is not lost by abandonment." (APPLICANT'S BRIEF at 1.)

Under that interpretation of MCC 11.15.2028(B), Applicant declared that "[t]here is no question of determining whether the use was continuously as a maintained 'nonconforming use'" (APPLICANT'S BRIEF at 1-2), distinguishing between the "lawful-at-the-time-of-zoning-enactment" provision in the non-conforming use pro-

vision in ORS 215.130(5)^[8] and the “lawful-*at-some-prior-point-in-time*” language in MCC 11.15.2028(B).

Applicant also concluded that, if MCC 11.15.2028(B) were to be construed as requiring the existence of a conditional use *permit* in order to be “legally established,” the provision would be superfluous. (APPLICANT’S BRIEF at 3–4.) Applicant did not, however, examine the question whether MCC 11.15.2028(B) itself might conflict with ORS 215.130(5) or the separate “nonfarm use” provisions in ORS 215.283.

Ultimately, the hearings officer concluded that “[11.15].2028(B) cannot be interpreted in the manner suggested by the applicant and the staff, without directly conflicting with ORS 215.283.” (DECISION at 3.)^[9] More specifically, he concluded that

⁸ ORS 215.130(5) provides, in pertinent part:

“The lawful use of any building, structure or land *at the time of the enactment or amendment* of any zoning ordinance or regulation may be continued. . . .” (Emphasis added.)

⁹ For reference, ORS 215.283 — which applies in counties that have *not* adopted “marginal lands” provisions (*cf.* ORS 215.213) — provides, in pertinent part:

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

“(m) *Dog kennels* not described in subsection (1)(j) of this section.” (Emphasis added.)

The legislature’s 1995 amendments to ORS 215.283 via SB 834 (*see* 1995 Or Laws, ch 528, § 2) did not amend any portion of ORS 215.283 that has any bearing here.

“... the only way that [MCC 11.15].2028(B) can be construed in such a way so as not to be in conflict with the statutory scheme [in ORS 215.283] is to interpret the ordinance to mean that [1] the kennel use must not only have been *listed* as a conditional use, but [2] it must have been *legally established as such, prior to August 14, 1980* (i.e., it must have *actually obtained a conditional use permit*).” (DECISION at 4 [emphasis and enumeration added].)

Because no operator of the kennel facility had ever obtained a conditional use “permit” before August 14, 1980, the hearings officer concluded that “the applicant cannot take advantage of whatever benefit MCC 11.15.2028(B) might confer.” (DECISION at 4.) The hearings officer did not, however, describe or examine what “benefit” .2028(B) *does* purport to confer.

The hearings officer separately concluded that an additional inquiry into the kennel’s status in 1958 must be made in order to resolve the separate question whether the kennel operation nevertheless comprised a valid “non-conforming” use. He did not, however, explain why issues of non-conforming use bore any relationship to Design Review issues.^[10]

“... [T]he *only way* in which this particular kennel could have been lawful in 1958, when zoning came into effect, was if the use was a *lawfully established non-conforming use* [at that time].” (DECISION at 4 [emphasis added].)

The hearings officer rendered findings with respect to the following chronology:

- ♦ From 1952 to August, 1957, the “Wallace” kennel operated on the premises. (DECISION at 5.)

¹⁰ As I read the Design Review provisions in MCC 11.15.7805, *et seq.*, neither the re-sumption nor the alteration of a non-conforming use *plainly* invokes Design Review. (See MCC 11.15.7820 [listing the kinds of uses].)

- ◆ From August, 1957, to December, 1962, the "Blitz" kennel operated on the premises. (*Id.*)
- ◆ There exists nothing in the record to determine what occurred during the period from December, 1962, to February, 1964. (*Id.*)

Because the County's zoning ordinance first applied to the property as of July 10, 1958, the kennel facilities became a valid non-conforming use on that date. (DECISION at 5.) However, because the hearings officer viewed the record as silent with respect to the period from December, 1962, to February, 1964, he concluded that there existed no "substantial evidence" of continuous kennel usage during that period. (DECISION at 6.)

The County's non-conforming use ordinance during that era declared that the cessation of a non-conforming use for more than one year constituted, in effect, an "abandonment" or "discontinuance" of the use. Thus, the hearings officer concluded that

"the non-conforming use status of the kennel expired on or about January 1, 1964, one year and one day after the use was discontinued in December, 1962." (DECISION at 6.)

Therefore, a discontinued "use" could not be re-established as a legal use unless and until first it demonstrated compliance with the County's Zoning Ordinance in some other proceeding. (DECISION at 6.)

The hearings officer thus concluded that, as of August, 1994, the then-existing kennel use did *not* comprise a "lawful" use, and that the absence of a "lawful" use deprived him of any authority to sustain Design Review approval. (DECISION at 7-8.) But he also concluded that that determination was "without prejudice" to some subsequent determination that a kennel use would either be permitted or otherwise declared legal. (DECISION at 7.)

Thus, as compared and contrasted, the County and hearings officer construed MCC 11.15.2028(B) as follows:

PLANNING DIRECTOR'S INTERPRETATION	HEARINGS OFFICER'S INTERPRETATION	DR 4-94 APPELLANTS' INTERPRETATION
"Conditional uses listed in subpart MCC [11.15].2012 [that were] [1] <i>legally established</i> prior to August 14, 1980[,] and [2] <i>not abandoned or discontinued for any reason for more than one year</i> , shall be deemed conforming and not subject to the provisions of MCC [11.15].8804 [<i>sic</i> ; '.8805'] . . ." (Emphasis added.)	"Conditional uses listed in subpart MCC [11.15].2012 [that were] [1] <i>legally established</i> prior to August 14, 1980[,] and [2] <i>legally established as a 'listed' use prior to August 14, 1980, by obtaining a conditional use permit</i> , shall be deemed conforming and not subject to the provisions of MCC [11.15].8804 [<i>sic</i> ; '.8805'] . . ." (Emphasis added.)	"Conditional uses <i>listed</i> in subpart MCC [11.15].2012 <i>before August 14, 1980</i> , [that were] <i>legally established by virtue of a permit issued</i> prior to August 14, 1980, shall be deemed conforming and not subject to the provisions of MCC [11.15].8804 [<i>sic</i> ; '.8805'] . . ." (Emphasis added.)

The County (via the Planning Director's interpretation), the opponents, and the hearings officer all added interpretive clauses to MCC 11.15.2028(B) that each viewed as implicit within the language in that provision.

Applicant attempted to appeal the hearings officer's decision, but the appeal apparently arrived sometime after the 4:30 p.m. deadline on that last day on which it could be filed. As a result, the County's denial of Applicant's 1994 Design Review application became final.

(5). 1995 PROCEEDINGS

After the adverse hearings officer's decision and the resultant denial of the 1994 Design Review application in DR 4-94, on April 11, 1995, Applicant filed another application, worded as follows:

"Applicants seek conditional use approval, or, alternatively, an alteration of a non-conforming use, for a 75-dog kennel.
..."

The matter came before me on August 16, 1995. Numerous proponents testified in favor of the application; no one testified in opposition at that hearing. I discuss the pertinent criteria and findings in detail *infra*.

II. PROCEDURAL ISSUES

By letter dated August 15, 1995, Marquam Farms Corporation — owner of adjacent property — submitted a letter that addressed five discrete subjects. Some of the subjects comprised preliminary procedural matters upon which I made rulings at the beginning of the August 16 hearing.

Marquam Farms' August 15, 1995, letter raised the following issues.

A. REQUEST FOR SETOVER OR CONTINUANCE

The attorneys for Marquam Farms requested either a setover or a continuance of the scheduled August 16 hearing. They requested a setover because of the unavailability of two of their attorneys on that date. Alternatively, they requested that I hold the record open for twenty-one days for purposes of making "any appropriate response."

Because:

- ♦ the request for the setover comprised a veritable last-minute request that, in my opinion, lacked a sufficient explanation why the request had not been made sooner,^[11]

¹¹ For instance, I received the faxed letter at approximately 4:40 p.m. on August 15, the afternoon before the scheduled hearing. The fax had apparently been transmitted to me at 3:23 p.m. on that same date.

- ♦ the attorneys' unavailability did not otherwise prevent them from preparing and submitting written comments or arguments, and
- ♦ ORS 197.763(4)(b) grants no right to a continuance *except* under circumstances and conditions that did not exist as of the August 15 letter,^[12]

I ruled during the August 16 hearing that there would be no setover under the circumstances.

However, ORS 197.763(6) does grant any "participant" — which, by virtue of its August 15, 1995, letter I deem Marquam Farms to be — the right to request that the record remain open for at least seven days.^[13] I therefore ruled that the record would remain open according to the following schedule:

- ♦ on or before August 23 at 4:30 p.m., any proponent of the application would be allowed to offer any additional evidence or further materials in support of the proposal;
- ♦ on or before August 30 at 4:30 p.m., any opponent of the application would be allowed to offer evidence or further materials in opposition to the proposal; and

¹² ORS 197.763(4)(b) provides, in pertinent part:

"... If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing. ..."

Marquam Farms did not predicate its pre-hearing request for a setover on the presence of "additional documents or evidence."

¹³ ORS 197.763(6) provides, in pertinent part:

"*Unless* there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. ..." (Emphasis added.)

- ♦ on or before September 6 at 4:30 p.m., any proponent of the application would be allowed to offer any rebuttal evidence or materials directly related to any evidence or materials that an opponent had filed on or before the August 30 deadline.

Thus, Marquam Farms would have an additional 14 days beyond the August 16, 1995, hearing within which to offer additional evidence or materials.

B. CLARITY OR ADEQUACY OF NOTICE

Marquam Farms' August 15, 1995, letter also challenged the clarity or adequacy of the hearing notice, and requested that I "make a preliminary determination [at the August 16, 1995, hearing] regarding the scope of the *application*." (Emphasis added.) I instead made a determination regarding the scope or adequacy of the *hearing notice*.

I perceive a substantive distinction between (1) a hearing notice that fails in some material fashion to adequately paraphrase or describe an application or the controlling criteria, and (2) a hearing notice that adequately paraphrases or summarizes an application that may itself contain some ambiguity. ORS 197.763(3) — incorporated by the general notice requirement in 215.416(5) — requires that the hearing notice:

"(a) Explain the nature of the application and the proposed use or uses which could be authorized; [and]

"(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue [.]"

In its August 15, 1995, letter, Marquam Farms suggested that it was "not clear" whether the approval request comprised an approval to expand an allegedly lawful 50-dog kennel to a 75-dog kennel, or whether the request comprised an approval of a 75-dog kennel when no "lawful kennel use presently exists." It urged that the matter be re-noticed for hearing, although it offered no reason why anyone might be prejudiced if that did not occur.

I have cited Applicant's various characterizations of the pending conditional use request *supra* beginning at page 7. The County's hearing notice recited that

"Applicant requests Conditional Use approval, or approval to alter a Non-Conforming Use, to expand the capacity of the existing dog kennel facility on this property from a maximum of 50 dogs to 75 dogs."

I concluded at the August 16 hearing that, notwithstanding some minimal degree of grammatical differences, the County's notice of hearing fairly paraphrased the substance of the application as required by ORS 197.763(3). Whether the *application itself* might have been more clearly articulated remains inconsequential for purposes of assessing the adequacy of the *hearing notice*; the notice can scarcely be held to higher standards of clarity than the application.

Thus, as of the August 16, 1995, hearing I found the County's hearing notice to be neither fatally ambiguous nor prejudicial to any interested party, and I denied Marquam Farms' request that the hearing be re-noticed to cure any grammatical flaw (if any) that, in my opinion, did not and could not affect substantial rights of any interested party.

By a related letter dated September 6, 1995, Marquam Farms objected to my resolution of the "notice" issue during the August 16, 1995, hearing, complaining that I "ruled that matters *outside* of the notice permitted the scope of the hearing to include a new request for a conditional use for a 75 dog kennel." (Emphasis added.)^[14]

Assuming that Marquam Farms' September 6, 1995, letter fulfills the criteria for post-hearing submittals that I established at the August 16, 1995, hearing, I cannot help but observe that:

¹⁴ Neither Marquam Farms nor any other interested party appeared at the August 16, 1995, hearing to challenge, or otherwise inquire about, the adequacy of the hearing notice.

- ◆ The resolution of Marquam Farms' initial objection as to the clarity of the hearing notice can scarcely be resolved without a review of, and comparison with, the application and Applicant's phraseology. I thus conclude that Marquam Farms' request for clarification invited just such a comparison and, accordingly, that Marquam Farms invited reference to matters "outside" of the notice in order to ascertain whether the notice proved fatally ambiguous.
- ◆ Marquam Farms itself specifically cited the Applicant's "application form" in its August 15, 1995, letter, following which Marquam Farms remarked that "from *this* [viz, the application form] it is not clear" what Applicant's request comprises. I thus conclude that Marquam Farms *itself* initially cited "matters outside of the notice" as an indispensable component of its request that I interpret the clarity of the hearing notice.
- ◆ Neither in its August 15, 1995, letter nor its September 6, 1995, letter has Marquam Farms suggested any reason why it has been misled or confused by Applicant's most recent approval request. Because Marquam Farms had adequate time and opportunity to formulate some reason why, given its participation in DR 4-94, a re-worded notice would rectify some prejudicial misunderstanding, and because I cannot conceive that a reasonable person in Marquam Farms' position could be materially misled by the wording of the hearing notice, I conclude that the hearing notice did not prejudice Marquam Farms in such a manner that it could not effectively participate here.
- ◆ Marquam Farms' September 6, 1995, letter contradicts the August 15, 1995, letter in a manner that suggests the absence of any lingering uncertainty. The earlier letter maintains that "it is *not clear* whether the request is for approval to expand an allegedly lawful 50 dog kennel to a 75 dog kennel, or whether the request is for approval of a 75 dog kennel where no lawful kennel presently exist" (emphasis added), while the most recent letter declares that the hearing notice was "*clearly* limited to expansion of a kennel from 50 to 75 dogs" (emphasis added). In other words, what was apparently "not clear" on August 15 had become "clear[]" by September 6. In that light, I conclude that Marquam Farms has relinquished the objection in its August 15 letter.

C. ISSUE AND CLAIM PRECLUSION

Marquam Farms also asserted in its August 15, 1995, letter that

"[t]o the extent that the applicants rely on either an existing conditional use permit or an existing non-conforming use for a 50 dog kennel, both issue and claim preclusion (formerly commonly referred to as collateral estoppel and *res judicata*) prevent the County from reopening those issues to overturn the previous [August, 1994] decision of the Hearings Officer [in DR 4-94]."

Because that issue implicated substantive rather than procedural issues, I determined that those issues would be addressed on the merits within this decision.

D. PENDING LITIGATION

Marquam Farms also suggested in its August 15, 1995, letter that the pendency of certain litigation in Multnomah County Circuit Court should preempt the pending land use proceedings. Because Marquam Farms itself had initially challenged the kennel operations within the context of *both* the 1990 *and* 1994 County land use proceedings, I concluded that it had already accorded the land use process a priority status in its challenges to the kennel operations.

I therefore concluded that, not only would I not abate the pending land use proceedings pending the completion of litigation, but I believed the contrary result should obtain, *viz*, any pending litigation should await a final determination as to Applicant's quest for conditional use or non-conforming use status.

E. PRECEDENTIAL IMPACT OF OAR 660-33-120

Finally, Marquam Farms urged in its August 15, 1995, letter that, notwithstanding any merit to Applicant's proposal, the 1994 promulgation of OAR 660-33-120 would prohibit kennel facilities in any event.

Because I determined that this particular subject, like the subject of "issue and claim preclusion" mentioned above, implicated substantive rather than procedural issues, I would address it on the merits within this decision.

III. APPLICABLE CRITERIA — CONDITIONAL USE

The following criteria apply to the proposed development:

A. EXCLUSIVE FARM ZONE USES [ORS 215.283]

As of Applicant's 1995 application, ORS 215.283 provided, in pertinent part:

* * * * *

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

* * * * *

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

The Applicant's kennel facilities comprise kennels "not described in subsection (1)(j)," *viz*, non-greyhound kennels.

The 1995 legislature's recent amendment to ORS 215.283 via SB 834 (*see* 1995 Or Laws, ch. 528, § 2) not only created an unrelated provision but could have no effect on the pending application in any event.

**B. STANDARDS FOR APPROVAL OF EXCLUSIVE FARM ZONE USES
[ORS 215.296]**

ORS 215.296 provides, in pertinent part:

"(1) A use allowed under ORS . . . 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:

"(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

"(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

*** * * * ***

"(10) Nothing in this section shall prevent a local governing body approving a use allowed under ORS . . . 215.283(2) from establishing standards in addition to those set forth in subsection (1) of this section or from imposing conditions to insure conformance with such additional standards."

C. LCDC "AGRICULTURAL LAND" ADMINISTRATIVE RULES
[OAR 660-33-120/660-33-130]

In June, 1994, LCDC promulgated OAR 660-33-120, which provides, in pertinent part:

"The specific development and uses listed in the following table are permitted in the areas that qualify for the designation pursuant to this division. . . . The abbreviations used within the schedule shall have the following meanings:

"A Use may be allowed. . . .

"R Use may be approved, after required review. . . .

"* Use not permitted.

"# Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-33-130. . . .

<u>HV</u> <u>Farm</u>	<u>All</u> <u>Other</u>	<u>USES</u>
...
*18	R5	Dog kennels."

OAR 660-33-130, likewise effective in June, 1994, additionally provides, in pertinent part:

"The following standards apply to uses listed in OAR 660-33-120 where the corresponding section number is shown on the chart for a specific use under consideration. . . .

"(18) Existing facilities may be maintained, enhanced or expanded, subject to other requirements of law. . . ."

**D. EFU CONDITIONAL USES
[MCC 11.15.2012(B)]**

MCC 11.15.2012(B) provides:

"The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7015 to .7140:

"(11) Dog kennels."

MCC 11.15.0010 defines "kennel" as

"[a]ny lot or premises on which four or more dogs, more than six months of age, are kept."

**E. CONDITIONAL USE — GENERAL APPROVAL CRITERIA
[MCC 11.15.7120(A)]**

MCC 11.15.7120(A) — implicated via MCC 11.15.2012(B), above — sets forth general conditional use approval criteria:

"A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional

use is allowed. If no such criteria are provided,^[15] the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

- "(1) Is consistent with the character of the area;
- "(2) Will not adversely affect natural resources;
- "(3) Will not conflict with farm or forest uses in the area;
- "(4) Will not require public services other than those existing or programmed for the area;
- "(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;
- "(6) Will not create hazardous conditions; and
- "(7) Will satisfy the applicable policies of the Comprehensive Plan."

F. CONDITIONAL USE — SPECIFIC EFU APPROVAL CRITERIA [MCC 11.15.7122]

In addition to the general conditional use approval criteria in MCC 11.15.7120, MCC 11.15.7122 additionally provides:

¹⁵ The "Exclusive Farm Use" provisions in MCC 11.15.2002–11.15.2030 do not contain separate approval criteria for conditional uses. MCC 11.15.2012(B) specifically cites the general approval criteria in MCC 11.15.7105–11.15.7140 as controlling.

"(A) In addition to the criteria of MCC .7120, an applicant for a Conditional Use listed in MCC .2102(B) must demonstrate that the use:

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

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

"* * * * *"

With one exception, this provision duplicates the language in ORS 215.296(1), quoted above; the ordinance renders the criteria in subparagraphs .7122(A)(1) and (2) *conjunctive*, while ORS 215.296 makes the counterpart provisions in subparagraphs (1)(a) and (b) *disjunctive*.

G. ANIMAL KEEPING — CONDITIONAL USE APPROVAL CRITERIA [MCC 11.15.7205-.7240]

In addition to all of the above conditional use criteria, MCC 11.15.7205-.7240 provide additional criteria.

MCC 11.15.7205 provides, in pertinent part:

"Dog kennels . . . may be permitted only upon the approval of the approval authority as a conditional use."

MCC 11.15.7210 provides:

"These uses shall be permitted only in the following areas and only where they will not conflict with the surrounding property uses:

- "(A) In CFU, F-2, MUA-20, MUF, and RR districts or those areas of similar low population density.**
- "(B) C-3 or C-2 commercial districts.**
- "(C) Manufacturing districts."**

MCC 11.15.7215 bears the caption **"Minimum Site Size Requirements"** and provides, in full:

- "(A) Area: Two acres.**
- "(B) Width: Two hundred fifty feet.**
- "(C) Depth: Two hundred fifty feet."**

MCC 11.15.7220 provides:

"These uses shall be located no closer than one hundred feet to any lot line, in or adjacent to an F, R, or A district."

MCC 11.15.7230 provides:

- "(A) All kennels, runs or pens shall be constructed of masonry or such other opaque material as shall provide for cleanliness, ease of maintenance, and sound and noise control.**

- "(B) All kennels, runs and other facilities shall be designed, constructed, and located on the site in a manner that will minimize the adverse effects upon the surrounding properties. Among the factors that shall be considered are the relationship of the use to the topography, natural and planted horticultural screening, the direction and intensity of the prevailing winds, the relationship and location of residences and public facilities on nearby properties, and other similar factors.**
- "(C) The owner or operator of a use approved under this section shall maintain the premises in a clean, orderly and sanitary condition at all times.**
...
- "(D) A separate housing facility, pen or kennel space may be required for each dog over six months of age kept on the premises over twenty-four hours."**

Finally, MCC 11.15.7240 provides an exemption for certain facilities:

"Animal facilities for which Animal Control Facility licenses were issued prior to October 31, 1985[,] shall be exempted from the provisions of MCC .7205-.7235 unless:

- "(A) There is an increase in the number of animals in the facility, or**
- "(B) The use is discontinued for a period of more than two years."**

H. COMPREHENSIVE PLAN PROVISIONS [POLICIES 9, 13, 22, 37, 38, AND 40]

The Staff Report identifies Comprehensive Plan Policies 9, 13, 22, 37, 38, and 40 as applicable. (Staff Report at 5 and 11.) I will discuss the pertinent provisions of those policies *infra* in the "Findings" portion of the conditional use discussion.

IV. PRECLUSION ISSUES — CONDITIONAL USE

Before proceeding to the substantive "conditional use" issues, a labyrinthine array of preliminary issues that I broadly categorize as "preclusion" issues need to be addressed and resolved. With one exception, these comprise issues that could effectively derail Applicant's approval request *apart from* the question whether the request itself fulfills the pertinent conditional use or non-conforming use criteria in the Zoning Ordinance. Marquam Farms' August 15, 1995, letter raises some of these issues.

The lone exception comprises the question whether *Marquam Farms itself* ought to be precluded from raising challenges that it unsuccessfully asserted in 1990 but did not appeal at that time.

Thus, I need to traverse the bewildering land use history surrounding the kennel facilities and resolve the following key questions:

- ◆ Is the hearings officer's August, 1994, decision in DR 4-94 binding on Applicant, such that I am now precluded from revisiting many of the legal and factual issues that the parties debated in 1994?
- ◆ What, if any, precedential or preclusive weight ought I accord the County's sequential determinations in 1989 and 1990 that the kennel facilities did *not* require "conditional use" approval?
- ◆ What, if any, precedential or preclusive effect do the 1989 and 1990 *approvals* — as opposed to *denials* — have on subsequent proceedings involving the kennel facilities?

- ♦ What, if any, precedential or preclusive effect do I accord the fact that the Applicant successfully and appropriately obtained conditional use approval in 1990 — an approval now beyond challenge — for a “watchman’s residence” as an accessory use to the kennel facilities?
- ♦ Is the current approval request sufficiently identical to the Design Review request in 4-94 that, all else aside, there exists no practical or logical reason to allow Applicant to plow the same furrow again?
- ♦ What, if any, precedential or preclusive effect do I accord the fact that Marquam Farms (1) *actively participated* in the 1990 proceedings in CU 23-90, (2) *raised* a “legality-of-use” issue in 1990 that later resurfaced in Marquam Farms’ 1994 Design Review appeal, and (3) *opted to not appeal* the adverse resolution of the “legality-of-use” issue in 1990?

As I explain below, I conclude that none of the above procedural questions foreclose consideration of the merits of Applicant’s current request for approval.

A. BECAUSE IT *DENIED* A REQUESTED APPROVAL, THE HEARINGS OFFICER’S 1994 DECISION DOES NOT PRECLUDE A RECONSIDERATION OF EITHER LEGAL OR FACTUAL “CONDITIONAL USE” ISSUES

Alone among the series of decisions and approvals that Applicant has sought and obtained since 1989, the hearings officer’s 1994 decision in DR 4-94 *denied* a requested approval, *viz*, Design Review approval. The fact that that decision “granted” an *appeal* of Design Review approval neither cloaks nor alters the fact that, unlike the decisions in 1989 (building permit), DR 90-07-02 (design review), and CU 23-90 (conditional use), no rights vested by reason of any approval.

The County’s Zoning Ordinance does not prohibit the resubmittal of an application that might have been the subject of an earlier denial. Unless accompanied by some affirmative adjudication of rights or interests, or unless made the subject of an appeal to the Land Use Board of Appeals (or beyond) in which a declaration as to the

existence or nonexistence of legal rights or interests occurs within that appellate context, the *denial* of a requested approval achieves nothing more the maintenance of the *status quo*.

Indeed, the hearings officer's 1994 decision concludes with the observation that

"... *if* the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review *should not prejudice such later action*, if any. Therefore, the applicant's request for Design Review is denied, *without prejudice*." (August 19, 1994, DECISION at 7 [emphasis added].)

When the County later placed the hearings officer's decision on the Board's September 13, 1994, acknowledgment agenda, it retained and incorporated the "without prejudice" language.

I therefore conclude that, because of the circumstances (*viz*, a denial of a request for approval followed by a subsequent resubmittal of a different nature), and because neither statute nor ordinance requires that the prior *denial* of a land use application binds the applicant in future proceedings, I am, in effect, writing on a slate unfettered and unconfined by the 1994 hearings officer's decision. See *Furler v. Curry County*, 27 Or LUBA 497, 506 (1994); *Reeder v. Clackamas County*, 20 Or LUBA 238, 242-44 (1990); and *S & J Builders v. City of Tigard*, 14 Or LUBA 708, 711-12 (1986).

B. THERE EXISTS NO PURE "IDENTITY OF ISSUES" SUCH THAT "CLAIM PRECLUSION" OR "ISSUE PRECLUSION" MIGHT OTHERWISE APPLY

In its August 15, 1995, letter, Marquam Farms suggested that

"both issue and claim preclusion (formerly commonly referred to as collateral estoppel and *res judicata*) prevent the County from reopening those issues to overturn the previous [August, 1994] decision of the Hearings Officer."

I conclude that, for three reasons, I am not bound by the hearings officer's legal conclusions in DR 4-94.

(1). "CLAIM PRECLUSION" AND "ISSUE PRECLUSION" SERVE
NO PURPOSE IN THIS PARTICULAR PROCEEDING

The 1994 proceedings in DR 4-94 resulted in the *denial* of an approval request, leaving the *status quo* unaffected and vesting no rights. I can find no statute or provision in the County's Zoning Ordinance — and Marquam Farms cites none — that precludes the resubmittal of an approval request under the circumstances that accompany Applicant's request.

Given the fact that someone in Applicant's position can typically reapply for the same or similar approvals after a prescribed period of time, I can find no authority for imposing the litigation-derived doctrines urged by Marquam Farms, nor has anyone cited any. See, for instance, *Nelson v. Clackamas County*, 19 Or LUBA 131, 140 (1990) (recognizing this principle).

(2). WITHIN AN ADMINISTRATIVE CONTEXT, I CANNOT BESTOW *STARE DECISIS* STATUS UPON A PRIOR INTERPRETATION OF A LOCAL ENACTMENT THAT MISINTERPRETS THE ENACTMENT

As I discuss in detail *infra* beginning at page 50, I conclude that the hearings officer's decision in DR 4-94 misinterpreted .2028(B). In effect, that decision renders .2028(B) superfluous and devoid of purpose.

By holding that, before .2028(B) takes effect,

“the kennel use must not only have been listed as a conditional use, but it must have been legally established as such, prior to August 14, 1980 (i.e. *it must have actually obtained a conditional use permit*)” (August 19, 1994, DECISION at 4 [emphasis added]),

the 1994 decision rendered .2028(B) entirely unnecessary; if a use that might otherwise qualify as a “.2028(B)” use had “actually obtained a conditional use permit” in the first place, then the existing use would *already* be “conforming” and would benefit in no respect from a provision such as .2028(B).

Stated differently, because the primary effects of .2028(B) comprise (1) the announcement that the antecedent use “shall be deemed *conforming*” as a *conditional* use, and (2) the declaration that the referent “conforming” conditional use “shall . . . not [be] subject to the [non-conforming use] provisions of MCC .880[5],” the drafters of .2028(B) could only have envisioned the creation or recognition of a species of “use” *other than* a conditional use for which a permit already existed. If not, then the drafters of .2028(B) simply recited the obvious.

Within the administrative context, until such time as LUBA or the courts adopt an interpretation of .2028(B) — and of all of the mirror-image provisions that I have catalogued in the footnote on page 51 — that *either* overturns the Planning Commission’s implicit interpretation in the 1990 proceedings in CU 23–90 *or* conforms to the hearings officer’s 1994 decision in DR 4–94, I cannot adhere to an interpretation of .2028(B) that effectively renders that provision mere surplusage and thus devoid of significance.

(3). THE ISSUES IN DR 4–94 AND THIS PROCEEDING, AND
THE MANNER IN WHICH THE ISSUES AROSE IN DR 4–94,
DO NOT SQUARELY ALIGN

Even assuming for purposes of argument that concepts such as “issue preclusion” or “claim preclusion” might obtain in a land use proceeding on the basis of the proceeding’s administrative characteristics (*see, generally, Fisher Broadcasting, Inc. v. Dept. of Rev.*, 321 Or 341, 355–59, ___ P2d ___ (1995); *Chavez v. Boise Cascade Corp.*, 307 Or 632, 635, 772 P2d 409 (1989); and *North Clackamas School Dist. v. White*, 305

C. THE COUNTY'S SEQUENTIAL, UNIFORM DETERMINATIONS IN 1989 AND 1990 THAT APPLICANT'S KENNEL FACILITIES DID *NOT* REQUIRE "CONDITIONAL USE" APPROVAL CONNOTES IMPLICIT INTERPRETATIONS OF MCC 11.15.2028(B) IN A MANNER THAT LONG AGO RESOLVED THE ISSUE

One cannot examine the chronology underlying Applicant's land use efforts from 1989 to date and remain unaffected by both the persistence and uniformity of the County's determinations and the accompanying representations that Applicant needed no "conditional use" approval in order to maintain and operate the kennel facilities.

An historical tour of the County's cumulative interpretations of the Zoning Ordinance in 1990 alone serves to underscore the precedential impact of those interpretive efforts.

(1). 1990 CONDITIONAL USE PROCEEDINGS

When Applicant sought conditional use approval of a "watchman's residence" in 1990 in CU 23-90, MCC 11.15.2014(E) authorized "uses . . . incidental and accessory to *the uses permitted under MCC .2008 through .2012*," and included, among other things, "[o]ther structures or uses customarily incidental to *any use permitted or approved* in this district."

Thus, it necessarily became a condition precedent to approval — whether implicit or otherwise — that the Planning Commission determine and conclude that there existed a dominant "use[] permitted under MCC .2008 through .2012" or "any [dominant] use permitted or approved" with the EFU district — *viz*, the kennel facilities themselves.

The Planning Commission appears to have done just that. The record contains the tape of the November 6, 1990, Planning Commission hearing, and the tape confirms the following events:

- ◆ The Planning Commission — apparently prodded to do so in some degree by Marquam Farms — inquired whether the underlying kennel use comprised the prerequisite legally-established conditional use, whether by permit or by virtue of MCC 11.15.2028(B).
- ◆ Staff informed the Planning Commission that it (staff) interpreted .2028(B) to render the kennel facilities a “‘conforming’ conditional use.”
- ◆ Staff informed the Planning Commission that it (staff) interpreted .2028(B) to create a species of conditional use that, unlike a *non-conforming* use, could *not* be terminated by abandonment or discontinuance.
- ◆ Staff informed the Planning Commission that a “.2028(B)” conditional use did not require any conditional use approval via the conditional use process in MCC 11.15.7105, *et seq.*, because .2028(B) *itself* grants conditional use status.

Thus, the pivotal question appears to have percolated to the surface during the November 6, 1990, hearing in such an indelible manner that I must conclude that the Planning Commission (1) became fully cognizant of the issue and (2) necessarily — albeit impliedly — rendered an appealable interpretation of .2028(B) in the manner now advocated by Applicant.

I note that Marquam Farms' argument on the appeal in DR 4-94 mirrored that “implied-yet-indispensable” analysis. In the appeal in DR 4-94, Marquam Farms necessarily argued that the hearings officer lacked the authority to sustain the Planning Director's administrative Design Review approval because the Design Review mechanism requires, as an *implied* condition precedent, the pre-existence of either a “conditional” or “community” use (*see* MCC 11.15.7820) — which, according to Marquam Farms, did not actually exist. Although the Planning Director's administrative Design Review approval in DR 4-94 did not *expressly* find the pre-existence of the requisite “conditional” or “community” use, it *implicitly* made that finding. Marquam Farms then challenged that *implicit* finding, according it the same force and effect as an *explicit* finding.

(2). 1990 DESIGN REVIEW PROCEEDINGS

When the County informed Applicant in 1990 that it only needed Design Review approval for remodeling (*see* DR 90-07-02), the "FINAL DESIGN REVIEW" dated August 6, 1990, specifically incorporated a condition derived from MCC 11.15.7230, which, in turn, would not otherwise have applied at all *unless* the County had first determined that the requisite condition precedent in MCC 11.15.7820 — *viz*, a conditional use — existed.

Thus, it necessarily became a condition precedent to approval — whether implicit or otherwise — that the Planning Director determine and conclude that there existed the requisite "conditional use" approval, without which any Design Review approval would be for naught.

(3). THE COUNTY ITSELF HAS "INTERPRETED" MCC 11.15.2028(B) IN DISPOSITIVE FASHION

Although I agree in principle with the hearings officer's 1994 conclusion that local governments' generally ought not be bound by mistakes of law (August 19, 1994, DECISION at 7 and 8), I cannot so easily dismiss the County's consistent characterizations of Applicant's kennel facility — and the effect of the controlling ordinances — as mere "mistakes" or "staff" misinterpretations upon which the "County" inadvertently relied.

Rather, I view such consistent, *ad seriatim* opinions as the functional equivalent of an *interpretation* of the County's Zoning Ordinance upon which persons such as Applicant might rely, and with respect to which persons such as Marquam Farms and others remain bound until the Board itself adopts a contrary interpretation of .2028(B) or until LUBA or the courts undertake to do that.

The separate — and quite different — question whether independent appellate tribunals such as LUBA, the Court of Appeals, or the Supreme Court might similarly be bound by the County's uniform, historical interpretations of its land use enactments

in Applicant's 1989 and 1990 land use proceedings has no bearing here.^[17] Even assuming for purposes of argument that there exists a difference between (1) a Board of County Commissioners' "acknowledgment" of a Planning Commission or hearings officer approval in the absence of an appeal to the Board,^[18] and (2) a Board of County Commissioners' determination of an appeal in accordance with MCC 11.15.8270-.8280 (see *McKenzie v. Multnomah County*, 131 Or App 177, 179 n. 1, 884 P2d 868 (1994) [appeal to Board implicates the *Clark/Gage* criteria]), the question whether the County's prior unappealed staff and Planning Commission approvals in 1989 and 1990 ought to be accorded precedential status *within future County proceedings* as interpretations of a local enactment does not implicate the type of analysis that resulted in *Gage v. City of Portland*, and *Derry v. Douglas County*, *supra*. Had the 1989 and 1990 proceedings resulted in *denials*, my conclusion might be different.

¹⁷ Compare, for instance, *Clark v. Jackson County*, 313 Or 508, 515-18, 836 P2d 710 (1992), and *Smith v. Clackamas County*, 313 Or 519, 524-28, 836 P2d 716 (1992) (LUBA and the courts shall generally defer to a local government's interpretations of land use enactments), with *Gage v. City of Portland*, 319 Or 308, 315-17, 877 P2d 1187 (1994) (LUBA and the courts owe no "deference" to interpretations of land use enactments by a hearings officer); and *Derry v. Douglas County*, 132 Or App 386, 389-90, 888 P2d 588 (1985) (LUBA and the courts owe no "deference" to interpretations of land use enactments by a Planning Commission).

¹⁸ MCC 11.15.8255 provides that

"[t]he written decision of the Planning Commission or the Hearings Officer shall be submitted to the Clerk of the Board by the Planning Director not later than ten days after the decision is announced. The Clerk shall summarize each decision on the agenda for the next Board meeting on planning and zoning matters for which notice can be given under the Charter."

The record reflects that the November 6, 1990, Planning Commission approval of CU 23-90 appeared on the Board of County Commissioners' November 27, 1990, "acknowledgment" agenda. The time for appealing the Planning Commission's decision expired on November 26, 1990; no one appealed

The record does not contain any similar Board consideration of any of the other 1989 or 1990 approvals. Although MCC 11.15.7865 and 11.15.8290 provide for an appeal to a hearings officer from the Planning Director's administrative Design Review approval, nothing in MCC 11.15.7805-.7870 appears to require the submittal of an *unappealed* approval to the Board in the manner otherwise required for Planning Commission or hearings officer decisions.

A local government need not specifically describe its decisions as "interpretive" of local enactments before persons such as Applicant can reasonably rely upon those decisions as reflective of approved constructions of those enactments. The more a local government consistently renders a particular interpretation of a local enactment within similar or identical circumstances, the less likely it becomes that the rest of us can look back and conclude that on each occasion the local government inadvertently made a "mistake of law," or that "staff" necessarily erred in misconstruing a provision.

Thus, when, as here, a local government — whether acting through staff, the Planning Commission, or a hearings officer — repeatedly interprets and implements its ordinances under circumstances in which interested parties (1) *could have* appealed those interpretations within the context of an *approval* but (2) elected to *not* appeal (see the following topic for more on that subject), I find it difficult to accept the argument that the consistency of the interpretations can never take the shape of an *interpretation*, but must remain relegated to a "mistake of law."

D. MARQUAM FARMS' FAILURE TO APPEAL THE 1990
DECISION THAT SPECIFICALLY REJECTED THE IDENTICAL
"LEGALITY-OF-USE" ARGUMENT THAT IT NOW
MAKES PRECLUDES IT FROM RELITIGATING THAT
ISSUE

In Marquam Farms' September 6, 1995, letter, it objected to any consideration of conditional use or non-conforming use issues in *this* proceeding because "those contentions were fully aired and decided in the unappealed Hearings Officer decision in DR 4-94." The correlative question becomes whether, according to that same reasoning, Marquam Farms' current objections via its August 15, 1995, and September 16, 1995, letters likewise come too late.

As I explain beginning at page 44, *supra*, I view the Planning Commission's 1990 decision in CU 23-90 as conclusively — albeit implicitly — resolving the question whether the kennel facilities comprised a "conforming" conditional use pursuant to MCC 11.15.2028(B). The record reflects that Marquam Farms (1) actively participated in the 1990 proceedings, (2) raised a "legality-of-use" issue that later resurfaced in DR 4-94, and (3) elected to not appeal the adverse resolution of that issue in the 1990 proceedings.

In *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), the Supreme Court recently rendered a poignant comment about belated efforts to raise issues in land use proceedings. With but a minor modification, that comment seems fitting here as well. Specifically, the Court championed the Court of Appeals' earlier observation that

“‘[a] party who did not raise an issue in an earlier proceeding because he chose not to participate in it should be as precluded from later raising the issue as a party who did participate but neglected to raise the issue.’” 313 Or at 153 n. 2, quoting from *Mill Creek Glen Protection Assoc. v. Umatilla Co.*, 88 Or App 522, 527, 746 P2d 728 (1987).

Paraphrased only slightly, that comment from *Beck* might well read: “A party who did not *pursue* an issue that it had raised in an earlier proceeding because it chose not to *appeal* the underlying decision should be as precluded from later raising the issue as a party who *did appeal* the underlying decision but *neglected to raise the issue* in the appeal.” As so paraphrased, that conclusion would not be a particularly novel proposition.

Indeed, in *Beck* the Supreme Court resolved the question whether, in a land use proceeding in which a party prevails on one or more issues but loses on one or more issues, that party might purposely refrain from pursuing an appeal with respect to the issues on which that party did not prevail, and then later appeal those same issues within the context of an appeal from a later decision. In land use proceedings, that scenario occurs (or used to occur) with some frequency: *viz*, an opponent of a proposed development appeals an underlying decision and wins some issues while losing others; content with a partial victory in round one, the opponent returns for round two; the opponent loses round two and appeals again. *Beck* makes it plain that the “lost” issues that the opponent chose to not pursue further in round one cannot form any part of an appeal of round two.^[19]

¹⁹ For reasons perhaps peculiar to the land use process, *Beck* would not apply to a land use *proponent* (*viz*, the applicant) when that proponent *fails* to obtain favorable approval and re-submits the same application after the passage of some prescribed period of time. In that event, *Beck* would also not preclude any *opponent* from raising issues in the later proceedings that had not been raised earlier. That scenario would allow, for instance, the parties to debate matters anew *vis-a-vis* the 1994 proceedings, but not the 1990 proceedings in CU 23-90.

Land use proceedings also frequently involve another scenario: an opponent of a proposed development raises a particular issue at the primary decision-making level but loses; rather than risk an unsuccessful appeal of the issue to the governing body (or higher), the opponent does not pursue any appellate resolution and simply allows the decision to become final. In 1990, Marquam Farms apparently did precisely that in CU 23-90. It (1) challenged the lawfulness of Applicant's kennel facilities (*see* tape of November 6, 1990, Planning Commission hearing), (2) received (or precipitated) a specific interpretation of MCC 11.15.2028(B) in response to that challenge, and, after the Planning Commission necessarily determined that the kennel facilities comprised what might be termed a ".2028(B) use," (3) elected to not pursue the matter further. It would not strain logic to apply *Beck's* reasoning to that scenario as well.

Thus, I conclude that — to paraphrase Marquam Farms' September 6, 1995, letter — Marquam Farms' "contentions [about the legality of the kennel facilities] were fully aired and decided in the unappealed [Planning Commission] decision in [CU 90-23]." Marquam Farms' resurrection of issues that could have been appealed to the Board (or beyond) in 1990 comes too late. Unlike the hearings officer's rejection of the Applicant's arguments in DR 4-94, the Planning Commission's rejection of Marquam Farms' arguments in CU 23-90 was *not* "without prejudice." I again emphasize the distinction between proceedings resulting in *approvals* and proceedings resulting in *denials*.

V. DO THE KENNEL FACILITIES ALREADY COMPRISE A ".2028(B)" USE?

Before resolving the question whether Applicant has fulfilled the various "conditional use" criteria in MCC 11.15.7105, *et seq.*, another preliminary question must first be answered: Do the existing kennel facilities comprise what might be termed a "conforming" conditional use, or what might also be labeled a ".2028(B) use"?

If so, then Applicant need not attempt to obtain retroactive conditional use approval for the kennel facilities themselves. If not, then the conditional use process for an *expansion* of use will be for naught and Applicant instead must fulfill the criteria in MCC 11.15.7105, *et seq.*, as if it were establishing the use for the first time.

Unfortunately, the language in .2028(B) engenders an interpretive quagmire into which everyone involved with Applicant's various land use proceedings has fallen

at one time or another. Marquam Farms earlier branded .2082(B)'s interpretation difficulties a proverbial "tar baby," and I concur. (See Marquam Farms' July 27, 1994, Memorandum in DR 4-94, at 2.) Nevertheless, unlike Marquam Farms' plea in 1994 that .2028(B) be left alone, I conclude that .2028(B) — its "tar baby" characteristics notwithstanding — stands squarely in the center of the path toward a resolution of Applicant's approval request, and that I do not know what direction that path takes until I confront .2028(B) directly.

MCC 11.15.2028(B) provides that

"[c]onditional uses *listed* in subpart MCC [11.15].2012 *legally established* prior to August 14, 1980, *shall be deemed conforming* and not subject to the provisions of MCC [11.15].8804 [*sic*; '.8805'] . . ." (Emphasis added.)

Virtually identical language appears in a host of provisions in the Zoning Ordinance.^[20]

"Dog kennels" certainly comprise a conditional use presently "listed" in MCC 11.15.2012(B)(11),^[21] and Applicant's facilities certainly comprise a "kennel" as defined in MCC 11.15.0010. Beyond those two certainties, everyone's understanding of what that language *means* and what it *does* seems to diverge.

²⁰. The same or similar language appears in, for example:

- ♦ MCC 11.15.2070(A) (CFU);
- ♦ MCC 11.15.2108 (F-2);
- ♦ MCC 11.15.2150 (MUA-20);
- ♦ MCC 11.15.2190 (MUF);
- ♦ MCC 11.15.2230 (RR);
- ♦ MCC 11.15.2270 (RC);
- ♦ MCC 11.15.2368 (UF-20 and UF-10);
- ♦ MCC 11.15.2488(A) (LR-40, LR-30, LR-20, LR-10, LR-7.5, LR-7, and LR-5);
- ♦ MCC 11.15.2718(A) (MR-4, MR-3, HR-2, and HR-1);
- ♦ MCC 11.15.5055 (LM, GM, HM);
- ♦ MCC 11.15.6062 (LF); and
- ♦ MCC 11.15.7040 (CS).

²¹ That "listing" apparently occurred in 1986. However, I do not perceive that fact to have any consequence with respect to the meaning or scope of .2028(B).

There exist two methods of interpreting .2028(B): either (1) parse its individual clauses in chronological order and construe each (*see* topics A and B, below), or (2) determine the most logical reason why the provision arose in the first place (*viz*, the goal or purpose underlying .2028(B)) and disregard linguistic imperfections along the way (*see* topic C, below).

As I discussed earlier in this decision, after reviewing and re-reviewing the hearings officer's 1994 decision in DR 4-94, I have (somewhat reluctantly) concluded that the 1994 decision simply misinterprets .2028(B). Notwithstanding all of the various arguments that might be advanced in favor of *stare decisis* with respect to hearings officers' decisions, I simply cannot follow an interpretation of .2028(B) that, in effect, renders that provision superfluous.

A. DO THE APPLICANT'S KENNELS COMPRISE A "LISTED USE" AT ALL?

Applicant interprets .2028(B) to mean that the existing kennel facilities comprise a "conditional use listed" in MCC 11.15.2012, regardless of whether or not .2028(B) might implicitly confine those "listed" uses to those in effect on August 14, 1980. That interpretation in turn depends upon the conclusion that .2028(B) comprises an elastic provision that protects "listed" conditional uses that the County had not even "listed" as conditional uses within an EFU district as of August 14, 1980. In other words, .2028(B)'s reference to "listed" uses includes all conditional uses "listed" in MCC 11.15.2012 at any point in time from August 14, 1980, forward — until changed by amendatory legislation.

Conversely, Marquam Farms — which, by virtue of its August 15, 1995, letter has incorporated the debate from the 1994 proceedings in DR 4-94 — reads .2028(B) as necessarily meaning that Applicant's kennel facilities could not pass muster as a "listed" conditional use in the first place because the County had not even "listed" kennels as a conditional use in an EFU district as of August 14, 1980. In other words, Marquam Farms' interpretation renders .2028(B) a provision that recognizes no use "listed" after August 14, 1980 — in effect creating two classes of "listed" uses.

The parties bolster their respective interpretations by citing different historical enactments, but neither discusses those cited by the other. Marquam Farms says that "[d]og kennels were not added to the list of EFU-zone conditional uses (MCC

.2012) until the enactment of Ordinance No. 509 on *May 17, 1986*." (July 27, 1994, Memorandum ["MARQUAM MEMORANDUM"] at 11, n. 2 [emphasis added].) But Applicant points out that "Multnomah County Ordinance No. 100, which went into effect on *November 15, 1962*, provided in section 7.5401(A) . . . that kennels were a conditional use 'in F-2 districts or those areas of similar low population density.'" (Applicant's July 28, 1994, Brief ["APPLICANT'S BRIEF"] at 2 [emphasis added].)

Given that the "F-2" designation that attains significance in Applicant's argument comprised the predecessor of the current "EFU" designation (*see* Ordinance No. 148, § 3 [redesignating the "F-2" district as "EFU-38"]), the available chronology supplied by the parties leaves me somewhat baffled. To confuse matters further, when the County enacted Ordinance No. 148 in September, 1977, § 3.103.3 thereof established the predecessor of the conditional use provisions in current MCC 11.15.2012(B), but no longer mentioned "kennels" as a conditional use.

I conclude that the legislative chronology — assuming that it can be translated into a cogent proposition — has scant significance at this point. Notwithstanding the fact that kennels could not have comprised a "listed" conditional use until May 17, 1986, for purposes of .2028(B) Applicant's kennel *now* comprises a "[c]onditional use[]" listed in subpart MCC [11.15].2012" if only because I would have to insert additional language or conditions into the provision, or surmise some non-explicit connotation, in order to disagree with Applicant's interpretation. My interpretation also renders .2028(B) an elastic provision that does not otherwise segregate conditional uses according to "listing" dates.

However, given the greater uncertainties with the remainder of the language in .2028(B) (below), I am not confident that this particular debate makes any difference.

B. WERE THE KENNELS "*LEGALLY ESTABLISHED* PRIOR TO AUGUST 14, 1980"?

As the Court of Appeals recently observed in *Von Lubken v. Hood River County*, 133 Or App 286, 288, ___ P2d ___ (1995), it is indeed possible to construct, operate, maintain, and otherwise "establish" a conditional use within an EFU district (a golf course) while proponents and opponents endure a five-year debate within LUBA and the Court of Appeals as to the legality and finality of the local government's ap-

proval in the first place. If ultimately successful, it would be equally possible for the parties in *Von Lubken* to urge at least two different dates upon which the use in question had been "legally established." Given that possibility, the question whether phrases such as "legally established" mean anything in particular cannot be answered with the ease suggested by Applicant and Marquam Farms.

(1). DOES THE TERM "*LEGALLY ESTABLISHED*" DIFFERENTIATE USES THAT WERE "*ILLEGALLY ESTABLISHED*" ?

I approach the meaning of the term "legally established" by asking whether it purports to distinguish its converse. Can it be said that Applicant's kennel facilities represent a conditional use "*illegally* established" prior to August 14, 1980? In other words, can there be an "illegal" *conditional* use? If not, then the differentiation in .2028(B) resulting from the term "legally" would be irrelevant insofar as it purported to draw a line between "legal" and "illegal" conditional uses.

Either the County employed the term "legally" for a particular reason, *viz*, in order to differentiate between "*legally*" established conditional uses and "*illegally*" established conditional uses, or it simply created a two-word phrase when one would have sufficed. Because I can think of no circumstances in which a particular use might be described as an "illegal" conditional use (as opposed to some other kind of use), I conclude that .2028(B) simply asks whether a particular had been "established" at its inception in a legal manner, and that the reference to "legally" does not signify other types of conditional use. Otherwise, the phrase "legally established" suggests that the converse exists, which, in the context of a conditional use, would yield an oxymoron.

However, I do not necessarily read the reference to "legally" out of .2028(B) altogether; rather, I interpret the term "legally" to refer to the *origins* of the use that .2028(B) then makes "conforming," regardless of whether that use comprised a "conditional" use when first established or something else. I conclude that Applicant's kennel facilities were long ago "established" in a legal manner, albeit not necessarily as a conditional use for which a permit had been given.

(2). DOES THE TERM "*LEGALLY ESTABLISHED*" NECESSARILY INCORPORATE NOTIONS OF "ABANDONMENT" OR "DISCONTINUANCE," AS THOUGH IT PERTAINED SOLELY TO PRE-EXISTING NON-CONFORMING USES?

Applicant — and staff as well in 1989 and 1990 — maintains that, as long as a "listed" conditional use has been "legally established" *at any point prior to August 14, 1980*, notions of "abandonment" or "discontinuance" become irrelevant. (APPLICANT'S BRIEF at 1-2.) Applicant reasons that the language in .2028(B)

"differs markedly from the language for determining whether a use is a nonconforming use: 'lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation' (ORS 215.130(5))." (APPLICANT'S BRIEF at 2 [underscore in original].)

Marquam Farms, on the other hand, declares that .2028(B) comprises "a 'grandfather' clause; not a resurrection clause. It cannot be used to restore to life rights which were extinguished (for reasons unrelated to the Code amendments) before the effective date of MCC .2028(B)." (MARQUAM MEMORANDUM at 8.) It fears that .2028(B) would otherwise allow a resumption of various conflicting uses that had long since ceased to exist within an EFU district, although I suspect that the conflicting uses would no longer be "listed" among the conditional uses allowed in the district under MCC 11.15.2012, and thus could not be "resurrected" anyway.

Both arguments make sense, although for different reasons:

- ◆ Applicant focuses solely on a language differential that does indeed reflect a material deviation from the nonconforming use provisions in ORS 215.130(5), yet offers nothing to determine whether that differential might have been intended or merely inadvertent. Moreover, Applicant suggests no rationale why .2028(B) ought to be read to ignore or minimize the possibility of long-since-discontinued uses being brought back to life.

- ♦ Marquam Farms focuses solely on the prospect of a “crazy patchwork of historical uses” that .2028(B) might condone if continuity of use were not implicit in .2028(B)’s language, although, as I note above, it seems equally logical to assume that obviously contradictory uses would no longer comprise “[c]onditional uses *listed* in subpart MCC [11.15].2012 [.]”

There exists yet a third consideration that neither party mentions: To accept Marquam Farms’ argument that the use in question must have been continuous until August 14, 1980 (which necessarily suggests a focus solely on non-conforming uses), the interpreter must be able to construct a rationale for the provision’s existence in the first place; that is, what purpose does the provision serve if it achieves nothing more than a name change of pre-existing *non-conforming* uses to “*conforming*” uses and correlatively grants enhanced protection for those uses (*viz*, “not subject to the provisions of MCC .880[5]”)? None.

In other words, in the interpretive scenario advocated by Marquam Farms, .2028(B) achieves *precisely* what Marquam Farms says it *cannot* achieve: it “*improves* the status of a [non-conforming] use that, even before amendment of the code, was not consistent with zoning.” (MARQUAM MEMORANDUM at 5 [emphasis in original].)

Put differently, if Marquam Farms is correct in its premise that .2028(B) can only apply to a pre-existing “legally established” non-conforming use, then I agree with the hearings officer’s decision in DR 4–94 that ORS 215.130 prohibits the conversion of a non-conforming use to a “conforming conditional use,” which, in turn, seems to strongly suggest that .2028(B) has as its target “use” something *other than* a “legally established” non-conforming use. In other words, *either* .2028(B) impermissibly conflicts with ORS 215.130 — in which case I must necessarily presume that the drafters of .2028(B) purposefully crafted an enactment that flouts state law — *or* it envisions the provision as implicating some other situation entirely — in which case it serves to explain why the language in .2028(B) cannot easily be reconciled with traditional notions of “non-conforming” uses or “conditional” uses.

Because Marquam Farms’ interpretation does not yield a rationale that adequately explains the purpose for the provision in the first place, and because in the interpretive scenario advocated by Marquam Farms .2028(B) does *precisely* what Marquam Farms says it *cannot* do, I cannot accept it. Linguistics alone does not a law make. At least Applicant’s contrary interpretation implies a purpose for the provision, *viz*, to render uses such as Applicant’s kennel facilities a “conforming” conditional use as of the date it appears “listed” in MCC 11.15.2012.

I therefore conclude that .2028(B) does not necessarily operate solely on "non-conforming" uses. For that reason, I further conclude that, at least for purposes of this case, a literal reading of the language in .2028(B) does not plainly suggest that the phrase "legally established prior to August 14, 1980" means that the use must, in addition to having been "legally established" at some point in time, have been "legally established *and continually maintained*" prior to August 14, 1980.

(3). THERE EXISTS NO SUBSTANTIAL EVIDENCE OF "ABANDONMENT" OR "DISCONTINUANCE" IN ANY EVENT

Finally, as I explain in detail in the non-conforming use portion of this decision, I conclude that there exists no "substantial evidence" of "abandonment" or "discontinuance" of kennel facilities on the property since their establishment in the early 1950s. Thus, even if Marquam Farms' interpretation of .2028(B) proves correct and that provision requires a continuity of use until August 14, 1980, the debate becomes moot.

C. WHAT OVERALL PURPOSE DOES .2028(B) SERVE?

The other method of resolving the meaning or scope of .2028(B) rests upon a determination of the purpose for which the County might have enacted that language in the first place.

(1). THE "LITERAL" APPROACH

Applicant suggests that .2028(B) means

"precisely what it says: if (1) a use such as a kennel is listed in MCC 11.15.2012; and (2) the use was legally established prior to August 14, 1980, it is as if the county gave the use a conditional use permit *on the day it was established.*" (APPLICANT'S BRIEF at 1 [emphasis added].)

But Applicant does not identify what date the kennel facilities might be deemed to have "established." If there exists more than one possible date (and I can think of a couple), then the "literal" approach proves not very helpful.

It would be more correct from the "literal" perspective to declare that a "use" becomes a "conforming conditional use" (*viz*, a ".2028(B) use") on the *later* of (1) August 14, 1980, or (2) the date the "use" appears listed among the various conditional uses in MCC 11.15.2012.

Thus, because Applicant's "literal" interpretation implicates some uncertainty as to the timing component, I cannot accept it as conclusive.

(2). THE "SAVING GRACE" APPROACH

Marquam Farms suggests that .2028(B) serves to protect a previously-authorized conditional use — *viz*, a use with a permit — from the various restrictions that otherwise burden *non*-conforming uses in the event that the County subsequently re-vamps its conditional use provisions in such a fashion that the previously-authorized conditional use becomes, in effect, a non-conforming use. (MARQUAM MEMORANDUM at 4 [preserving the use's right to be "expanded, enlarged, or intensified"].)

However, that interpretation does not explain .2028(B)'s explicit correlation to MCC 11.15.8805, which does *not* insulate any .2028(B) use from the "alteration" criteria in MCC 11.15.8810. In other words, the protection-of-use that assumes significance in Marquam Farms' hypothesis does not really exist.

Moreover, Marquam Farms' interpretation must also account for the possibility that, instead of merely restructuring the criteria under which a conditional use operates (as in the example on page 4 of its July, 1994, memorandum), the County might very well *eliminate* the use itself from among the list of conditional uses. In that event,

nothing about .2028(B) serves to explain why the County would want to protect *unlisted* conditional uses.

Finally, Marquam Farms' interpretation would appear to render .2028(B) duplicative of the "pre-existing use" provisions in MCC 11.15.7610 and .7615, which I find susceptible to the very interpretation that Marquam Farms offers as a justification for .2028(B), *viz*, protection of "delisted" uses:

"A use *conforming* to the provisions of this Chapter prior to July 26, 1979, *but not thereby listed* in the applicable district as [1] a primary use, [2] a use permitted under prescribed conditions or [3] a conditional use, is subject to the provisions of MCC .7615 through .7640" MCC 11.15.7610 (emphasis and enumeration added).

"... [E]xpansion, change in construction or enlargement of a use *described in MCC .7610* shall be permitted [.]" MCC 11.15.7615 (emphasis added).

See also MCC 11.15.7620 (allowing restoration of a ".7610" use) and 11.15.7625 (allowing a "change" of a ".7610" use).

(3). THE "SIGNIFICANCE-OF-THE-EXEMPTION-*VIS-A-VIS*-11.15.8805" APPROACH

No one discusses the significance of .2028(B) in terms of MCC 11.15.8805, which is, after all, specifically mentioned in .2028(B).

A dominant effect of MCC 11.15.2028(B) lies in its exemption from the non-conforming use criterion in MCC 11.15.8805. MCC 11.15.8805 sets forth three limitations:

- ♦ Any "restoration" or "replacement" shall be allowed only for prescribed reasons. (.8805(A).)

- ♦ Any "non-conforming structure or use" that suffers abandonment or discontinuance "for more than two years" cannot be resumed unless the "resumed use conforms with the requirements of this code at the time of the proposed resumption." (.8805(B).)
- ♦ Any "non-conforming structure or use may be maintained with ordinary care." (.8805(C).)

However, .2028(B) plainly leaves its referents subject to the "alteration" provisions in MCC 11.15.8810. Why?

Because .2028(B) contains an express reference to "conforming," and because MCC 11.15.8805(B) contains a correlative reference to a resumption of an abandoned or discontinued as long as the resumed use "conforms" with pertinent Zoning Code requirements, I find it logical to construe .2028(B) as establishing a presumption that any "resumed" use that, at the time of resumption, (1) comprises a use that appears "listed" in MCC 11.15.2012 *and* (2) had been "legally" established at any point prior to August 14, 1980, automatically "conforms with the requirements of this code at the time of the proposed resumption."

In other words, the use may very well have been "abandoned" or "discontinued," but its resumption shall be treated as the resumption of a *conditional use* instead of a non-conforming use. Any "alteration" of the use would, however, still be subject to MCC 11.15.8810.

Thus, when the County added "dog kennels" to its list of .2012(B) conditional uses in 1986, any question of "abandonment" or "discontinuance" became, in effect, a moot point as long as the use after 1986 did not comprise any "alteration" of use. That interpretation would accord a .2028(B) use the same treatment as would otherwise be afforded any other conditional use for which a permit had been granted but which might have been discontinued; as long as the use remains listed as an authorized conditional use within, for instance, MCC 11.15.2012, discontinuance has no impact or effect on a *conditional use*.

(4). THE "QUASI-CONDITIONAL USE" (OR "WHAT ELSE COULD IT MEAN?") APPROACH

Applicant also suggests that .2028(B) has as its intended purpose

"to make the uses conforming if they are listed as conditional uses, regardless of whether they have actually obtained conditional use permits." (APPLICANT'S BRIEF at 3 [underscore in original].)

Under this interpretation, .2028(B) grants "quasi"-conditional use status to any use that, "but for" the absence of the required permit, *would be* a true (*viz*, allowed) "conditional" use. That interpretation of .2028(B) would not apply to just any "use," a fact that placates Marquam Farms' concern that .2028(B) would otherwise *enhance* or *improve* the status of a true non-conforming use.

An apparent flaw in this interpretation lies in the fact that, until a pre-existing use actually appears *listed* as a conditional use (in, for instance, MCC 11.15.2012), it could only be a non-conforming use, in which case it would not fulfill the "but for" test of the preceding paragraph until such time as it became a "listed" conditional use.

In response, Applicant correctly observes that, if .2028(B) does *not* achieve the suggested purpose (and if Marquam Farms' hypothesis proves correct), the only remaining category of uses to which .2028(B) might apply would be conditional uses for which a permit *already* existed, and that

"interpreting MCC 11.15.2028(B) to apply only to uses covered by prior conditional use permits *would essentially read the provision out of the code*. . . . [I]f a use is already covered by a conditional use permit, the right to continue that use is [*already*] governed by the permit and MCC 11.15.7105 to 11.15.7135." (APPLICANT'S BRIEF at 3-4.)

I agree.

MCC 11.15.2028(B) makes no sense — and becomes utterly superfluous — if it can only apply to conditional uses for which a prior permit has been granted. It *only*

makes sense if it purports to apply to a use that, "but for" the absence of a conditional use permit, *would be* a true conditional use.

For that reason, I reject Marquam Farms' argument that .2028(B) only applies to conditional uses for which a prior permit has been issued. (See MARQUAM MEMORANDUM at 3-4 and 6-7.) If Applicant's kennel facilities *had* a conditional use permit, the debate about whether .2028(B) confers "quasi"-conditional use status would never occur.

Because I cannot construe .2028(B) to be superfluous and thus unnecessary, I am left with giving it the meaning that Applicant suggests: .2028(B) "makes the uses conforming [conditional uses] if they are listed as conditional uses [within MCC 11.15.2012], regardless of whether they have actually obtained conditional use permits." As so construed, .2028(B) alleviates a logical — if not legal — defect in the status of a use that had perhaps been non-conforming (or even a "delisted" conditional use) at some point in time, but later became a "listed" conditional use. After being "listed" as a conditional use, a pre-existing use — whether established by permit approval or otherwise — could scarcely be described as a "non-conforming" use. MCC 11.15.2028(B) resolves that conundrum.

(5). SUMMARY OF PROBABLE MEANINGS

None of the above outcome-based interpretations explain the meaning of .2028(B) with certainty. Unfortunately, the only alternatives comprise declarations that .2028(B): (1) has no discernible purpose, (2) runs afoul of ORS 215.130 in some unspecified fashion, or (3) remains hopelessly ambiguous. Because I conclude that none of those alternatives comprises the *only* reasonable alternative, I cannot in this case accept an alternative that would effectively obliterate a local enactment.

I therefore conclude that the most probable and reasonable meaning to be accorded .2028(B) is this: It purports to apply to a use that, but for the absence of a conditional use permit, *would be* a true conditional use. The resulting use comprises a "conforming" conditional use or what might be described as a ".2028(B)" use. Such a "conforming" conditional use may be curtailed or discontinued and resumed in the same manner as a true conditional use, unburdened by notions of "abandonment" or "discontinuance" normally associated with *non*-conforming uses.

That interpretation also resolves a profound dilemma for a use that had, for example, been a non-conforming use and later became a "listed" conditional use. A pre-existing use that suddenly becomes a "listed" conditional use can scarcely be described as a "non-conforming" use.^[22] MCC 11.15.2028(B) renders that species of use a "conforming" conditional use without the need to apply for a conditional use permit in order to maintain a use that, but for the absence of a permit, is *already* a conditional use.

VI. DOES THE CONDITIONAL USE PROCESS APPLY AT ALL TO AN *EXISTING* "CONDITIONAL USE"?

Applicant has proceeded upon the assumption that the modification and expansion of the kennel facilities would constitute an alteration or modification of an existing conditional use (*viz*, a ".2028(B) use") for which a conditional use permit would be necessary.

However, I find the Zoning Ordinance less than clear under the circumstances with respect to the following question: Must an applicant who *already has* a conditional use — via .2028(B) or otherwise — proceed with conditional use approval each time a change is sought with respect to components of the "use" apart from the "use" itself?

The following conditional use provisions within MCC 11.515.7105, *et seq.*, seem to suggest different results:

- ◆ MCC 11.15.7110(B) recites that the conditional use criteria control any "*modification*" of a conditional use, but otherwise provides no indication of what the term "modification" encompasses.

²² MCC 11.15.0010's definition of "non-conforming use," for instance, describes a use "which does *not* conform with the use regulations of the district in which it is located." Obviously, a "non-conforming use" that suddenly attains a new status as a "listed" *conditional* use falls outside that definition. Even if the definition of "non-conforming use" said "*did* not conform" instead of "*does* not conform," it would defy logic or reason to describe a "listed"—but—never—formally—approved conditional use as a "nonconforming" use.

- ♦ MCC 11.15.7110(D) recites that “[a]ny *change of use*” shall be subject to approval, but does not purport to define “change of use” as encompassing a change in the amount of activity associated with a listed “conditional” use, in other words, no change in “use.”
- ♦ MCC 11.15.7110(D) also recites that “[a]ny . . . *modification of limitations or conditions*” shall be subject to conditional use approval, but does not specify the source of any such “limitations or conditions” (*viz*, in a prior conditional use permit, or some other approval).
- ♦ MCC 11.15.7130 prescribes a conditional use permit “for each conditional use approved, *before development* of the use,” but says nothing about the expansion of an existing conditional use that does not involve an altogether new “use.” Applicant does not propose to “develop” a listed conditional use; “develop” presupposes previous non-existence.

First of all, I do not construe the “before-development-of-the-use” language in MCC 11.15.7130 as requiring a conditional use permit in order to expand or modify components of an *existing* conditional “use” that has already been “developed.”

Nor do I construe the “change-of-use” language in MCC 11.15.7110(D) as requiring a conditional use permit in order to expand or modify components of an *existing* conditional “use.” Applicant proposes to retain the same “use,” as identified within the conditional use provisions in MCC 11.15.2012(B)(11). By comparison, although the “‘conforming’ conditional use” provisions in MCC 11.15.2028 — as well as the host of similar provisions cited in the footnote at page 51 — require that any “change of use” must be governed by the applicable conditional use criteria (*see* .2028(B)), they then define “change of use” as meaning only a change “*from* one conditional use listed in MCC 11.15.2012 *to another* such conditional use” (*see* .2028(C)). Applicant, however, proposes no change to another conditional use.

The reference to “limitations or conditions” in MCC 11.15.7110(D) seemed, upon an initial reading, to be broad enough to include the August 6, 1990, “FINAL DESIGN REVIEW” approval for “50 Dogs” and the accompanying comment in the August 6, 1990, “NOTICE OF PLANNING DIRECTOR DECISION” in 90-07-02 that “no additional dogs are authorized by this permit.” However, I note that the phrase “limitations or conditions” initially appears in the first sentence in MCC 11.15.7110(D) *only in connection with a conditional use permit*. Thus, the identical reference in the second sentence of MCC 11.15.7110(D) to a “modification” of those same “limitations or condi-

tions" relates back to the first sentence simply as a matter of internal consistency, which, in turn, suggests that "limitations or conditions" contained in, for instance, a Design Review approval would *not* trigger the conditional use approval process. I therefore interpret MCC 11.15.7110(D)'s reference to "limitations or conditions" to mean *only* those "limitations or conditions" that appear in a prior *conditional use permit*; no other interpretation would make grammatical or contextual sense, especially in a two-sentence provision.

I therefore conclude that, because the "conditions" in the 1990 Design Review approval did not occur within the context of a conditional use permit (as the first sentence of MCC 11.15.7110(D) otherwise suggests), Applicant's request to increase the kennel capacity from 50 to 75 dogs does *not* implicate a prior "limitation[]" or condition[]" as to the amount of dogs allowed, and therefore does *not* require conditional use approval for that increase — as long as Applicant at least has an existing conditional use, via the "'conforming' conditional use" provisions in .2028(B) or otherwise.

VII. FINDINGS — CONDITIONAL USE

In the event that I am incorrect in my interpretation of .2028(B), or am incorrect in my conclusion that nothing about DR 4-94 has any preclusive effect under the circumstances, or am incorrect in my conclusion that nothing in MCC 11.15.7105, *et seq.*, requires a conditional use permit in this particular case, I have considered all of the pertinent conditional use criteria as well.

Because of the peculiar — if not unique — circumstances of this approval request, I have considered the conditional use criteria for two purposes. *First*, I have considered and resolved the question whether Applicant fulfills the conditional use criteria with respect to the existing kennel facilities as if those facilities did not yet exist. *Second*, I have considered and resolved the question whether Applicant fulfills the conditional use criteria with respect to an *expansion* of kennel capacity.

The distinction between the two purposes that I describe in the preceding paragraph appear minimal in the context of the differences between the existing 50-dog kennel facilities and the proposed 75-dog kennel facilities. However, from a procedural perspective the distinction proves significant. A 45-year-old "use" that comprises a "listed-but-unapproved" conditional use ought to be accorded conditional use

status, if it is to attain any status at all. Furthermore, as I read the non-conforming use language in MCC 11.15.8805(B),^[23] any *resumption* of what might otherwise be a "discontinued" non-conforming use would necessarily utilize the conditional use criteria if, as here, that use comprised a "listed" conditional use within the zoning district. I can think of no other criteria within the meaning of MCC 11.15.8805(B) that would control the resumption of such a non-conforming use under the circumstances.

Thus, as I observed earlier, because MCC 11.15.8805(B) provides that a discontinued use may be "re-established" if it "conforms with the requirements of this code at the time of the proposed resumption," and because Applicant's kennel facilities do indeed qualify as a "conditional use" listed in MCC 11.15.2012(B)(11), I find nothing in the Zoning Ordinance that would preclude the "re-establishment" of a discontinued use via a request for conditional use approval under the peculiar circumstances of this case. If Applicant fulfills the criteria for the belated recognition of a conditional use, the resumption issue actually disappears. On the other hand, if Applicant cannot, in the words of MCC 11.15.8805(B), prove "conform[ance] with the requirements of this code," and if those requirements now mandate the conditional use process, then the resumption issue similarly disappears.

A. ORS 215.283

ORS 215.283(2) provides, in pertinent part, that

"[t]he following nonfarm uses may be established, subject to the approval of the governing body or its designate in any area zoned for exclusive farm use subject to ORS 215.296:

"* * * * *

²³ MCC 11.15.8805(B) provides, in pertinent part:

"If a non-conforming structure or use is abandoned or discontinued for any reason for more than two years, it shall not be re-established *unless the resumed use conforms with the requirements of this code* at the time of the proposed resumption."
(Emphasis added.)

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

I find that ORS 215.283(2)(m) describes Applicant's kennel facilities.

B. ORS 215.296 / MCC 11.15.7122

ORS 215.296 provides, in pertinent part:

"(1) A use allowed under ORS . . . 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:

"(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; *or*

"(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use." (Emphasis added.)

MCC 11.15.7122 similarly provides:

"(A) In addition to the criteria of MCC .7120, an applicant for a Conditional Use listed in MCC .2102(B) must demonstrate that the use:

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

"(2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use." (Emphasis added.)

The County's conjunctive provision represents a permissible narrowing of the approval criteria in ORS 215.296(1). See ORS 215.296(10).

- (1). **"Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use"**

"Erring on the side of conservatism," Applicant has identified an "impact" area comprising a 1,500-foot area surrounding the kennels. The only "impact" identified in the record would be the noise generated by the barking of the dogs. Applicant's noise study reflects that

- ◆ Within the kennel itself, the noise generated by the dogs' barking could approach (or slightly exceed) that comparable to "a jet flying overhead."
- ◆ Thirty feet outside the kennel, at the Marquam Farms property line, the noise generated by the dogs slightly exceeded the ambient noise level at that particular location.
- ◆ Five hundred feet from the kennel, the noise generated by the dogs almost paralleled the ambient noise level at that particular location, and measured less than the noise generated by geese flying overhead.
- ◆ 1,500 from the kennel, Applicant predicts any kennel-generated noise to be "marginally audible."

Applicant identifies but one commercial farming operation within the 1,500 "impact area": the Vetsch dairy farm. Nothing in the Zoning Ordinance defines "surrounding" or "adjacent." I conclude that, under the circumstances and for purposes of this, Applicant's chosen "impact area" adequately determines the extent of the "surrounding lands" that MCC 11.15.7122(A)(1) requires the Applicant to address.

The record contains no evidence of "forest practices" on surrounding lands "devoted" to a "forest use." Accordingly, the "forest" component of this criterion could

not possibly apply, and I find that the kennel facilities could not force any "significant" change in accepted forest practices on surrounding lands devoted to forest use.

- (2). **"Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use"**

The record identifies the Vetsch dairy as the only farming operation on "surrounding" land, as I have applied that term for purposes of this case in the previous section.

Because, as I noted in the previous section, Mr. and Mrs. Vetsch submitted a letter dated August 11, 1995, in which they laud the existing kennel operations and urge approval of Applicant's proposal, I conclude that any suggestion that an expanding kennel operation would increase the cost of dairy operations would be incongruous with that letter. I thus find that the kennel facilities will not "significantly" increase the cost of accepted farming practices on surrounding lands devoted to farm use.

The record contains no evidence of "forest practices" on surrounding lands "devoted" to a "forest use." Accordingly, the "forest" component of this criterion could not possibly apply, and I find that the kennel facilities could not "significantly" increase the cost of accepted forest practices on surrounding lands devoted to forest use.

C. OAR 660-33-120/ 660-33-130

- (1). **OAR 660-33-120 AND 660-33-130 EXPRESSLY ALLOW "EXISTING" KENNEL USES TO CONTINUE, AND TO BE "MAINTAINED, ENHANCED OR EXPANDED"**

In June, 1994, LCDC promulgated OAR 660-33-120 and 660-33-130, the pertinent text of which appears beginning on page 32, *supra*. Those rules declare two things:

- ◆ According to OAR 660-33-120, dog kennels comprise a "use not permitted" within an EFU district comprised of "high-value farmland."
- ◆ According to OAR 660-33-130, "[e]xisting facilities [located within 'high-value farmland'] may be maintained, enhanced or expanded [.]"

Staff reports that Applicant's kennel facilities comprise "high-value farmland," and Applicant does not suggest otherwise.

Because (1) OAR 660-33-130 specifically declares that "[e]xisting facilities may be maintained, enhanced or expanded," and (2) neither OAR 660-33-120 nor OAR 660-33-120 mentions, infers, or intimates some unspoken meaning for the term "existing," I conclude that Applicant's kennel facilities comprise an "existing" use for purposes of OAR 660-33-120 and 660-33-130. I do not, in other words, subscribe to the metaphysical anomaly that Applicant's kennel facilities can be described as the *converse* of "existing."

Furthermore, because neither OAR 660-33-120 nor OAR 660-33-130 purports to make distinctions between conditional uses and non-conforming uses, and because OAR 660-33-120 in particular appears concerned with the establishment of *new* uses that heretofore have never previously existed in any form, I additionally conclude that OAR 660-33-120 and 660-33-130 expressly allow Applicant's kennel facilities to continue, and to be "maintained, enhanced or expanded [.]"

Staff concluded that OAR 660-33-120/660-33-130 would alone prevent any approval of Applicant's request. (STAFF REPORT at 10 ["OAR 660-33-110 [*sic*] does not allow dog kennels on High Value Farmland."].) Yet OAR 660-33-130 *specifically allows* dog kennels, as long as they comprise "existing" kennels. Staff did not suggest or conclude that Applicant's kennels comprise something *other than* "existing" kennels, nor, as I read OAR 660-33-130, could it.

Thus, I conclude that neither OAR 660-33-120 nor 660-33-130 have any preclusive effect under the peculiar circumstances of this case. Rather, they prohibit only the development of *new* uses that, by obvious implication, never previously existed. This interpretation also allows the rules to co-exist with state law (*see* the following topic).

— o — o — o —

(2). TO THE EXTENT THAT OAR 660-33-120 AND 660-33-130
DIFFER WITH STATE LAW, STATE LAW CONTROLS

Applicant also asserts that OAR 660-33-120 and 660-33-130 clash with state law. In the event that I am incorrect in my conclusion that neither of those rules purports to preclude the continued operation or expansion of "existing" kennel facilities, I will address that alternative challenge to the preclusive effect of those rules.

The discussion in this topic assumes that OAR 660-33-120 and 660-33-130 together ban any local government approval of kennel facilities that lack any prior approval. Because of the unusual circumstances surrounding Applicant's approval request, I need to further assume that those rules also prohibit any attempt to obtain local government approval for *either* (1) a conditional use that has existed for many years but which never obtained a conditional use permit, *or* (2) the resumption of a non-conforming use by the fulfillment of the requisite standards, per MCC 11.15.8805(B).

ORS 215.283(2) provides in pertinent part:

"The following nonfarm uses *may be established*, subject to the approval of the governing body or its designate in any area zoned for exclusive farm use . . . :

* * * * *

"(m) *Dog kennels* not described in subsection (1)(j) of this section." (Emphasis added.)

Applicant's kennel facilities comprise those described — and allowed with County approval — by ORS 215.283(2)(m). [The County has reproduced the provisions of ORS 215.283(2)(m) within MCC 11.15.2012(B)(11).]

I will assume for purposes of this discussion that the rules would preclude local governments from granting conditional use (or other) permits to any kennel operations even in instances in which, as here, a local government ordinance allows (1) "conforming" conditional uses with respect to which permits have not been granted, and (2) the resumption of non-conforming uses by the fulfillment of prescribed standards. If so, then ORS 215.283(2)(m) and OAR 660-33-120/ 660-33-130 run head-

long into each other; the former allows kennels to be approved in EFU districts, while the latter does not.

Staff concluded that OAR 660-33-120/660-33-130 would alone prevent any approval of Applicant's request. (STAFF REPORT at 10.) Staff did not, however, examine the impact of ORS 215.283(2)(m), except to report that

- ◆ the County's present Zoning Ordinance mirrors ORS 215.283(2)(m) but has not yet been amended to incorporate OAR 660-33-120/660-33-130, and
- ◆ County Counsel had advised staff that "until the [Zoning Ordinance] is amended to include the OAR provisions, the OAR provisions must be considered in the review of any application for proposed uses within the Exclusive Farm District." (STAFF REPORT at 10.)

LCDC's promulgation of OAR 660-33-120/660-33-130 has rendered staff's task more difficult than it ought to be, and puts staff in the position of asserting the preclusive effect of administrative rules that, in my opinion, conflict with a higher authority: state law. Because of the hierarchy of land use laws, staff cannot simply ignore OAR 660-33-120/660-33-130, notwithstanding the apparent conflict between uses that state law plainly allow in ORS 215.283 and uses that OAR 660-33-120/660-33-130 purport to prohibit.

I conclude that LCDC lacks the authority to enact an administrative rule that purports to delimit or extinguish the types and availability of uses otherwise allowed by statute. No state agency has the authority to diminish statutory rights by administrative fiat. *See Cook v. Workers' Compensation Department*, 306 Or 134, 138-39, 758 P2d 854 (1988), and *Miller v. Employment Division*, 290 Or 285, 289, 620 P2d 1377 (1980); *see also Fisher Broadcasting, Inc. v. Dept. of Rev.*, 321 Or 341, 355-59, ___ P2d ___ (1995) (state agency cannot create an administrative rule at odds with statute). Although the 1995 legislature had the opportunity to amend ORS 215.283 to recognize the limitations in OAR 660-33-120/660-33-130, and in fact did amend ORS 215.283 in a manner not relevant here (*see* 1995 Or Laws, ch. 528, § 2 [amending subsection (1)]), it nevertheless left subsection (2) intact.

Just as LCDC lacks the authority to alter the various Goals by promulgating conflicting administrative rules (*see 1000 Friends of Oregon v. LCDC (Lane Co.)*, 305 Or 384, 399-402, 752 P2d 271 (1988)), and just as LCDC similarly lacks the authority to acknowledge a local government's comprehensive plan in a fashion that would alter

any of the various Goals (*see 1000 Friends of Oregon v. LCDC (Lane Co., supra*, 305 Or at 396-97; and *1000 Friends of Oregon v. Wasco County Court*, 299 Or 344, 369, 703 P2d 207 (1985)), LCDC's authority does not extend to the promulgation of administrative rules that purport to modify statutes.

If the question were instead whether LCDC might require local governments to "enact more restrictive *criteria* than ORS 215.283 imposes *for permitting the uses described* in that statute" (*see Brentmar v. Jackson County*, 130 Or App 438, 441, 882 P2d 1117 (1994), *review allowed* 320 Or 453 (1994); *see also Kenagy v. Benton County*, 112 Or App 17, 20 n. 2, 826 P2d 1047 (1992), and *Von Lubken v. Hood River County*, 104 Or App 683, 687, 803 P2d 750 (1990), *adhered to on reconsideration* 106 Or App 226, 806 P2d 727, *rev den* 311 OR 349 (1991)), the issue would disappear. I would analogize from the discussions in *Brentmar*, *Kenagy*, and *Von Lubken, supra*, that LCDC might well be able to promulgate "restrictive criteria." But OAR 660-33-120/660-33-130 together do not purport to merely implement "more restrictive criteria" for "permitting" the statutory uses; they purport to *eliminate* the uses altogether.

D. MCC 11.15.2012(B)

MCC 11.15.2012(B) requires the fulfillment of the conditional use criteria in MCC 11.15.7015-.7140 for the development of "dog kennels," among other listed conditional uses. Applicant's facilities comprise a "kennel" as defined in MCC 11.15.0010.

Applicant has specifically addressed the conditional use criteria in MCC 11.15.7015-.7140 in the approval request. I discuss those criteria in the following section.

E. MCC 11.15.7120(A)

(1). "CONSISTENT WITH THE CHARACTER OF THE AREA"

Sauvie Island encompasses a combination of agricultural and rural/recreational uses, the latter of which include private hunting facilities and kennels. Dog kennels have historically been a part of Sauvie Island for almost half a century, and at least two long-standing kennels remain active on the island.

Applicant's kennel facilities both serve and exemplify the island's rural/recreational uses, and serve as a logical place to board and train hunting dogs, which, in turn, have long been used for hunting on the island. Some farmers maintain "duck ponds" on their property as a private hunting reserve, and dog kennels function as a natural adjunct to that sort of activity. The other dog kennels have in the past maintained hunting facilities in conjunction with, and in direct proximity to, the kennel operations. Some members of Marquam Farms board and train their dogs at Applicant's kennel facilities.

Applicant has documented abundant and, with the exception of Marquam Farms, seemingly unanimous support among Sauvie Island residents and others who actively participate in various activities on the island. No one else suggests that a dog kennel would be significantly inconsistent with the area's agricultural and rural/recreational attributes. Indeed, two other active kennels have co-existed with island uses for quite some time.

In prior years, Marquam Farms has voiced concern about the impact that the dogs might have on its hunting facilities,^[24] and has also raised a number of complaints about historical difficulties concerning the noise generated by dogs barking at night and Applicant's observation of property boundaries and other problems associated with the close proximity of the kennels. As I read the record, it seems that, of all

²⁴ Marquam Farms has participated in this proceeding only via its August 15, 1995, and September 6, 1995, letters. The August letter suggested that the proceedings in DR 4-94 ought to preclude the necessity for further hearings. Although Marquam Farms asserted in DR 4-94 that Applicant's dog kennels would adversely impact its hunting operations, it has not specifically re-incorporated or raised that issue here. I will, however, treat Marquam Farms' August 15, 1995, letter liberally and proceed as if Marquam Farms had actually voiced the same compatibility issues once again.

the hunting operations on the island, Marquam Farms seemingly stands alone in its complaints about potential adverse impacts and conflicts caused by Applicant's kennel facilities (or, for that matter, nay other kennel facilities on the island). I also observe that most of the complaints arose in recent years after Applicant successfully obtained various land use approvals in 1989 and 1990 (twice). In any event, I do not find that those sorts of complaints have much bearing on the question whether the kennel facilities remain consistent with the character of the area.

Finally, the record offers a number of observations by people who purport to be knowledgeable about hunting in general — and about Marquam Farms' hunting operation in particular — who conclude that any adverse effects suffered by Marquam Farms over the years resulted only from what can be summarized as "overhunting," rather than the presence of dog kennels on adjacent property. Not only has no other proprietor of a private hunting facility voiced similar complaints of an inherent conflict with kennels, but both of the other kennel operators maintain duck hunting facilities on the same property — without any apparent problem.

Applicant contends that more dogs will not necessarily translate into more noise. Applicant proposes improvements to the kennel facilities (*viz*, soundproofing, enclosed runs, wall along shared access, redesigned parking lot) which have been designed specifically to reduce and minimize noise generated by barking dogs. Applicant's noise test results seem to confirm that, even without the improvements, the noise levels at different points on the property do not vastly exceed other environmental noise levels.

I find that kennel facilities have long been a part of the Sauvie Island environment, form a natural adjunct to the hunting activities on the island, and conform to the agricultural and rural/recreational activities on the island. I therefore find, in addition, that Applicant's kennel facilities will be, and have long been, consistent with the character of the area.

(2). "WILL NOT ADVERSELY AFFECT NATURAL RESOURCES"

The property contains no inventoried natural resource site, and the closest such resource site would be the Sturgeon Lake Wildlife Refuge across Reeder Road. However, because Applicant does not allow dogs to run loose on the property, and

because Applicant's property is fenced in any event, I find it improbable that the kennel facilities could have any impact on the Sturgeon Lake wildlife refuge, let alone "adversely affect" it.

I therefore find that the kennel facilities will not adversely affect any natural resources.

(3). "WILL NOT CONFLICT WITH FARM OR FOREST USES IN THE AREA"

Because MCC 11.15.7122(A) prescribes more extensive criteria for the operation of Applicant's dog kennels in the EFU district, and because I have already found that the kennel facilities fulfill the criteria in MCC 11.15.7122(A), *supra*, I further find, based upon the discussion and findings in connection with .7122(A), that Applicant's kennel facilities will not conflict with farm uses in the area.

No "forest" uses exist in the area, thus I also find that Applicant's kennel facilities cannot conflict with forest uses in the area.

(4). "WILL NOT REQUIRE PUBLIC SERVICES OTHER THAN THOSE EXISTING OR PROGRAMMED FOR THE AREA"

Applicant proposes nothing that will require additional public services, and the service provider forms in the record confirm that existing services will be adequate.

I therefore find that Applicant's kennel facilities will not require public services other than those existing or programmed for the area.

(5). "WILL BE LOCATED OUTSIDE A BIG GAME WINTER HABITAT AREA"

No big game winter habitat area exists on or near the property. I therefore find that Applicant's kennel facilities will be located, and has long been located, outside a big game winter habitat area.

(6). "WILL NOT CREATE HAZARDOUS CONDITIONS"

Dogs themselves do not comprise "hazardous conditions," and nothing else about Applicant's kennel facilities create the likelihood of generating any such conditions. All dog owners must present proof of current vaccinations before admittance to the kennel. The dogs remain kenneled and do not run at-large. Applicant processes all waste material on-site according to prescribed DEQ criteria.

I therefore find that Applicant's kennel facilities will not create hazardous conditions.

(7). "WILL SATISFY THE APPLICABLE POLICIES OF THE COMPREHENSIVE PLAN"

I address this particular criterion separately below. Because I conclude that Applicant's kennel facilities fulfill pertinent plan policies, I therefore find for purposes of this criterion that the facilities will, and do, satisfy the applicable policies of the comprehensive plan.

F. MCC 11.15.7205-.7240

(1). LOCATION REQUIREMENTS

Applicant's kennel facilities will be located within an area of "low population density" similar to that in districts such as F-2 — the district's zoning designation prior to the EFU-38 redesignation. Sauvie Island has long represented an area of historically low population density.

I therefore find that Applicant's kennel facilities fulfill the locational requirements in .7210(A).

(2). MINIMUM SITE SIZE REQUIREMENTS

The site comprises more than nine acres, and the drawings depict a width ranging from 333 feet in the rear of the property to more than 900 feet along Reeder Road, and a depth ranging from 390 feet to 1,800 feet.

I therefore find that Applicant's kennel facilities, both existing and as expanded, fulfill the minimum site size requirements in .7215.

(3). MINIMUM SETBACK REQUIREMENTS

The property does not lie in or adjacent to an F, R, or A district. Thus, the one-hundred-foot minimum setback requirements in .7220 do not apply.

(4). OTHER REQUIREMENTS

Applicant has constructed the kennels, runs, and pens of concrete block, with chain-link fencing dividers and concrete floors. The roofing is opaque. I therefore find that Applicant's kennel facilities fulfill the requirements of .7230(A).

Applicant proposes to remodel the existing kennel facilities within a single, continuous, enclosed building, which will provide "optimal sound control" and thus minimize the noise impact on adjacent and surrounding properties. The dogs will be able to move from the individual pens without entering the open courtyard. They will also have their view of neighboring activities obstructed, which, in turn, will reduce barking. The trees and landscaping surrounding the existing kennel facilities will be retained, as will the trees and landscaping within the courtyard. Prevailing winds from the northwest will carry sounds and smells toward the open land to the southeast of the kennel facilities. The nearest residence lies 1,000 feet distant. Although Marquam Farms has in the past lodged complaints about the noise of barking dogs, I note that, not only did the kennel facilities apparently *precede* the hunting operations on Marquam Farms' property, but Applicant proposes to design and construct any expansion so as to do precisely what .7230 requires, *viz*, "minimize" — as opposed to eliminate — adverse impacts. I therefore find that Applicant's kennel facilities fulfill the requirements of .7230(B).

Twice daily, Applicant disinfects the dog areas, feeding pans, water pails, and public areas. Applicant also inspects each dog twice daily. Multnomah County Animal Control regularly inspects the kennel facilities. Testimony from others reflects that Applicant maintains a well-respected, highly-professional kennel operation of considerable quality. I therefore find that Applicant's kennel facilities fulfill the requirements of .7230(C).

Applicant's proposal will allow all dogs at the kennel facilities to be kept in separate housing facilities. I therefore find that Applicant's kennel facilities fulfill the requirements of .7230(D).

Although .7240 allows an exemption from .7205-.7235 for kennels "for which Animal Control Facility licenses were issued prior to October 31, 1985," Applicant does not suggest — and the record does not otherwise confirm — that the exemption provision applies.

G. COMPREHENSIVE PLAN PROVISIONS

(1). POLICY 9 — AGRICULTURAL LAND

Policy 9 ("Agricultural Land") recites, among other things, that it serves to

"restrict the use of these [agricultural] lands to exclusive agricultural and other uses, consistent with state law, recognizing that the intent is to preserve the best agricultural lands from inappropriate and incompatible development."

Although Policy 9 does not require specific findings, I find that Applicant's kennel facilities comprise an "other use[], consistent with state law," within the meaning of Policy 9. The kennel facilities will not inhibit or impede the use of any agricultural land, nor will they withdraw any land from agricultural use.

(2). POLICY 13 — AIR, WATER AND NOISE QUALITY

Policy 13 ("Air, Water and Noise Quality") requires, prior to approval,

"a statement from the appropriate agency that all standards can be met with respect to air quality, water quality, and noise levels. . . ."

The kennel facilities create no air emissions, and all waste products from the facilities are handled on-site in an approved septic system. Thus, the kennel operations will have no adverse impact on "healthful air quality levels in the regional airshed" or "healthful ground and surface water resources."

Finally, I find that Applicant's kennel facilities will, as designed, either "prevent or reduce excessive sound levels," while simultaneously balancing the needs of adjacent and surrounding properties. For instance:

- ◆ Applicant proposes to construct a solid wall for the full length of the kennel along the shared access with the Marquam Farms property. The dogs will be unable to see vehicles as they drive past on the shared driveway, which, in turn, will reduce the dogs' propensity to bark at passing cars *etc.*
- ◆ Applicant proposes to completely cover the kennels with an insulated roof, in contrast to the partial exposure that currently exists. The insulated roof will reduce noise transmission from within the kennel.
- ◆ Applicant proposes to redesign the manner in which dogs will be moved from one building to another for grooming, bathing, and exercise; these activities are currently visible and audible to dogs in the kennel, which, in turn, causes them to bark.
- ◆ Applicant proposes to redesign the parking area, allowing owners to exit their vehicles and pick up dogs out of sight of the dogs, which, in turn, will eliminate one cause of barking.

(3). POLICY 22 — ENERGY CONSERVATION

Policy 22 ("Energy Conservation") provides that

"[t]he County shall require a finding prior to the approval of . . . quasijudicial action that the following factors have been considered:

- "A. The development of energy-efficient land uses and practices;
- "B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;

- "C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
- "D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic [*sic*; 'climatic'] conditions to advantage.
- "E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources."

I have duly "considered" each of the designated criteria, and I conclude that only "A" applies under the circumstances. Applicant has designed the proposed kennel facilities to reduce energy consumption, because the new kennel structures will be enclosed from the elements and insulated.

(4). POLICY 37 — UTILITIES

Policy 37 ("Utilities") requires a pre-approval finding that the water, sanitation, drainage and communication facilities are available as follows:

"WATER AND DISPOSAL SYSTEM"

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

- "D. There is an adequate private water system, and a public sewer with adequate capacity.

"DRAINAGE"

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

"ENERGY AND COMMUNICATIONS"

- "H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and
- "I. Communications facilities are available."

Applicant has an adequate private water supply system and the kennel facilities have an existing, adequate and approved septic system. I find that Applicant's kennel facilities fulfill paragraph "D" of this Policy, which renders "A," "B," and "C" moot.

Applicant handles all storm water runoff on-site, and does not come in contact with any waste material generated by the kennel operations; all runoff from kennel floors goes directly into the septic system. I find that Applicant's kennel facilities fulfill paragraphs "F" and "G" of this Policy, which renders "E" moot.

The existing electrical and telephone service appears adequate to continue to handle the kennel's needs, even after an expansion. I find that Applicant's kennel facilities fulfill paragraphs "H" and "I" of this Policy.

(5). POLICY 38 — FACILITIES

Policy 38 ("Facilities") requires a pre-approval finding that:

"SCHOOL

- "A. The appropriate school district has had an opportunity to review and comment on the proposal.

"FIRE PROTECTION

- "B. There is adequate water pressure and flow for fire fighting purposes; and
- "C. The appropriate fire district has had an opportunity to review and comments [sic] on the proposal.

"POLICE PROTECTION

- "D. The proposal can receive adequate police protection in accordance with the standards of the jurisdiction providing police protection."

The various service provider forms confirm that Applicant's kennel facilities will be adequately served by water for firefighting purposes and by the Sheriff for police protection. The school district will have an opportunity to comment on Applicant's proposal. I find that Applicant's kennel facilities fulfill paragraphs "A" through "D" of this Policy.

(6). POLICY 40 — DEVELOPMENT REQUIREMENTS

Policy 40 ("Development Requirements") requires a pre-approval finding that:

- "A. Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the Bicycle Corridor Capital Improvements Program and Map.
- "B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.
- "C. Areas for bicycle parking facilities will be required in development proposals, where appropriate."

I conclude that none of these criteria are "appropriate" because they have no application to the specific proposal.

VIII. CONCLUSIONS — CONDITIONAL USE

With respect to the conditional use issues, I conclude as follows:

- ◆ Nothing about the hearings officer's decision in DR 4-94 precludes me from considering and resolving the various conditional use issues raised in this 1995 approval request.
- ◆ Marquam Farms' failure to appeal the Planning Commission's 1990 *approval* in CU 23-90, in which the Planning Commission addressed and rejected the "legality-of-use" issues that Marquam Farms has now raised in both the 1994 and 1995 proceedings, and in which the Planning Commission interpreted MCC 11.15.2028(B) in a manner adverse to Marquam Farms, precludes Marquam Farms from now revisiting the interpretive question.

- ◆ The County's sequential interpretations and consistent applications of MCC 11.15.2028(B) in the 1989 and 1990 proceedings — each of which *approved* proposals and thus vested certain rights — constitutes implicit interpretations of MCC 11.15.2028(B) which I accord deference, notwithstanding the fact that no party appealed those interpretations to the Board.
- ◆ Applicant's kennel facilities already comprise a “‘conforming’ conditional use” pursuant to MCC 11.15.2028(B). That provision purports to apply to a “listed” conditional use that, but for the absence of a conditional use permit, would be an approved conditional use. Any other reading or interpretation of .2028(B) either requires that additional language be added to it or renders it superfluous and of no purpose.
- ◆ Unless otherwise the subject of “limitations or conditions” imposed by a prior conditional use approval, nothing in the conditional use provisions in MCC 11.15.7105, *et seq.*, plainly requires that an applicant must seek additional conditional use approval in order to modify or alter components of an existing conditional use that do not otherwise comprise any change in the “use” itself.
- ◆ Alternatively, Applicant has fulfilled all of the applicable conditional use criteria in MCC 11.15.7105, *et seq.*, MCC 11.15.7122, MCC 11.15.7205, *et seq.*, and the pertinent Comprehensive Plan policies with respect to both of the following: (1) the initial establishment of a conditional use approval for a dog kennel, and (2) the expansion of an existing conditional use — whether arising from .2028(B) or from the previous clause — to allow an increase from a 50-dog kennel facility to a 75-dog kennel facility.
- ◆ Nothing in OAR 660-33-120 or 660-33-130 precludes or prohibits conditional use approval for an “existing” kennel under the circumstances. If those rules did purport to do so, they would clash with ORS 215.283, which allows the establishment of dog kennels in EFU districts.

IX. PRECLUSION ISSUE — NON-CONFORMING USE

As I discussed earlier in the conditional use part of this decision, Marquam Farms' August 15, 1995, letter urged, among other things, that the hearings officer's August 19, 1994, decision in DR 4-94 precludes any revisitation of issues already examined in that decision. Among other things, the hearings officer addressed the non-conforming use issue in some detail, and discerned a gap in kennel use between December, 1962, and February, 1964. (DECISION at 6.)

Thus, I need to resolve the question whether the hearings officer's August, 1994, decision binds Applicant, such that I am now precluded from revisiting the evidentiary and legal arguments that the parties debated in 1994 with respect to the non-conforming use issues.

I conclude that:

- ◆ because of the specified conditions precedent to the Design Review mechanism in the Zoning Ordinance, the hearings officer lacked the authority in DR 4-94 to venture beyond the question whether the kennel facilities comprised a "conditional use" at that time.
- ◆ the only evidentiary "gap" in the record comprises an unexplained gap in the County's intermittent inspection records, a flaw that renders those records something considerably less than "substantial evidence" of the sort described in, for instance, *1000 Friends of Oregon v. LCDR (Lane Co.)*, 305 Or 384, 402-04, 752 P2d 271 (1988), and *Younger v. City of Portland*, 305 Or 346, 356-57, 752 P2d 262 (1988).
- ◆ because the decision in DR 4-94 resulted in the *denial* of an approval request, that denial attains no preclusive effect for the same reasons discussed in the conditional use portion of this decision, beginning at page 39, *supra*.

A. THE HEARINGS OFFICER LACKED THE AUTHORITY TO PROCEED BEYOND THE JURISDICTIONAL QUESTION IN THE DESIGN REVIEW PROCEEDINGS IN DR 4-94, AND TO DETERMINE NON-CONFORMING USE ISSUES

Because DR 4-94 comprised a "Design Review" proceeding prescribed by MCC 11.15.7805, *et seq.*, the only non-substantive, procedural question that could be raised in any appeal from the Planning Director's administrative decision would comprise the inquiry whether Applicant fulfilled the condition precedent to Design Review in MCC 11.15.7820:

"The provisions of MCC .7805 through .7865 shall apply to all [1] *conditional* and [2] *community service* uses in any district *and to* [3] [a list of seven categories of other uses not pertinent here]." (MCC 11.15.7820 [emphasis and enumeration added].)

All other issues would necessarily implicate the *substantive* Design Review criteria.

At the outset of his opinion, the hearings officer addressed the "jurisdictional" question whether he

"lacks authority to approve this Design Review request, unless or until the underlying kennel use receives appropriate land use approval to make it a lawful use in the zone." (DECISION at 3.)

Because Design Review would, by its terms, apply to, among other things, a "*conditional*" use and not necessarily to a "*non-conforming*" use (*see* MCC 11.15.7820),^[25] the hearings officer's inquiry would necessarily entail the question whether Applicant's kennel facilities comprised the former use. Although the hearings officer in DR 4-94 indeed answered that question (DECISION at 3-4), he also answered

²⁵ If there exist any other portions of the Zoning Ordinance that subjects non-conforming uses to Design Review, no one has cited it.

the separate question whether the kennel facilities comprised a non-conforming use. (DECISION at 4-6.)

As I noted earlier in the discussion of that decision, the hearings officer did not explain why or how issues of non-conforming use attained significance once he made the determination that there existed no underlying conditional use for purposes of Design Review. However, as I read and construe MCC 11.15.7805, *et seq.*, the hearings officer did not have the jurisdictional authority under MCC 11.15.7820 to make that sort of determination within the context of an appeal from the Planning Director's administrative Design Review determination, and the parties themselves could not grant him that authority.

Applicant raised this "jurisdictional" issue at the August 16, 1995, hearing in the context of whether the hearings officer's opinion comprised *dictum* on the issue of non-conforming use. I agree with Applicant that the hearings officer's decision in 4-94 purports to resolve factual and legal issues with respect the question of non-conforming use that nothing in MCC 11.15.7805, *et seq.*, gives him the authority to decide.

I thus conclude that the portion of the hearings officer's decision in DR 4-94 that purported to resolve questions of fact with respect to non-conforming use could not be binding. As surplusage, the non-conforming use discussion in DR 4-94 does not preclude a revisitation of that issue. *See Reeves v. Washington County*, 24 Or LUBA 483, 493 (1993).

B. THERE EXISTS NO EVIDENTIARY GAP IN KENNEL USAGE

I have independently examined the record with respect to the chronology of kennel usage. I conclude that reality differs from the findings in the decision in DR 4-94.

The record in this case (which includes all earlier land use proceedings) documents that the kennel facilities proceeded through a number of owner/operators: Wallace, Blitz, Courtway, Eaton, Meifert, Pein, Persinger, and now the Schillereffs. Unfortunately, at this late date the documentation of kennel operations proves somewhat skimpy. The record yields different methods of determining whether kennel operations have been continuous since the Wallace operations began in 1952.

A number of opponents testified in similar affidavits in the proceedings in DR 4-94 that: (1) they never saw any "recognizable" kennel structures on the property before 1990, (2) they never perceived any kennel use on the property before 1990, and (3) they never saw more than one dog on the property until 1990. Marquam Farms also offered excerpts from County records that, according to them, do not reflect descriptions of the existence or degree of kennel usage during the following time periods:

- ◆ December, 1962, to February, 1964;
- ◆ February, 1965, to October, 1965;
- ◆ October, 1966, to September, 1967; and
- ◆ 1971 to the present.

Marquam Farms relies upon County inspection reports in 1967 and 1969 that contain the following:

<u>Date Of Record</u>	<u>Information In Various Labeled Blanks In Record</u>
10-18-67	<p>"Zone": F-2 "Non-conforming": "Approved" "Owner": Meifert ("Lake Tree Kennels") "Occupant": Meifert "Date Established": "Moved in 9-5-67" "Use": Dog kennel Additional information:</p> <ul style="list-style-type: none">◆ Use "limited to 50 dogs"◆ "Occupant" from 10-65 to 10-66: "Eaton," who maintained "15 to 20 dogs"◆ "Occupant" from 2-64 to 2-65: "Courtway," who maintained four to five dogs◆ "Occupant" from 8-57 to 12-62: "Blitz," who maintained "up to 50 dogs"◆ Occupant before Blitz: "Wallace," who maintained kennels "for about 5 yrs" before Blitz
1-28-69	<p>"Zone": F-2 "Non-conforming": Left blank "Owner": Pein ("Lake Tree Kennels") "Occupant": Meifert "Date Established": Nothing helpful "Use": Dog kennel</p>

Additional Information:

- ◆ contains the following notation:

"8-4-71 Kennel gone all of 71 - 2 dogs in 1970"

Thus, the County's two reports do *not* account for the following time periods:

- ◆ December, 1962, to February, 1964
- ◆ February, 1965, to October, 1965
- ◆ October, 1966, to September, 1967
- ◆ October, 1967, to January, 1969
- ◆ January, 1969, to date

The question becomes whether I can surmise from the record that the County's two inspection reports are themselves so complete and inherently trustworthy that I might conclude that any "gaps" in kennel operations can be inferred from corresponding "gaps" in the reports. If there were any evidence in the record that might shed some light on the frequency of the inspection reports or the methodology underlying the facts detailed in the reports, I might be able to conclude that the reports themselves comprise a complete and accurate chronology. However, there exists no such confirming evidence. For example, nothing in the record allows me to conclude that the two inspection reports purport to account for *all* of the time periods for which the reports themselves reflect a gap. The extremely intermittent characteristics of the proffered inspection reports irretrievably deprives them of any reliability for time periods not mentioned.

Thus, although I conclude that the County's various inspection reports comprise "substantial evidence" as to the existence of kennel operations during the *reported* times, I find that they do *not* comprise "substantial evidence" sufficient for me to infer that there existed no kennel operations during "gap" times.

Applicant, on the other hand, relies upon an unbroken chain of owners/operators, each of whom maintained some level of kennel operations:

- ◆ Wallace, beginning in 1952 and ending with the transfer to Blitz in 1957;
- ◆ Blitz, beginning in 1957 and ending with the transfer to Meifert in 1966;

- ◆ Meifert, beginning in 1966 and ending with the transfer to the Peins in 1970;
- ◆ Peins, beginning in 1970 and ending with the transfer to the Persingers in 1973;
- ◆ Persingers, beginning in 1973 and ending with the transfer to the Schillereffs in 1989;
- ◆ Schillereffs beginning in 1989 and continuing to date.

All of the listed owners/ operators maintained *some* degree of kennel operations.

In addition, the record contains:

- ◆ a November 27, 1967, letter from Elden Persinger received by the Planning Commission on December 1, 1967 (for unknown purposes) that declares that "I have known the Lake Tree Kennels to have been in [the] business of boarding & training dogs *since the year of 1954* ...";
- ◆ a November 27, 1967, letter from C. Dondo received by the Planning Commission on December 1, 1967 (again for unknown purposes), that declares that Lake Tree Kennels "have been in the business of boarding and training dogs *since the year of 1952.*"
- ◆ an affidavit dated August 23, 1995, from George Douglas, who has resided on Sauvie Island for nearly 50 years, and who "particularly remember[s] Mrs. Blitz who operated a kennel there from the late 1950s until she sold the property to Myron Meifert [in 1966]. During that time there were always many dogs at the kennel."
- ◆ an affidavit dated August 23, 1995, from Timothy Schillereff who recites that, as a youngster, he occasionally visited the kennel operations maintained by the Persingers — to whom he is related — and that he recalls "there were always dogs in the kennels," numbering more than four and up to at least ten.

- ◆ an affidavit dated August 23, 1995, from Norman Crowe, who began working on Sauvie Island in the early 1950s and who has lived there since 1964, who recites that he particularly remembers the Blitz kennel operations during the early and mid-1960s, which he describes as "always operating at capacity or near capacity -- in the neighborhood of 50 dogs," and who further recites that he has traveled the island roads regularly since 1964 and "cannot recall a time when there were not barking dogs in the kennel every years."
- ◆ an affidavit dated August 23, 1995, from Mildred Meifert — mother of previous kennel operator Myron Meifert — who has resided on Sauvie Island for over thirty years and who recites that she, too, recalls the Blitz kennel operations from the late 1950s until the transfer to her son in 1969, and that the property continuously maintained kennel operations with at least four and often more dogs, and, in addition, she recalls the Pein kennel operations during the early 1970s, which maintained at least 10 kennel runs and consistently boarded dogs.
- ◆ an affidavit dated August 23, 1995, from Marguerite Persinger, who owned the kennel operation with her husband from 1973 to 1989, who recites that she maintained no fewer than "four to six adult dogs living or boarded on our property each year from 1973 until the time we sold the property and kennel," and who further recites that she annually visited the Pein kennel operations from 1970 to 1973 and recalls no fewer than four — and sometimes more — dogs at the kennel facilities during those years.
- ◆ an affidavit dated July 27, 1994, from Elden Persinger, who owned the kennel facilities from 1973 to 1989, and who recites that he knew the Peins and their kennel operations during the early 1970s and that the Peins routinely kenneled no fewer than four or five dogs, and who further recites that from 1973 to 1989 the Persinger kennel operation "regularly cared for 4-5 dogs at the kennel."

- ◆ a letter dated August 22, 1995, from Pat Baggett who regularly visited the Blitz kennel operations and who recites that every time she visited the Blitz kennels those facilities "always had 25 dogs or so in the kennels," and who further recites that the Peins "never shut done [sic] the kennel" when they owned it in the early 1970s and that the Peins routinely kenneled at least six dogs, and who finally recites that the Persinger kennel operations "always had between 3 to 10 dogs in their kennels" each time she visited them during their ownership from 1973 to 1989.

Finally, Mr. and Mrs. Persinger testified at the August 16, 1995, hearing that some degree of kennel operations had been present throughout the 1950s and 1960s, and in particular in the early 1960s during a period that the 1994 hearings officer's decision in DR 4-94 identifies as lacking in evidence. Although neither the Persingers nor the Peins maintained what the record describes as "commercial" kennels,^[26] both owners maintained their own dogs in the kennel facilities and "regularly" boarded other dogs for friends or acquaintances. I note that the recent testimony mirrors Mr. Persinger's November, 1967, letter that I describe just above.

Thus, the apparent gaps (or "discontinuances") from December, 1962, to February, 1964, from February, 1965, to October, 1965, and from October, 1966, to September, 1967, that Marquam Farms infers from the County's 1967 and 1969 inspection records disappear. Indeed, the two 1967 letters described above eliminated those gaps as a matter of record within the proceedings in DR 4-94, but the hearings officer made no mention of that.

I find, therefore, that:

- ◆ Nothing upon which Marquam Farms relies for this issue comprises "substantial evidence" in the sense that I deem it sufficiently reliable or complete to conclude that all "gaps" in the County's inspection records necessarily mean that no kennel facilities existed during those "gaps."

²⁶ Nothing in the County's definition of "kennel" refers to "commercial" facilities; rather, "kennel" comprises "[a]ny lot or premises on which *four or more dogs, more than six months of age, are kept.*" (MCC 11.15.0010 [emphasis added].)

- ◆ Although less satisfactory than other means of demonstrating continuity of use, the unbroken succession of owners/operators from 1952 to date — each of whom operated and maintained kennel facilities of some sort — coupled with the absence of affirmative evidence that any of those same individuals subsequently discontinued or abandoned the very facilities that each was known for maintaining, comprises “substantial evidence” that *some* degree of kennel operations has persisted unabated from 1952 forward.
- ◆ The November, 1967, letters to the Planning Commission, *supra*, which attest to continued kennel use from 1952 and 1954, respectively, through 1967 — thus plugging the evidentiary gap cited in the 1994 hearings officer’s decision — coupled with Mr. Persinger’s recent testimony 28 years later that kennel operations have always been present to some extent, comprise “substantial evidence” that kennel operations endured continuously, and certainly during the “gap” periods that Marquam Farms has urged.
- ◆ The proliferation of 1995 affidavits from people who have lived or worked on the island for a number of years, and who were each personally familiar with various owners from the 1950s forward, comprise “substantial evidence” that kennel operations in an amount consistent with the definition of “kennel” in MCC 11.15.0010 endured without abatement or discontinuance from the 1950s to now. The fact that not all of the owners/operators maintained what might be described as “commercial” kennel facilities remains, as the hearings officer also noted in DR 4-94, entirely beside the point.

I thus reject Marquam Farms’ assertions that no recognizable kennel facilities existed, or could be seen, on the property until approximately 1989 or 1990. Given the proliferation of non-partisan testimony in the record about the existence of *some* degree of kennel operations on the property from 1952 forward, I simply cannot accept declarations that there existed no kennel operations on the property before 1989 or 1990. If the intent of the various Marquam Farms affidavits is to comment on the existence and location of particular buildings or structures, as opposed to the presence of kennel operations, that would be altogether different matter, but it would also be entirely irrelevant to the question.

C. BECAUSE IT *DENIED* A REQUESTED APPROVAL, THE HEARINGS OFFICER'S 1994 DECISION DOES NOT PRECLUDE A RECONSIDERATION OF EITHER LEGAL OR FACTUAL "NON-CONFORMING USE" ISSUES

As I discussed earlier, the hearings officer's 1994 decision in 4-94 *denied* a requested approval, *viz*, Design Review approval. No rights vested, and the *denial* of the requested approval in 1994 achieved nothing more the maintenance of the *status quo*.

The County's Zoning Ordinance does not prohibit the resubmittal of an application that might have been the subject of an earlier denial. Indeed, the hearings officer's 1994 decision concludes with the observation that

"... *if* the applicant is able to ... establish the use as a lawful use, this denial of Design Review *should not prejudice such later action*, if any. Therefore, the applicant's request for Design Review is denied, *without prejudice*." (August 19, 1994, DECISION at 7 [emphasis added].)

I therefore conclude that, because of the peculiar circumstances (*viz*, a denial of a request for approval followed by a subsequent resubmittal of a different nature), and because neither statute nor ordinance requires that the prior *denial* of a land use application bind the applicant in future proceedings, I am not bound by the non-conforming use aspects of the hearings officer's decision in DR 4-94. See *Furler v. Curry County*, *supra*, 27 Or LUBA at 506; *Reeder v. Clackamas County*, *supra*, 20 Or LUBA at 242-44; and *S & J Builders v. City of Tigard*, *supra*, 14 Or LUBA at 711-12.

D. "CLAIM PRECLUSION" AND "ISSUE PRECLUSION"
SERVE NO PURPOSE WITHIN THIS PROCEEDING

The 1994 proceedings in DR 4-94 resulted in the *denial* of an approval request, leaving the *status quo* unaffected and vesting no rights. I can find no statute or provision in the County's Zoning Ordinance — and Marquam Farms cites none — that

precludes the resubmittal of an approval request under the circumstances that accompany Applicant's request.

Given the fact that someone in Applicant's position can typically reapply for the same or similar approvals after a prescribed period of time, I can find no authority for imposing the litigation-derived doctrines urged by Marquam Farms, nor has anyone cited any. See, for instance, *Nelson v. Clackamas County*, *supra*, 19 Or LUBA at 140 (recognizing this principle).

X. APPLICABLE CRITERIA — NON-CONFORMING USE

A. ALTERATION / RESUMPTION OF A NON-CONFORMING USE [ORS 215.130]

ORS 215.130 provides, in pertinent part:

"(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted to reasonably continue the use. . . .

"(7) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

"(9) As used in this section, 'alteration' of a nonconforming use includes:

"(a) A change in the use of no greater adverse impact to the neighborhood; and

"(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood."

B. OAR 660-33-120 AND 660-33-130

The provisions of OAR 660-33-120 and 660-33-130 appear beginning at page 32, *supra*.

**C. RESTORATION, REPLACEMENT, OR ABANDONMENT OF
A NON-CONFORMING USE
[MCC 11.15.8805]**

MCC 11.15.8805 provides, in pertinent part:

"* * * * *

"(B) If a non-conforming structure or use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms with the requirements of this code at the time of the proposed resumption.

**D. ALTERATION OF A NON-CONFORMING USE
[MCC 11.15.8810]**

MCC 11.15.8810 provides, in pertinent part:

*** * * * ***

- “(C) An alteration as defined in [ORS 215.130(9)] may be permitted to reasonably continue the use.**

*** * * * ***

- “(E) An alteration of a non-conforming use may be permitted if the alteration will affect the surrounding area to a lesser negative extent than the current use, considering:**

- “(1) The character and history of the use and of development in the surrounding area;**
- “(2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line;**
- “(3) The comparative numbers and kinds of vehicular trips to the site;**
- “(4) The comparative amount and nature of outside storage, loading and parking;**
- “(5) The comparative visual appearance;**
- “(6) The comparative hours of operation;**
- “(7) The comparative effect on existing vegetation;**
- “(8) The comparative effect on water drainage;**

"(9) The degree of service or other benefit to the area; and

"(10) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area."

E. VESTED RIGHT

Clackamas County v. Holmes, 265 Or 193, 508 P2d 190 (1973), declared the following criteria to apply to a determination whether a "vested right" exists to continue to develop a project suddenly rendered illegal by an unanticipated zone change:

- ◆ the *substantiality* of expenditures, which the courts sometimes (but do not necessarily) measure by a "ratio" test that compares expenditures actually to the total projected cost of a project (265 Or at 197);
- ◆ the *good faith* of the landowner (265 Or at 198);
- ◆ whether the landowner had *actual notice* of any proposed zoning changes before commencing development or spending funds (265 Or at 198);
- ◆ the *type of expenditures*, that is, whether the expenditures were directly, but not necessarily exclusively, related to the proposed development (265 Or at 198);
- ◆ the *kind of project*, that is, its desirability in terms of meeting the existing or proposed needs of the area (265 Or at 198);^[27]

²⁷ Within the confines of "vested right" rubric, the term "kind of project" obviously does not mean whether the project qualifies as a permitted or allowed use for zoning purposes; if it did, the question of "vested right" would be moot.

- ♦ the *location of the project*, that is, the extent to which the project might be ideally suited for the site (265 Or at 198);
- ♦ the project's *ultimate cost* (265 Or at 198);
- ♦ whether the landowner's acts arose beyond a mere *contemplated use*, that is, whether an objective commitment to a particular, identifiable use or development had occurred (265 Or at 198); and
- ♦ whether the landowner continuously advanced the development at all times, or whether *abandonment* had occurred at any point (265 Or at 201).

XI. FINDINGS — NON-CONFORMING USE

A. OAR 660-33-120 AND 660-33-130

As I discuss in detail *supra* beginning at page 32, OAR 660-33-130(18) specifically provides that "[e]xisting facilities may be maintained, enhanced, or expanded, subject to other requirements of law."

By getting to this point, I have already determined that Applicant's kennel facilities comprise an "existing" use, the alteration of which remains unimpacted by OAR 660-33-120 or 660-33-130. Any other conclusion would run afoul of ORS 215.130(7), which specifically allows the resumption of a non-conforming use if it "conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption."

B. MCC 11.15.8810

(1). "A change in the use of no greater adverse impact on the neighborhood"

Although Applicant proposes to expand the capacity of the kennel facilities from 50 to 75 dogs, Applicant correlatively proposes a redesign of the kennel facilities so that noise levels will be reduced from current levels.

I therefore find that the increased kennel capacity will have no greater adverse impact on the neighborhood, and that the evidence suggests a lesser impact.

(2). "A change in the structure or physical improvements of no greater adverse impact on the neighborhood"

Although Applicant proposes to expand the capacity of the kennel facilities from 50 to 75 dogs, Applicant correlatively proposes a redesign of the kennel facilities so that all of the kennel structures will be consolidated within one larger facility. As I understand Applicant's proposal, the new facility will effectively replace, rather than add to, the existing facilities.

I therefore find that the redesigned kennel facilities will have no greater adverse impact on the neighborhood, and that the evidence suggests a lesser impact than the existing configuration.

(3). "The character and history of the use and of development in the surrounding area"

Both the character and history of the kennel facilities, and other pertinent locational information, appears in detail earlier in this decision. It would serve no purpose to repeat it here.

Based upon that information, I find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the character and history of the use and of development in the surrounding area. Indeed, I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area, such that the term "lesser negative extent" has any significance here.

(4). "The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line"

I have discussed the noise issue earlier in the context of the EFU approval criteria and the Comprehensive Plan Policy 13, and it would serve no purpose to repeat those discussions here.

I find that issues pertaining to "dust," "fumes," "glare," or "smoke" have no material bearing on Applicant's proposal. Based upon a prior discussion of the manner in which Applicant disposes of waste on-site, I find that issues pertaining to "odor" have been effectively negated altogether.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line. Indeed, I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area, such that the term "lesser negative extent" has any significance here.

(5). "The comparative numbers and kinds of vehicular trips to the site"

Concededly, Applicant's proposal might result in a 50% increase in vehicular trips to the kennel facilities. Applicant projects the average daily trips to be 6.3 in 1995, 7.5 in 1996, and 8.4 in 1997.

However, given the projected trip data and the historical data with respect to the average number of daily trips in the past three years (*viz*, 4.2 in 1992, 5.1 in 1993, and 5.6 in 1994), and also given the fact that there exists an inverse relationship between the peak kennel season (March through September) and peak hunting season (October through January), I find that, with respect to the surrounding area, the vehicular traffic will be almost *de minimis*, and that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area in the first place, such that the term "lesser negative extent" has any significance here.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative numbers and kinds of vehicular trips to the site.

Finally (and alternatively), I also interpret MCC 11.15.8810(E) to depict something *other than* a conjunctive list of mandatory requirements, each of which must be fulfilled. I instead construe the listed factors to represent guidelines in determining whether, when considered *as a whole*, the proposal will "affect the surrounding area to a lesser negative extent than the current use." One of more of the listed factors may, under that interpretation, indeed have a greater impact than previously. See, by analogy, *Union Oil Co. v. Board of Co. Comm. of Clack. Co.*, 81 Or App 1, 5-6, 724 P2d 341 (1986) (nine "vested rights" criteria not to be treated as independently or singularly dispositive).

(6). "The comparative amount and nature of outside storage, loading and parking"

Applicant maintains no outdoor storage, and has no plans to do so in the future.

Because Applicant proposes to redesign the parking area in such a manner as to reduce, for example, the barking that results when the dogs see the arrival of cars and the congestion associated with customers' automobiles in the office area, I find that the redesign parking area will reduce noise and congestion associated with customer traffic.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative amount and nature of outside storage, loading, and parking. Indeed, I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area, such that the term "lesser negative extent" has any significance here.

(7). "The comparative visual appearance"

The redesigned, state-of-the-art kennel building will improve upon the long-standing quonset hut facilities. The parking area will be redesigned, and Applicant proposes new landscaping and fencing.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative visual appearance.

(8). "The comparative hours of operation"

Although Applicant's hours of operation will not change, this criterion has no significant bearing on uses in the surrounding area.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative hours of operation, because I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area in the first place, such that the term "lesser negative extent" has any significance here.

(9). "The comparative effect on existing vegetation"

Applicant will provide some new landscaping, which will also benefit the adjacent Marquam Farms to some extent.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative effect on existing vegetation. Indeed, I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area in the first place, such that the term "lesser negative extent" has any significance here.

(10). "The comparative effect on water drainage"

Impervious surface area will increase because of the enclosed kennel. However, because Applicant handles all water drainage on-site, I find that there will be no increase in off-site water drainage.

I also find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the comparative effect on

water drainage, because I further find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area in the first place, such that the term "lesser negative extent" has any significance here.

Finally (and alternatively), I also interpret MCC 11.15.8810(E) to depict something *other than* a conjunctive list of mandatory requirements, each of which must be fulfilled. I instead construe the listed factors to represent guidelines in determining whether, when considered *as a whole*, the proposal will "affect the surrounding area to a lesser negative extent than the current use." One of more of the listed factors may, under that interpretation, indeed have a greater impact than previously.

(11). "The degree of service or other benefit to the area"

Applicant envisions that the degree of service and benefit to the island and its users will actually increase. Because I find that neither the existing facilities nor their proposed expansion constitutes a "negative" impact on the surrounding area in the first place with respect to the degree of service or other benefit to the area, I conclude that the term "lesser negative extent" has no significance here.

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to the degree of service or other benefit to the area.

Finally (and alternatively), I also interpret MCC 11.15.8810(E) to depict something *other than* a conjunctive list of mandatory requirements, each of which must be fulfilled. I instead construe the listed factors to represent guidelines in determining whether, when considered *as a whole*, the proposal will "affect the surrounding area to a lesser negative extent than the current use." One of more of the listed factors may, under that interpretation, indeed have a greater impact than previously.

(12). "Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area"

Other than Marquam Farms, no one has voiced any objection to the existing kennel operations or to any proposed expansion. Marquam Farms has historically confined the bulk of its objections to noise issues, all of which will be diminished and minimized by any redesign of the kennel operations. I discern no other material factors in the record that have given rise to "conflicts or incompatibility with the character or needs of the area."

I therefore find that the proposed alteration will "affect the surrounding area to a lesser negative extent than the current use" with respect to "other factors."

C. VESTED RIGHT

Applicant additionally asserts a "vested right to the nonconforming use." (February 23, 1995, "SAUVIE ISLAND KENNELS LAND USE APPLICATION" at 11.) This particular argument only has relevance as a "last resort" argument, that is, if Applicant can fulfill neither the conditional use criteria nor the non-conforming use that I have discussed above. Thus, everything in this particular discussion assumes that Applicant has exhausted all other means of establishing the right to continue the operation of the kennel facilities.

There exists a pivotal differentiation between

- ◆ a right to continue development that, when complete, will result in a non-conforming use, according to the criteria in *Clackamas Co. v. Holmes*, 265 Or 193, 197-201, 508 P2d 190 (1973) (discussing the factors underlying a "vested" right to continue and finish a development and actually *begin* a use), and

- ♦ a right to resume a use that may have been abandoned or discontinued after having been in place for some period of time. *See*, for instance, the discussion in *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1981).

In *Polk County v. Martin*, the Court described the seminal “vested rights” decision in *Clackamas Co. v. Holmes* as

“concern[ing] the degree of development which must exist *before an owner of partially developed property can be said to have established a ‘lawful use’ of property* under the statutes, so as to use the property as intended even though the use would not be permitted under the zoning law *which became effective while the property was being improved.*” *Polk County v. Martin, supra*, 292 Or at 80 (emphasis added).

I can find no authority for the proposition that a discontinued non-conforming use — and by using the term “discontinued” I infer nothing contrary to the findings and conclusions that I have already reached in this decision — can be resurrected under the circumstances here by using “vested right” as a vehicle. Even assuming that Applicant may have spent substantial sums to purchase and remodel the kennel facilities, that factor would only be pertinent if, after Applicant had begun making those expenditures, the County had downzoned the property in such a manner that kennels were no longer allowed. That is not what has happened. Indeed, one of the *Holmes* factors requires an inquiry into whether the proponent “had notice of any proposed zoning or amendatory zoning before starting his improvements [.]” 265 Or at 198. Applicant’s 1994 approval request did not get derailed because of any mid-stream zoning; instead, it became untracked just as effectively as if LUBA, the Court of Appeals, or the Supreme Court had rendered the ruling that the hearings officer instead rendered in DR 4-94.

Thus, I reject the argument that Applicant has a “vested right to complete the work sanctioned by DR 90-07-02 and CU 23-90.” (*See* Applicant’s February 23, 1995, “SAUVIE ISLAND KENNELS LAND USE APPLICATION” at 11.) Even assuming for purposes of argument that Applicant has not yet completed the “work sanctioned” by DR 90-07-02 and CU 23-90, that “work” would not result in the *creation* of a “use” in the manner envisioned by *Clackamas Co. v. Holmes*; the “use” itself evolved long ago.

XII. CONCLUSIONS — NON-CONFORMING USE

As an alternative to my conclusions in the conditional use portion of this decision, I conclude as follows:

- ◆ Nothing about the hearings officer's decision in DR 4-94 precludes me from considering and resolving the various non-conforming use issues raised in this 1995 approval request.
- ◆ Applicant has demonstrated a reasonable, objective certainty that the kennel facilities have been in continuous operation as a "kennel" defined in MCC 11.15.0010 since at least 1952, and that, despite fluctuations in what might be described as "commercial" usage, nevertheless has endured without any abandonment or discontinuance since that time.
- ◆ Nothing in OAR 660-33-120 or 660-33-130 precludes or prohibits the resumption of a non-conforming use with respect to an "existing" kennel under the unique circumstances of this case. If those rules did purport to do so, they would clash with ORS 215.130(7), which allows the resumption of a use in conformity with local government enactments.
- ◆ Applicant has fulfilled the criteria in MCC 11.15.8810 with respect to the "alteration" of a non-conforming use.
- ◆ Alternatively, Applicant has fulfilled the criteria mentioned in MCC 11.5.8805(B) — which, under the circumstances of this proceeding, I find to be the conditional use criteria discussed earlier in this decision — with respect to the "resumption" of any discontinued non-conforming use.

DATED this 15th day of September, 1995.


BARRY L. ADAMSON, Hearings Officer



PRESTON GATES & ELLIS LLP
ATTORNEYS

DANIEL H. KEARNS
DIRECT LINE
(503) 226-5707

December 15, 1997

Sandra Duffy, Esq.
Multnomah County Counsel's Office
P. O. Box 849
Portland, OR 97209

SENT VIA FAX TO 248-3377

Re: Schillereff Remand Hearing

Dear Sandra:

Thank you for forwarding to me a copy of Larry Derr's December 11, 1997 letter regarding this remand proceeding. With Ed Sullivan on sabbatical leave, I am working double duty and would have hoped for a little more lead time to respond to the issues Larry raises. In any event, my clients, Tim and Angela Schillereff, feared that Marquam Farms would again barrage the Board with procedural objections and delays in an attempt to prolong the process, and I see their concerns may not have been far wrong.

My basic response is that the Board of County Commissioners determines the procedure of this remand proceeding, and it can and should address the remand by not reopening the record but by adopting new findings which address LUBA's remand order. The draft proposed findings I supplied you and planning staff address all of the issues identified by LUBA and provide a complete and understandable interpretation of the relevant code provisions. The Board should only grant Mr. Derr's request if it feels it needs more evidence to decide the matter. Contrary to Mr. Derr's assertion, I believe the Board understood the nature of this matter and the evidence in the record when it unanimously approved this application the first time. I trust, the Board can master the issues and evidence once again, assuming it is able to remain focused procedurally.

By way of a specific response to Mr. Derr's objections, the record compiled during the original proceeding amply documents the nature and extent of the Schillereffs' nonconforming dog kennel by way of County land use decisions and other documents, letters, affidavits and testimony presented at the hearing. All of that evidence is analyzed in the draft proposed findings I submitted, along with the two operative MCC provisions. Moreover, the record and my findings are well organized to assist the Board in tracing the nature and extent of dog kennel use on the property. There is no need for more evidence on these issues.

Mr. Derr incorrectly claims my clients already have 75 dogs in their kennel. As you know, even though the County approved the Schillereffs' design review application for the

A LIMITED LIABILITY PARTNERSHIP INCLUDING OTHER LIMITED LIABILITY ENTITIES

ANCHORAGE • COEUR D'ALENE • LOS ANGELES • PORTLAND • SEATTLE • SPOKANE • HONG KONG • WASHINGTON, D.C.

111 SW FIFTH AVENUE SUITE 3200 PORTLAND, OREGON 97204-3688 503-228-3200 FX: 503-248-9085 www.prestongates.com

PRESTON GATES & ELLIS LLP

Sandra Duffy, Esq.
December 15, 1997
Page 2

expansion to 75 dogs, it has not issued building permits. My clients have respected the County's position while the Marquam Farms appeal proceeds and have limited business to 50 dogs - the number of dogs approved by Multnomah County in 4 separate land use decisions since 1989. Thus, I doubt the evidence Mr. Derr speaks of would be of much value when addressing the potential impact of 75 dogs. And, lest the Board forget, one of the primary reasons for this application is so that the Schillereffs can modernize and enclose the kennels and runs. This will prevent the sound of dogs barking from being heard beyond the property line and will keep boarded dogs isolated from other kennel activities thus substantially limiting or eliminating the barking in the first place.

In summary, there is no reason to reopen the record except to delay the proceeding. The Board should, however, address the issue at the beginning of Tuesday's hearing. As you will recall, Mr. Derr asked for a *de novo* hearing at the Board level during the original proceeding yet failed to introduce any new evidence at the hearing. I fear a repeat performance and would recommend that the Board keep tight control of the proceeding. Again, thank you for allowing me the opportunity to respond to Mr. Derr's letter.

Sincerely,



Daniel H. Kearns

cc: Tim and Angela Schillereff
Greg Winterowd
Larry Derr, Esq. (by fax to 228-0171)

DEC-11-87 THU 17:45

TEL:

JOSSELSON POTTER ROBERTS

FAX NO. 503 228 0111

LAW OFFICES OF
JOSSELSON, POTTER & ROBERTS
 81 S.W. YAMHILL STREET
 PORTLAND, OREGON 97204
 TELEPHONE (503) 228-1458
 FACSIMILE (503) 228-0171

December 11, 1997

BY FAX 248-3377

Sandra Duffy
 Multnomah County Counsel
 P O Box 849
 Portland, OR 97209

Re: Schilleroff Remand Hearing

Dear Sandy:

Post-It™ brand fax transmittal memo 7871		# of pages > 2
To <i>San Kears</i>	From <i>S Duffy</i>	
Co.	Co.	
Dept.	Phone #	
Fax # <i>248-9085</i>	Fax # <i>248-3377</i>	
<i>Please call Sandy</i>		

I was out of town when the hearing notice arrived and have not been able to catch up to you this week after my return to discuss the hearing procedure.

The notice is unclear whether the Board will conduct its hearing on the record or admit new evidence. Bob Hall told me he thought the intent was to not open the record to new evidence, but only to consider proposed new findings submitted by the applicant. Have you received proposed findings? If so, will you please fax me a copy?

I told Bob that it makes the most sense for the Board to remand the matter to a Hearings Officer because of the procedural and factual complexity of the case. Then, if a party dislikes the result, they still have the option to appeal the decision to the Board.

Here are the issues that we see need to be addressed.

First is the question of the nature of the non-conforming use. That should be decided on the record because there could not be any new evidence bearing on the history of use. However, the possible conclusions from the record evidence range from determining that there is insufficient evidence of an unbroken maintenance of four or more dogs to determining from the evidence a specific number of dogs equal to or greater than four that were always in residence during the relevant years. I question whether the Board wants to do that sort of in-depth review of the record in the first instance rather than having a hearings officer do it.

Second, if a determination is made that a non-conforming use exists and the exact nature and extent of the use is defined, a decision must be made about the impact of expanding from that level to the proposed 50 dogs. Since the starting point level for the analysis was not determined in the previous decision, the conclusion about the effect of expansion must be

LAWRENCE R. DEAR
 OF COUNSEL

DEC-11-97 THU 17:48

TEL:

JOSSELYN POTTER ROBERTS

FAX NO. 503 228 0171

P. 03

JOSSELYN, POTTER & ROBERTS

December 11, 1997

Page 2

revisited. In the period since the last decision the Schillereff's have made changes authorized by the decision including adding the additional dogs.

Since the additional dogs are already on the property, it is no longer necessary to speculate about the impact on surrounding property. The impacts have occurred and the evidence is available. It is evidence that was unavailable in the previous proceedings and must be admitted now, if the decision making process reaches this level. That kind of evidence cannot be presented in a 20 minute hearing. Again, a hearings officer is the preferred method of receiving this kind of evidence, with an appeal to the Board if necessary.

Because all of these procedural issues need to be resolved, and can only be resolved ultimately by the Board, the December 16 meeting should be used only for the purpose of establishing the procedure. Our recommendation is a remand to a hearing officer. If the Board instead chooses to retain the matter before itself, it needs to inform the parties of the way it intends to work through these issues.

Please call as soon as you receive this letter. Ask that I be interrupted from whatever I am doing, and if out of the office, have them use my beeper to locate me.

Very truly yours,


Lawrence R. Darr

12/16/97
DAN KEARNS
SUBMITTAL

We specifically note the applicants' kennel operation has buildings and facilities to board 50 dogs and that the record contains focused testimony that 50 dogs have frequently been boarded at the kennel since 1958. We find that the kennel business has a periodic nature that results in a variation in the number of dogs boarded over the course of seasons and years. We find, however, that the basic facilities for 50 dogs has been in place on the property and used throughout the course of that period. On that basis, we find that the 50-dog kennel that existed in 1958 has never been abandoned or discontinued, but, instead has persisted continuously until the present. Granted, there have not been 50 dogs boarded at the kennel continuously throughout that time, but we do not interpret our ordinance to require that kind of continuous use. It is sufficient that the owners of the kennel, including these applicants, have continuously maintained the facilities for a maximum occupancy of 50 dogs since 1958 and have, in fact, frequently housed that maximum number of animals. On that basis, the applicants have maintained their right to a nonconforming use of 50 dogs until the present.

LAW OFFICES OF
JOSSelson, POTTER & ROBERTS
53 S.W. YAMHILL STREET
PORTLAND, OREGON 97204
TELEPHONE (503) 228-1455
FACSIMILE (503) 228-0171

12/16/97
LAWRENCE DERR
SUBMITTAL

December 16, 1997

Board of County Commissioners
Multnomah County
1120 SW 5th Avenue, Room 1500
Portland, OR 97204

Re: Schillereff Remand Hearing
Case File No. CU 4-95 and MC 1-95

Dear County Commissioners:

The Land Use Board of Appeals determined that the decision of the Board approving an increased kennel operation from 50 to 75 dogs was unlawful. The decision was remanded for the County to examine three matters and make findings consistent with the law.

First, the County must determine the present nature and extent of the nonconforming kennel use, if any exists. The Court of Appeals, in affirming LUBA's actions, made it clear that the inquiry may lead to the conclusion that the nonconforming use has been interrupted or abandoned and no longer exists.

Second, if the evidence supports some level of nonconforming use, then the requested expansion must be reexamined as an expansion from that level, not from a 50 dog kennel.

Third, the County was given the opportunity to adopt an interpretation of MCC 11.15.2028(B) that is consistent with the law.

Because the record is lengthy and contains conflicting evidence on the subject of the extent of the kennel operation over the last 40 years, Marquam Farms suggests that the Board send the case back to a Hearings Officer for an evaluation of the facts relating to the first two items. The Hearings Officer can also provide an interpretation for the third item. If either party is dissatisfied with the result, an appeal would be available to this Board.

APPLICANT'S FINDINGS

The Applicants have proposed a Board order and findings in support of a second approval of a 75-dog kennel operation. Those findings the applicants made and lost before

Board of County Commissioners
Multnomah County
December 16, 1997
Page 2

LUBA and the Court of Appeals. This Board cannot in good conscience approve those findings. Doing so would be grossly unfair to the members of Marquam Farms. The resultant appeal and second remand would only add to the delay and expense experienced by both parties.

In the discussion below, we compare the key assertions of the proposed findings with the holdings from the LUBA and Court of Appeals decisions.

Expansion of Nonconforming Use - MCC 11.15.8810

Proposed Findings, page 3, II.C. "We find that, on its face, MCC 11.15.8810 does not require an evaluation of the nature or extent of the underlying nonconforming use. We interpret MCC 11.15.8810 as requiring only that an applicant start with a lawful nonconforming use which can then be modified, including in some cases an expansion."

Proposed Findings, page 3, III.A. "In so doing, we interpret MCC 11.15.8810 as not requiring any detailed discussion about the nature or extent of the underlying nonconforming use, except for a discussion establishing that the use is a lawful nonconforming use."

Both LUBA and the Court of Appeals stated clearly and unequivocally that a nonconforming use expansion cannot be evaluated until the exact nature and scope of the nonconforming use is established. They held that the prior County decision was defective for failing to do this.

LUBA said:

"However, the hearings officer made no attempt to define the scope of the continued use. Rather, he apparently concluded, without analysis, that since intervenors established the continued existence of a kennel, *i.e.*, at least 4 adult dogs on the property since the 1950's, they had somehow established a nonconforming use to operate and expand a 50-dog kennel. Such a conclusion is not legally justified." *Marquam Farms Corporation v. Multnomah County*, 32 OR LUBA 513, 520 (1996)

"The county must determine the level of intensity of the use that has continued uninterrupted since the use became nonconforming. This requires an evaluation both of the threshold question of the level of intensity existing when

Board of County Commissioners
Multnomah County
December 16, 1997
Page 3

the use became nonconforming, and the level of intensity that has continued, uninterrupted, since that time. The county has done neither of these required evaluations." *Marquam LUBA*, *supra* 520.

The Court of Appeals concurred.

"For largely the reasons expressed by LUBA, we conclude that the county's present decision on the nonconforming use issue does not satisfy ORS 215.130. Without further findings by the county to particularize the nature and extent of the original and continuing nonconforming use, in the face of evidence that the use has historically receded from commercial to fairly minimal levels, the requested expansion cannot be justified under ORS 215.130(5) and (9). Subsection (5) provides that an '[a]lteration of any such [nonconforming] use may be permitted to reasonably continue the use.' Subsection (9) defines 'alteration' to include a 'change in use of no greater adverse impact to the neighborhood.' Whether the requested expansion meets that statutory standard cannot be ascertained unless the actual past and present scope of the use is identified and can be compared with the extent and effects of the proposed enlarged future use. Moreover, it cannot be known what is necessary and therefore, permissible to '*continue the use*' in the absence of a prior determination regarding the nature and scope of the *original and present* use that have acquired and retain nonconforming status. The statutory test cannot be applied or passed on the basis of the county's present unquantified findings that *some* kennel use has endured through-out the 40-year period.⁶" *Marquam Farms Corporation v. Multnomah County*, 147 Or App 368,381 (1997).

In footnote 6, the Court of Appeals observed that the factual inquiry could lead to the conclusion under ORS 215.130(7) that the nonconforming use had fallen below the four dog level and no longer exists.

"The additional facts that the county must find *may* also affect the sufficiency of the applicants' showing under ORS 215.130(7), as well as subsections (5) and (9). That question, too, is before the county on remand."

"In the present posture of the case, we cannot now decide whether the findings the county has made, *if* supplemented by the required additional ones, could suffice to establish compliance with the statute. However, if we correctly understand petitioners to argue that the existing findings are sufficient to

Board of County Commissioners
Multnomah County
December 16, 1997
Page 4

demonstrate compliance in themselves, we disagree with them." *Marquam*, CA *supra*, footnote 6.

The Court of Appeals also explained that both the nonconforming use expansion evaluation and the interpretation of MCC 11.15.2028(B) involve application of a state statute, ORS 215.130, so that the County's interpretation receives no deference and local decisions must comply with the statute notwithstanding the existence of alleged contrary but acknowledged ordinance provisions. *Marquam*, CA *supra* 380.

Proposed Findings, page 4, III.A.1. Although the applicants assert through their proposed findings that the County need not determine the nature and scope of the nonconforming use, they also claim that the County has made the determination in prior, binding decisions.

The applicants made and lost this argument before LUBA and did not pursue it before the Court of Appeals. And, if they had not raised the issue on the appeal, they would not be entitled to do so now for the first time.

Here is what LUBA said:

"To the extent respondents argue that one or both of the 1990 decisions somehow 'vested' certain nonconforming use rights in intervenors, we reject that argument. Neither of the 1990 decisions addressed intervenors' nonconforming use rights directly, or through an application of .2028. Rather, in 1990 the county merely approved a design review for a 50-dog kennel and a conditional use for a watchman's residence."

"While that 1990 decision cannot now be revisited, neither can the county rely on that decision to demonstrate the existence of nonconforming use rights to intervenors' current kennel operations." *Marquam* LUBA, *supra* 519.

It is notable that the evidence cited by applicants in this section of the findings is not evidence that a 50-dog kennel operated on the property without interruption from the time the use became nonconforming to the present. In fact, the most that the applicants' evidence claims is that through the latter part of the 1970s and through the 1980s the only full time dog on the property was that of the owners and there were occasional visits from friend's dogs. The maximum number asserted during this period at any time was four to five dogs. The Marquam Farms members who frequented the property from 1983 until the new kennel opened

Board of County Commissioners
Multnomah County
December 16, 1997
Page 5

in 1989 or 1990 provided sworn affidavits that the only dog they ever saw on the property during that period was the single owner's dog.

In the face of this conflicting evidence and the fact that the applicants bear the burden of proof to show the exact number of dogs that occupied the property at all times, the Board cannot justify a finding that even four dogs were regular residents of the property at all times until the opening of the new kennel.

If the Board chooses to accept the vague and imprecise testimony provided by the applicants over the sworn statements of the Marquam members, the best case for the applicants supported by that evidence is that by the 1980s, the "kennel" use consisted of the owner's dog full time and occasional visits by up to three other dogs. That then is the baseline against which the proposed 75 dog commercial kennel operation must be judged when applying ORS 215.130 and the twelve factors of MCC11.15.8810.

THIS BOARD CANNOT FIND FROM THIS RECORD THAT A 75 DOG COMMERCIAL KENNEL OPERATION WILL HAVE A LESSER NEGATIVE IMPACT ON THE MARQUAM FARMS DUCK HUNTING THAN A SINGLE DOG PLUS OCCASIONAL VISITS FROM UP TO THREE ADDITIONAL DOGS.

Expansion of an Existing, Lawful Conditional Use - MCC 11.15.2028(B)

Proposed Findings, page 11, III.B. "This code provision provide (sic) a basis for approval of the applicants' request for a 75-unit dog kennel completely independent and apart from MCC 11.15.8810 and one which does not depend upon traditional notions of nonconforming use theory based on state law, i.e., ORS 215.130 and appellate cases decided under that statute."

The starting point for the application of MCC 11.15.2028(B) is the existence of a lawful nonconforming use. The Court of Appeals explained it this way:

"... section 2028(B) does not and cannot be interpreted to say anything that either defines nonconforming uses or regulates them. Rather, the role of nonconforming uses in the section is simply that of a condition precedent to the operative provisions, i.e., the 'conversion' of preexisting nonconforming uses to conditional uses that, *after* their conversion, are subject to the conditional use regulations in the county's legislation. To the extent that the county has interpreted the section in

Board of County Commissioners
Multnomah County
December 16, 1997
Page 6

the manner that petitioners assert, the interpretation cannot survive even under the less than stringent ;'clearly wrong' test that inheres in [citations omitted]." *Marquam, CA supra* 379.

More important than the failure to acknowledge the role of the nonconforming use determination is the omission from the applicants' proposed findings of the requirements of ORS 215.296. That statute sets forth the farm impact standards that must be met to authorize a kennel use under ORS 215.283(2). Unless MCC 11.15.2028(B) is read to require that the use has previously satisfied those requirements, the section would operate in violation of the statute and be unenforceable. That is why the previous hearings officer in his 1994 decision held that the only way a use could obtain the benefits of .2028(B) is if it had received a conditional use permit. Because OAR 660-33-120 and 130 prohibit new kennels on this high value farmland, the permit must have been obtained before the adoption of those LCDC rules.

The Court of Appeals summarized the matter as follows:

"LUBA concluded that the county's decision violates that state statute by interpreting and applying section 2028(B) in a way that allows a use subject to ORS 215.283(2) to achieve permitted status without being tested against the standards that ORS 215.296(1) requires it to satisfy. We agree with LUBA, and we reject petitioners' arguments that challenge LUBA's reasoning directly." *Marquam, CA supra* 383.

CONCLUSION

The applicants do not have a lawfully preexisting nonconforming 50-dog kennel. The evidence in the record, fairly interpreted, shows that the kennel use was abandoned for a period of nearly 20 years from the early 1970s to the late 1980s. Most generously interpreted in favor of the applicants, the evidence supports a kennel consisting of one owner's dog and occasional visits from up to three additional dogs. That is the baseline for evaluating an expansion to a 75-dog commercial kennel. Based on traffic alone, the negative impacts of the expanded kennel will be greater, not lesser than the nonconforming use.

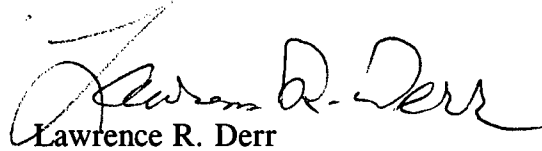
The applicants do not have a lawful conditional use for a 50-dog kennel. Any interpretation of MCC 11.15.2028(B) that asserts that they do is unlawful under ORS 215.283(2) and other state farm use laws.

JOSSELYN, POTTER & ROBERTS

Board of County Commissioners
Multnomah County
December 16, 1997
Page 7

The request for expansion of the kennel must be denied under either alternative basis.

Very truly yours,



Lawrence R. Derr

LRD:lb

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

In the matter of the application by Tim and
Angela Schillereff for the alteration of an
existing nonconforming dog kennel use to allow
up to 75 dogs.)

On remand from LUBA - LUBA No. 95-254)
County File No. CU4-95, ~~MC095~~ *mc 1-95*)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW and
FINAL ORDER**

The Board of Commissioners for Multnomah County hereby approves the applicants' request for an alteration of their existing, lawful, nonconforming ~~50-unit dog kennel~~ with a capacity for 50 dogs to expand the kennel capacity to accommodate 75 dogs pursuant to MCC 11.15.8810. ~~As an independent, alternate basis for our decision we approve the applicants' request for a CUP to expand their existing lawful conditional use 50-unit dog kennel to accommodate 75 dogs pursuant to MCC 11.15.2028(B) and 11.15.7105, et seq.~~

The Multnomah County Board of Commissioners finds as follows:

I. PROCEDURE AND PROCEDURAL HISTORY:

This matter originally came before us in the form of the following three alternative applications to allow the applicants' proposed 75-unit dog kennel:

- A. Authorization pursuant to MCC 11.15.8810 to allow the alteration of the applicants' existing nonconforming 50-unit dog kennel to a 75-unit dog kennel;
- B. A conditional use permit pursuant to MCC 11.15.2028(B) to expand the applicants' existing, conforming 50-unit dog kennel to a 75-unit dog kennel; and
- C. A Conditional Use Permit to allow a new 75-unit dog kennel on high value farm land.

The applicants initially took a 3-part alternative approach due to ambiguities in the Multnomah County Code (MCC) as to the status of the applicants' existing 50-unit nonconforming kennel operation and uncertainty as to the avenues in the MCC for obtaining an increase in use to 75 units. In our original decision, we approved all three of the alternative applications based on the 110-page findings of fact and conclusions of law written by the Hearings Officer.

The opponent, Marquam Farms, appealed to LUBA, which remanded the decision back to this Board in a December 5, 1996 Final Opinion and Order for further consideration of the "nature and extent" of the applicants' existing kennel operation. We and the applicants appealed LUBA's decision to the Court of Appeals, which affirmed LUBA. Thus, this matter comes before us on remand from LUBA for further consideration of the nature and extent of the applicants' existing nonconforming kennel use.

This matter was duly noticed and a public hearing was held before the Board of County Commissioners on December 16, 1997 (the "remand hearing"). That hearing was continued to allow staff to provide an excerpt of the record identifying the evidence in the record that supports the applicants' nonconforming use arguments. The hearing was reconvened December 30, 1997 for decision. Because we find the evidentiary record is adequate and compliance with LUBA's remand order does not require the evidentiary record to be re-opened, we did not allow the introduction of new factual evidence at the remand hearing. In this remand proceeding, the applicants' representative was allowed to make summary legal arguments, based on the existing record, as was a representative from Marquam Farms. No other party has standing in this remand proceeding; thus, after these summary arguments, we closed the public testimony portion of the hearing, deliberated and voted to approve the applicants' request.

II. CONTROLLING LAW:

We note at the onset, the applicants' original set of 3 alternative requests, coupled with the Hearings Officer's lengthy decision addressing all issues raised by all parties, created~~contributed~~ a certain amount of confusion on the part of LUBA and the Court of Appeals as to what the applicants had requested and what this Board had approved. On remand, the applicants have endeavored to simplify and make more clear their request and we too simplify our decision.

A. **New Dog Kennel on High Value Farm Land:** LUBA and the Court of Appeals eliminated the applicant's third alternative approach to this application, *i.e.*, establishment of a new 75-unit dog kennel on high value farm-land. OAR 660-33-120 prohibits the "establishment" of a new dog kennel on high value farmland, but allows local governments to approve the expansion of an existing dog kennel on high value farm-land. According to the Supreme Court's decision in *Lane County v. DLCD*, 325 Or 569 (1997), this rule is valid and prohibits our consideration of the applicants' third request in this matter, but specifically authorizes the expansion of an existing dog kennel on high value farmland under MCC 11.15.8810. Thus, in this remand decision, the applicants' have abandoned, and we do not address, any request to establish a new dog kennel on high value farmland.

B. **MCC 11.15.2028(B):** In its remand order, LUBA expressed strong reservations about the validity of MCC 11.15.2028(B) and our interpretation of this code provision that converts a nonconforming use into a lawful, conforming conditional use by operation of law ~~and~~ without a separate permit. This was the applicants' second alternative basis which we approved. ~~It was in the context of addressing this provision that LUBA remanded our decision for further~~

~~discussion and fact finding on the "nature and extent" of the applicants' previously existing kennel operation. In this decision, we address LUBA's direction on remand and provide a more clear interpretation of this code provision in the context of this application. However, the primary focus of our decision relates to the applicants' first alternative basis pertaining to the alteration of an existing nonconforming use pursuant to MCC 11.15.8810. The applicants have withdrawn this aspect of their application, and for that reason we do not address § 2028 further.~~

C. **MCC 11.15.8810:** This code provision allows the alteration, including an expansion, of any existing nonconforming use so long as the alteration will affect the surrounding area to a lesser negative extent, considering certain criteria. This was the applicants' first basis for their application, which we approved. We find that, on its face, § MCC 11.15.8810 does not require an evaluation of the nature or extent of the underlying nonconforming use. We interpret § MCC 11.15.8810 as requiring only that an applicant start with a lawful nonconforming use which can then be modified, including in some cases an expansion. Under our interpretation, an evaluation of a request made pursuant to § MCC 11.15.8810 requires only that we determine that a lawful nonconforming use exists and then that the 12 alteration criteria in § MCC 11.15.8810(A)&(E) are met. MCC 11.58.8810, which allows alteration of a nonconforming use, does not require an applicant to each time re-prove the nature and extent of the underlying nonconforming use. We find that once an applicant has proven to the county its entitlement to a nonconforming use in some prior proceeding at a particular level of intensity, we are entitled to rely upon that prior showing as a conclusive determination that the nonconforming use exists and allows us to proceed with the request to modify that lawfully existing nonconforming use. We begin our Findings and Decision with a discussion of this aspect of the applicants' application.

III. FINDINGS AND DECISION:

This decision addresses only the requirements of § .8810 and the remand orders of LUBA and the Court of Appeals. In particular, LUBA remanded our earlier decision for a more complete discussion of the nature and extent of the applicants' nonconforming dog kennel operation. We do not read the remand orders to require us to reopen the record to accept more evidence or that we necessarily must quantify the nature and extent of the applicants' nonconforming by using numbers dogs. As noted above, we do not interpret § .8810 to require the applicants to re-prove entitlement to their underlying nonconforming use; however, LUBA's remand order anticipates that level of explanation in our findings on remand, and so we provide it here. We find the applicants have established two bases for their right to a nonconforming dog kennel with a capacity for 50 dogs and those bases are discussed in the first two subsections. The third subsection addresses the criteria in § .8810 for expanding that lawful nonconforming use.

A. The Applicants' have proved their right to an existing lawful nonconforming dog kennel use with capacity for 50 dogs:

We specifically note the applicants' kennel operation has buildings and facilities with capacity to board 50 dogs and that the record contains focused testimony that 50 dogs have frequently been boarded at the kennel since 1958. We find that the kennel business has a periodic nature that results in a variation in the number of dogs boarded over the course of seasons and years. This is similar to nonconforming schools, hotels, churches, campgrounds and similar facilities which have a basic set of facilities with a particular capacity, but the actual number of occupants varies over time.

When interpreting § .8810 in the context of nonconforming dog kennels, as with nonconforming hotels, schools, churches and campgrounds, we do not quantify the extent of the nonconforming use by counting the number of occupants over time and then using the low-point as the ceiling for the use's extent. For purposes of compliance with § .8810 we focus on the capacity of the nonconforming kennel, hotel, school, church or campground and use that as the measure of the extent of the nonconforming use right over time. If the operator abandons the use or evidences the intention to abandon, we then conclude the use has lapsed, and the right is terminated. But, when the basic facility and capacity have been actively maintained continuously over time and occasionally filled to that capacity, we will conclude the "use" has persisted throughout and the nonconforming use right has been maintained. Just because the number of dogs, students, hotel guests, parishioners or campers fluctuates over time, we do not measure or limit the extent of the nonconforming use right by the number of occupants, which in virtually all cases would be zero at some point during every year. This interpretation of MCC .8810 and state law is modeled on the Oregon Supreme Court's decision in *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1997).

Consistent with this interpretation, we find that all of the basic facilities for boarding 50 dogs have been in place on the applicants' property since before 1958 and used throughout the course of that period. This is supported by the County's business license records for this kennel, and the sworn affidavits, documents and live testimony presented at the August 16, 1996 hearing before the hearings officer.¹ In this regard, we are particularly persuaded by the testimony of the dog kennel's original owners Red and Marguerette Persinger before the hearings officer.² This

¹ This includes the following evidence in the record:

- The 1967 and other County Business License records indicating the kennel on this property has had capacity for 50 dogs since 1954.
- Affidavits of George Douglas, Elden E. Persinger, Timothy Schillereff, Norman Crowe, Mildred Meifert, Marguerite Persinger, Neil Rose, Louisa Rose, Mairi Holman.
- Letters from Neil Rose, Pat Baggett, Elden E. Persinger, C. Dondo, and George Cashdollar.
- Personal testimony before the Hearings Officer at the August 16, 1995 hearing from Fred Granata, Peter Davis, Kent Meyer, Bruce Cabbellero, Doug Johnston, Patty Larsen, Myron Meifert, Linda Reeder Burns, Tim and Angela Schillereff, Elden D. Persinger, and Marguerette Persinger.

We specifically agree with and adopt as our own the Hearings Officer's conclusions with regard to this evidence found at pages 91 through 95 of his September 15, 1995 decision.

² Representatives of Marquam Farms have objected that none of the testimony presented on behalf of the applicants before the hearings officer is credible. We disagree. Not only is much of this evidence given under oath,

evidence shows that the kennel facility on the applicants' property has maintained a capacity for 50 dogs throughout this period and frequently 50 dogs were actually kenneled at the facility. Moreover, the following County land use approvals for modifications to this kennel operation provide further proof that the capacity of the kennel facility has been maintained at 50 dogs since before 1958:

- March 2, 1989 building permit to remodel the applicants' original kennel facility with a capacity of 50 dogs.
- August 6, 1990 Planning Director's design review decision specifically for the "remodeling of a Kennel for 50 Dogs." The lot layout in the application and decision show the original pre-1958 buildings still intact with a capacity for 50 dogs.
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence, the decision for which specifically says the applicants' kennel has an approved capacity for 50 dogs.
- March 7, 1996 Planning Director's design review decision approving the remodel of the applicants' kennel with a stated existing capacity of 50 dogs.

The applicants and their predecessors maintained the kennel buildings, dog runs and other facilities with a capacity of 50 dogs since before 1958. On that basis, we find that the kennel facilities with a capacity for 50 dogs which existed in 1958 has never been abandoned or discontinued, but, instead has been actively maintained and used continuously until the present. Granted, there have not been 50 dogs boarded at the kennel throughout that entire time, but we do not interpret our ordinance to require that kind of continuous use, nor did the Supreme Court require it of the aggregate pit in the *Martin* case. It is sufficient that the owners of the kennel, including these applicants, have continuously maintained the facilities for a maximum occupancy of 50 dogs since 1958 and have, in fact, frequently housed that number of animals. On that basis, the applicants and their predecessors have actively maintained until the present the right to a nonconforming kennel facility with a capacity for 50 dogs.

B. The Applicants' have a vested right to a dog kennel use with a capacity for 50 dogs by virtue of the County's prior approvals, representations made to the applicants by the County that such a right exists, and the applicants' detrimental reliance upon those representations:

but the majority of it is very specific and detailed, especially that of the Persingers, who owned and lived on the property for from 1973 until the applicants purchased it in 1989. We also note that no representative from Marquam Farms attended the August 16, 1996 hearings officer hearing, despite direct mail notice. Therefore, we reject Marquam Farms' opinions about the credibility of this testimony. Moreover, the testimony that Marquam Farms submitted in the 1994 design review proceeding and had incorporated into this record is from duck hunters that were on the Marquam Farms property, at most, a few days each year. When compared with the detailed evidence about day-to-day activities submitted in support of the applicants', we are not persuaded by the evidence provided by Marquam Farms and do not find it credible.

In addition to the evidence in this record to support the applicants' claim that their kennel has maintained a capacity for 50 dogs since before 1958, we are persuaded by previous County land use decisions that are premised upon, and therefore confirm, the fact that the applicants' have a right to a nonconforming dog kennel with capacity for 50 dogs. In particular, each of the following unappealed land use approvals by Multnomah County is legally premised upon the fact of this nonconforming use:

- March 2, 1989 building permit to remodel the applicants' original kennel building. As part of that process, County Staff specifically informed that a separate conditional use permit was not required for the use because it was nonconforming.
- August 6, 1990 Planning Director's design review decision approving a remodeling of the applicants' existing 50-unit dog kennel.
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence for the applicants' existing 50-unit dog kennel, including a determination by the Chief Assistant County Counsel and an acknowledgment by the planning commission that the applicants had a right to the existing nonconforming 50-unit dog kennel.
- March 7, 1996 Planning Director's design review decision approving the applicants' remodel of the existing 50-unit kennel and the design for an additional 25 kennel units.

Each of the design review approvals specifically stated that the capacity of the applicants' kennel was 50 dogs.³ Marquam Farms received notice of each of these applications, and in each had the opportunity to refute the stated kennel capacity of 50 dogs. Yet, Marquam Farms failed to appeal any of these design review decisions, including the underlying 50-dog kennel capacity. Moreover, in each of these applications, County Counsel and planning staff advised the applicants' they did not need to make a separate application to establish the underlying kennel use.⁴ The applicants' justifiably relied upon that specific direction from County staff and upon the County's approval and proceeded to invest in and maintain their kennel facilities.⁵

³ We acknowledge that only some portions, but by no means all, of the records for these prior proceedings are now before us. However, there is no requirement in state law or the MCC that requires us to first review the entire record of these prior decisions before acknowledging what these decisions approve.

⁴ That acknowledgment was first explicitly stated in the October 8, 1990 opinion of Chief Assistant County Counsel John DuBay that the applicants' had a lawfully existing nonconforming use predating restrictive zoning. We accept and agree with that determination.

⁵ Under our interpretation of MCC .8810, we find that, not only do the applicants' have a vested right to the nonconforming use they claim based on prior County approvals and advice of staff, but that we are estopped from concluding at this late date that the right does not in fact exist.

With regard to the November 1990 conditional use, the permit approved was for a use accessory to the applicants' 50 dog kennel. The application for an accessory night watchman's residence could only be accepted and considered by Multnomah County if the underlying use existed, i.e., a dog kennel with a capacity for 50 dogs. Again, Marquam Farms had notice of this application; its representatives participated in the planning commission hearing, yet Marquam Farms did not appeal. We find that Marquam Farms' failure to appeal the County's decisions and the applicants' reliance on those same decisions has vested the applicants' right to a nonconforming kennel use with a capacity for 50 dogs. We are estopped from concluding otherwise in this application even if we were inclined to do so (which we are not).

Our acknowledgment of the applicants' right in this regard is also supported by the staff's position taken in 1994 when the applicants had applied for design review to expand their dog kennel from 50 to 75 units. At that time, planning staff again verified the applicants' legal right to a nonconforming 50-unit dog kennel with the same Chief Assistant County Counsel, who again opined that the applicants' nonconforming use right was valid and need not be re-proven in the context of the 1994 design review application. On that basis, the applicants were advised to not submit any separate application or evidence to prove their existing nonconforming use right to a 50-unit kennel. This advice is memorialized in staff's February 2, 1994 Pre-application Conference Notes. Because the record in the applicants' 1994 design review application did not include this evidence, which staff specifically advised the applicants to not include, the Hearings Officer denied the application without prejudice.⁶

~~Our decision approving the applicants' request for a 75-unit dog kennel is based on 2 alternative bases: MCC 11.15.8810 and MCC 11.15.2028(B). The first basis is the more simple and straight forward, and we address it as follows:~~

~~A. MCC 11.15.8810 - Alteration of an Existing, Lawful Nonconforming Use:~~

~~We interpret MCC 11.15.8810 to allow the expansion of an existing nonconforming use so long as the criteria in MCC 11.15.8810(E) are met. In this case, we find these standards are met, based on the detailed discussion that follows. In so doing, we interpret MCC 11.15.8810 as not requiring any detailed discussion about the nature or extent of the underlying nonconforming use, except for a discussion establishing that the use is a lawful nonconforming use.~~

~~We specifically reject any suggestion that, in this application, the applicants must prove anew the elements necessary to establish the underlying nonconforming use as though they were applying for a nonconforming use. As discussed below, the fact that the applicants have an existing, lawful, nonconforming 50-unit kennel operation was established through a series of unappealed county decisions over the past 7 years. We decline Marquam Farms' invitation to~~

⁶ We place emphasis on the 1994 Hearings Officer's decision which made no particular determination about the applicants' nonconforming use claim, but instead said "if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore the applicant's request for Design Review is denied without prejudice." The future confirmation of the applicants' nonconforming use right anticipated by the Hearings Officer in 1994 is set forth in this decision.

readdress the fact of that right or the evidence that would normally be required to establish the applicants' nonconforming use. This proceeding is controlled by MCC 11.15.8810, which assumes the underlying nonconforming use right already exists and has been legally acknowledged.

~~1. The Applicants have an existing, lawful, nonconforming 50-unit dog kennel:~~

~~We find the applicants' request is based on their existing right to a lawful, nonconforming 50-unit dog kennel. The applicants' right to this use is documented in the record through the chronology supplied by the applicants along with corroborating affidavits and testimony before the Hearings Officer.⁷ The dog kennel on the applicants' property predates restrictive zoning, which was first applied on July 10, 1958. The applicants' entitlement to the use is also supported by the following series of unappealed land use decisions by Multnomah County:~~

- ~~• March 2, 1989 building permit to remodel the applicants' original kennel building. As part of that process, County Staff specifically informed that a separate conditional use permit was not required for the use because it was nonconforming.~~
- ~~• August 6, 1990 Planning Director's design review decision approving a remodeling of the applicants' existing 50-unit dog kennel.~~
- ~~• November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence for the applicants' existing 50-unit dog kennel, including a determination by the Chief Assistant County Counsel and an acknowledgment by the planning commission that the applicants had a right to the existing nonconforming 50-unit dog kennel.~~
- ~~• March 7, 1996 Planning Director's design review decision approving the applicants' remodel of the existing 50-unit kennel and the design for an additional 25 kennel units.~~

⁷ This includes the following evidence in the record:

- ~~• xxBusiness License indicating the kennel has a capacity of 50 dogs.~~
- ~~• Affidavits of George Douglas, Elden E. Persinger, Timothy Schillereff, Norman Crowe, Mildred Meifert, Marguerite Persinger, Neil Rose, Louisa Rose, Mairi Holman.~~
- ~~• Letters from Neil Rose, Pat Baggett, Elden E. Persinger, C. Dondo, and George Cashdollar.~~
- ~~• Personal testimony before the Hearings Officer at the August 16, 1995 hearing from Fred Granata, Peter Davis, Kent Meyer, Bruce Cabbellero, Doug Johnston, Patty Larsen, Myron Meifert, Linda Reeder Burns, Tim and Angela Schillereff, Elden D. Persinger, and Marguerette Persinger.~~

We specifically agree with and adopt as our own the Hearings Officer's conclusions with regard to this evidence found at pages 91 through 95 of his September 15, 1995 decision.

~~We conclude that all of these unappealed approvals acknowledged and confirmed the applicants' right to a lawful nonconforming 50-unit dog kennel.⁸ That acknowledgment was first explicitly stated in the October 8, 1990 opinion of Chief Assistant County Counsel John DuBay that the applicants' had a lawfully existing nonconforming use predating restrictive zoning. We accept and agree with that determination, but even if we did not, both of the 1990 decisions were premised on and included this County Counsel opinion and neither was appealed.~~

~~Our acknowledgment of the applicants' right in this regard is further supported by the staff's position taken in 1994 when the applicants had applied for design review to expand their dog kennel from 50 to 75 units. At that time planning staff verified the applicants' legal right to a nonconforming 50-unit dog kennel with the same Chief Assistant County Counsel, who again opined that the applicants' nonconforming use right was valid and need not be proven in the context of the 1994 design review application. On that basis, the applicants were advised to not submit any separate application or evidence to prove their existing nonconforming use right to a 50-unit kennel. This advice is memorialized in the February 2, 1994 Pre-application Conference Notes by staff. Because the record in the applicants' 1994 design review application did not include this evidence, which staff specifically advised the applicants to not include, the Hearings Officer denied the application without prejudice. The Hearings Officer determined that at least some evidence should have been submitted to support the applicants' entitlement to the underlying nonconforming use.⁹~~

We now have the full record before us; whereas, that does not appear to have been the case with the Hearings Officer in 1994. In light of the evidence in this record, we find the applicants' have had a right to a nonconforming 50-dog kennel ~~since the time restrictive zoning was first imposed~~. We find that, had the Hearings Officer before him the record which we do today, he would have had sufficient evidence of the applicants' nonconforming use right to approve the design review request. Regardless of the validity of that supposition, we find that today the applicants have established that their nonconforming use right to a 50-unit dog kennel with a capacity for 50 dogs is preexisting, that the county acknowledged that fact in 1990 on 4 occasions since 1989, and that acknowledgment none of those decisions was wernot appealed ~~even~~ by Marquam Farms despite its participation in those proceedings. On this basis, we now proceed to analyze the criteria of § MCC 11.15.8810(E) and address the applicants' request to expand their lawfully existing nonconforming 50-unit dog kennel to 75 units.

⁸ We acknowledge that only some portions, but by no means all, of the records for these prior proceedings are now before us. However, there is no requirement is state law or the MCC that requires us to first review the entire record of these prior decisions before acknowledging what these decisions approve.

⁹ We place emphasis on the 1994 Hearings Officer's decision which made no particular determination about the applicants' nonconforming use claim, but instead said "if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore the applicant's request for Design Review is denied without prejudice." The future confirmation of the applicants' nonconforming use right anticipated by the Hearings Officer in 1994 is set forth in this decision.

2C. The Applicants have demonstrated compliance with the criteria in § MCC 11.15.8810 to allow expansion of the capacity of their dog kennel from 50 to 75 dogs:

MCC 11.15.8810(A)&(E) provide 12 criteria that must be met before an alteration, such as the one proposed here, can be approved and specifically require findings on each of the following.

- (A)(1): A change in the use of no greater adverse impact on the neighborhood.
- (A)(2): A change in the structure of physical improvements of no greater adverse impact on the neighborhood.
- (E): An alteration of a non-conforming use may be permitted if the alteration will affect the surrounding area to a lesser negative extent than the current use, considering:
 - (1) The character and history of the use and of development in the surrounding area.
 - (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.
 - (3) The comparative numbers and kinds of vehicular trips to the site.
 - (4) The comparative amount and nature of outside storage, loading and parking.
 - (5) The comparative visual appearance.
 - (6) The comparative hours of operation.
 - (7) The comparative effect on existing vegetation.
 - (8) The comparative effect on water drainage.
 - (9) The degree of service or other benefit to the area, and
 - (10) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

We address each criterion below separately. But first, we specifically find that § MCC 11.15.8810(E) does not necessarily preclude an increase in the number of kennel units, and that an increase from 50 to 75 can meet this standard of a reduction in negative impacts. In particular, we find the applicants' specific proposal includes a redesign of kennel operation that,

when taken as a whole, will achieve a reduction in overall negative impacts from that of the current 50 units.

1a. A change in the use of no greater adverse impact on the neighborhood.

The primary impact from this proposal, and the one which Marquam Farms complains of, is noise. We find this proposal and the design features it entails will result in an overall reduction in noise from this dog kennel operation. The specific design features that will bring about this degree of protectiveness is explained in detail in subsection "d" below.

2b. A change in the structure of physical improvements of no greater adverse impact on the neighborhood.

The physical improvements that will accompany the applicants' increase from 50 to 75 dogs will reduce the operation's overall impact on the neighborhood, which in this case is limited to the Marquam Farms hunt club. The specific ways in which this will happen are described in detail in the subsections that follow.

3e. The character and history of the use and of development in the surrounding area.

As already noted, the starting point for our inquiry is the applicants' lawful, existing, nonconforming 50-unit dog kennel. The history of use at this 9.4 acre site is characterized by a commercial dog kennel with a capacity for 50 dogs. The property is too small to be productively or economically put to a farm use. We define the "surrounding" area to be the area likely to be impacted by this proposed use. We find that a circle with a radius of 1,500 feet exceeds the distance likely to experience impacts from this proposed kennel operation. For purposes of the criteria in § MCC 11.15.8810(E), we address potential impacts within this area.¹⁰

The surrounding area is rural and sparsely developed (only 3 residences within a quarter mile radius). The kennel complements recreational use of the island for hunting since hunting dogs are frequently boarded and trained at the kennel. The nearest residence is approximately 800 feet from the kennel, separated by Reeder Road and a 15-foot dike covered with an expansive blackberry bramble. The following improvements are not part of the current kennel operation, but are proposed by the applicants in this proposal: insulated roof, walls, parking and circulation. With these improvements, we find that barking dogs will not be audible at the nearest residence, and this conclusion is supported by the sound study conducted by the applicants and included in the record.¹¹

¹⁰ In addition to the findings set forth herein, we also expressly accept and adopt as our own the compatibility analysis submitted by the applicant at pages 13-14 and 26 of their application narrative.

¹¹ The noise study (conducted by Rose City Sound in 1990) is attached to the applicants' narrative as Attachment E. We accept this study and its conclusions as credible expert testimony on the subject of noise impacts.

The only commercial farming operation with a 1,500 foot radius is a dairy operation which reports no adverse impacts to date from the current 50-dog kennel operation or any of the other dog kennels on this property. We find that, with the proposed improvements, this farm will not experience any impacts from the proposed use in the future.

The only possible impact identified in the record is with Marquam Farms - the hunt club that abuts the subject site. Marquam Farms shares a common access easement with the applicants' kennel. We find that any dog barking problems previously experienced by Marquam Farms will no longer exist because of the proposed redesign. The applicants propose a new configuration that prevents dogs housed in the kennels from seeing hunters arriving and leaving Marquam Farms. With the new design, the dogs will no longer bark at arriving and departing hunters, thus the proposal, when taken as a whole, will reduce the impacts presently experienced by Marquam Farms from 50 dogs.

4d. The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.

With regard to noise, the applicants have submitted a credible, expert sound study that demonstrates that barking dog noise, even with the addition of 25 more dogs, will be reduced.¹² In particular, the following design features will collectively reduce the noise below what is currently experienced with 50 dog kennel:

- A 100' solid wall for the full length of the shared accessway that blocks the kennels' view of hunters entering and leaving the Marquam Farms hunt club,
- Kennels covered with an insulated roof to prevent sound transmission,
- A parking lot design that allows dogs to be taken to grooming, bathing, exercise and living facilities without being heard or seen by dogs in the kennel,
- A circulation design that allows dog owners to pick-up and leave-off dogs out of sight and sound of the kennels, thus not disturbing dogs housed in the kennels.

We find these measures will be adequate to prevent and, in fact, reduce noise impacts on all properties within the impact area. In light of the fact that the applicable zoning allows all of the surrounding properties to have up to 3 adult dogs with absolutely no mechanism to prevent any impacts, we find the applicants' proposal will prevent noise impacts.

With regard to dust, we find that the applicants' driveway is graveled and there is no evidence of dust from traffic on the driveway. Based on this record, we find that dust is not a factor that could adversely impact properties in the impact area. To the extent that dust from the

¹² In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicant at pages 26-28 of their application narrative.

gravel driveway could be construed to be a problem, we find that conventional tillage agricultural operations produce far more dust than could be produced from the applicants' driveway.

With regard to odor, we find no evidence of odor complaints in the record before us. Moreover, the applicants have installed an on-site septic system sufficient to handle all septic waste from a 75-unit dog kennel. Consequently, we find that odor from the proposed 75-unit kennel operation will not be a problem.

We find there will be no vibration, glare or smoke impacts from this proposed use. In summary, we conclude that the proposed alteration to expand the kennel to 75 dogs will affect the surrounding area to a lesser negative extent than the current 50-unit kennel considering noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line. Thus, we find that, pursuant to ~~§ MCC 11.15.8810~~(E)(2), the alteration will have a reduced negative effect when compared to the current operation.

5e. The comparative numbers and kinds of vehicular trips to the site.

We find that, with an increase from 50 to 75 kennels, vehicular traffic will necessarily increase; however, with the proposed modifications to the kennel's design, we find that the negative impacts from traffic will be less.¹³ The traffic benefits from the proposal are primarily from improved parking and circulation at the site - and issue discussed in the next subsection. Moreover, we find, based on evidence in the record, that none of the transportation facilities serving the applicants' kennel are near capacity, and thus there will be no capacity or safety impact from the proposed expansion. We also find to be persuasive the fact that the peak dog boarding season (summer) does not overlap with the peak in duck club use at Marquam Farms (fall and winter). Accordingly, we find, pursuant to ~~§ MCC 11.15.8810~~(E)(3), the alteration will have a reduced negative effect when compared to the current operation.

6f. The comparative amount and nature of outside storage, loading and parking.

There is no outside storage associated with the current or proposed configuration, thus outside storage is not an issue. The proposal will improve the site's parking by adding wheel stops, thus maintaining better parking organization and by screening the parking and loading areas from dog kennels, thus limiting disturbance to boarded dogs. Also, the new parking configuration will prevent customer cars from blocking the access shared with Marquam Farms because of the proposed single office, replacing the current 2 offices, the location of circulation signs and the better organization of parking spaces marked with wheel stops. With these improvements, we find that, pursuant to ~~§ MCC 11.15.8810~~(E)(4), the alteration will have a reduced negative effect when compared to the current operation.

¹³ In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicants at pages 28-30 of their application narrative.

7g. The comparative visual appearance.

We find that the proposed improvements to the kennel will improve its visual appearance for the following reasons:

- The old Quonset huts on the property will be replaced with a new, state of the art kennel building.
- The parking lot will be provided with wheel stops and signs to ensure that customer vehicles are parked in an orderly fashion.
- New landscaping and fencing will be installed as proposed which will enhance the appearance of the kennel and grounds.

With these improvements, we find that the expanded kennel will have a better visual appearance than does the present 50-dog operation. Accordingly, we find that, pursuant to § MCC 11-15.8810(E)(5), the alteration will have a reduced negative effect when compared to the current operation.

8h. The comparative hours of operation.

The hours of operation with the proposed expansion will not change; thus, § MCC 11-15.8810(E)(6) is not a factor.

9i. The comparative effect on existing vegetation.

With the proposed expansion of use to 75 dogs, the applicants propose new landscaping which will benefit and lessen the impacts to Marquam Farms. In particular, Marquam Farms will benefit from landscaping separating the parallel parking area from the northeast wall of the new kennel building. With this improvement, we find that, pursuant to § MCC 11-15.8810(E)(7), the alteration will have a reduced negative effect when compared to the current operation.

10j. The comparative effect on water drainage.

The proposed alteration will increase slightly the impervious area and thus the runoff from the site. However given the site's 9.4-acre size, we find that the site's overall drainage will not be affected by the proposed expansion. As noted previously, the water quality of the runoff will not be negatively impacted by the use because of the septic system planned to serve the expanded operation. For these reasons, we find § MCC 11-15.8810(E)(6) is not a factor.

11k. The degree of service or other benefit to the area.

We find the alteration proposed by the applicants will benefit the surrounding area because of the substantial improvements in design, facilities and operations it represents. The only complaints received in this matter were from Marquam Farms, and we find that the

proposed alteration, when taken as a whole, will not only eliminate those impacts that currently exist, but will benefit Marquam Farms. The expansion will allow the applicants to serve more of the dogs owned by hunt club members as well as dogs owned by other Sauvie Island residents. The proposal will reduce noise, improve the overall appearance of the property and buildings and improve parking and circulation. All of these improvements, and the increased capacity, stand to benefit the surrounding area. Thus, pursuant to § MCC 11.15.8810(E)(9), the alteration will have a reduced negative effect when compared to the current operation

12. Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

As noted previously, we find the present use has no measurable impact on surrounding resource uses or its neighbors, with the possible exception of Marquam Farms. With the proposed expansion, those few impacts will be substantially reduced or eliminated. The applicants' proposal is designed specifically to reduce impacts with Marquam Farms and provide a better standard of service to current and future customers. We believe the insulated and completely contained building design, the solid wall along the shared access way, the improved circulation measures and landscaping will make this kennel more compatible with Marquam Farms and the other properties within the surrounding area. We find these measures, taken as a whole will reduce the overall conflicts with surrounding uses, to the extent they exist at all, and will make the use in its altered form more compatible with its neighbors as required by § MCC 11.15.8810(E)(10).

B. MCC 11.15.2028(B) — Expansion of an Existing, Lawful Conditional Use:

~~The second alternative basis for approval which remains after LUBA's remand order is MCC 11.15.2028(B). This code provision provides a basis for approval of the applicants' request for a 75-unit dog kennel completely independent and apart from MCC 11.15.8810 and one which does not depend upon traditional notions of nonconforming use theory based on state law, i.e., ORS 215.130 and appellate cases decided under that statute.~~

~~In its review of our first decision in this matter, LUBA concluded the applicants had established a nonconforming use right, but, without much exploration of the extremely large record, summarily concluded that the extent of that use was a 4-dog kennel. As we explain in the previous section, the extent of the nonconforming use which we address in this decision, and which the evidence in the record supports, is 50 dogs. However, in response to questions raised by LUBA in its decision regarding MCC 11.15.2028(B), we provide the following interpretation of that section and an explanation of how it too supports our finding of 50 dogs as the starting point.~~

1. Under MCC 11.15.2028(B) the applicants have a lawful conditional use right to a 50-unit dog kennel:

~~MCC 11.15.2028(B) pertains to uses that were lawful when first established and in existence at the time restrictive zoning was first applied. In our original decision in this matter,~~

we did not focus on this provision, and LUBA indicated that a fuller explanation and interpretation was called for. Specifically, MCC 11.15.2028(B) provides that:

~~"Conditional uses listed in subpart MCC .2012 [the conditional use section] legally established prior to August 14, 1980, shall be deemed conforming and not subject to the provisions of MCC .8804 [the nonconforming use section], provided, however, that any change of use shall be subject to approval pursuant to the provisions of MCC .2012."~~

~~As an aside, we interpret this code provision consistently with the state law that controls nonconforming uses, but with the proviso that, under its terms, a lawful, existing nonconforming use may become transformed into a conditional use. LUBA and the Court of Appeals appeared to interpret our original decision to allow the resurrection of lapsed nonconforming uses as fully allowed conditional uses under this code provision. This was not our intent. In order to gain protection under MCC 11.15.2028(B) and conversion into a conforming use according to its terms, an applicant must prove all of the following:~~

- ~~(1) The use was lawful when established,~~
- ~~(2) The use was in continuous existence up to and including August 14, 1980,~~
- ~~(3) The use is listed as a conditional use in the underlying zoning district, and~~
- ~~(4) The use has been continuously in operation since August 14, 1980, at least at some level of intensity, until the present.~~

~~We find all of these elements to be present in this case.~~

~~As explained in the first sections of this decision, the record clearly demonstrates that a dog kennel lawfully existed at the subject site and has operated since before the time of restrictive zoning. With little review of the evidentiary record, LUBA noted the applicants' nonconforming use right to 4 dogs. Thus the first two elements of MCC 11.15.2028(B), are met. The third element is also met because dog kennels are listed as being conditionally allowed in the County's EFU zone. See MCC 11.15.2012(B)(11). According to the plain language of MCC 11.15.2028(B), the dog kennel operation on the applicants' property became a lawful conditional use on August 14, 1980 with no affirmative or formal action by the County nor an application by the then property owners. MCC 11.15.2028(B) does not require any specific proceeding or permit for a use that has met the requirements of that section to be deemed a lawful conditional use and we reject any suggestion that a formal conditional use permit is required under MCC 11.15.2028(B).~~

~~An important part of our interpretation rests upon the use being listed as a conditional use in the underlying zone and the fact that the use lawfully existed on August 14, 1980. In light of those facts, we do not understand what an additional formal conditional use proceeding or permit would add. The use existed and it was lawful at least on August 14, 1980. MCC 11.15.2028(B) requires that use be deemed a lawful conditional use, and we give literal effect to that requirement. For the purposes of this proceeding, however, the question remaining is the~~

fourth element, *i.e.*, has the use been maintained at least at some level of intensity since August 14, 1980 in order to maintain the conditional use status.

With regard to the fourth element, MCC 11.15.2028(B) is not a nonconforming use regulation, and we specifically find that our interpretation of this provision is not controlled by traditional notions of nonconforming use law, ORS 215.130 or appellate decisions interpreting that statute. We find that once a use, such as the applicants' dog kennel, has attained the status of a legal conditional use on August 14, 1980, it may vary in intensity or extent without any particular limitations except there can be no lapses. Thus, no particular approval or permit was required for the applicants to maintain their conditional use status, so long as there were no lapses in the use between August 14, 1980 and now. The record shows no such lapses, but a continuous, uninterrupted use dog kennel use throughout that period.¹⁴ Thus, we find the fourth element to be met, and the applicants have a lawful conditional use right to a 50 dog kennel, which may be expanded pursuant to the conditional use permit criteria in MCC 11.15.7105, *et seq.*

The interpretation we articulate today is consistent with the interpretation County planning staff and the County Counsel have followed with regard to these applicants in prior decisions, including the following:

- March 1989 building permit to remodel the applicants' original kennel building;
- August 1990 design review decision approving a remodel of the applicants' 50 unit dog kennel; and
- November 1990 conditional use permit for the night watchman's residence.

Based on this interpretation, the applicants were specifically told to not bother applying for any sort of nonconforming use status or conditional use permit confirming that their 50 unit dog kennel was already a lawful conditional use. Pursuant to our interpretation of MCC 11.15.2028(B), as set forth in our decision today, that prior advice was proper, lawful and supported by the plain language of MCC 11.15.2028(B), which has been acknowledged by LCDC as being consistent with applicable state law.

2. The applicant's lawful conditional use right to a 50 dog kennel can be expanded to 75 dogs because the conditional use permit standards in MCC 11.15.7105, *et seq.* are met:

Having established that the applicants have a lawful right to a 50 unit conditional use dog kennel coming into this proceeding, they may now apply to expand that use to 75 dogs by meeting the standards for conditional uses in MCC 11.15.7105, *et seq.* We find, as did the Hearings Officer in 1995, that the applicants have demonstrated compliance with those

¹⁴ However, had a lapse occurred, the applicants would simply have had to apply for a new conditional use permit to reactivate the use. The use would not be illegal, it would merely require a new permit.

standards.¹⁵ ~~Our conclusion in this regard is based upon the facts and conclusions asserted by the applicants' at pages 13 through 25 of their application narrative, which we adopt as our own in support of this decision. Thus, the applicants have begun with a lawful conditional use right to a 50-unit dog kennel pursuant to MCC 11.15.2028(B) and have demonstrated compliance with the approval standards necessary to expand that use to a 75-unit dog kennel under MCC 11.15.7105, et seq.~~

IV. CONCLUSION:

Based on the foregoing findings of fact and conclusions of law, we hereby approve the applicants' request for an alteration of their existing, lawful, nonconforming 50-unit dog kennel to expand to accommodate 75 dogs. ~~As an independent, alternate basis for our decision we approve the applicants' request for a CUP to expand their existing lawful conditional use 50-unit dog kennel to accommodate 75 dogs.~~

IT IS SO ORDERED this ____ day of December, 1997.

Chair of the Board of Commissioners

Attest: _____

AYES: _____

NAYS: _____

J:\DHK\33536-00.003\BOCCFIND.DOC

¹⁵ We specifically agree with, and adopt as our own, the Hearings Officer's conclusions with regard to the applicants' compliance with the standards for modifying conditional uses in MCC 11.15.7105, *et seq.*, found at pages 85 and 86 of his September 15, 1995 decision.

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

In the matter of the application by Tim and
Angela Schillereff for the alteration of an
existing nonconforming dog kennel use to
allow up to 75 dogs.)

On remand from LUBA - LUBA No. 95-254)
County File No. CU4-95, MC1-95.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW and
FINAL ORDER**

The Board of Commissioners for Multnomah County hereby approves the applicants' request for an alteration of their existing, lawful, nonconforming dog kennel with a capacity for 50 dogs to expand the kennel capacity to accommodate 75 dogs pursuant to MCC 11.15.8810.

The Multnomah County Board of Commissioners finds as follows:

I. PROCEDURE AND PROCEDURAL HISTORY:

This matter originally came before us in the form of the following three alternative applications to allow the applicants' proposed 75-unit dog kennel:

- A. Authorization pursuant to MCC 11.15.8810 to allow the alteration of the applicants' existing nonconforming 50-unit dog kennel to a 75-unit dog kennel;
- B. A conditional use permit pursuant to MCC 11.15.2028(B) to expand the applicants' existing, conforming 50-unit dog kennel to a 75-unit dog kennel; and
- C. A Conditional Use Permit to allow a new 75-unit dog kennel on high value farm land.

The applicants initially took a 3-part alternative approach due to ambiguities in the Multnomah County Code (MCC) as to the status of the applicants' existing 50-unit nonconforming kennel operation and uncertainty as to the avenues in the MCC for obtaining an increase in use to 75 units. In our original decision, we approved all three of the alternative applications based on the 110-page findings of fact and conclusions of law written by the Hearings Officer.

The opponent, Marquam Farms, appealed to LUBA, which remanded the decision back to this Board in a December 5, 1996 Final Opinion and Order for further consideration of the "nature and extent" of the applicants' existing kennel operation. We and the applicants appealed LUBA's decision to the Court of Appeals, which affirmed LUBA. Thus, this matter comes

before us on remand from LUBA for further consideration of the nature and extent of the applicants' existing nonconforming kennel use.

This matter was duly noticed and a public hearing was held before the Board of County Commissioners on December 16, 1997 (the "remand hearing"). That hearing was continued to allow staff to provide an excerpt of the record identifying the evidence in the record that supports the applicants' nonconforming use arguments. The hearing was reconvened December 30, 1997 for decision. Because we find the evidentiary record is adequate and compliance with LUBA's remand order does not require the evidentiary record to be re-opened, we did not allow the introduction of new factual evidence at the remand hearing. In this remand proceeding, the applicants' representative was allowed to make summary legal arguments, based on the existing record, as was a representative from Marquam Farms. No other party has standing in this remand proceeding; thus, after these summary arguments, we closed the public testimony portion of the hearing, deliberated and voted to approve the applicants' request.

II. CONTROLLING LAW:

We note at the onset, the applicants' original set of 3 alternative requests, coupled with the Hearings Officer's lengthy decision addressing all issues raised by all parties, created a certain amount of confusion on the part of LUBA and the Court of Appeals as to what the applicants had requested and what this Board had approved. On remand, the applicants have endeavored to simplify and make more clear their request and we too simplify our decision.

A. New Dog Kennel on High Value Farm Land: LUBA and the Court of Appeals eliminated the applicant's third alternative approach to this application, *i.e.*, establishment of a new 75-unit dog kennel on high value farmland. OAR 660-33-120 prohibits the "establishment" of a new dog kennel on high value farmland, but allows local governments to approve the expansion of an existing dog kennel on high value farmland. According to the Supreme Court's decision in *Lane County v. DLCD*, 325 Or 569 (1997), this rule is valid and prohibits our consideration of the applicants' third request in this matter, but specifically authorizes the expansion of an existing dog kennel on high value farmland under MCC 11.15.8810. Thus, in this remand decision, the applicants' have abandoned, and we do not address, any request to establish a new dog kennel on high value farmland.

B. MCC 11.15.2028(B): In its remand order, LUBA expressed strong reservations about the validity of MCC 11.15.2028(B) and our interpretation of this code provision that converts a nonconforming use into a lawful, conforming conditional use by operation of law without a separate permit. This was the applicants' second alternative basis which we approved. The applicants have withdrawn this aspect of their application, and for that reason we do not address MCC .2028 further.

C. MCC 11.15.8810: This code provision allows the alteration, including an expansion, of any existing nonconforming use so long as the alteration will affect the surrounding area to a lesser negative extent, considering certain criteria. This was the applicants'

first basis for their application, which we approved. We find that, on its face, MCC .8810 does not require an evaluation of the nature or extent of the underlying nonconforming use. We interpret MCC .8810 as requiring only that an applicant start with a lawful nonconforming use which can then be modified, including in some cases an expansion. Under our interpretation, an evaluation of a request made pursuant to MCC .8810 requires only that we determine that a lawful nonconforming use exists and then that the 12 alteration criteria in MCC .8810(A)&(E) are met. MCC 11.58.8810, which allows alteration of a nonconforming use, does not require an applicant to each time re-prove the nature and extent of the underlying nonconforming use. We find that once an applicant has proven to the county its entitlement to a nonconforming use in some prior proceeding at a particular level of intensity, we are entitled to rely upon that prior showing as a conclusive determination that the nonconforming use exists and allows us to proceed with the request to modify that lawfully existing nonconforming use. We begin our Findings and Decision with a discussion of this aspect of the applicants' application.

III. FINDINGS AND DECISION:

This decision addresses only the requirements of MCC .8810 and the remand orders of LUBA and the Court of Appeals. In particular, LUBA remanded our earlier decision for a more complete discussion of the nature and extent of the applicants' nonconforming dog kennel operation. We do not read the remand orders to require us to reopen the record to accept more evidence or that we necessarily must quantify the nature and extent of the applicants' nonconforming by using numbers dogs. As noted above, we do not interpret MCC .8810 to require the applicants to re-prove entitlement to their underlying nonconforming use; however, LUBA's remand order anticipates that level of explanation in our findings on remand, and so we provide it here. We find the applicants have established two bases for their right to a nonconforming dog kennel with a capacity for 50 dogs and those bases are discussed in the first two subsections. The third subsection addresses the criteria in MCC .8810 for expanding that lawful nonconforming use.

A. The Applicants' have proved their right to an existing lawful nonconforming dog kennel use with capacity for 50 dogs:

We specifically note the applicants' kennel operation has buildings and facilities with capacity to board 50 dogs and that the record contains focused testimony that 50 dogs have frequently been boarded at the kennel since 1958. We find that the kennel business has a periodic nature that results in a variation in the number of dogs boarded over the course of seasons and years. This is similar to nonconforming schools, hotels, churches, campgrounds and similar facilities which have a basic set of facilities with a particular capacity, but the actual number of occupants varies over time.

When interpreting MCC .8810 in the context of nonconforming dog kennels, as with nonconforming hotels, schools, churches and campgrounds, we do not quantify the extent of the nonconforming use by counting the number of occupants over time and then using the low-point as the ceiling for the use's extent. For purposes of compliance with MCC .8810 we focus on the

capacity of the nonconforming kennel, hotel, school, church or campground facility and use the facility capacity as the measure of the extent of the nonconforming use right over time. If the operator abandons the use or evidences the intention to abandon, we then conclude the use has lapsed, and the right is terminated. But, when the basic facility and capacity have been actively maintained continuously over time and occasionally filled to that capacity, we will conclude the "use" has persisted throughout and that the nonconforming use right has been maintained. Just because the number of dogs, students, hotel guests, parishioners or campers fluctuates over time, we do not measure or limit the extent of the nonconforming use right by the number of occupants, which in virtually all cases would be zero at some point during every year. This interpretation of MCC .8810 and state law is modeled on the Oregon Supreme Court's decision in *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1997).

Consistent with this interpretation, we find that all of the basic facilities for boarding 50 dogs have been in place on the applicants' property since before 1958, actively maintained and used throughout the course of that period. This is supported by the County's business license records for this kennel, and the sworn affidavits, documents and live testimony presented at the August 16, 1996 hearing before the hearings officer.¹ In this regard, we are particularly persuaded by the testimony of the dog kennel's original owners Red and Marguerette Persinger before the hearings officer.² This evidence shows that the kennel facility on the applicants' property has been maintained with a capacity for 50 dogs throughout this period and frequently 50 dogs actually were kenneled at the facility. The following County records and land use approvals for this kennel operation provide further proof that the capacity of the kennel facility has been maintained at 50 dogs since before 1958:

¹ This includes the following evidence in the record:

- The 1967 and other County Business License records indicating the kennel on this property has had capacity for 50 dogs since 1954.
- Affidavits of George Douglas, Elden E. Persinger, Timothy Schillereff, Norman Crowe, Mildred Meifert, Marguerite Persinger, Neil Rose, Louisa Rose, Mairi Holman.
- Letters from Neil Rose, Pat Baggett, Elden E. Persinger, C. Dondo, and George Cashdollar.
- Personal testimony before the Hearings Officer at the August 16, 1995 hearing from Fred Granata, Peter Davis, Kent Meyer, Bruce Cabbellero, Doug Johnston, Patty Larsen, Myron Meifert, Linda Reeder Burns, Tim and Angela Schillereff, Elden D. Persinger, and Marguerette Persinger.

We specifically agree with and adopt as our own the Hearings Officer's conclusions with regard to this evidence found at pages 91 through 95 of his September 15, 1995 decision.

² Representatives of Marquam Farms have objected that none of the testimony presented on behalf of the applicants before the hearings officer is credible. We disagree. Not only is much of this evidence given under oath, but the majority of it is very specific and detailed, especially that of the Persingers, who owned and lived on the property for from 1973 until the applicants purchased it in 1989. We also note that no representative from Marquam Farms attended the August 16, 1996 hearings officer hearing, despite direct mail notice. Therefore, we reject Marquam Farms' opinions about the credibility of this testimony. Moreover, the testimony that Marquam Farms submitted in the 1994 design review proceeding and had incorporated into this record is from duck hunters that were on the Marquam Farms property, at most, a few days each year. When compared with the detailed evidence about day-to-day activities submitted in support of the applicants', we are not persuaded by the evidence provided by Marquam Farms and do not find it credible.

- October 18, 1967 County Business License records stating that the facility was constructed in 1954 and 1955 as a commercial breeding and boarding kennel facility with a capacity of up to 50 dogs.
- March 2, 1989 building permit to remodel the applicants' original kennel facility with a capacity of 50 dogs.
- August 6, 1990 Planning Director's design review decision specifically for the "remodeling of a Kennel for 50 Dogs." The lot layout in the application and decision show the original pre-1958 buildings still intact with a capacity for 50 dogs.
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence, the decision for which specifically says the applicants' kennel has an approved capacity for 50 dogs.
- March 7, 1996 Planning Director's design review decision approving the remodel of the applicants' kennel with a stated existing capacity of 50 dogs.

The applicants and their predecessors have actively maintained the kennel buildings, dog runs and other facilities with a capacity of 50 dogs since before 1958. On that basis, we find that the kennel facilities with a capacity for 50 dogs which existed in 1958 has never been abandoned or discontinued, but, instead has been actively maintained and used continuously until the present. Granted, there have not been 50 dogs boarded at the kennel throughout that entire time, but we do not interpret our ordinance to require that kind of continuous use, nor did the Supreme Court require it of the aggregate pit in the *Martin* case. It is sufficient that the owners of the kennel, including these applicants, have continuously maintained the facilities for a maximum occupancy of 50 dogs since 1958 and have, in fact, frequently housed that number of animals. On that basis, the applicants and their predecessors have actively maintained until the present the right to a nonconforming kennel facility with a capacity for 50 dogs.

B. The Applicants' have a vested right to a nonconforming dog kennel with a capacity for 50 dogs by virtue of the County's prior approvals, representations made to the applicants by the County that such a right exists, and the applicants' detrimental reliance upon those representations:

In addition to the evidence in this record to support the applicants' claim that their kennel has maintained a capacity for 50 dogs since before 1958, we are persuaded by previous County land use decisions that are premised upon, and therefore confirm, the fact that the applicants' have a right to a nonconforming dog kennel with capacity for 50 dogs. In particular, each of the following unappealed land use approvals by Multnomah County is legally premised upon the fact of this nonconforming use:

- March 2, 1989 building permit to remodel the applicants' original kennel building. As part of that process, County Staff specifically informed that a separate conditional use permit was not required for the use because it was nonconforming.
- August 6, 1990 Planning Director's design review decision approving a remodeling of the applicants' existing 50-unit dog kennel.
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence for the applicants' existing 50-unit dog kennel, including a determination by the Chief Assistant County Counsel and an acknowledgment by the planning commission that the applicants had a right to the existing nonconforming 50-unit dog kennel.
- March 7, 1996 Planning Director's design review decision approving the applicants' remodel of the existing 50-unit kennel and the design for an additional 25 kennel units.

Each of the design review approvals specifically stated that the capacity of the applicants' kennel was 50 dogs.³ Marquam Farms received notice of each of these applications, and in each had the opportunity to refute the stated kennel capacity of 50 dogs. Yet, Marquam Farms failed to appeal any of these design review decisions, including the underlying kennel use with a 50-dog capacity. Moreover, in each of these applications, County Counsel and planning staff advised the applicants' they did not need to make a separate application to establish the underlying kennel use.⁴ The applicants' justifiably relied upon that specific direction from County staff and upon the County's approval and continued to invest in and maintain their kennel facilities.⁵

With regard to the November 1990 conditional use, the permit approved was for a use accessory to the applicants' 50 dog kennel. The application for an accessory night watchman's residence, as a matter of law, could only be accepted and considered by Multnomah County if the underlying use existed, *i.e.*, a dog kennel with a capacity for 50 dogs. We find that the Planning Commission's November 6, 1990 approval necessarily included an approval or ratification of the applicants' nonconforming kennel use and its capacity of 50 dogs. Again, Marquam Farms had

³ We acknowledge that only some portions, but by no means all, of the records for these prior proceedings are now before us. However, there is no requirement in state law or the MCC that requires us to first review the entire record of these prior decisions before acknowledging what these decisions approve.

⁴ That acknowledgment was first explicitly stated in the October 8, 1990 opinion of Chief Assistant County Counsel John DuBay that the applicants' had a lawfully existing nonconforming use predating restrictive zoning. We accept and agree with that determination.

⁵ Under our interpretation of MCC .8810, we find that, not only do the applicants' have a vested right to the nonconforming use they claim based on prior County approvals and advice of staff, but that we are estopped from concluding at this late date that the right does not in fact exist.

notice of this application; its representatives participated in the planning commission hearing, yet Marquam Farms did not appeal. We find that Marquam Farms' failure to appeal the County's 1990 conditional use permit is a critical omission that bars further litigation or dispute of the nonconforming use issue in this or any other proceeding. To preserve its right to dispute the nonconforming use status of the applicants' kennel, Marquam Farms was required to have appealed that decision to this Board. As things now stand, the Planning Commission's and the other unappealed decisions and the applicants' reliance on those same decisions have now vested the applicants' right to a nonconforming kennel use with a capacity for 50 dogs. We are now estopped from concluding otherwise in this application even if we were inclined to do so (which we are not).

Our acknowledgment of the applicants' right in this regard is also supported by the staff's position taken in 1994 when the applicants had applied for design review to expand their dog kennel from 50 to 75 units. At that time, planning staff again verified the applicants' legal right to a nonconforming 50-unit dog kennel with the same Chief Assistant County Counsel, who again opined that the applicants' nonconforming use right was valid and need not be re-proven in the context of the 1994 design review application. On that basis, the applicants were advised to not submit any separate application or evidence to prove their existing nonconforming use right to a 50-unit kennel. This advice is memorialized in staff's February 2, 1994 Pre-application Conference Notes. Because the record in the applicants' 1994 design review application did not include this evidence, which staff specifically advised the applicants to not include, the Hearings Officer denied the application without prejudice.⁶

We now have the full record before us; whereas, that does not appear to have been the case with the Hearings Officer in 1994. In light of the evidence in this record, we find the applicants' have had a right to a nonconforming 50-dog kennel. We find that, had the Hearings Officer before him the record which we do today, he would have had sufficient evidence of the applicants' nonconforming use right to approve the design review request. Regardless of the validity of that supposition, we find that today the applicants have established that their nonconforming use right to a kennel with a capacity for 50 dogs, that the county acknowledged that fact on 4 occasions since 1989, and that none of those decisions were appealed by Marquam Farms despite its participation in those proceedings. On this basis, we now proceed to analyze the criteria of MCC .8810(E) and address the applicants' request to expand their lawfully existing nonconforming 50-unit dog kennel to 75 units.

C. The Applicants have demonstrated compliance with the criteria in MCC .8810 to allow expansion of the capacity of their dog kennel from 50 to 75 dogs:

⁶ We place emphasis on the 1994 Hearings Officer's decision which made no particular determination about the applicants' nonconforming use claim, but instead said "if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore the applicant's request for Design Review is denied without prejudice." The future confirmation of the applicants' nonconforming use right anticipated by the Hearings Officer in 1994 is set forth in this decision.

MCC 11.15.8810(A)&(E) provide 12 criteria that must be met before an alteration, such as the one proposed here, can be approved and specifically require findings on each of the following.

- (A)(1): A change in the use of no greater adverse impact on the neighborhood.
- (A)(2): A change in the structure of physical improvements of no greater adverse impact on the neighborhood.
- (E): An alteration of a non-conforming use may be permitted if the alteration will affect the surrounding area to a lesser negative extent than the current use, considering:
 - (1) The character and history of the use and of development in the surrounding area.
 - (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.
 - (3) The comparative numbers and kinds of vehicular trips to the site.
 - (4) The comparative amount and nature of outside storage, loading and parking.
 - (5) The comparative visual appearance.
 - (6) The comparative hours of operation.
 - (7) The comparative effect on existing vegetation.
 - (8) The comparative effect on water drainage.
 - (9) The degree of service or other benefit to the area, and
 - (10) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

We address each criterion below separately. But first, we specifically find that MCC .8810(E) does not necessarily preclude an increase in the number of kennel units, and that an increase from 50 to 75 can meet this standard of a reduction in negative impacts. In particular, we find the applicants' specific proposal includes a redesign of kennel operation that, when taken as a whole, will achieve a reduction in overall negative impacts from that of the current 50 units.

1. A change in the use of no greater adverse impact on the neighborhood.

The primary impact from this proposal, and the one which Marquam Farms complains of, is noise. We find this proposal and the design features it entails will result in an overall reduction in noise from this dog kennel operation. The specific design features that will bring about this degree of protectiveness is explained in detail in subsection "d" below.

2. A change in the structure of physical improvements of no greater adverse impact on the neighborhood.

The physical improvements that will accompany the applicants' increase from 50 to 75 dogs will reduce the operation's overall impact on the neighborhood, which in this case is limited to the Marquam Farms hunt club. The specific ways in which this will happen are described in detail in the subsections that follow.

3. The character and history of the use and of development in the surrounding area.

As already noted, the starting point for our inquiry is the applicants' lawful, existing, nonconforming 50-unit dog kennel. The history of use at this 9.4 acre site is characterized by a commercial dog kennel with a capacity for 50 dogs. The property is too small to be productively or economically put to a farm use. We define the "surrounding" area to be the area likely to be impacted by this proposed use. We find that a circle with a radius of 1,500 feet exceeds the distance likely to experience impacts from this proposed kennel operation. For purposes of the criteria in MCC .8810(E), we address potential impacts within this area.⁷

The surrounding area is rural and sparsely developed (only 3 residences within a quarter mile radius). The kennel complements recreational use of the island for hunting since hunting dogs are frequently boarded and trained at the kennel. The nearest residence is approximately 800 feet from the kennel, separated by Reeder Road and a 15-foot dike covered with an expansive blackberry bramble. The following improvements are not part of the current kennel operation, but are proposed by the applicants in this proposal: insulated roof, walls, parking and circulation. With these improvements, we find that barking dogs will not be audible at the nearest residence, and this conclusion is supported by the sound study conducted by the applicants and included in the record.⁸

The only commercial farming operation with a 1,500 foot radius is a dairy operation which reports no adverse impacts to date from the current 50-dog kennel operation or any of the other dog kennels on this property. We find that, with the proposed improvements, this farm will not experience any impacts from the proposed use in the future.

⁷ In addition to the findings set forth herein, we also expressly accept and adopt as our own the compatibility analysis submitted by the applicant at pages 13-14 and 26 of their application narrative.

⁸ The noise study (conducted by Rose City Sound in 1990) is attached to the applicants' narrative as Attachment E. We accept this study and its conclusions as credible expert testimony on the subject of noise impacts.

The only possible impact identified in the record is with Marquam Farms - the hunt club that abuts the subject site. Marquam Farms shares a common access easement with the applicants' kennel. We find that any dog barking problems previously experienced by Marquam Farms will no longer exist because of the proposed redesign. The applicants propose a new configuration that prevents dogs housed in the kennels from seeing hunters arriving and leaving Marquam Farms. With the new design, the dogs will no longer bark at arriving and departing hunters, thus the proposal, when taken as a whole, will reduce the impacts presently experienced by Marquam Farms from 50 dogs.

4. The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.

With regard to noise, the applicants have submitted a credible, expert sound study that demonstrates that barking dog noise, even with the addition of 25 more dogs, will be reduced.⁹ In particular, the following design features will collectively reduce the noise below what is currently experienced with 50 dog kennel:

- A 100' solid wall for the full length of the shared accessway that blocks the kennels' view of hunters entering and leaving the Marquam Farms hunt club,
- Kennels covered with an insulated roof to prevent sound transmission,
- A parking lot design that allows dogs to be taken to grooming, bathing, exercise and living facilities without being heard or seen by dogs in the kennel,
- A circulation design that allows dog owners to pick-up and leave-off dogs out of sight and sound of the kennels, thus not disturbing dogs housed in the kennels.

We find these measures will be adequate to prevent and, in fact, reduce noise impacts on all properties within the impact area. In light of the fact that the applicable zoning allows all of the surrounding properties to have up to 3 adult dogs with absolutely no mechanism to prevent any impacts, we find the applicants' proposal will prevent noise impacts.

With regard to dust, we find that the applicants' driveway is graveled and there is no evidence of dust from traffic on the driveway. Based on this record, we find that dust is not a factor that could adversely impact properties in the impact area. To the extent that dust from the gravel driveway could be construed to be a problem, we find that conventional tillage agricultural operations produce far more dust than could be produced from the applicants' driveway.

⁹ In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicant at pages 26-28 of their application narrative.

With regard to odor, we find no evidence of odor complaints in the record before us. Moreover, the applicants have installed an on-site septic system sufficient to handle all septic waste from a 75-unit dog kennel. Consequently, we find that odor from the proposed 75-unit kennel operation will not be a problem.

We find there will be no vibration, glare or smoke impacts from this proposed use. In summary, we conclude that the proposed alteration to expand the kennel to 75 dogs will affect the surrounding area to a lesser negative extent than the current 50-unit kennel considering noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line. Thus, we find that, pursuant to MCC .8810(E)(2), the alteration will have a reduced negative effect when compared to the current operation.

5. The comparative numbers and kinds of vehicular trips to the site.

We find that, with an increase from 50 to 75 kennels, vehicular traffic will necessarily increase; however, with the proposed modifications to the kennel's design, we find that the negative impacts from traffic will be less.¹⁰ The traffic benefits from the proposal are primarily from improved parking and circulation at the site - and issue discussed in the next subsection. Moreover, we find, based on evidence in the record, that none of the transportation facilities serving the applicants' kennel are near capacity, and thus there will be no capacity or safety impact from the proposed expansion. We also find to be persuasive the fact that the peak dog boarding season (summer) does not overlap with the peak in duck club use at Marquam Farms (fall and winter). Accordingly, we find, pursuant to MCC .8810(E)(3), the alteration will have a reduced negative effect when compared to the current operation.

6. The comparative amount and nature of outside storage, loading and parking.

There is no outside storage associated with the current or proposed configuration, thus outside storage is not an issue. The proposal will improve the site's parking by adding wheel stops, thus maintaining better parking organization and by screening the parking and loading areas from dog kennels, thus limiting disturbance to boarded dogs. Also, the new parking configuration will prevent customer cars from blocking the access shared with Marquam Farms because of the proposed single office, replacing the current 2 offices, the location of circulation signs and the better organization of parking spaces marked with wheel stops. With these improvements, we find that, pursuant to MCC .8810(E)(4), the alteration will have a reduced negative effect when compared to the current operation.

7. The comparative visual appearance.

We find that the proposed improvements to the kennel will improve its visual appearance for the following reasons:

¹⁰ In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicants at pages 28-30 of their application narrative.

- The old Quonset huts on the property will be replaced with a new, state of the art kennel building.
- The parking lot will be provided with wheel stops and signs to ensure that customer vehicles are parked in an orderly fashion.
- New landscaping and fencing will be installed as proposed which will enhance the appearance of the kennel and grounds.

With these improvements, we find that the expanded kennel will have a better visual appearance than does the present 50-dog operation. Accordingly, we find that, pursuant to MCC .8810(E)(5), the alteration will have a reduced negative effect when compared to the current operation.

8. The comparative hours of operation.

The hours of operation with the proposed expansion will not change; thus, MCC .8810(E)(6) is not a factor.

9. The comparative effect on existing vegetation.

With the proposed expansion of use to 75 dogs, the applicants propose new landscaping which will benefit and lessen the impacts to Marquam Farms. In particular, Marquam Farms will benefit from landscaping separating the parallel parking area from the northeast wall of the new kennel building. With this improvement, we find that, pursuant to MCC .8810(E)(7), the alteration will have a reduced negative effect when compared to the current operation.

10. The comparative effect on water drainage.

The proposed alteration will increase slightly the impervious area and thus the runoff from the site. However given the site's 9.4-acre size, we find that the site's overall drainage will not be affected by the proposed expansion. As noted previously, the water quality of the runoff will not be negatively impacted by the use because of the septic system planned to serve the expanded operation. For these reasons, we find MCC .8810(E)(6) is not a factor.

11. The degree of service or other benefit to the area.

We find the alteration proposed by the applicants will benefit the surrounding area because of the substantial improvements in design, facilities and operations it represents. The only complaints received in this matter were from Marquam Farms, and we find that the proposed alteration, when taken as a whole, will not only eliminate those impacts that currently exist, but will benefit Marquam Farms. The expansion will allow the applicants to serve more of the dogs owned by hunt club members as well as dogs owned by other Sauvie Island residents. The proposal will reduce noise, improve the overall appearance of the property and buildings and

improve parking and circulation. All of these improvements, and the increased capacity, stand to benefit the surrounding area. Thus, pursuant to MCC .8810(E)(9), the alteration will have a reduced negative effect when compared to the current operation.

12. Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

As noted previously, we find the present use has no measurable impact on surrounding resource uses or its neighbors, with the possible exception of Marquam Farms. With the proposed expansion, those few impacts will be substantially reduced or eliminated. The applicants' proposal is designed specifically to reduce impacts with Marquam Farms and provide a better standard of service to current and future customers. We believe the insulated and completely contained building design, the solid wall along the shared access way, the improved circulation measures and landscaping will make this kennel more compatible with Marquam Farms and the other properties within the surrounding area. We find these measures, taken as a whole will reduce the overall conflicts with surrounding uses, to the extent they exist at all, and will make the use in its altered form more compatible with its neighbors as required by MCC .8810(E)(10).

IV. CONCLUSION:

Based on the foregoing findings of fact and conclusions of law, we hereby approve the applicants' request for an alteration of their existing, lawful, nonconforming dog kennel with a capacity for 50 dogs to expand the kennel capacity to accommodate 75 dogs.

IT IS SO ORDERED this ____ day of December, 1997.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
for Multnomah County, Oregon

By: Sandra Duffy
Sandra Duffy, Chief Assistant County Counsel

J:\DHK\33536-00\003\BOCCFIND.DOC

MEETING DATE: FEB 05 1998

AGENDA NO: C-12

ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: **Request Approval of Deed to Contract Purchaser for Completion of Contract.**

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: Consent

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation

CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590

BLDG/ROOM #: 166/300/Tax Title

PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Request approval of deed to contract purchaser, JEFFREY PAUL FISH, for completion of Contract #15735
(Property purchased at auction).

Deed D981537 and Board Order attached.

2/5/98 ORIGINAL DEED & COPIES OF
ALL TO VANESSA WITKA

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 28 AM 11:40

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT MANAGER: K.A. Tuneberg Larry E. Nicholas

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk 248-3277

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Authorizing the Execution of Deed D981537
Upon Complete Performance of a Contract
with JEFFREY PAUL FISH

} ORDER
98-15

WHEREAS, on May 13, 1993, Multnomah County entered into a contract with JEFFREY PAUL FISH for the sale of the real property hereinafter described; and

WHEREAS, the above contract purchaser has fully performed the terms and conditions of said contract and is now entitled to a deed conveying said property to said purchaser; now therefore

IT IS ORDERED that the Chair of the Multnomah County Board of County Commissioners execute a deed conveying to the contract purchaser the following described real property, situated in the County of Multnomah, State of Oregon:

LOT 12, BLOCK 7, WILLIAMS AVENUE ADD, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

Dated this 5th day of February, 1998.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By Beverly Stein
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
Multnomah County, Oregon

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

DEED D981537

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

LOT 12, BLOCK 7, WILLIAMS AVENUE ADD, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

The true and actual consideration paid for this transfer, stated in terms of dollars is \$7,000.00.

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

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

JEFFREY PAUL FISH
1834 SW 58TH AVE #206
PORTLAND OR 97221

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 5th day of February, 1998, by authority of an Order of the Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By *Beverly Stein*
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
Multnomah County, Oregon

By *Matthew O. Ryan*
Matthew O. Ryan, Assistant County Counsel

DEED APPROVED:

Kathleen A. Tuneberg, Director
Tax Collections/Records Management

By *K. A. Tuneberg*

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

STATE OF OREGON

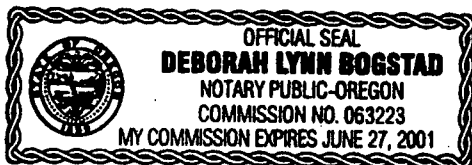
)

) ss

COUNTY OF MULTNOMAH

)

The foregoing instrument was acknowledged before me this 5th day of February, 1998, by Beverly Stein, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Deborah Lynn Bogstad

Notary Public for Oregon

My Commission expires: June 27, 2001

MEETING DATE: FEB 05 1998

AGENDA NO: C-13

ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Approval of IGA Amendment No. 1 with ODOT for Westside Transportation System Plan

BOARD BRIEFING **Date Requested:** _____

Requested by: _____

Amount of Time Needed: _____

REGULAR MEETING: **Date Requested:** _____ **Consent Agenda**

Amount of Time Needed: _____

DEPARTMENT: Environmental Services **DIVISION:** Transp. & Land Use Planning

CONTACT: April Siebenaler **TELEPHONE #:** x66031

BLDG/ROOM #: 425

PERSON(S) MAKING PRESENTATION: April Siebenaler

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Approval of IGA Amendment No. 1 with ODOT for Westside Transportation System Plan

2/5/98 ORIGINALS TO CATHY KRAMER

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 27 AM 11:35

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: K. Blaine Nicholas

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

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

MEMORANDUM

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Larry F. Nicholas, DES Director
April Siebenaler, Transportation Planning Specialist

TODAY'S DATE: December 29, 1997

REQUESTED PLACEMENT DATE: January 15, 1998

RE: Approval of IGA Amendment No. 1 with ODOT for Westside Transportation System Plan

I. Recommendation/Action Requested:

Approval of Amendment No. 1 to the Intergovernmental Agreement with the Oregon Department of Transportation (ODOT Agreement No. 15,305, and County Agreement No. 301267) for the Westside Transportation System Plan (TSP).

II. Background/Analysis:

Phase I of the Transportation System Plan (TSP) was funded by ODOT through Corridor Planning. Work on Phase II of the Westside TSP is happening at this time. Phase II uses the transportation issues identified in the Rural Area Plan studies as a basis for the TSP. An additional public meeting not originally part of the Phase II scope of work is necessary to adequately address public concerns.

III. Financial Impact:

Multnomah County's additional contribution is \$2,500 and is currently within in the Transportation and Land Use Planning Division budget for FY 96-97. The \$2,500 covers the cost of one additional public meeting.

IV. Legal Issues:

There are no legal issues.

V. Controversial Issues:

There are no controversial issues.

VI. Link to Current County Policies:

As identified in Policy 3, it is the County's policy to provide opportunities for citizens and interested people to participate in all phases of a County planning process. It is the County's policy to implement a balanced, safe and efficient transportation system as identified in Policy 33a in the County Comprehensive Framework Plan. The goal of Policy 33c is to implement a bicycle and pedestrian system for the County to provide a balanced transportation system.

VII. Citizen Participation:

Citizens were invited to participate in a Task Force and Sounding Board to identify needs and review proposals for developing the Transportation System Plan. An additional Task Force meeting is needed to cover the broad range of public input being gathered. An open house will be held toward the end of the planning process.

VIII. Other Government Participation:

Washington County and the City of Portland will be included in discussions concerning consistency with their respective Transportation System Plans.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedure CON-1)

Renewal ☐

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

Contract #: 301267

Amendment #: 1

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services not to exceed \$50,000 <input type="checkbox"/> Intergovernmental Agreement (IGA) not to exceed \$50,000 <input type="checkbox"/> Architectural & Engineering not to exceed \$10,000 (for tracking purposes only) <input type="checkbox"/> Expenditure <input type="checkbox"/> Revenue	<input type="checkbox"/> Professional Services that exceed \$50,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input checked="" type="checkbox"/> Intergovernmental Agreement (IGA) that exceed \$50,000 <div style="text-align: center;"> APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # <u>C-13</u> DATE <u>2/5/98</u> <u>DEB BOGSTAD</u> BOARD CLERK </div>

Department: Environmental Services

Division: Transp. & Land Use Planning

Date: 12/30/97

Originator: April Siebenaler

Phone: 736-6031

Bldg/Rm: 425/Trans

Contact: Cathey Kramer

Phone: 248-5050 x22589

Bldg/Rm: 425/Trans

Description of Contract : An Amendment to Intergovernmental Agreement with Oregon Dept. of Transportation for Phase II of the Westside Transportation System Plan (TSP). Phase I was funded by ODOT Corridor Planning.

RFF/BID:	RFF/BID DATE:	EXEMPTION NUMBER/DATE:
ORIGINAL CONTRACT NO. _____	(only for original renewals)	EXEMPTION EXPIRATION DATE: _____
ORS/AR # _____	Contractor is: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> ESB <input type="checkbox"/> QRF <input type="checkbox"/> N/A <input type="checkbox"/> NONE	Check all boxes that apply

Contractor Name Oregon Dept. of Transportation Mailing Address 123 NW Flanders Street Portland, OR 97209-4037 Michael Ray Phone (503) 731-8283 Employer ID# or SS# _____ Effective Date April 24, 1997 Termination Date June 30, 1998 Original Contract Amount \$ 60,000.00 Total Amt of Previous Amendments \$ _____ Amount of Amendment \$ 2,500.00 Total Amount of Agreement \$ 62,500.00	\$62,500 County Contribution +20,000 ODOT Contribution \$82,500 Project Total Remittance address _____ (If different) Payment Schedule / Terms <input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Monthly \$ _____ <input checked="" type="checkbox"/> Other \$ 2,500.00 <input type="checkbox"/> Requirements Not to Exceed \$ _____ Encumber <input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

REQUIRED SIGNATURES

Department Manager

KB Lantz

DATE

1/14/98

Purchasing Manager

(Class II Contracts Only)

County Counsel

Sandra H. Duffy

DATE

1-27-98

County Chair

William Stein

DATE

2/5/98

Sheriff

DATE

Contract Administration

(Class I, Class II Contracts only)

DATE

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT \$			
LINE #	FUND	AGENCY	ORG	SUB ORG	ACTIVITY	OBJECT/REVENUE	SUB OBJ	RECPT CAT	LGFS DESCRIP	AMOUNT	INC DEC
01	150	030	6104			6110					
02											
03											

DISTRIBUTION: Original - Contract Administration, Initiator, Accounts Payable If additional space is needed, attach separate page. Write contract # on top of page.

**Misc. Contracts & Agreements
No. 15305 (ODOT)
No. 301267 (Multnomah County)**

AMENDMENT NO. 1

Multnomah County, hereinafter referred to as "COUNTY," entered into an agreement with The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," (ODOT Agreement No. 15,305, and County Agreement No. 301267), dated December 4, 1997. The agreement covers ODOT provision of the consulting firm of CH2M Hill through its flexible services contract to help the County develop a Transportation System Plan for the West Side Rural County.

It has now been determined by ODOT and the COUNTY that the agreement referenced above, although remaining in full force and effect, shall be amended by this Amendment No. 1 in order to increase the limited dollar amount. The purpose of this shared increase is to offset the cost of an additional public meeting as shown in Change Request #1 (see Exhibit A). Therefore, the referenced agreement shall be amended as follows:

RECITALS – paragraph 4, page 1 which reads:

"4. Payment for said services shall not exceed a maximum amount of \$80,000, with a maximum of \$20,000 in ODOT Corridor Planning Funds and the remaining \$60,000 to be paid with funds available to the COUNTY. The COUNTY's \$60,000 should first be applied to the Project as described in Exhibit 'A'. If total project costs are to exceed \$80,000, a supplement to this agreement will be required before additional costs are incurred. Any portion of the COUNTY's \$60,000 that may be remaining after the TSP is completed will revert to the COUNTY.

ODOT has approved a program and system of Access Oregon Highways (AOH) to improve movement of through traffic between geographic areas within Oregon and between Oregon and neighboring states. A key objective of the program is to manage and preserve the AOH corridors to achieve the highest safe operating speeds whenever practical and appropriate while being sensitive to the needs and desires of existing communities."

Shall be amended to read:

"4. Payment for said services shall not exceed a maximum amount of \$82,500, with a maximum of \$20,000 in ODOT Corridor Planning Funds and the remaining \$62,500 to be paid with funds available to the COUNTY. The COUNTY's \$62,500 should first be applied to the Project as described in Exhibit "A." If total project costs are to exceed \$82,500, a supplement to this agreement will be required before additional costs are incurred. Any portion of the COUNTY's \$62,500 that may be remaining after the TSP is completed will revert to the COUNTY.

ODOT has approved a program and system of Access Oregon Highways (AOH) to improve movement of through traffic between geographic areas within Oregon and between Oregon and neighboring states. A key objective of the program is to manage and preserve the AOH corridors to achieve the highest safe operating speeds whenever practical and appropriate while being sensitive to the needs and desires of existing communities."

ODOT OBLIGATION - paragraph No. 6, page 3 which reads:

"6. ODOT shall, upon execution of this agreement, request COUNTY to forward an advance deposit of \$60,000 to a local investment pool for its share of funding for the project."

Shall be amended to read:

"6. ODOT shall, upon execution of this agreement, request COUNTY to forward an advance deposit of \$62,500 to a local investment pool for its share of funding for the project."

COUNTY OBLIGATIONS - paragraph Nos. 2 and 3 which read:

"2. COUNTY shall contribute \$60,000 and sufficient staff time and other COUNTY resources as their share of the cost of this project, including but not limited to the following:

- Provide the consulting firm any information that it requests, provided the COUNTY has access to such information.
- Monthly progress reports indicating tasks worked on or completed.

3. COUNTY shall, upon ODOT's request and prior to assignment of work to consultant, deposit in a local investment pool, the sum of \$60,000 to go toward payment of the consultant. The COUNTY shall give ODOT a project specific Power of Attorney to draw off of this account to pay the consultant. Any portion of COUNTY's deposit which when added to ODOT's \$20,000, exceeds the actual total cost of the project will be refunded or released to the COUNTY."

Shall be amended to read:

"2. COUNTY shall contribute \$62,500 and sufficient staff time and other COUNTY resources as their share of the cost of this project, including but not limited to the following:

- Provide the consulting firm any information that it requests, provided the COUNTY has access to such information.
- Monthly progress reports indicating tasks worked on or completed.

3. COUNTY shall, upon ODOT's request and prior to assignment of work to consultant, deposit in a local investment pool, the sum of \$62,500 to go toward payment of the consultant. The COUNTY shall give ODOT a project specific Power of Attorney to draw off of this account to pay the consultant. Any portion of COUNTY's deposit which when added to ODOT's \$20,000, exceeds the actual total cost of the project will be refunded or released to the COUNTY."

All other terms and conditions of the agreement, except as amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

On March 7, 1996 the Oregon Transportation Commission adopted Delegation Order 2, which grants authority to the Branch and Region Managers to approve and execute agreements for work in the approved workplan budget.

APPROVAL RECOMMENDED:

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By: Beverly Stein 2/5/98
Beverly Stein, Chair Date

STATE OF OREGON, by and through its
DEPARTMENT OF TRANSPORTATION

By: _____
Region Manager Date

MULTNOMAH COUNTY, OREGON
Department of Environmental Services

By: Larry F. Nicholas 1/14/98
Larry F. Nicholas, Director Date

STATE OF OREGON, by and through its
DEPARTMENT OF TRANSPORTATION

TDB Manager Date

REVIEWED:

THOMAS SPONSLER, County Counsel
for Multnomah County, Oregon

REVIEWED FOR ODOT:

By: _____
Assistant Attorney General Date

By: Sandra Duff 1-27-98
Assistant County Counsel Date

KSRJ2154_AGR_AMEND 1.DOC

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-13 DATE 2/5/98
DEB BOGSTAD
BOARD CLERK

Exhibit A

TECHNICAL MEMORANDUM Multnomah County WS Rural TSP

CH2M HILL

Change Request #1

PREPARED FOR: April Siebenaler/Multnomah County
Michael Ray/ODOT

PREPARED BY: Jay McRae/CH2M Hill

COPIES: Karen Schilling/Multnomah County
Neil Handyside /CH2M Hill
Vaughn Brown/Jeanne Lawson & Asc.

DATE: October 1, 1997

Due to the delay of the Metro Model being completed, an extra Task Force Meeting is needed in order to maintain continuity and credibility with the process.

Originator: Jay McRae	Date: October 3, 1997	CR ID: #1
Product: Westside Rural Multnomah County TSP	Problem/Symptom: <ul style="list-style-type: none">• The Metro Model has been delayed for reconfiguration of the TAZs for the tri-county area.	
Title: Public Involvement		

Public Involvement:

The Metro Model has been delayed resulting in a delay of evaluation of alternatives. There is also some question about how much material a volunteer citizen group can absorb and provide meaningful input.

Alternatives Considered:

- ⇒ Cancel October meeting and reschedule.
- ⇒ Conduct October meeting and rescope by adding one additional Sounding Board and Task Force Meeting.

Impact Assessment:

- Schedule – See the attached schedule revision and public involvement plan.
- Project Cost – See attachment project cost breakdown for additional details.
- Quality – Task force will have a higher acceptance of the finished product.

Suggested Solution:

Approve requested change.

Project Cost Increase

Original Amount	\$13,986.00
Revised Amount	\$16,486.00
Net increase (decrease)	\$ 2,500.00

Amount of increase includes:**Jeanne Lawson & Asc.****\$1,374.00**

- 15 hours for workshop design and facilitation
- 5 hours for planning meeting and project management

CH2M Hill**\$1,126.00**

- 9 hours meeting planning, preparation, workshop attendance, debrief
- 3 hours coordination and logistics

Draft Revised Public Involvement Plan

Purpose

The purpose of this document is to outline the public involvement for the development of the Multnomah County Westside Rural TSP.

Objectives

- Participants will be involved in a meaningful way.
- Participants will be treated with the respect as volunteers.
- Use of proven methods and techniques for efficient and effective use of volunteer time.
- Clear communications and coordination to achieve the desired result.

Audience

There are several levels of detail necessary to communicate and achieve a quality Transportation System Plan. Below are a list of groups and their role:

- Sounding Board – a representative sample of citizens that are asked to respond to written materials sent out by mail. Their opinions are tallied and provided to the Task Force as additional input to their efforts.
- Task Force – a representative sample of the community will be invited to participate in a series of workshops. The workshops will be a mixture of creative problem solving and educational opportunities on transportation. The group will not be asked to become experts in government regulation.
- Open House – citizens will be invited to attend open meeting set up with stations to offer information receive input to be incorporated in the finished product.
- Planning Commission – this is a group of local citizens appointed to serve on a standing committee. An informational presentation will be provided to this group.
- County Commission – a group of elected citizens responsible for the approval and adopting the Transportation System Plan as an element of the local comprehensive plan.

Public Involvement and Agency Coordination

Task Force

Angelo Colasurdo

Dave Koennecke

Jennifer Budhabhatti

James Hampton

Tracy Waters

Kim Holm

Jerry Covic

Joann Waters-White

Jerry Penk

Jeannine Jolicoeur-Wells

Geoff Pampush

Jill Inahara

Brian Lightcap

Stavros Kalafatis

Shelley Lorenzen

Sounding Board

Steve Robertson

Terry Dieter

Clifton Smith

Sarah Cohen

David Hill

Steve Tichenor

Margaret Frison

Karen McDaniel

Patrick & Mary Hengen

Seth Tane

Chris Wrench

Larry Reed

Lauren Wiener

Ivan Law

Dorothy English

James Shaw

Paul Keppler

Darryl Willis

Jim Kessinger

Jay Kravitz

Robert Zahler

Benell Tindall

Sean Doyle

"Skip" Winfield White

Margaret Tate

David Van Vleck

Sounding Board (Agency Perspective)

Gainer Riker, Sauvie Island Grange

Donna Matrazzo, Sauvie Island
Conservancy

Kay Durtschi, Chair Multnomah County
Citizens Involvement Commission

Blair Crumpacker, LUT Planning,
Washington County

John Gillam, City of Portland

Chuck Berry, Washington County

Chris Deffebach, Metro

Cheryl Neal, Citizens for preservation of
Skyline Ridge

Karen Frost-Meacey, Bicycle Transportation
Alliance

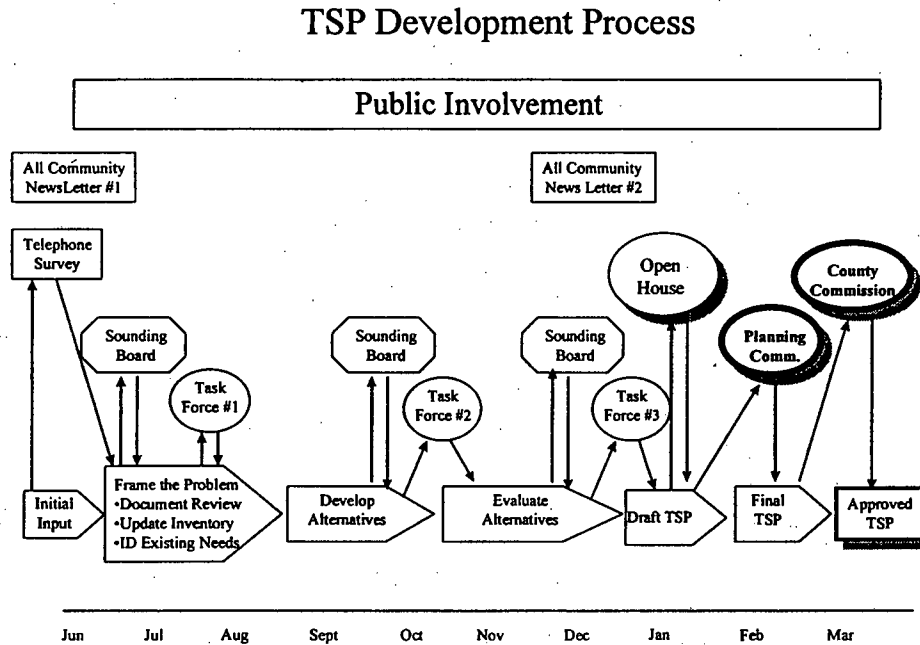
Andrew Cotugno, Metro

Donald Wallin, Columbia County Road
Department

Cherie Sprando, Water Front Owners and
Operators of Oregon

Jon Jinings, DLCD

Process Overview and Schedule



Public Interaction Outlines

Telephone Survey -- Complete

Newsletter #1 -- Complete

Sounding Board #1 -- Complete

Task Force #1 -- July 29, 1997 -- Complete

Sounding Board #2 -- October -- Complete

Objectives

- Early review of draft goals and objectives.
- Solicit feedback on CIP project selection criteria.

Materials

- TSP requirements and findings in Powerpoint Slide Format.
- Draft Goals and Objectives.
- One page summary of CIP Project Selection Criteria.

Expected Results

- Receive feedback on distributed materials.

Task Force #2 –Decision Criteria – October 29th-- Complete

Objectives

- Finalize Draft Goals and Objectives
- Review needs summary
- Raise awareness of CIP project selection process.
- Identify potential projects.

Methods

- Presentation of needs summary.
- Review process of draft goals is to be defined.
 - Option A – Divide into subgroups of 3 to 4 people with 2 minute report outs to entire group.
 - Option B – Viewing wall and participants post sticky note comments on each goal individually and the group analyzes the comments as a whole with appropriate technique depending upon the data (e.g. affinity sort, one by one review, etc.).
- Walk through of needs and potential projects by corridor.

Materials

- Presentation of existing conditions and needs summary in powerpoint slide format.
- Map(s) showing improvement locations.
- TSP develop process/schedule.
- Transportation Issues.

Expected Results

- Finalize transportation goals and objectives.
- Project needs determined.

Mailing to Task Force & Sounding Board November

- Revised Goals and Objectives
- Project list to date and invitation for additional projects to be evaluated including a project name, location, description, and justification.
- Work completed to date and remaining work for Sounding Board and Task Force Members.

Mailing to Task Force & Sounding Board January

- Educational materials about evaluating future needs.
- Listing of future needs based upon analysis.

Mailing to Task Force & Sounding Board February

- Project list including those generated from future needs.
- Project selection rating including making choices between alternatives.
- Financing program summary.
- Policy and implementation strategies.
- Draft program sorting of projects for short, medium, and long term investments strategy.

Task Force #3 – Alternatives Evaluation Late February

Objectives

- Review and receive endorsement for selected projects.
- Review and receive endorsement for policies and implementing strategies.
- Review and receive endorsement for funding plan.
- Celebrate and close out Task Force by reviewing next steps and decision process.

Methods

- Walk through and validate project priorities, policies and implementing strategies, and funding plan.

Expected Results

- Select preferred funding strategies.
- Finalize project priorities by mode.

Open House – Citizen Preference Mid March

Objectives

- Receive input and comments on the draft TSP.
- Draft written transportation plan available for review outside of Open House.

Methods

- Viewing wall of the results of the work to date including focus group work
- Conduct exercise of spending tax dollars between a variety of community issues – schools, transportation, library, etc.

Expected Results

- Community comment on preferred alternatives and project priorities.

Planning Commission March

Objectives

- Review TSP and solicit comment on Draft.

Methods

- Presentation of transportation system needs, alternatives considered, and implementation plan.

Expected Results

- Recommendation to County Commission.

County Commission April

Objectives

- Adopt TSP as an element of the local comprehensive plan.

Methods

- Presentation of transportation system needs, alternatives considered, and implementation plan.
- Staff Report on Planning Commission recommendation.

Expected Results

- Final TSP.

DEPARTMENT
CONTACT

Health
Kathy Innes

HD#14

(Date) FEB 05 1998

DIVISION Director
TELEPHONE 248-3056-x27027

C-14

3) OF PERSON MAKING PRESENTATION TO BOARD

SUGGESTED

AGENDA TITLE

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

Approve a an increase of \$358,000 and 1.3 FTE in the Tobacco Cessation program funded with increased State grant funds.

(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

come from? What budget is reduced? Attach additional information if you need more space.)

☒

Personnel changes are shown in detail on the attached sheet

This action adds 1 FTE of Health Educator and .2 Principal Investigator to the Tobacco Cessation Program.

It also adds \$131,080 to professional services for community contracts: High School Cluster Incentive Program (\$54,000), Smokefree Workplace/Cessation Promotion Program (\$30,000), and World No Tobacco Day (\$10,000).

There is also \$28,000 for media advertising. Pass through has \$31,900 to be paid to the Washington County Department of Health for collaborative cessation efforts, and \$34,354 to be paid to the State for support of evaluation and research positions.

3. REVENUE IMPACT

(Explain revenues being changed and reason for the change)

Adds \$358,000 to the federal State Fund

Adds \$5,658 to the General Fund contingency account in indirect cost.

4. CONTINGENCY STATUS

(to be completed by Budget & Quality)

Fund Contingency before this modification

Date

After this modification

Originated By

Date

Department Director

Tom Hink

Date

1-13-98

Plan/Budget Analyst

Date

Employee Services

Karen R.

Date

1-20-98

Board Approval

Date

Deborah C. Beasley

2/5/98

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 26 AM 11:36

PERSONNEL DETAIL FOR BUDGET MODIFICATION NO.

BD 14

5. ANNUALIZED PERSONNEL CHANGES

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

				ANNUALIZED			
Permanent Positions, Temporary, Overtime, or Premium	JCN	Org	Explanation of Change	BASE PAY Increase (Decrease)	Increase/(Decrease		TOTAL Increase (Decrease)
					Fringe	Ins.	
2.00	6352	0053	Health Educator	76148	13674	9110	98932
0.40	9798	0053	Principal Investigator	33292	5978	1736	41006
-0.80	9798	0051	Principal Investigator	(40888)	(6624)	(6690)	(54202)
1.00	6021	0051	Program Dev Spec	40888	6624	6690	54202
-1.00	9696	0053	Health Serv Spec	(41011)	(7382)	(2995)	(51388)
1.00	9693	0053	Health Serv Admin	42241	30206	3112	75559
							0
2.60	TOTAL CHANGE (ANNUALIZED)			\$110,670	\$42,476	\$10,963	\$164,109

6. YEAR PERSONNEL DOLLAR CHANGES

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

				CURRENT FY			
Permanent Positions, Temporary, Overtime, or Premium	JCN	Org	Explanation of Change	BASE PAY Increase (Decrease)	Increase/(Decrease		TOTAL Increase (Decrease)
					Fringe	Ins.	
1.00	6352	0053	Health Educator	38074	6837	4555	49466
0.20	9798	0053	Principal Investigator	16646	2989	868	20503
-0.40	9798	0051	Principal Investigator	(20444)	(3312)	(3345)	(27101)
0.50	6021	0051	Program Dev Spec	20444	3312	3345	27101
-0.50	9696	0053	Health Serv Spec	(20554)	(3691)	(1498)	(25743)
0.50	9693	0053	Health Serv Admin	20554	3691	1498	25743
1.30							
TOTAL CURRENT FISCAL YEAR CHANGES				\$54,720	\$9,826	\$5,423	\$69,969

EXPENDITURE													
TRANSACTION EB GM [] TRANSACTION DATE													
ACCOUNTING PERIOD													
BUDGET FY													
Change													
Document				Organi-	Reporting			Current	Revised	Increase			
Number	Action	Fund	Agency	zation	Activity	Category	Object	Amount	Amount	(Decrease)	Subtotal	Description	
		156	015	0053			5100			54,720			
		156	015	0053			5200			4,416			
		156	015	0053			5500			10,268			
		156	015	0053			5550			5,423			
		156	015	0053			6060			66,254			
		156	015	0053			6110			131,080			
		156	015	0053			6120			14,400			
		156	015	0053			6200			40			
		156	015	0053			6230			11,920			
		156	015	0053			6310			12,450			
		156	015	0053			6330			2,824			
		156	015	0053			7100			33,882			
		156	015	0053			7150			1,260			
		156	015	0053			7300			1,520			
		156	015	0053			7400			3,581			
		156	015	0053			8400			10,900	364,938		
		100	075	9120			7700			5,658			
		100	015	0905			6110			21,286			
		100	015	9130			7608			6,938	33,882		
		400	070	7522			6580			5,423			
		402	030	7990			6140			3,400			
		401	030	5905			6230			1,520			
		410	030	5630			6230			3,581			
TOTAL EXPENDITURE CHANGE										412,744	398,820		

REVENUE					FSD 14								
TRANSACTION RB GM []		TRANSACTION DATE				ACCOUNTING PERIOD						BUDGET FY	
Document				Organi-		Reporting		Current	Revised	Change			
Number	Action	Fund	Agency	zation	Activity	Category	Object	Amount	Amount	(Decrease)	Subtotal	Description	
		156	015	0053			2379			358,000			
		156	015	0053			7601			6,938	364,938		
		100	075	7410			6602			33,882			
		400	070	7522			6602			5,423			
		402	030	7990			6602			3,400			
		401	030	5905			6602			1,520			
		410	030	5630			6602			3,581			
									0				
									0				
TOTAL REVENUE CHANGE										412,744	364,938		



MULTNOMAH COUNTY, OREGON

RECEIVED

JAN 16 1998

EMPLOYEE SERVICES
MULTNOMAH COUNTY

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

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

TO: Board of County Commissioners

FROM: Billi Odegaard *Billi Tomf*

TODAY'S DATE: Jan. 13, 1998

REQUESTED PLACEMENT DATE: Jan. 29, 1998

SUBJECT: Health Budget Modification Number 14

I. Recommendation / Action Requested:

Approve an increase of \$358,000 and 1.2 FTE in the Smoking Cessation Program funded with increased State grant revenue.

II. Background / Analysis:

This action adds 1 FTE of Health Educator and .2 Principal Investigator to the Tobacco Cessation Program. The Health Educators will maintain an on going relation with school personnel assisting in Community Mobilization, the Reward and Reminder Program, and Operation Storefront activities. The action also adds \$131,080 to professional services. \$94,000 of this is for the following community contracts: High School Cluster Incentive Program (\$54,000), Smokefree Workplace/Cessation Promotion Program (\$30,000), and World No Tobacco Day (\$10,000). There is also \$28,000 for media advertising in professional services. The action adds \$31,900 to Pass Through for payment to the Washington County Department of Health for collaborative cessation efforts and \$34,354 for payment to the State Health Division for research and evaluation. The Budget Modification also cuts a Principal Investigator and adds a Program Development Specialist to the Planning&Development program in accordance with current staffing needs.

III. Financial Impact: NA

IV. Legal Issues: NA

V. Controversial Issues: NA

VI. Link to Current County Policies: NA

VII. Citizen Participation: NA

VIII. Other Government Participation: NA

MEETING DATE: FEB 05 1998
AGENDA NO.: C-15
ESTIMATED START TIME: 9:30Am

(Above space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement with the Oregon Health Division

BOARD BRIEFING Date Requested: _____

Requested By: _____

Amount of Time Needed: _____

REGULAR MEETING Date Requested: _____

Amount of Time Needed: Consent Calendar

DEPARTMENT: Health DIVISION: Planning & Development

CONTACT: Denise Chuckovich* TELEPHONE #: 248-3674

BLDG/ROOM #: 160/8

PERSON(S) MAKING PRESENTATION: n/a

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Renewal of Intergovernmental Agreement 201168 with the Oregon Health Division for research and evaluation services required for the Health Department's various grants.

2/5/98 originals to Karen Garber

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 27 AM 11:42

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

Or

DEPARTMENT MANAGER: Billi Odgaard

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk at 248-3277



MULTNOMAH COUNTY OREGON



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

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

MEMORANDUM

Date: January 23, 1998
To: Board of County Commissioners
Via: Bill Odgaard, Health Department Director
From: Denise Chuckovich, Director, Office of Planning and Development
Subject: Contract #201168 with the Oregon Health Division for research services

- I. Recommendation/Action Requested: The Health Department recommends Board ratification of Contract #201168 with the Oregon Health Division for the period October 1, 1997, through August 31, 1998.
- II. Background/Analysis: This agreement has been renewed annually since 1989. The Oregon Health Division will continue to assume responsibility for the required research and evaluation components of the Health Department's various grants (see list on page one of the agreement). The renewal was delayed pending finalization of the dollar amounts for this year's grants, but the Health Division has provided services continuously since the last agreement expired September 30, 1997. Therefore the agreement is retroactive to October 1, 1997.
- III. Financial Impact: The County will pay the Oregon Health Division a maximum of \$241,289. This agreement is fully funded by the grants for which the services are required.
- IV. Legal Issues: None
- V. Controversial Issues: None
- VI. Link to Current County Policies: Continuing to collaborate with other governmental agencies in the provision of services.
- VII. Citizen Participation: None
- VIII. Other Government Participation: None

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☒ [X]

Contract # 201168

Previously Approved Contract Boilerplate: ☒ [X] Attached ☐ [] Not Attached

Amendment # _____

<p style="text-align: center;">CLASS I</p> <p><input type="checkbox"/> [] Professional Services under \$50,000</p> <p><input type="checkbox"/> [] Intergovernmental Agreement under \$50,000</p> <p><input type="checkbox"/> [] Expenditure</p> <p><input type="checkbox"/> [] Revenue</p>	<p style="text-align: center;">CLASS II</p> <p><input type="checkbox"/> [] Professional Services over \$50,000 (RFP, Exemption)</p> <p><input type="checkbox"/> [] PCRB Contract</p> <p><input type="checkbox"/> [] Maintenance Agreement</p> <p><input type="checkbox"/> [] Licensing Agreement</p> <p><input type="checkbox"/> [] Construction</p> <p><input type="checkbox"/> [] Grant</p> <p><input type="checkbox"/> [] Revenue</p>	<p style="text-align: center;">CLASS III</p> <p><input checked="" type="checkbox"/> [X] Intergovernmental</p> <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p>AGENDA # <u>C-15</u> DATE <u>2/5/98</u></p> <p style="text-align: center;">DEB BOGSTAD</p> <p style="text-align: center;">BOARD CLERK</p>
---	--	--

Department: Health Division: Planning & Development Date: 1/9/98

Contract Originator: Denise Chuckovich Phone: x24367 Bldg/Room: 160/8

Administrative Contact: Karen Garber Phone: x26207 Bldg/Room: 160/7

Description of Contract:

Provide research services required by the Health Department's various federal grants.

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

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

Original Contract No. 104152/104162* (FOR RENEWALS ONLY) *Then 201323, 201244, 201705, 200986, 200897

<p>Contractor: <u>Oregon Health Division</u></p> <p><u>Center for Disease Prevention & Epidemiology</u></p> <p><u>800 NE Oregon St #21, Suite 730</u></p> <p><u>Portland, OR 97232</u></p> <p>Phone: <u>731-4434</u></p> <p>Employer ID# or SS#: <u>93-6001752</u></p> <p>Effective Date: <u>October 1, 1997</u></p> <p>Termination Date: <u>August 31, 1998</u></p> <p>Original Contract Amount: \$ <u>241,289</u></p> <p>Total Amt of Previous Amendments: \$ <u>n/a</u></p> <p>Amount of Amendment: \$ <u>n/a</u></p> <p>Total Amount of Agreement: \$ <u>241,289</u></p>	<p>Mike Stark, Program Design Evaluation Services</p> <p>Niki Pope, Business Manager</p> <p>Remittance Address (if different) _____</p> <p>_____</p> <p>_____</p> <p>Payment Schedule _____ Terms _____</p> <p><input type="checkbox"/> [] Lump Sum \$ _____ <input type="checkbox"/> [] Due on Receipt</p> <p><input checked="" type="checkbox"/> [X] Monthly \$ <u>(invoice)</u> <input type="checkbox"/> [] Net 30</p> <p><input type="checkbox"/> [] Other \$ _____ <input type="checkbox"/> [] Other</p> <p><input type="checkbox"/> [] Requirements contract - Requisition Required</p> <p>Purchase Order No. _____</p> <p><input type="checkbox"/> [] Requirements Not to Exceed \$ _____</p> <p>Encumber: Yes <input type="checkbox"/> [] No <input type="checkbox"/> []</p>
--	---

REQUIRED SIGNATURES:

Department Manager: Billi Odegaard Date: 1/7/98

Purchasing Director: _____ Date: _____

(Class II Contracts Only)

County Counsel: Katrina Gaudin Date: January 27, 1998

County Chair/Sheriff: _____ Date: February 5, 1998

Contract Administration: _____ Date: _____

(Class I, Class II Contracts Only)

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

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

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

**INTERGOVERNMENTAL AGREEMENT
FOR RESEARCH SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT is between MULTNOMAH COUNTY, acting by and through its Health Department, hereafter "COUNTY," and THE STATE OF OREGON, acting by and through its Health Division, hereafter "STATE."

WITNESSETH:

WHEREAS, COUNTY is in receipt of various grants (as detailed below) for the period October 1, 1997, through August 31, 1998; and

WHEREAS, COUNTY requires research services for these grants which STATE is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, STATE is able and prepared to provide such research services as COUNTY does hereinafter require, under those terms and conditions set forth; now therefore,

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

1. **TERM**

This Agreement shall become effective when fully executed retroactive to October 1, 1997, and shall expire August 31, 1998, unless sooner terminated under the provisions hereof.

2. **SERVICES**

STATE's Program Design and Evaluation Services Unit will provide the following services under this Agreement:

A. Assume responsibility for all required research components related to the following grants:

- 1) Healthy Start Initiative, funded by the Health Resources and Services Administration (HRSA).
- 2) African American Birth Outcomes Project, funded by the Annie E. Casey Foundation.
- 3) HIV Prevention in Drug Treatment Dropouts, funded by the National Institute on Drug Abuse (NIDA).
- 4) ClearCorps Lead Evaluation, funded by the City of Portland.
- 5) Tobacco Prevention Evaluation, funded by the State of Oregon, through an intergovernmental agreement with the Oregon Health Division.

- B. Provide technical assistance in the area of research design to COUNTY operations staff.
- C. Serve as a consultant regarding the implementation and evaluation of new interventions.
- D. Provide regular reports to COUNTY outlining information required by COUNTY for ongoing quality assurance and process evaluation.
- E. Assist in the compilation of all progress reports required by grantors.
- F. Represent COUNTY in all negotiations with grantors which involve the research components of the grants, including any out-of-state meetings.
- G. Transmit in a timely manner all data collected by COUNTY to grantors or their designees.
- H. Assist in the development of continuation grant applications.
- I. Comply with all special terms and conditions of the grant awards as outlined by grantors.

3. COMPENSATION

- A. COUNTY agrees to pay STATE a maximum of \$241,289 for the performance of those services provided hereunder, which payment shall be subject to the following terms:

- 1) The maximum budget for each grant is as follows:

Healthy Start Initiative	\$62,242
African American Birth Outcomes Project	\$59,951
HIV Prevention in Drug Treatment Dropouts	\$30,000
ClearCorps Lead Evaluation	\$59,546
Tobacco Prevention Evaluation	<u>\$29,550</u>
Total:	\$241,289

- 2) The budget categories for each grant and the duration of each grant are detailed in Exhibit A, which is attached to this Agreement and herein incorporated by reference. STATE acknowledges that funding for the African American Birth Outcomes Project and the Tobacco Prevention Evaluation is provided only through June 30, 1998. For these two grants, COUNTY and STATE will negotiate funding for services beyond this date when COUNTY receives its notices of grant award for 1998-99.
- 3) COUNTY shall reimburse STATE monthly upon receipt of a monthly expenditure report for each grant. Reports shall be submitted to:

Contract Manager, Office of Planning & Development
Multnomah County Health Department
426 SW Stark Street, 2nd Floor
Portland, OR 97204

- B. COUNTY certifies that sufficient funds are available and authorized to finance the costs of this Agreement through the fiscal year ending June 30, 1998. In the event that funds cease to be available to COUNTY in the amounts anticipated during the remainder of the fiscal year, or in the event that sufficient funds are not approved and authorized in the next fiscal year, either COUNTY or STATE may terminate the Agreement or the parties by mutual agreement may reduce Agreement funding accordingly. COUNTY will notify STATE as soon as it receives notification from funding source. Reduction or termination will not affect payment for accountable expenses prior to the effective date of such action.
- C. STATE shall submit all invoices for services provided under this Agreement within 45 days after the end of the Agreement period. COUNTY shall not be responsible for payment of invoices submitted more than 45 days after the end of the Agreement period.

**INTERGOVERNMENTAL AGREEMENT
STANDARD CONDITIONS**

1. INDEPENDENT CONTRACTOR STATUS

STATE is an independent contractor and is solely responsible for the conduct of its programs. STATE, its employees and agents shall not be deemed employees or agents of COUNTY.

2. INDEMNIFICATION

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

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

3. WORKERS' COMPENSATION INSURANCE

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

4. TAXPAYER IDENTIFICATION NUMBER

STATE shall furnish to COUNTY its federal employer identification number, as designated by the Internal Revenue Service.

5. SUBCONTRACTS AND ASSIGNMENT

STATE shall neither subcontract with others for any of the work prescribed herein, nor assign any of STATE's rights acquired hereunder without obtaining prior written approval from COUNTY. COUNTY by this Agreement incurs no liability to third persons for payment of any compensation provided herein to STATE.

6. RECORD CONFIDENTIALITY

COUNTY and STATE agree to keep all client records confidential in accordance with state and federal statutes and rules governing confidentiality.

7. ACCESS TO RECORDS

STATE 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 STATE as COUNTY or auditor may deem necessary to satisfy audit and/or program evaluation purposes. STATE shall permit authorized representatives of COUNTY's Health Department to site-visit all programs covered by this Agreement. Agreement costs disallowed as the result of such audits, review or site visits will be the sole responsibility of STATE. If an Agreement cost is disallowed after reimbursement has occurred, STATE will make prompt repayment of such cost.

8. ADHERENCE TO LAW

- A. STATE shall adhere to all applicable laws governing its relationship with its employees, including but not limited to laws, rules, regulations and policies concerning workers' compensation, and minimum and prevailing wage requirements.
- B. STATE shall not unlawfully discriminate against any individual with respect to hiring, compensation, terms, conditions or privileges or employment, nor shall any person be excluded from participation in, be denied the benefits, or be subjected to discrimination under any program or activity because of such individual's race, color, religion, sex, national origin, age or handicap. In that regard, STATE must comply with all applicable provisions of Executive Order Number 11246 as amended by Executive Order Number 11375 of the President of the United States dated September 24, 1965, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and Section 504 of the Rehabilitation Act of 1973 as implemented by 45 CFR 84.4 and the Americans with Disabilities Act of 1990, Public Law Number 101-336 and all enacting regulations of the EEOC and Department of Justice. STATE will also comply with all applicable rules, regulations and orders of the Secretary of Labor concerning equal opportunity in employment and the provision of ORS Chapter 659.

9. MODIFICATION

- A. In the event that COUNTY's Agreement obligation is amended by a federal- or state-initiated change, COUNTY shall amend this Agreement through written notification of changes sent to STATE by mail. STATE shall return to COUNTY within twenty (20) working days a signed acknowledgment of receipt of COUNTY's notification document.
- B. Any other amendments to the provisions of this Agreement, whether initiated by COUNTY or STATE, shall be reduced to writing and signed by both parties.

10. WAIVER OF DEFAULT

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

11. EARLY TERMINATION

- A. Violation of any of the rules, procedures, attachments, or conditions of this Agreement may, at the option of either party, be cause for termination of the Agreement and, unless and until corrected, of funding support by COUNTY and services by STATE, 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 Agreement shall not prevent said party from invoking the remedies of this paragraph for any succeeding violations of this Agreement.
- B. This Agreement may be terminated by either party by sixty (60) days prior written notice to the other party, delivered by certified mail or in person.
- C. COUNTY may terminate this Agreement immediately, effective upon delivery of written notice to STATE by certified mail or in person, under any of the following conditions:
 - 1) Upon denial, revocation, suspension or non-renewal of any license or certificate required by law or regulation to be held by STATE to provide a service under this Agreement.
 - 2) If STATE fails to begin services on the date specified in this Agreement, or if STATE fails to continue to provide service for the entire Agreement period.
 - 3) If COUNTY has evidence that STATE has endangered or is endangering the health and safety of clients/residents, staff, or the public.

- D. If the Agreement is terminated under this paragraph, COUNTY shall pay STATE only for services provided in accordance with the Agreement through the day of termination.
- E. Termination under any provision of this paragraph shall not affect any right, obligation or liability of STATE or COUNTY which accrued prior to such termination.

12. NOTICE OF LITIGATION

Each party shall give the other immediate notice in writing of any action or suit filed or any claim made against that party which may result in litigation in any way related to this Agreement.

13. OREGON LAW AND FORUM

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

14. INTEGRATION

This Agreement contains the entire Agreement between the parties pertaining to its subject matter and supersedes all prior written or oral discussions or agreements.

15. CERTIFICATION REGARDING LOBBYING

- A. STATE certifies, to the best of STATE's knowledge and belief, that no federally appropriated funds have been paid or will be paid, by or on behalf of STATE, to any person for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement, STATE shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

16. OMB CIRCULAR A-128

If STATE is a sub-recipient of federal funds passed through COUNTY, STATE shall submit to COUNTY an annual federal compliance audit in conformity with OMB Circular A-128 and the federal Single Audit Act of 1984.

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

THE STATE OF OREGON

By *David Fez*

Title State Epidemiologist

Date 1/16/98

MULTNOMAH COUNTY

By *Beverly Stein*

Beverly Stein, Multnomah County Chair
Date February 5, 1998

By *Billi Odegaard*

Billi Odegaard, Health Department Director
Date 1/23/97

By *Denise Chuchovich*

Program Manager
Date 1/23/98

REVIEWED:

Thomas Sponsler, County Counsel for
Multnomah County, Oregon

By *Katie Gaetjens*

Katie Gaetjens, Assistant County Counsel
Date 1/27/98

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-15 DATE 2/5/98
DEB BOGSTAD
BOARD CLERK

EXHIBIT A
Oregon Health Division
Budget for Research Services

Category	FTE	Healthy Start Initiative 10/1/97-8/31/98	African American Birth Outcomes 10/1/97-6/30/98	NIDA Evaluation 10/1/97-8/31/98	Clearcorps Lead Evaluation 10/1/97-8/31/98	Tobacco Evaluation 11/1/97-6/30/98	TOTAL
Personnel							
Research Analyst 3	1.00	34,078					34,078
Environmental Epi Manager	0.04				2,157		2,157
Research Analyst 3	0.55				21,984		21,984
Office Assistant	0.40				8,609		8,609
Research Analyst 3	1.00		32,250				32,250
Research Analyst 3	0.50			16,125			16,125
Research Analyst 3	0.50					14,333	14,333
Research Analyst 2	0.25					4,886	4,886
Fringe Benefits		12,752	12,068	10,148	12,444	7,192	54,604
Subtotal	4.24	46,830	44,318	26,273	45,194	26,411	189,026
Materials & Services							
Supplies		1,964	2,490	154	1,144	630	6,382
Non-capital equipment		0	0	0	2,500	0	2,500
Professional Services		0	5,000	0	6,239	0	11,239
Staff Travel/Training		1,375	1,125	0	0	0	2,500
Rent		2,645	2,546	0	1,536	849	7,576
Telephone		1,590	1,530	383	926	510	4,939
State Government Svc Charge		692	666	167	404	296	2,225
Intra-Agency ISS Charge		1,747	1,682	420	1,013	561	5,423
Subtotal		10,012	15,039	1,124	13,762	2,846	42,783
Total Direct Budget		56,842	59,357	27,397	58,956	29,257	231,809
Indirect #		5,400	594	2,603	590	293	9,480
Total Budget		62,242	59,951	30,000	59,546	29,550	241,289

Indirect cost rate for federal grants is calculated at 9.5% for on-site expenses. Indirect cost rate for non-federal grants is calculated at 1% for on-site expenses.

MEETING DATE: FEB 05 1998
AGENDA NO: C-160
ESTIMATED START TIME: 9:30
AM

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement between the District Attorney's Office and Services to Children and Families to fund the CAMI child abuse program for 1998.

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

REGULAR MEETING: DATE REQUESTED: 1/29/98
AMOUNT OF TIME NEEDED: 1 minute

DEPARTMENT: District Attorney DIVISION: Family Justice

CONTACT: Tom Simpson TELEPHONE #: 248-3863
BLDG/ROOM #: 101/600

PERSON(S) MAKING PRESENTATION: (consent calendar item)

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Intergovernmental Agreement between the District Attorney's Office and Services to Children and Families to fund the CAMI child abuse program for 1998.

2/5/98 ORIGINALS to KATHY GRAHAM

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT MANAGER: TS

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 23 PM 1:28



SUPPLEMENTAL STAFF REPORT

TO: Board of County Commissioners

FROM: Michael D. Schrunk

DATE: January 14, 1998

RE: Intergovernmental Agreement between the District Attorney's Office and Services to Children and Families to fund the CAMI child abuse program for 1998.

1. **Recommendation/Action Requested:**
Approval
2. **Background/Analysis:**
The District Attorney's Office is a county multidisciplinary abuse team formed under ORS 418.747 which provides child abuse multidisciplinary intervention (CAMI) services as set forth in the District Attorney Office's CAMI plan on file with the State Office for Services to Children and Families.
3. **Financial Impact:**
This grant appropriates \$727,066.18 in new revenue for 1998.
4. **Legal Issues:**
ORS 190 provides for intergovernmental agreements.
5. **Controversial Issues:**
N/A
6. **Link to Current County Policies:**
N/A
7. **Citizen Participation:**
N/A
8. **Other Government Participation:**
State Office for Services to Children and Families.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☒ [X]

Contract # 500447

-Approved Contract Boilerplate: Attached: Not Attached

Amendment 4

<p style="text-align: center;">CLASS I</p> <p><input type="checkbox"/> Professional Services under \$50,000</p> <p><input type="checkbox"/> Intergovernmental Agreement under \$50,000</p>	<p style="text-align: center;">CLASS II</p> <p><input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCRB Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS III</p> <p><input checked="" type="checkbox"/> Intergovernmental Agreement over \$50,000</p> <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p>AGENDA # <u>C-16</u> DATE <u>2/5/98</u></p> <p style="text-align: center;">DEB BOGSTAD</p> <p style="text-align: center;">BOARD CLERK</p>
---	--	--

Department: District Attorney Division: Family Justice Date: January 13, 1998

Contract Originator: Tom Simpson Phone: 248-3863 Bldg/Room: 101/600

Administrative Contact: Kathy Graham Phone: 248-5330 Bldg/Room: 101/600

Description of Contract: Amendment to Intergovernmental Agreement between the State of Oregon Services to Children and Families and Multnomah County District Attorney's Office to fund the CAMI child abuse program for 1998.

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

ORS/AR # _____ (Check all boxes that apply) Contractor is ☐ JMBE ☐ JWB ☐ JESB ☐ JQRF ☐ JN/A ☐ JNone

Original Contract No. 500447 (ONLY FOR ORIGINAL RENEWALS)

<p>Contractor Name: <u>SCF/CAMI Contracts</u></p> <p>Mailing Address: <u>500 Summer St. N.E.</u> <u>Salem, OR 97310-5657</u></p> <p>Phone: <u>(503)-945-5915</u></p> <p>Employer ID# or SS#: _____</p> <p>Effective Date: <u>1/1/98</u></p> <p>Termination Date <u>12/31/98</u></p> <p>Original Contract Amount: <u>\$ 498,980.70</u></p> <p>Amount of Previous Amendments: <u>\$ 658,178.05</u></p> <p>Amount of Amendment: <u>\$ 727,066.18</u></p> <p>Total Amount of Agreement: <u>\$1,884,224.93</u></p>	<p>Remittance Address (if different) _____</p> <p>Payment Schedule/Terms</p> <p><input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt</p> <p><input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30</p> <p><input checked="" type="checkbox"/> Other \$ <u>quarterly per schedule</u> <input type="checkbox"/> Other</p> <p><input type="checkbox"/> Requirements contract - Requisition Required</p> <p>Purchase Order No. _____</p> <p><input type="checkbox"/> Requirements Not to Exceed \$ _____</p> <p>Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></p>
---	---

REQUIRED SIGNATURES

Department Manager: [Signature] Date: 1-13-98

Purchasing Manager: _____ Date: _____

(Class II Contracts Only)

County Counsel: [Signature] Date: 1-22-98

County Chair/Sheriff: [Signature] Date: February 5, 1998

Contract Administration: _____ Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01	156	023	2437			2339			CAMI	\$727,066.18	
02											
03											

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

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

STATE OF OREGON INTERGOVERNMENTAL AGREEMENT

Agreement Number: 71921

Date: December 18, 1997

This agreement is between the State of Oregon, acting by and through its Department of Human Resources, STATE OFFICE FOR SERVICES TO CHILDREN AND FAMILIES, hereinafter referred to as the "Department" and MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE, which has formed an eligible Agency multidisciplinary child abuse team formed under Oregon Revised Statute 418.747, hereinafter referred to as the "Agency". The Department's supervising representative for this agreement is Janvier Slick.

Effective Date and Duration: This agreement shall become effective on January 1, 1998, or on the date at which every party has signed this agreement. This agreement shall expire, unless otherwise terminated or extended, on December 31, 1998. However, such expiration shall not extinguish or prejudice Department's right to enforce this Agreement with respect to (i) any breach of a Agency warranty; or (ii) any default or defect in Agency performance that has not been cured.

Statement of Work: The agreement provisions are contained in the following and are by this reference, made a part of this agreement:

Document
SCHEDULE

Pages

3

Agency's Approved Plan

Not Attached - on file with Department

Consideration: Department agrees to pay the Agency an amount not to exceed \$727,066.18 for accomplishment of the work, including any allowable expenses. Interim payments shall be made to the Agency as outlined in the agreement document entitled SCHEDULE.

Amendments: The terms of this agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.

AGENCY MUST COMPLETE AGENCY DATA AND CERTIFICATION

NAME: (tax filing): Multnomah County

ADDRESS: P. O. Box 14700, Portland, OR 97293-0700

Social Security # or Federal Tax ID. # 93-6002309

I, the undersigned, agree to perform work outlined in this agreement in accordance with the terms and conditions and the attachments referenced herein.

Approved by the Agency:

Signature: [Signature] Title: Mgmt Assistant Date: 1-13-98

Approved by State Office for Services to Children and Families:

Signature: _____ Title: _____ Date: _____

Reviewed by Contracts Officer: _____ Date: _____

Approved as to Legal Sufficiency: [Signature] Asst. A.G. Date: Dec 30, 1997

Contract No. 50447
Amendment No. 4
Agreement No. 71921

**MULTNOMAH COUNTY/SERVICES TO CHILDREN AND FAMILIES
INTERGOVERNMENTAL AGREEMENT**

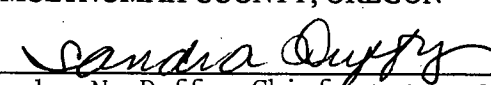
APPROVED FOR MULTNOMAH COUNTY, OREGON

By 
Beverly Stein, County Chair

Date: February 5, 1998

REVIEWED:

THOMAS SPONSER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra N. Duffy, Chief Assistant County Counsel

Date: 1-22-98

**APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS**
AGENDA # C-16 DATE 2/5/98
DEB BOGSTAD
BOARD CLERK

SCHEDULE

AGENCY: MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE

DATE: December 18, 1997

SECTION A: AGREED

Whereas, the Agency is a county multidisciplinary child abuse team formed under ORS 418.747 and has submitted its child abuse multidisciplinary intervention (CAMI) plan to the Department, as required by ORS 418.746 (5). The Agency's CAMI plan, which is on file with the Department, is by this reference hereby made a part of this agreement.

Whereas, the Department, by its authority under ORS 418.746 (3), has determined the Agency's plan eligible or conditionally eligible for funding, based on the factors set forth in ORS 418.746 (4).

Now therefore, the purpose of this Agreement is to provide a means to distribute CAMI Account funds from the Department to the Agency. The Department does not seek the specific services described in the plan.

The Agency and the Department agree that this agreement begins on January 1, 1998 and ends on December 31, 1998. The Agency and the Department agree to the following:

1. The Agency agrees to provide services as described in its CAMI plan and any amendments.
2. The Agency agrees, if its CAMI plan has been conditionally approved for funding under ORS 418.746 (3) (b) by the Department, the Agency will take such action as is required to make its CAMI plan fully eligible for funding by December 31, 1999.
3. The Agency agrees that services shall be provided within the geographic boundaries of **MULTNOMAH** County, Oregon.
4. The Agency agrees that the money received under this agreement will not be used as replacement revenues for currently available funds previously allocated by the county for child abuse intervention.
5. The Agency shall submit a year-end report on December 31, 1998, to the Department. The report shall document how the money was utilized and shall describe as to what extent the program was able to meet anticipated outcomes in terms of benefits to

children and families.

6. The Department, with the advice of the Advisory Council on Child Abuse Assessment, created by ORS 418.784, and the advisory council on child abuse created pursuant to the requirements of the Children's Justice Act (Public Law 99-401, Title I), shall disburse moneys from the Child Abuse Multidisciplinary Intervention Account to the Agency. The moneys shall be allocated by the same or similar formula used by the Attorney General for equitable distribution of the fund for victim's assistance programs under ORS 147.227 (1).

SECTION B: PAYMENTS

1. During the period beginning January 1, 1998 and ending December 31, 1998, payment shall be subject to the provisions of ORS 293.462 (payment of overdue account charges); the Department will pay to the Agency, by check(s), an amount not to exceed \$727,066.18, to be paid as follows:

- a. Payment in the amount of \$181,766.55 per calendar quarter from December 31, 1997 through June 30, 1998.
- b. Payment in the amount of \$181,766.54 per calendar quarter from July 1, 1998 through December 31, 1998.

ORS requires frist payment to be made before January 1, 1998.
Payment per calendar quarter shall be according to the follwing schedule:

Payment After Date	For Period	
	Beginning	and Ending
December 31, 1997	January 1, 1998	March 31, 1998
April 1, 1998	April 1, 1998	June 30, 1998
July 1, 1998	July 1, 1998	September 30, 1998
October 1, 1998	October 1, 1998	December 31, 1998

Payments will be withheld pending receipt of reports or completion of other eligibility conditions.

3. Agency shall not submit billings for, and Department will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before Agency performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. This Agreement will not be amended after the expiration date.

SECTION C: PROVISIONS SPECIFIC TO THIS AGREEMENT

1. This agreement may only be amended by a written instrument signed by both parties.
2. This agreement may be terminated by mutual consent of both parties, or by either party upon 90 days written notice to the other party, delivered personally or by certified mail.
3. The Agency shall defend, save, and hold harmless the State of Oregon, the Department of Human Resources, the Department and their officers, agents and employees from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of the Agency or its subcontractors, agents or employees under this agreement.

MEETING DATE: _____

FEB 05 1998

AGENDA #: _____

LC-1

ESTIMATED START TIME: _____

9:30 Am

(Above space for Board Clerk's Use Only)

AGENDA PLACEMENT FORM

SUBJECT: OLCC License Renewal

BOARD BRIEFING:

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: _____

AMOUNT OF TIME NEEDED: _____

DEPARTMENT: Sheriff's Office

DIVISION: _____

CONTACT: Rick Barnett

TELEPHONE: 251-2441

BLDG/ROOM #: 313/120

PERSON(S) MAKING PRESENTATION: Sergeant Jim Dusevoir

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

BOARD OF
COUNTY COMMISSIONERS
98 FEB -3 PM 2:25
MULTNOMAH COUNTY
OREGON

This is an OLCC Package Store with Pumps License Renewal application for:

Larson's Marina
14444 NW Larson Road
Portland, Oregon 97231

2/5/98 ORIGINAL to Elizabeth Larson; copy to Rick Barnett

The background has been checked on applicant: Elizabeth A. Larson and no criminal history can be found on the above.

SIGNATURES REQUIRED:

ELECTED

OFFICIAL: _____

(OR)

DEPARTMENT

MANAGER: _____

James Dusevoir

Oregon Liquor Control Commission

PO Box 22297, Milwaukie, OR 97269 1-800-452-6522

License Renewal Application

IMPORTANT: Failure to fully disclose any information requested, or providing false or misleading information on this form is grounds to refuse to renew the license. Your license expires December 31, 1997

License Type: Package Store with Pumps	District: 1	County/City: 2600	RO#: R24534A	421/203
--	-------------	-------------------	--------------	---------

LARSON'S MARINA, INC.
14444 NW LARSON RD
PORTLAND OR 97231

Licensee(s) LARSON'S MARINA, INC.

Tradename LARSON'S MARINA
14444 NW LARSON RD
PORTLAND OR 97231

Instructions:

1. Answer all questions completely on the renewal application.
2. Have each partner or an authorized corporate officer sign the renewal application.
3. Have the local governing body endorse the renewal application.
4. Return completed renewal application along with the appropriate license fee due before December 11, 1997 to avoid late fees.

Operational Questions:	Responses:										
(1) Please list a daytime phone number.	Phone Number: 286-1223										
(2) Please list all arrests or convictions for any crime, violation, or infraction of any law during the last year even if they are <u>not liquor</u> related for anyone who holds a financial interest in the licensed business. Attach additional sheet of paper to back of form if needed.	<table><thead><tr><th>Name</th><th>Offense</th><th>Date</th><th>City/State</th><th>Result</th></tr></thead><tbody><tr><td>ELIZABETH LARSON</td><td>SPEEDING</td><td></td><td>PORTLAND</td><td>FINE</td></tr></tbody></table>	Name	Offense	Date	City/State	Result	ELIZABETH LARSON	SPEEDING		PORTLAND	FINE
Name	Offense	Date	City/State	Result							
ELIZABETH LARSON	SPEEDING		PORTLAND	FINE							
(3) Will anyone share in the profits who is not a licensee? If yes, please give name(s) and explain.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:										
(4) Were there any changes of ownership (ie: add/drop partners, change to corporations, etc.) not reported to the OLCC in the last year?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES & EXPLAIN:										
(5) Package Store Licenses with Gas Pumps: Report actual grocery inventory at cost (DO NOT INCLUDE BEER OR WINE).	\$ 928 ⁰⁰ *										

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

The County of MULTNOMAH recommends that this license be GRANTED X REFUSED _____ on (date) 2/5/98

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

License Fees and Late Fee Schedule & Amounts - Do not mail cash.	Dollar Amount (\$)
License Fee for Package Store with Pumps	50.00
TOTAL FEE TO PAY >>>>PLEASE PAY THIS AMOUNT<<<<	50.00
Late Fees	
IF Renewal Application Is Received After December 11, 1997 but before January 01, 1998	Add 12.50 To Total Due
IF Renewal Application Is Received On or After January 01, 1998.	Add 20.00 To Total Due

Print Name	Signature	Date	Social Security #	Date of Birth
ELIZABETH A. LARSON SECRETARY	<u>Elizabeth A. Larson</u>	1-28-98	550-76-1934	10-20-50

*Inventory will increase by ~100% beginning mid- to late March.

MEETING DATE: FEB 05 1998
AGENDA #: R-2
ESTIMATED START TIME: 9:30am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: RESULTS Presentation

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

REGULAR MEETING: DATE REQUESTED: 2-5-98
AMOUNT OF TIME NEEDED: 10 minutes

DEPARTMENT: ADS DIVISION: _____

CONTACT: Sue Longaker TELEPHONE #: 248-3620 #26073
BLDG/ROOM #: 161/3rd

PERSON(S) MAKING PRESENTATION: Public Guardian's Office

ACTION REQUESTED:

[☒] INFORMATIONAL ONLY [☐] POLICY DIRECTION [☐] APPROVAL
[☐] OTHER

SUGGESTED AGENDA TITLE:

RESULTS in the Public Guardian Office

CLERK OF
COUNTY COMMISSIONERS
98 JAN 28 PM 1:34
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT Mary Shortall Deputy Director, ADS
MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

**PRESENTATION TO THE BOARD OF
MULTNOMAH COUNTY COMMISSIONERS**

FROM THE OFFICE OF PUBLIC GUARDIAN & CONSERVATOR

FEBRUARY 5, 1998

DEFINITION OF A HIGH PERFORMANCE WORK TEAM:

“Complimentary staff who manage their own work as a group and who are committed to a common purpose, performance goals and customer service approach for which they hold themselves mutually accountable, and who are deeply committed to one another’s personal growth and success.” - From The Wisdom of Teams, Katzenbach & Smith, 1983.

Before



This is why we do it ...

After



Overcoming Major Barriers to a Successful Transition to Quality

1) *Initiate quality program without linking change to a strategic plan*

- team activities need to focus on the bottom line processes needed for customer service
 - * 7/95 Program Mission within agency mission 7/95
 - * 8/95 Delegated subteams begin to make work process improvements ("buddy system", pooled clerical overload, filing system.)
 - * 10/95 Customer ID
 - * 12/97 Group training plan, linked to personal plans, goals

2) *Management doesn't "walk the talk"*

- morale relates to the gap between stated and actual values
 - * 6/95 group orientation/ education about CQI
 - * 7/95 Consensus decision-making model, ground rules, group roles, rotating team leader (full rotation complete by 1997)
 - * 8/95 Program values developed within agency values
 - * 10/95 Group process to hire two new staff, dev't of "peer mentoring"
 - * 3/96 Program standards
 - * 1996-7 Management training, development of model of coaching
 - * 12/96 Consensual focus on diversity/uniqueness as a group hiring value
 - * 10/96 First evaluation of meeting effectiveness
 - * 6/97 team-building retreat
 - * 1/98 conflict model training/ development

3) *Policies and Procedures are often based on assumptions and values that are being gradually replaced*

systems have to change to match the emerging quality culture

- * 10/95 Decision Matrix
- * 11/95 Delegation of schedules/ office coverage within constraints
- * 11/95 Performance measures for Information/ Referral Calls
- * 1/96 Ethical Principles for Decision-Making
- * 2/96 Performance Measures for ongoing services
- * 6/96 Staff time study to decide focus areas for improved efficiency
- * 10/96 Program evaluation of meeting effectiveness
- * 7/97 Delegation of Training Decisions to Training Committee
- * 10/97 Personal training plans link to group training plan
- * 2/97 Delegated case assignment system

GOALS FOR 1998

- Benchmarking against northwest and national guardianship programs
- Satisfaction survey of client "care team" members
- Internal assessment of key Performance Measures
- Peer review quality assurance system

PUBLIC GUARDIAN AND CONSERVATOR OFFICE

MISSION AND VALUES

The mission of the Office of the Public Guardian/Conservator is to protect the most vulnerable and incapacitated citizens in Multnomah County from abuse, exploitation, and self-neglect, through a quality program of legally substituted decision-making for persons and property.

The Public Guardian/Conservator holds the following values (-) in support of the organizational values of ASD (o):

- o Promotion of client independence
 - Ensure that care, treatment and services represent the least restrictive form of intervention possible.
- o Promotion of client choice
 - All decisions shall be made in a manner that protects the civil rights and liberties of the client and maximizes independence and self-reliance.
- o Respect for individuals
 - Exercise prudence and diligence to scrupulously avoid even the appearance of conflict of interest.
- o Involvement of people in decisions that affect them
 - When possible, decision-making for incapacitated clients should be guided by the principle of substitute judgment in order to promote the underlying values of self-determination and well-being.
- o Provision of quality service that is coordinated and easily accessible
 - Customer-focused, honest, fair and consistent service delivery which assures accessibility and responsiveness to the most vulnerable citizens.
- o Efficient use of public and private resources
 - Conserve and maximize both public and private resources.
- o Personal integrity
 - Staff shall exhibit the highest degree of trust, loyalty and fidelity in relation to clients.

PG/C Goals FY 97-98
12/30/97

1. Benchmarking/ Measurement

	B. Revise client assessment tool used to measure client improvement	PIPs 3/1/98
	C. Identify 4 Public Guardian or non-profit programs to use as benchmarks.	PIPs 12/1/97
	(1) ID best features and available data	PIPs/HB 3/1/98
	(2) Draft an initial survey	PIPs/HB 4/1/98
	(3) Implement survey/ tally	PIPs/HB 6/1/98
	D. Participate in agency OQA: Implementation plan	All 5/98
Done	E. Add AA/Final Acct Benchmark and tracking system	DONE 12/98
Done	A. Evaluate outcomes from first year of client assessment tool.	DONE 9/97

2. Partnership Development/ Access/ Managed Care

A. Intake Access/ Service	
a. Survey key intake customers on serv. needs/ possibilities/ accessibility	MS, Intake 3/98
b. Revision of intake criteria/ standards (next FY)	ID issues 5/1/98
B. Request Elders in Action "Elder-Friendly" Evaluation	All; 4/1/98
C. Continue partnership activities with OHSU/HMOs, MH, DD Council	H, M/ PIPs
D. Develop a program complaint/ appeals process.	All/ HB 4/98
E. Utilize ADS comment form	All/ MS 2/98
F. Coord with PSRI: criteria/proced. for private sector referrals	HB/MS 5/98

FOR REVIEW 11/126/97

G. Web site for PG/C office. All: set date; HB + Support: do

3. Customer Service

A. Implement Program Standards/ Initial Evaluation	PIPs/ HB
(1) Revise previously developed standards.	PIPs/ HB 1/1/98
(2) Decide on stds for implementation/ implement	PIPs/ HB 2/1/98
(3) Choose standards for initial evaluation.	PIPs/ HB 3/1/98
(4) Develop an initial evaluation for internal benchmarking.	PIPs/ HB 3/98
(5) Draft model, identify issues to include in peer review system	PIPs/ HB 4/1/98
(6) Implement peer review initial eval	6/1/98
(7) participate in court efforts to develop standards	HB/ ongoing
B. Survey on-going customers on service satisfaction (split from prev.intake goal) sub-goals,	dates by 2/1; done 6/98
C. Continuous Improvement: Ongoing program issues (see attached)	MS/ Prax: see PL for list

4. Staff Development

A. Annual Staff Reviews	
DONE A. (1) All perf. revs w. cust. serv. content/pers. dev. goals	Done 11/97
(2) Revise mechanism to get customer service input into performanc appraisals,	HB 7/15/98
based on comment form and satisf. survey	
(3) Group training plan	Training comm. 1/15/98 or budget deadlines
B. Continue dev't of self-directed teams/ delegation to teams	M/H
(1) Written internal delegation agreements regarding trusts and ? Pips/M,H Plan w dates: 2/1	
(2) Employee satisfaction survey (existing form)	MS 5/98
(3) ID/ implement a conflict resolution model for group process	Train. Comm FY 98-9

5. Technology

A. Legal documents transferred into WORD	All: set date: implement:JS/Support
B. Data system operational in Windows	All: set date; implement: JS
C. Coord move to Windows 95	All: set date; Implement: JS/HB/Support

OTHER: fee redo; re-assess progress since '87audit; ADSD after-hours redo + ongoing

DECISION MATRIX
7/1/97-6/30/98

✓ Current Practice
★ Goal

ID DECISION	WHO MAKES IT	WHO GIVES INPUT	WHO MUST BE INFORMED	MANAGEMENT DECIDE AND ANNOUNCE	MGMT DEV'D MODEL FOR INPUT: MGMT DECIDE	PG/C STAFF-DEV'D MODEL FOR INPUT: MGMT DECIDE	MANAGEMENT DELEGATE CONSEN. W/IN CONSTRAINTS	PG/C STAFF CONSENSUS WRITTEN AGREEMENT	PG/C STAFF DELEGATE DECISION TO TEAM W/WRITTEN AGREEMENT
PG/C Procedures	Dir, PG	Co. Counsel PG/C Staff ASD Staff	PG/C Staff		✓	★			
Accepting New Clients	Sr Dep PG, PG	MDT, Referral Sources, Deps.	PG/C staff, referral sources		✓	★			
PG/C Budget Resource Allocatn	ASD Admin, Mgmt, BCC	All ASD staff	All staff		✓	★			
Work assignments/distribution	PG, Sr Dep PG	PG/C staff, work teams, Mgmt	PG/C staff, ASD staff				✓		★
Staff training budget usage	Training Comm.	Teams	PG/C staff						✓ ★
Final hiring decision	PG, Dep Dir, Dir	Interview panel, staff	Dir, Staff			✓	★		
Disciplinary Action	Mgmt team, PG	Dir, Employee, Union		✓ ★					
Performance Review/ Appraisal	PG	Employees, teams, customers	Personnel, Dep. Dir, Employee		✓ ★				
Quality/ Efficiency, Performance Stds.	PG/ Mgmt Teams	PG/C Staff, ASD staff	PG/C Staff, Dep Dir			✓	★		
Team Wk Process Improvement	Mgmt, Work Teams	Work teams	PG/C Staff					✓	★
Leave	Mgmt, Staff, within constraints	County, State, Union, Individual, PG/C Staff, ASD	Employee, Group, County		✓	★			
Vacation leave (scheduling)	Individual within policy guidelines	All staff, PG, Union, ASD Central	PG/C staff					✓ ★	
Work schedules	PG, Staff	ASD Central Staff, County, Union	PG/C staff, Customers			✓	★		
Comp. Time	PG, Individual--within policy	Individual, PG, Staff	PG/C staff		✓		★		

ETHICAL PRINCIPLES FOR DECISION-MAKING

for Public Guardianship and Conservatorship

1. The Fiduciary will make informed decisions on behalf of the client with care and diligence:
 - Protecting the client's civil rights and liberties.
 - Maximizing client independence and self-reliance.
 - Supporting the least restrictive environment that is available and reasonable.
 - Making reasonable efforts to ascertain client preferences.
 - Using a substituted judgment standard unless the guardian is reasonably certain that substantial harm to the client will result from such a decision.
 - Using a best interest standard when client preferences cannot be established, or when use of a substituted judgment model will result in substantial harm to the client.
 - Scrupulously avoiding conflict of interest and self-dealing.
 - Seeking consultation from knowledgeable professionals, and considering the opinions of those with knowledge when making decisions on behalf of the client.

2. The Fiduciary will manage the property and income of the client with care and diligence:
 - Providing competent management of the estate for the needs of the client, fostering independence and self-reliance.
 - Seeking consultation and new knowledge when needed.
 - Scrupulously avoiding conflict of interest and self-dealing.
 - Observing statutory requirements.
 - Exercising prudence in investment and management of real or personal property, consistent with reasonable effort.

PG/C TRAINING POLICY

MEMBERSHIP

The Training Committee will consist of three members: one person from the Support Staff team; one from the PG5 team; and the Training Coordinator. Members are Dena Wilson, Deborah Thorsen, and June Shepard. Team members will serve one-year terms, beginning in January.

MEETINGS

1. The Committee will meet on the first Wednesday of the month at 10:30 a.m., to review training requests and discuss training issues and opportunities. A meeting schedule will be posted on the bulletin board. Special meetings may be called as appropriate. The Committee will make decisions with at least two members present; if this quorum is not met, the request will be referred to the Public Guardian for a decision.
2. Training requests submitted by individuals on the Committee may be approved by the remaining two members; however, the Committee will ask that Holly also review these decisions to discourage potential conflict-of-interest allegations.

ROLES AND RESPONSIBILITIES

1. Training funds will be allocated in a way which recognizes the customer's need for trained staff, and balances the needs of the group with the skill enhancement interests of the individual employee. The PG/C staff will seek consensus on identifying group training needs.
2. The Committee will recommend a budget during the budget process, which takes into account both individual needs, team needs, and all staff needs in light of the effort for continuous quality improvement in the work place.
3. The Committee will develop guidelines for an equitable distribution of the PG/C training budget.
4. The Committee will review training requests and determine if these meet training guidelines.
5. Training for management staff will not be addressed by the Training Committee.
6. Decisions regarding NGA attendance by deputies will be made consensually by the PIPs work group.
7. The Committee will research educational opportunities and coordinate in-house training for the staff.

8. The Committee will track trainings and conferences which staff have attended, and determine if modifications to the training budget are necessary.
9. The Committee will provide monthly reports to PG12 regarding the training budget and training requests.

DECISION-MAKING GUIDELINES

Guidelines have been developed for an equitable distribution of the PG/C training budget. Equitable does not necessarily mean that all staff will have an equal allocation of training dollars to spend, nor will staff have individual allotments of funds available for their use. Each request is considered on its own merit, but the Committee will make every effort to assure that all staff are allowed opportunities for training within the fiscal year. Some staff may be required to attend training, which may take priority over other training requests in a given year. The Committee will be notified of all individual training plans. The following criteria will be considered by the Committee when reviewing training requests:

- Available funds.
- Relevance of the training to the employee's current position, job development, or training issues.
- Employee's need for a particular training.
- Information provided by the employee on the request form.
- Training previously attended by the employee.
- Location of the training.
- Number of training requests being submitted.
- Appropriate cost for the training being offered.

Training Categories

The Committee will approve training requests based on the following prioritized guidelines:

1. Request is job-related -- training will directly impact job performance and effectiveness and help staff person to do a better job.
2. Professional Growth
3. Personal Development

Payment Guidelines

Payment for training will be based on the priority of training as determined by the above guidelines. The following rating will be used to determine if payment for training is approved:

1. If training is *job-related*, the Committee may recommend:

- a) Payment for total registration and time off provided by County to attend the training.
 - b) Individual pays for registration, but County approves the time off to attend the training.
 - c) Individual pays for registration and takes personal holiday or vacation to attend training.
 - d) No recommendation.
2. If training is for *professional growth*, the Committee may recommend:
- a) Partial payment for registration (match situation), and County approves time off to attend training.
 - b) Partial payment for registration, and individual required to take personal holiday or vacation to attend training.
 - c) Individual pays for registration, but County approves time off to take the training.
 - d) Individual pays for registration, and individual is required to take personal holiday or vacation to attend training.
 - e) No recommendation.
3. If training is for *personal development*, the Committee may recommend:
- a) Individual pays for registration, and County approves time off for the training.
 - b) Individual pays for registration, and County requires individual to take personal holiday or vacation for training dates.
 - c) No recommendation.

PROCEDURE

1. All requests for training should be submitted on the PG/C TRAINING REQUEST FORM (see attached). The training announcement and registration form should be attached to the request.
2. Requests that meet training guidelines will have action taken on them at the regularly scheduled meeting. Individuals who submitted requests will be informed of the Committee's recommendation as soon as possible after the meeting. If an individual does not agree with the Committee's recommendation, an appeal may be made to PG12 for a final determination.
3. Training requests that have been approved by the Committee will be prepared by the Training Committee Coordinator for signature by the Public Guardian.
4. The Committee will have a mailbox (outside June's cubicle) where:
 - a) Blank training request forms will be available.
 - b) Completed PG/C training requests should be submitted for approval.
 - c) Training announcements may be submitted for distribution among staff.

5. The Committee will provide an office training calendar (within the vacation calendar) beginning in January 1997. It is recommended that individuals mark scheduled trainings on the calendar, so that other staff will know when they are absent from the office for training. The calendar will include *internal* and *external* trainings.
6. The Committee will be responsible for entering undebriefed trainings to the PG12 list of parked agenda items. The workshop attendee will be responsible for scheduling a presentation at an upcoming all-staff meeting.

#1

SPEAKER SIGN UP CARDS

DATE 2/5/98

NAME SETH TANE

ADDRESS 13700 NW NEWBERRY
RD PORTLAND 97231

PHONE _____

SPEAKING ON AGENDA ITEM NUMBER OR
TOPIC HOME OCCUPATIONS

GIVE TO BOARD CLERK

#2

SPEAKER SIGN UP CARDS

DATE 1/5/98

NAME Chris Foster

ADDRESS 15400 NW McNamee Rd

Portland OR 97231

PHONE 621-3564

SPEAKING ON AGENDA ITEM NUMBER OR
TOPIC HOME OCCUPATION ORD.

GIVE TO BOARD CLERK

Meeting Date: FEB 05 1998
Agenda No: R-3
Est. Start Time: 9:40 AM

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Public Reading of an Ordinance amending the Multnomah County Zoning Code (MCC 11.15) by creating two classifications of Home Occupations with applicable standards and procedures. (C 2-97)

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

REGULAR MEETING Date Requested: February 5, 1998
 Amt. of Time Needed: 30 Min.

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

PERSON(S) MAKING PRESENTATION: Susan Muir / Kathy Busse

ACTION REQUESTED

☐ Informational Only ☐ Policy Direction ☒ Approval ☐ Other

SUGGESTED AGENDA TITLE

Public Reading of an Ordinance amending the Multnomah County Zoning Code (MCC 11.15) by creating two classifications of Home Occupations with applicable standards and procedures.

SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: KB Lou E. Erickson

BOARD OF
COUNTY COMMISSIONERS
58 JAN 26 PM 4:12
MULTNOMAH COUNTY
OREGON

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

To: Board of County Commissioners

From: Planning Staff

Today's Date: January 23, 1998

Requested

Placement Date: February 5, 1998

Subject: Public hearing on an ordinance amending section 11.15 of the Multnomah County Code to update the home occupation provisions. (Planning case file C 2-97)

I. Recommendation / Action Requested:

Recommend adoption of an ordinance that will amend various sections of the zoning code to allow for two types of home occupations. Type A, which is a minimal impact operation and Type B, which would be processed as a Conditional Use.

II. Background / Analysis:

In 1996, the Transportation and Land Use Planning Division made the interpretation that the existing home occupation definition that defines a home occupation as: "Any lawful activity not otherwise specifically provided for in this Chapter" meant that as long as the use proposed for the home occupation was listed anywhere else in the code, it could not be considered an allowed home occupation. This interpretation was consistent with historical planning documents dating back to 1966. The Planning Commission heard testimony that the staff interpretation of this was burdensome and outdated and the Planning Commission embarked on revising the zoning ordinance with the help of a subcommittee. The subcommittee began by analyzing current state code as well as taking several case studies from Clackamas and Washington Counties as well as the City of Portland (see attached matrix labeled Exhibit A).

The Planning Commission subcommittee drafted language with the goals of accommodating the need for home based businesses in the County while also understanding that enforcement of the code will be a major issue. With this in mind, the Planning Commission came up with a two tiered concept that would allow home occupations with little or no impact to the neighborhood to be processed as a registration with the Transportation and Land Use Planning Division. This first type is referenced as Type A in the ordinance and has very tight standards about what can occur without moving into the higher impact category (Type B). Type A allows up to one employee or customer at a time, allows no new buildings or structures, no deliveries outside of those normally associated with a single family dwelling, has no outdoor storage or displays and no signage. The noise level cannot exceed 50 dba, no repair or assembly of any vehicles or motors can occur as

part of this type of operation and the proposal must have direct access to a public road. If one of these standards cannot be met, the home occupation would be considered Type B.

Type B home occupations are those that need to be reviewed by the community and will be considered a conditional use. This will allow the County to notice those neighbors surrounding the property and give them the opportunity to comment on the proposal. Type B home occupations could allow up to 5 employees and will be reviewed to be consistent with character of the area and follow all other state and county guidelines.

The Planning Commission approved the ordinance with the idea that it was desirable to open up the home occupation process in Multnomah County while still ensuring that it was enforceable.

III. Financial Impact

The fiscal impact to the County should be made up through processing fees. The Type A home occupation registration will be filed in the same manner as building permits that are issued by the County and should not require much staff review. The registering of Type A home occupations should save staff resources for code enforcement research and tracking. The application fees paid by the applicants will cover the Type B home occupation processing costs. Currently the fee for a pre-application conference is \$285.00 and a conditional use permit is \$1,550.

IV. Legal Issues

No legal issues have been identified. The revisions proposed are not known to be in violation of any County Planning Policy (except as revised), Statewide Planning Goals, Statutes and Rules.

V. Controversial Issues

These revisions have had public participation from the beginning. Although generally there has been support for the revisions, some of the public testimony received at the Planning Commission level has indicated that the ordinance does not go far enough to allow some types of businesses to operate as home occupations without placing undue burdens on them. The Planning Commission and Staff felt strongly that recommending revisions that can accommodate most home occupation scenarios while still being enforceable was critical at this time and were very reluctant to allow any additional flexibility.

VI. Link to Current County Policies

The East of Sandy River Rural Area Plan contained material about the restrictions currently in place regarding home occupations. The plan discussed the idea of revisiting the county code to look at accommodating the growth of at-home businesses in the rural areas with the concept that there is a demand for a more lenient interpretation of home occupation. The rural area plan contained a policy that stated:

“Consider revisions to the home occupations policies in the Multnomah County Zoning Ordinance.”

This ordinance will implement that policy. In addition, a portion of the Comprehensive Framework Plan will be revised (see. P. 3 of ordinance) to update the policy on home occupations. The revisions will add flexibility to the intent and purpose while staying consistent with the goals and policies established for the resource areas in Multnomah County.

VII. Citizen Participation

Notice of the Planning Commission hearing on the proposed ordinance was published in the *Oregonian* newspaper. Three people testified at the Planning Commission hearing. Notice of this hearing before the Board was also published in the *Oregonian*.

VIII. Other Government Participation

The Department of Environmental Quality was contacted and gave input into the ordinance to ensure the Small Business Section of DEQ will be contacted for input on all applications.

Attachments: Ordinance C 2-97
Planning Commission Resolution
Draft Planning Commission Ordinance
Exhibit A – Matrix of other local jurisdictions

RESOLUTION
BEFORE THE PLANNING COMMISSION
OF MULTNOMAH COUNTY, OREGON

RESOLUTION
C 2-97

In the matter of amending the Multnomah County
Zoning Ordinance Home Occupation definition and
processes by the Multnomah County Board of
Commissioners

)
)
)
)
)
)

WHEREAS, On November 18, 1996 the Planning Commission heard testimony regarding the current provisions for home occupations which are not responsive to current business practices, and

WHEREAS, The Planning Commission subsequently formed a subcommittee to conduct meetings and assist in the preparation of the revisions to the home occupation portion of the Multnomah County Code.

WHEREAS, The Subcommittee reported back to the Planning Commission with draft policies and principles to be implemented through the revisions including goals:

- (1) Addressing the need for home based businesses for those uses that are not large enough and do not have impacts that are associated with uses allowed in the rural center or urban zoning districts.
- (2) Protecting the rural character of areas in unincorporated Multnomah County and maintain the quality of life for all residents of the communities.
- (3) Clearly indicating which types or levels of activities are regulated in Multnomah County and which are not.
- (4) Joining in an effort to reduce vehicle miles traveled, traffic congestion and air pollution in the State of Oregon.
- (5) Providing clear direction for the Planning Staff on interpreting regulations regarding home occupations.
- (6) Creating a simple and quick process for prospective applicants for home occupation permits.

- (7) Making an enforceable code that does not place additional burdens on the code enforcement staff, and

WHEREAS, This amendment will allow home occupations only when they are in accordance with all other applicable state codes.

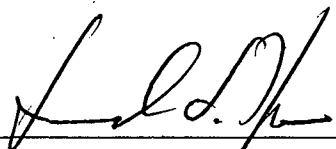
WHEREAS, This draft ordinances was presented at a public hearing before the Planning Commission on September 8, 1997; and

WHEREAS, Amendments were made at that hearing including:

1. Adding a general finding that requires home occupations to comply with all other state codes.
2. Delete references to economic success not being tied to customers visiting the site.
3. Exempt Type B home occupations from requiring Design Review if no modifications (similar to SEC exemptions for additions).
4. Exempt Type A and B (if no modifications) home occupations from Significant Environmental Concern permits.
5. Amend the Type A definition to read non-resident employee or customer on the premises at any one time in addition to the resident participant.
6. The hours of activity changed from 8 am-5 pm to 7 am - 6 pm.
7. Add language to require that the approval be specific in terms of number of employees allowed, hours, type of business, etc.

NOW, THEREFORE BE IT RESOLVED that the Multnomah County Planning Commission hereby recommends that the proposed revisions to the Multnomah County Zoning Code regarding home occupations be adopted by the Multnomah County Board of Commissioners.

APPROVED this 8th day of September, 1997.

By 

LEONARD YOON, CHAIR
MULTNOMAH COUNTY PLANNING COMMISSION
MULTNOMAH COUNTY, OREGON

1 BEFORE THE BOARD OF COUNTY COMMISSIONERS

2 FOR MULTNOMAH COUNTY, OREGON

3 ORDINANCE NO. ~~DRAFT~~

4
5 An Ordinance amending the Multnomah County Comprehensive Framework
6 Plan and the Multnomah County Zoning Ordinance regarding the provisions for
7 home occupations.

8
9 (Language in ~~striketrough~~ is to be deleted; underlined language is new)

10
11 Multnomah County Ordains as follows:

12
13 Section I. Findings

14
15 (A) On November 18, 1996 the Planning Commission heard testimony regarding
16 the current provisions for home occupations which are not responsive to current
17 business practices.

18
19 (B) The Planning Commission subsequently formed a subcommittee to conduct
20 meetings and assist in the preparation of the revisions to the home occupation
21 portion of the Multnomah County Code.

22
23 (C) The Subcommittee reported back to the Planning Commission with draft
24 policies and principles to be implemented through the revisions including goals:

25
26 (1) Addressing the need for home based business' for those uses that are not
27 large enough and do not have impacts that are associated with uses
28 allowed in the rural center or urban zoning districts.

29 (2) Providing the opportunity for residents of Multnomah County to engage
30 in these types of home occupations when the economic success of the
31 business is not tied to customers visiting the site.

- 1 (3) Protecting the rural character of areas in unincorporated Multnomah
- 2 County and maintain the quality of life for all residents of the
- 3 communities.
- 4 (4) Clearly indicating which types or levels of activities are regulated in
- 5 Multnomah County and which are not.
- 6 (5) Joining in an effort to reduce vehicle miles traveled, traffic congestion
- 7 and air pollution in the State of Oregon.
- 8 (6) Providing clear direction for the Planning Staff on interpreting
- 9 regulations regarding home occupations.
- 10 (7) Creating a simple and quick process for prospective applicants for home
- 11 occupations permits.
- 12 (8) Making an enforceable code that does not place additional burdens on the
- 13 code enforcement staff.

14

15 (D) This draft ordinances was presented at a public hearing before the Planning

16 Commission on September 8, 1997.

17

18 Section II. Amendment of the Multnomah County Comprehensive Framework Plan

19

20 Policy 27: Commercial Location

21 * * *

22 E. CLASSIFY COMMERCIAL DEVELOPMENTS ACCORDING TO THEIR

23 FUNCTION, TENANT/TENANT MIX, AND SCALE OF OPERATIONS, AS

24 FOLLOWS:

25 * * *

1	SCALE	INTENT AND	PRIMARY	GROSS
2		PURPOSE	TENANT/TENA	LEASABLE
3			NT MIX	AREA (GLA)
4	HOME	TO ALLOW	VARIABLE	LESS THAN 20%
5	OCCUPATION	BUSINESS		OF THE HOME
6		WHICH CAN BE		<u>NOT</u>
7		CARRIED ON		<u>APPLICABLE</u>
8		WITHIN A		
9		HOME <u>OR</u>		
10		<u>ACCESSORY</u>		
11		<u>STRUCTURE</u>		
12		AND WHOSE		
13		IMPACT WILL		
14		NOT AFFECT		
15		THE ADJACENT		
16		HOMES <u>OR</u>		
17		<u>RESOURCE</u>		
18		<u>AREAS</u>		

16 Section III. Amendment of the Multnomah County Zoning Code MCC 11.15

18 MCC 11.15.0010 Definitions

19 * * *

20 Home Occupation – ~~Any lawful activity not otherwise specifically provided for in~~
 21 ~~this Chapter commonly carried on within a dwelling unit or accessory building by~~
 22 ~~the occupant thereof, no employee or other person being engaged in the same;~~
 23 ~~which activity is secondary to the use of the property for residential purposes;~~
 24 ~~provided that there is no outside advertising or display of merchandise; that no sale~~
 25 ~~of merchandise is made from the premises, and that noise, odor, smoke, gases,~~
 26 ~~fallout, vibration, heat or glare resulting from the activity is undetectable at any~~
 27 ~~property line. The operation of a Residential Home is not considered a Home~~
 28 ~~Occupation.~~

30 (A) Type A: A type A home occupation is one where the residents use their
 31 home as a place of work. Type A home occupations may have up to one

1 employee in addition to the resident participant. No customers shall visit the
 2 site. No new buildings or modifications to existing structures shall be
 3 allowed. No deliveries other than those normally associated with a single
 4 family dwelling and between the hours of 8 a.m. - 5 p.m. No outdoor
 5 storage or displays shall occur (including vehicle parking). No signage shall
 6 be allowed (including temporary signage and those exempted under MCC
 7 11.15.7912 with the exception of those required under MCC 11.05.500-
 8 .575), and no noise above 50 dba at the property lines shall be permitted.
 9 No repair or assembly of any vehicles or motors can occur as part of a type
 10 A home occupation. A type A home occupation may not serve as
 11 headquarters or dispatch where employees come to the site. A type A home
 12 occupation must have direct access to a public road (no easements). Type A
 13 home occupations shall be filed on a form provided by the Planning
 14 Director.

15
 16 Type B: A type B home occupation is one where the residents use their home
 17 site as a place of work but exceeds the standards of the type A home occupation.
 18 Type B home occupations shall be approved as per MCC 11.15.7105 and .7455.

20 * * *

21 **Exclusive Farm Use Zone**

22 * * *

23 **11.15.2012 Conditional Uses**

24 * * *

25 (F) Type B Hhome occupation as provided for in ORS 215.448 MCC 11.15.7455
 26 and provided:

27 ~~(1) That there is no outside advertising or display of merchandise; and~~

28 ~~(2)-(1) That no sale of merchandise is made from the premise; and~~

29 ~~(3)-(2) That noise, odor, smoke, gases, fallout, vibration, heat or glare resulting~~
 30 from the activity is not detectable at any property line.

1 A home occupation located on high-value farmland may employ only
2 residents of the home.

3 * * *

4 11.15.2014 Accessory Uses

5 * * *

6 (E) Type A home occupation pursuant to the definition and restrictions of
7 MCC .0010. Home occupations as defined by MCC .0010 do not allow
8 the level of activity defined in ORS 215.448.

9 * * *

11 Commercial Forest Use Zone

12 * * *

13 11.15.2054 Conditional Uses

14 * * *

15 (C) Type B Hhome occupation pursuant to the definition and restrictions of MCC
16 .0010. Home occupations as defined by MCC .0010 do not allow the level of
17 activity defined in ORS 215.448; and MCC 11.15.7455 and provided:

18 (1) That no sale of merchandise is made from the premise; and

19 (2) That noise, odor, smoke, gases, fallout, vibration, heat or glare resulting
20 from the activity is not detectable at any property line.

21 * * *

22 11.15.2054 Accessory Uses

23 * * *

24 (C) Type A Hhome occupations pursuant to the definition and restrictions of
25 MCC .0010. Home occupations as defined by MCC .0010 do not allow the
26 level of activity defined in ORS 215.448.

27 * * *

29 Multiple Use Agriculture Zone

30 * * *

1 11.15.2132 Conditional Uses

2 * * *

3 (D) Type B Home occupation as provided for in MCC 11.15.7455.

4 * * *

5 11.15.2134 Accessory Uses

6 * * *

7 (C) Type A Hhome occupations pursuant to the definition and restrictions of8 MCC .0010; and

9 * * *

10

11 **Rural Residential**

12 * * *

13 11.15.2212 Conditional Uses

14 * * *

15 (C) Type B Home occupation as provided for in MCC 11.15.7455.

16 * * *

17 11.15.2214 Accessory Uses

18 * * *

19 (C) Type A Hhome occupations pursuant to the definition and restrictions of20 MCC .0010; and

21 * * *

22

23 **Rural Center**

24 * * *

25 11.15.2252 Conditional Uses

26 * * *

27 (C) Type B Home occupation as provided for in MCC 11.15.7455.

28 * * *

29 11.15.2254 Accessory Uses

30 * * *

31

1 (C) Type A Hhome occupations pursuant to the definition and restrictions of
 2 MCC .0010; and

3 * * *

4 **Urban Low Density Residential LR-40**

5 * * *

6 11.15.2508 Uses Permitted Under Prescribed Conditions

7 * * *

8 (E) Type A Hhome occupations as defined in pursuant to the definition and
 9 restrictions of MCC .0010.

10 * * *

12 **Urban Low Density Residential LR-30**

13 * * *

14 11.15.2528 Uses Permitted Under Prescribed Conditions

15 * * *

16 (E) Type A Hhome occupations as defined in pursuant to the definition and
 17 restrictions of MCC .0010.

18 * * *

20 **Urban Low Density Residential LR-20**

21 * * *

22 11.15.2548 Uses Permitted Under Prescribed Conditions

23 * * *

24 (E) Type A Hhome occupations as defined in pursuant to the definition and
 25 restrictions of MCC .0010.

26 * * *

28 **Urban Low Density Residential LR-10**

29 * * *

30 11.15.2568 Uses Permitted Under Prescribed Conditions

1 * * *

(F) Type A Home occupations as defined in pursuant to the definition and restrictions of MCC .0010.

4 * * *

5

6 Urban Low Density Residential LR-7.5

7 * * *

8 11.15.2588 Uses Permitted Under Prescribed Conditions

9 * * *

(G) Type A Home occupations as defined in pursuant to the definition and
restrictions of MCC .0010

12 * * *

13

14 Urban Low Density Residential LR-7

15

*** * ***

16 11.15.2608 Uses Permitted Under Prescribed Conditions

17 * * *

(H) Type A Home occupations as defined in pursuant to the definition and restrictions of MCC .0010.

20

21

22 Urban Low Density Residential LR-5

* * *

11.15.2628 Uses Permitted Under Prescribed Conditions

* * *

(G) Type A Home occupations as defined in pursuant to the definition and restrictions of MCC .0010

* * *

29

30 **Urban Medium Density Residential MR-4**

1 * * *

2

3 * * *

4 (H) Uses customarily incidental to any of the above uses, including Type A home
5 occupations pursuant to the definition and restrictions of MCC .0010.

6

7 (I) Type B Home occupation as provided for in MCC 11.15.7455.

8 * * *

9

10 Single Family Residential R-10

11 * * *

(H) Uses customarily incidental to any of the above uses, including Type A home occupations pursuant to the definition and restrictions of MCC .0010.

14

15 (I) Type B Home occupation as provided for in MCC 11.15.7455.

16 * * *

17

18 Single Family Residential R-7

19 * * *

(H) Uses customarily incidental to any of the above uses, including Type A
home occupations pursuant to the definition and restrictions of MCC .0010.

22

23 (I) Type B Home occupation as provided for in MCC 11.15. 7455.

24 * * *

25

26 Home Occupations - CU

27

28 11.15.7455 Definitions:

29

30 (A) Employee - one full or part time participant, resident or non-resident, in the

31

1 business shall constitute one employee.

2 (B) Customers - Any person visiting the site that is not an employee who is
3 associated with the home occupation.

4 (C) Normal deliveries - The home occupation shall not involve the use, parking,
5 storage or repair of any vehicle exceeding a gross vehicle weight of 11,000
6 pounds, except deliveries by parcel post, United Parcel Service, or similar in-
7 town delivery service trucks. These deliveries or pick-ups of supplies or
8 products, associated with business activities, are allowed at the home only
9 between 8 am and 5 pm.

10 (D) Headquarters - A business operation where employees come to the site at any
11 time.

12 (E) Motor vehicles - vehicles or equipment with internal combustion engines
13 (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines,
14 lawn mowers, chain saws, and other small engines).

15
16 11.15.7460 Purposes

17
18 The purposes of this home occupation section are to address the need for home
19 based business for that are small scale businesses (not more than 5 employees)
20 and that fit in with the characteristic of the neighborhood or the area. The
21 regulations are designed to:

22
23 (A) Provide the opportunity for residents of Multnomah County to engage in
24 these types of home occupations when the economic success of the
25 business is not tied to customers visiting the site.

26 (B) Protect the individual characteristics of areas in unincorporated
27 Multnomah County and maintain the quality of life for all residents of the
28 communities.

29 (C) Join in an effort to reduce vehicle miles traveled, traffic congestion and
30 air pollution in the State of Oregon.

31

1 11.15.7465 Criteria for Approval

2

3 The approval authority shall find that the following standards are met:

4

5 (A) The standards found in MCC 11.15. 7120:

6 (B) The home occupation does not employ more than 5 employees.

7 (C) The site has on site parking as per MCC 11.15.6100 to accommodate the

8 total number of employees and customers.

9 (D) No deliveries other than those normally associated with a single family

10 dwelling and between the hours of 8 a.m. - 5 p.m.

11 (E) No outdoor storage or display

12 (F) No signage (including temporary signage and those exempted under MCC

13 11.15.7912) with the exception of those required under MCC 11.05.500-

14 .575.

15 (G) No noise above 50 dba at the property lines.

16 (H) No repair or assembly of any vehicles or motors.

17 (I) The application has been noticed to and reviewed by the Small Business

18 Section of the Department of Environmental Quality.

19

20 ADOPTED this ____ day of _____, 1997, being the date of its
21 third reading before the Board of County Commissioners of Multnomah County.

22

23 BOARD OF COUNTY COMMISSIONERS

24 FOR MULTNOMAH COUNTY, OREGON

25

26

27

Beverly Stein, Chair

28

29

30

31

1 REVIEWED:

2

3 THOMAS SPONSER, COUNTY COUNSEL

4 FOR MULTNOMAH COUNTY, OREGON

5

6 By _____

7 Thomas Sponsler, County Counsel

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

Home Occupations Background Information 12/13/96

Multnomah County

Any lawful activity not otherwise specifically provided for in this Chapter, commonly carried on within a dwelling unit or accessory building by the occupant thereof, no employee or other person being engaged in the same; which activity is secondary to the use of the property for residential purposes; provided that there is no outside advertising or display of merchandise; that no sale of merchandise is made from the premises, and that noise, odor, smoke, gases, fallout, vibration, heat or glare resulting from the activity is undetectable at any property line. Does not include the operation of a Residential Home.

State Code

In an exclusive farm, forest zone or mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation;

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

It shall employ on the site no more than five full-time or part-time employees;

It shall be operated substantially in:

the dwelling, or

other buildings normally associated with uses permitted in the zone in which the property is located; and

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

The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section.

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

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

Clackamas County

Minor Home Occupations	Major Home Occupation - Non-urban	Major Home Occupations - Urban
Allowed in any zone that permits dwellings	Allowed in rural or natural resource zoning on lots or parcels two acres or larger	Allowed in urban, future urban, rural center district, or in a rural or natural resource district on a lot less than 2 acres in size.
Conducted within a dwelling	Conducted by member of family in the	Conducted by member of family in the

<p>No change in the exterior of the dwelling</p> <p>Limited to 5 employees</p> <p>No outdoor storage, including vehicles</p> <p>No accessory structures used</p> <p>No displays</p> <p>No signs</p> <p>No additional parking spaces</p> <p>No more than 5 vehicle trips/day</p> <p>No equipment that creates noise, vibration, glare, fumes or odor, or visual or audible electrical interference.</p>	<p>residence</p> <p>No more than 5 full or part time employees</p> <p>Must have frontage on and direct access from public road or easement serving only the subject property (requires petition if serves more)</p> <p>Up to 1,000 square feet of an accessory building space can be used</p> <p>Character and residential function of the buildings and property shall be maintained</p> <p>Shall not create noise which exceeds 60 dba between 8 am and 6 pm. Shall not create noise which is detectable off the property between 6 pm and 8 am.</p> <p>No vibration, glare, fumes, odors or electrical interference shall be detectable off the property</p> <p>No outside storage</p> <p>One sign, 8 sq ft.</p> <p>No more than 15 vehicle trips/day</p> <p>Max # of vehicles associated with HO shall not exceed 5</p> <p>Additional parking requirements</p>	<p>residence</p> <p>No more than 5 full or part time employees</p> <p>Must have frontage on and direct access from public road or easement serving only the subject property (requires petition if serves more)</p> <p>Up to 500 square feet of an accessory building space can be used</p> <p>Character and residential function of the buildings and property shall be maintained</p> <p>Shall not create noise which exceeds 60 dba between 8 am and 6 pm. Shall not create noise which is detectable off the property between 6 pm and 8 am.</p> <p>No vibration, glare, fumes, odors or electrical interference shall be detectable off the property</p> <p>No outside storage</p> <p>One sign, 3 sq ft.</p> <p>No more than 10 vehicle trips/day</p> <p>No vehicles stored over 11,000 lbs/gvw</p> <p>Additional parking requirements</p>
	Administrative Decision, good for one year	Administrative Decision, good for one year

Portland

Type A	Type B	Other
<p>No employees or customers come to site. Artists, crafts people, writers and consultants.</p>	<p>One employee or customers come to the site. Counseling, tutoring and hair cutting.</p>	<p>Lists Bed and Breakfast facility and Family daycare as separate exemptions.</p>
<p>No repair or assembly of any vehicles or motors</p> <p>May not serve as headquarters or dispatch centers where employees come to the site</p> <p>All activities must be in completely enclosed structures</p>	<p>No repair or assembly of any vehicles or motors</p> <p>May not serve as headquarters or dispatch centers where employees come to the site</p> <p>Prohibited in a residence with an accessory rental unit</p>	

<p>Exterior storage or display is prohibited</p> <p>Dwelling and site must remain residential in appearance</p> <p>Max noise level 50 dba at property line</p> <p>No more than one truck may be parked at the site</p> <p>Deliveries allowed between 8 am and 5 pm</p>	<p>Customers may only visit the site between 7 am and 9 pm</p> <p>One nonresident employee is allowed provided no customers come to the site</p> <p>Only 8 customers or clients may visit the site in a day</p> <p>Retail sales of goods must be entirely accessory to any services provided on site (hair care products sold as an accessory to hair cutting)</p> <p>No more than one type B home occupation per dwelling</p> <p>All activities must be in completely enclosed structures</p> <p>Exterior storage or display is prohibited</p> <p>Dwelling and site must remain residential in appearance</p> <p>Max noise level 50 dba at property line</p> <p>No more than one truck may be parked at the site</p> <p>Deliveries allowed between 8 am and 5 pm</p>	
	<p>Permit issued by building bureau, after application submitted, applicant provides notice to neighbors</p>	

Washington County

Type I	Type II
<p>A lawful activity carried on within the dwelling by a member or members of the family who occupy the dwelling, it is secondary to the use of the dwelling.</p>	<p>One employee or customers come to the site. Counseling, tutoring and hair cutting.</p>
<p>Shall be operated entirely within the dwelling</p> <p>Shall not use more than 25% of the floor area of the dwelling</p> <p>When in a residential district, no external evidence of an occupation except one sign, 2 sq. ft. in size</p> <p>Won't involve the use or storage of tractor trailers, semi-trucks or</p>	<p>Shall be operated entirely within the dwelling or permitted accessory structure</p> <p>If located inside UGB, shall not use more than 25% of the floor area of the dwelling or no more than 400 sq ft of allowed accessory structure</p>

heavy equipment (construction)
No retail sales other than phone sales
Involves fewer than 6 customers daily entering the premises
No noise, odors, vibrations, glare, fumes or electrical interference should be produced
No additional parking
If in commercial or industrial district, may have one ID sign, max 20 sq. ft.

Requires permit, renewed once a year

If located outside UGB, shall not use more than 25% of the floor area of the dwelling, where an accessory building is used, no more than 1000 sq ft shall be utilized
When in a residential district, no external evidence of an occupation except one sign, 2 sq. ft. in size
No remodeling allowed which changes the residential character
No use or storage of heavy vehicles or equipment. No warehousing or distribution
No retail sales
Involves fewer than 10 customers daily entering the premises
No noise, odors, vibrations, glare, fumes or electrical interference should be produced
Only one person can be employed who is not a permanent resident
Must provide parking plan
If in commercial or industrial district, may have one ID sign, max 20 sq. ft.

Requires permit, renewed once a year

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON
ORDINANCE NO. _____

An Ordinance amending the Multnomah County Comprehensive Framework Plan and the Multnomah County Zoning Ordinance regarding the provisions for home occupations.

(Language in ~~strike through~~ is to be deleted; underlined language is new)

Multnomah County Ordains as follows:

Section I. Findings

(A) On November 18, 1996 the Planning Commission heard testimony regarding the current provisions for home occupations which are not responsive to current business practices.

(B) The Planning Commission subsequently formed a subcommittee to conduct meetings and assist in the preparation of the revisions to the home occupation portion of the Multnomah County Code.

(C) The Subcommittee reported back to the Planning Commission with draft policies and principles to be implemented through the revisions including goals:

- (1) Addressing the need for home based business' for those uses that are not large enough and do not have impacts that are associated with uses allowed in the rural center or urban zoning districts.
- (2) Protecting the rural character of areas in unincorporated Multnomah County and maintain the quality of life for all residents of the communities.

- 1 (3) Clearly indicating which types or levels of activities are regulated in
- 2 Multnomah County and which are not.
- 3 (4) Joining in an effort to reduce vehicle miles traveled, traffic congestion
- 4 and air pollution in the State of Oregon.
- 5 (5) Providing clear direction for the Planning Staff on interpreting
- 6 regulations regarding home occupations.
- 7 (6) Creating a simple and quick process for prospective applicants for home
- 8 occupations permits.
- 9 (7) Making an enforceable code that does not place additional burdens on the
- 10 code enforcement staff.
- 11 (8) This amendment will allow home occupations only when they are in
- 12 accordance with all other applicable state codes.

13

14 (E) A draft ordinances was presented at a public hearing before the Planning
15 Commission on September 8, 1997.

16

17 Section II. Amendment of the Multnomah County Comprehensive Framework Plan

18

19 Policy 27: Commercial Location

20

* * *

21 E. CLASSIFY COMMERCIAL DEVELOPMENTS ACCORDING TO THEIR
22 FUNCTION, TENANT/TENANT MIX, AND SCALE OF OPERATIONS, AS
23 FOLLOWS:

24

* * *

25

26

27

28

29

30

31

1	SCALE	INTENT AND	PRIMARY	GROSS
2		PURPOSE	TENANT/TENANT	LEASABLE
3			MIX INCLUDES	AREA (GLA)
4	HOME	TO ALLOW	VARIABLE	LESS THAN
5	OCCUPATION	BUSINESS		20% OF THE
6		WHICH CAN		HOME NOT
7		BE CARRIED		<u>APPLICABLE</u>
8		ON WITHIN A		
9		HOME OR		
10		<u>ACCESSORY</u>		
11		<u>STRUCTURE</u>		
12		AND WHOSE		
13		IMPACT WILL		
14		NOT AFFECT		
15		THE		
16		ADJACENT		
17		HOMES OR		
18		<u>RESOURCE</u>		
19		<u>AREAS</u>		

15 Section III. Amendment of the Multnomah County Zoning Code MCC 11.15

17 MCC 11.15.0010 Definitions

18 * * *

19 Home Occupation – ~~Any lawful activity not otherwise specifically provided for in~~
20 ~~this Chapter commonly carried on within a dwelling unit or accessory building by~~
21 ~~the occupant thereof, no employee or other person being engaged in the same;~~
22 ~~which activity is secondary to the use of the property for residential purposes;~~
23 ~~provided that there is no outside advertising or display of merchandise; that no sale~~
24 ~~of merchandise is made from the premises, and that noise, odor, smoke, gases,~~
25 ~~fallout, vibration, heat or glare resulting from the activity is undetectable at any~~
26 ~~property line. The operation of a Residential Home is not considered a Home~~
27 ~~Occupation.~~

28

29 (A) Type A: A type A home occupation is one where the residents use their
30 home as a place of work. Type A home occupations may have up to one non-
31 resident employee or customer on the premises at any one time in addition to the

1 resident participant. No new buildings or modifications to existing structures
 2 shall be allowed (constructed after the effective date of this ordinance). No
 3 deliveries other than those normally associated with a single family dwelling
 4 and between the hours of 7 a.m. - 6 p.m. No outdoor storage or displays shall
 5 occur (including vehicle parking associated with the Home Occupation). No
 6 signage shall be allowed (including temporary signage and those exempted
 7 under MCC 11.15.7912 with the exception of those required under MCC
 8 11.05.500-.575), and no noise above 50 dba (decibels adjusted) at the property
 9 lines shall be permitted. No repair or assembly of any vehicles or motors can
 10 occur as part of a type A home occupation. A type A home occupation may not
 11 serve as headquarters or dispatch where employees come to the site. A type A
 12 home occupation must have direct access to a public road (no easements). Type
 13 A home occupations shall be filed on a form provided by the Planning Director.
 14 Type A Home Occupations must be in conformance with all other applicable
 15 state codes.

16 (B): Type B home occupation is one where the residents use their home
 17 site as a place of work but exceeds the standards of the type A home occupation.
 18 Type B home occupations shall be approved as per MCC 11.15.7105 and .7455.

20 * * *

21 **Exclusive Farm Use Zone**

22 * * *

23 **11.15.2012 Conditional Uses**

24 * * *

25 (F) Type B Hhome occupation as provided for in ~~ORS 215.448~~ MCC 11.15.7455
 26 and provided:

27 ~~(1) That there is no outside advertising or display of merchandise; and~~

28 ~~(2) (1) That no sale of merchandise is made from the premise; and~~

29 ~~(3) (2) That noise, odor, smoke, gases, fallout, vibration, heat or glare~~
 30 resulting from the activity is not detectable at any property line.

A home occupation located on high-value farmland may employ only residents of the home.

* * *

11.15.2014 Accessory Uses

* * *

(E) Type A home occupation pursuant to the definition and restrictions of MCC 11.15.0010. Home occupations as defined by MCC 11.15.0010 do not allow the level of activity defined in ORS 215.448.

* * *

Commercial Forest Use Zone

* * *

11.15.2054 Conditional Uses

* * *

(C) Type B Hhome occupation pursuant to the definition and restrictions of MCC .0010. Home occupations as defined by MCC .0010 do not allow the level of activity defined in ORS 215.448; and MCC 11.15.7455 and provided:
(1) That no sale of merchandise is made from the premise; and
(2) That noise, odor, smoke, gases, fallout, vibration, heat or glare resulting from the activity is not detectable at any property line.

* * *

11.15.2054 Accessory Uses

* * *

(C) Type A Hhome occupations pursuant to the definition and restrictions of MCC 11.15.0010. Home occupations as defined by MCC 11.15.0010 do not allow the level of activity defined in ORS 215.448.

* * *

Multiple Use Agriculture Zone

* * *

1 11.15.2132 Conditional Uses

2 * * *

3 (D) Type B Home occupation as provided for in MCC 11.15.7455.

4 * * *

5 11.15.2134 Accessory Uses

6 * * *

7 (C) Type A Hhome occupations pursuant to the definition and restrictions of

8 MCC 11.15.0010; and

9 * * *

10

11 Rural Residential

12 * * *

13 11.15.2212 Conditional Uses

14 * * *

15 (C) Type B Home occupation as provided for in MCC 11.15.7455.

16 * * *

17 11.15.2214 Accessory Uses

18 * * *

19 (C) Type A Hhome occupations pursuant to the definition and restrictions of

20 MCC 11.15.0010; and

21 * * *

22

23 Rural Center

24 * * *

25 11.15.2252 Conditional Uses

26 * * *

27 (C) Type B Home occupation as provided for in MCC 11.15.7455.

28 * * *

29 11.15.2254 Accessory Uses

30 * * *

31

1 (C) Type A Hhome occupations pursuant to the definition and restrictions of
 2 MCC 11.15.0010; and

3 * * *

4 **Urban Low Density Residential LR-40**

5 * * *

6 11.15.2508 Uses Permitted Under Prescribed Conditions

7 * * *

8 (E) Type A Hhome occupations as defined in pursuant to the definition and
 9 restrictions of MCC 11.15.0010.

10 * * *

11

12 **Urban Low Density Residential LR-30**

13 * * *

14 11.15.2528 Uses Permitted Under Prescribed Conditions

15 * * *

16 (E) Type A Hhome occupations as defined in pursuant to the definition and
 17 restrictions of MCC 11.15.0010.

18 * * *

19

20 **Urban Low Density Residential LR-20**

21 * * *

22 11.15.2548 Uses Permitted Under Prescribed Conditions

23 * * *

24 (E) Type A Hhome occupations as defined in pursuant to the definition and
 25 restrictions of MCC 11.15.0010.

26 * * *

27

28 **Urban Low Density Residential LR-10**

29 * * *

30 11.15.2568 Uses Permitted Under Prescribed Conditions

31

1 * * *

(F) Type A Home occupations as defined in pursuant to the definition and restrictions of MCC 11.15.0010.

4 * * *

6 Urban Low Density Residential LR-7.5

7 * * *

⁸ 11.15.2588 Uses Permitted Under Prescribed Conditions

9 * * *

(G) Type A Home occupations as defined in pursuant to the definition and
restrictions of MCC 11.15.0010

12 * * *

14 Urban Low Density Residential LR-7

15

* * *

16 11.15.2608 Uses Permitted Under Prescribed Conditions

17

(H) Type A Home occupations as defined in pursuant to the definition and restrictions of MCC 11.15.0010.

20 * * *

22 Urban Low Density Residential LR-5

29 . * . * *

11.15.2628 Uses Permitted Under Prescribed Conditions

* * *

(G) Type A Home occupations as defined in pursuant to the definition and restrictions of MCC 11.15.0010

20

* * *

Urban Medium Density Residential MR-4

1 * * *

2 11.15.2748 Uses Permitted Under Prescribed Conditions

3 * * *

4 (G) Type A Home occupations as defined in pursuant to the definition and
5 restrictions of MCC 11.15.0010

6 * * *

7

8 Single Family Residential R-40

9 * * *

10 11.15.2832 Use

11 * * *

(H) Uses customarily incidental to any of the above uses, including Type A home occupations pursuant to the definition and restrictions of MCC 11.15.0010.

14

15 (I) Type B Home occupation as provided for in MCC 11.15.7455.

16 * * *

17

18 Single Family Residential R-30

19

20 11.15.2842 Use

21

(H) Uses customarily incidental to any of the above uses, including Type A home occupations pursuant to the definition and restrictions of MCC 11.15.0010.

24

25 (I) Type B Home occupation as provided for in MCC 11.15.7455.

26

27

28

29 Single Family Residential R-20

30 * * *

31

1 11.15.2852 Use

2

3 * * *

4 (H) Uses customarily incidental to any of the above uses, including Type A home
5 occupations pursuant to the definition and restrictions of MCC 11.15.0010.

6

7 (I) Type B Home occupation as provided for in MCC 11.15.7455.

8 * * *

9

10 **Single Family Residential R-10**

11 * * *

12 (H) Uses customarily incidental to any of the above uses, including Type A home
13 occupations pursuant to the definition and restrictions of MCC 11.15.0010.

14

15 (I) Type B Home occupation as provided for in MCC 11.15.7455.

16 * * *

17

18 **Single Family Residential R-7**

19 * * *

20 (H) Uses customarily incidental to any of the above uses, including Type A
21 home occupations pursuant to the definition and restrictions of MCC
22 11.15.0010.

23

24 (I) Type B Home occupation as provided for in MCC 11.15. 7455.

25 * * *

26

27 **Significant Environmental Concern**

28

28 * * *

29 11.15.6404 Exceptions

30

30 * * *

31

- 1 (H) All type A Home Occupations
 2 (I) Type B Home Occupations that require the addition of less than 400 square
 3 feet of ground coverage to the structure.

4 **Conditional Use**

5 * * *

6 11.15.7127 Design Review Exceptions

7 Exempted from the Design Review criteria of MCC .7805 through .7870 (A)

8 include:

9 (A) Single family residences

10 (B) Type B Home Occupations that require the addition of less than 400 square feet
 11 of ground coverage to the structure.

12 * * *

13 **Home Occupations - CU**

14
 15 11.15.7455 Definitions:

16
 17 (A) Employee - one full or part time participant, resident or non-resident, in the
 18 business shall constitute one employee.

19 (B) Customers - Any person visiting the site that is not an employee who is
 20 associated with the home occupation.

21 (C) Normal deliveries - The home occupation shall not involve the use, parking,
 22 storage or repair of any vehicle exceeding a gross vehicle weight of 11,000
 23 pounds, except deliveries by parcel post, United Parcel Service, or similar in-
 24 town delivery service trucks. These deliveries or pick-ups of supplies or
 25 products, associated with business activities, are allowed at the home only
 26 between 7 am and 6 pm.

27 (D) Headquarters - A business operation where employees come to the site at any
 28 time.

29 (E) Motor vehicles - vehicles or equipment with internal combustion engines
 30 (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines,
 31 lawn mowers, chain saws, and other small engines).

1

2 11.15.7460 Purposes

3

4 The purposes of the type B home occupation section are to address the need for
5 home based business for that are small scale businesses (not more than 5
6 employees) and that fit in with the characteristic of the neighborhood or the area.

7 The regulations are designed to:

8 (A) Protect the individual characteristics of areas in unincorporated
9 Multnomah County and maintain the quality of life for all residents of the
10 communities.

11 (B) Join in an effort to reduce vehicle miles traveled, traffic congestion and
12 air pollution in the State of Oregon.

13

14 11.15.7465 Criteria for Approval

15

16 The approval authority shall find that the following standards are met:

17

18 (A) The standards found in MCC 11.15. 7120:

19 (B) The home occupation does not employ more than 5 employees.

20 (C) The site has on-site parking as per MCC 11.15.6100 to accommodate the
21 total number of employees and customers.

22 (D) No deliveries other than those normally associated with a single family
23 dwelling and between the hours of 7 a.m. - 6 p.m.

24 (E) No outdoor storage or display

25 (F) No signage (including temporary signage and those exempted under MCC
26 11.15.7912) with the exception of those required under MCC 11.05.500-
27 .575.

28 (G) No noise above 50 dba at the property lines.

29 (H) No repair or assembly of any vehicles or motors.

30 (I) The application has been noticed to and reviewed by the Small Business
31 Section of the Department of Environmental Quality.

(J) Each approval issued by a hearings officer shall be specific for the particular home occupation and reference the number of employees allowed, the hours of operation, frequency and type of deliveries, the type of business and any other specific information for the particular application.

* * *

Design Review

11.15.7817 Exceptions

The provisions of MCC .7805 through .7865 shall not be applied to the following uses:

(A) Single family residences,

(B) Type B Home Occupations that require the addition of less than 400 square feet of ground coverage to the structure.

ADOPTED this _____ day of _____, 1998, being the date of its second reading before the Board of County Commissioners of Multnomah County.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Sandra N. Duffy
Sandra N. Duffy, Chief Assistant County Counsel

November 17, 1996

Seth Tane

13700 NW Newberry rd..
Portland, OR., 97231
(503) 735-0339 office
286-6339 home
735-0337 fax

To : Multnomah County Planning Commission Members
Re: Request to review MCC .0010 "Home Occupation" Definition

I am pleased to see the commission consider the above subject with the intent of refining code language to clearly implement the planning objectives in a practical manner.

My comments below are from my perspective as a resident on a five acre CFU parcel in the West Hills operating a Home Occupation, and as a citizen interested in rational, practical, land use planning as a social tool to preserve and improve Quality of Life.

It is unfortunate that the present situation of self-acknowledged, long standing, absurdly restrictive, and unevenly enforced interpretation is only now being addressed, but this pattern is an example of the practices that create and inflame a constituency adversarial to planning and government in general. Bearing this history in mind, the Planning Commission must be careful to provide the rationale or intent of the code, code language, and an interpretation together for planning staff to administer. The result must be usable, unambiguous, and equitable to what appears to be an increasing number of county residents.

An interesting study, *Home-Based Enterprise in Oregon: Improving Local Regulation of An Important Economic Asset*, prepared by Michael F. Sheehan, Ph.D. Fisher, Sheehan & Colton, Sept. 1996, was brought to my attention by Commissioner Saltzman's office on Friday the 15th. I read it and have provided copies for each of you and the Multnomah County Chair and other board members. I have also had several conversations this weekend with Mr. Sheehan to clarify or expand on several of the aspects of the study. Because of the short lead time I have not been able to prepare a written synopsis for you, but I will be happy to testify orally and answer any questions I can.

This is an opportunity to craft enlightened code to encourage rather than restrict *reasonable*, family owned and operated home businesses. It is hard to imagine a better fit with the desires to reduce vehicle miles traveled, reduce crime in neighborhoods, provide an incentive to family stability, and manage natural resources through intensive stewardship.

Home Occupations should be appropriate to each class of zone in consideration of the impacts on adjoining properties, due to parcel size and minimum yard dimensions. Permitted home occupations should be described by employment level / type, traffic generation, noise, environmental criteria, and other appropriate performance standards and not by listed "type". The range of "types" as listed in the examples below only serve to illustrate the complexities inherent in generalization when the setting of standards is undertaken.

So many scenarios can be painted to illustrate the kinds of Home Occupations that we might want to encourage, drawn from the actual Multnomah County population, and many currently in violation of the current interpretation. They can be one person or parent and child enterprises that generate taxable income and local economic gain with a greatly reduced impact on transportation, parking, and environmental impact, while having positive effects for neighborhood and family values. At the point at which they cross the thresholds of employment, traffic, and impacts, they cease to be Home Occupations and must be located in appropriate zones for the level of impact. For example:

Artist (painter, sculptor, photographer, filmmaker-videographer, printmaker, glassblower, jeweler, textiles, bookbinder, woodworker, potter, dancer, musician, writer, actor...)

Information Technology (programmer, data entry, journalist, publisher, editor, internet services, electronic sales, radio dispatch...)

Cottage Industry (assembly, trades person, musical instrument making, light manufacturing, small boat building, mobile service...)

Business and Professional (planner, architect, surveyor, engineer, drafter / designer, financial analyst, electronic broker, biologist, forester, auctioneer, cartographer, geologist, attorney, outpatient health services, researcher...)

Agricultural / Forest / Marine resource related (wholesale and neighborhood specialty garden and animal products, fishing, outdoor guide, arborist, small equipment design / repair, gardener, landscaper...)

The challenge is to provide for the genuinely appropriate level of activity for the zone. In the CFU, for example, many professions, crafts and trades can be compatible with the intended commercial forest and habitat uses because of the large lot sizes, and rural character. These same activities may be clearly unacceptable in an urbanized, small lot, neighborhood. All of the above illustrative examples can be operated at true home occupation, zone appropriate scales, *in some zones*, and many could also be envisioned growing, or being beyond that scale. Some thoughts on possible threshold criteria:

Employment:	Immediate family residing on the property only.
Traffic / Parking:	Off street parking only, no retail trade, regulated truck / visitor average and peak frequency. No more than two powered business vehicles and all under 26,000 GVW.
Signage:	Standard sign size for address / identification only (6" x 36" max ?)
Environmental Impacts:	Noise, emissions, standards, DEQ ?, Structure area and number limited. Limitation on refuse generation with exclusion for recycling.
Licensing:	Establish home occupation business license with fee to cover costs if necessary and automatic registration for business personal property tax, and state fire marshal hazardous material compliance.

The possible utilization of the conditional use process to address all proposed "Class 2" or over the threshold Home Occupations is an option, but the threshold must be established with a clearly articulated intent that offers equal footing based on performance based standards free of "class" or "collar color" bias. The old paradigm of limiting neighbor to neighbor conflicts by effectively prohibiting anything other than barbecuing or lawnmowing has questionable validity in an age of telecommuting, home schooling, and virtual corporations.

Sincerely,

Seth Tane

March 5, 1997

Seth Tane

13700 NW Newberry Rd.
Portland, OR., 97231
(503) 735-0339 office
286-6339 home
735-0337 fax

To : Multnomah County Planning Commission Members
Re: Suggested new MCC .0010 "Home Occupation" Definition / Code

I am pleased to see the commission consider the above subject with the intent of refining code language to clearly implement the planning objectives in a practical manner. I offer this draft as a citizen interested in rational, practical, land use planning as a social tool to preserve and improve Quality of Life.

In the interim between the present, and the possible eventual acceptance of new, enlightened code, a considerable time may elapse before the Planning Commission can complete this work, and to allow time for the scheduling, consideration, and hearings by the Board of Commissioners. In fact, it is advisable to take the time to do a proper job of this new code work and not be rushed by the desire to fix the problem, resulting in language with new loopholes for staff to interpret in unforeseen ways. For this reason, I urge you to provide an immediate interpretation to correct the longstanding staff position that virtually all home occupations are subject to enforcement (and many are currently subject to in-process enforcement actions) because the activities in question are provided for in other zones. **This current situation is a waste of enforcement resources, is contrary to the intent of the code, is causing hardship for citizens, and deserves this quick fix !**

The challenge for a more permanent solution is to provide: A statement of purpose, code language, and an interpretation together for planning staff to administer. The result must be usable, unambiguous, and equitable to what appears to be an increasing number of county residents. The difficulty is in properly balancing the potential desired benefits with the prevention of unintended negative impacts inappropriate to the residential and resource zones. It is also essential to use performance standards (traffic, noise, etc.) to avoid unjustified value judgements that might permit an Artist, but prohibit a one person manufacturer of similar size objects, for example, or permit an office type use, but not a craft use even if the impacts are identical.

This is an opportunity to design enlightened code to encourage rather than prohibit *reasonable*, family owned and operated home businesses. It is hard to imagine a better fit with the desires to reduce vehicle miles traveled, reduce crime in neighborhoods, provide an incentive to family stability, and manage natural resources through intensive stewardship by virtue of increased presence.

Following the draft code is a brief discussion of some of the provisions for clarification.

The possible utilization of the conditional use process to address all proposed "B" or over the threshold Home Occupations is an option, but the threshold must be established with a clearly articulated intent that offers equal footing based on performance based standards free of "class" or "collar color" bias. The old paradigm of limiting neighbor to neighbor conflicts by effectively prohibiting anything other than barbecuing or lawnmowing has questionable validity in an age of telecommuting, home schooling, and virtual corporations.

DRAFT CODE HOME OCCUPATIONS

Sections:

1. Purpose
2. Description of Type A and Type B Home Occupations
3. Performance Standards
4. Requirements

Consistent with Policy 27, COMMERCIAL LOCATION, Policy 29 OFFICE LOCATION, of the Comprehensive Framework Plan, and the goals of reducing vehicle miles traveled, decreasing

neighborhood crime, and encouraging family cohesion while protecting the residential character and natural resources of properties the following Home Occupation regulations are effective (insert date)

TYPE " A " HOME OCCUPATIONS

1. Resident participants in operation only.
2. No additional net trip generation from either clients or deliveries over existing residential or resource use, and no net increase in fuel consumption by transport vehicles.
3. No signage.
4. Conducted within primary residence or accessory structure of size and appearance normal to zone or outdoors when not visible to public view or neighboring residences.
5. Adherence to performance standards required, neighbor notification, filing with personal property tax, and state fire marshal required.
6. Permanent unless violations reported. One time \$100 administrative fee to fund additional staff burden.

TYPE " B " HOME OCCUPATIONS

1. Resident participants and up to two additional non-resident participants at any time.
2. No additional net trip generation from either clients or deliveries over existing residential or resource use, and no net increase in fuel consumption by transport vehicles.
3. Signage limited to two square feet (1' x 2') for identification purposes.
4. Conducted within primary residence or accessory structure of size and appearance normal to zone or outdoors when not visible to public view or neighboring residences.
5. Adherence to performance standards required, neighbor notification, filing with personal property tax, and state fire marshal required.
6. Valid for two years, automatic renewal by mail if no reported, verified violations. Initial and renewal fee of \$150 to fund staff burden.

Explanatory Notes for Draft Home Occupations Code

1. The use of *Participant* rather than *employee* prevents abuse by the "multiple owners" or "subcontractors" tactic.
2. Trip generation and fuel consumption standards should be calculated on a renewable weekly calendar, with no "banking". This means that the applicant uses the standard figures for trips per household / week at the time of application, and may substitute any of those trips with the

visit of delivery, client, or other trips on a weekly basis. Each week begins a new trip budget, so that a seasonal business cannot save up enough trips to have an unreasonable level of traffic in the "on" season. Fuel consumption standards are used in the same manner to encourage pedestrian, bicycle and small delivery vehicles over trucks. An upper limit on delivery vehicle size appropriate to the class of road and safety considerations should remain in force.

3. It is not inconceivable that a reasonable home occupation, a sculptor of small garden fountains or a kite maker, for instance, when complying with all the performance standards and other requirements might be appropriate to be partially outdoors, when not visible from the public right of way or neighboring residences.

4. The requirements for registration with the Business Personal Property tax and State Fire Marshall hazardous materials reporting system may at first seem excessive, but is unfair to similar sized businesses in commercial zones who must comply with these regulations, regardless of impact or size. Furthermore, under current statute all business property, including that in a "home office", is required to be assessed anyway, this will merely increase compliance and share the burden properly. As mentioned at the work session on March 3, and widely acknowledged, compliance is currently the exception rather than the rule.

5. The arbitrary limitation as discussed at the work session (400 sq', 1000 sq') of size for accessory structures should be eliminated. Instead, it should remain as in the current code for such structures, rather than subject to some additional restriction. Currently the accessory structures are subject to the Planning Director's approval as customarily accessory or incidental to any use permitted or approved in this district (MCC 11.15.2054 in the CFU, for example). It is readily seen that barns, sheds, and other accessory structures in the CFU and EFU zones for instance, contain many structures far larger than 20' x 50', with similar or greater impacts than the proposed Home Occupations, because there are currently no limits on the impacts of the uses of these structures at present. Currently the owner of such resource lands can store, operate, and maintain any kind of machinery or equipment in their structures no matter what kind of noise, smoke or other effects are generated, day or night. The new uses would be subject to standards, and not create size related impacts.

6. Performance standards can be as simple as those currently contained in the Home Occupations language that refer to detectability at property boundaries, with the exception that noise needs a measurable, quantifiable, level (50db was deemed acceptable in the Portland code, this should be examined as to appropriate levels for the larger rural properties). Sound experts use a variety of methods to comply with existing city and state noise ordinances that refer to the duration, intensity, and peak and average levels for various periods and times of day. Some guidance needs to be provided to staff, however, so that frivolous complaints about "glare" (can you see your neighbors' UPS truck windshield in the sun?) and other standards have a reasonable meaning.

HOMEWORK ? Part 2...

The Multnomah County Planning commission considered its regular September meeting to be the hearing for the draft " Home Occupation Ordinance " and unanimously approved the new ordinance and definition with some important amendments and changes. The amended draft will be signed by the commission chair, and forwarded to **County Council** for a **hearing** scheduled for **Jan. 29, 1998**. While the new ordinance is a vast improvement over the previous interpretation by planning staff, which amounted to an effective ban on working at home, it still contains language that will eliminate many of our work-at-home businesses. A quick sampler:

1. **No outside storage or parking.** I use my pickup for my business, and now I have to build a bigger building, with more environmental impact, just so that no one can see my truck on my five acre rural property ? Huh ?
2. No part of any structure built, altered, or remodeled or new accessory structure constructed after the date of enactment of the new ordinance can **ever** be used for a home occupation. Even if the property is sold, the room you put a new window in (yes, with a permit) can never be used by a legal home occupation under the new draft ordinance. As long as the new structure or alteration conforms with all of the SEC and other zoning and land use criteria, why should we penalize those who can figure out a way to work at home instead of drive to the office or plant ?
3. No work of any kind on large machines, appliances or motors. This includes the restoration of classic boats or automobiles even **inside** a garage. This provision is found in many home occupation ordinances and reflects the suburban or urban residential setting where the world's worst neighbor might be the "junkyard" or chain saw repair business. This hazard is taken care of by the inclusion of a provision that restricts noise at the property lines to 50 db. There also obviously need to be different, zone appropriate adjustments in the rural areas of the county.
4. The planning commission was comfortable with all of the above, which I brought to their attention as one of only two citizens present, because any one can apply to obtain a Conditional Use Permit to address special circumstances Under the "B" level application. Unfortunately even with the removal of the design review requirement, this uncertain process may cost the home business proprietor at least three thousand dollars in fees, outside consultants, and presentation, not to mention the months of work. Not really realistic for the 18 year old landscaper who doesn't have a garage to park his pickup and trailer inside...Or the artist who sculpts outside her barn, or even displays a piece of her work there.

Does this affect you or your neighbor ? Call Susan Muir at Multnomah County Planning, 248-3043 to confirm the date and for a copy of the draft ordinance, which may not be ready for public review until a week or two before the Jan. 29 hearing. **Call or write your County Commissioners before the hearing, and attend the hearing and testify!**

Chair Beverly Stein	1120 SW 5th Avenue, Room 1515 Portland, OR	248-3308
Commissioner Gary Hansen	248-3240 fax "	97204 248-5219
Commissioner Sharron Kelley	248-5262 fax "	248-5213

(commissioner Collier has resigned, and commissioner Saltzman will have resigned by the hearing date in order to run for Portland City Council)

Seth Tane

13700 NW Newberry rd.. Portland, OR., 97231 735-0339 phone 735-0337 fax

January 28, 1998

CC: Eddie Campbell

To: Chair Beverly Stein
1120 SW 5th Avenue room 1504
Portland, Oregon 97204

Dear Chair Stein,

Thank you for your interest concerning the upcoming hearing on the draft Home Occupation Ordinance. I understand you were briefed by planning staff on this issue recently, and that your only remaining concern after reviewing my comments are that the cost and prepayment associated with the type "B" rural area conditional use should be comparable to surrounding jurisdictions. I have done some additional research on this topic with the following results:

46
1930
540
2338
deposits

City of Portland:	Type "B"	\$100 two years
Clackamas County:	Rural Area Major Home Occupation	\$172 per year
Columbia County:	All Home Occupations, all zones	\$600 conditional use Permanent
Washington County:	Type II Rural	\$847 application, \$257 renewal

Obviously the proposed Multnomah County Conditional use costs will be much higher, although how staff will be able to answer how much is unknown, since there is no history to track under the new fee schedule and recovered costs approach. In addition, there is no certainty that even if the standards are met that the permit will be granted, without the possible additional costs of appeals etc.

I still maintain this is not a reasonable alternative. If a "B" level could be accommodated by a higher permit fee, and/or yearly renewal with conditions set administratively, perhaps with room for public notice and comment, and everything beyond that dealt with by the Conditional Use Permit process we might have a workable alternative.

Because I am still concerned that the draft ordinance does not meet the stated goals of the process, and you have not indicated what your proposed changes are if the staff report on comparative pricing confirms the results tabulated above, I have contacted Commissioners Hansen and Kelley on this subject. I have forwarded to them the same information I provided to you, plus the additional specific recommended changes to the draft ordinance below. I ask that you review these specific recommendations and confer with the other commissioners to see if we can craft a truly enlightened ordinance that reflects present realities.

1/12/98 Draft Ordinance Recommended Changes: **SHOWN IN BOLD**

Page 4, Line 1..participant. **DELETE SENTENCE:** No new buildings or modifications...

Page 4, Line 5 ...occur **THAT ARE VISIBLE FROM THE PUBLIC RIGHT OF WAY OR ADJOINING RESIDENCES,** (including vehicle parking) **EXCEPT FOR THE PARKING**

Seth Tane

13700 NW Newberry rd.. Portland, OR., 97231 735-0339 phone 735-0337 fax

January 28, 1998

**To: Commissioner Gary Hansen
1120 SW 5th Avenue suite 1500
Portland, Oregon 97204**

Dear Commissioner Hansen,

Thank you for your interest concerning the upcoming hearing on the draft Home Occupation Ordinance. A brief synopsis of the key issues follows and please also see the enclosed earlier letters to the Planning Commission that will provide some background.

As I mentioned in our phone conversation today, If the planning staff can't (for legal reasons) be directed to interpret the existing MCC 11.15.0010 code in a manner that does not eliminate all home occupations then the new draft ordinance can be revised to fix the defects as I have illustrated in my version of the ordinance that follows. At this point planning staff, the Planning Commission, and Chair Stein feel that items 1,2, and 3 below are taken care of because a Conditional Use Permit can be applied for to accommodate the exceptions. As we discussed (item 4) this is not a reasonable alternative. If a "B" level could be accommodated by a higher permit fee, and/or yearly renewal with conditions set administratively, perhaps with room for public notice and comment, and everything beyond that dealt with by the Conditional Use Permit process we would have a workable alternative.

DRAFT ORDINANCE PROBLEMS

- 1. No outside storage or parking will be permitted. Completely unrealistic, unenforceable, and environmentally unsound for rural home occupations. Forces an increase in structure size and impervious surfaces to garage a car, pickup or trailer even if used only part time for a home occupation. Should instead reference visibility from adjoining residences, and public right of way if there is a need for this section.**
- 2. No work of any kind on large machines, appliances or motors. This includes the restoration of classic boats or automobiles even inside a garage. This provision is found in many home occupation ordinances and reflects the suburban or urban residential setting where the world's worst neighbor might be the "junkyard" or chain saw repair business. This hazard is taken care of by the inclusion of a provision that restricts noise at the property lines to 50 DB. There also obviously need to be different, zone appropriate adjustments in the rural areas of the county.**
- 3. No part of any structure built, altered, or remodeled or new accessory structure constructed after the date of enactment of the new ordinance can *ever* be used for a home occupation. Even if the property is sold, the room you put a new window in (yes, with a permit) can never be used by a legal home occupation under the new draft ordinance. As long as the new structure or alteration conforms with all of the SEC and other zoning and land use criteria, why should we penalize those who can figure out a way to work at home instead of drive to the office or plant ?**

4. The planning commission was comfortable with all of the above because any one can apply to obtain a Conditional Use Permit to address special circumstances Under the "B" level application. Unfortunately even with the removal of the design review requirement, this uncertain process may cost the home business proprietor at least three thousand dollars in fees, outside consultants, and presentation, not to mention the months of work. Not really realistic for the 18 year old landscaper who doesn't have a garage to park his pickup and trailer inside...Or the artist who sculpts outside her barn, or even displays a piece of her work there.

1/12/98 Draft Ordinance Recommended Changes: **SHOWN IN BOLD**

Page 4, Line 1..participant. **DELETE SENTENCE:** No new buildings or modifications...

Page 4, Line 5 ...occur **THAT ARE VISIBLE FROM THE PUBLIC RIGHT OF WAY OR ADJOINING RESIDENCES, (including vehicle parking) EXCEPT FOR THE PARKING OF A SINGLE VEHICLE WITHOUT SIGNAGE UNDER 10,000 LBS GVW,**

Page 4, Line 8... **DELETE SENTENCE:** No repair or assembly of any vehicles or motors can occur as part of a type A home occupation. (See above item for reasoning)

Page 4, Line 17(and all following pages that define type B as a conditional use) **DELETE LINE AND REPLACE WITH:** the criteria found on Page 12, lines 17,18,19,20,23 (as amended below),24,25,26,28,29,30 (**EXCEPT REPLACE HEARINGS OFFICER WITH PLANNING DIRECTOR**)

Page 11, Lines 2 through 11, **DELETE**

Page 12, Lines 12 and 14 **DELETE**

MOVE REMAINDER OF PAGE 12, AS AMENDED BELOW, AND PAGE 13, LINES 1 AND 2 TO PAGE 4, LINE 17 (as above)

Page 12, Line 22 ...display **THAT IS VISIBLE FROM THE PUBLIC RIGHT OF WAY OR ADJOINING RESIDENCES.**

PAGE 12, line 24...exception of **A DIRECTIONAL SIGN NO MORE THAN 2 SQUARE FEET IN SIZE WHERE NECESSARY BECAUSE OF MULTIPLE STRUCTURES OR ACCESS ROADS ON THE PROPERTY...and those required....**

Page 13, Lines 4 through 12, **DELETE**

I also recommend application fees for type "A" and type "B" permits set at a level to recover direct costs, and the automatic referral to Assessment and Taxation, business personal property tax section, for registration.

Sincerely,

Seth Tane

MEETING DATE: February 5, 1998
AGENDA #: R-4
ESTIMATED START TIME: 10:10 am

(Above Space for Board Clerk's use only)

AGENDA PLACEMENT FORM

SUBJECT: Community Power Buying Group Briefing

BOARD BRIEFING:

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: Thursday, February 5, 1998

AMOUNT OF TIME NEEDED: 30 minutes

DEPARTMENT: Non-Departmental

DIVISION: Chair Beverly Stein

CONTACT: Rhys Scholes

TELEPHONE #: 248-3928

BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: Serena Cruz, Staff to Portland City Commissioner Erik Sten and Phil Welker of the Portland Energy Office

ACTION REQUESTED:

☒ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Community Power Buying Group Briefing

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

Beverly Stein

(OR)

DEPARTMENT

MANAGER: _____

BOARD OF
COUNTY COMMISSIONERS
98 JAN 28 PM 1:49
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions? Call the Board Clerk @ 248-3277



CITY OF

PORTLAND, OREGON

DEPARTMENT OF PUBLIC WORKS

Erik Sten, Commissioner

City Hall (503) 823-3589

Fax (503) 823-3596

Mailing Address:

1220 SW 5th Ave Rm 407

Portland OR 97204

Temporarily Located At:

1400 SW 5th Ave Rm 702

Portland Oregon

January 28, 1998

TO: Multnomah County Board of Commissioners

FROM: Portland City Commissioner Erik Sten

SUBJECT: COMMUNITY POWER BUYING GROUP BRIEFING

In my role as the Commissioner in Charge of the Portland Energy Office, I have had the opportunity to become engrossed in the changes taking place in the electric utility industry. These changes are picking up speed despite the fact that the Oregon legislature failed to pass comprehensive deregulation legislation. Our local utility companies have proposals before the Public Utility Commission that would open up various markets in Oregon to electric supplier competition. Deregulation is here whether we are ready to face its consequences or not.

Large customers, like the City and the County, stand to gain during this virtual deregulation period. The County already takes advantage of its ability to combine all of its load and lower its electric bill through access to the competitive market. While the City aggregates portions of its load it is examining following the County's lead in aggregating our entire load. However, the City has decided to play a larger role in this area than in the past because Portland and Multnomah County residents will not have such an opportunity. Moreover, the City is also concerned that as the utility companies prepare for deregulation they are decreasing their commitments to conservation efforts, low-income bill paying assistance and weatherization programs, and to renewable resources. In order to protect our community's residents and small businesses as well as ensuring a strong commitment to public purposes the City of Portland is examining its role as a broker for the City's residents and small businesses.

It only makes sense for the City and the County to join forces to extend the potential benefits of a Community Power Buying Group to the entire County. The larger the load that this buying group has to "sell" to an energy services provider the better the deal for our community's residents. Consequently, I have asked the Portland Energy Office and my staff member, Serena Cruz, to work with the County to see if there is a partnership we can work out.

City Commissioner Erik Sten
COMMUNITY POWER BUYING GROUP BRIEFING
Page 2

Attached to this memo are the materials that City Council reviewed that the most recent Council Informal on energy deregulation that was held on January 20, 1998. Phil Welker and Serena Cruz will provide the County with a briefing on these materials and on the Community Power Buying Group at your next meeting – February 5, 1998. If you have any questions while reviewing these materials prior to that briefing please feel free to contact either Phil Welker, 823-7590 or Serena Cruz, 823-3606. Thank you for your interest and I hope that we will be able to work out a successful partnership in the interest of our community's residents and small businesses.

City Council Informal
January 20, 1998

Community Power Buying Group Proposal

*Prepared by the Energy Office
Submitted by Commissioner Erik Sten*

Contents

I. Background.....	1
II. Issues where the City has a public policy interest	3
III. Goals.....	4
IV. Portland Community Power Proposal	5
V. City's legal authorities.....	8
VI. Market research results.....	10
VII. Recommendation	14
VIII. Appendices	15
A. Background on City authorities	
B. Background Article on Community Choice and Municipal Aggregation	
C. City government facility sample load profiles	
D. BPA Residential Exchange	
E. System Benefits Charge	
F. Franchise fees	

I. Background

Regulators and lawmakers at the federal level and in nearly every state are developing proposals to provide customers with retail access to electricity markets. To date, 14 states have already passed retail access legislation. The Oregon legislature will take up utility deregulation issues again in the next session. There are seven bills dealing with deregulation issues pending in Congress, and an Administration proposal is being developed. Congressional consensus is proceeding very slowly.

During the last Oregon Legislature utility deregulation legislation was extensively debated in the Oregon House Power Deregulation Committee. The committee developed a consumer bill that was generally supported by large customers, consumer interests, Eugene Water and Electric Board, the League of Cities and the City of Portland. The bill imposed a 3% fee statewide to fund conservation, renewable resource development and low income energy services; established a default provider for customers who are unwilling to get into the market early to protect their competitiveness; established a rate cap for residential and small business customers to protect them from shifts in costs; continued low income energy bill paying assistance, funded by a meter charge; and protected cities' franchise fees for the next two years while a permanent solution is found. Due to opposition by public power utilities and PGE, the committee did not send a bill to the House.

In the interim, focus has shifted to utility deregulation proposals before the OPUC. PGE is currently running a pilot program that allows retail access for residents in four communities and a portion of all large customer's loads. They recently filed an application for approval of the *Customer Choice Plan* for complete deregulation. PGE would achieve system-wide retail access through this plan by October 1998. Pacific Power has also proposed a pilot in Klamath Falls that gives all system large loads retail access before small customers.

In 1996 the Energy Office developed a report, *The City's Role in a Changing Electric Utility Environment*. This report explores a range of options that could meet the City's goals for consumer protection, energy efficiency, renewable resources, utility license revenue, and state and regional energy policy. The report suggests that the City could accomplish many of its energy efficiency and environmental protection goals by finding new ways to:

- use the City's own purchasing power
- expand the City's use of its authority as a franchiser granting long-term contract rights for operations in rights-of-way
- act in some capacity as a load aggregator or utility.

The recommendations from the *City's Role* report are based on a substantial body of City policies that involve consumer protection, environmental protection, efficiency, and equity. They include:

- Portland Development Commission policies support small business development.
- Affordable housing policies seek to decrease residential living costs. Residents and small business customers are those least likely to see benefits from deregulation.
- The City Energy Policy sets a city-wide goal to increase the energy efficiency of all sectors in Portland by ten percent by the year 2000.
- The Carbon Dioxide Reduction Strategy sets a goal to reduce Portland's carbon dioxide emissions by 20 percent below 1988 levels by the year 2010.
- The Sustainable City Principles provide a broad framework for conservation of natural resources and the availability of public purpose programs.

The City developed the *City's Role* report in consultation with the Urban Consortium Energy Task Force, Northwest Environmental Advocates, Citizens Utility Board, League of Oregon Cities, Renewable Northwest Project, the Fair and Clean Coalition, local utilities and others. Experiences developing the *City's Role* report, participating in PGE and PacifiCorp Least Cost Plans, the PGE/Enron merger proceedings, and the deregulation debates in the Legislature have helped create a framework for developing the next steps for Portland to consider.

A multi-agency City planning group, including Water, BES, Transportation, Cable, OFA, the City Attorney's Office and the Energy Office met and developed several potential roles the City could take on to protect small consumers. The options the group developed generally involve two categories of action: 1) consolidating customers loads and bringing some market power to small consumer transactions, or 2) trying to impose public purpose requirements on distribution utilities or power marketers.

These options were discussed with the City Council at the September 30, 1997 informal. The Council was supportive of the goals presented (reviewed below) and instructed staff to aggressively pursue these options, complete research and discussions with stakeholders and the public, research the City's legal authorities in this area, describe the program concepts, and develop recommendations for Council action.

II. Issues where the City has a public policy interest

Local Powers

The City's local home rule authorities may come under attack or be limited as various deregulation proposals move through the legislature. These authorities include the ability to impose franchise fees for the use of City streets, the allocation of local non-exclusive franchise service territories and the broad charter powers granted to the Council. Opposite outcomes for local powers are found in the recent legislative experiences in Massachusetts and California.

In Massachusetts, the state legislature has expressly authorized local governments to become 'community aggregators' by a majority vote of the locally elected officials, to aggregate residents and businesses who do not find a new energy provider of their own. "Act Restructuring the Electric Utility Industry in the Commonwealth," 1997 Mass. Acts Chap. 164 Sec. 247. Under 'Community Choice,' automatic aggregation by local governments is non-compulsory; consumers wishing to find their own provider may 'opt out' of the local government's group.

On the other hand, California's legislature has authorized cities to aggregate customers, but they must compete with other potential suppliers. Cal. Code Pub. Util. Chap. 2.3, *Electrical Restructuring*. In California, local government aggregators must convince consumers to 'opt in' to their buyers' group, or else they will automatically become customers of the deregulated incumbent utilities. California's law, AB1890, gave its deregulated incumbent power companies 'automatic ownership' of consumers who do not find a new provider, by designating them 'default providers' for all passive consumers while prohibiting local governments from assuming that role under any circumstances.

Consumer Protection/Education

Many utility deregulation proposals assume consumers will fend for themselves in a deregulated marketplace. However, discriminatory practices and unfair market power problems could prevent all customers from benefiting from deregulation, and may even leave some customers and public purposes worse off. In order to effectively participate in this new competitive market consumers will need clear and accurate information. As power markets become more competitive, ensuring that consumers are well-informed will become increasingly important and there will be a need for sources of complete, unbiased information.

Public Purposes

Important public purposes related to the production and distribution of electricity have been addressed through regulatory least cost planning requirements. These processes and protections are being rapidly discarded

in the rush to create a competitive market. In particular, clean energy strategies like installing energy conservation measures, helping low income customers and developing sustainable resources are being marginalized as competitive pressures force utilities to focus on a short term commodity perspective.

Price protections for small consumers may also be abandoned. It is important to ensure small consumers see price benefits from competition, through aggregated market power or other means.

Market Barriers

Businesses and homeowners often don't invest in energy efficiency and renewable resources on their own because they face several serious existing market barriers (lack of capital, lack of information and technical assistance, property owners with no stake in tenant energy bills, etc.). Past utility programs were designed to overcome these problems. A more competitive, deregulated electricity market will not address *any* of these market barriers, and may in fact exacerbate these barriers.

Fair Distribution Charges

The savings that may be available from a competitive power market are only a portion of the total costs of providing service. The settlement of transmission, distribution and so called stranded costs may have an equal or greater impact on savings. The City is an intervenor in the OPUC proceeding (UE 102) where PGE's costs of service are to be allocated. Many of the costs proposed for inclusion as distribution charges may be inappropriate. Overall costs will fall to the benefit of small consumers if these costs are disallowed.

III. Goals

Timing for legislative deregulation action is uncertain; even so, the impact of wholesale competition on retail markets is already occurring. For example, the utilities have already entered into a variety of special contracts with industrial customers amounting to almost 40% of PGE's large loads. These deals inevitably shift costs to small customers, as demonstrated by the recent BPA Direct Service Industry (mostly aluminum companies) deals that resulted in an increase in rates to PGE customers of nearly 12 percent.

Small customers in the Pacific Northwest may be more likely to see price increases than in any other region of the country, simply because the region is already served by low-cost resources. While savings for average consumers are possible, the City is may be able to mitigate harm to small customers. For public purposes, the City has a unique initial opportunity to use its own corporate load to add to the market power of small

customers and to cost effectively use some savings to enhance public purpose offerings.

Ultimately, the City should seek to accelerate public purpose spending by a modest amount while there is an one-time opportunity to offset and absorb the cost with new savings. At the same time the City could use aggregated market power and competition to further reduce the cost of providing these services, and provide an incentive for providers to be innovative in the provision of these services. As public purpose services become linked and delivered with other new products and services as competition proceeds, the need for funding will further decline.

Minimum requirements of a workable solution

- Must provide access to stable "market-based" power prices for small consumers.
- Must provide for cost-effective conservation, renewables and services for low-income families.
- Must be politically feasible.
- Must provide consumers with some choices and options.

IV. Portland Community Power Proposal

Roles of City and Power Marketers

We recommend that the City take a very limited role for itself in the retail market for electricity. Under retail access, customers may have some choice of power providers and with this proposal, they will retain that choice. However, for those consumers who do not choose a specific power marketer, the City will take on the responsibility of defining and negotiating the features, services and price of energy services. Beyond basic consumer information, the City will not actively compete with commercial aggregators and power marketers for customer's individual choice.

The City will act as the agent for those customers who do not make an independent choice for the narrow purpose of creating an energy services arrangement that provides power *bundled with* a program for the delivery of public purpose services. Power marketers and other energy services providers will be the actual service provider to individual customers, establishing a direct customer relationship while delivering the services of the City program.

This type of Community Power Buying Group will use competition among the power marketers to reduce the cost of providing both power and public purposes. Competition among power marketers at the wholesale level to provide services for large numbers of small customers

should result in better prices and enhanced service offerings. The City also will use its share of any statewide Systems Benefit Charge allocation to further offset public purpose costs.

A variety of deregulation models are being discussed, chief among them is a proposal called the "portfolio approach." The portfolio approach will not allow retail access for small customers, but will instead require the incumbent local utility to offer a menu of choices acting as a portfolio manager. The incumbent utility obligation to serve these customers would be retained and regulatory bodies would determine the price, content and conditions on switching between options. Large customers would gain direct access and the local utility would no longer have an obligation to serve them.

The Community Power Buying Group will be proposed as a local government option that can be adjusted to work with the details of the portfolio approach and other deregulation proposals.

Program Components

Competitive Prices

The City should promote arrangements where small customers can aggregate to receive benefits from market competition including access to a broad range of services and competitive prices. For those consumers who do not choose a specific power company, the Community Power Buying Group will use competition among power marketers to reduce the cost of providing both power and public purpose services. The City also will use its share of the statewide Systems Benefit Charge allocation to further offset public purpose costs. A Community Power Buying Group will create sufficient market power for small customers and use that market power to cause competition to reduce price (or mitigate price increases).

Conservation

Estimates drawn from the PGE 1998-99 Integrated Resource Plan indicate that the conservation potential still remaining in Portland is 63 average megawatts at a cost effectiveness threshold of about 2 cents/kilowatt-hour. This represents thousands of homes and businesses where energy efficiency is substandard and improvements will benefit occupants. Meeting this goal will reduce city-wide energy use by 13%. The savings in the local economy will be more than \$27 million each year.

The City should set reasonable goals, such as weatherize all residences in the City by 2020 so they meet or exceed the 1980 Oregon Residential Code and target an increase in energy efficiency of 10 percent on average for small business and non-profit organizations in the City by 2010. These

goals are supported by the City's Energy Policy and Carbon Dioxide Reduction Strategy.

Low-income Services

There are approximately 15,000 low income residences in the City that still need to be weatherized. At the current program rate it will take 50 years to finish that job. The City should set a goal to improve all low income single and multi-family housing in the City so that it meets or exceeds 1980 Oregon Residential Code efficiency standards by 2010.

In addition the City should consider providing a minimum of \$1 million annually to help pay winter heating bills for low income families (\$200 each for 5,000 families). It is estimated that 24,000 poverty level households in Portland need heating assistance. The balance of the needed assistance funds should be sought from federal, state and utility sources.

Renewable Resources

The City should consider investing in new renewable resource development as part of the basic package of resources serving Community Power Buying Group load. This will enhance the long term prospects for maintaining the City's environmental quality and reduce global CO2 emissions.

V. City's legal authorities

Legislative Action by the City

We propose a model where the City's Community Power Buying Group will serve any customer who has not otherwise made an affirmative decision to select an Energy Service Provider. In other words, the City's buying group will serve as the broker or agent for the "default customers", in residential and small commercial account classes. The City will assemble the customer accounts into a block, and then seek competitive bids from Power Marketers for price and public purpose services. In this transaction, the City will not take title to either the customer account or the power.

There are no significant existing legal barriers for the City to pursue aggregation to achieve greater market power for these customers. In aggregating customer accounts, the Council may enact an ordinance to legislate "default" aggregation requirements for services within the City. This action will be a legitimate exercise of the charter authorities granted to the Portland City Council.

Utility Franchises

The City could use its franchise authority to meet consumer and public purpose goals by putting additional requirements into the franchise contracts.

Portland's home rule charter grants broad authority to the council to oversee the activities of public utilities, including oversight through the establishment of franchises and the issuance of permits. The courts have characterized franchises as special privileges granted by government, which generally do not belong to citizens as a common right. Generally, the "special privilege" is a grant of authority to exercise powers or to perform acts which, without the grant, could not otherwise be performed. For electric utilities, the grant typically consists of the "privilege" of using the public right-of-way within a municipality or county to locate distribution and transmission facilities.

There are two electric utilities that operate within the City of Portland. Pacific Power (Pacific) operates under an existing, current franchise that does not expire until 2006. No modifications can be made to this franchise without the utility's cooperation and consent. Portland General Electric (PGE) operates under a number of franchises to which it claims to be a successor in interest. The PGE franchises are of questionable legal validity under Oregon law.

Final resolution of the City's unsettled franchise relationships with PGE will likely result in a protracted legal dispute, which will not be resolved within a reasonable timeline. Pacific intends to retain its generation and marketing functions, and intends to continue to serve its "defaulting" customers. Pacific has expressed opposition to the concept of municipal aggregation, and it is unlikely that the corporation will be willing to revise its franchise to accommodate the City.

Therefore, if the City were to pursue its goals through the franchise option, it might lead to two separate methods and service levels in Portland, and may result in lengthy litigation. The potential for a Community Power Buying Group makes this approach unnecessary at this time. If a Community Power Buying Group is not feasible, pursuing the City's goals through franchise requirements or related local service requirements should be revisited.

Municipalization

Oregon cities are authorized by statute to "build, own, operate and maintain ... electric light and power plants, within and without its boundaries for the benefit and use of its inhabitants and for profit." ORS 225.020(1). The statute requires that the city's underlying authority to undertake this activity must be "conferred by or contained in its charter or

act of incorporation." Id. While the City Charter does not specifically address the operation of a municipal electric utility, it does contain a general grant of authority to exercise all powers granted by Oregon statutes. Charter §§1-101 and §2-105.

The state statutes authorize cities to "condemn for its use private property for the purpose of erecting and maintaining electric lines thereon for the purpose of generating and conveying power to light and heat the city, and to be used and sold by the city for manufacturing, transportation, domestic and other purposes, either within or without the corporate limits of the city, and for the purpose of constructing electrical systems for municipal uses." ORS 223.005(3).

If deregulation legislation grants retail access to all classes of customers, it does not appear necessary at this time to municipalize the City's distribution system in order to accomplish the City's consumer and public purpose goals. However, if a different deregulation approach is legislated, municipalization may be an appropriate vehicle. Circumstances that would support this choice include the need to directly acquire low-cost federal power for Portland, the potential for a greatly reduced local presence by PGE, the need to spread public purpose costs equitably across all Portland customers, and the possible potential to avoid excessive system stranded costs that may result from deregulation.

VI. Market research results

Interviews with Power Providers

Discussion parties: Portland General Electric, PacifiCorp, Northwest Natural Gas, Eugene Water and Electric Board, Enron Energy Services, Electric Lite, the Southern Company, the Bonneville Power Administration, Avista, and Illinova.

The reaction of power industry representatives to the Community Power Buying Group proposal has been mixed. In general, the current incumbent utilities (Pacific, Portland General, and Northwest Natural) have been opposed to the proposal, with concerns that the program would be anti-competitive and anti-choice.

Pacific anticipates that many customers will not participate in choice and they want to keep those customers, since they intend to remain a power provider in a deregulated market. In addition Pacific asserts that their market research indicates that customers who do not choose are affirming their choice of Pacific, and these customers would not want the City to make choices for them.

In contrast, Portland General does not intend to stay in the business of selling power, but has proposed that the service for customers who do not choose a new power provider be bid out to power marketers, with any premium from the sale used to offset PGE's own distribution system costs. Northwest Natural also cites general anti-competitive concerns.

Under current regulation utilities have a service monopoly where they are obligated to serve all the customers in their territory in exchange for a guaranteed regulated rate of return on their investment. Under open access proposals utilities will no longer be obligated to serve their customers, only to provide them access to the market.

In general, The City should take the position that regulated utilities should have no particular first claim to the energy service needs of customers once they escape the obligation to serve and are allowed to market their energy into other previously exclusive service territories. This is particularly true if utilities are financially held harmless for "stranded" resource investments for former service territory customers through stranded cost recovery charges and securitization mechanisms.

This is consistent with PGE's retail access proposal which proposes to bid out the "default" load to other energy service providers. Pacific Power wants to be the Energy Service Provider for those consumers who do not choose a new company, and is exploring versions of the "portfolio approach" (described above) as a deregulation model.

Other power marketer responses have been mixed. Virtually all would enjoy the opportunity to serve the Community Power Buying Group load, particularly if the costs of marketing to individual customers can be avoided. However only a few have thought about delivering public purpose services as part of the deal. Enron Energy Services and the Southern Company have indicated that they would be interested in providing those services. (Pacific, the Eugene Water and Electric Board and Northwest Natural have also indicated interest in "partnerships" with the City to deliver both power and public purpose services.)

Interviews with Governments

Discussion parties: Oregon Office of Energy, Oregon Public Utilities Commission, League of Oregon Cities, Multnomah County, Washington County, Gresham, Troutdale and Metro.

Other units and agencies of local government have expressed support and interest in joining with a Portland Community Power Buying Group project to provide both power and public purpose services. Most local government representatives intend to try to take advantage of competitive pricing to lower operating costs for government facilities (and are initially

interested in joining with Portland's large loads to make purchases more economical). However, while they are quite interested, they lack the internal resources to develop proposals to extend benefits to their citizens and small businesses. They would like to be able to sign on to an established program to provide enhanced public purposes at the local level.

State agencies such as the Oregon Public Utilities Commission and the Oregon Office of Energy are interested in a variety of proposals to provide both power and public purposes in a competitive power market. They are interested in Portland's active participation in the development of legislative and regulatory options to provide benefits to small customers and have encouraged the City to develop a formal proposal to be discussed with those of the local utilities.

Interviews with Public Interest Groups

Discussion parties: Renewable Northwest Project, Northwest Energy Coalition (formerly NCAC), OSPIRG, Citizens Utility Board (Fair and Clean Coalition), Northwest Energy Advocates, and Oregon Heat.

The public interest community is also interested in new options that Portland might provide for the provision of public purposes to small customers. These groups have seen their interests rapidly erode as competitive pressures have begun to dismantle the existing utility industry structure. Utility budgets for low income services, energy conservation, and renewable resources have been slashed 60 to 70 percent as utilities try to cut costs and meet the competition that has been occurring at the wholesale level for the past four years. Under retail access proposals what remains of these efforts will only be available if state legislatures impose a separate distribution system charge on customers (in the Northwest the Regional Review recommended a three percent System Benefits Charge).

In general, all of the public interest groups encourage and would support a Portland program that featured an aggressive component of public benefits for small customers, particularly low income customers. However, the Citizens Utility Board, leading the Fair and Clean legislative coalition, is circulating a proposal (a version of the "portfolio approach" described above) that would preserve regulated utility service for small customers while allowing large customers retail access to the market. They are concerned that a Community Power Buying Group proposal may add to the momentum for deregulation. Staff is reviewing their portfolio proposal to identify ways to accomplish City goals under that scenario. Language for local government options as part of the portfolio proposal is being developed.

Focus groups

The Portland Energy Office requested assistance from Research Into Action (RIA) in conducting focus groups to identify customer concerns regarding utility deregulation. The following is summary of responses gathered in two focus groups conducted by RIA with residential customers on the evening of January 6, 1998.

Key findings include:

- Customers' overall experience with deregulation has been negative: most cite no real reduction in costs and poor service as outcomes in other deregulated industries.
- Customers want choice "in theory" but are concerned about needing to choose among many providers, bothersome solicitation, and complexity.
- Customers who want choice are most interested in lower cost or in choosing a provider whose "social agenda" most closely matches their own values.
- Consumers do feel that energy services for small business, homeowners, senior and low income citizens are important services. Some feel these services should be offered for free and others feel a small fee, especially for small businesses, would be fine.
- It is too early for customers to choose, under a deregulated scenario, between a new provider, staying with their existing utility, or choosing the City to act as an aggregator. Customers do not yet know enough about what will be offered and on what basis they will be asked to choose.
- Customers do see a role for the City or some other public entity in providing customers with information about all energy providers who will be in the market. Such a "table" of providers and characteristics would assist customers to choose among the players based on key variables such as cost, reliability, energy sources, and social responsibility.
- Consumer protection, under any scenario, is important and could be a role taken on by the City under energy deregulation.

RIA conducted one focus group with small business owners whose businesses are located within Portland city limits. As part of focus group we also asked participants to answer a short survey. The focus group was conducted on the evening of January 7, 1998.

Key findings are similar to those for residential consumers:

- Small business owners past experience with deregulation of different industries has been negative: most cite increased business costs due to

dealing with the hassle of deregulation resulting from reduced regulatory oversight and an increase in fraudulent practices.

- Small business owners express a desire for "choice" and a dislike for monopoly power, but find the process of making choices to be burdensome and the process of dealing with solicitors time consuming and costly.
- Small business owners would like to see their electricity costs reduced through lower prices, but they overwhelmingly doubt that such savings will accrue to them.
- Most small business owners feel that energy services for small business, homeowners, seniors and low income citizens are important. All but two of the ten participants thought efforts should be undertaken to ensure that these services continue.
- All but two of the small business owners expressed a preference for having someone (the City, their trade association, or some non-profit) act as a aggregator rather than making their own choice for a new electricity provider.
- Small business owners see a role for the City or some public entity to provide information about the energy providers and to provide consumer protection.

VII. Recommendation

Staff recommends that, in order to meet City goals, the City pursue the creation of a Community Power Buying Group and in the event that deregulation occurs that staff prepare for the Council's consideration an ordinance that will legislate the aggregation of small customer accounts. If full deregulation does not occur, staff should develop and present to the Council an alternative proposal for action that will meet the City's goals.

Develop a Community Power Buying Group Pilot Program

The City should develop a pilot program with local utilities to test ways to achieve the City's goals and the Community Power Buying Group concept. Staff should identify the necessary steps and timeline, and the appropriate Council action.

Actively Participate in OPUC Proceedings

The City should continue its active participation in the OPUC proceeding on PGE's Customer Choice Proposal (UE-102), where various deregulation concepts will be examined prior to the next legislative session. The City should submit the Community Power Buying Group as an option compatible with various utility and public interest proposals.

Develop Partnerships with Other Local Governments

The City should develop partnerships for a Community Power Buying Group with other local jurisdictions. Expanding the scope should enhance the possible economies of scale.

Develop Partnerships with Energy Service Providers

The City should develop creative partnerships with local utilities, public interest groups, and energy service providers in order to push innovation in the development and association of public purpose services with other new products and services as deregulation proceeds. Securing access to Northwest low-cost federal power resources will also require partnerships with appropriate energy service providers.

Prepare to Participate Fully in Deregulation Legislation

The City should expand its participation in the legislative process, proposing a local option for Community Power Buying Groups and utility franchise fees as a feature of deregulation legislation.

If deregulation legislation makes a community power buying group impractical, the City should pursue additional franchise requirements or municipalization to accomplish City goals.

VIII. APPENDICES

- A. Background on City authorities**
- B. Background Article on Community Choice and Municipal Aggregation**
- C. City government facility sample load profiles**
- D. BPA Residential Exchange**
- E. System Benefits Charge**
- F. Franchise fees**

A. *Background on City authorities*



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
City Hall (503) 823-4047

Mailing Address:
1220 SW 5th Ave Rm 315
Portland OR 97204

Temporarily Located At:
1400 SW 5th Rm 600
Portland, OR 97204

January 12, 1998

INTEROFFICE MEMORANDUM

TO: Susan Anderson, Director
Energy Office

FROM: Benjamin Walters *BW*
Deputy City Attorney

SUBJECT: City Authority in a Deregulated Electricity Market

Over approximately the past six months, the Energy Office has been working with numerous city bureaus, including the Cable Office, the Water Bureau, BES, Transportation, OFA and the City Attorney's Office, to develop options for the City Council to respond to changes in the electricity market. The options being considered include consolidating the City's customer load with smaller consumers to bring market power to small consumer transactions, and to preserve some public benefits for these customers. This scenario has been characterized as "aggregation" of customer accounts.

How may the City aggregate residential and small commercial accounts?

This memo assumes the following: The City would aggregate customers who have not otherwise made an affirmative decision to select an energy service provider (an "ESP"). The City would serve as the "default" broker for certain customer classes, restricted to residential and small commercial accounts. The City would assemble customer accounts into an aggregated form, and then would seek competitive bids from ESPs for price and social benefits. In this transaction, the City would not take title to either the customer account or to the power. Any customer who affirmatively selected another energy provider would automatically be removed from the City's aggregation.

Question: What legal authority exists for the City serving as a "default" broker for residential and small commercial customers in a deregulated electricity market?

Short Answer: The City could aggregate customer accounts in one of two ways. First, the City could exercise its governmental function. The City could designate itself as the "default broker" for customers who have not otherwise affirmatively selected an energy provider. Alternatively, the City could seek to exercise its franchising authority over use the public rights of way by including conditions for price and services. However, pursuing this approach would pose legal questions and significant policy complications. The City could also continue to pursue its own internal aggregation to achieve greater market power for its own purchases. The City could also join as partners with other local governments, within Multnomah County or even regionally, to form a purchasing consortium for "government" loads. This could be achieved through an intergovernmental agreement or by other means.



Discussion:

A. Legislative Action by the City

"All powers of local government are delegated. The delegation may be accomplished by the state constitution (a constitutional power), by a statute (a statutory power), or by the voters of a city or county through adoption or amendment of a charter (a charter power)." O. Etter, "City Structure - Powers and Limitation", §2.7 Oregon Local Government Law, (Oregon Law Institute 1991). Under the Oregon Constitution, "[t]he people of Oregon, . . . , gave to the people of a municipality (acting through their local government) the right to pass laws, and restrict their own individual freedom and the freedom of others within their jurisdiction, subject only to the 'Constitution and the criminal laws of the State of Oregon'." City of Portland v. Jackson, 316 Or 143, 149 (1993) (State criminal statutes did not preempt city's local authority to forbid public nudity). In considering the validity of a local ordinance, the court first determines whether the city has acted within its charter authority or a statutory grant. Haley v. City of Troutdale, 281 Or 203, 209 (1978).

1. Portland's City Charter.

"[T]he special function of a charter or act of incorporation is that it is needed to organize the local political entity, to establish its governing organs, their selection, their powers and their limits. The charter is the local constitution." La Grande/Astoria v. PERB, 284 Or 173, 178 (1978). In 1903, the Oregon Legislature adopted a special act granting a charter to the City of Portland. Special Laws of Oregon 1903, chapter I. The legislation granted broad authority to the city:

The City of Portland shall be invested within its limits with authority to perform all public services and with all governmental powers, except such as are expressly conferred by law upon other public corporations and subject to the limitations prescribed by the constitution and laws of the state, except as hereinafter provided. Article I, section 3.

The Portland City Council was authorized "[t]o exercise within the limits of the City of Portland all the powers, commonly known as the police power, to the same extent as the State of Oregon has or could exercise said power within said limits[.]" Article IV, section 73.a.1. The current Portland City Charter contains substantially similar provisions. The Charter vests the city, as a municipal corporation, with "all general and specific powers granted to the City by any general or special law of the State of Oregon". Charter §1-101. The City is vested with "authority to perform all public and private services" and with "all governmental powers" except those expressly conferred on another governing body and subject to limitations prescribed by the constitution and laws of the state. Charter §1-102.

The City of Portland by its Council has power and authority, subject to the provisions, limitations and restrictions contained in this Charter or in statute, to exercise any power or authority granted to the City by statute, general or special, or by this

Charter, and may do any other act necessary or appropriate to carry out such authority, or exercise any other power implied by the specific power granted. Charter §2-105.

The authority to exercise the powers so granted is vested in the city council, which is granted the power and authority to "secure the protection of persons and property and to provide for the . . . peace, safety and good order of the city." *Id.* The City Council is further empowered to "secure the protection of persons and property and to provide for the health, cleanliness, ornament, peace, safety and good order of the City." Charter §2-105(a)(2). The city council may "make such rules and regulations as may be necessary and proper for the efficient and economical conduct of the business of the city." Charter §2-303. In addition, the charter provides that "[a]ny restriction or limitation imposed on the authority of the council by charter provision, applies only as its language explicitly and necessarily requires. . . . The city has authority to carry out general or special powers expressed or implied by charter, statute or general law, as the council finds necessary or convenient." Charter §13-201.

These charter provisions have been examined in numerous Oregon cases discussing the scope of Portland's legislative authority. *See, e.g., City of Portland v. Jackson, supra; Covey Garage v. Portland*, 157 Or 117, 139, 141 (1937) (City Charter authority power "to exercise within the limits of the City of Portland all the powers commonly known as the 'police power' to the same extent as the State of Oregon has or could exercise said power within said limits" authorized ordinance requiring inspection of rental cars); *Carlson v. City of Portland*, 45 Or App 439, 442 (1980) (City Charter gave Council broad authority to adopt regulations for union contract negotiations). Where the Council acts within its broad grant of power "a city's legislative act is presumed valid unless it appears on its face that it concerns matters outside the city's jurisdiction." *Kassel v. City of Salem*, 34 Or App 739, 742 (1978).

In addition to these broad grants of authority, the City Charter contains an extensive list of 65 specifically enumerated powers. Among such specific powers, the City has the power and authority to "enter into contracts with utilities to sell electricity generated by city owned hydro projects. Charter §2-107(a)(65). These specific grants of authority do not serve to otherwise limit the city's authority to act: the Charter specifically provides that "[the] enumeration of particular powers granted to the Council in this Charter shall not be construed to impair any grant of power herein contained, express or implied, nor to limit any such general grant to powers of the same class or classes as those so enumerated." Charter Section 2-106.

In addition to empowering the City, the Charter contains restrictions upon the Council's authority to act. For example, the City Charter prohibits the issuance of "exclusive" franchises. Charter §10-206. The Charter also addresses the subject of mandatory weatherization:

Except for the provisions of the Building Code of the City of Portland in effect on September 1, 1979, the Council of the City of Portland shall not pass or enforce any ordinance, resolution, law or program mandating weatherization for any building or structure built in the City of Portland prior to September 1, 1979, unless such ordinance, resolution, law or program is referred to the citizens of Portland for a vote. Charter §1-108.

Under Oregon's constitutional scheme of home rule cities, Portland has broad authority to adopt ordinances addressing a wide variety of social matters, such as preserving the public safety or promoting the general welfare. Although the City Charter does not expressly confer the specific authority to aggregate customer accounts, there is no need to find a specific source of authority before the City is empowered to act. In this instance, the council could exercise its broad grant of legislative authority, and determine that aggregation of customer accounts to create a larger customer pool with potentially greater savings and to preserve public benefits was in the general public welfare. Acting upon this conclusion, the council could enact an ordinance, declaring defaulting customers to be aggregated under city domain.¹

In the alternative, the City could ask the voters to modify the charter to provide specific authority to aggregate accounts. Voter approval could serve to provide validation for the City's efforts to act as a default broker. The city council may refer municipal measures or amendments to the charter of a city as provided under state statutes. ORS 221.210. There are two problems with this approach. First, it does not appear to be legally necessary. Second, implementing this choice would functionally not much different from "opt in" aggregation in terms the process of obtaining voter "consent".

2. Form alliances with other local governments.

Cities and counties may enter into intergovernmental agreements as "units of local governments". ORS 190.003 - 190.110. In authorizing these agreements, the legislature sought to promote local government economy and efficiency, and directed that the statutes be liberally construed. ORS 190.007. Under an intergovernmental agreement, local governments may enter into written agreements "for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform." ORS 190.010. An intergovernmental agreement vests "the unit of local government, consolidated department, intergovernmental entity or administrative officer designated therein to perform specified functions or activities [] with all powers, rights and duties relating to those functions and activities that are vested by law in each separate party to the agreement, its officers and agencies. ORS 190.030(1).

In Northwest Natural Gas v. City of Portland, 300 Or 291 (1985) several public utilities sued the city, county and Tri-Met seeking a declaration that the city had no authority to compel the relocation of utility facilities in the public streets without compensation to accommodate construction of Tri-Met's light rail system. The court held the city had authority to order the utilities to relocate their existing facilities. Under ORS 190.030(1), an agreement entered into by the city, the county and Tri-Met vested each entity with all powers, rights and duties belonging to the other. Thus the city could order the utilities to relocate for construction undertaken by the district. Id., at 315-16.

¹Legislative action by the city would not constitute "slamming" as regulated under current Federal Trade Commission administrative rules. The FTC has rules governing deceptive telemarketing practices, (16 CFR §310 et seq), which were promulgated under authority of the 1994 Telemarketing and Consumer Fraud Act. 15 USC §§6101-6108. However, by their terms, these regulations would not be applicable. Similarly, the Oregon Public Utilities Commission has adopted regulations governing the activities of energy service providers in soliciting customers in PGE's open access pilot. By their terms, the regulations apply for a limited time period and within limited areas in the state. They would not apply if the City chose to legislatively identify itself as a default broker.

The City is one of PGE's larger customers, with over 600 accounts and an annual billing of over \$5,000,000. The advantages of account aggregation have already been partially demonstrated by the City's participation in one of PGE's special tariffs. The City has aggregated some of its larger accounts, including pumping stations and the Portland Building, to achieve the minimum participation level required to participate in the special PGE tariff. The City was able to obtain a price reduction for the aggregated accounts, and used a portion of these savings to purchase a commitment from PGE to provide environmentally sustainable generating resources, or "green power". To achieve greater market power in an open access market, Portland could continue further aggregation of its own internal load, or could join with other units of local government for load aggregation. Whether the city was aggregating internal accounts or pooling with smaller customers as a "default" broker, the operating entity created by any intergovernmental agreement would be vested with the authority of each of the participating governments by force of Oregon law.

B. Seek Additional Legislative Authority.

The city could seek specific statutory authority during the next legislative session.² This has occurred in Massachusetts. The state legislature expressly authorized local governments to become 'community aggregators' by a majority vote of locally elected officials, to aggregate residents and businesses who do not find a new energy provider of their own. "Act Restructuring the Electric Utility Industry in the Commonwealth", 1997 Mass. Acts Chap. 164 Sec. 247.³ "Under 'Community Choice,' automatic aggregation by local governments is non-compulsory; consumers wishing to find their own provider may 'opt out' of the local government's group." Fenn, "Massachusetts Legislature Passes Nation's First Pro-'Community Choice' Deregulation Bill on 11/19/97" Local Power News (November 1997).⁴

The risk in seeking statutory authorization is that the final result may not match the original request. California's legislature has authorized cities to aggregate customers, but they must compete with other potential suppliers. Cal. Code Pub. Util. Chap. 2.3, *Electrical Restructuring*.

In California, . . . , local government aggregators must convince consumers to 'opt in' to their buyers' group, or else they will automatically become customers of the deregulated incumbent utilities . . . California's law, AB1890, gave its deregulated incumbent power companies 'automatic ownership' of consumers who do not find a new provider, by designating them 'default providers' for all passive consumers while prohibiting local governments from assuming that role under any circumstances. Fenn, supra.

²If existing Oregon statutes do not address the entry of cities into this area, this presents a question of antitrust immunity. Federal antitrust law only provides immunity to local governments if the state has affirmatively authorized them to engage in the challenged activity. The test is not met by statutes that neither permit nor contemplate the specific actions, or are neutral. The immunity test is met if the statutes "clearly contemplate" that the challenged anticompetitive conduct will occur, that such conduct is a "foreseeable" result of the enactments, and that anticompetitive effects will "logically" result from such conduct. Town of Hallie v. City of Eau Claire, 471 U.S. 34 (1985) (Statute authorized municipal sewage collection and treatment); Community Communications Co. v. City of Boulder, 455 U.S. 40, 55-56 (1982) (No state authorization for municipal cable franchising.)

³ Downloaded from the Massachusetts General Court website: "<http://www.magnet.state.ma.us/legis/seslaw97/sl970164.htm>".

⁴This article was obtained through "<http://www.local.or/madereg.html>".

The California legislation also guarantees the utilities full recovery of their "stranded" costs - the costs of investments in generation plants and other facilities that would not otherwise be economically recoverable in a competitive environment. From a policy perspective, it is unclear why incumbent utilities, assured of recovering their stranded costs, should be given the right to continue to serve old customers who do not otherwise choose other energy providers.

C. Modify existing utility franchises, or issue new ones.

Portland's home rule charter grants broad authority to the council to oversee the activities of public utilities, including the establishment of franchises and the issuance of permits. The courts have characterized franchises as special privileges granted by government, which generally do not belong to citizens as a common right. Northwest Natural Gas Co. v. City of Portland, 300 Or 291, 308 (1985). Generally, the "special privilege" is a grant of authority to exercise powers or to perform acts which, without the grant, could not otherwise be performed. Oregon v. Portland General Electric Co., 52 Or 502, 526 (1908). The grant typically consists of the "privilege" of using the public right-of-way within a municipality or county. The nature of that use can vary from temporary, limited users, such as garbage-haulers or ambulances, to permanent, extensive occupation of the public right-of-way, such as electricity distribution facilities. Traditionally, Oregon cities have exercised their franchise authority for the orderly management of public rights-of-way within their boundaries.

When the grant for use of the public streets has been accepted and acted upon by the grantee, in return for valuable consideration, the courts have interpreted franchises as contracts. Elliott v. City of Eugene, 135 Or 108, 294 P 358 (1931). In Elliott, the city issued an exclusive franchise to collect and haul garbage on the city streets for a period of three years. Approximately one year later, voters amended the city charter to prohibit granting exclusive franchises for the collection and hauling of garbage in the city. The grantee sued to restrain the city from enforcing the new charter provisions. The court held that amending the city charter after granting a exclusive franchise served to impair that exclusive contract. Thus, the charter amendment was invalid as applied to the grantee during the duration of its franchise.

Because a franchise is considered a contract, the conditions in the franchise are as binding as the terms of any other contract, both upon the municipality and the company, and their successors. 12 McQuillin, §34.06. As in other contracts, breach of franchise terms may give rise to a contractual cause of action. Rose City Transit v. City of Portland, 18 Or App 369 (1974), aff'd as modified upon limited review, 271 Or 588 (1975). The courts strictly construe the provisions of franchises as public grants, and have held that nothing passes by implication. City of Joseph, supra, 57 Or at 591. Thus, where a city issued a franchise to construct and operate a water system within its boundaries, the city was not itself precluded from thereafter setting up a competing water business. Copeland v. City of Waldport, 147 Or 60 (1934).

1. PP&L franchise

In 1986, the City of Portland granted a franchise to PacifiCorp, doing business as PP&L, "to operate [an] electric energy distribution and transmission system .. for the purpose of supplying electricity to the City and its inhabitants." Ordinance No. 159056, §1. The franchise has a term of twenty years from its effective date. By operation of the City Charter, the franchise became effective 60 days after the franchise was adopted in October, 1986. The franchise is not exclusive: The City reserves the right to grant rights

to others, as well as to act on its own, to "use its streets for the same or similar purposes allowed [to PP&L under the franchise]". Section 9.

The PP&L franchise does not contain any express reference to city authority to set rates or prescribe service requirements. However, the franchise terms incorporate by reference the requirements of the City Charter governing utility franchises. The charter also provides that all franchises granted by the city are expressly subject to the requirements set forth in the Charter. Section 10-201. The charter authorizes the city council to set rates for public utilities:

Every charge, rate, fare or compensation made, charged or demanded by any person or corporation engaged in the operation of a public utility within the City of Portland for any service rendered or to be rendered shall be just, fair and reasonable. The Council shall have the power to hear and determine what are just, fair and reasonable rates, fares and charges and to fix and limit such rates, fares and charges ... Charter §10-106.

This authority is further supported by ORS 221.420(2)(c), which allows Oregon cities to "fix by contract, prescribe by ordinance, or in any other lawful manner, the rates, charges or tolls to be paid to, or that may be collected by, any public utility or the quality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product or service within such city." Under the statute, such rate schedules can be in place for no more than five years. Under the statute, the Public Utility Commission has 90 days after the city has so acted to determine if the rates and charges are in the "public interest". If the Commission so objects within the 90 day period, the rates and charges do not go into effect unless approved by a vote of the people. The Commission's review authority is limited to the review of rates. See, Portland Stage v. City of Portland, 252 Or 633, 638 (1969) (Statute gave exclusive authority to city to determine bus routes within its boundaries, outside the PUC's control.)

2. PGE franchises

Portland General Electric claims to operate within the City of Portland as a successor in interest to five franchises issued before the turn of the century. These franchises include: (1) Ordinance No. 107 issued by the City of Albina to the Albina Light & Water Co. on or about March 5, 1890; (2) Ordinance No. 595 issued by the City of East Portland to H.A. & C.P. Hogue & D.H. Jones on or about June 29, 1887; (3) Ordinance No. 984 issued by the City of East Portland to Geo. W. Brown on or about June 25, 1891; (4) Ordinance No. 3538 issued by the City of Portland to Geo. Weidler on or about September 8, 1882; and, (5) Ordinance No. 4932 issued by the City of Portland to P.F. Morey on or about October 7, 1886. None of these franchises identify a specific term or duration. Under Oregon law, such franchises are void or voidable. Newsom v. City of Rainier, 94 Or 199, 201-202, 185 P 296 (1919). (Franchise containing no express limitation of time, continuing so long as grantee complied with its terms, constituted a plain perpetuity and was void.) The three cities of East Portland, Albina and Portland were consolidated in 1893 by an act of the legislature, which was subsequently ratified by a majority of the voters in all three municipalities.

3. Discussion

Both PGE and PP&L have articulated their own unique visions of how deregulation should occur and how they intend to operate in a competitive marketplace. PGE intends to divest itself of its energy generation functions, and become only a distribution and transmission company, a "common carrier" of electricity with no "customers" beyond the ESPs for whom they will provide transportation services. PP&L intends on retaining its generation and marketing functions, and intends to continue to serve as the "default" provider for its customers who do not affirmatively select alternative ESPs.

PP&L operates under an existing, current franchise that does not expire until 2006. No modifications can be made to PP&L's franchise without the utility's cooperation and consent. PP&L's own long range plans to continue operating as an integrated utility mean that it is inherently less interested in municipal aggregation. PP&L's existing franchise can not be modified without its consent and cooperation.⁵ Even if the utility was willing to enter into franchise modification discussions, PP&L's franchise governs the utility's use of the city streets to supply electricity. If the utility was acting as a common carrier for energy service providers, the city would not have a direct "contractual" relationship with such third parties. While the franchise may empower the city to address the rates and services of a "distribution" company, it is not clear how the franchise would reach ESPs using the franchisee's facilities, to allow the city to control the electricity prices and require public benefits be offered. It is an unresolved legal question whether the statute authorizing cities to "legislate" rates for "public utilities" would extend to ESP's operating over the public utility's facilities in the public right-of-way.

PGE's franchises present a legal uncertainty. It is likely PGE will litigate the legal status of its rights. Even if the City were to eventually prevail, it would only achieve a partial solution. PP&L would still remain serving a substantial portion of Portland under its existing franchise. The city would be left with two systems operating side-by-side. The most likely scenario would seem to be that franchising would result in two separate, and unequal, systems would operate in Portland. It is unlikely that even this result could be obtained within any meaningfully short time period.

Finally, the City Charter presents a complicating procedural requirement, either in modifying PP&L's existing franchise, or in negotiating a replacement for PGE's outdated agreements. The Charter provides:

No franchise shall take effect until sixty (60) days after its passage unless it shall receive a majority of the votes cast thereon at a referendum election held for that purpose within a less time. The filing of a petition for referendum shall defer the taking effect of a franchise until after the election. A petition signed by two thousand (2,000) registered voters shall be sufficient to call a referendum upon any franchise ordinance. Charter §10-208.

⁵The City may only propose terms and conditions to a franchisee: It may not compel the franchisee to accept such terms. City of Portland v. Pacific Telephone and Telegraph Co., Multnomah County Circuit Court Case No. N-1594 (Judge Hall Lusk) at p. 14 (May 1, 1934). If however, the parties fail to reach agreement on reasonable terms and conditions, the city may seek to expel a franchisee whose rights have expired.

Susan Anderson
January 12, 1998
Page 9

If time is of the essence, the charter requirements for formal franchise approval can take up to four months. If the franchises are controversial, there are minimal procedural obstacles for referring the documents to the voters. This would delay final approval even further.

c: Drew Barden, Office of Finance and Administration
David Olson, Office of Cable Communications and Franchise Management
Don Gardner, Office of Transportation
Richard Gray, Office of Transportation
Serena Cruz, Commissioner Sten's Office
Susan Schneider, Office of Government Relations
Phil Welker, Energy Office

G:\FRANCH\MISC.BEW\ANDRSN02.MMO

B. Background Article on Community Choice and Municipal Aggregation

Community Choice and Municipal Aggregation"

by Scott Ridley

We have largely forgotten the role that local governments have played and continue to play in the development of the electric industry. Moreover, we risk losing sight of the options local governments may offer to protect consumers, to advance competition in the marketplace, and to enhance opportunities for technology and economic development.

The future role of local government is one of the most important issues in the restructuring discussion. The basic authority of consumers rests at the local level. The resulting options consumers have to act as more than just respondents to private brokers and telemarketing calls are at the local level. And the ability for consumers to shape the marketplace and standards for what it will offer exists at the local level as well.

Part of what we have forgotten is that local consumer authority regarding electric utilities grows from an earlier era of competition when cities and towns commonly offered electric service to competitive bidding by suppliers. At its core, it is based on the ability of consumers, through direct votes or through their local elected officials, to determine who will occupy or utilize public streets and ways and under what terms and conditions that use will be granted.

Traditionally, this consumer authority has taken two forms. One is the local franchise grant to investor-owned utilities. The second is the choice of local consumers to establish a nonprofit municipal electric system - a form of self-franchise.

It is important that this authority not be diminished or swept aside by blind pressures to "clear market barriers." Otherwise, consumers could become literally "disenfranchised," reduced to responding to marketers without the full ability to determine the competitive terms and standards under which they would be served.

In a new competitive market those fundamental powers that consumers have at the local level could prove vital. Two years ago there was a belief that each individual consumer would enter the marketplace and select a competitive supplier. It is now generally agreed that consumers - especially

"Community Choice and Municipal Aggregation"
by Scott Ridley

residential and small business consumers - will have to aggregate in order to gain benefits.

There will undoubtedly be many forms of consumer aggregation. But what local governments offer - both public power and non-public power communities - are forms that are publicly accountable, non-discriminatory, non-profit, subject to open meeting and ethics laws, and oriented toward advancing economic development and the public interest.

The opportunities are many and varied:

For competitive power suppliers, community based aggregation under franchises or municipal power systems offers a stable, institutional party who may contract for longer periods or for larger, geographically concentrated blocks of power supply. This stability and size can decrease the cost and risk of financing facilities, result in better savings for consumers and a more dependable revenue stream for suppliers.

For energy efficiency, community involvement would move costs to the customer side of the meter. This can increase consumer benefits, help to overcome cost and information barriers, and shorten payback periods. It could also allow comprehensive approaches rather than cream-skimming and take conflicts out of fuel-switching.

For renewable energy, community aggregation offers a range of opportunities. Portfolio standards for "green power" can be included in power supply contracts. Community leverage in this area could allow consumers to become active "green citizens" rather than geographically scattered would-be "green consumers," who may be unsure of the true nature of what they are paying for and limited in their choices.

For low- and fixed-income consumers these options would assure the opportunity to remain part of a group with all other consumers. State protections for low-income consumers, as well as all consumers, would be written into the contracts with competitive suppliers.

For local government these options and the opportunities they offer provide a chance to minimize the negative impacts of competitive markets and maximize benefits for residents, businesses and municipal budgets. Revenue sources may be enhanced or protected, energy efficiency programs maintained, and planning and economic development improved. In addition, forward-looking communities can consider long-term infrastructure improvements such as integrating telecommunications, cable TV, Internet and energy supply that they might otherwise have little ability to undertake.

How these opportunities might be pursued is tied to the distinct differences between the two basic community forms: municipal electric systems and community aggregation under franchises. The differences center largely on the extent of control and relative liability a community might want to assume. There are several important differences: (1) municipal systems may generate a significant portion of their power supply as well as purchase under contract, while communities that aggregate consumers under a franchise would contract for all supply, with the possible exception of small demonstration or on-site projects; (2) municipal systems own and operate the distribution system and other facilities, while communities aggregating consumers with a franchise would contract for distribution services, or receive them under a tariffed rate; and (3) municipal systems buy and resell power, while aggregation communities only contract for service, and do not buy and resell power.

In many analyses, there is a misperception that the original passage of laws for state regulation of electric utilities abolished local powers for aggregating consumers and for negotiating and granting contracts, and reduced them by statute to narrow police powers. For both public options - establishment of municipal systems and community aggregation under franchises - it is important to examine the nature of local consumer powers and how and whether they have been clouded by regulatory practices, case law, statute, or general misperception.

The current atmosphere is one of high interest and great danger. At least ten states have included an option (in state electricity restructuring) for local government aggregation in legislation that has been filed. However, in some of these states there appears to be a marked lack of awareness of the existing balance of powers between local and state government, or a disregard for the importance of consumer leverage.

Private utilities and others have historically opposed attempts to form municipal systems and to utilize local franchise powers. In debates over restructuring of the industry this has carried over to aggregation of consumers by local government. The common charge is that it will create market barriers and re-regulate or stifle competition. The reality is that it will allow more consumers to participate and gain the benefits of competition. Legislation recently passed in Massachusetts allows for "Community Choice" - citizens can vote to aggregate using their local powers, and those who do not want to participate are allowed to "opt out" and choose any supplier they wish. (Editor's note: See story on page 1: "Massachusetts Legislature Passes Nation's First Deregulation Bill with Community Choice.") Existence of this local government option gives consumers more, and not less choice, as well as leverage they would not have otherwise.

Private utilities who hope to continue to hold a monopoly position through their "standard" offer" do not appreciate consumers having this choice and leverage. In Massachusetts, they lobbied extensively to pull out the "Community Choice" and opt-out language from the legislation. Such blind efforts to wipe out local consumer authority and forms of community choice in the name of clearing "market barriers" can open the way for predatory practices by utilities and others. In what appears to be the same old game, both private utilities and some power marketers still want to "own the customer." For utilities its the "standard offer" form of service, for power marketers it is in "alliances" with local government and private organizations.

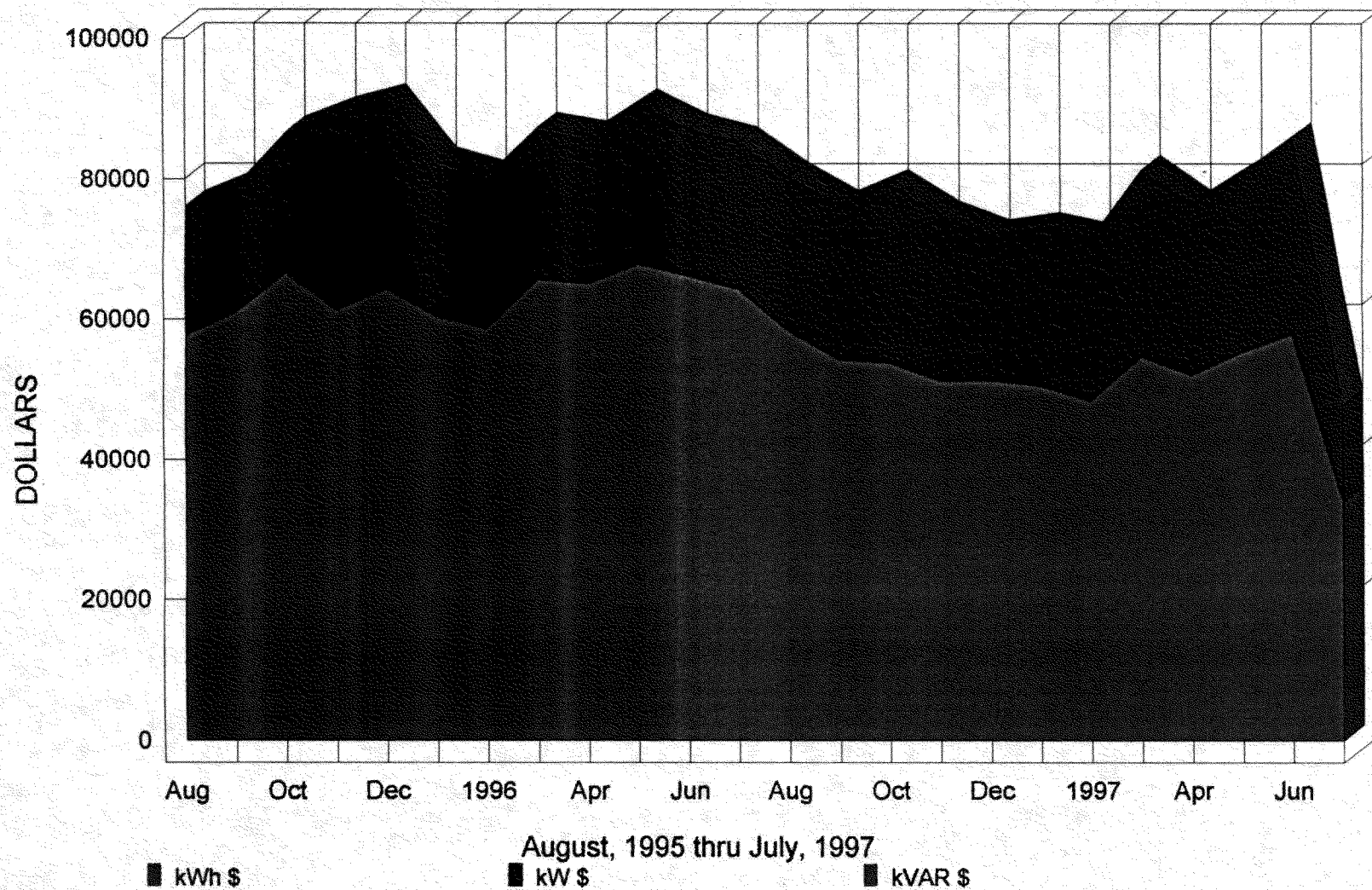
For a market to function effectively, it must be balanced between consumer and supplier interests. Options that provide consumers with statutory powers, leverage and autonomy are critical to the ultimate standards and benefits that will emerge from a restructured industry. The loss of consumers' autonomy and their traditional foundation of authority will mean that market suppliers have an opportunity to dominate.

Experience offers cause for hope. Local governments are durable institutions and have a proven track record of service in the electric industry. For more than a century, public power systems have provided aggregated service to consumers in their communities at prices that average 15 percent less than those of investor-owned utilities. Under a restructured industry, consumers should have the choice of voting to aggregate their communities - either as a municipal system owning distribution facilities - or as a franchised aggregation with hard-nosed contracts for service. An increasing number of communities have become interested in these options, but legislation at the state level will need to be watched closely for restructuring provisions that could undermine consumer and community choice. In many states, local governments have yet to take their place at the table in these discussions. The next few years will tell what may become of this sleeping giant.

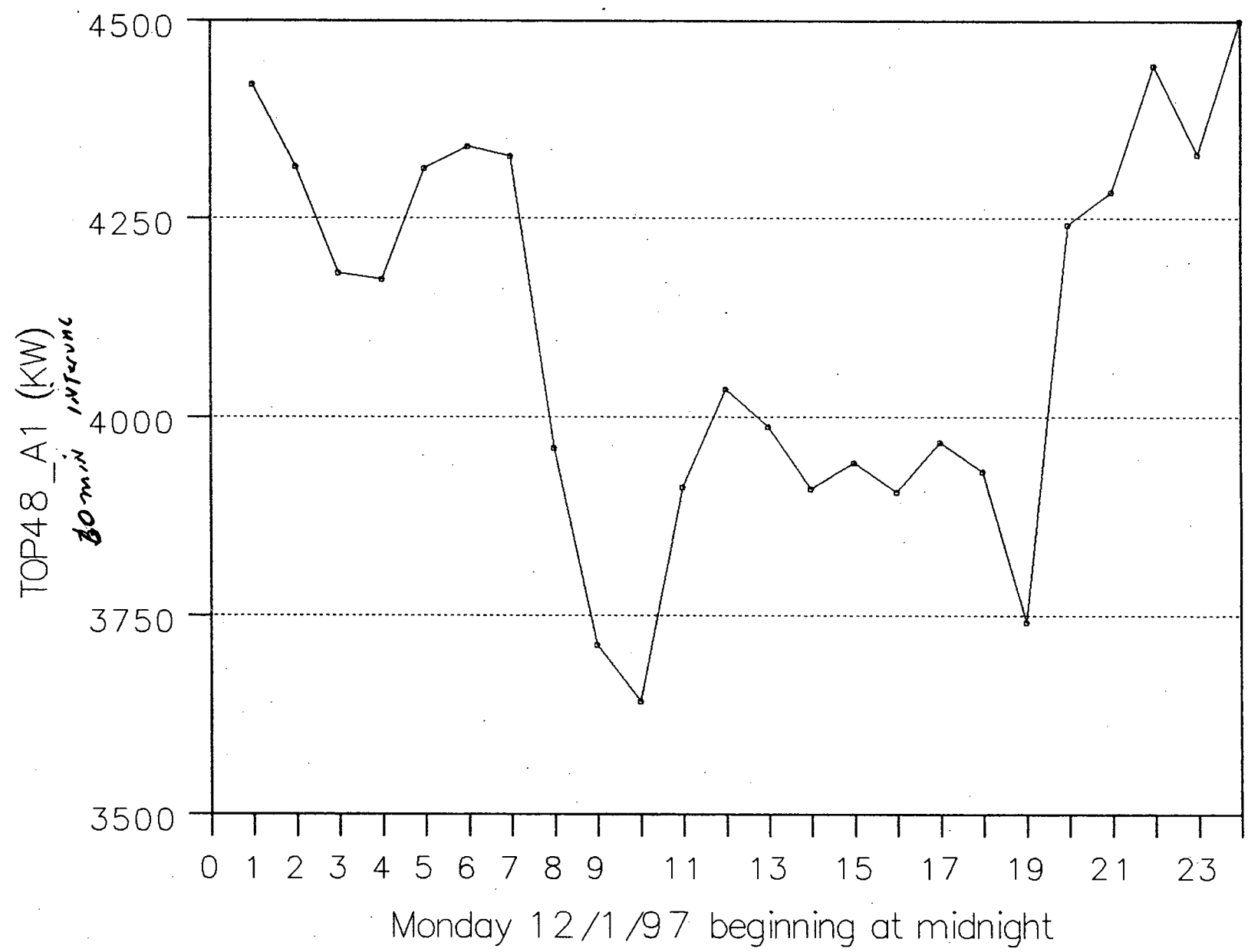
Copyright (c) 1998 by the American Local Power News

C. City government facility sample load profiles

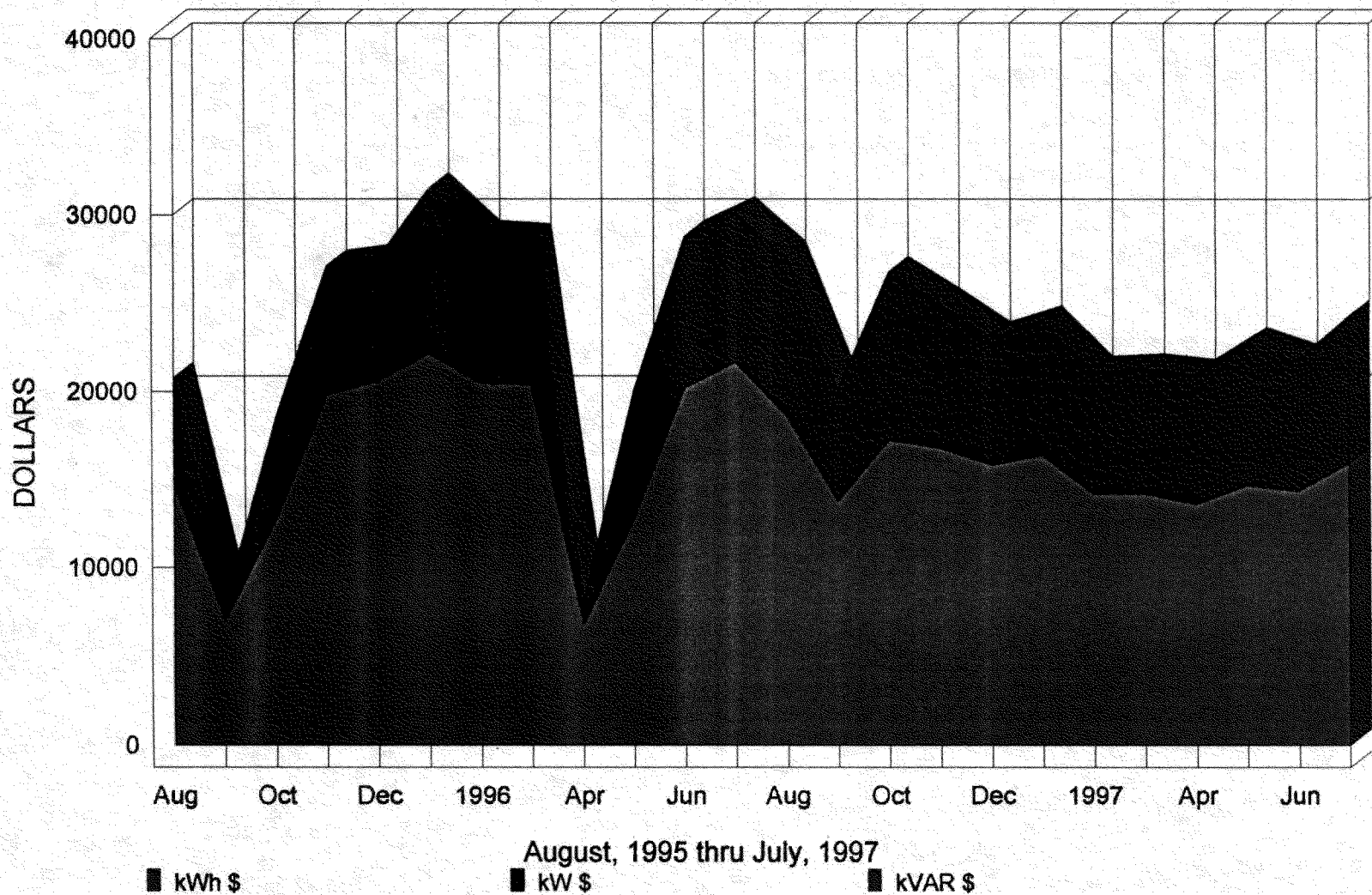
Electricity Cost Breakdown for Columbia Blvd Treatment Plant



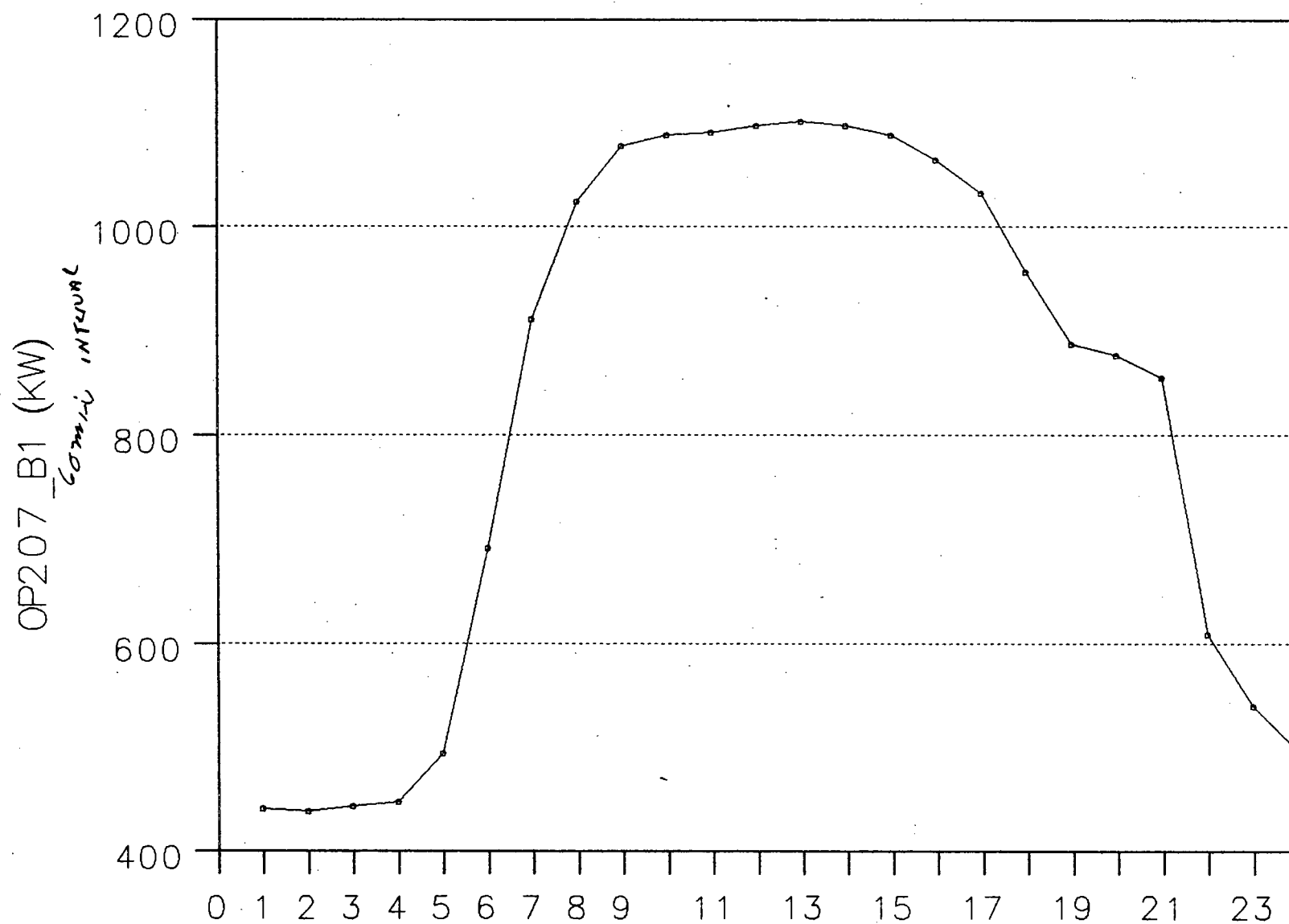
City of Portland-Portsmouth



Electricity Cost Breakdown for Portland Building 1120 SW 5av

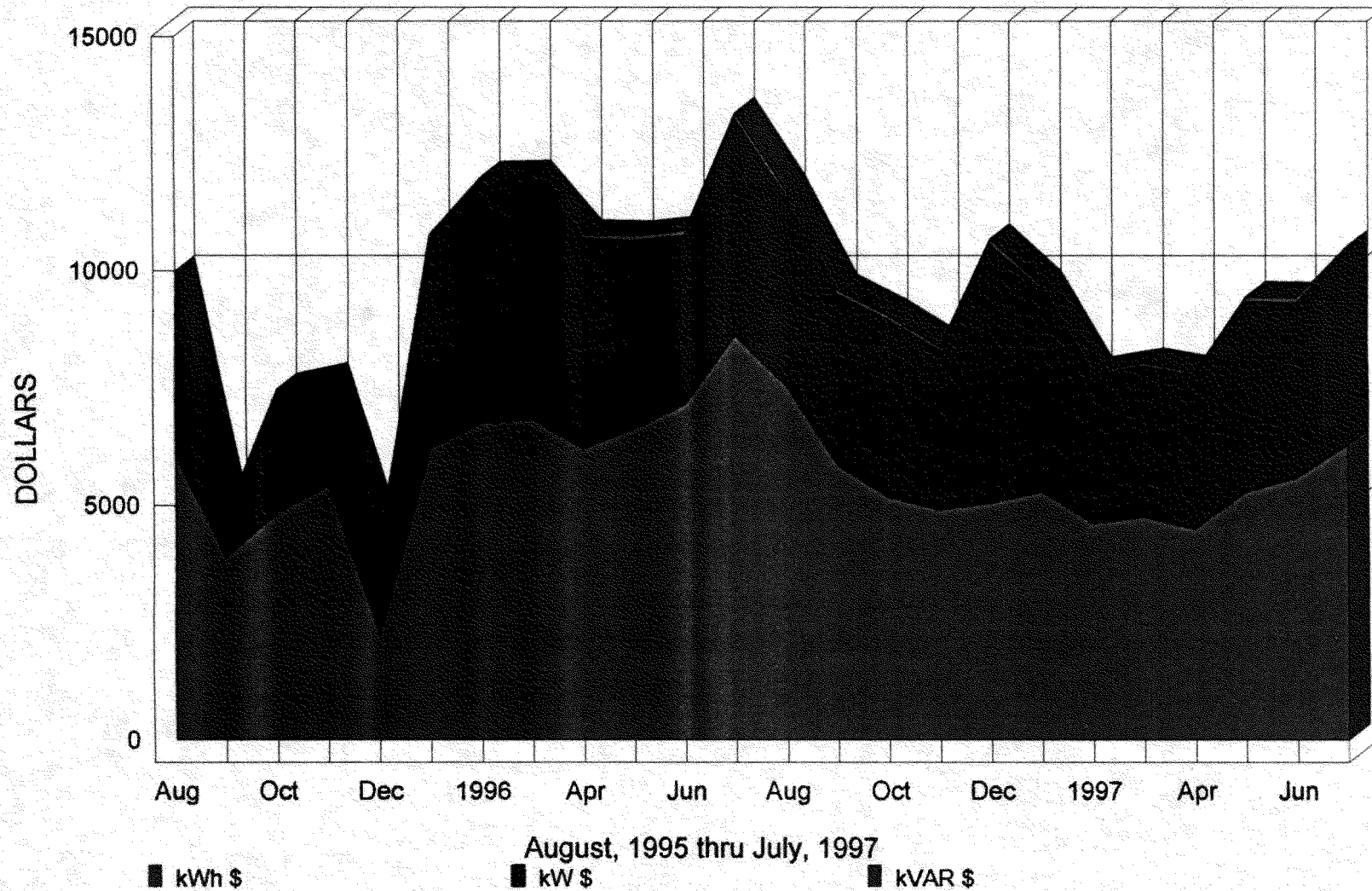


City of Portland-BGS

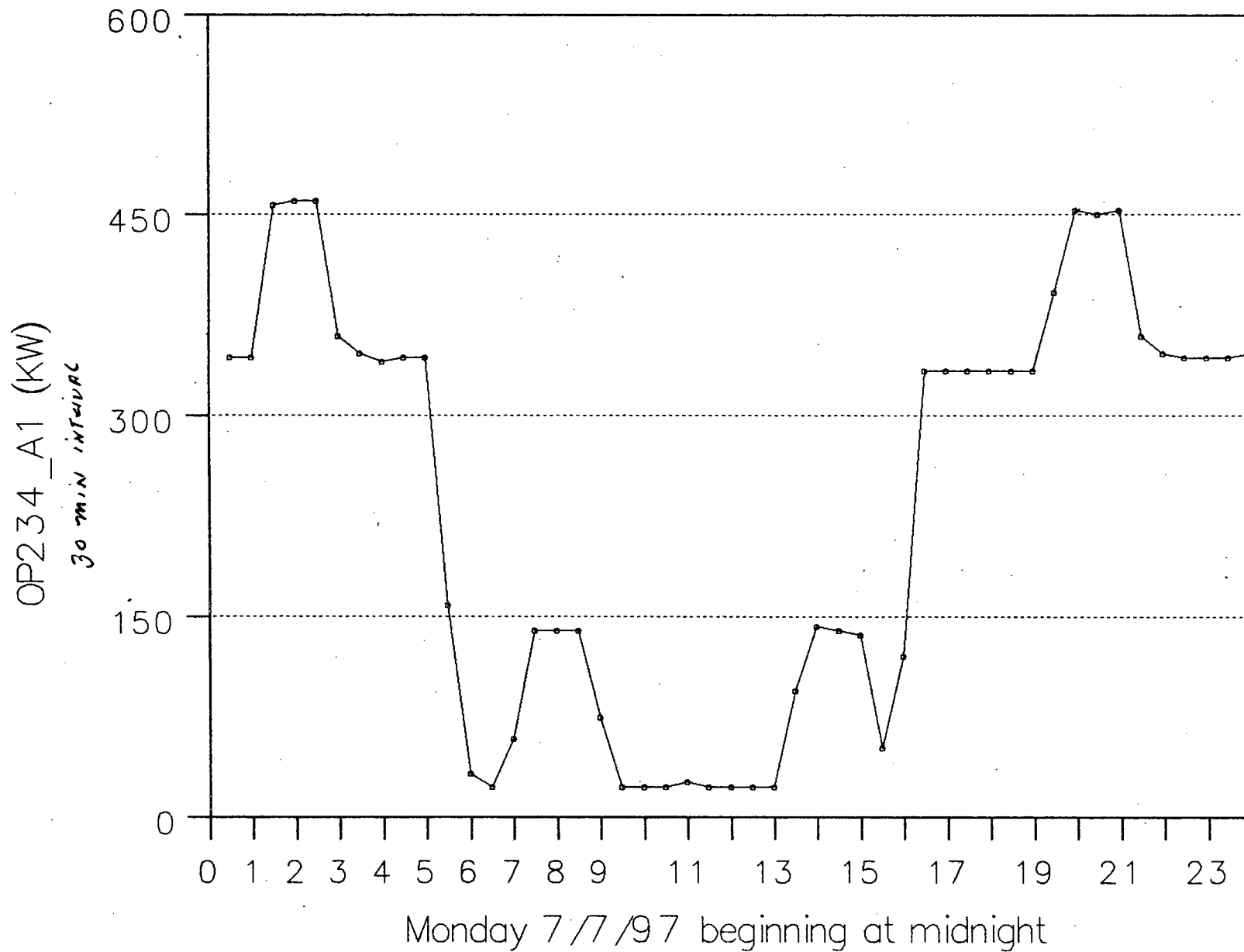


Monday 12/1/97 beginning at midnight

Electricity Cost Breakdown for Water Bureau SW Jefferson St.



City of Portland-Water



D. BPA Residential Exchange

As a result of the Northwest Power Act of 1980, Northwest utilities have the right to sell to Bonneville an amount of power equal to that required to serve their residential and small farm customers at the utilities' average system costs and receive an equal amount of power at Bonneville's average system cost. In reality, this is an accounting transaction. No power is actually delivered. This was intended to be a mechanism to share the benefits of the low-cost federal hydropower system with the residential and small farm customers of the region's investor-owned utilities. As a result of decisions made by Bonneville in its most recent rate case, those benefits have been reduced.

Congress intervened for one year to stabilize the exchange benefits until October 1, 1997, after which rate increases became necessary for the residential and small farm customers of the exchanging utilities. Currently, BPA and PGE have been unable to agree on the level of exchange benefits for this year. The OPUC recently approved an 11.9 percent rate increase resulting from the lack of settlement.

E. *System Benefits Charge*

A frequently discussed option to raise funds for conservation resources that might not be captured by the open market is a "system benefits charge." The system benefits charge is a fee assessed broadly across the electricity distribution system that is non-bypassable and is used to develop conservation. The idea is similar to the levy on phone bills to provide 911 emergency calling and universal service for low-income and physically impaired customers. Almost every active restructuring process in the United States is calling for a system benefits charge or something very similar to maintain some level of energy-efficiency services. A 3 percent system benefits charge has been recommended in the northwest. The state legislature will have to include the system benefits charge in deregulation legislation for it to occur.

F. Franchise fees

Legislation in the last session would have created a new state tax on the gross charges of the costs billed for cable, telecommunications, electricity, natural gas, water and heat. this charge would have been on the utility customer, not the utility service provider. The bill would have preempted all future local franchise agreements. It would have eliminated all future "in kind" agreements, including funding and equipment for public, educational and governmental access (PEG) channels. A special sub-committee of the House Commerce Committee worked on this issue all session. The issue engendered rancor and hostility in the opening statements of the first meeting of the sub-committee that continued all session. The Chair was openly hostile to cities and to the very idea of franchise fees. Although the utilities were allowed to testify and to have amendments and new bills introduced frequently, cities were rarely allowed to comment on the record.

Finally the City of Portland was able to put forward its proposal for a franchise fee based on the amount of energy consumed and the amount of telecommunication services received. On the energy side the proposal had the support of the Oregon League of Cities. Other cities were skeptical of the proposal on the telecommunications side.

The committee was divided on how to proceed. The counties tried to insert themselves as beneficiaries of any change in franchise fees, sometimes hurting the cities' case and sometimes not. The utilities were absolutely opposed to the City of Portland's proposal for a permanent solution. The cities opposed "proxy price" proposal brought forward by some of the big customers. The utilities, AOI, and other large industrial energy customers and the cities were absolutely opposed to a statewide tax as proposed in HB 2060. With their help we were able to kill that alternative with a majority of the committee and the Speaker. the large industrial customers and AOI then joined the City of Portland and LOC in trying to preserve a temporary fix for cities affected by the "pilot projects" or virtual deregulation that was coming. The sub-committee closed down in disarray without acting on any of the franchise fee bills. The full Commerce Committee could not agree either; so the issue died. The status quo was preserved, but no legislative protections for cities for the pilot projects were enacted.

MEETING DATE: FEB 05 1998
AGENDA NO: R-5
ESTIMATED START TIME: 10:40am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Appointment to Columbia River Gorge Commission

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

REGULAR MEETING: DATE REQUESTED: 2/5/98
AMOUNT OF TIME NEEDED: 5-10 Minutes

DEPARTMENT: Nondepartmental DIVISION: Chair's Office

CONTACT: Delma Farrell TELEPHONE #: 248-3953
BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: Chair Stein

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Appointment of Anne Squier to the Columbia River Gorge Commission for a term ending April 30, 2002.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Stein
(OR)
DEPARTMENT
MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

BOARD OF
COUNTY COMMISSIONERS
JAN 23 4 11:04
ULTONAH COUNTY
OREGON

Delma

MULTNOMAH COUNTY OREGON

RECEIVED

INTEREST FORM FOR CITIZEN ADVISORY BOARDS & COMMISSIONS

NOV 19 1997

BEVERLY STEIN
MULTNOMAH COUNTY CHAIR

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

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

COLUMBIA RIVER GORGE COMMISSION

B. Name: ANN SQUIER 5Y Anne W. SQUIER
Address: 5214 SE 30th #58 5214 SE 30th #58
City/State/Zip: PORTLAND OR 97202 Portland OR 97202
Home Phone: 503-235-1998
C. Current Employer: National Marine Fisheries Serv.
Address: 525 NE Oregon, Ste 500
City/State/Zip: Portland, OR 97231
Work Phone/Extension: 503-230-5406
Occupation: Natural Resource Policy / Attorney (not currently practicing)

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

Sex: M ☒ F

Racial/
Ethnic Background: ☐ African-American ☐ Asian ☒ Caucasian
☐ Hispanic ☐ Native American ☐ Other

Date of Birth: Month 12 Date 08 Year 38

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

DATES:

EMPLOYER/VOLUNTEER ACTIVITY

See attached materials

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

Aging/Elderly
Agriculture
Alcohol/Drug Treatment
Animal Welfare
Art
Children and Families
Civil Rights/Discrimination
Corrections/Law Enforcement
Economic Development/Trade
Environment/Natural Resources
Food Services

Handicapped/Disabled Issues
Health Care
Housing
Juvenile Justice Issues
Labor/Labor Relations
Land Use Planning
Library Services
Mental Health Services
Minority Affairs
Transportation
Other _____

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

None I am aware of

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

Steven R. Schell - Black, Netherline Ste 1200 707 SW Washington
224-5560/417-2145 Portland OR 97205
Dick Benner, Director, Oregon Dept of Land Conservation & Development
503-373-0060 1.25 Court St Salem OR 97310

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

Signature: Annex Squier

Date: 11/15/97

Contact: Delma Farrell

Beverly Stein, Multnomah County Chair
1120 SW Fifth Room 1515
Portland, Oregon 97204 Tel. (503) 248-3308
FAX: (503) 248-3093
E-Mail: MultChair@aol.com

ANNE W. SQUIER
5647 SE 38th Ave.
Portland, OR 97202
(503) 771-1998 (msg: 285-8432)

EDUCATION **Northwestern School of Law, Lewis and Clark College**
Portland, Oregon
JD, Cum Laude, December 1983, Class Standing 1/58

University of Hawaii, Honolulu, Hawaii
Graduate Courses in Biology, Chemistry, 1968-69

Reed College, Portland, Oregon
BA, Biology, 1960

ADMISSIONS **U.S. District Court, District of Oregon, July 1986**
Oregon State Bar, 1984

EMPLOYMENT **National Marine Fisheries Service, Portland, Oregon**
Intergovernmental assignment; policy coordination for coastal salmon issues, June 1996 to present. *NJR: new PM*
Contact, not IFA

Oregon Department of Environmental Quality
Education and other projects, January 1995 to June, 1996. *ADW*

Oregon Governor Barbara Roberts
Senior Policy Advisor, Natural Resources
June 1992 to January 1995

Northwestern School of Law of Lewis and Clark College, Portland, Oregon
Assistant Professor of Law, August 1989 to June 1992
Water Law, Administrative Law, Civil Procedure

Oregon Department of Justice, Salem, Oregon
Assistant Attorney General, December 1984 to July 1989
General Counsel Division - Natural Resources

OTHER WORK EXPERIENCE **UMA Engineers, Portland, Oregon**
Biologist, 1974 -1975
Fish hatchery pollution abatement; solid waste

Reed College, Portland, Oregon
Associate in Biology, 1961-68; 1969-71

ANNE W. SQUIER
Page Two

**COMMUNITY
ACTIVITIES
HONORS**

Governmental

Energy Facility Siting Task Force, March to November 1996.

Environmental Quality Commission, State of Oregon 1991-92.

Land Conservation and Development Commission, State of Oregon, 1976 to 1984; Vice-Chair 1981-1984.

Oregon 2000 Commission, 1978 to 1979.

Water Policy Review Board, State of Oregon, Chair 1975-1976.

Cascade Head Scenic Research Area Advisory Committee,
US Forest Service, 1975 to 1979

Advisory Committee, Oregon Coastal Conservation and Development Commission, Member and Chair, 1973-75.

Legal

Contributor, 1991 Water and Water Rights, R.E. Beck, Ed.

Contributor, Oregon State Bar CLE "Land Use," 1987.

Speaker and Planner for Continuing Legal Education conferences, 1984 - present. Water Law, Administrative Law, Clean Water Act, Endangered Species, etc.

Interest Groups

Public Stewardship Award, 1000 Friends of Oregon, 1995.

Oswald West Award, Oregon Shores Conservation Coalition, 1984.

Oregon Planning Institute Award, 1984.

National Outstanding Contribution to Planning Award, American Planning Association, 1981;

Oregon Chapter Citizen Planner Award, 1980.

Golden Beaver Award, Citizen-at-Large, Izaak Walton League, Oregon Division, 1975.

23 May we ask your present employer about your character, qualifications, and work record? A "NO" will not affect our review of your qualifications. If you answer "NO" and we need to contact your present employer before we can offer you a job, we will contact you first. . . . YES NO
X

24 READ WORK EXPERIENCE IN THE INSTRUCTIONS BEFORE YOU BEGIN.

- Describe your current or most recent job in Block A and work backwards, describing each job you held during the past 10 years. If you were unemployed for longer than 3 months within the past 10 years, list the dates and your address(es) in an experience block.
- You may sum up in one block work that you did more than 10 years ago. But if that work is related to the type of job you are applying for, describe each related job in a separate block.
- INCLUDE VOLUNTEER WORK (non-paid work)--If the work (or a part of the work) is like the job you are applying for, complete all parts of the experience block just as you would for a paying job. You may receive credit for work experience with religious, community, welfare, service, and other organizations.

- INCLUDE MILITARY SERVICE--You should complete all parts of the experience block just as you would for a non-military job, including all supervisory experience. Describe each major change of duties or responsibilities in a separate experience block.
- IF YOU NEED MORE SPACE TO DESCRIBE A JOB--Use sheets of paper the same size as this page (be sure to include all information we ask for in A and B below). On each sheet show your name, Social Security Number, and the announcement number or job title.
- IF YOU NEED MORE EXPERIENCE BLOCKS, use the SF 171-A or a sheet of paper.
- IF YOU NEED TO UPDATE (ADD MORE RECENT JOBS), use the SF 172 or a sheet of paper as described above.

A Name and address of employer's organization (include ZIP Code, if known) State of Oregon Office of the Governor State Capitol Salem, OR 97310	Dates employed (give month, day and year)		Average number of hours per week	Number of employees you supervise
	From: 6/1/92 To: Present		80	2
	Salary or earnings		Your reason for wanting to leave	
	Starting \$ per Ending \$ per		Job will terminate	

Your immediate supervisor: Governor
Name: Barbara Roberts
Area Code: 503 Telephone No.: 378-3111
Exact title of your job: Senior Policy Advisor
If Federal employment (civilian or military) list series, grade or rank, and, if promoted in this job, the date of your last promotion: Natural Resources

Description of work: Describe your specific duties, responsibilities and accomplishments in this job, including the job title(s) of any employees you supervise. If you describe more than one type of work (for example, carpentry and painting, or personnel and budget), write the approximate percentage of time you spent doing each.

Advise Governor on all natural resource and environmental issues, including water resource, fish, wildlife, forest, park, energy, etc. Coordinate policy among all natural resource agencies of the state, working with agency directors, board members, and staffs. Deal with and resolve policy conflicts. Prepare correspondence responding to citizen concerns, and deal with citizen telephone inquiries. Recommend people for appointed positions. Chair numerous resource issue committees (Water quality, national estuary, hazardous materials, ocean policy, etc). Work with tribal governments and colleagues in other states on regional and national issues. Coordinate with federal agency officials on fishery, forest, scenic waterway, and other issues. Represent the Governor in all resource/environmental circumstances and events where she is unable to be present.

For Agency Use (skill codes, etc.)

B Name and address of employer's organization (include ZIP Code, if known) Lewis & Clark Law School SW Terwilliger Blvd. Portland, OR 97219	Dates employed (give month, day and year)		Average number of hours per week	Number of employees you supervised
	From: 7/89 To: 5/31/92		65	N/A
	Salary or earnings		Your reason for leaving	
	Starting \$ per Ending \$ App.		To accept position with the Governor	

Your immediate supervisor: Dean
Name: Steve Kanter
Area Code: 503 Telephone No.: 768-6601
Exact title of your job: Asst. Prof.
If Federal employment (civilian or military) list series, grade or rank, and, if promoted in this job, the date of your last promotion:

Description of work: Describe your specific duties, responsibilities and accomplishments in this job, including the job title(s) of any employees you supervised. If you describe more than one type of work (for example, carpentry and painting, or personnel and budget), write the approximate percentage of time you spent doing each.

Teaching law classes (water law, administrative law, civil procedure); research and writing in natural resource areas; normal load of committee/administrative duties; supervising student research and writing (generally in natural resource/environmental area); active in legal community (speaking, bar committee work).

For Agency Use (skill codes, etc.)

Standard Form 171-A-Continuation Sheet for SF 171

Form Approved:
OMB No. 3206-001

• Attach all SF 171-A's to your application at the top of page 3.

1. Name (Last, First, Middle Initial) Squier, Anne W.	2. Social Security Number 019-30-0332
3. Job Title or Announcement Number You Are Applying For	4. Date Completed

ADDITIONAL WORK EXPERIENCE BLOCKS

<input type="checkbox"/> Name and address of employer's organization (include ZIP Code, if known) State of Oregon Department of Justice Salem, OR 97310	Dates employed (give month, day and year) From: 12/84 To: 7/89		Average number of hours per week 45	Number of employee you supervised NA
	Salary or earnings Starting \$ _____ per _____ Ending \$ _____		Your reason for leaving To accept full t law teaching posi	
Your immediate supervisor Name Don Arnold Area Code 503 Telephone No. 378-4620		Exact title of your job Asst. Atty. General		

Description of work: Describe your specific duties, responsibilities and accomplishments in this job, including the job title(s) of any employees you supervised. If you describe more than one type of work (for example, carpentry and painting, or personnel and budget), write the approximate percentage of time you spent doing each.

General Counsel for agencies such as Water Resources, Parks, State Lands; advice on rule formulation, interpretation; statutory interpretation; opinion drafting. Gave advice to governing bodies in meetings and in writing. Cooperate with attorneys in trial and appellate divisions as needed. Represent agencies in negotiations (eg with tribal governments on fish and wildlife or water issues).

During this period I also taught Water Law as an adjunct professor one semester each year (evenings)

For Agency Use (skill codes, etc.)

<input type="checkbox"/> Name and address of employer's organization (include ZIP Code, if known) Bonneville Power Administration Portland, OR	Dates employed (give month, day and year) From: 2/27/82 To: 12/14/84		Average number of hours per week 45	Number of employee you supervised 0
	Salary or earnings Starting \$ _____ per _____ Ending \$ _____		Your reason for leaving To accept AAG posi in state Dept of J	
Your immediate supervisor Name Harvard Spigal Area Code 503 Telephone No. 230-3000		Exact title of your job Law Clerk, then Attorney		

If Federal employment (civilian or military) list series, grade or rank, and, if promoted in this job, the date of your last promotion
Do not have; will obtain needed

Description of work: Describe your specific duties, responsibilities and accomplishments in this job, including the job title(s) of any employees you supervised. If you describe more than one type of work (for example, carpentry and painting, or personnel and budget), write the approximate percentage of time you spent doing each.

Analyzing issues related to non-firm power rate calculations. Conducted discovery, participated in administrative hearing, prepared witnesses. With colleague, generated theory upon which rates for sale of nonfirm power to California were ultimately approved. Familiar with energy regulation, Northwest Power Planning Council, etc.

For Agency Use (skill codes, etc.)

Application of Anne W. Squier

Use this area to continue your work experience. Write the corresponding job number from the job being continued. If you still need more space, you may attach additional sheets. REMEMBER to include all information as stated in the instructions under the Work History section.

(continued)

Instructions indicate that "volunteer" activities relevant to this application should be listed. Among the many such activities shown on my resume, I would highlight the following service:

- Oregon Water Policy Review Board, 1975 -76; Chair for several months; active participant in Oregon's initial determination not to support construction of Elk Creek Dam, after extensive hearing, fact analysis, and policy evaluation.
- Oregon Land Conservation and Development Commission, 1976 - '84. Particular involvement in drafting and adoption of Coastal Goals; development of Metro Urban Growth Boundary; formulation of detailed housing policy, etc. Extensive contact with local government officials and planners; advocate for local citizen involvement.
- Oregon 2000 Commission - considered innovative ways to drive Oregon's future growth and yet maintain quality of life and strong economy. Report unfortunately was largely subsumed in changing of administrations.
- Oregon Environmental Quality Commission, October 1991 - present. As a relative newcomer to this Commission, have not had time to show concrete impacts of my service; have raised several issues for increased attention, such as need for greater integration of water quality and water quantity administration, etc.

How did you learn about this position? ☒ Newspaper ☐ Jobline ☒ Friend

☐ Employment Office ☒ State Employee or Agency

Other _____

KEEP A COPY OF YOUR APPLICATION

MAIL YOUR APPLICATION, ALONG WITH THE TEST, SUPPLEMENT, OR ANY OTHER NECESSARY ATTACHMENTS TO THE AGENCY AND ADDRESS LISTED ON EACH JOB ANNOUNCEMENT.

MULTIPLE CHOICE TESTS ARE GIVEN AT VARIOUS TIMES AND LOCATIONS AROUND THE STATE. YOU WILL BE NOTIFIED OF TESTING TIMES AND LOCATIONS AFTER YOUR APPLICATION IS PROCESSED.

MEETING DATE: FEB 05 1998
AGENDA NO: R-6
ESTIMATED START TIME: 10:40am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Columbia River Gorge Issues Update

BOARD BRIEFING:

DATE REQUESTED: 2/5/98

REQUESTED BY: Chair Stein

AMOUNT OF TIME NEEDED: 30-45 Minutes

REGULAR MEETING:

DATE REQUESTED: _____

AMOUNT OF TIME NEEDED: _____

DEPARTMENT: Nondepartmental

DIVISION: Chair's office

CONTACT: Delma Farrell

TELEPHONE #: 248-3953

BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: Blair Batson, Out-going Gorge Commissioner

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Briefing on issues addressed during the term of out-going Columbia River Gorge Commissioner Blair Batson and discussion of issues to be addressed during next four years.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT

MANAGER: _____

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
98 JAN 23 AM 11:04

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES