ANNOTATED MINUTES

Tuesday, August 10, 1999 - 9:30 AM
Multnomah County Courthouse, Boardroom 602
1021 SW Fourth Avenue, Portland

BOARD BRIEFINGS

Chair Beverly Stein convened the meeting at 9:29 a.m., with Vice-Chair Diane Linn, Commissioners Sharron Kelley, Lisa Naito and Serena Cruz present.

B-1 Child Abuse Receiving Center. Presented by Craig Opperman, Dan Steffey, Helen Smith and Brian Carleton.

DAN STEFFEY, CRAIG OPPERMAN, JOHN BARR, JULIE WELLS, BRIAN CARLETON, HELEN SMITH, KATHERINE JANSEN-BYRKIT, DEBBIE MCCABE, KAY TORAN, MAUREEN BARTON AND DAVE BOYER PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. BOARD CONSENSUS TO DISCUSS BOND ISSUES ON SEPTEMBER 9, 1999.

B-2 Multnomah County Oregon 1999 Financial Condition Audit. Presented by Suzanne Flynn and Judith DeVilliers.

SUZANNE FLYNN AND JUDITH DEVILLIERS PRESENTATION. MS. FLYNN, MS. DEVILLIERS, DAVE BOYER AND DAVE WARREN RESPONSE TO BOARD QUESTIONS AND DISCUSSION.

There being no further business, the meeting was adjourned at 11:34 a.m.

Thursday, August 12, 1999 - 9:30 AM
Multnomah County Courthouse, Boardroom 602
1021 SW Fourth Avenue, Portland

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:32 a.m., with Vice-Chair Diane Linn, Commissioners Sharron Kelley, Lisa Naito and Serena Cruz present.

CHAIR STEIN INTRODUCED VISITING COLUMBIA COUNTY COMMISSIONER RITA BERNHARD.

REGULAR AGENDA

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

DEPARTMENT OF HEALTH

UC-1 Notice Of Intent to Partner with Oregon Health Division in an Application for Funding from the Centers for Disease Control to Establish a Correctional Health Tracking and Treatment Enhancement Project

COMMISSIONER KELLEY MOVED AND COMMISSIONER LINN SECONDED, APPROVAL OF UC-1. KATHY PAGE EXPLANATION. NOTICE OF INTENT UNANIMOUSLY APPROVED.

PUBLIC COMMENT

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

JEFF BACHRACH SUBMITTED LETTER ON BEHALF OF CLIENTS WESTERN STATES REQUESTING BOARD TO CHANGE ITS DECISION AND DELETE JUNE 17, 1999 FINDING FROM LAND USE CASE. COUNTY COUNSEL THOMAS SPONSLER EXPLANATION OF SANDRA DUFFY LEGAL OPINION. BOARD CONSENSUS TO LEAVE DECISION AS IS.

DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE

R-2 Budget Modification DCJ-01 Adding $900,363 in Federal Juvenile Accountability Block Grant Revenue to the Counseling/Court Services Division Budget

COMMISSIONER KELLEY MOVED AND COMMISSIONER LINN SECONDED, APPROVAL OF R-2. JULIE NEBURKA EXPLANATION AND RESPONSE TO BOARD QUESTIONS. CHAIR STEIN COMMENTS IN SUPPORT. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

R-3 Results of Mediation/Compromise Efforts Between the Trust for Public Lands and Crown Point Country Historical Society and Board Decision Following June 8, 1999 De Novo Hearing on Appeal of Hearings Officer Decision Regarding Denial of Appellants (Crown Point Country Historical Society) Appeal of NSA 26-94, Allowing Applicant (Trust for Public Lands) to Remove Sixteen Structures at Bridal Veil, Excluding Church and Post Office

ROBERT TRACHTENBERG EXPLANATION AND REQUEST FOR ADDITIONAL TIME FOR THE PARTIES TO REVIEW A PROPOSAL FROM TRUST FOR PUBLIC LANDS PRIOR TO BOARD DECISION. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER LINN, RESULTS OF MEDIATION AND HEARING DECISION UNANIMOUSLY CONTINUED TO THURSDAY, SEPTEMBER 9, 1999.

R-4 Budget Modification CCFC 2000-02 Approving Revenue Stream Exchange with the Department of Community and Family Services

COMMISSIONER KELLEY MOVED AND COMMISSIONER LINN SECONDED, APPROVAL OF R-4. JEANETTE HANKINS EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

R-5 First Reading of an ORDINANCE Amending County Forfeiture Law (MCC 15.350, et seq.) Providing for Vehicle Forfeiture for Repeat Driving Under the Influence or Driving While Suspended or Revoked

ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER NAITO MOVED AND COMMISSIONER LINN SECONDED, APPROVAL OF FIRST READING. COMMISSIONER NAITO, SHERIFF DAN NOELLE, CONGRESSMAN EARL BLUMENAUER, JUDGE DOROTHY BAKER, ASSISTANT DISTRICT ATTORNEY CHRIS CAREY, DRUNK DRIVER SURVIVOR TIANA TOZER, PORTLAND POLICE OFFICER JIM FERRARIS, TROUTDALE POLICE CHIEF MARK BERREST, AND GRESHAM POLICE OFFICER JIM PENINGER PRESENTATIONS, TESTIMONY IN SUPPORT AND RESPONSE TO BOARD QUESTIONS. BARBARA FIETTA TESTIMONY IN SUPPORT. JERRY HOFFMAN TESTIMONY IN OPPOSITION. JEFFREY BIRRER, JASON SNIDER, TIM WHITEHEAD, MARLENE WIRTANEN, E.H. COLLINS, TOM BUHLER, RAY MATHIS, PHILLIP WINDELL DOUG BROWN, PONTINE ROSTECK, CAROLYN HARRINGTON, ROSANNE LEE AND JACQUENETTE MCINTIRE TESTIMONY IN SUPPORT. MR. WINDELL ADVISED TARGET CITY IS WILLING TO PROVIDE BOARD WITH STATISTICS AND DUII LITERATURE ON WAYS TO ALLEVIATE RECIDIVISM. COMMISSIONER CRUZ COMMENTS IN SUPPORT OF QUALITY ALCOHOL AND DRUG TREATMENT AND CONCERN OVER POTENTIAL RACISM. DISTRICT 4 STAFF ASSISTANT ROBERT TRACHTENBERG SUBMITTED MEMO FROM COMMISSIONER KELLEY AND ADVISED THE ORDINANCE WOULD ONLY APPLY IN UNINCORPORATED AREAS. COMMISSIONER LINN COMMENTS IN SUPPORT OF MORE ALCOHOL AND DRUG TREATMENT BEDS. COMMISSIONER KELLEY COMMENTS IN APPRECIATION OF TARGET CITY OFFER TO

PROVIDE DATA AND URGED THAT BOARD GET CLARIFICATION OF ADMINISTRATATIVE RULES AND ADMINISTRATIVE IMPLICATIONS OF A SEIZURE AND FORFEITURE IMPOUNDMENT. CHAIR STEIN ADVISED SHE WANTS PROGRAM TO HAVE A REVENUE NEUTRAL FINANCIAL IMPACT, WITH FORFEITURE FUNDS GOING TO ALCOHOL AND DRUG TREATMENT RATHER THAN LAW ENFORCEMENT SERVICES, AND THAT THERE BE AN EVALUATION COMPONENT TO THE PROGRAM. COMMISSIONER NAITO COMMENTS IN SUPPORT, EXPLAINING PROPOSED ORDINANCE WAS MODELED AFTER THE DESCHUTES COUNTY VERSION, AND THAT A DRAFT FINANCIAL AND OPERATIONAL PLAN WILL BE PROVIDED PRIOR TO THE SECOND READING. FIRST READING UNANIMOUSLY APPROVED. SECOND READING THURSDAY, OCTOBER 14, 1999.

The meeting was recessed at 11:43 a.m. and reconvened at 11:46 a.m.

DEPARTMENT OF HEALTH

R-6 RESOLUTION Declaring Intent to Extend Agreement for Exclusive Emergency Ambulance Services, Contract No. 200726, with Buck Medical Services, dba American Medical Response, Northwest (AMR) and Authorizing Negotiations for Extension

HEALTH OFFICER DR. GARY OXMAN INTRODUCTIONS. COUNTY AUDITOR SUZANNE FLYNN AND CITY OF PORTLAND AUDITOR DICK TRACY (ON BEHALF OF GARY BLACKMER) PRESENTATION OF JOINT REVIEW OF THE MULTNOMAH COUNTY AMBULANCE CONTRACTOR'S COMPLIANCE WITH THE URBAN RESPONSE TIME REQUIREMENT, AND RESPONSE TO BOARD QUESTIONS AND COMMENTS IN APPRECIATION. DR.OXMAN EXPLANATION OF REVISED HEALTH DEPARTMENT RECOMMENDATIONS OF

AMBULANCE FRANCHISE AGREEMENT RENEWAL IN RESPONSE TO AUDIT CONCERNING RELIABILITY OF RESPONSE TIME COMPLIANCE. COUNSEL THOMAS SPONSLER EXPLANATION OF REVISION TO SUBSTITUTE RESOLUTION. PAUL THALHOFER OF TROUTDALE TESTIMONY IN SUPPORT OF EXTENSION. GRESHAM CITY COUNCILOR VICKI THOMPSON TESTIMONY IN SUPPORT OF COUNTY PUTTING CONTRACT OUT FOR BID. GRESHAM DEPUTY CHIEF RILEY CATON TESTIMONY EXPRESSING CONCERN REGARDING AMR RESPONSE TIME TO GRESHAM. JON ALTMANN AND NIC WILDEMAN OF RURAL METRO CORP TESTIMONY IN SUPPORT OF COUNTY PUTTING CONTRACT OUT TO BID. JACQUENETTE MCINTIRE OF GRESHAM TESTIMONY IN OPPOSITION TO EXTENSION. JERRIS HEDGES OF OHSU TESTIMONY IN SUPPORT OF EXTENSION. TERRY MARSH OF AMR TESTIMONY IN SUPPORT OF EXTENSION. BENSON MEYERS OF ROSEMONT SCHOOL TESTIMONY IN SUPPORT OF EXTENSION. AMR PARAMEDICS LUCIE DRUM AND SUSAN HOLTSCLAW TESTIMONY IN SUPPORT OF EXTENSION. JAY CAULK OF OREGON BURN CENTER TESTIMONY IN SUPPORT OF EXTENSION. NEAL DIETZ ON BEHALF OF GRESHAM FIREFIGHTERS TESTIMONY EXPRESSING CONCERN REGARDING RESPONSE TIMES AND IN SUPPORT OF COUNTY PUTTING CONTRACT OUT TO BID. AMR PARAMEDIC CHARLES SAVOIE TESTIMONY IN SUPPORT OF EXTENSION. BOB BRENNAN TESTIMONY IN SUPPORT OF EXTENSION. AMR PARAMEDIC RANDY LAUER TESTIMONY IN SUPPORT OF EXTENSION. MARK WIENER OF RURAL METRO CORP TESTIMONY IN SUPPORT OF COUNTY PUTTING CONTRACT OUT TO BID. JERRY SHOREY ON BEHALF OF AMALGAMATED TRANSIT UNION, TESTIMONY

IN SUPPORT OF EXTENSION, WITH COUNTY CONTRACT REVIEW OF AMR EMPLOYEE SALARY, TRAINING AND OTHER ISSUES. PORTLAND AREA PARAMEDIC ALLIANCE REPRESENTATIVE JOHN PRAGGASTIS TESTIMONY IN SUPPORT OF EXTENSION, WITH COUNTY CONTRACT REVIEW OF VARIOUS ISSUES DESCRIBED IN LETTER HE SUBMITTED TO BOARD. KAISER PHYSICIAN REGINA ATCHESON TESTIMONY IN SUPPORT OF EXTENSION. AMR PARAMEDIC JEFF BIRRER TESTIMONY IN SUPPORT OF EXTENSION, WITH COUNTY CONTRACT REVIEW OF AMR EMPLOYEE SALARY, TRAINING AND OTHER ISSUES. PARAMEDIC REPRESENTATIVE RUFUS FULLER TESTIMONY IN SUPPORT OF EXTENSION. COMMISSIONER NAITO MOVED AND COMMISSIONER LINN SECONDED, APPROVAL OF SUBSTITUTE RESOLUTION. IN RESPONSE TO A QUESTION OF COMMISSIONER NAITO, DR. OXMAN ADVISED HE WAS WILLING AND MOST ANXIOUS TO DISCUSS AMR RESPONSE TIME CONCERNS WITH THE CITY OF GRESHAM. DR. OXMAN RESPONSE TO QUESTIONS OF COMMISSIONER CRUZ REGARDING GEOGRAPHIC AREA RESPONSE TIMES OF 8 MINUTES OR LESS 90% OF THE TIME. MR. SPONSLER EXPLANATION IN RESPONSE TO QUESTIONS OF COMMISSIONER KELLEY REGARDING CONTRACT AND ORDINANCE LANGUAGE PERTAINING TO EQUITABLE SERVICE AND EQUALIZED RESPONSE TIME. COMMISSIONERS LINN, NAITO AND CRUZ COMMENTS IN SUPPORT OF EXTENSION. COMMISSIONER KELLEY COMMENTS IN SUPPORT OF COUNTY PUTTING CONTRACT OUT TO BID. CHAIR STEIN COMMENTS IN SUPPORT OF EXTENSION. IN RESPONSE TO A QUESTION OF CHAIR STEIN, TERRY MARSH ADVISED HE SHARES THE CONCERNS EXPRESSED TODAY AND WILL

WORK TO ADDRESS ISSUES. RESOLUTION 99-162 APPROVED, WITH COMMISSIONERS LINN, NAITO, CRUZ AND STEIN VOTING AYE, AND COMMISSIONER KELLEY VOTING NAY.

COMMISSIONER COMMENT/LEGISLATIVE ISSUES

R-7 Opportunity (as Time Allows) for Commissioners to Comment on Non-Agenda Items or to Discuss Legislative Issues.

NO ONE WISHED TO COMMENT.

There being no further business, the meeting was adjourned at 1:35 p.m.

OFFICE OF THE BOARD CLERK
FOR MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad

Deborah L. Bogstad

MULTNOMAH COUNTY, OREGON

BOARD OF COMMISSIONERS

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

Diane Linn, Commission Dist. 1
1120 SW Fifth Avenue, Suite 1500
Portland, Or 97204-1914
Phone: (503) 248-5220 FAX (503) 248-5440
Email: diane.m.linn@co.multnomah.or.us

Serena Cruz, Commission Dist. 2
1120 SW Fifth Avenue, Suite 1500
Portland, Or 97204-1914
Phone: (503) 248-5219 FAX (503) 248-5440
Email: serena.m.cruz@co.multnomah.or.us

Lisa Naito, Commission Dist. 3
1120 SW Fifth Avenue, Suite 1500
Portland, Or 97204-1914
Phone: (503) 248-5217 FAX (503) 248-5262
Email: lisa.h.naito@co.multnomah.or.us

Sharron Kelley, Commission Dist. 4
1120 SW Fifth Avenue, Suite 1500
Portland, Or 97204-1914
Phone: (503) 248-5213 FAX (503) 248-5262
Email: sharron.e.kelley@co.multnomah.or.us

ANY QUESTIONS? CALL BOARD CLERK DEB BOGSTAD @ 248-3277
Email: deborah.l.bogstad@co.multnomah.or.us

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

AUGUST 10 & 12, 1999 BOARD MEETINGS

FASTLOOK AGENDA ITEMS OF INTEREST

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

Thursday, 9:30 AM, (LIVE) Channel 30
Friday, 10:00 PM, Channel 30
Sunday, 1:00 PM, Channel 30
Produced through Multnomah Community Television

Tuesday, August 10, 1999 - 9:30 AM
Multnomah County Courthouse, Boardroom 602
1021 SW Fourth Avenue, Portland

BOARD BRIEFINGS

B-1 Child Abuse Receiving Center. Presented by Craig Opperman, Dan Steffey, Helen Smith and Brian Carlton. 1 HOUR REQUESTED.

B-2 Multnomah County Oregon 1999 Financial Condition Audit. Presented by Suzanne Flynn and Judith DeVilliers. 45 MINUTES REQUESTED.

Thursday, August 12, 1999 - 9:30 AM
Multnomah County Courthouse, Boardroom 602
1021 SW Fourth Avenue, Portland

REGULAR MEETING

REGULAR AGENDA

PUBLIC COMMENT - 9:30 AM

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

DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE - 9:30 AM

R-2 Budget Modification DCJ-01 Adding $900,363 in Federal Juvenile Accountability Block Grant Revenue to the Counseling/Court Services Division Budget

NON-DEPARTMENTAL - 9:35 AM

R-3 Results of Mediation/Compromise Efforts Between the Trust for Public Lands and Crown Point Country Historical Society and Board Decision Following June 8, 1999 De Novo Hearing on Appeal of Hearings Officer Decision Regarding Denial of Appellants (Crown Point Country Historical Society) Appeal of NSA 26-94, Allowing Applicant (Trust for Public Lands) to Remove Sixteen Structures at Bridal Veil, Excluding Church and Post Office

R-4 Budget Modification CCFC 2000-02 Approving Revenue Stream Exchange with the Department of Community and Family Services

R-5 First Reading of an ORDINANCE Amending County Forfeiture Law (MCC 15.350, et seq.) Providing for Vehicle Forfeiture for Repeat Driving Under the Influence or Driving While Suspended or Revoked

DEPARTMENT OF HEALTH - 10:45 AM

R-6 RESOLUTION Declaring Intent to Extend Agreement for Exclusive Emergency Ambulance Services, Contract No. 200726, with Buck Medical Services, dba American Medical Response, Northwest (AMR) and Authorizing Negotiations for Extension

COMMISSIONER COMMENT/LEGISLATIVE ISSUES - 11:45 PM

R-7 Opportunity (as Time Allows) for Commissioners to Comment on Non-Agenda Items or to Discuss Legislative Issues.

MEETING DATE: AUG 12 1999

AGENDA NO.: DC-1

ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Notice of Intent

BOARD BRIEFING *Date Requested:* _____

Requested By: _____

Amount of Time Needed: _____

REGULAR MEETING *Date Requested:* August 12, 1999

Amount of Time Needed: ~~Consent Calendar~~ 2 minutes

DEPARTMENT: Health *DIVISION:* Corrections Health

CONTACT: Kathy Page *TELEPHONE #:* 248-3959

BLDG/ROOM #: 119/4/Med

PERSON(S) MAKING PRESENTATION: ~~n/a~~ KATHY PAGE

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Notice of Intent to partner with Oregon Health Division in an application for funding from the Centers for Disease Control to establish a Correctional Health Tracking and Treatment Enhancement Project

99 AUG 11 AM 10:42

OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

Or

DEPARTMENT MANAGER: Jan Sinclair for Lillian Shirley

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk at 248-3277

2/97

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

MEMORANDUM

TO: Beverly Stein, Chair

FROM: Kathy Page, Manager Corrections Health Division

THROUGH: Lillian Shirley, Director Dan Sender for Lillian Shirley

SUBJECT: Notice of Intent to partner with Oregon Health Division in an application for funding to Centers for Disease Control for a Correctional Health Tracking and Treatment Enhancement Project

DATE: August 10, 1999

REQUESTED PLACEMENT DATE: August 12, 1999

I. Recommendation/Action Requested

The Multnomah County Health Department seeks approval to partner with Oregon Health Division in requesting funding from the Centers for Disease Control to establish a Correctional Health Tracking and Treatment Enhancement Project.

II. Background/Analysis

The Oregon Health Division (OHD) is currently a recipient of Centers for Disease Control Comprehensive STD Prevention Systems funding. As a current recipient of funds, OHD is eligible to compete for FY 2000 supplemental funding. For its supplemental funding project, OHD is proposing to partner with Multnomah County Health Department Corrections Health Division to establish a data tracking project that would monitor the prevalence of STDs and tuberculosis infection in county corrections facilities. The proposed program will expand the current manual system for collecting STD screening data, and establish a standardized tracking system that includes data on tuberculin skin testing. The project will design and implement an electronic data collection management and reporting system.

III. Financial Impact

The Health Department will contribute $15,000 in-kind to the project through an existing Office Assistant II position. The OAII currently manually compiles demographic and medical data (STD and TB) for tracking and reports. This position will be trained to enter data into the new

electronic data system, and to produce reports from the new system. In addition, the project will support a new .5 FTE OAII position.

IV. Legal Issues
None

V. Controversial Issues
None

VI. Link to Current County Policies
The project is consistent with the Health Department strategic objective to control and reduce the incidence of communicable diseases.

VII. Citizen Participation
Not Applicable

VIII. Other Government Participation
This collaborative project between OHD and Multnomah County coordinates public health and corrections efforts in working to improve the health of incarcerated individuals, and to impact the health of the community.

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME JEFF BACHRACH

ADDRESS 1727 NW Hoyt
Ptld 97209

PHONE 222-4402

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC PUBLIC COMMENT R-1

GIVE TO BOARD CLERK

RAMIS
CREW
CORRIGAN &
BACHRACH, LLP
ATTORNEYS AT LAW

1727 N.W. Hoyt Street
Portland, Oregon 97209

(503) 222-4402
Fax: (503) 243-2944

JEFF H. BACHRACH
MARK L. BUSCH
D. DANIEL CHANDLER++
AMY A. CHESNUT
CHARLES E. CORRIGAN*
STEPHEN F. CREW
HEIDI T. DECKER***
MARTIN C. DOLAN
GARY FIRESTONE*
WILLIAM E. GAAR*
DAVID H. GRIGGS
G. FRANK HAMMOND*
ALLISON P. HENSEY+
KELLY M. MANN
T. CHAD PLASTER*
TIMOTHY V. RAMIS
WILLIAM J. STALNAKER

JAMES M. COLEMAN
DOMINIC G. COLLETTA**
JOHN R. McCULLOCH, JR.
OF COUNSEL

SALEM OFFICE
21 Oaks Office Building
525 Glen Creek Rd., NW
Suite 300
Salem, Oregon 97304

(503) 363-9604
Fax: (503) 363-9626

SOUTHWEST WASHINGTON OFFICE
First Independent Place
1220 Main Street, Suite 451
Vancouver, Washington
98660-2964

(360) 699-7287
Fax: (360) 699-7221

BOARD OF
COUNTY COMMISSIONERS
99 AUG 11 PM 4:02
MULTNOMAH COUNTY
OREGON

August 10, 1999

Beverly Stein, Chair
Diane Linn, Commissioner
Serena Cruz, Commissioner
Lisa Naito, Commissioner
Sharron Kelley, Commissioner
1120 SW Fifth Avenue
Suites 1515 and 1500
Portland, OR 97204

Re: Correction to Final Order No. 99-113

Dear Chair Stein and Commissioners:

I will be appearing before you at this Thursday's board meeting to follow up on the second part of the request made in my letter to you of July 27, 1999. (For your convenience, a copy of that letter is attached.)

I will be asking the board to remand and delete finding 4(b) from Final Order No. 99-113 (denying PREs 16-98, 17-98 and 18-98) adopted on June 17, 1999. That is the finding which states, in effect, that the board's denial is based on the 1986 Oregon Administrative Rule, rather than the denial being based solely on LUBA's remand of Ordinance 903.

As set out in my letter of July 27, the board expressly stated at its June 10 hearing that it was not taking any position regarding the interpretation or applicability of the 1986 OAR. Nevertheless, the final order presented to the board on June 17 contained finding 4(b), contradicting the position taken a week before.

Two weeks ago, the board deleted a finding about the 1986 OAR from the ordinance repealing Ordinance 903. To be consistent with that action, and consistent with the position set out at the June 10 hearing, finding 4(b) attached to Final Order No. 99-113 needs to also be deleted.

Beverly Stein, Chair
Diane Linn, Commissioner
Serena Cruz, Commissioner
Lisa Naito, Commissioner
Sharron Kelley, Commissioner

I recognize that the county's policy is to base its land use decisions on criteria at least as strict as **applicable** state law. Deleting finding 4(b), however, is not inconsistent with that policy because the board's position, as stated at the June 10 hearing and reiterated by your 4-1 vote on July 29, is that you have not yet ruled on whether the 1986 OAR is applicable to this case.

The County Counsel's office did not provide me or Western States with an advance copy of the proposed findings for Final Order No. 99-113 nor did we receive notice of the June 17 hearing when they were adopted. Based on the transcript of the hearing, it cannot be determined whether the commissioners knowingly adopted finding 4(b) and reversed the position they stated the prior week. It would be unfair to let the finding stand under those circumstances.

The finding has significant legal implications for my client and I respectfully urge the board to have it deleted.

Very truly yours,

Jeff H. Bachrach

JHB/jlk

cc: Thomas Sponsler
Western States Development Corp.

C:\orcc\JLK\JHB\Western States\commissionerltr3.wpd

RAMIS
CREW
CORRIGAN &
BACHRACH, LLP
ATTORNEYS AT LAW

1727 N.W. Hoyt Street
Portland, Oregon 97209

(503) 222-4402
Fax: (503) 243-2944

JEFF H. BACHRACH
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DOMINIC G. COLLETTA**
JOHN R. McCULLOCH, JR.
OF COUNSEL

SALEM OFFICE
21 Oaks Office Building
525 Glen Creek Rd., NW
Suite 300
Salem, Oregon 97304

(503) 363-9604
Fax: (503) 363-9626

SOUTHWEST
WASHINGTON OFFICE
First Independent Place
1220 Main Street, Suite 451
Vancouver, Washington
98660-2964

(360) 699-7287
Fax: (360) 699-7221

July 27, 1999

Beverly Stein, Chair
Diane Linn, Commissioner
Serena Cruz, Commissioner
Lisa Naito, Commissioner
Sharron Kelley, Commissioner
1120 SW Fifth Avenue
Suites 1515 and 1500
Portland, OR 97204

Re: Repeal of Ordinance 903

Dear Chair Stein and Commissioners:

The proposed ordinance to repeal Ordinance 903 that will be before you this Thursday (July 29) contains a legal finding that is contrary to the position taken by the board at your hearing June 10, 1999. The finding is unnecessary and should be deleted from the ordinance.

The legal finding concerns the 1986 Oregon Administrative Rule (OAR 660-05-030) that was discussed at the board's June 10 hearing. At that hearing, in response to a request for clarification that I made on behalf of Western States, the board expressly acknowledged that it was not taking any position regarding the 1986 OAR or whether or not the rule would apply to the new applications Western States would be submitting. Chair Stein stated that "our process is to have the hearings officer make the original decision which is then appealed to us and then we can make [the determination]."

As the transcript of the June 10 hearing makes clear, the board voted to deny Western States' three applications and to subsequently repeal Ordinance 903 because of LUBA's determination that Ordinance 903 contains procedural defects. Yet the ordinance repealing Ordinance 903, as currently drafted, would have this board make the finding that Ordinance 903 is also being repealed because it violates the 1986 OAR.

The resolution of the legal questions about the 1986 OAR could significantly affect Western States' rights. The answer to those questions should be determined through the county's regular process. It is premature for the board to adopt any findings about the OAR until Western States has had an opportunity to submit the new applications and present the case, with a supporting legal memorandum, to the county's hearings officer. The issues can then be brought before this board on appeal if necessary. By slipping the findings about the 1986 OAR into the repeal ordinance, the process has been unfairly short-circuited to Western States' distinct disadvantage.

Western States' rights have already been prejudiced in this same manner. The final order denying Western States' three applications adopted by this board on June 17 included a similar finding indicating that the denial was also based on the 1986 OAR, rather than just on LUBA's remand decision. I did not appear at that hearing because neither Western States nor my office was given an advance copy of the final order nor were we even notified of the hearing date for adoption of the final order.

According to a transcript of the June 17 hearing, several commissioners commented that they too had just received the final order and had not had an opportunity to review it. The following is an excerpt from the transcript of that hearing:

Comm. Naito: This is just the adoption of the final order that we did adopt last week?

Sandra Duffy: Yes it is.

* * *

Comm. Cruz: I just want to make sure that we're not stating that we found anything about the underlying farm management plans.

* * *

Comm. Naito: To me it looks like it's all based on Ordinance 903.

Comm. Linn: That's what it looks like to me too. Approval of the ordinance because we . . . repealed 903.

* * *

Comm. Naito: It's really all related to 903, the Ordinance 903. . .

Sandra Duffy: That's right. . .

Comm. Naito: Is that correct in that we based our decision based on the fact that that ordinance had been declared partially invalid by the state? Okay.

Comm. Linn: Okay, are we ready to vote?

It was never pointed out to the commissioners that the order contained a finding about the 1986 OAR, despite the fact that the board said at the June 10 hearing it was not making any determination about the relevance or interpretation of the OAR.

If you go forward with the repeal of Ordinance 903, I would urge you to please make clear that you are doing so solely because of LUBA's remand decision and not because of any determinations you have reached regarding the 1986 OAR. That is the position set out by this board at the June 10 hearing.

Assuming that is still the board's position, then I would also ask that you reconsider the final order adopted on June 17 (No. 99-113) and delete finding 4(b), which contains a conclusion about the 1986 OAR. If finding 4(b) remains of record, then my client's rights will have been compromised without the benefit of a public notice or public hearing.

Thank you very much for your attention to this matter.

Very truly yours,

Jeff H. Bachrach

cc: Western States Development Corporation
Thomas Sponsler

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MEMORANDUM

To: Board of County Commissioners

From: Sandra Duffy, Assistant County Counsel

Re: Final Order No. 99-113

Date: August 11, 1999

I have just reviewed the letter from Mr. Bachrach to the Board on the above-referenced matter. The Board does not have jurisdiction to do a voluntary remand of this matter back from LUBA. ORS 197.830 (12)(b) provides:

> At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, the local govemment or state agency may withdraw its decision for purposes of reconsideration.

The record in the appeal of PREs 16-98, 17-98 and 18-98 was filed with LUBA on July 29, 1999. It is too late for the Board to withdraw its decision for purposes of reconsidering the finding it made.

BUDGET MODIFICATION NO. DCJ00_01

[For Clerk's Use] Meeting Date AUG 12 1999

Agenda # R-2

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

DEPARTMENT: Community Justice
DIVISION: Counseling Svcs
CONTACT: Meganne Steele
TELEPHONE: 248-3961

***NAME[S] OF PERSON MAKING PRESENTATION TO BOARD:** Bill Morris/John Miller

SUGGESTED AGENDA TITLE **[To assist in preparing a description for the printed agenda]**

The Department of Community Justice Budget Modification # DCJ00_01 Adds $900,363 In Federal Juvenile Accountability Block Grant Revenue To The Department's Counseling/Court Services Division.

ESTIMATED TIME NEEDED ON THE AGENDA: N/A

2. **DESCRIPTION OF MODIFICATION** **[Explain the changes this Bud Mod makes. What budget does it increase? What do the changes accomplish? Where does the money come from? What budget is increased or reduced? Attach additional information if you need more space].**
Personnel changes are shown in detail on the attached. Yes

This budget modification adds a 1.0 FTE Juvenile Counselor position, Temporary personnel coverage, $786,730 Contracted Services for youth, staff Supplies and Telephone expense, and the purchase of a cage car for juvenile offender transport. All expense is covered by grant revenue except Temporary personnel. That $19,925 cost is covered by the Department's 46% share of the grant's Indirect Cost support. The remaining 54%, related to County support services, increases General fund Contingency by $23,450.

3. **REVENUE IMPACT** **[Explain revenues being changed and the reason for the change]**

- Increases Rev Code 2104 by $900,363.
- Increases Insurance Services Reimbursement by $4,971.
- Increases general fund Contingency by $23,450 Indirect Cost support.

99 AUG -3 PM 12:06
MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS

4. **CONTINGENCY STATUS [to be completed by Finance/Budget]**

_____ **Contingency before this modification [as of** _____ **$**_____
[Specify Fund] **[Date]**

After this modification **$**_____

Marie H. Eighmey 6/30/99 — **[Originated By] [Date]**
E Clausen/MB 7-2-99 — **[Department Manager] [Date]**
[signature] 8-3-99 — **[Finance/Budget] [Date]**
[Employee Relations] [Date]
Deborah Bogstad 8/12/99 — **[Board Approval] [Date]**

DOCUMENT NUMBER: **ACTION:**

FUND	AGCY	ORG	ACT	REPT CATEG	OBJ CODE	CURR AMT	REV AMT	CHANGE	TOTAL	DESCRIPTION
156	22	2741		JABG	6060			786,730		Pass Thru Pay
156	22	2741		JABG	7100			40,753		Indirect Cost
									827,483	**Subtotal Org 2741**
156	22	2752		JABG	5100			39,543		Permanent
156	22	2752		JABG	5500			9,969		Salary Related
156	22	2752		JABG	5550			1,070		Insurance
156	22	2752		JABG	6230			250		Supplies
156	22	2752		JABG	7100			2,672		Indirect Cost
156	22	2752		JABG	7150			750		Telecommunications
									54,254	**Subtotal Org 2752**
156	22	2761		JABG	8400			18,626		Equipment (cage car)
									18,626	**Subtotal Org 2761**
									900,363	**Fund 156 DCJ**
100	22	2910		JABG	5200			15,474		Temporary
100	22	2910		JABG	5500			3,901		Salary Related
100	22	2910		JABG	5550			600		Insurance
									19,975	**Fund 100 DCJ**
									920,338	**Total All Funds, DCJ**
400	70	7531			6580			4,971	**4,971**	**Insurance**
100	75	9120			7700			43,425		**Contingency**
100	75	9120			7700			(19,975)		**Contingency**
									23,450	**Total Contingency**
								948,759	**948,759**	**TOTAL EXPENSE**

FUND	AGCY	ORG	ACT	REPT CATEG	REV SO.	CURR AMT	REV AMT	CHANGE	TOTAL	DESCRIPTION
156	22	2741		JABG	2104			827,483	**827,483**	**Juv Accountability Block Gr**
156	22	2752		JABG	2104			54,254	**54,254**	**Juv Accountability Block Gr**
156	22	2761		JABG	2104			18,626	**18,626**	**Juv Accountability Block Gr**
100	22	2910			7601			19,975	**19,975**	**General Fund**
400	70	7531			6612			4,971	**4,971**	**Insurance Svc Reimb**
100	75	7410			6602			23,450	**23,450**	**Indirect Cost**
								948,759	**948,759**	**TOTAL REVENUE**

5. ANNUALIZED PERSONNEL CHANGES

FUND	AGCY	ORG	FTE	JCN	POSITION TITLE	BASE PAY	SAL REL	INSUR	TOTAL
156	22	2752	1.00	6272	JCC	39,543	9,969	1,070	50,582
			1.00		**TOTAL ANNUAL**	**39,543**	**9,969**	**1,070**	**50,582**

6. CURRENT YEAR PERSONNEL DOLLAR CHANGES

FUND	AGCY	ORG	FTE	JCN	POSITION TITLE	BASE PAY	SAL REL	INSUR	TOTAL
156	22	2752	1.00	6272	JCC	39,543	9,969	1,070	50,582
									-
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			1.00		**TOTAL**	**39,543**	**9,969**	**1,070**	**50,582**

FY00 Federal Juvenile Accountability Incentive Block Grant - July 1, 1999 thru June 30, 2000

Description	FTE	DCJ Obj Code	Mult Cnty DCJ	DCJ Prof Svcs contract with: Portland Police	Incoming Revenue to DCJ. TOTAL DCJ	Incoming Revenue to DA. Mult Cnty DA	City of Gresham	Total
Personnel								
Youth Gang Outreach Worker	1.00			55006	55006			55006
Juv Court Counselor	1.00		50582		50582			50582
Deputy District Attorney	1.00				0	94442		94442
Senior Data Analyst	1.00			72487	72487			72487
Subtotal Personnel			**50582**	**127493**	**178075**	**94442**	**0**	**272517**
Contractual Services - Professional Services								
5 community providers - Youth Gang Consortium		6110	323132		323132			323132
IRCO - Asican Learning Center		6110	50000		50000			50000
1 community provider - Youth Offender Reception Ctr		6110	200000		200000			200000
Subtotal Contractual Services			**573132**	**0**	**573132**	**0**	**0**	**573132**
Materials/Services								
Brochures/translations				5000	5000			5000
Desk Supplies		6230	250	500	750	250		1000
Computer hardware/software/network		6230	0	6750	6750	2000		8750
Motor Pool: PDX vehicle rental, DA lease from pool		6330	0	5000	5000	12000		17000
Telecommunications		7150	750	1250	2000	1128		3128
Indirect Cost [DCJ = $51,582 Personnel + M&S plus $573,132 Comm Providers + $213,598 PDX Police contract = $838,312 x 5.18%; DA = $109,820 x 7.91%]		7100	43425	0	43425	8687		52112
Subtotal Materials/Services			**44425**	**18500**	**62925**	**24065**	**0**	**86990**
Capital								
Cage car for transport of juvenile offenders		8400	18626		18626			18626
Live Scan to capture fingerprints of booked juveniles				67605	67605			67605
Subtotal Capital			**18626**	**67605**	**86231**	**0**	**0**	**86231**
Total Federal Funds (does not include match)			**686765**	**213598**	**900363**	**118507**	**0**	**1018870**
Federal Grant Award total								**1018870**
***Fed Grant Award* less Total Fed Funds = Unpgm'd $s**								**0**

MULTNOMAH COUNTY OREGON

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

MEMORANDUM

TO: **BOARD OF COUNTY COMMISSIONERS**

FROM: **Meganne Steele**
Department of Community Justice

DATE: **July 1, 1999**

RE: **REQUEST FOR FY99 DCJ00_01 BUDGET MODIFICATION APPROVAL**

I. **RECOMMENDATION/ACTION REQUESTED:** Approve budget modification DCJ00_01 to add $900,363 federal Juvenile Accountability Block Grant revenue to the Department of Community Justice.

II. **BACKGROUND/ANALYSIS:** The Office of Juvenile Justice and Delinquency Prevention provides these block grant funds. The Department of State Police distributes the funds in Oregon. The block grant funds are intended for programs that promote greater accountability in the juvenile justice system. Multnomah County has worked collaboratively with the cities of Portland and Gresham to determine how the funds would be used in Multnomah County. The funds will be used as follows:

- Youth gang outreach.
- Asian Learning Center.
- Youth Reception Center.
- Coordination of interagency anti-violence efforts.
- Prosecution of complex gang and juvenile crimes.
- Tracing illegal sources of guns.
- Processing juveniles taken into custody.

III. **FINANCIAL IMPACT:** This budget modification initiates the receipt of Juvenile Accountability Block Grant dollars by the Department. An additional $118,507 block grant revenue will be received by the District Attorneys' Office, bringing the total block grant revenue to $1,018,870 for the fiscal year. The

budget modification follows the intergovernmental agreement, which was approved earlier.

IV. **LEGAL ISSUES:** N/A

V. **CONTROVERSIAL ISSUES:** N/A

VI. **LINK TO CURRENT COUNTY POLICIES:** Through prevention and direct intervention, this grant will address delinquency and violence by individual youth and those involved with gangs.

VII. **CITIZEN PARTICIPATION:** N/A

VIII. **OTHER GOVERNMENT PARTICIPATION:** The programs supported by this grant were agreed upon by representatives of Multnomah County, the City of Portland and the City of Gresham.

MULTNOMAH COUNTY, OREGON

BUDGET & QUALITY
PORTLAND BUILDING
1120 S.W. FIFTH - ROOM 1400
P. O. BOX 14700
PORTLAND, OR 97214
PHONE (503) 248-3883

To: Board of County Commissioners

From: Julie Neburka, Budget Analyst JN

Date: August 3, 1999

Subject: DCJ Bud Mod #01, requesting approval to add $900,363 in federal Juvenile Accountability Block Grant Funds in FY 2000.

The Department of Community Justice (DCJ) requests approval of bud mod DCJ 00-01 to budget $900,363 in federal Juvenile Accountability Block Grant Funds in FY 2000. This is a one-year grant distributed through the Oregon State Police that is intended for services that enhance accountability in the juvenile justice system. This grant also provides funds to the City of Portland police and the District Attorney's Office. Matching fund requirements are met by a match from the Casey Foundation.

The department proposes adding one FTE Juvenile Court Counselor, supplies, and pass-through funds to community-based organizations for the operation of a Youth Offender Reception Center, gang outreach services, and an Asian learning center. The Juvenile Court Counselor will conduct evening home visits and curfew checks, visit "hot spots" in the community, and work with Adult Community Justice Parole & Probation Officers and Oregon Youth Authority Parole Officers to coordinate supervision of violent and gang-affected youth offenders. A primary function of this position is to develop and share information about offenders and available services between criminal justice agencies, particularly between juvenile and adult agencies.

The Budget Office recommends approval of this bud mod. The grant application is tailored to the needs identified in Multnomah County's Juvenile Justice Strategic Plan, and will provide targeted services not currently available in the community. The Youth Offender Reception Center in particular will help to keep lower-risk youth out of the Detention Center and will direct these youth to necessary services. The department believes that it can re-apply for this grant at least once more, and beyond that has not identified how the grant-funded position and services will be continued, if at all, beyond the life of the grant.

Did Not speak

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME Chuck Rollins

ADDRESS 43010 NE 2nd ST
Corbett

PHONE 695-5821

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Bridal Veil

GIVE TO BOARD CLERK

AUG 1 2 1999

MEETING DATE: ~~JUL 08 1999~~ R-3
AGENDA NO: ~~R-8~~
ESTIMATED START TIME: ~~10:30~~ 9:35

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Results of Mediation/Compromise Efforts Between the Trust for Public Lands and Crown Point Country Historical Society and Board Decision Following June 8, 1999 De Novo Hearing on Appeal of Hearings Officer Decision Regarding Denial of Appellants (Crown Point Country Historical Society) Appeal of NSA 26-94, Allowing Applicant (Trust for Public Lands) to Remove Sixteen Structures at Bridal Veil, Excluding Church and Post Office

REGULAR MEETING: *DATE REQUESTED:* *July 8, 1999*

AMOUNT OF TIME NEEDED: 30 ~~45~~ *minutes*

DEPARTMENT: *Environmental Services* *DIVISION:* *Land Use*

CONTACT: *Robert Trachtenberg* *TELEPHONE #:* *248-5213*

BLDG/ROOM #: *106/1500*

PERSON(S) MAKING PRESENTATION: *Sharron Kelley*

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Results of Mediation/Compromise Efforts Between the Trust for Public Lands and Crown Point Country Historical Society and Board Decision Following June 8, 1999 De Novo Hearing on Appeal of Hearings Officer Decision Regarding Denial of Appellants (Crown Point Country Historical Society) Appeal of NSA 26-94, Allowing Applicant (Trust for Public Lands) to Remove Sixteen Structures at Bridal Veil, Excluding Church and Post Office

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Sharron Kelley
(OR)
DEPARTMENT MANAGER:

99 JUN 29 PM 2:00
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

REEVES, KAHN & EDER
ATTORNEYS AT LAW
P.O. BOX 86100
4035 S.E. 52ND AVENUE
PORTLAND, OREGON 97286

PLEASE REPLY TO P.O. BOX

TELEPHONE (503) 777-5473
FAX (503) 777-8566

H. PHILIP EDER
CYRUS W. FIELD
PEGGY HENNESSY*
GARY K. KAHN*
J. KRISTEN PECKNOLD
MARTIN W. REEVES*
*Also Admitted
in Washington

July 7, 1999

Deb Bogstad
Clerk of the Board
Multnomah County Board
of Commissioners
1120 S.W. Fifth Avenue
Portland, Oregon 97204

VIA FACSIMILE (503) 248-3013

Re: NSA-26-94 Bridal Veil Land Use Appeal

Dear Deb:

As you know, the above matter was scheduled for a final decision at the Board of Commissioners' July 8, 1999. This letter is to confirm that Trust for Public Lands has requested that the date of the final decision be continued until the August 12, 1999 hearing at 9:30 a.m.

At the Board's request, the parties have been negotiating in an effort to reach a mutually acceptable resolution of the matter. While no formal agreement has been reached, Trust for Public Lands would like to continue the negotiations and appear before the Board of Commissioners on August 12, 1999 with either:

1) A concrete proposal with enforceable terms and conditions reflecting a settlement agreement between the parties, to be incorporated into the Board's final decision on the demolition permit application;

or, if negotiations break down,

2) A request that the Board render a final decision on the demolition permit application, based on the evidence presented in the de novo proceeding in this matter.

Thank you for your help in notifying all interested parties of the postponed date for the Board's final decision in the above matter.

Should you have any questions, please feel free to call.

Very truly yours,

REEVES, KAHN & EDER

Peggy Hennessy

Peggy Hennessy

PH:nh
cc: Client

c:\data\ph\tp\bogstad.ltr

REEVES, KAHN & EDER
ATTORNEYS AT LAW
P.O. BOX 86100
4035 S.E. 52ND AVENUE
PORTLAND, OREGON 97286

PLEASE REPLY TO P.O. BOX

TELEPHONE (503) 777-5473
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CYRUS W. FIELD
PEGGY HENNESSY*
GARY K. KAHN*
J. KRISTEN PECKNOLD
MARTIN W. REEVES*
*Also Admitted in Washington

June 3, 1999

Bev Stein, Chair
Multnomah County Board of Commissioners
1120 S.W. Fifth Avenue, Suite 1515
Portland, Oregon 97204-1914

Diane Linn
Multnomah County Board of Commissioners
1120 S.W. Fifth Avenue, Suite 1515
Portland, Oregon 97204-1914

Serena Cruz
Multnomah County Board of Commissioners
1120 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204-1914

Lisa Naito
Multnomah County Board of Commissioners
1120 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204-1914

Sharron Kelley
Multnomah County Board of Commissioners
1120 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204-1914

Re: Crown Point Country Historical Society Appeal of Trust for Public Land's Approved Demolition of Sixteen Structures in the National Scenic Area
Multnomah County Case No. NSA-26-94

Dear Chair and Members of the Board of Commissioners:

I represent Trust for Public Land with respect to its interest, as the applicant, in the above matter. The hearing on Crown Point Country Historical Society's appeal has been scheduled for 9:30 a.m. on Tuesday, June 8, 1999. I am enclosing copies of our Memorandum in Opposition to Crown Point's appeal for your review. The original memorandum is being filed with the Clerk of the Board under separate cover.

Thank you for your consideration.

Very truly yours,

REEVES, KAHN & EDER

Peggy Hennessy

Peggy Hennessy

PH:nh
Enclosure
cc: Client

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BEFORE THE BOARD OF COMMISSIONERS

FOR THE COUNTY OF MULTNOMAH

In the Matter of the Renewal of the Request by Trust for Public Lands for Demolition of Structures at Bridal Veil	File No. NSA 26-94 MEMORANDUM IN OPPOSITION TO APPEAL OF CROWN POINT COUNTRY HISTORICAL SOCIETY

I. INTRODUCTION

This memorandum is filed on behalf of Trust for Public Lands ("TPL") in support of its request for demolition of 16 structures at Bridal Veil in the National Scenic Area of the Columbia River Gorge. The Planning Director approved TPL's demolition request and Crown Point Country Historical Society ("Crown Point") appealed. On appeal, the Hearings Officer upheld the County's approval and Crown Point has appealed the Hearings Officer's decision to this Board.

Crown Point contends that the buildings proposed for demolition must be found eligible for inclusion in the National Register of Historic Places because they are significant. However, the applicant's Evaluation of Significance, which is supported by substantial evidence in the record, concludes that the buildings are not eligible for inclusion.

The effect of finding the buildings eligible for inclusion on the National Register would be to require a formal "Assessment of the Effect" of demolishing the buildings pursuant to MCC § 11.15.3818 (G) (2). Because the buildings are not historically significant, no Assessment of Effect is required.

e:\data\ph\tpl\memo

The sole issue before the Board of Commissioners is whether the Planning Director and Hearings Officer both erred in finding that the Evaluation of Significance and other comments received do not indicate that the buildings proposed for demolition are eligible for inclusion in the National Register of Historic Places. MCC § 11.15.3818 (G) (2) (a).

II. DISCUSSION

A. Determination of Significance

MCC § 11.15.3818 (G) provides, in relevant part:

> If the Evaluation of Significance demonstrates that the affected cultural resources are not significant, the Planning Director shall submit a copy of all cultural resource survey reports to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC .3818 (E) (1).
>
> 2. The Planning Director shall find the cultural resources significant and require an Assessment of Effect **if** the Evaluation of Significance or comments received indicate either of the following:
>
> a. The cultural resources are included in, or eligible for inclusion in, the National Register for Historic Places. * * * Cultural resources are eligible for the National Register of Historic Places if they possess integrity of location, design, setting, materials, workmanship, feeling, and association. In addition, they must meet one or more of the following criteria:
>
> i. Association with events that have made a significant contribution to the broad patterns of the history of this region;

ii. Association with the lives of persons significant in the past;

iii. Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

iv. Yield, or may be likely to yield, information important in prehistory or history. [Emphasis on **if** added].

In this case, neither the Evaluation of Significance submitted by the applicant nor any of the comments submitted by any other interested party (e.g. Crown Point, SHPO, Keeper of the National Register, U.S. Forest Service), indicate that the buildings at issue are eligible for inclusion on the National Register of Historic Places. Therefore, the review process does not progress to the assessment of impact stage of review under MCC § 11.15.3818 (H).

B. Evaluation of Significance

Heritage Investment Corporation ("HIC") conducted an extensive historic survey of the site and prepared a formal Evaluation of Significance as required by MCC § 11.14.3818 (F). HIC evaluated the existing buildings with respect to their eligibility for inclusion on the National Register of Historic Places and found that they do not qualify. This analysis is summarized at pages 100-108 of the Evaluation of Significance. HIC Report at 100-108.

///

In evaluating the significance of the buildings proposed for demolition, HIC's six-member professional team included Architectural and Industrial Historians as well as a Tourism Specialist. HIC Report at 4. The team evaluated the buildings, sites, structures, objects, and historic landscapes. It considered them individually, as an ensemble, as a thematic grouping, and as a potential historic district. Id.

HIC reviewed extensive archival information, including William F. Carr's history of the Bridal Veil Lumbering Company, Sharr Prohaska's Bridal Veil Oregon: History and Significance of the Community, and numerous newspaper articles from 1897 through 1991. HIC Report at 11-12. In addition, the team conducted several on-site visits to evaluate the buildings proposed for demolition. HIC has prepared a detailed analysis of each building, including physical descriptions, photographs and professional opinions as to the historical integrity. HIC Report at 18-95. Based upon all the available information, HIC concluded that none of the buildings was eligible for inclusion on the National Register of Historic Places. HIC report at 107-108.

C. Eligibility for Inclusion of the National Register

1. Heritage Investment Corporation

The standards under MCC § 11.15.3818 (G) (2) (a) are virtually the same as the federal standards for determining eligibility for inclusion on the National Register of Historic Places. HIC addressed each criterion listed under MCC § 11.15.3818 (G) (2) (a)

in its evaluation of the significance of the buildings. There are four separate criteria under which a resource may be considered for inclusion: (1) association with a significant event; (2) association with a significant person; (3) architectural significance; or (4) information potential.

(i) Association with Significant Event

To qualify under this criterion, the buildings must be closely associated with an event or pattern of events, which are important within the historical context, and which retain historic integrity. HIC Evaluation at 102. HIC reviewed available literature, including the Tourism Development Associates' compilation and William F. Carr's Bridal Veil Lumbering Company. Based upon HIC's research, it found that none of the remaining houses can be dated to Bridal Veil's primary period of significance, prior to 1902. The houses were constructed after 1906 and possibly as late as the 1920s. Id. Most of the remaining structures were built as temporary housing for the lumber company workers.

Crown Point contends that the HIC report does not provide the information required for an historic survey. Crown Point Comments at 1. It further asserts that HIC's archival research is incomplete because there are no specific citations to actual historic references. Id. However, as noted above, HIC did review available literature, including William F. Carr's Bridal Veil Lumbering Company and other historic reference materials. HIC Evaluation at 102. HIC also included a two-page bibliography of

other references on which it relied in preparing the report. HIC Report at 11-12. Based on those materials, HIC concluded that the buildings cannot be associated with any significant event. Id.

HIC found that, collectively, the buildings do not represent any sense of community or company town. None of the structures retains enough integrity to be considered for its association with the late 19th century. HIC Evaluation at 102.

ii. Association with a Significant Person

This criterion requires that the buildings be associated with a person who is singularly important within the historical context and that the buildings retain historic integrity. HIC found no evidence of connection to any person singularly important, historically. Nor did it find that the buildings retain historic integrity. HIC Evaluation at 103.

iii. Architectural Significance

The architectural significance test requires a finding that the buildings have distinctive characteristics of types, periods, and methods of construction. These buildings were established as temporary structures for a company town. HIC found that "the structures represent neither high artistic value nor significant design or construction themes." Id. at 104. In addition, most of the buildings have been significantly altered, by replacement of the porches, windows, doors, chimneys, roofs, siding, and by the addition of square footage. HIC Report 18-95. These alterations diminish the historic integrity of the buildings.

iv. Information Potential

This criterion requires that the structures provide important information contributing to our understanding of history. Id. at 104. HIC notes that William Carr has exhaustively studied the history of the Bridal Veil Lumber Company and that the records can be found at the Oregon Historical Society. In addition, John Woodward has conducted a 5-year study of Larch Mountain, which includes Bridal Veil. The period in question is relatively modern with extensive information available on all aspects of the human condition. HIC Evaluation at 104. Consequently, the buildings will not provide significant new information. Id.

v. Conclusion Regarding National Register Criteria

After extensive research and analysis, as described above, HIC determined that the buildings proposed for demolition are not eligible for inclusion on the National Register. HIC Report at 107-108. This conclusion is supported by substantial evidence in the record.

2. Crown Point

Crown Point contends that the buildings should be deemed eligible for inclusion on the National Register of Historic Places. However, they have not produced substantial evidence to support such a finding. There were two unsuccessful attempts to nominate the site for inclusion on the National Register in 1995 and 1996.

///

Crown Point appears to believe that the decision of the State Advisory Committee on Historic Preservation to "nominate" the buildings for inclusion on the National Register somehow provides substantial evidence that the buildings are eligible. However, as the hearings officer noted:

> The Advisory Committee felt that the application did establish eligibility, but their opinion was determined to be incorrect by the keeper of the National Register. No new evidence to suggest otherwise has been presented to the Hearings Officer. Hearings Officer's Decision at 8.

Crown Point finds it significant that the nomination was "returned without action," rather than "denied." However, the "return without action" means that the applicant did not carry its burden to produce sufficient evidence to show the Keeper of the National Register that the buildings are eligible for listing on the National Register of Historic Places. Similarly in this case, Crown Point has not produced sufficient evidence to the County to show eligibility under MCC § 11.15.3818 (G) (2) (a).

In 1996, the Keeper of the National Register found that

> [t]he above-ground structures are not archeological resources and would not be contributing resources in the Historical Archeological Site as it is presented in the returned nomination. The significance of the archeological site (if such is demonstrated) would not depend on the presence of the above-ground structures. Exhibit A.

///

///

///

Crown Point contends that this finding does not mean the buildings are ineligible for listing. It relies heavily on the following statement of the Keeper of the National Register:

> buildings may be eligible under criterion D if the information they contain is important. (December 20, 1996 letter from Carol D. Shull, Keeper of the National Register, a copy of which is attached as Exhibit A).

However, Ms. Shull is merely restating criterion D of the eligibility criteria in the Code of Federal Regulations, as a potential approach for nomination. A similar criterion is found in the County's code at MCC § 11.15.3818 (G) (2) (a) (iv), set forth above. Neither TPL's evaluation of significance, nor Crown Point's documentation, presented the Planning Director with sufficient information to allow her to determine that the cultural resources <u>are</u> eligible for inclusion on the National Register and therefore "significant" under MCC § 11.15.3818 (G) (2) (a).

Further review of Ms. Shull's December 20, 1996 letter shows that she found that there was <u>no</u> supporting documentation or argument for listing these buildings based upon the information potential contained in the buildings themselves. Exhibit A. Nor is there supporting documentation or argument for listing the buildings under MCC § 11.15.3818 (G) (2) (a) (iv) in the record for this case.

Not only did Crown Point fail to convince the Planning Director and the Hearings Officer that the buildings are eligible for inclusion on the National Register, it also failed to convince

the keeper of the National Register. Because the buildings are not historically significant, TPL need not assess the effect of demolition on the buildings pursuant to MCC § 11.15.3818 (G) (2).

3. State Historic Preservation Office

In response to the cultural resource survey materials submitted to the State Historic Preservation Office ("SHPO") under § MCC 11.15.3818 (G), on April 28, 1997, the agency submitted comments to the Planning Department regarding the significance of the buildings on the site, including the following statement:

> The opinion of the State Historic Preservation Office is that the 14 houses and three garages at Bridal Veil lack integrity and are not eligible for the National Register under Criteria A, B, or C, nor do they meet Criterion D as components of a larger historical archeological site.

This quote appears at the top of page 2 of the April 28, 1997 SHPO letter, which is attached as Exhibit B. This is the official position of the SHPO.

As indicated in the September 26, 1992 and April 4, 1994 SHPO letters, SHPO has demonstrated a longstanding concern about the historical integrity of the buildings at Bridal Veil. SHPO has consistently declined to find that the buildings would be eligible for inclusion on the National Register.

4. Keeper of the National Register

As noted above, the Keeper returned the application to include this site on the National Register because the applicant had not met the burden to show compliance with the eligibility

requirements. Exhibit A. Crown Point repeatedly states that the Keeper of the National Register did not make a determination regarding the site - that the nomination was merely returned without action. However, the fact that the nomination was returned, without being found eligible shows that the applicant, the State Advisory Committee on Historic Preservation, had not carried its burden to provide sufficient evidence to allow the Keeper to find the buildings eligible for inclusion on the National Register. The Keeper effectively made a determination of ineligibility based upon the information presented.

5. U.S. Forest Service

Tom Turck, an archaeologist with the U.S. Forest Service, has reviewed TPL's proposal, including the scope of work for the project. The federal agency finds that the "work plan and process of implementation for demolition of the mill site meets federal review criteria for situations involving potential archaeological materials." A copy of the April 2, 1998 letter from Arthur J. Carroll of the U.S. Forest Service is attached as Exhibit C.

D. Burden of Proof

The burden is not on the applicant to prove a negative: ineligibility for the National Register of Historic Places. The applicant's obligation is to submit an evaluation of significance under MCC § 11.15.3818 (F). The applicant has complied with standards (1)-(6) under this section, as reflected in the 108-page document supporting the determination that the buildings are not

significant. Based upon this information, and other comments received, the Planning Director is required to make a determination of significance under MCC § 11.15.3818 (G).

While an applicant may be required to address the listing criteria for the National Register in its evaluation of significance under MCC § 11.15.3818 (F), MCC § 11.15.3818 (G) does not impose a burden on every applicant to absolutely prove that a building proposed for demolition does <u>not</u> satisfy any of the National Register eligibility criteria. If this were the case, an applicant would have to "prove," for example under MCC 11.15.3818 (G) (2) (a) (i), that

> the building is not associated with events that have made a significant contribution to the broad patterns of history of the region.

Such an interpretation would require an applicant to identify all events that have made a significant contribution to the broad patterns of history in the region - then, show that the building is not associated with any of those events.

Similarly, if there was a burden to "prove" under MCC § 11.15.3818 (G) (2) (a) (ii), that the buildings had no

> [a]ssociation with the lives of persons significant in the past,

an applicant would have to show all the lives associated with each building and explain why none of them are significant. This is not a reasonable interpretation of the eligibility criteria. The intent is to provide a means to evaluate the significance of a site

///

for purposes of protecting it. An applicant cannot be asked to prove "insignificance" - this is not the standard.

The Code of Federal Regulations ("CFR") standards are clearly approval criteria for listing on the National Register of Historic Places. They are also factors to be considered in evaluating the significance of a site under the County's code. However, an applicant need not prove the non-existence of these factors as approval criteria for conditional uses in the Columbia River Gorge. The eligibility criteria must be addressed in evaluating the significance of the buildings under MCC § 11.15.3818 (F), but an applicant cannot be required to prove a negative.

Here, the applicant's experts have addressed the criteria based upon exhaustive review of the available literature, including materials compiled by Tourism Development Associates and the in-depth history of the Bridal Veil Lumbering Company by William F. Carr. HIC found that the buildings do not have any significant connection to an event or theme. HIC has the expertise to evaluate the integrity of the buildings and determine their significance by applying the listing eligibility requirements under the CFR and Multnomah County's code.

In addition to HIC's findings that the buildings are not significant, SHPO, an objective state agency, determined that the buildings are not significant cultural resources. Exhibit B at 2. Furthermore, the Keeper of the National Register of Historic Places found that the buildings were not archeological resources and would

not be contributing resources as the information was presented to the Keeper. Exhibit A.

The record contains substantial evidence in support of the Planning Director's and Hearings Officer's findings that the buildings are not significant cultural resources. Crown Point has not produced substantial evidence, through its comments or otherwise, to support a conclusion that the buildings are eligible for inclusion in the National Register. Moreover, there have been two failed efforts to have the site included on the National Register of Historic Places.

If the Planning Director does not find that the site is eligible for inclusion on the National Register, based upon the Evaluation of Significance or comments of interested parties, then the applicant need not prepare an assessment of the impacts. MCC § 11.15.3818 (G). Here, the Planning Director's finding that the buildings are not significant cultural resources is supported by substantial evidence in this record and she has properly construed the applicable provisions of MCC § 11.15.3818 (G). This finding was properly upheld by the Hearings Officer.

E. Access to Site

Crown Point contends that it has been at a substantial disadvantage because its members have not been allowed access to the site. For purposes of evaluating the historic significance of the buildings, they do not require access to the site. Crown Point's members have access to the same information used by the

applicant to determine historical significance. The applicant has submitted photographs showing the type of construction. There is sufficient information in the record to determine whether the buildings are likely to yield important historic information. The Multnomah County Code does not require an applicant to open private property to the public.

III. CONCLUSION

Based upon the foregoing, the Applicant respectfully requests that the Board of Commissioners affirm the Hearings Officer's decision affirming the Planning Director's decision approving this application.

Dated this 3rd day of June, 1999.

Respectfully submitted,

REEVES, KAHN & EDER

Peggy Hennessy

Peggy Hennessy, OSB #87250
Of Attorneys for the Applicant

United States Department of the Interior

NATIONAL PARK SERVICE
P.O. Box 37127
Washington, D. C. 20013-7127

IN REPLY REFER TO:
H32(2280)

DEC 20 1996

Mr. Chris Beck, Project Manager
The Trust for Public Land
Oregon Field Office
1211 SW Sixth Avenue
Portland, Oregon 97204

Dear Mr. Beck:

Thank you for your letter of 15 November 1996 regarding the nomination for the Bridal Veil Historical Archeological Site in Multnomah County, Oregon.

You are correct in your reading of Barbara Little's comments on the standing buildings insofar as their archeological significance is concerned.

In her comments of 9/18/96, which accompanied the returned nomination, Dr. Little, our archeologist, wrote,

> If the standing buildings are nominated for their information potential under criterion D, then the information they could contribute should be clearly described. The standing buildings, as such, do not contribute to the archeological potential of the site, although the patterning of the locations of those buildings (or their foundations) would contribute to the information potential of the site as the research questions currently are posed.

The above-ground structures are not archeological resources and would not be contributing resources in the Historical Archeological Site as it is presented in the returned nomination. The significance of the archeological site (if such is demonstrated) would not depend on the presence of the above-ground structures.

As alluded to in the comments, buildings may be eligible under criterion D if the information they contain is important. However, there is no supporting documentation and no argument made in the nomination for the information contained in these buildings.

We hope that this clarifies our opinion. If you have any questions please contact Barbara Little at (202) 343-9513.

Sincerely,

Carol D. Shull
Keeper of the National Register of Historic Places
National Register, History and Education

EXHIBIT A
PAGE 1 OF 1

Oregon

PARKS AND
RECREATION
DEPARTMENT

STATE HISTORIC
PRESERVATION OFFICE

April 28, 1997

Robert Hall, Senior Planner
Multnomah County Department of Environmental Services
Transportation and Land Use Division
2115 SE Morrison Street
Portland OR 97214

RE: NSA 26-95

Dear Mr. Hall:

This responds to your request to comment on the application of the Trust for Public Land to demolish 16 [17] buildings standing on property of 16.95 acres owned by the applicant at Bridal Veil. The application, as we understand it, involves 14 houses and three garages, the remaining residential component of the historic lumber company town.

Our comments are solicited in accordance with that portion of Multnomah County Code relating to cultural resource review criteria for the Columbia River Gorge National Scenic Area, specifically MCC 11.15.3818 (F). With respect to MCC 11.15.3818 (F) (2), the applicant's evaluation report consists solely of the 1994 historical survey report prepared by Heritage Investment Corporation. As distributed, we question whether the applicant's evaluation could be considered complete, since it does not include supplementary information relating to National Register significance under Criterion D.

Subsequent to completion of the applicant's 1994 historical survey report, the State Historic Preservation Office and the State Advisory Committee on Historic Preservation participated in a thorough review of the Bridal Veil Townsite according to National Register rules and guidance: 36CFR 60.4, *National Register Criteria for Evaluation*; National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation*; and National Register Bulletin 36, *Guidelines for Evaluating and Registering Historical Archeological Sites and Districts*. The State's review extended to a formal request, pursuant to 36 CFR 60.6, for the Keeper's determination of National Register eligibility of a 30.88-acre area under multiple ownership as a historical archeological district.

There is little doubt that archeological deposits remain at the former lumber company townsite. Nevertheless, the Keeper of the National Register declined to make a determination. The National Register maintains that where subsurface testing to document intact subsurface remains or stratigraphy is constrained, alternative documentation of information potential is required. The reviewer held that the surface observations that were documented did not constitute evidence that the information likely to be yielded by cultural deposits would meet the National Register standards of significance. Accordingly, documentation entitled "Bridal Veil Historical Archeological Site," completed March 15, 1996 by the Crown Point Historical Society with the assistance of Sharr Prohaska, Sally Donovan, and David Ellis, was returned to the State.

EXHIBIT B
PAGE 1 OF 2

1115 Commercial St. NE
Salem, OR 97310-1001
(503) 378-5001
FAX (503) 378-6447

The opinion of the State Historic Preservation Office is that the 14 houses and three garages at Bridal Veil lack integrity and are not eligible for the National Register under Criteria A, B, or C, nor do they meet Criterion D as components of a larger historical archeological site. The National Register staff reviewed not only the 1996 documentation prepared by the Crown Point Historical Society, but testimony of archeologists and all other testimony of record which accompanied the documentation. National Register reviewer Barbara Little, archeologist and co-author of National Register Bulletin 36, stated "the standing buildings, as such, do not contribute to the archeological potential of the site..." She acknowledged that "the patterning of the locations of those buildings (or their foundations) would contribute to the information potential of the site as the reasearch questions currently are posed." In subsequent explanation of her comments, the reviewer stated to the Trust for Public Land, "the above-ground structures are not archeological resources and would not be contributing resources" in the historical archeological site as it is documented since there is no supporting argument made for the importance of the information contained in the buildings. The position of State Historic Preservation Office, which is independent of that of the State Advisory Committee on Historic Preservation, therefore, was affirmed by the National Register.

Although MCC 11.15.3818 (F) does not call for findings of effect and mitigation, we note from the transmittal letter accompanying the applicant's evaluation report that the applicant proposes monitoring by a qualified archeologist during the demolition process to ensure that the demolitions do not "significantly impact subsurface materials." It is our opinion that special measures are appropriate as a condition of demolition, and, if invited under the relevant section of the Code, we would recommend that known associated sites be identifed in cooperation with the Crown Point Historical Society and professional historical archeologists so that disturbance of them can be avoided wherever possible. We also would urge that the building sites not be scraped, but that traces of the foundations be allowed to remain as surface patterning and the sites filled and planted to protect against both hazard and unauthorized disturbance in the future.

Thank you for the opportunity to offer our comments.

Sincerely,

James M. Hamrick, Deputy
State Historic Preservation Officer

cc: Robert L. Meinen
Hon. Beverly Stein
Bowen Blair
Kathy Busse
Crown Point Historical Society
Sally Donovan
David Ellis
Tom Turck
H. Ward Tonsfeldt
John H. Atherton
State Advisory Committee
Historic Preservation League

EXHIBIT B
PAGE 2 OF 2

United States Department of Agriculture
Forest Service
541-386-2333
Columbia River Gorge National Scenic Area
FAX 541-386-1916
902 Wasco Avenue
Suite 200
Hood River, OR 97031

File Code: 2360

Date: April 2, 1998

Ms. Kathy Busse, Director
Division of Planning
Multnomah County
2115 SE Belmont
Portland, OR 97214

Dear Ms. Busse:

The Trust for Public Land (TPL) has an application with Multnomah County to demolish 16 structures at Bridal Veil, a property owned by TPL. Our understanding is that resolution of the "demolition permit" was contingent upon appropriate mitigation measures be developed and made a part of this application for permit to demolish these structures.

We were requested to provide archaeological technical assistance in this matter. Tom Turck, our archaeologist, has worked with TPL consultant archaeologist, Gary Bowyer, related to the scope of work plan for demolition of mill site structures. This work plan has been reviewed by Mr. Turck. The proposed work plan and process of implementation for demolition of the mill site meets federal review criteria for situations involving potential archaeological materials.

The National Register of Historic Places reveals that the buildings at Bridal Veil are not historic resources. If the scope of work plan is followed, we believe that the buildings can be demolished in such a way to avoid any potential archaeological resources. We are particularly pleased that once the demolition is complete, TPL has committed to conducting a thorough archaeological survey of this site. Information derived from that survey will hopefully provide all interested parties with reliable information about historic and archaeological resources at Bridal Veil.

Thank you for your attention to this matter. I look forward to working with your office on the Bridal Veil site in the coming months as TPL's application is considered. If additional information is required, please contact our archaeologist, Tom Turck, at the National Scenic Area office (541) 386-2333.

Sincerely,

Arthur J. Carroll

ARTHUR J. CARROLL
Area Manager

EXHIBIT C
PAGE 1 OF 1

Bridal Veil Open Space Protection Effort Chronology
Trust for Public Land

1980's Oregon State Parks Department tried to negotiate purchase from McGriff

1986 Gorge Act passed by Congress establishing acquisition authority in NSA

1990 Bridal Veil property placed into Special Management Area.

1991 TPL acquired Bridal Veil from McGriff for $712,000 with ***$400,000 gift from Ed and Sue Cooley*** as a memorial for their son.
Tenants given notice to indentify new housing opportunities.

1992 TPL conducts historic resources inventory
Mult. Co.contracts their own historic resources report
TPL applies for demolition permit of all the buildings except church and p.o.
Planning Commission rejects TPL application
Board of Commissioners rejects application under Goal 5; ESEE analysis required.

1993 Mult. Co. Forms ESEE committee under Goal 5 to reach consensus
ESEE committee position inacurately presented to Board by opponents.
ESEE analysis recommendations prepared by Planning Director.
New state statute nullifies Goal 5 in Gorge. TPL application and all work to date is negated.

1994 TPL makes new application for demolition.
Opponents submit first nomination to National Register.
TPL awaits result before proceeding.
Nomination returned with indication that buildings not historic.

1995 Opponents make second nomination to National Register revising proposal to indicate Bridal Veil's potential as a historic archaeologic district.
TPL awaits result before proceeding.
TPL granted approval to demolish Resaw bldg because of hazardous threat to U.P. Railroad.

1996 State Historic Advisory Board recommends approval of Nat'l Reg. Nomination;
State archaeologist (SHPO), however, indicates buildings are not historic archaeologic features and that nomination does not make compelling case for Historic Archaeologic District.
National Register finally indicates buildings are not significant resources.

1997 TPL renews demolition application.
Bridal Veil caretaker violates TPL demolition permit for resaw bldg. Applic. put on hold.
TPL develops mitigation plan for resaw bldg. and ***compromise*** plan for addressing archaeologic issues on remaining Bridal Veil buildings.

1998 ***U.S.Forest Service approves TPL mitigation plan and compromise plan for addressing potential archaeologic issues.***
TPL mitigation plan is accepted by the County and demolition application process is renewed.
TPL demoliton approved by Planning Director.
Planning Director appealed by opponents to Hearings Officer
Hearings Officer affirms Planning Director Decision.
Hearings Officer decision appealed to Board.

2235 N.E. 25th
Portland, OR 97212
October 13, 1992

Scott Pemble, Director of Planning
Multnomah County
2115 S.E. Morrison
Portland, OR 97214

Dear Mr. Pemble:

I am writing in regards to the proposal to revise the county Comprehensive Framework Plan to add Bridal Veil to the inventory of significant Historic Resources. I am very familiar with the historic resources of the Columbia River Gorge in my capacity as Division Historian for the Army Corps of Engineers and as a private historical consultant.

I have read with care the cultural resources reports prepared by Tourism Development Associates and Heritage Investment Corporation. Based on my own extensive research on the historical and cultural resources of the Columbia River Gorge, it is my professional opinion that Bridal Vail is a significant historical resource that should be included in the Multnomah County Comprehensive Framework Plan. The late 19th and early 20th timber industry in the Columbia River Gorge was a vital regional economic activity and the industrial complex and community at Bridal Vail is an excellent example of such development. The site offers the opportunity to preserve and interpret remnants of this important industry. Given that so few statewide resources remain reflecting Oregon's early-day lumber industry and community life, Bridal Vail may be the last chance to provide public interpretation of this aspect of the state's history. The exact form of preservation and interpretation should be based on a thorough site investigation and evaluation with opportunity for full public input.

As part of its stewardship of both scenic and cultural and historic resources, Multnomah County should follow through with the appropriate Goal 5 procedures to insure full consideration of Bridal Vail in the planning process.

Sincerely,

William F. Willingham

William F. Willingham, Ph.D.

June 1, 99

A young passenger patiently awaits the train arrival at the Bridal Veil Railway Station, turn of the century.

from the Crown Point Country Historical Society Collection

Dear Clerk of the Board:

Could you Please distribute these to the Commissioners. There copies of letters weve recieved over the years in support of Bridal Veil. Its just a small sampling that we would like the commissioners to see to help them understand our position

CPCHS
PO BOX 17
Bridal Veil OR.
97010

Thanks

Chuck Rollins

IERITAGE
:ESEARCH
SSOCIATES, INC.
ARCHAEOLOGY
AND HISTORY

September 30, 1992

Scott Pemble, Director of Planning
Multnomah County
2115 SE Morrison
Portland, Oregon 97214

Dear Mr. Pemble:

It has come to my attention that a question has arisen concerning the scope of the Cultural Resource Overview that HRA prepared for the Columbia River Gorge National Scenic Area (CRGNSA) in 1988. Specifically, I understand that the fact that an inventory of structures at Bridal Veil, Oregon, was not included in our overview has been used to argue that these structures are not historically significant. This argument is not valid.

The CRGNSA overview project involved a review and synthesis of existing archaeological and historical information (documents, reports, site records, published materials) available for lands included within the Scenic Area. The scope of our contract was confined to consideration of previously recorded sites and did not include survey or evaluation of cultural resources in the field. Our project was strictly limited to literature review and synthesis.

In view of this fact, it is noteworthy that the Bridal Veil Lumber Company is prominently mentioned in the CRGNSA overview for its role in the beginning of large-scale commercial lumbering in the Gorge. Clearly, any remaining structures associated with the company mill town of Bridal Veil, Oregon, should be inventoried and evaluated for their architectural and historical significance.

There are many prehistoric and historic sites in the Columbia Gorge and elsewhere that have not yet been inventoried and evaluated. Bridal Veil is one locality where such work has not yet been conducted. Based on its role in the history of economic development in the Gorge, it is strongly recommended that a cultural resource inventory and evaluation be conducted in Bridal Veil before any plans are implemented that might affect the remaining structures. Please contact me if you have any questions about our work in the CRGNSA.

Sincerely,

Rick Minor

Rick Minor, PhD
Senior Archaeologist

Garden Avenue
ıe, Oregon 97403

HISTORIC SEATTLE
PRESERVATION AND DEVELOPMENT AUTHORITY

HISTORIC SEATTLE HAS MOVED:
605 First Avenue, Suite 100
Seattle, WA 98104
206-622-6952 FAX 206-622-1197

October 13, 1992

Multnomah County Commissioners
ATTN:Scott Pemble
Director of Planning
2115 SE Morrison
Portland, OR 97214

To the Multnomah County Commissioners:

I am writing to express my support for the amendment of the Multnomah County Cultural Resources Inventory to include the built resources of Bridal Veil, Multnomah County, Oregon. I have read both the reports from Heritage Investment Corporation (HIC) and Sharr Prohaska of Cultural Heritage Tourism.

I am particularly concerned with the conclusion reached in the HIC report regarding the significance of remaining structures in Bridal Veil. The post office, houses (originally built for workers) and church are negatively evaluated due to modifications over time and condition. They appear to have been evaluated as "stand alone" structures rather than in the context of a collection as they were built, for a single purpose "company town". Nearly all properties are altered over time and alterations in and of themselves should not be the justification to conclude a total lack of historic significance. The HIC report also concludes that "only a few of the houses exist" (p. 106). Both studies note elsewhere that 12 of the original "standard" workers houses still stand along with three other larger houses including the mill manager's house. This is a significant number of original structures and would lead any historian to the conclusion that a large extent of the community context remains.

As former Planning Director of Oregon City (1979-1987), I am very favorably impressed with the historical information presented in the Prohaska report regarding the role played by Will and Harris Hawley at Bridal Veil from 1882-1892. Oregon City Pulp and Paper, established by the Hawleys at the flouring mills in Oregon City, played a paramount role in early history of Oregon City (later becoming Publishers Paper, now Smurfit Newsprint).

I have received the Multnomah County staff report for the Bridal Veil issue. I recommend that the County Cultural Resource Inventory be amended to include Bridal Veil as an historic and cultural resource.

I am concerned about the HIC report's conclusion that Bridal Veil structures are not significant given their previous historic inventories did not focus on structures at Bridal Veil. I was on the Board of Directors of the Historic Preservation League of Oregon (HPLO) when the National Park Service's Columbia River Highway report was done, with the HPLO as a sponsor. The focus of that study/report was the highway and not the resources in the Columbia Gorge.

Sincerely,

Catherine Galbraith

Catherine M. Galbraith, Executive Director
Historic Seattle Preservation and Development Authority

CG:dla

c:S. Prohaska

1830 NE Klickitat St.
Portland, OR 97212
October 1, 1992

Scott Pemble
Director of Planning
Multnomah County
2001 SE Morrison
Portland, OR 97214

Dear Mr. Pemble:

I am writing to urge that Multnomah County take the necessary steps to recognize the community of Bridal Veil as a unique and significant historic and cultural resource. Such recognition might appropriately involve addition of Bridal Veil to the county's Cultural Resources Inventory and amendment of the county's Comprehensive Plan to include Bridal Veil as an important embodiment of the county's history.

I offer this judgment as a historian specializing in the growth of the American West. My career has included fifteen years on the faculty of Portland State University with a teaching and research focus on Portland and the Pacific Northwest. In particular, I have been involved in studying the history of the Columbia River Gorge since 1981 and am currently writing a book on aspects of that history.

For much of the nineteenth century and the early decades of the twentieth century, the Columbia River Gorge was a resource production region whose Anglo-American settlers exploited fish and forest resources. The communities and industrial complexes created by the commercial fishing industry (such as fish wheels and the cannery at Rooster Rock) have now vanished from the Multnomah County landscape. The communities and industrial complexes created by the logging industry survive in substantial form only at Bridal Veil. It would be a deep loss to the heritage of the state and county should this remaining community disappear as well.

In evaluating cultural resources, it is important to distinguish between the architectural values of individual structures and the historic values retained when multiple elements of a landscape can be viewed and studied in context. Bridal Veil is a classic example of a cultural landscape which is far more than a simple sum of its parts. Understood in the context of the Gorge economy, the houses and public buildings represent important aspects of the logging industry and remind us of its viability into the middle decades of the twentieth century.

As a final point, it is worth remembering that the purpose of the federal legislation creating the Columbia River Gorge National Scenic Area was to preserve and conserve the natural beauty of the Gorge without destroying the economic vitality of the existing communities. Multnomah County has taken the lead in accepting the goals of the Scenic Area program. Recognition of the economic history of the Gorge through appropriate Goal 5 planning in relation to Bridal Veil would make a direct contribution to the achievement of the purposes of the Scenic Area.

Sincerely,

Carl Abbott, Ph.D.

ALFRED STAEHLI, AIA,
AND ASSOCIATES

ARCHITECT/PLANNER
ARCHITECTURAL CONSERVATOR

317 SE 62ND AVENUE
PORTLAND, OREGON
97215
(503) 230-0807

29 September 1992

Commissioner Gladys McCoy
Multnomah County
1021 SW Fourth Avenue
Portland, OR 97201

Re: The Bridal Veil Community: Historic Preservation League of Oregon's Recommendation.

Dear Commissioner McCoy:

The Historic Preservation League of Oregon (HPLO), Oregon's statewide historic preservation education and advocacy organization, strongly recommends that the Multnomah County Cultural Resources Inventory be amended to include the community of Bridal Veil as a historic and cultural resource of major importance to Multnomah County. As a professional in historic preservation work, I have no doubt that Bridal Veil is eligible for listing in the National Register of Historic Places (NR) and should be so nominated. Whether or not a NR nomination is made, the Oregon State Historic Preservation Office should be requested to give a Determination of Eligibility for NR listing; and if a favorable determination is given, then the Forest Service and Trust for Public Lands should be advised that there would be a Preservation Act Section 106 issue raised should there be any action to raze Bridal Veil before transferring it to federal ownership.

Other HPLO members, officers, and I have followed this issue since the acquisition of the property by The Trust for Public Lands in 1991. We have reviewed the two studies which have evaluated this property and its significance, Heritage Investment Corp. and Cultural Heritage Tourism International. I have visited Bridal Veil and seen its buildings, as well as attending a public meeting in Corbett, and I am otherwise very familiar with the history of the town and its timber company.

1993 is the 150th anniversary of the Oregon Trail. Second in importance only to the Oregon Trail and its effects on the history of the Pacific Northwest are the histories of our timber and fishing industries, particularly related to the Columbia River and the Columbia River Gorge. We in the Pacific Northwest have been remiss in looking after the places, buildings, and culture of our timber industry. There is no comprehensive inventory of extant timber industry company towns, camp sites, mills, and railroads. There is no program in place to plan for the conservation of timber industry sites and their development for education and tourism. Because of this neglect, we have lost Valsetz, Kinzua (an especially good Rustic "Bungalow" Style mill town with excellent recreational potential), and nearly all camp sites. Gilchrist is of a different era. Nowhere has a logging company town or camp been preserved to represent that vanished way of life and industry for the instruction of our children on how we became what we now are. The Broughton Lumber Company flume high on the cliffs of the Washington side of the Gorge, possibly the last one in the world, lies abandoned and is rapidly decaying. What will remain of our timber industry heritage, which flume, mill, group of houses, or site will remain as the last remenent of that history? It might be Bridal Veil.

Historic landmark designation and the inclusion of any site or building in a cultural resource inventory has never meant that a landmark must be preserved, only that preservation consideration must be given before the site is lost or irreversibly changed. Obviously, landmark recognition does express a public interest in a property and its history and imposes some restrictions on it development just as does zoning or transportation planning. The HPLO recognizes that The Trust for Public Lands did not wish to become involved with historic property management when it acquired the Bridal Veil site, but they did. We object to the distortion of the historical and architectural evaluation process in order to free the Trust from its stewardship obligation. At the very least, Bridal Veil must be documented according to the appropriate level of Historic American Buildings Survey (HABS) standards, which may mean a complete topographic survey of the site, archeology, and measured drawings, or it may mean just architectural photography recording of the site and buildings and the collection and recording of the extant history and records.

The Multnomah County Cultural Resources Inventory is the tool to insure that appropriate action is taken to either record or preserve Bridal Veil before it is gone.

The preservation of Bridal Veil would be a difficult undertaking. With few of the mill buildings remaining, none of the machinery, no flume, and just a few other buildings, the interpretation of its history must be done through the use of visual aids, landscaping, and other interpretive tools, possibly some reconstructions. Buildings are not preserved unless beneficial uses are found for them to pay for their restoration, maintenance, and operation. However, I have seen that there is considerable enthusiasm in the Corbett community for Bridal Veil, and similar undertakings have been successful. That community interest in the preservation of their timbering history should be respected and allowed to prove its interest in saving Bridal Veil. Multnomah County must help by appropriately adding Bridal Veil to its inventory. Only if preservation efforts are unsuccessful, should the razing of the remaining town be permitted.

It is inappropriate for me to directly challenge the assertions in the HIC report. The uses in a derogatory manner of elements of the remaining buildings and their conditions are easy to manipulate and to reverse into positive statements: Little town fabric or plan sense. The lack of significance in simple buildings. Non-historic '40s church and '30s P.O. buildings. Lacks historic integrity. Not quite qualifying within the National Register criteria. But, in Sect. 7, par. A, the HIC team questions the importance of the theme of "logging" in the Columbia Gorge Region, in an area designated as a National Scenic Area? This is clearly a too obvious expression of pre-disposition to disparage the importance of the remains of Bridal Veil, even implying that any preservation and interpretation of timber industry in the Gorge is unacceptable. Shame on my colleagues.

The Historic Preservation League of Oregon finds that the evidence of Bridal Veil and its importance to the history of development and commerce in the Columbia River Gorge and in the Pacific Northwest is decisively in favor of the recognition of that site in the Multnomah County Cultural Resources Inventory. This has nothing to do with the practicality of the eventual preservation and interpretation of the site or of its demolition. There is a substantial public interest in the designation of Bridal Veil as a Multnomah County historic resource and in the nomination of that site to the National Register of Historic Places. The public interest in Bridal Veil may be satisfied by either the preservation of the site and

Historic landmark designation and the inclusion of any site or building in a cultural resource inventory has never meant that a landmark must be preserved, only that preservation consideration must be given before the site is lost or irreversibly changed. Obviously, landmark recognition does express a public interest in a property and its history and imposes some restrictions on it development just as does zoning or transportation planning. The HPLO recognizes that The Trust for Public Lands did not wish to become involved with historic property management when it acquired the Bridal Veil site, but they did. We object to the distortion of the historical and architectural evaluation process in order to free the Trust from its stewardship obligation. At the very least, Bridal Veil must be documented according to the appropriate level of Historic American Buildings Survey (HABS) standards, which may mean a complete topographic survey of the site, archeology, and measured drawings, or it may mean just architectural photography recording of the site and buildings and the collection and recording of the extant history and records.

The Multnomah County Cultural Resources Inventory is the tool to insure that appropriate action is taken to either record or preserve Bridal Veil before it is gone.

The preservation of Bridal Veil would be a difficult undertaking. With few of the mill buildings remaining, none of the machinery, no flume, and just a few other buildings, the interpretation of its history must be done through the use of visual aids, landscaping, and other interpretive tools, possibly some reconstructions. Buildings are not preserved unless beneficial uses are found for them to pay for their restoration, maintenance, and operation. However, I have seen that there is considerable enthusiasm in the Corbett community for Bridal Veil, and similar undertakings have been successful. That community interest in the preservation of their timbering history should be respected and allowed to prove its interest in saving Bridal Veil. Multnomah County must help by appropriately adding Bridal Veil to its inventory. Only if preservation efforts are unsuccessful, should the razing of the remaining town be permitted.

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T. ALLAN COMP, Ph.D.
historian

1847 Vernon Street NW, Washington, D.C. 20009 • 202-986-9633 • FAX: 202-483-7339
P.O. Box 382, Virginia City, Nevada 89440 • 702-847-9124

29 September 1992

Scott Pemble
Director of Planning
Multnomah County
2001 East Morrison
Portland, OR 97214

Dear Mr. Pemble:

In the early 1980s I served as the Division Chief for Cultural Resources for the Pacific Northwest Region of the National Park Service. In that capacity in 1981 and 82 I helped organize and then directed the reuse study of the Columbia River Highway in Oregon. That study produced an inventory of the old highway, a final Columbia River Highway: Options for Conservation and Reuse report, and several other reports as well.

It was never the goal of the Columbia River Highway Project to evaluate cultural or historic resources in the vicinity of the highway. We did look at structures directly related to the early life of the highway -- garages, service stations, and early auto courts -- but nothing more. I will admit that we saw a number of interesting structures that seemed to suggest their potential for historic district status, but I purposefully kept the team tightly focused on the highway, its structures and some directly-related buildings. Even a quick scan of the inventory cards prepared by the team and on file with the State Historic Preservation Office will confirm this restricted focus for the highway project.

I have also read the report on Bridal Veil, apparently one of the few remaining company towns surviving from Oregon's significant timber history. I remember the little collection of structures well and commented at the time on the utility of the village as a place within the Gorge to interpret the early lumbering history of Oregon. After reviewing the cultural resources report on Bridal Veil, my own professional judgement is that this is clearly a potential National Register Historic District and, perhaps more important, a wonderful opportunity to extend the range of interpretation within the Gorge, a place continuously impacted by human habitation for the last 12,000 years. Given this historic and interpretative potential, I would strongly urge Multnomah County to consider amending their comprehensive plan to include Bridal Veil as an important representative component of the history of this area.

Just two week ago I recently presented a paper on the Columbia River Highway to a session of the "Great River of the West" project. I commented that the highway had become an historic experience that helped to link diverse interests, that strengthened

the consensus about the importance of the Gorge and the National Scenic Area designation. As the National Park Service and other historic preservation and conservation organizations are beginning to recognize, the larger Heritage landscapes and corridors now being developed speak to the larger and more diverse interests of Americans in seeing not just small pieces but whole landscapes of our past conserved -- and appropriately developed. These heritage places can become major tourist attractions, significant recreational opportunities for local residents and supportive places in which to live. The Columbia River Gorge and its many cultural and recreational resources has the potential to become such a place by recognizing its many assets -- assets that include Bridal Veil.

With best regards,

T. Allan Comp

T. Allan Comp, Ph.D.

ALFRED STAEHLI, FAIA
ARCHITECT/PLANNER
ARCHITECTURAL CONSERVATOR
317 SE 62ND AVENUE
PORTLAND, OREGON
97215
(503) 230-0807
FAX - PHONE FIRST

May 8, 1997

Carol Shull
Keeper of the Register
National Register of Historic Places
PO Box 37127
Washington, DC 20013-7127

Re: National Register Nomination for Bridal Veil, Oregon.

Dear Ms. Shull:

This letter is on my own behalf. Although I am chairman of the Portland Chapter AIA Committee on Historic Resources and a member of the Oregon State Advisory Committee on Historic Preservation, these comments are my own and do not represent those committees. We also have met through the AIA's national Committee on Historic Resources.

I wish to protest the return of the nomination which was forwarded to you by our State Historic Preservation Office. Technically, you may be correct. The archaeological documentation is incomplete. The significance of the buildings is not fully explained. Our Oregon SHPO staff does not support the nomination. The Trust for Public Lands (TPL) has opposed any kind of landmark designation from the beginning. I served on the Multnomah County committee which reviewed the property in 1994 which recommended county landmark designation.

I believe that you are being gulled by the efforts of TPL to save their agreement with the donor who gave TPL the money for purchasing the site. Politics and face are the real issue, not the significance of the property.

TPL acquired the property with a donation which stipulated that the site would be cleared and made a park, added to the adjacent Bridal Veil Falls State Park. There are strong sentiments for the preservation of the Columbia River Gorge to a sylvan past as depicted in the early photographs of C. E. Watkins, or at least to the early views of the historic Columbia River Highway. There is no room in this view for vernacular buildings in the gorge, certainly not if they are not in pristine condition or associated with a notable architect or engineer. Archaeological sites are acceptable so long as they do not impede the restoration of the forests and the roadsides, or the demolition of inconvenient old buildings.

I am not qualified to comment on the significance of archaeological remains on the property. I have participated in the discussions about them and am both aware of the conflicting testimony of different archaeologists and the impediments placed by TPL to resolving the significance questions. TPL, so far, has threatened trespass prosecution of anyone investigating the site.

I made detailed examinations of the buildings for the county task force in 1994. Except for my being unable to prepare the nomination of the property to the National Register because I am a SACHP member, I am confident that an excellent nomination could be written and documented which includes the buildings under criteria A and C. The present nomination concentrated on the archaeology due to the opposition of TPL; although the buildings are prominently mentioned

as contributing resources, and their significance was reinforced by the comments of the Oregon SACHP members as contained in the minutes.

All of the remaining Bridal Veil buildings, especially the workers and managers houses, in fact are 90% original construction and materials. They are fully capable of being restored, existing on the original sites, and retaining "---sufficient original workmanship and material---to serve as instruction in period fabrication." They are very rare examples of their kind, among the last remaining, and are prime examples of their type. They are simple vernacular buildings from a company town. Their history is that of one of the two, lumbering and fishing, primary development influences on Oregon and the Pacific Northwest. Beneath the added sidings and interior finishes, the original lap siding and T&G ceiling remains, the original flooring, and the original framing. Simple good construction. Non pretentious. Workers' housing. What else can be said for them?

There has never been a question about the difficulty of preserving these remaining buildings. The cost and effort would be substantial. I doubt that the Crown Point Country Historical Society would be able to marshall the money to preserve and restore them, certainly not without the cooperation of TPL, which it has vowed never to give. The main purpose of a this National Register nomination was to gain the nominal protection of Section 106 action and review, and the probable requirement for HABS/HAER documentation before demolition. TPL doesn't want to do that either. Cultural resource conservation is their banner, isn't it? The demolition of landmarks is not their image. TPL has its agreement with the donor to respect.

I have tried to help with the nomination, to provide necessary input to better state the condition and significance of the buildings, made some improvements, but could not write the nomination myself. It is not difficult to rephrase the same information provided by Heritage Investment to support the buildings instead of to condemn them. Heritage Investment chose its architectural and historical consultants deliberately to suppress the significance of the properties. Lewis McArthur and Richard Ritz, FAIA, friends and colleagues of mine although we sometimes disagree, are respected historians, but not of vernacular architecture. Lewis is a geographic and Columbia River Gorge writer. Richard is a historian of Oregon architects and modern Portland architecture. Neither is interested in vernacular architecture. A landmark has to be one of the rarest and finest to tip their scale.

This is why I say you are being gulled. TPL has made a concerted effort to diminish the significance of the Bridal Veil site by commishioning negative studies of the buildings and archaeological resources and by preventing objective studies of any resources. Your action is unwittingly aiding TPL's cynical actions for Bridal Veil. The remaining buildings, still standing, have deteriorated significantly since 1994. TPL is using demolition by delay and neglect to accomplish what they have not been able to do by permit.

Sincerely,

copies: SHPO, HPLO, Crown Pt. CHS, Mult. Co.

ALFRED STAEHLI, FAIA
ARCHITECT/PLANNER
ARCHITECTURAL CONSERVATOR
317 SE 62ND AVENUE
PORTLAND, OREGON
97215
(503) 230-0807
FAX - PHONE FIRST

August 13, 1998

Bob Hall, Senior Planner
Multnomah County, Oregon
Dept. of Environmental Services,
Transportation and Land Use Planning
2115 S.E. Morrison Street
Portland, OR 97214

RE: Request by TPL for demolition of structures at Bridal Veil, (NSA-26-95), notice of 6 August 1998.

Dear Mr. Hall:

As a minimum, the Trust for Public Lands should be required to do basic Historic American Buildings Survey (HABS) documentation on the remaining 16 buildings as a mitigating condition for their demolition.

Contrary to the statements in the attached letters that the buildings exhibit no historic landmark significance, they were found to be significant for County landmarks purposes, they are prominently—if inadequately—described in the original National Register (NR) nomination prepared for Crown Point Historical Society which was not forwarded to NPS for review, and they are cited as significant contributing landmarks in the minutes of the Oregon State Advisory Committee on Historic Preservation when it reviewed and approved the final amended NR nomination under Criterion D, archaeology. The SACHP never found that the buildings were not significant or contributing resources to the site; but that for NR nomination purposes, they were not as compellingly described as the potential archaeological resources, therefore the request was made to the preparers to change the nomination to focus on Criterion D.

The remaining buildings at Bridal Veil, as they were at the time of the beginning of this drawn out process, when first reviewed for Multnomah County Landmark status, were eminently restorable and capable of interpreting the life and history of Bridal Veil. That they have been subject to demolition by neglect by TPL and are now in a more ruinous condition cannot absolve TPL from its responsibility for their stewardship of a historic resource. It is very likely that no program would ever have emerged which would have saved and restored the buildings and demolition would have been their ultimate fate. Documentation would have been appropriate at that time.

I took photographs of them at that time, exterior and interior, construction details and finishes. I meant the photographs to be used by the NR nomination preparers to illustrate their qualities and potential for restoration and interpretation. Unfortunately, I could not be the preparer of the nomination and in the hurry to prepare it, the buildings were inadequately described and illustrated. I still have those photographs. They show that despite superficial appearances, that 80-90% of the

original construction materials and finishes remained intact, only poorly painted over or covered by later materials: Original siding. Original T&G wall and ceiling finish. Original doors, windows, and frames. Original plan and elevations. The one remaining manager's house still had its original kitchen cabinets and most interior finishes. These were company town vernacular buildings, not high style or the work of an eminent architect. They were exemplary remainders of a very typical logging company town and one of the last and most complete of that type which remained in the Pacific Northwest. Gilchrist, Oregon, and McCloud, California, remain as historic logging company towns but these are planned and architect designed communities and are not the same as the more common and now rarer vernacular company town.

I would be glad to show these photographs of Bridal Veil and explain them if necessary to influence a requirement for their documentation. I hope that TPL will have the documentation done by a responsible party so that the record of this community will be complete even though is will no longer stand.

Thank you.

Alfred M. Staehli, FAIA
Historic Preservation Architect
and Architectural Conservator

Copy: SHPO
CPHS
AIA/CHR
HPLO

King County
Cultural Resources Division
Parks, Planning and
Resources Department
Arts Commission
Landmarks Commission
Smith Tower Building
506 Second Avenue, Room 1115
Seattle, Washington 98104
(206) 296-7580 V/TDD **296-7580**

October 2, 1992

C 9-92

Mr. Scott Pemble
Director of Planning
Multnomah County
2115 SE Morrison Street
Portland, Oregon 97214

RE: Community of Bridal Veil Historic Significance

Dear Mr. Pemble:

I am writing to urge Multnomah County government to assist in the preservation and restoration of the historic logging community of Bridal Veil.

In addition to my position as Historic Preservation Officer for King County, Washington, I am also a principle in the consulting firm of Koler/Morrison which conducted an inventory of historic sites in Multnomah County in 1989-90. During that study I became familiar with the cultural resource base of the county including the community of Bridal Veil. Bridal Veil was not included in our inventory at that time for the following reasons: 1) our scope of work was limited to a windshield survey of *architecturally* significant resources, and 2) we were told by the Planning Director that an intensive inventory of the Gorge would be conducted at a later date and therefore we should limit our documentation to only the most architecturally prominent resources.

The omission of the community from our original inventory is not an indication that the site lacks significance. It is my opinion that Bridal Veil is highly significant from an historical perspective as a rare surviving example of a logging community which illustrates the growth and evolution of the industry over many decades. It is additionally significant because it is the only resource of its type in all of Multnomah County and perhaps in the state. For these reasons every effort should be made to preserve, restore and interpret this site for the benefit of all those who live in and visit the Columbia Gorge.

I have worked in the field of rural and small-town preservation for over 14 years. Most recently I was involved in the designation and restoration of the community of Selleck in King County. Established in the late 19th century, Selleck thrived for several decades as a bustling logging community until the mill closed and the town was abandoned. In 1988, with many of its original buildings collapsed and those that remained sorely dilapidated, the community was listed on the National Register of Historic Places and designated as a King County Landmark in recognition of its significance as the last vestige of a logging community in King County. Four years later most of the residences have been rehabilitated for low-income housing, the

schoolhouse restored, and interpretive plaques commemorating the town's contribution to state and local history erected.

The findings and recommendations for Bridal Veil's preservation articulated in the July 1992 report prepared by Sharr Prohaska are solid and well-substantiated: there is sufficient physical integrity to preserve and interpret the site. Multnomah County should make every effort to see that Bridal Veil is saved from the wrecking ball. Once Bridal Veil is gone it is gone forever along with a very significant part of Oregon's past. We can't afford to lose everything.

Sincerely,

Julie M. Koler

CROWN POINT COUNTRY HISTORICAL SOCIETY

P.O. BOX 17 ◊ BRIDAL VEIL, OREGON ◊ 97010

Nov. 23, 1992

Chris Beck
Trust for Public Land
1211 SW 6th Ave.
Portland, OR 97204

Dear Chris:

I am writing regarding our request for permission to have access access to the Bridal Veil site to a historic preservation architect and preservation contractor for the purpose of evaluating the buildings, at no expense to your organization.

Per our conversation this morning, I am confirming your decision to deny access at this time. Please let me know if I have misunderstood in any way.

Sincerely,

Chuck

Chuck Rollins
Vice-President
695-5821

cc: Martin Rosen
Mult. Co. Commissioners
Mult. Co. Planning Commission
Sen. Mark Hatfield
Sen. Bob Packwood
Rep. Ron Wyden
Scott Pemble

Bridal Veil Community Church

P.O. BOX 54
BRIDAL VEIL, OREGON 97010

SEPTEMBER 2, 1998

DEPARTMENT OF ENVIRONMENTAL SERVICE
TRANSPORTATION & LAND USE PLANNING DIVISION
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
ATTENTION: BOB HALL, SENIOR PLANNER

SUBJECT: RENEWAL OF REQUEST BY TRUST FOR PUBLIC LANDS FOR DEMOLITION OF STRUCTURES AT BRIDAL VEIL, OREGON (NSA 26-95)

DEAR SIR:

WE ARE INDEED INTERESTIED IN YOUR CORRESPONDENCE DATED AUGUST 6, 1998 CONCERNING THE FUTURE OF BRIDAL VEIL, OREGON.

THE BRIDAL VEIL COMMUNITY CHURCH HAS BEEN IN EXISTENCE FOR OVER SIXTY YEARS AT THE SAME LOCATION. OUR CHURCH FAMILY HAS MINISTERED NOT ONLY IN SUNDAY MORNING SERVICES, BUT HAVE HAD A VITAL MINISTRY OF WORKING WITH THE YOUTH, FAMILIES AND ELDERLY DURING THE WEEK. A SUMMER CAMP PROGRAM HAS BEEN INSTRUMENTAL IN KEEPING SOME OF OUR YOUTH OUT OF TROUBLE AS WELL AS LETTING THEM MAKE NEW FRIENDS. WE BELIEVE THAT OUR PRESENCE HAS BEEN A POSITIVE INFLUENCE TO OUR AREA TOO.

WE THEREFORE ASK THAT THE BRIDAL VEIL POST OFFICE AND THE BRIDAL VEIL COMMUNITY CHURCH BE GIVEN SPECIAL CONSIDERATION IN REGARDS TO THE FUTURE. WE APPRECIATE YOUR INTEREST IN OUR AREA AND HOPE YOUR DECISION WILL BE SATISFACTORY TO ALL CONCERNIED

I HAVE ENJOYED THE AREA AS PASTOR OF THE CHURCH FOR TWENTY YEARS. WE HAVE SEEN A LOT OF CHANGES. WE LOOK FORWARD TO THE FUTURE WITH GREAT ANTICIPATION.

SINCERELY YOURS,

Merle Davis

MERLE DAVIS, PASTOR

DISTRIBUTION:
ORIGINAL: BOB HALL
COPY: DON GIDDEON, CHAIRMAN
COPY: FILE

P.O. Box 1341
Portland, Oregon 97207
October 18, 1992

Multnomah County
Board of County Commissioners
1201 S.W. Fourth
Portland, Oregon 97204

RE: Landmarks designation for Bridal Veil community

Dear Commissioners:

I have worked in cultural resource management in Oregon since 1976, including a number of studies in the Columbia River Gorge. Although my primary training is in prehistoric archaeology, I have conducted a number of studies that have included inventory, evaluation, and documentation of standing structures. In addition, as Public Issues Coordinator for the Association of Oregon Archaeologists since 1987, I have reviewed dozens of reports and studies undertaken on behalf of local, state, and federal agencies for their compliance with the relevant legislation and regulations. In a personal capacity, I have recently reviewed the Heritage Investment Corporation (HIC) report entitled Bridal Veil, Multnomah County, Oregon: Historical and Architectural Evaluation. My comments below are intended to address only that report and its recommendations.

In general, I found the HIC report seriously, if not fatally, flawed in its methods, conclusions, and adherence to both professional and legal guidelines and standards. I will confine the remainder of my observations to the most serious problems that exemplify the overall criticism.

In evaluating the HIC report, I have relied primarily on the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (Federal Register, Vol. 48, No. 190, 44716-44740, September 29, 1983). Although these standards are not legally pertinent to the Multnomah County historic landmarks process, they are widely recognized as reflecting professional standards among historic preservation specialists. In addition, any studies of the Bridal Veil community conducted to meet the U.S. Forest Service cultural resource requirements in the Columbia River Gorge NSA management plan must meet these guidelines and standards.

The *Secretary of the Interior's Standards and Guidelines* stress the importance of carefully defining the "historic context" of the study area. This calls for thorough research and a grasp of the historical development of the area being studied. The HIC report exhibits no awareness of the history of the Columbia River Gorge and only passing familiarity with the Bridal Veil community. A page and a half of a "brief history" of Bridal Veil does not constitute an adequate historic context statement. I find this a particularly critical weakness of the report.

In this regard, the authors of the HIC report are primarily concerned with evaluating Bridal Veil as an example of a "company town." This immediately narrows the scope of their evaluation, ignoring the potential contribution of Bridal Veil to the historical development of the history of the Columbia River Gorge or Multnomah County other than as a "company town." Even from this narrow perspective, the HIC report is flawed. HIC's definition of a company town is much more restricted than that used by James Allen in his classic study, The Company Town in the American West (Allen, for example, states that a company town does not have to be owned by the dominant company).

Second, HIC attempts to compare Bridal Veil with five other company towns in Oregon. The context for evaluation at the county level should be the county, not the state. Are there other company towns in the Columbia River Gorge or Multnomah County that exemplify this kind of historical development as well as or better than Bridal Veil? And even here, HIC does not comment that among their own list, Bridal Veil is the oldest. HIC considers the fact that Bridal Veil has been reconstructed as substantially diminishing its historic value. I would argue instead that the changes in the community offer a rare opportunity, even at the state level, to explore the evolution of what began as a company town over a period of a century. In the Pacific Northwest, Port Gamble, Washington, is the only logging company town that has endured longer than Bridal Veil.

I also believe that the HIC report also suffers from an overemphasis on the architectural integrity of the component structures, without considering compensating factors. There is no question that most of the remaining buildings at Bridal Veil are in poor physical condition and the integrity of historic properties is a key consideration in the evaluation process. Poor integrity alone, however, should not and does not determine the significance of a historic community. We need to remember that recognition of historical significance of a property is defined primarily by its history not its architecture.

I have already argued that the HIC report does not present an adequate evaluation of Bridal Veil's potential historic importance. The HIC report states that "None of the early lumber structures remains. None of the residential structures is intact. The exact location of many of the original buildings is questionable." The second statement is not correct. Several of the residential structures are in poor condition but they are "intact" and can continue to provide important information not just on the architecture of the community but on the community's social organization as well (an element not addressed by the HIC report).

The seemingly poor information on the locations of the original buildings may be true of the archival records (although we have no information in this report that HIC attempted to locate early maps, drawings, photos, company records, etc., of Bridal Veil). This limitation can potentially be addressed, however, through archaeological field studies. Archaeological research at the nearby Warrendale Cannery is a good example of how written and photographic records and oral histories can be supplemented by archaeological fieldwork and analysis to provide a more comprehensive historical picture. Many historic communities that lack any standing structures have been considered eligible for the National Register through their potential to yield important information through archaeological studies.

The HIC report notes that Dr. John Woodward has conducted a five-year archaeological study of Larch Mountain, but does not reveal if that study addressed prehistoric or historic resources, if his study included Bridal Veil itself, and what the results of that study were. The report also suggests that Bridal Veil would offer "industrial archaeological interpretive opportunities" if it consisted of a "cohesive collection of well-maintained essentially unaltered structures." This statement shows a little understanding of archaeological interpretation. Archaeology's greatest contribution to our understanding of historic sites and communities is by what it adds to the architectural and documentary record. Bridal Veil in fact offers better archaeological opportunities in its present condition than if it was a "cohesive collection of well-maintained essentially unaltered structures."

In conclusion, the HIC report has employed an inappropriately narrow perspective to argue that the Bridal Veil community lacks historic significance. It is almost as if the conclusions and recommendations framed the scope and character of the HIC evaluation. I strongly urge the Commissioners to reject this report as a basis for determining the county's recognition of Bridal Veil as an historic landmark.

Thank you for the opportunity to comment on this action.

Yours truly,

David V. Ellis

Donovan and Associates
1615 Taylor Ave. • Hood River, OR • 97031 • 541-386-6461

Dear Mr. Hall, May 9, 1997

I am writing in response to the Trust for Public Land's request to demolish the remainder of the buildings at Bridal Veil, Oregon. I was amazed to see that the Trust only submitted the 1994 report, *Bridal Veil, Multnomah County, Oregon, Historic Survey and Evaluation of Significance*, prepared by Heritage Investment Planning, as the source of review by the county. Many other studies have been completed of the site including recommendation of the Task Force set up by Multnomah County to study Bridal Veil and a National Register of Historic Places nomination entitled *Bridal Veil Historical Archeological Site* (March 15, 1996).

In the past, Bridal Veil has been designated a historic resource by the county and had the full support of the State Advisory Committee on Historic Preservation (different from the SHPO) when the National Register Nomination was presented in front of the Committee. The National Register nomination was then sent to the Keeper of the Register for review. The nomination was returned with no determination of eligibility for the National Register because of insufficient information pertaining to the archeological component. As one of the preparers of the nomination, I would like to state that the Trust for Public Land would not allow the proper archeological investigation to occur on site so the nomination could not be completed to its fullest potential according to National Register standards.

It was never our intent as preparers of the nomination to state that the buildings were not significant historic archeological resources. The houses are an integral part of the site (as stated in the nomination) and contribute to the significance of the site. In correspondence between National Register reviewer Barbara Little and the Trust for Public Land, Ms. Little stated that *"the above-ground structures are not archeological resources and would not be contributing resources" in the historical archeological site as it is documented since there is not supporting argument made for the importance of the information contained in the buildings.* Supporting documentation for the nomination was limited because the Trust was uncooperative with Crown Point Historical Society in preparing the nomination and even threatened to sue anyone trespassing on the site. Due to these facts, the investigation of the site was not as complete as it should have been.

It seems that after all this time some sort of agreement could be made between Crown Point Historical Society and the Trust for Public Land to mitigate the effects to the site and preserve some of the structures while proceeding with the Trust's plans to sell and develop the site. I would strongly urge that a solution be found with the help of a mediator. The Trust for Public Land and Crown Point have spent a lot of time, money, and energy on this issue. Perhaps some of this energy should be spent on working out a compromise instead of butting heads.

I would also urge the County to look at the Columbia River Gorge National Scenic Area Management Plan, pages I-50 to I-53 which talks about Cultural Resources within the Scenic Area. GMA Policy, Item no. 8 seems particularly appropriate (see attached). Wouldn't the management plan provisions for cultural resources apply in this case?

Sincerely,

Sally Donovan

Sally Donovan
Donovan and Associates

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

B. A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed above in 6A(1) through (6). The locations of known cultural resources are shown in the cultural resource inventory prepared by Heritage Research Associates.

7. A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

8. The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the GMA. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

   The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for cultural resources that are discovered during construction of small-scale and large-scale uses in the GMA.

   For the Management Plan, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

9. The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction.

10. If cultural resources may be affected by a proposed use, an evaluation shall be performed to determine if they are significant. Cultural resources are significant if one of the following criteria is satisfied:

HISTORIC PRESERVATION LEAGUE OF OREGON

"To Promote, Protect, Preserve Oregon's Cultural Resources"

October 13, 1994

Scott Pemble, Director
Division of Planning
2115 SE Morrison St.
Portland, OR 97214

RE: Application Request for Demolition of the Bridal Veil Townsite, Case No. NSA 26-94.

Dear Mr. Pemble:

Please refer to my letter of October 12, 1994 in regards to my concern about the lack of public notification in regards to this application. In order to secure our right to participate in the public process regarding Case No. 26-94, I am submitting the following comments even through I strenuously object to the disregard shown to the numerous participants in the Bridal Veil issue. I believe that an extension of an additional 30 days to allow for further comment and proper public notification is appropriate.

I would like to express several areas of concern I have with the application for demolition of the Bridal Veil Townsite.

I found it difficult to respond to the application for two reasons. First, the application had little or no information about the proposed action except for a desire by the applicant to demolish a number of structures. The application should not be considered complete without the following:

- -The required historic and cultural surveys.
- -An evaluation of the site's historical and cultural significance.
- -Specific information about the proposed new use of the site. Including a site plan and a schedule for redevelopment.
- -A request for a use change.
- -A description on how the applicant will handle hazardous waste disposal on buildings that are not considered historical significant.
- -A protection plan for cultural resources that maybe disturbed during any proposed demolition.

This list is by no means complete but serves as an example of the additional material that should accompany a significant request such this demolition proposal. It is difficult to make comments without sufficient information up-front.

Second, Multnomah County did not provide any criteria in which to guide public comments. It would be helpful if the county could provide several pieces of information including:

-A brief description of the property in question.

-A brief summary of the proposed action and any potential conflicts that may arise.

-A brief summary of previous county involvement in the site.

-A brief summary of how the application will be handled including a reference to the applicable portions of the NSA General Provisions including the notification and appeals procedure.

This type of information is necessary in order to respond effectively.

It is my understanding that under MCC 11.15.3818, GMA Cultural Resource Review Criteria that both a Cultural Resource Reconnaissance Survey and a Historic Survey must be conducted. It is my concern that both of these surveys be completed by a qualified professional and that their work be done in a comprehensive and objective fashion. There has been a great deal of important information that has been presented at previous public hearings that must be included in the public record and accessed by the consultant conducting the surveys. Therefore, I request that you make all of the previous Multnomah County files on Bridal Veil part of the public record under Case No. NSA 26-94. This should include all files related to Case File C9-92A including but not restricted to:

-File C9-92A
-Planning Commission and County Commission public hearings, testimony, staff reports and transcripts.
-The file titled Supplemental Materials.
-The file titled Bridal Veil Correspondence, received prior to 10/16/92.
-The file containing correspondence received after the close of the 10/16/92 Planning Commission hearing.
-The file containing the Bridal Veil Task Force Report and other Task Force working documents.
-The report prepared by Sharr Prohaska titled Bridal Veil, History and Significance of the Community.
-All files related to Case No. Sec 33-92.
-Any correspondence between either the proponent or the opponents and staff regarding the historic designation of Bridal Veil and the demolition requests.
-Any other not mentioned materials that is in the County's possession and that relates to the efforts to determine the historic significance of the townsite of Bridal Veil and the efforts to demolish the remaining structures.

Also, in regards to the required Cultural Resource Reconnaissance Survey, the application which proposes to demolish 17 structures located on a large parcel of land within the NSA and that will affect a significant number of archaeological features must be treated as a large-scale use under MCC11.15.3818(D)(2).

It is my understanding that a National Register Nomination is being prepared for the townsite of Bridal Veil by members of the local community. The application for nomination is expected to be submitted to the State Historic Preservation Office by the end of the year. The findings of the Advisory Council will have an effect on the demolition proceedings.

In conclusion I have several recommendations:

-That an extension of an additional 30 day for comment be granted.
-That public notice be sent to all interested parties including the 100 or so all ready on the notification list.
-That the application be deamed not complete until a Cultural Resource Reconnaissance Survey for large-scale uses and a Historic Survey are completed in accordance with the provisions of the County's NSA ordinance.
-That the applicant is requlred to follow all of the provisions of the County's NSA ordinance.

Thank you for your time and consideration. If you have any questions feel free to call me.

Sincerely,

Mike Byrnes

Mike Byrnes, President
Historic Preservation League of Oregon

HISTORIC PRESERVATION LEAGUE OF OREGON

"To Promote, Protect, Preserve Oregon's Cultural Resources"

October 12, 1994

Scott Pemble, Director
Division of Planning
2115 SE Morrison St.
Portland, OR 97214

RE: Application Request for Demolition of the Bridal Veil Townsite, Case No. NSA 26-94.

Dear Mr. Pemble:

On behalf of the Historic Preservation League of Oregon, I want to express our grave concern over the lack of public notification by Multnomah County in regards to this application. We were informed about the application and the 30 day comment period through the local rumor mill, 1 1/2 weeks before the end of the comment period!

As active participants in the numerous public hearings on the historic significance of Bridal Veil as well as being a member of the Multnomah County 1993 Bridal Veil Task Force we strongly object to the County's notification procedures in regard to this application! Over 100 hundred individuals, organizations and agencies were sent public notices for previous hearings on Bridal Veil. Only 17 notices were sent out in regards to this new application. In light of the controversial nature of the Bridal Veil proposal the County should have made every effort to mail out notices to everyone on their existing notification lists whether or not the current code requires it.

On behalf of the interested parties that were not notified, I request that the County extend the comment period an additional 30 days and that notice be sent to all of the 106 interested parties on the Bridal Veil mailing list. The extension and additional notification will insure the right of all previous participants to voice their concerns and it preserves their right to appeal any forthcoming decision.

In light of the strong opinions regarding Bridal Veil's future, and the intention of TPL to sell the property to a public agency, extending the comment period is prudent, ethical and in the best interest of the public process.

Thank you for your time and consideration. I would welcome the opportunity to discuss with you the possibility of amending MCC 11.15.3810 (B) and other public notification sections of the code to allow for equitable public participation in the National Scenic Area. In the mean time please place the Historic Preservation League of Oregon on your notification list for all applications that will affect cultural and historic resources within the NSA. If you have any questions please feel free to call me.

P.O. BOX 40053, PORTLAND, OREGON 97240 (503) 243-1923, 243-6857

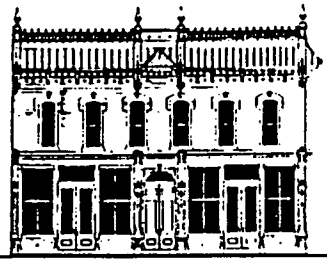
Sincerely,

Mike Byrnes

Mike Byrnes, President
Historic Preservation League of Oregon

cc: Beverly Stein, Chair
Board of County Commissioners

Sharron Kelley
Board of County Commissioners

BOSCO-MILLIGAN  FOUNDATION

ARCHITECTURAL HERITAGE CENTER

P.O. Box 14157 / Portland, Oregon 97214 / (503) 231-7264

M E M O R A N D U M

TO: Scott Pemble, Planning Director, Multnomah County
FROM: Cathy Galbraith, Executive Director
DATE: October 12, 1994

RE: Request for Demolition - Bridal Veil Townsite, by Trust for Public Lands

As an appointed member of Multnomah County's 1993 Bridal Veil Task Force, I am dismayed at the lack of even a County courtesy notice of the application for demolition. Given the strong and broad based public interest in the effort to monitor a public process that has been confusing (to say the least), any notice to any interested parties by the County in a proposal as serious and irreversible as demolition would have gone a long way to ensure an open opportunity for public review and comment.

I submit the following comments as per NSA Site Review (MCC 11.5.3804) and GMA Cultural Resource Review (MCC 11.15.3818).

- The Board of County Commissioners, Planning Commission, and the Bridal Veil Task Force all concluded that buildings at Bridal Veil are historically significant County resources. Therefore, compliance with 11.15.3818(3) is required. I maintain that the buildings/site are of regional and statewide significance and that the townsite includes historic and cultural resources that cannot be separated in assessing impacts of demolition. While the State Historic Preservation Office's opinion may be that the townsite is not National Register eligible, there has been no definitive determination to that end.
- No Cultural Resource Reconnaissance Survey has been undertaken. As far as I have been able to determine, the Gorge Commission and Indian Tribal Governments have not yet prepared/adopted a map of cultural resources in the GMA. Therefore, compliance with 11.15.3818(2) is required. The proposed demolition does **not** meet any of the provisions of 11.15.3818 that would exempt the applicant and County from compliance with 11.15.3818 (A)(1)(2)(3), (D)(2), (3)(a)(b), (E)(2)(a)(b)(c)(d), (F)(1)(2)(3)(4)(5) (all relating to historic and cultural resources). The findings from these steps may then lead to compliance with (G)(2)(a)(i)-(iv) and (b), (H)(1)(a)(b)(i)-(v) and (2), and (J)(1)(2) (all relating to historic and cultural resources).

With many years of local government planning experience, I can honestly say that one of the greatest sources of citizen frustration is lack of clarity and direction from local government officials in complying with the jurisdiction's own regulating ordinances. The County's review of the potential land use actions at Bridal Veil has been fraught with this problem every step of the way. When elected officials, staff, and legal counsel exhibit uncertainty in administering their own ordinances, how can the general public have any assurance that "the public process" is being followed?

Given the relative "newness" of the County's Columbia River Gorge National Scenic Area Ordinance, the County needs to take the utmost care to apply, administer, and fully understand its own ordinance.

In conclusion, I recommend that you recognize the lack of staff expertise on the provisions of your GMA ordinance, in regards to judging historic and cultural resources. Cities and Counties rarely have these professional staff capabilities in-house and Multnomah County is no exception. I recommend that your decision require the applicant to conduct a Cultural Resource Survey, Evaluation of Significance, Reconnaissance Survey for Large Scale Uses, and Historic Survey as per the provisions of the County's GMA ordinance.

cc: Beverly Stein, Chair
Board of County Commissioners

HERITAGE RESEARCH ASSOCIATES, INC.

ARCHAEOLOGY AND HISTORY

September 30, 1992

Scott Pemble, Director of Planning
Multnomah County
2115 SE Morrison
Portland, Oregon 97214

Dear Mr. Pemble:

It has come to my attention that a question has arisen concerning the scope of the Cultural Resource Overview that HRA prepared for the Columbia River Gorge National Scenic Area (CRGNSA) in 1988. Specifically, I understand that the fact that an inventory of structures at Bridal Veil, Oregon, was not included in our overview has been used to argue that these structures are not historically significant. This argument is not valid.

The CRGNSA overview project involved a review and synthesis of existing archaeological and historical information (documents, reports, site records, published materials) available for lands included within the Scenic Area. The scope of our contract was confined to consideration of previously recorded sites and did not include survey or evaluation of cultural resources in the field. Our project was strictly limited to literature review and synthesis.

In view of this fact, it is noteworthy that the Bridal Veil Lumber Company is prominently mentioned in the CRGNSA overview for its role in the beginning of large-scale commercial lumbering in the Gorge. Clearly, any remaining structures associated with the company mill town of Bridal Veil, Oregon, should be inventoried and evaluated for their architectural and historical significance.

There are many prehistoric and historic sites in the Columbia Gorge and elsewhere that have not yet been inventoried and evaluated. Bridal Veil is one locality where such work has not yet been conducted. Based on its role in the history of economic development in the Gorge, it is strongly recommended that a cultural resource inventory and evaluation be conducted in Bridal Veil before any plans are implemented that might affect the remaining structures. Please contact me if you have any questions about our work in the CRGNSA.

Sincerely,

Rick Minor

Rick Minor, PhD
Senior Archaeologist

97 Garden Avenue
ene, Oregon 97403
ne 503/485-0454

GORGE PUBLISHING, INC.

November 19, 1992

Multnomah County Planning Commission
2115 SE Morrison
Portland, OR 97214

Dear Multnomah County Planning Commission,

Regarding SEC 33-92 #755, 756, 757, 758 – Request for the demolition of 17 buildings in Bridal Veil.

Please do not permit demolition of any restorable or culturally significant buildings at **Bridal Veil** until their historical significance is determined. This application is in direct contradiction to SEC criteria Section (l) "Archeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry."

Additionally, the houses, if restored, maintained and interpreted properly, would make an excellent historic "cornerstone" to any park development at Bridal Veil. Destroying them contradicts SEC criteria Section (E) "Recreational needs shall be satisfied . . . and with minimum conflict with areas of environmental significance."

The Bridal Veil mill site and town site is an area of cultural and historic value worthy of preservation. As one of the oldest examples of a former way of life, it deserves the chance to provide a living educational example to our future generations. As you well know, once a piece of history is destroyed, it is gone forever.

My ancestors were born and raised in what is now a mining "ghost" town. I take great pride and curiosity in being able to view what is left of it (partially restored), and how much is missing that will never be seen again. I have this same feeling about the Oregon Trail, and now am very concerned that all traces of the community of Bridal Veil are about to be wiped out.

The Columbia River Gorge National Scenic Area Act calls for the enhancement and protection of cultural resources, in addition to scenic, recreation, and natural resources. Cultural resources are well defined in the Scenic Area Management Plan, and are not limited to Native American traditions. The Bridal Veil site is a prime example of a significant cultural resource, and therefore worthy of your consideration before it's too late. Thank you.

Sincerely,

Carol York

Carol York, Editor
Columbia Gorge Magazine

cc. Gladys McCoy, Chairman
Multnomah County Board of Commissioners

P.O. Box 918, Hood River, Oregon 97031 ■ Phone 503-386-7440 Fax 503-386-7480

The George Washington University
WASHINGTON DC

DEPARTMENT OF EXERCISE SCIENCE AND TOURISM STUDIES

May 7, 1993

Leonard Yoon, Chair
Multnomah County Planning Commission
Division of Planning and Development
2115 SE Morrison Street
Portland, Oregon 97214

Dear Commissioner Yoon and Multnomah County Planning Commissioners ,

I recently received a copy of the testimony presented to you at the May 3rd, 1993 meeting of the Planning Commission regarding Bridal Veil ESEE analysis, recommendations of the Bridal Veil task force, and testimony presented to the Commission by Chris Beck representing theThe Trust for Public Lands.

Unfortunately, due to my teaching assignment, I am unable to be in Portland with you at the May 10th meeting to help clarify some information presented by the Trust for Public Lands. I am concerned about the proposed amendments submitted by Trust for Public Lands. More specifically:

1. The purpose of the task force was to evaluate the buildings through an ESEE analysis and determine which buildings should be restored and preserved. Although cost should always be a consideration, the feasibility of restoration should not enter into the decision making process at this stage of deliberation. TPL continues to quote the Bingham report as a basis for not restoring the buildings. Mr. Bingham is a quality private contractor, however, there are many other ways to restore buildings at a much greater savings to the property owner than by using a general contractor.

2. Although TPL will not accept the fact that the buildings are historic, it has been determined by the Planning Commission,the Board of County Commissioners and myself, as cultural resource consultant to Multnomah County, that the buildings are historically and culturally significant. Let's all accept that premise once and for all and move on with the best way to preserve these historic buildings.

   Contrary to the report, the director for TPL was contacted prior to purchase of the property and told by several consultants, including myself, that the buildings and site were probably historically significant. Unfortunately, staff seemed unwilling to listen to outside opinion.

3. The role of the HPLO should be clarified in Chris Beck's testimony. As president of the HPLO for three years, I am aware of the advice the HPLO offered TPL. There appears to be some confusion in Beck's testimony that you may wish to clarify in before making your decision.

   Mr. Beck feels that because some of the buildings have been modernized on the interior they are no longer significant. This is not the case with historic properties. One of the manager's homes is almost completely intact and several of the row houses have had little interior alteration. Regardless, interior alteration is not the criteria one uses to determine historic significance.

WASHINGTON, DC 20052 • (202) 994-6290 • FAX (202) 994-1220

4. To clarify one more time--the SHPO office was asked whether or not they thought there was a National Register historic district at the site. I believe at that time the SHPO office had not received my historic resource report nor had they visited the site. After hearing this issue stated several times in public by TPL, I asked Ms. Elisabeth Potter for a point of clarification. A copy of her letters are enclosed.

5. For the record--the reason the Prohaska report does not contain any information on the architectural significance or integrity of the buildings is because TPL threated lawsuit and refused to let me in the buildings when I was conducting my research on the historic and cultural significance of Bridal Veil.

Recommendations:

1. TPL needs to work more closely with the community to find a positive way to preserve and restore as many buildings as possible at the Bridal Veil site. This excludes the mill buildings, however, they should be documented prior to demolition and all quality timbers and wood stored for reuse in the restoration of the houses.

2. Bridal Veil has unlimited potential as an attraction in the Columbia Gorge. It could serve as an invaluable resource for the interpretation of the timber/logging industry. Instead of investing so much negative energy, let's be positive and creative and turn Bridal Veil into a win/win situation for everyone. By dividing the property TPL can have a natural park on one half of the property and the buildings can be restored on the other half. The natural and historic resources at Bridal Veil definitely complement each other and should be interpreted in that manner.

3. Under social consequences--preservation of at least two of the buildings along the Columbia Gorge Scenic Highway would greatly enhance the natural areas. I have worked for the preservation of the Columbia Gorge Scenic Highway for 10 years and it was never the intent of the HPLO or the original Columbia River Scenic Highway Committee to demolish the manager's houses or any buildings associated with the highway.

4. Economic consequence--Form a separate non-profit to begin immediately to seek funds and develop creative techniques to preserve the houses associated with Bridal Veil. Due to the amount of interest in Bridal Veil, I am certain this task is possible.

5. Conflicting uses--Bridal Veil has not conflicted with any use in the Gorge since it's inception. Let's interpret how beautifully the natural and historical environments have existed side by side for almost 100 years in the Columbia Gorge.

In closing, I urge the commission members to continue to find ways to preserve Bridal Vei as an very important cultural and historical resource to Multhomah County. Please contact me if you want any additional information.

Sincerely yours,

Sharr Prohaska

Sharr Prohaska
Professor
Graduate School of Tourism Administration
Tel: 202-994-7071

TO: Multnomaqh County Board of Commissioners
FROM: J. Wrabek
DATE: 19 October 1992
RE: HALTING THE DESTRUCTION OF BRIDAL VEIL

C 9-92
Received
10/19/92
BC Meeting

I'm Joe Wrabek. I am former mayor of Cascade Locks, where I have lived for the last 16 years. I am here on behalf of Bridal Veil. In my opinion, the preservation of Bridal Veil is required by the terms of the Columbia Gorge National Scenic Area Act of 1986, and the Management Plan adopted by the Columbia Gorge Commission. Under the Gorge Act and the Management Plan, the property owner has very little to say about the matter. Property owners in the National Scenic Area in general do not get to say very much about whether or how their property is to be preserved.

Central to the Gorge Act is the idea that there are public values in private property--scenic, natural, cultural, historic, and recreational resources--which it is the obligation of government to preserve. Local, state, and Federal governments all must undertake the enforcement of such preservation; that's the essence of the intergovernmental "partnership" imposed by the Gorge Act. Where the existence of one of those public values is in doubt, government is expected to err on the side of preservation; that's the basis behind the management plan, and most of the land-use decisions by the Columbia Gorge Commission over the last five years. I frankly do not see where you folks have much of a choice.

In the case of Bridal Veil, you are confronted with some rather serious claims that the community, one of the oldest in the Columbia Gorge, is one of those "historical resources" that are mandated to be preserved. You are confronted with a rather large body of evidence which appears to prove that point.

And you are confronted with a property owner which despite a hifalutin-sounding name, is acting like one of those California land developers our parents warned us about. They have moved in with the stated intent of destroying what is here and replacing it with something else of their own devising, and have proceeded to pursue precisely that, local objections--and the law--notwithstanding. This is the sort of irresponsible behavior the Gorge Act and Management Plan were supposed to protect the Gorge against.

And in this case the property owner really ought to know better. The head of the Portland field office of this outfit, and one of their Portland staff, are the former chairman and executive director, respectively, of the very environmental pressure group responsible for initiating and drafting the very Gorge Act that mandates the preservation of what they are destroying. Their actions can be justified only by an assumption that the law was not intended to apply to them, just to everyone else. I expect you will disabuse them of that notion.

What can you do to halt the destruction of Bridal Veil? I've heard a lot of comments this evening about how "nothing can be done." In fact, as public officials, you know there's quite a bit you can do.

First, Multnomah County has the general police power of local

government to abate public health, fire, and safety hazards. I don't think there's any question that the Trust for Public Land is maintaining a health, fire, and safety nuisance out at Bridal Veil (perhaps "maintaining" isn't quite the proper word). We have a whole town full of buildings that are being purposefully kept vacant and deliberately allowed to deteriorate and become a breeding ground for rats and other pests. The situation is a hazard to the public particularly in light of the proximity of heavily-used public parks and trails.

The county has the power to abate the public hazard by requiring that the buildings be fixed up and maintained. The county can do so itself and bill the property owner if the property owner is unwilling to make the improvements on its own. The county can also impose civil penalties on the property owner until the hazards are abated. I recommend you do so.

Second, the county has additional recourse under the Gorge Act. While you can't enforce the Management Plan yourselves until the Gorge Commission approves your revised zoning ordinances, you do have the authority under the Gorge Act to compel the Forest Service and Gorge Commission to do so. The Gorge Commission can halt the damage to the historical resource with injunctions and fines up to $10,000 per day; the Forest Service can condemn the property. The county can sue the Forest Service, the Gorge Commission, or both to force them to do their duty. I recommend you advise both parties of your intent to do so.

Third, I believe you'd agree that continued ownership of Bridal Veil by the Trust for Public Land probably presents a continued danger to the historic resource, based on the current owner's track record. This is an argument often used by environmental pressure groups against other land developers and speculators. While the idea of a governmental body dictating who is to own a piece of property seems--correctly--to fly in the face of a very fundamental property right, I have to inform you that in this Brave New World of environmental regulation we live in, it not only appears to be possible, it is in fact being done. Based on precedents of the past five years, the county appears to have the authority to order, by ordinance, the sale of Bridal Veil by the Trust for Public Land to one or more parties dictated by the Board of Commissioners. It is also legal--the U.S. Supreme Court said so in a Hawaii case--for the county to condemn the property for the purpose of transferring it to a more acceptable third party. I would remind the Commissioners that the representatives of the Trust for Public Land, both in their current jobs and in their previous incarnations as officers of the "Friends of the Gorge," have urged such tactics be applied to other property owners. They shouldn't complain too loudly if their goose is cooked in the same kind of sauce.

From the county's standpoint, I believe you could direct the local Historical Society to arrange for the transfer of the property to a new owner--perhaps one of the non-profit forestry foundations--that would be committed to restoring and maintaining the historic resource, and I believe the Historical Society would be happy to do so.

The result could be one of those "win-win situations" you read about in the land-use textbooks but rarely see. You could have the historic buildings restored and maintained (which will make these folks and the Gorge regulators happy), and at no governmental cost (which will make your taxpayers happy). You could end up with a nice tourist attraction--much nicer than a collection of falling-down houses, which will make the Portland Convention and Visitors Bureau happy as well as fulfilling one of the

purposes of the Gorge Act--to protect and support the economy. You will put to use some valuable housing stock instead of letting it go to waste, and the revenue-strapped Corbett School District will like having the property back on the tax rolls.

And the Trust for Public Land should be happy because they'll be allowed to get out with their skins intact, which they've told us repeatedly is plenty of benefit for any land speculator.

It is important for you to act right away. While we talk and you listen, the forced deterioration of Bridal Veil continues unabated, and will do so until you Commissioners exercise your authority to stop it. As Dr. Seuss put it in The Lorax:

> Unless someone like you cares a whole awful lot
> Nothing is going to get better. It's not.

Thank you for the opportunity to comment.

ECCCO

East County Coordinating Committee

Bob Luce, President
Franklin Jenkins, Vice-President
Dorothy M. Smith, Secretary

3441 SE 174th Avenue
Portland, OR 97236
Phone: 761-5209

October 17, 1992

Multnomah County Planning Commission:

The Multnomah County Inventory of Historical Sites should be amended to include the site of Bridal Veil as a culural and historical resource. Evidently Bridal Veil was overlooked in the site survey of the Columbia Gorge area.

Bridal Veil was a donation land claim to Amos Moore, the first settler there in 1880. The logging and mill operation started in Bridal Veil in 1886 and continued for a 100 years. Bridal Veil was an operating logging and mill town long before the Columbia Gorge Highway was built. Access to the mill and the shipping of lumber was on the railroad and the Columbia River.

Bridal Veil was a company-owned mill town and should be preserved and restored for its cultural and historical significance. It has the potential for cultural interpretation to school children and tourists for the way it was in the "good old days." There are no such 100-year-old mill towns preserved in The Gorge or the Metro area. Bridal Veil is one of our cultural heritages which should be retained and restored as a company-owned mill town of the period. A museum and period collections could be housed in these buildings. Such a preservation should not be incompatible with the proposed restoration of the wetlands.

This area has great potential for development of a significant cultural and historical site. We urge your thoughtful consideration for the inclusion of Bridal Veil in the Inventory of Historical Sites.

Respectfully submitted,

Dorothy M. Smith

Dorothy M. Smith, Secretary

10-13-92

MULTNOMAH COUNTY PLANNING COMMISSION
ATTN. SHARON COWLEY
2115 S. E. MORRISON ST.
PORTLAND, OREGON 97214

C 9-90

DEAR MADAM:

THIS LETTER IS PERTAINING TO SAVING BRIDAL VEIL, OREGON FOR A HISTORICAL MUSEUM.

BRIDAL VEIL WAS A SAWMILL AND LOGGING FACILITY MANY YEARS BEFORE THE COLUMBIA RIVER HIGHWAY WAS BUILT, ALSO BEFORE THE MUSEUM AT CROWN POINT AND CASCADE LOCKS WERE BUILT. BOTH OF THESE HAVE LOVELY MUSEUMS OF PAST HISTORY, AND MANY PEOPLE HAVE ENJOYED THEM FOR MANY YEARS.

BRIDAL VEIL IS A BOOK OF HISTORY OF PAST SAWMILL DAYS. IT TOOK TWO LOGGING OPERATIONS TO KEEP THE MILL IN LOGS FOR SAWING. IT PRODUCED SUCH LARGE AND LONG TIMBERS FOR BRIDGES AND BOATS. LARCH LUMBER IS A VERY STRONG WOOD FOR ANY USE. TWO OF THE WORLD'S SAILBOAT RACE WINNERS HAD SPARS OF MASTS FROM BRIDAL VEIL, OREGON.

OUR YOUNGER PEOPLE WOULD ENJOY SEEING THE HISTORY OF THOSE DAYS IN A MUSEUM AT BRIDAL VEIL.

ANOTHER POINT I WOULD LIKE TO MAKE IS THE LOCATION. IT HAS EASY ACCESS TO IT FROM A CROSS COUNTINENTAL HIGHWAY BOTH EAST AND WEST.

IT WOULD BE VERY NICE TO HAVE THE OLD HOMES, POST OFFICE AND GRAVEYARD RESTORED.

MY GRANDPARENTS ON BOTH SIDES OF THE FAMILY WORKED IN THE BRIDAL VEIL SAWMILL IN THE EARLY DAYS. MY FATHER'S FATHER CAME IN 1890, AND MY MOTHER'S FATHER CAME IN 1905. TWO OF MY UNCLES AND THEIR PARENTS ALSO WORKED IN THE MILL IN 1890.

MY COUSIN AND I WILL CONTRIBUTE OVER THIRTY PICTURES OF THOSE DAYS FOR A MUSEUM, THE HISTORY OF THE SAWMILL AND OPERATIONS AND THE PEOPLE.

THANK YOU FOR CONSIDERING MY REQUEST.

YOURS TRULY,

Kenneth E. McKee

GLENN E. OTTO
EAST MULTNOMAH AND
NORTH CENTRAL CLACKAMAS COUNTIES
DISTRICT 11

REPLY TO ADDRESS INDICATED:
☐ Senate Chamber
Salem, OR 97310
☐ 23680 NE Shannon Court
Troutdale, OR 97060

OREGON STATE SENATE
SALEM, OREGON
97310

October 15, 1992

Multnomah County Planning Commission
2115 SE Morrison
Portland OR 97214

C 9-92

Dear Planning Commission Members:

Please add my voice to those who would like to see Bridal Veil preserved "as is".

Already too many of our unique examples of towns and buildings have been destroyed in the name of progress or whatever the current cause.

I urge you to consider carefully the destruction of this historic site.

Sincerely,

Glenn E. Otto

Glenn E. Otto

TROUTDALE HISTORICAL SOCIETY
104 S.E. Kibling St. · Troutdale, OR 97060

Sept. 30, 1992

Multnomah County Planning Commission
2115 SE Morrison St.
Portland, OR 97214

Attention: Sharon Cowley

C 9-92
SW Issues

Dear Planning Commission Members:

The Troutdale Historical supports the efforts of the Crown Point Country Historical Society to preserve a historical site at Bridal Veil.

The history of logging in our community should not be erased. Bridal Veil's role in the timber industry should be preserved so that the story can be told to visitors to the Columbia River Gorge.

Thank you for your attention.

Sincerely,

Sam K. Cox

Sam K. Cox
Preesident

Gorge Resource Coalition

Post Office Box 285, Bingen, Washington 98605
Box 185, Odell, Oregon 97044

September 25, 1992

C 9-92

Sharon Cowley
Multnomah County Planning Commission
2115 SE Morrison St.
Portland, OR 97214

Dear Ms. Cowley:

This letter is intended to express the Gorge Resource Coalition's support for Crown Point Historical Society's efforts to designate the town of Bridal Veil, Oregon as a historic landmark and to develop an interpretive center for explaining the importance of logging and lumber companies to the region.

The Gorge Resource Coalition is comprised of individuals involved in natural resource industries throughout the Columbia River Gorge. The heritage of our members is deep, and for most, originates in the early timber industry of the area.

The town of Bridal Veil is one of the pioneer logging communities in the Columbia River Gorge. Founded in 1886, the contributions made by the town of Bridal Veil to the culture and history of Portland and the Columbia River Gorge are add greatly to the uniqueness of the area. To remove the town of Bridal Veil, and the remnants of the Bridal Veil Lumber Company, would be a tragic loss of heritage.

The importance of the timber industry to the residents of the Pacific Northwest, current, past, and future, must not be forgotten.

Sincerely,

Jason S. Spadaro
Officer

SDS Lumber Company
P.O. Box 266
Bingen, Washington 98605
(509) 493-2155

September 23, 1992

C 9-92

Sharon Cowley
Multnomah County Planning Commission
2115 SE Morrison St.
Portland, OR 97214

Dear Ms. Cowley:

SDS Lumber Company is located in Bingen, Washington, in the Columbia River Gorge. SDS was founded in 1946 by Wallace Stevenson, Frank Daubenspeck, and Bruce M. Stevenson. All three of SDS's founders were involved with the Broughton Lumber Company and its historic lumber flume prior to 1946. While Broughton and SDS Lumber Companies have both played important roles in the more recent history and economic development of the Columbia River Gorge, the town of Bridal Veil, and the old Bridal Veil Lumber Company, were true pioneers in this region.

The town of Bridal Veil has a very long and rich history as a pioneer logging community in the Columbia River Gorge. Founded in 1886, the contributions made by the town of Bridal Veil to the culture and history of the Columbia River Gorge add greatly to the uniqueness of the area. To remove the town of Bridal Veil, and the remnants of the Bridal Veil Lumber Company, would be a tragic loss of heritage.

This letter is intended to express SDS Lumber Company's support for Crown Point Historical Society's efforts to designate the town of Bridal Veil, Oregon as a historic landmark. Furthermore, SDS supports the effort to establish an interpretive center for explaining the importance of logging and lumber companies, such as Bridal Veil Lumber Company, in shaping the Columbia River Gorge and the early expansion of the Portland area. The importance of the timber industry to the residents of the Pacific Northwest, current, past, and future, must not be forgotten.

Thank you,

Bruce R. Stevenson
President

11 October 1992

Joan M. Kelley
P.O. Box 82
Eugene, Oregon 97440

Scott Pemble
Director of Planning
Multnomah County
2001 East Morrison
Portland, Oregon 97214

RE: The Industrial Lumber Site of Bridal Veil C 9-92

Dear Mr. Pemble,

I am currently completing my master's thesis at the University of Oregon in the discipline of Historic Preservation. My thesis has two objectives: 1) a historical overview of the lumber industry in the Douglas fir region of Oregon, verifying its regionalism; 2) and a case study of five representative towns within that region. Each town was examined for their extant cultural resources relating to the pre-1940 lumber industry. Bridal Veil was not selected for study, however, it was researched for its character-defining features of the Lower Columbia area. This geographically based analysis put Bridal Veil into the category of the Lower Columbia area, establishing that the surrounding topography determined a specific lumber industry. These particular characteristics differed from the Coast and Cascades Ranges or the coastal fringe.

The site of Bridal Veil is, indeed, a complex issue for planners, environmentalists, preservationists and historians. I write in support of Bridal Veil's living history and cultural resources (above and below the ground).

I have read the "Historical and Architectural Evaluation" prepared by Heritage Investment Corporation and concluded there were oversights in that report. One striking misconception is their misunderstanding of a western company town. Foremost, within western company towns the existence of "parks or commons" were anything but typical. To speak of those features in referring to company towns of the West is using the definition of a Northeastern company town not one of the West. Company towns of the Eastern regions had quite different arrangements, having been built by industrialists involved with renewable materials for manufacturing. The provisions of those raw materials were unlike the natural resource based economy of the western company towns involved with mining or timber. Eastern industrialists built their towns for permanence, thereby approaching a company town

with a very different concept. The necessity or importance of a commons did not transfer to the western landscape.

Secondly, Bridal Veil is recognizable as a company town. Though without many of its structures the very site, road patterns and geographical location are clear indications of its earlier role as a community functioning solely for the purpose of the lumber company. Third, within the HIC report there is a lack of recognition for the 1902 site. A western company lumber town characteristically illustrates a hierarchy of housing. It appears that houses numbered 18, 20 and 22 in the report may have been the homes for the mill managers or foremen in the community's early history. Fourth, after reading John A. Woodward's "Pacific Northwest Lumbering," it seems HIC did not adequately address the industrial archeology of the area.

In conclusion, the buildings at Bridal Veil cannot be viewed as singularly significant but must be comprehended in a holistic approach of the western landscape. To be unbiased the site best be looked at within the regional context of the Lower Columbia inside the Douglas fir region of the greater Pacific Northwest. Bridal Veil is an opportunity to study the previously, overlooked lumber industry in the region of the Lower Columbia River. As a student of historic preservation, I highly recommend the County Planners include Bridal Veil as a historical and cultural resource important not only to Multnomah County but the state of Oregon as well.

Sincerely,

Joan M. Kelley

RYAN GARDNER / THE OUTLOOK

Chuck Rollins, left, and Steve Lehl have fought for almost 10 years to prevent destruction of the historic mill town between Interstate 84 and the old historic highway.

Battle over Bridal Veil nearing an end

BY SHARON NESBIT
of The Outlook staff

The nine-year battle for Bridal Veil, which may conclude in late April, is a fight between the good guys and the good guys.

One good guy is the Trust for Public Land, owner of the old mill town in the Columbia River Gorge. It is a non-profit organization that conserves land.

The other is the Crown Point Country Historical Society, a non-profit group that preserves history.

Both organizations rode to Bridal Veil's rescue in 1990 and have been in a head-to-head dispute ever since over the future of the historic mill town that was established in the 1880s.

A final hearing before the Multnomah County Board of Commissioners stands between the two. Originally set April 13, but now postponed to an undetermined date later in the month, the hearing will decide whether the land trust can knock down the old company houses that mark the mill town and go about making the site into a park.

Such a decision will end the dreams of the Historical Society, headed by Steve Lehl and Chuck Rollins, which envisions a park that also would honor the site's logging history.

Lehl and Rollins, both of whom work for the Wood Village Public Works Department, admit the crusade has almost run its course. Their effort, largely fueled by volunteer effort and about $3,000 in donated money, twice came within a whisker of giving Bridal Veil the historic listing that would have saved it. Again and again they stalled attempts to wipe out the town.

No matter what happens, Rollins says: "We've enjoyed it. It's not like it's ever been a pain in the rear to do this. We'd do it again in a minute."

Chris Beck, project manager for the Trust for Public Land, is in charge of the Bridal Veil site. He sees permission to demolish the dozen old moss-covered buildings at Bridal Veil as vindication.

It confirms, he says "all of the things we said early on in the process. That Bridal Veil was not of enough significance to merit protecting the buildings."

When Trust for Public Land brought Bridal

TURN TO BATTLE, *Page 3A*

6/8

Battle

CONTINUED FROM *Page 1A*

Veil, the organization unveiled a park plan improving trail access to Bridal Veil Falls. Lehl and Rollins had a similar dream, but their vision called for a walk that also would display and describe logging equipment. They saw the old company houses strung along the road between Interstate 84 and the historic highway as future museums, recognizing the human effects on the gorge, particularly that of logging and fishing.

Rollins stood on the road this week pointing out the workers' houses — mossy, windows broken, barely standing. Across the road, farther uphill are the homes of management types, some of which are still occupied. The trust's neglect of the lower houses during the recent years left a bitter taste for the historians.

The trust bought the town in 1990 for $712,500 with the goal of ridding the site of the former mill buildings and homes. It backed away, though, from destroying the Bridal Veil Church, which still serves the community, and the popular Bridal Veil post office. Though not a historic building, the tiny post office serves local residents and brides who mail their wedding invitations from there for the unique postmark.

The property no one claims is the Bridal Veil cemetery, at the east end of the community, tended only by volunteers. Among its graves are tiny ones, testament to a diphtheria epidemic that swept the area.

The Bridal Veil Lumbering Co. and town site served logging operations much farther up the slopes of the gorge. Logs sent downhill by water-filled flumes were finished at the mill. Railroad cars hauled lumber all over the nation. In the 1930s, small wooden boxes for Kraft Cheese were made there, as well as ammunition boxes to hold the firepower of World War II.

It was that heritage Lehl and Rollins set out to save. In the process they amassed a huge collection of photos, artifacts and knowledge. One of the irritants of the fight has been that the other side does not respect that knowledge.

"They describe us as enemies, people who don't believe in the scenic area, and that's not true," Lehl says. "We're more than friends of the gorge, we're lovers of the gorge. We live here."

For this last battle, Crown Point historians asked supporters to write county commissioners expressing opinions on the issue. David Ripma, president of the Troutdale Historical Society and a member of the Crown Point group, has offered assistance. In his view, the site qualifies for the National Register of Historic Places.

If county commissioners uphold the demolition permit in April, the trust will first knock down the buildings and then conduct a $20,000 archaeological survey, which Beck says is a compromise to satisfy historians.

Beck said this week that what happens after the survey is unknown.

Meeting Date: JUN 08 1999
Agenda No: P-1
Est. Start Time: 9:30

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: A DeNovo Hearing before the Board of County Commissioners regarding an appeal of the Hearings Officer's decision on **NSA 26-94.**

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

REGULAR MEETING Date Requested: June 8, 1999
Amt. of Time Needed: 1 hour

DEPARTMENT: DES **DIVISION:** Land Use Planning
CONTACT: Robert Hall **TELEPHONE:** 248-3043
BLDG/ROOM: 455 / 116

PERSON(S) MAKING PRESENTATION: Robert Hall and Liz Fancher

ACTION REQUESTED

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

SUGGESTED AGENDA TITLE

A DeNovo Hearing before the Board of County Commissioners regarding an appeal of the Hearings Officer's decision regarding a **Denial** of the Appellant's appeal of NSA 26-94, allowing the applicant to remove sixteen structures at Bridal Veil, excluding the church and post office.

SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: KB Larry F. Nicholas

MULTNOMAH COUNTY

BOARD HEARING of June, 8 1999

TIME 9:30am

CASE NAME: Removal of buildings at Bridal Veil

NUMBER NSA 26–94

ACTION REQUESTED OF BOARD

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

1. APPLICANT & APPELLANT NAME/ADDRESS

APPLICANT

Trust for Public Lands
1121 SW Sixth Avenue
Portland, OR 97204

APPELLANT

Crown Point Country Historical Society
P.O. Box 17
Bridal Veil, OR 97010

2. ACTION REQUESTED BY APPLICANT

Appeal of Hearing Officer decision which upheld the Planning Director decision approving removal, with conditions, of sixteen structures at Bridal Veil, excluding the church and post office. That decision would conclude the Columbia River Gorge National Scenic Area Cultural Review Process at the Evaluation of Significance stage (see attached *Cultural Review Process* diagram).

3. PLANNING DIRECTOR DECISION

Approval with conditions.

4. HEARINGS OFFICER DECISION:

Approval with conditions.

5. IF RECOMMENDATION AND DECISION ARE DIFFERENT, WHY?

Both decisions were for approval and were based on the following approval criteria:

The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for use in evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4). Cultural resources are eligible for the National Register of Historic Places if they possess integrity of location, design, setting, materials, workmanship, feeling, and association. In addition, they must meet one or more of the following criteria:

(A) Association with events that have made a significant contribution to the broad patterns of the history of this region;

(B) Association with the lives of persons significant in the past;

(C) Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

(D) Yield, or may be likely to yield, in-formation important in prehistory or history.

6. THE FOLLOWING ISSUES WERE RAISED AT THE HEARING *(WHO RAISED THEM?)*

Chuck Rollins, representing the Crown Point Country Historical Society, raised the only issues at the hearing. Their concerns centered on the issue of the eligibility of the structures for inclusion in the *National Register of Historic Places*. The Hearing Officer comprehensively addressed all of the issues raised at the hearing in her decision.

In their current appeal, Crown Point Country Historical Society responds to the Hearing Officer evaluation of the issues raised at the hearing. Those responses fall into the following categories:

Historic Survey – Three of the issues involve the degree of completeness of the Historic Survey submitted by the Trust for Public Lands. The historic survey is not an issue at the Evaluation of Significance stage of the NSA Cultural Review process. The historic survey was evaluated at the Historic Survey stage of that process. The evaluation of the historic survey indicated that the application should proceed to the Evaluation of Significance Stage of the Cultural Review Process. The Planning Director made that determination on December 28, 1994. No appeals of that decision were filed. Consequently, the applicant proceeded to the Evaluation of Significance stage.

Bias of Application – The fourth point of appeal argues that, "By virtue of the fact that this application is completed by the applicant, it will by nature reflect the applicant's wishes for the outcome of the matter."

The burden of proof is always on the applicant in a land use application. The Planning Director and the Hearing Officer both found that the applicant had carried the burden necessary to demonstrate that the structures on this property were not significant when evaluated against the applicable approval criteria. Consequently, the Cultural Review process would be completed.

Eligibility for National Register – The five remaining issues deal with eligibility of the Bridal Veil mill site are items directly related to the approval criteria for an Evaluation of Significance. They are summarized on the chart entitled *National Register Issues Raised by the Crown Point Country Historical Society*.

7. DO ANY OF THESE ISSUES HAVE POLICY IMPLICATIONS? EXPLAIN.

No. They involve application of existing code language.

National Register Issues Raised by the Crown Point Country Historical Society

Hearing Officer Finding	CPCHS Comment (Appelant)	Staff Comment
The hearings officer's review revealed that the written and oral comments now in the record do not indicate that the TPL buildings are eligible for inclusion on the National Register.	The evidence is the 1996 decision by the Oregon State Historic Advisory Committee on Historic Preservation who voted that the site is eligible for inclusion on the National Register.	The Advisory Committee found the property met National Register criteria and forwarded the application to the Keeper of the Register for determination of eligibility. The Keeper determined that the record lacked sufficient evidence. **Recommendation-Uphold Hearing Officer decision.**
The Advisory Committee felt that the application did establish eligibility, but their opinion was determined to be incorrect by the keeper of the National Register.	The advisory committee's opinion was not found to be incorrect. The nomination was not denied but returned without action.	The Keeper of the Register found that the evidence submitted was not sufficient to determine eligibility and returned the application. **Recommendation-Uphold Hearing Officer decision.**
The comments considered and reviewed by the Hearings Officer include testimony presented at the hearing and the following documentary evidence (comments on 17 letters and statements)	The hearing officer should not have dismissed this testimony. The ordinance requires that the evidence "indicate" that the resource would be eligible for the national register, not that it absolutely is (which would be impossible to determine unless the keeper of the register makes a decision).	The Hearing Officer considered the testimony. The ordinance requires that, "The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places." There is no reference to "indicate" in the approval criteria. CPCHS is correct, in that, the determination of eligibility is one that can only be made by the Keeper of the National Register. **Recommendation-Uphold Hearing Officer decision.**
TPL's actions "... provides evidence of TPL's lack of objectivity on the historical significance question and intractability but it does not establish historic significance..."	TPL should allow an architectural survey to answer the question definitely. The Prohaska report establishes historic significance. The Hearing Officer dismisses expert testimony because of the terminology used.	The Hearing Officer reviewed the testimony with respect to the approval criteria for determination of Significance as required by the Management Plan and the Zoning Code. **Recommendation-Uphold Hearing Officer decision.**
The State Advisory Committee on Historic Preservation decision "indicates" that the site is suitable for inclusion in the register, but the Keeper of the Register determined the evidence insufficient to determine eligibility.	The Advisory Committee should be sufficient to "indicate" eligibility. The state panel should be definitive when there is a lack of a decision from a national body.	Again, "indicate" is not sufficient. It must be found that the resource is eligible for inclusion, or included in, the National Register of Historic Places. **Recommendation-Uphold Hearing Officer decision.**

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

NOTICE OF REVIEW

1. Name: Levi (Last), _____ (Middle), Steve (First)
2. Address: P.O. Box 17 (Street or Box), Bridal Veil (City), OR 97010 (State and Zip Code)
3. Telephone: (503) 695 - 5238
4. If serving as a representative of other persons, list their names and addresses:
   Crown Point Country Historical Society
   P.O. Box 17
   Bridal Veil, OR. 97010
5. What is the decision you wish reviewed (*e.g.*, denial of a zone change, approval of a subdivision, *etc.*)?
   Multnomah Co Hearings Officer decision to uphold planning directors decision NSA 26-94
6. The decision was announced by the Hearing Officer on Jan 11, 19 99
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
   Filed previous appeal to hearings officer.

TOTAL 530.00
0000-001 2/16/99
9445 PHIL 11:10AM

8. Grounds for Reversal of Decision (*use additional sheets if necessary*):

see attached letter

9. Scope of Review *(Check One)*:

(a) ☐ On the Record

(b) ☒ On the Record plus Additional Testimony and Evidence

(c) ☐ *De Novo* (*i.e.*, Full Rehearing)

10. **If you checked 9(b) or (c), you must use this space to present the grounds on which you base your request to introduce new evidence** (Use additional sheets if necessary). For further explanation, see handout entitled *Appeal Procedure*.

see attached letter

Signed: Steve Lell Date: 2-16-99

For Staff Use Only

Fee:

Notice of Review = $530.00

Received by: [signature] Date: 2/16/99 Case No. NSA 26-94

Crown Point Country Historical Society

PO Box 17 ✣ Bridal Veil, Oregon 97010

February 15, 1999

Dept. Of Environmental Services
1600 SE 190th Ave.
Portland, OR 97223

Re: Appeal of Hearings Officer decision to the Multnomah County Board of Commissioners in the matter of NSA 26-94

We are appealing the hearings officer decision because the officer did not adequately address our concerns as presented in our letter dated November 25, 1998. We disagree with her conclusions, as we disagreed with the conclusions of the planning director, and interpret the ordinances differently.

We resubmit our arguments to the board of commissioners as presented to the hearings officer, as well as all the attachments and enclosures submitted at that time (already on file), to support our appeal, and plan to present further testimony at the hearing before the county commissioners. We request all documentation presented by us on November 25 to be included with this appeal to the commissioners.

In answering #10 on the appeal form, we request to present new evidence that may clarify points or language submitted earlier, or refute points presented in the Hearings Officer's decision.

We also are now submitting comments regarding specific points in the Hearings Officer's decision, beginning on page 5 of her decision. This will not be complete, as she did not address directly many of the concerns outlined in our letter, but a few of the key points.

Thank you.

Sincerely,

Chuck Rollins

Chuck Rollins
President
503/695-5281

for the board of directors
Clarence Mershon, vice president
Steve Lehl, treasurer
Sandy Cartisser, secretary
Curt Johnson
Dorothy Larson
Laurel Slater
Shio Utetake
Alice Wand
Nita Wilton

COMMENTS FROM CROWN POINT COUNTRY HISTORICAL SOCIETY,
FEBRUARY 15, 1999, ON THE
DECISION OF HEARINGS OFFICER
ON APPEAL OF ADMINISTRATIVE DECISION
NSA 26-94

The italics indicate points the hearings officer took from our letter of November 25, 1998, followed by her findings. We have excerpted points within her findings we wish to refute. Her findings are followed by CPCHS comments, in bold and set off by asterisks.

Beginning on page 4-Decision of Hearing Officer

D. Hearing & Issues on Appeal

(p.5) ...*"Our appeal . .. . is based on the Multnomah County GMA Cultural Review Criteria (MCC 11.15.3818). Our review indicates that the process required by these county ordinances may not have been completed, specifically as it pertains to the historic survey (A)(3), and (D)(3) . . ."*

FINDINGS: Section (A)(3) requires an historic survey. An historic survey is defined by MCC 11.15.3556 as "actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs." The Trust for Public Land's Evaluation of Significance includes information that documents the integrity and physical condition of all of the historic buildings proposed for demolition. The Evaluation text and photographs provide this information. The report is supported by archival research.

*****The evaluation text and photographs in the Heritage Investment Corporation report used in the Evaluation of significance do NOT provide this information. It is merely a description of the buildings, no more professionally examined or presented than a casual passer-by would. Only one drawing, a "typical floor plan" is presented, with no dimensions and without referring to any of the buildings individually.**

The section entitled "Building Descriptions" contains mainly one-paragraph descriptions using words such as "appears to be" frequently. If it were a true historic survey, inconclusive wording such as "The building appears to be in fair to poor structural condition" would be eliminated and would instead consist of definitive comments on the condition.

The "archival research" done by the HIC is incomplete. Their "historical and architectural evaluation" does not cite any sources; in Section 5, it lists several inventories but refers to none of the historic evidence as presented to the county in county consultant Sharr Prohaska's report, or the book by Bill Carr of the US Forest Service on historic lumbering in Bridal Veil, or any other actual historic reference materials.***

"The March 5, 1997 Evaluation of Significance submitted by Heritage Investment Corporation of TPL does not contain a complete historic survey, which should include architectural evaluation of the buildings as required in (D)(3)."

FINDINGS: Section (D)(3) says that historic surveys shall include specified information. The Crown Point Country Historical Society claims that an architectural evaluation is required and is missing from the Evaluation. Section (D)(3) does not, however, require an "architectural evaluation." Section (D)(3)(c) requires that the Trust "provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations" and Section (D)(3)(a)(iii) requires "archival research, blueprints and

drawings as necessary." The Evaluation includes archival research and a drawing of the basic layout of a mill worker's home. The architectural illustration requirement is clearly inapplicable to a demolition project as no construction activity is proposed that needs to be illustrated.

***** Again, one drawing of a basic layout is not adequate. Many of the houses are similar in appearance, and several are not. There are no blueprints or drawings in their report of the configuration of the individual houses or buildings.*****

"We do not believe the requirements in (F) have been satisfied completely because the Evaluation of Significance does not demonstrate that the resources are not significant as required in (F)(4)."

FINDINGS: Section 11.15.3816 (F)(4) requires the Trust to "illustrate why each cultural resource is or is not significant. Section (F)(4) requires an illustration of why the Evaluation determined that a resource is or is not significant. Such an illustration (discussion) has been provided throughout the Evaluation.

***** We disagree with this interpretation. Certainly, they have given their sketchy observances. They have not demonstrated professionally supported, detailed and documented conclusions about the individual buildings.*****

E. Law Relevant to Appeal

... The question, therefore, is whether any of the buildings proposed for demolition is eligible for inclusion on the National Register....

The Trust prepared an Evaluation of Significance. The Evaluation determined that the TPL buildings do not qualify for listing in the National Register of Historic Places, either individually or collectively. According to TPL's attorney Ms. Hennessey:

"The burden of proof is not on the applicant to prove a negative: ineligibility for the National Register. The applicant's obligation is to submit an evaluation of significance . . . While an applicant may be required to address the listing criteria for the National Register in its evaluation of significance under MCC Section 11.15.3818(F), MCC 11.15.3818(G) does not impose a burden on every applicant to absolutely prove that a building proposed for demolition does not satisfy any of the National Register eligibility criteria."...

***** We believe the evaluation of significance must include all the evidence or it cannot be considered complete. By virtue of the fact that this evaluation is completed by the applicant, it will by nature reflect the applicant's wishes for outcome on the matter. *****

(p.7) The hearings officer next reviewed the comments received by the County to determine whether those comments ***"indicate"*** that the buildings are eligible for inclusion on the National Register for any of the reasons listed in subsection i. – iv (Criteria A – D of the National Register criteria). Crown Point's National Register application was based on subsection iv. (Criterion D). There is some evidence that it could have been prepared under subsection i. (Criterion A). No evidence exists in the record, however, other than unsubstantiated claims made by Mr. Rollins at the November 1998 hearing, that the site is eligible for inclusion on the National Register for the reasons listed in subsections ii. and iii (Criteria B and C).[3]

The hearings officer's review revealed that the written and oral comments now in the record do not indicate that the TPL buildings are eligible for inclusion on the National Register.[4] As a result, an Assessment of Effect is not required.

***** the evidence comes in the form of the 1996 decision by the Oregon State Historic Advisory Committee on Historic Preservation, who voted unanimously that the site is eligible for inclusion on the National register (see our documentation included with last appeal). The Appeals Officer refers to this action later in her decision.*****

The evidence submitted to the County in favor of requiring an Assessment of Effect shows that some professionals believe that the town and the TPL buildings are "probably eligible" for inclusion on the National Register. The Hearings Officer must find, however, that the comments indicate that the buildings are eligible, not that they are probably eligible. Crown Point representative Chuck Rollins also submitted a copy of its application for inclusion of the TPL property on the National Register and documentation regarding the decision by the State Advisory Committee on Historic Preservation to nominate the site for inclusion on the National Register based upon Crown Point's application. That application was, however, determined by the keeper of the National Register, to be insufficient to establish that the site is eligible for inclusion on the National Register. The Advisory Committee felt that the application did establish eligibility, but their opinion was determined to be incorrect by the keeper of the National Register. No new evidence to suggest otherwise has been presented to the Hearings Officer. As a result, none of the evidence in the record "indicates" that the Trust's property is eligible for inclusion on the National Register.

***** The advisory committee's opinion was not found to be incorrect. The nomination was NOT denied but was returned without action.**

...The comments considered and reviewed by the Hearings Officer include testimony presented at the hearing and the following documentary evidence...

***** in the Hearings Officer's comments that follow, she repeatedly refers to the expert's comments on the buildings' *likely eligibility* for the national register. Of course, because access to the buildings have been consistently denied, those experts could not make a definitive determination. These ten letters from professional historians provide ample support for the need to determine the eligibility definitively, and the value of the buildings and site. Please read the original letters as they were submitted by CPCHS. We find it appalling that the hearings officer dismisses this large body of expert testimony with semantic hair-splitting, when the content of the letters support the idea the buildings would be eligible.**

The ordinance requires that the evidence "indicate" that the resource would be eligible for the national register, not that it absolutely is, (which would be impossible to determine unless the keeper of the register makes a decision.) (see Hearings Officer's comment on the previous page, 2nd paragraph from the bottom). We believe that the evidence does indeed "indicate" this, and that the ordinance cited does not require expert testimony to include the exact wording desired by the Hearings Officer.***

(p.9) ... TPL's actions in threatening Ms. Prohaska [Multnomah County consultant]with a lawsuit provides evidence of TPL's lack of objectivity on the historic significance question and intractability but it does not establish historic significance....

*****The hearings officer's comment here, referring to one of the letters CPCHS included in the appeal, is a good example of how the hearings**

officer is acknowledging TPL's lack of objectivity, but is choosing to disregard this evidence. If TPL is so convinced that the buildings at Bridal Veil are ineligible, why is it so adamant that the buildings not receive a complete architectural survey to answer the question definitively.

In addition, the Prohaska report does indeed establish historic significance, hundreds of pages worth. That document, prepared for Multnomah County, is included in the earlier record.

Again and again, in commenting on the individual letters submitted by CPCHS, the Hearings officer dismisses the expert testimony because they chose to word their letters not in the legal terminology she prefers, but in the terminology of their own professions and expertise. ***

(p.10)...A July 1, 1996 letter from James Hamrick of SHPO to the Keeper of the National Register dated July 1, 1996 stating that the State Advisory Committee on Historic Preservation concluded unanimously that the property meets National Register criteria but also states that the SHPO staff archeologist's analysis of the application using the National Register guidelines revealed that the case for National Register eligibility was not proven.[5] This letter and attached minutes provide evidence that the Advisory Committee's decision was that the property meets National Register criteria. This evidence "indicates" that the site is suitable for inclusion on the Register but this evidence was provided to the keeper of the Register and determined to be insufficient to establish eligibility. As such, the evidence, without more, does not indicate eligibility....

*****Again, we believe because the only decision that was made conclusively was that of the State Advisory Committee on Historic Preservation, that that decision should be used as sufficient to establish, or "indicate" eligibility. Our own state's panel of experts should be definitive, especially with the lack of a decision from the national body.*****

JAN [illegible]

DECISION OF HEARINGS OFFICER
ON APPEAL OF ADMINISTRATIVE DECISION
NSA 26-94

Applicant: Trust for Public Lands
1211 SW Sixth Avenue
Portland, OR 97204

Appellant: Crown Point Country Historical Society
PO Box 17
Bridal Veil, OR 97010

Request: National Scenic Area approval for demolition of sixteen structures [shown on the site map as buildings 2, 3, 4, 5, 6, 7, 12, 13, 14, 15, 17, 18, 20 & 22, plus the shop and warehouse (all as described in the report titled *Bridal Veil, Multnomah County, Oregon Historic Survey and Evaluation of Significance, July 29, 1994* by Heritage Investment Corporation), but excluding the church and post office] at Bridal Veil.

Location: 47000–47330 West Mill Road

Legal Description: Tax Lots '11', '3' and '2' Section 22, Township 1 North, Range 5 East & Lots 8–15, First Addition to Bridal Veil

Zoning: Special Management Area, Public Recreation (GS–PR)

Findings and Conclusions:

The Hearings Officer makes the following findings and conclusions regarding the above-referenced land use application:

A. Background of Proposal

Previously, on April 6, 1995, the Planning Director had approved demolition of the aboveground portion of the resaw building on the Bridal Veil property (NSA 4–95). That demolition was accomplished as approved during the remainder of 1995 and 1996. However, during early 1997, activity in excess of that approved by NSA 4–95 occurred in the vicinity of the resaw building. The Planning Director notified the applicant of the unauthorized activity and indicated that processing of the request for an Evaluation of Significance of the other 16 structures would be held at the notification stage until a mitigation plan for the activity in and around the resaw building was developed and approved.

In November, 1995, the Crown Point Historical Society made application to the National Park Service for placement of this property (plus adjacent properties owned by the Bridal Veil Cemetery, Union Pacific Railroad, Multnomah County and the State of Oregon) on the National Register of Historic Places. The application indicated the property should be considered significant due to "Archeology: Historic-non-aboriginal, Industry and Social History." It further indicated that the property qualified for National Register listing based on criteria (i) and (iv) above.

On September 18, 1996 the Bridal Veil Historical Archeological Site application was reviewed by Dr. Barbara Little of the National Park Service. Her comments indicate that the application contained insufficient information to make a decision and was being returned. Two of her comments addressed the buildings that are now being proposed for demolition. They are as follows:

"If the standing buildings are nominated for their information potential under criterion D, then the information they could contribute should be clearly described. The standing buildings, as such, do not contribute to the archeological potential of the site, although the patterning of the locations of those buildings (or their foundations) would contribute to the information potential of the site as the research questions currently are posed."

"In Section 7 (of the application), there should be no categories listed under "Architectural Classification" because there are no contributing buildings. This site does not appear to be eligible under Criterion A particularly due to a lack of integrity of the extant remains."

[Staff note: Criterion A and D are identical to (i) and (iv) above]

Chris Beck of the Trust for Public Land, in a letter to Carol Shull, Keeper of the Register for the National Register of Historic Places dated November 15, 1996, asked clarification of Dr. Little's review comments. On December 20, 1996, Ms. Shull commented in part:

"The above-ground structures are not archeological resources and would not be contributing resources in the Historical Archeological Site as it is presented in the returned nomination. The significance of the archeological site (if such is demonstrated) would not depend on the presence of the above-ground structures."

Mr. Beck then requested an opinion from the Oregon State Historic Preservation Office regarding the buildings at Bridal Veil. On February 6, 1997, James M. Hamrick, Deputy State Historic Preservation Officer, responded:

"The State Historic Preservation Office position is that the 14 houses, 3 garages, and several other buildings at Bridal Veil are not eligible for the National Register under Criteria A, B, C, nor do they meet Criterion D. The National Register has acknowledged "the standing buildings, as such, do not contribute to the archeological potential of the site..." We conclude their demolition would have "No Effect," particularly since, under present limitations of access and insufficient test evidence, the property as a whole cannot be effectively demonstrated to meet National Register Criterion D as a historical archeological site."

The nomination of the Bridal Veil site for the National Register of Historic Places was made on the basis of its archeological potential; thus, its title *Bridal Veil Archeologic Site.*. The previous comments indicate two areas of concern:

(1) The Bridal Veil site has the potential of containing significant archeologic resources and further research needs to be conducted to evaluate that potential, and

(2) The buildings on the Bridal Veil site are not contributing resources, but their locations and patternings would contribute to the information potential of the site.

On March 5, 1997, the Trust for Public Land submitted an Evaluation of Significance in conjunction with their request for demolition of 16 buildings at Bridal Veil. Notice of that request and a copy of a report entitled *Bridal Veil Multnomah County, Oregon Historic Survey and Evaluation of Significance* (125 pages) prepared by Heritage Investment Corporation was mailed to interested parties on April 11, 1997.

The applicant recently submitted a *Scope of Work for the Bridal Veil Historical Archaeological Site* prepared by Gary C. Bowyer of Western Resources Consulting which includes the following:

- A mitigation plan for unauthorized work in the vicinity of the resaw building; and

- A request to demolish the remaining 16 structures with either archaeological testing prior to or during demolition; and
- A proposal to conduct archaeological testing of the entire 29.95-acre site after all 16 structures have been removed and an offer to provide the results of that testing to all interested parties.

As a result of this submittal, the Evaluation of Significance stage of the Cultural Review process for the request to demolish the remaining 16 structures was reinstated. Notice of the proposal was mailed to appropriate governmental agencies and all individuals who had previously indicated an interest in the project. Responses were received from the following eight agencies and/or individuals:

Friends of the Columbia Gorge.
US Forest Service, NSA Office
David V. Ellis
Nancy Russell.
Oregon State Historic Preservation Office
Bridal Veil Community Church.
Crown Point Country Historical Society
Alfred Staehli

The applicant submitted a Scope of Work for demolition of sixteen buildings at the Bridal Veil historical archaeological site that addresses both of these concerns. That Scope of Work was prepared by Gary C. Bowyer of Western Resources Consulting. Mr. Bowyer has submitted a resume that indicates he satisfies the professional qualifications of MCC 11.15.3818(D). That scope of work proposes mapping and photographing the building complex prior to any building demolition. Next, archaeological monitoring is proposed either during or prior to any building demolition. Finally, an archaeological survey of the entire site will be conducted after the buildings have been removed. That survey will consist of a reconnaissance survey, mapping and photographing identified features and artifacts, and a final surveyed map of the entire site indicating building footprints, depressions and refuse deposits.

B. Decision of Planning Director

The Planning Director approved the applicant's request to demolish all Bridal Veil buildings listed above, subject to compliance with specified conditions of approval, after determining that the record lacks evidence to show that the buildings proposed for demolition are historically significant. The Director stated:

"Based on the comments from Carol Shull, Keeper of the Register for the National Register of Historic Places, Dr. Barbara Little of the National Park Service, and James M. Hamrick, Deputy Oregon State Historic Preservation Officer, the Planning Director finds the sixteen buildings under application for demolition are not significant and that their removal can be accomplished in a manner that will insure the preservation of the integrity of any potential archeological resources on the property. Because there is a potential for ground disturbing activity during demolition, the monitoring during demolition option of the Scope of Work is rejected and the applicant shall be required to perform testing prior to demolition as described in the Scope of Work.

The cultural review process would be complete if:

- The applicant submitted the results of the pre-demolition mapping, photography and testing to the US Forest Service National Scenic Area office and the Planning Director for review prior to the issuance of any demolition permits. The Forest Service and Planning Director must determine all pre-demolition work has been completed as described in the "Testing

Prior to Demolition" portion of the Scope of Work prior to issuance of any demolition activity, and

- The applicant posted a performance bond to insure the post-demolition archaeological survey and professional land survey of the entire property is completed as described in the Scope of Work. Consultation with professional archaeologists indicate that the proposed post-demolition archaeological survey could cost $10,000, and the County Survey Office estimates the land survey to cost approximately $10,000. Therefore, the performance bond should be in the amount of $20,000. That bond amount may be reduced if the applicant submits written bids from qualified professionals for lesser amounts to perform the work as described.

The Planning Director recognizes the comments and concerns of the Crown Point Country Historical Society and includes several of their suggestions in this decision. The Director, however, is persuaded by the comments of Carol Shull, Keeper of the Register for the National Register of Historic Places, and Dr. Little in 1996 with respect to the significance of the sixteen buildings. No new information regarding their significance has been added to the record in the two years since those comments were written. The property will continue to have the potential of archeological significance, and the Final Report which will result from this decision will add to the body of knowledge of that potential."

C. Appeal

On October 13, 1998, Multnomah County issued an administrative decision in case NSA 26-94 approving a request by the Trust for Public Land to demolish numerous buildings at Bridal Veil. On October 27, 1998, an appeal of the administrative decision of the Multnomah County Planning Director was filed by Laurel B. Slater on behalf of Crown Point Country Historical Society. The appeal was timely filed, having been filed within 14 days from the date the administrative decision was issued. MCC 11.15.3810(G).

The Notice of Appeal filed by the Society listed the following as the grounds for reversal or modification of the Planning Director's decision as follows:

> "Disagree with staff recommendation to allow removal of buildings at Bridal Veil due to their historic potential."

D. Hearing & Issues on Appeal

On November 18, 1998, an appeal hearing was conducted by Hearings Officer Liz Fancher. At the commencement of the hearing, the hearings officer questioned whether the notice of appeal complied with the requirement of MCC 11.15.8290(B) that the notice list the "specific grounds" relied on for reversal or modification of the decision. In response to the Hearings Officer's inquiries, Crown Point representative Chuck Rollins narrowed the issue raised in the appeal to the following:

> The Planning Director should have found that the cultural resources to be significant and should have required an Assessment of Effect because all of the Bridal Veil properties that are to be demolished are eligible for inclusion in the National Register of Historic Places for each of the four reasons enumerated in MCC 11.15.3818(2)(a)(i) – (iv).

In a letter dated November 25, 1998 to the hearings officer, Mr. Rollins raised issues that go beyond the scope of the appeal, despite being advised of the provisions of the appeals ordinance that limit review of the Notice of Appeal to the specific grounds raised in the appeal. The hearings officer addressed the issues, however, as they may be raised in future proceedings before the Board of Commissioners, if an appeal of this decision is filed with the Board.

"Our appeal . . . . is based on the Multnomah County GMA Cultural Review Criteria (MCC 11.15.3818). Our review indicates that the process required by these county ordinances may not have been completed, specifically as it pertains to the historic survey (A)(3), and (D)(3) . . ."

FINDINGS: Section (A)(3) requires an historic survey. An historic survey is defined by MCC 11.15.3556 as "actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs." The Trust for Public Land's Evaluation of Significance includes information that documents the integrity and physical condition of all of the historic buildings proposed for demolition. The Evaluation text and photographs provide this information. The report is supported by archival research.

"The March 5, 1997 Evaluation of Significance submitted by Heritage Investment Corporation of TPL does not contain a complete historic survey, which should include architectural evaluation of the buildings as required in (D)(3)."

FINDINGS: Section (D)(3) says that historic surveys shall include specified information. The Crown Point Country Historical Society claims that an architectural evaluation is required and is missing from the Evaluation. Section (D)(3) does not, however, require an "architectural evaluation." Section (D)(3)(c) requires that the Trust "provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations" and Section (D)(3)(a)(iii) requires "archival research, blueprints and drawings as necessary." The Evaluation includes archival research and a drawing of the basic layout of a mill worker's home. The architectural illustration requirement is clearly inapplicable to a demolition project as no construction activity is proposed that needs to be illustrated.

"We do not believe the requirements in (F) have been satisfied completely because the Evaluation of Significance does not demonstrate that the resources are not significant as required in (F)(4)."

FINDINGS: Section 11.15.3816 (F)(4) requires the Trust to "illustrate why each cultural resource is or is not significant. Section (F)(4) requires an illustration of why the Evaluation determined that a resource is or is not significant. Such an illustration (discussion) has been provided throughout the Evaluation.

E. Law Relevant to Appeal

The law that central to the Hearings Officer's decision of this matter is MCC 11.15.3818 (2)(a) (i) – (iv). That law provides:

(2) The Planning Director shall find the cultural resources significant and *require an Assessment of Effect if the Evaluation of Significance or comments received indicate either*:

(a) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for use in evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the *National Register Criteria for Evaluation (36 CFR 60.4)*.. Cultural resources are eligible for the National Register of Historic Places if they possess integrity of location, design, setting, materials, workmanship, feeling, and association. In addition, they must meet one or more of the following criteria:

(i) Association with events that have made a significant contribution to the broad patterns of the history of this region;

(ii) Association with the lives of persons significant in the past;

(iii) Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

(iv) Yield, or may be likely to yield, information important in prehistory or history."

(b) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

FINDINGS: The issue before the Hearings Officer is whether an Assessment of Effect is required prior to demolition of the Bridal Veil buildings. If either subpart (a) or (b) are satisfied, an Assessment of Effect must be required. No claim of significance under subpart (b) has been claimed for this site. As a result, subpart (a) is the sole criterion applicable to the determination of whether the Trust must prepare an Assessment of Effect.

Subpart (a) requires an Assessment of Effect if the Evaluation of Significance or comments received by the County indicate that the Bridal Veil buildings, individually or collectively, are included on the National Register or are eligible for inclusion in the National Register of Historic Places based upon the criteria listed in this ordinance. In this case, none of the buildings is listed on the National Register. The question, therefore, is whether any of the buildings proposed for demolition is eligible for inclusion on the National Register.

In order to be included on the National Register, a building or historical site must possess "integrity of location, design, setting, materials, workmanship, feeling and association." It must also be shown that the building or site has an association with significant events, has an association with significant persons, is distinctive in design or architecture or consists of highly artistic work or is of archeological significance. The National Register criteria are subjective. The criteria are, however, refined and interpreted by historians using the National Register Bulletin "How to Apply the National Register Criteria for Evaluation."

The Trust prepared an Evaluation of Significance. The Evaluation determined that the TPL buildings do not qualify for listing in the National Register of Historic Places, either individually or collectively. According to TPL's attorney Ms. Hennessey:

"The burden of proof is not on the applicant to prove a negative: ineligibility for the National Register. The applicant's obligation is to submit an evaluation of significance . . . While an applicant may be required to address the listing criteria for the National Register in its evaluation of significance under MCC Section 11.15.3818(F), MCC 11.15.3818(G) does not impose a burden on every applicant to absolutely prove that a building proposed for demolition does not satisfy any of the National Register eligibility criteria."

The applicant's reading of the approval criteria appears to be accurate.[1] As such, the Evaluation does not provide a basis upon which to require the applicant to conduct an Assessment of Effect.[2]

The hearings officer next reviewed the comments received by the County to determine whether those comments "indicate" that the buildings are eligible for inclusion on the National Register for any of the reasons listed in subsection i. – iv (Criteria A – D of the National Register criteria). Crown Point's National Register application was based on subsection iv. (Criterion D). There is some evidence that it could have been prepared under subsection i. (Criterion A). No evidence exists in the record, however, other than unsubstantiated claims made by Mr. Rollins at the November 1998 hearing, that the site is eligible for inclusion on the National Register for the reasons listed in subsections ii. and iii (Criteria B and C).[3]

The hearings officer's review revealed that the written and oral comments now in the record do not indicate that the TPL buildings are eligible for inclusion on the National Register.[4] As a result, an Assessment of Effect is not required.

The evidence submitted to the County in favor of requiring an Assessment of Effect shows that some professionals believe that the town and the TPL buildings are "probably eligible" for inclusion on the National Register. The Hearings Officer must find, however, that the comments indicate that the buildings are eligible, not that they are probably eligible. Crown Point representative Chuck Rollins also submitted a copy of its application for inclusion of the TPL property on the National Register and documentation regarding the decision by the State Advisory Committee on Historic Preservation to

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[1] Subsection (G)(3) also provides that the cultural resource review process shall be deemed complete if "no substantiated comment is received during the 30 day comment period and the Evaluation of Significance indicates the effected cultural resources are not significant." TPL has not argued that no substantiated comments were received so this is not an issue in this review.

[2] Mr. Rollins claimed that the Bridal Veil buildings are eligible for inclusion on the Register due to the fact that the town is associated with the Kraft family (subsection ii/Criterion B). The National Register Bulletin that guides review of applications makes it clear, however, that the buildings in question must illustrate a famous person's important achievements. Buildings in this category typically include the home of an important person, the studio of an important artist or the business headquarters of an important industrialist. It does not include an buildings owned by persons of no particular historical significance merely because those buildings are located in a town where the mill was once owned by a person who is famous for reasons unconnected to the town.

[3] This ordinance shifts the burden of proof to the County and opponents upon the filing of an Evaluation of Significance that meets County standards and that concludes that a site or building is not eligible for inclusion on the National Register. In Oregon land use proceedings the burden of proof must always remain with the applicant. Yet, this matter is proceeding under a local adoption of a federal law. Opponents to the TPL application have not objected to this shifting of the burden and have not provided any legal arguments regarding this issue. As a result, the issue has not been addressed by the hearings officer.

[4] The Hearings Officer wishes to make it clear that her opinion does not determine whether or not the Bridal Veil site is or is not historically significant to Multnomah County.

nominate the site for inclusion on the National Register based upon Crown Point's application. That application was, however, determined by the keeper of the National Register, to be insufficient to establish that the site is eligible for inclusion on the National Register. The Advisory Committee felt that the application did establish eligibility, but their opinion was determined to be incorrect by the keeper of the National Register. No new evidence to suggest otherwise has been presented to the Hearings Officer. As a result, none of the evidence in the record "indicates" that the Trust's property is eligible for inclusion on the National Register.

The comments considered and reviewed by the Hearings Officer include testimony presented at the hearing and the following documentary evidence:

Alfred Staehli, FAIA, letter dated August 13, 1998 and November 1998 hearing testimony: Mr. Staehli states that the Trust should be required to do "basic Historic American Buildings Survey (HABS) documentation on the remaining buildings as a mitigating condition." Mr. Staehli states that the Bridal Veil buildings were not determined to be insignificant. Mr. Staehli says that the buildings are "eminently restorable and capable of interpreting life and history in Bridal Veil." Mr. Staehli's letter mentions that the Oregon State Advisory Committee on Historic Preservation approved the final amended National Register nomination under Criterion D (subsection iv). Mr. Staehli does not say that the buildings are eligible for inclusion on the National Register.

David V. Ellis, in a September 5, 1998 letter commented on the Trust's proposed methods of monitoring demolition work. The letter did not contain any evidence regarding National Register criteria.

Chuck Rollins, in a September 5, 1998 letter, complained about violations of the resaw building permit and the Bowyer scope of work for monitoring demolition activities. As to the historic value question, Mr. Rollins stated that the keeper of the National Register did not deny Crown Point's application for inclusion of the townsite on the National Register based on Criterion D (subsection iv. of the County's ordinance). Mr. Rollins cited the keeper's comment that research questions were well developed and would demonstrate the likelihood of important information at the site "if the presence of intact remains were well-documented." The fact that one has developed a good study methodology does not say anything about whether the site is worth studying.

The Rollins letter and other evidence in the record establishes that the National Register application was returned because it was incomplete. This means that it is possible that additional evidence might be found that would establish the historical significance of the site. It also means, however, that the evidence submitted was not sufficient to establish significance. The only evidence in the Rollins letter regarding historic register question is his Mr. Rollins' statement that the Oregon State Advisory Board on Historic Preservation voted to forward the Crown Point application for nomination to the National Register.

At the hearing in November, 1998, the Hearings Officer advised Mr. Rollins and the Crown Point Country Historical Society that it should organize and submit all evidence that bears on the central question of significance. Mr. Rollins submitted a letter dated November 25, 1998, the Society's application for nomination to the National Register and correspondence with The Trust and the Keeper of the National Register and other letters that support Crown Point's position.

Mr. Rollins' November letter contains the claim that "we believe that (G)(2), based on the inconclusiveness of the National Register nomination and 'comments received,' requires the Planning Director to find the cultural resources significant, and therefore require an Assessment of Effect. Subsection (G)(2) requires the hearings officer to

require an Assessment of Effect only if the comments in the record indicate that the TPL buildings are eligible for nomination, not if the comments indicate a lack of evidence to determine that the buildings are eligible for inclusion on the National Register.

Mr. Rollins submitted a letter from Sharr Prohaska dated May 7, 1993. Ms. Prohaska states that Chris Beck of TPL was told by Ms. Prohaska and several consultants that Bridal Veil was "probably historically significant." Ms. Prohaska says that "interior alteration is not the criteria one uses to determine significance." The Hearings Officer concurs with this statement. Ms. Prohaska also says that "[t]he reason the Prohaska report does not contain any information on the architectural significance or integrity of the buildings is because TPL threatened lawsuit and refused to let me in the buildings when I conducted my research on the historic and cultural significance of Bridal Veil." The Prohaska letter does not reach a conclusion on historic significance and the eligibility of the site for inclusion on the National Register. TPL's actions in threatening Ms. Prohaska with a lawsuit provides evidence of TPL's lack of objectivity on the historic significance question and intractability but it does not establish historic significance.

Mr. Rollins submitted a letter from Rick Harmon, Oral Historian of the Oregon Historical Society, dated October 19, 1992 that states that Harmon would lend "an emphatic yes" to the question of Bridal Veil's significance as a cultural and historic resource based upon the fact that the remnants of the town are still rooted in their original context. This statement does not, however, say that the site is eligible for inclusion on the National Register.

Mr. Rollins provided the Hearings Officer with a letter from Mr. Rollins to Mr. Beck dated November 23, 1992. That letter documents TPL's refusal to allow access to the Bridal Veil buildings by Crown Point. The letter does not, however, establish that the Bridal Veil buildings are of historical significance.

Mr. Rollins submitted a letter from Carl Abbott, Ph.D. that states that the communities and industrial complexes created by the logging industry survive in Multnomah County in substantial form only at Bridal Veil. Dr. Abbot states that Bridal Veil is "a classic example of a cultural landscape which is far more than a simple sum of its parts." Dr. Abbott does not offer an opinion regarding the National Register criteria.

Mr. Rollins also submitted an undated letter from Sally Donovan, an historian with a master degree in Historic Preservation at the University of Oregon. Ms. Donovan's letter addresses former County criteria that have been repealed. Ms. Donovan's letter specifically states that National Register criteria are irrelevant to evaluating the site. As such, it is not reasonable to rely upon this letter as offering an opinion on National Register criteria. Ms. Donovan's letter states that some of the buildings owned by TPL retain historic integrity but she fails to identify those buildings. The Hearings Officer is, therefore, unable to draw any conclusion regarding the historical integrity of any particular building based upon this statement.

Mr. Rollins submitted a letter from T. Allan Comp, Ph.D., Historian that supports inclusion of Bridal Veil as a Goal 5 resource in the Multnomah County comprehensive plan. The letter says that the site is a "potential" National Register site. This letter does not discuss the National Register criteria.

Mr. Rollins submitted an October 13, 1992 letter from Catherine Galbraith recommending that the Bridal Veil homes be evaluated as a collection. The letter does not include an opinion regarding eligibility for inclusion of the town on the National Register.

Mr. Rollins also provided a February 13, 1996 letter from Professor David Brauner of Oregon State University. Professor Brauner states that a representative of TPL contacted him while attempting to find an archaeologist who would speak in opposition to the nomination. Professor Brauner was troubled that no subsurface data is available to support the nomination but notes that TPL refuses access to the site to historians. Professor Brauner is of the opinion that the buildings are a part of the archaeological record. Professor Brauner does not, however, make any claim that the site is or is not eligible for inclusion in the National Register.

Mr. Rollins submitted an October 18, 1992 letter from Richard Ellis stating that some of the TPL buildings are intact and "can continue to provide important information not just on the architecture of the community, but on the community's social organization as well." The Ellis letter addressed a report from HIC (Heritage Investment Corporation) that predates the 1994 Evaluation of Significance prepared by HIC. The Ellis letter noted a number of deficiencies in that report and concluded that the HIC report was inappropriately narrow. Mr. Ellis did not, however, address the National Register review standards nor does it say that the TPL building are eligible for inclusion on the National Register.

Mr. Rollins also submitted the application for inclusion of the Bridal Veil site on the National Register under criterion D. This is the application that was determined by the Keeper of the Register to be insufficient to support a conclusion that the Bridal Veil site is eligible for listing on the National Register. As such, it is known that this application and the information it contains do not indicate eligibility. Instead, it is known that this information alone does not establish eligibility.

A July 1, 1996 letter from James Hamrick of SHPO to the Keeper of the National Register dated July 1, 1996 stating that the State Advisory Committee on Historic Preservation concluded unanimously that the property meets National Register criteria but also states that the SHPO staff archeologist's analysis of the application using the National Register guidelines revealed that the case for National Register eligibility was not proven.[5] This letter and attached minutes provide evidence that the Advisory Committee's decision was that the property meets National Register criteria. This evidence "indicates" that the site is suitable for inclusion on the Register but this evidence was provided to the keeper of the Register and determined to be insufficient to establish eligibility. As such, the evidence, without more, does not indicate eligibility.

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[5] SHPO's historical review determined that the Bridal Veil buildings lack integrity and are not eligible for the National Register based upon National Register evaluation criteria. In his May 4, 1994 letter to Mr. Rollins, SHPO representative James Hamrick states "we told you unequivocally that it was our professional opinion the townsite does not meet National Register criteria A and C on grounds of integrity." An earlier SHPO letter to Mr. Rollins dated April 4, 1994 also unequivocally stated that "we do not believe the evidence is conclusive enough to meet eligibility under Criterion D." In 1997, Mr. Hamrick of SHPO stated "[t]he opinion of the State Historic Preservation Office is that the 14 houses and three garages at Bridal Veil lack integrity and are not eligible for the National Register under Criteria A, B or C nor do they meet Criterion D as components of a larger historical archeological site." Mr. Hamrick noted that National Register reviewer Barbara Little found that "the standing buildings, as such do not contribute to the archeological potential of the site" and that the above ground structures are not archeological resources. Mr. Rollins acknowledged SHPO's position in his September 5, 1998 letter, stating "James Hamrick of SHPO has taken the position that the buildings are not of historic significance." TPL could have, but did not, argue that a review under MCC 11.15.3818 (G) was not necessary due to the provisions of MCC 11.15.3818(B), particularly if they had obtained SHPO's opinion in a way that mirrors the language of subsection (B).

F. Other Ordinance Considerations Not Challenged in Appeal

This property is located in a Special Management Area and is designated Public Recreation. It is in a Coniferous Woodland landscape setting and has a Recreation Intensity Class of IV. Bridal Veil Creek, which flows through a portion of the property, is identified on resource maps provided by the Gorge Commission as being a tributary fish habitat and a riverine wetland. Consequently, the following ordinance criteria apply to this request:

1. Scenic Resources

The property is in a Coniferous Woodland landscape setting and is visible from several Key Viewing Areas (Columbia River, I-84, Historic Columbia River Highway and SR 14). As such, MCC 11.15.3814(A), (B) &(C)(2) potentially apply. However, the applicant proposes no development of the property, nor the construction of any structures. All of the cited criteria apply to property development or the construction of structures. None of the criteria address the removal of structures.

There is a potential, however, that unvegetated areas resulting from structure removal would adversely impact the scenic resources of the Gorge. As a result, a condition of approval must be that areas be revegetated to eliminate that potential. Storage of demolition materials on the property would also have a potential adverse impact on scenic resources. As a result, any approval must be conditioned upon a requirement that no demolition materials be stored on site. If the above conditions are imposed and followed, the request to demolish the Bridal Veil structures, would satisfy the scenic review criteria.

2. Cultural:

The Planning Director found that the Cultural Review process requires the applicant to mitigate unauthorized work in the vicinity of the resaw building. This finding was not appealed by any party. As such it remains binding on the applicant. The requirements for mitigation are found in MCC 11.5.3820(G)(5). The Forest Service, as required by those standards, has reviewed the proposed mitigation work in conjunction with the removal of the resaw building and finds the plan meets all applicable standards (4/2/98 letter from Arthur J. Carroll). Therefore, the cultural review process will be complete for the resaw building upon completion of the proposed mitigation plan.

3. Recreational

The proposal is only for removal of structures. There are low intensity recreational uses on adjoining parcels to the west at Bridal Veil State Park. However, since no development or land uses are proposed, the building removal would not adversely affect recreational resources within the Scenic Area.

4. Natural Resources

Maps from the Gorge Commission and site investigation indicate the following natural resources on the property:

1. The site is crossed by a tributary fish habitat stream (Bridal Veil Creek).
2. Bridal Veil Creek is a riverine wetland.
3. No known natural areas, endemic plant species or sensitive wildlife areas are identified on the property.

Because Bridal Veil Creek is a tributary fish habitat and a riverine wetland, the applicant is required to comply with the applicable provisions of MCC 11.15.3830 (SMA Natural Resource Review Criteria). Those include:

a. The establishment of a 200-foot undisturbed buffer zone along Bridal Veil Creek unless it can be shown there are practicable alternatives as provided by MCC 11.15.3822(F).

b. A site plan containing the additional information required by MCC 1.15.3830(B) if any demolition or ground disturbing activity, including movement of machinery or supplies or placement of debris, is proposed within the 200 foot buffer zone. Any demolition conducted within the buffer zone shall also comply with MCC 11.15.3830(B)(6) and (7).

c. A narrative statement that all applicable standards of MCC 11.15.3830(B)(5)(b) and (c) will be satisfied if any demolition or ground disturbing activity is proposed within the 200 foot buffer zone.

The proposal would comply with the Natural Resource review criteria if items a, b and c (above) were satisfied for any demolition or ground disturbing activity within the 200 foot buffer zone. However, the applicant does not propose any demolition activity in the vicinity of the Bridal Veil Creek buffer zone. Therefore, these criteria do not apply, and the project, as proposed, satisfies the Natural Resource review criteria.

DECISION:

Affirm the decision of the Planning Director to approve applicant's request to demolish sixteen buildings on the Bridal Veil mill site shown on the site map of the Historic Survey and Evaluation of Significance dated July 29, 1994 as buildings 2, 3, 4, 5, 6, 7, 12, 13, 14, 15, 17, 18, 20 & 22, plus the shop and warehouse, subject to the following conditions:

1. The applicant shall obtain a demolition permit prior to the removal of any structure on this property. No demolition permit shall be issued until results of the testing prior to demolition as described in the Scope of Work is completed and the results reviewed and approved by the Planning Director and the US Forest Service as having satisfactorily completed that portion of the Scope of Work.

2. All work proposed in the Scope of Work shall be performed under the direct field supervision of Gary C. Bowyer of Western Resources Consulting. If, in his absence, any other individual is proposed to be involved in the direct field supervision of the Scope of Work, their professional qualifications shall first be submitted to and approved by the Planning Director as meeting the professional qualifications of MCC 11.15.3818(D).

3. Prior to the issuance of any demolition permits, the applicant shall:

   a. Provide a landscaping plan which insures revegetation of any barren area exposed by the requested demolition with species endemic to the Bridal Veil area within one year of issuance of the demolition permit;

   b. Provide a plan for the disposition of demolition materials at a location not visible from any Key Viewing Area within the Columbia River Gorge; and

   c. Provide the County a performance bond in the amount of $20,000 (or a lesser amount as determined appropriate by the Planning Director based upon written bids from qualified professionals) to insure completion of the post-demolition portion of the Scope of Work.

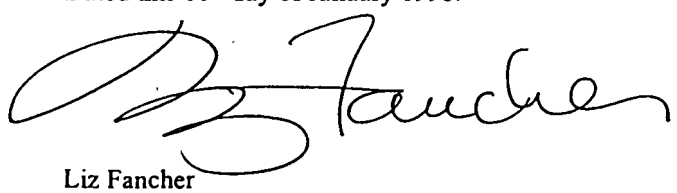
4. The post-demolition portion of the Scope of Work shall be completed within 12 months of issuance of the first demolition permit.

5. No development permits for any future use of this property shall issue until all work outlined in the Scope of Work has been completed and the Final Report described therein conveyed to the Planning Director. That document shall be a part of the record in this case and will be available to any individual or group for future reference.

6. The applicant shall comply with MCC 11.15.3818 (L) and (M). Should any cultural resource, historic or prehistoric, be uncovered on the site, the applicant or parties of interest shall immediately cease work and notify the Planning Director and the Columbia River Gorge Commission within 24 hours. The Planning Director will then notify the Crown Point Country Historical Society and request their input in the survey and evaluation required by MCC 11.15.3818(L)(3).

7. Except as otherwise specified in the above conditions, this approval is based on the applicants submitted testimony, site and demolition plans, and substantiating documents. The applicant shall be responsible for implementing the Scope of Work as presented and conditionally approved.

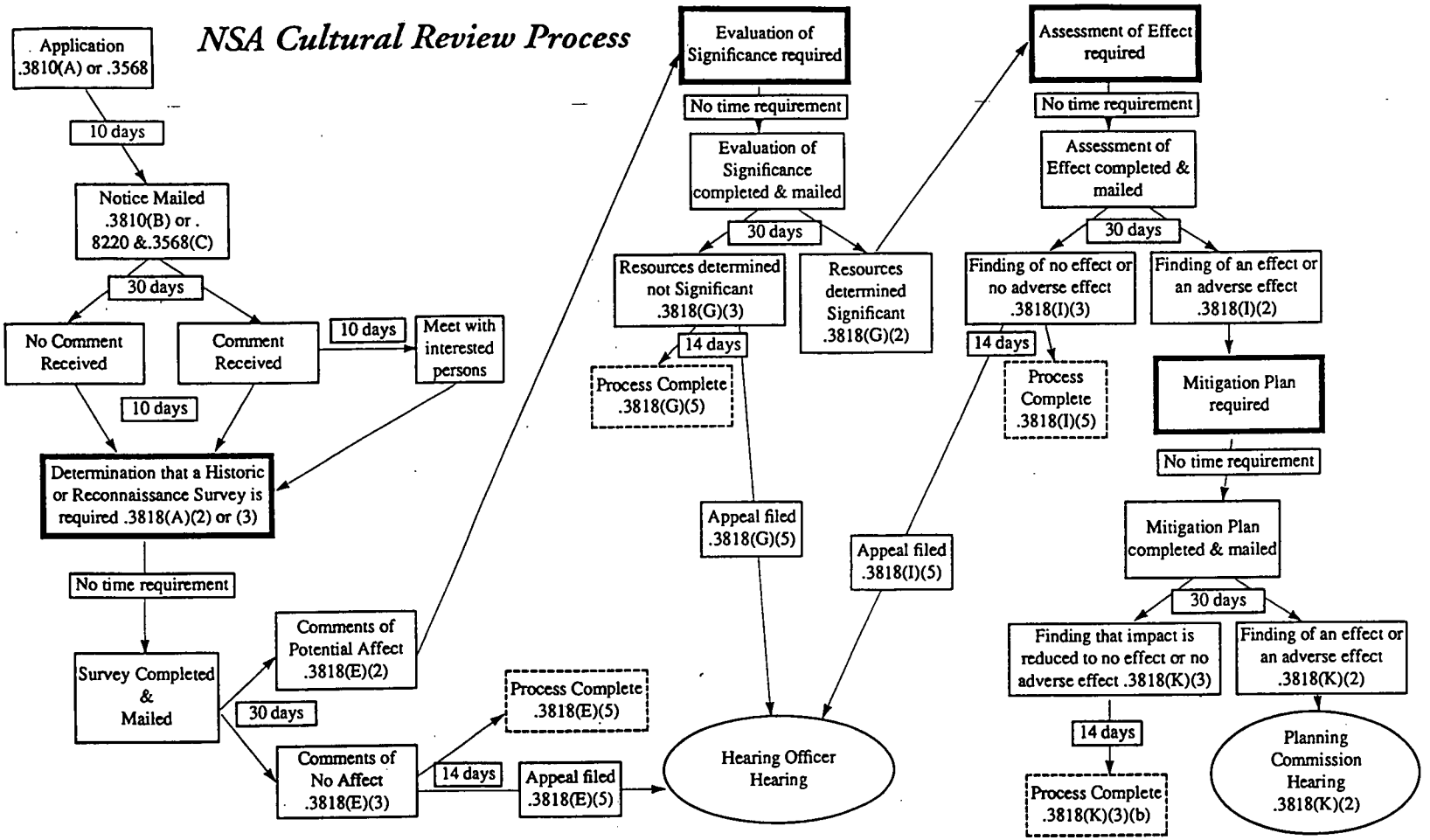
Dated this 11th day of January 1998.



Liz Fancher
Multnomah County Hearings Officer

APPEAL PROCESS: The decision of the Director shall be final unless a notice of appeal is filed with the Director of Planning and Development within 10 days of the date of this decision by the applicant or any other party. Notice of Appeal forms may be obtained at the Multnomah County Planning Division Office. Appeals are processed as provided in MCC 11.15.8290. Appeal fees: Appeal of Hearings Officer decision to the Board of County Commissioners, $530.00. Transcript requirements and fees: See County code.

NSA Cultural Review Process



Chronology of County Actions Regarding Removal of 16 Buildings at Bridal Veil

Statewide Planning Goal 5 Actions

Date	Action	Comment
July 24, 1992	Planning Staff informs TPL of application requirements under Statewide Planning Goal 5	
August 20, 1992	TPL submits Historical & Architectural Evaluation of buildings at Bridal Veil prepared by Heritage Investment Corporation	Report concluded no historic resources at Bridal Veil
September 24, 1992	Staff memo indicating report entitled *Bridal Veil, Oregon History and Significance of the Community* prepared for Multnomah County is available.	Report concluded that,"... houses, post office, church/community, and cemetery should not be destroyed. Some consideration should be given to preserving the remaining wooden mill building."
October 5, 1992	Planning Commission hearing to consider amendment of Framework Plan to include Bridal Veil in the inventory of significant historic resources.	Continued to October 19th
October 19, 1992	Continued Planning Commission hearing	Continued to November 16, 1992
November 16, 1992	Planning Commission determines Bridal Veil site should be added to inventory of significant historic resources and the remainder of the Goal 5 process be completed for the property.	
December 7, 1992	TPL appeals Planning Commission recommendation.	
December 29, 1992	Board adopts Planning Commission recommendation.	
January 7, 1993	County adopts ordinance implementing provisions of the Management Plan For the Columbia River Gorge National Scenic Area	

May 3, 1993 May 17, 1993	Planning Commission hearings on completion of Goal 5 process.	Planning Commission recommends adoption of a Goal 5 program.
June 7, 1993	TPL appeals Planning Commission recommendation to Board.	
June 25, 1993	CRGNSA ordinance becomes effective	Replaced Statewide Planning Program for the NSA
July 13, 1993	Board hearing on TPL appeal.	Continued to August 10th.
August 10, 1993	Board recognizes changes in State and County regulations regarding the CRG National Scenic Area, rejects the Planning Commission recommendation, and takes no further action on this request.	Goal 5 process no longer applicable to the Bridal Veil site.
Columbia River Gorge National Scenic Area Actions		
September 6, 1994	TPL submits National Scenic Area application to demolish 17 structures at Bridal Veil. Application contains applicant's submittal material for a Historic Survey and Evaluation of Significance.	
December 28, 1994	Planning Director determines that comments received during comment period indicate that Historic Survey stage of the NSA Cultural Review process is complete, however, additional information is required to complete Evaluation of Significance stage of Cultural Review process.	
December 28, 1994	County notified by SHPO that an application had been received to place the Bridal Veil property on the National Register of Historic Places.	Application filed by Crown Point Country Historical Society.
January 27, 1995	TPL files application to demolish resaw building on property due	Applicant continues application to remove the
	to potential hazard to adjoining railroad.	other 16 buildings.
April 6, 1995	Planning Director approves (with conditions) removal of resaw building.	No objections or appeals.

October 22, 1996	County notified by SHPO that the application for inclusion of the Bridal Veil Site in the National Register of Historic Places had been returned due to "insufficient evidence to make a decision about the information potential of the archeological resources" of the site.	
March 5, 1997	TPL submits application for Evaluation of Significance.	
April 10, 1997	Planning Director notifies TPL that specific conditions of the approval to remove the resaw building had been violated. All processing of Bridal Veil applications would cease until evaluation and mitigation plan was provided.	
April 21, 1998	TPL submits evaluation and mitigation plan for resaw building and requests renewal of consideration of Evaluation of Significance for the 16 other structures.	Plan reviewed and approved by US Forest Service and SHPO.
August 6, 1998	County reinstates Evaluation of Significance and notifies all parties requesting comments.	
October 13, 1998	Planning Director conditionally approves demolition of the 16 structures.	
October 27, 1998	Crown Point Country Historical Society appeals Planning Director Decision to Hearing Officer.	
November 18, 1998	Hearing Officer hearing on appeal.	Hearing closed but both parties given 21 days for periods of additional submittal and rebuttal.
January 11, 1999	Hearing Officer conditionally approves demolition of the 16 structures.	
February 16, 1999	Crown Point Country Historical Society appeals Hearing Officer decision to Board of County Commissioners.	Hearing to be held June 8, 1999

BUDGET MODIFICATION NO. **CCFC 2000-02**

(For Clerk's Use) Meeting Date AUG 12 1999

Agenda No. R-4

1. REQUEST FOR PLACEMENT ON THE AGENDA FOR

07/22/99

DEPARTMENT	**CCFC**	DIVISION	
CONTACT	**Jim Clay**	TELEPHONE	**248-3897**
* NAME(S) OF PERSON MAKING PRESENTATION TO BOARD		NA	

SUGGESTED AGENDA TITLE **Revenue neutral CCFC funding stream exchange to leverage private 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 accomplish? Where does the money come from? What budget is reduced? Attach additional information if you need more space.)

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

In order to leverage $150K from a private source (Legacy Health System) for the CCFC Early Early Childhood Collaborative Initiative, it is necessary to structure the rest of the financing so that fiscal years align with project timeline. This budget modification bring a one-time-only exchange of revenues between county agencies to allow for this alignment of fiscal years.

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

Revenue neutral. Makes a one-time-only move of state Great Start carryover revenue from CCFC to DCFS, in exchange for DCFS CGF. Does not change the contingency for either agency.

BOARD OF COUNTY COMMISSIONERS
99 AUG -4 PM 12:00
MULTNOMAH COUNTY
OREGON

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

~~no change~~ Fund Contingency before this modification ____ Date ____

After this modification

Originated By	MKWaddell 8/3/99 Jeanette Hankins Date 8/3/99	Department Director	Date 8/3/99
Plan/Budget Analyst	Date 8-4-99	Employee Services	Date
Board Approval	Deborah C Bogstad Date 8/12/99		

BudMod1.xls

PERSONNEL DETAIL FOR BUDGET MODIFICATION NO. CCFC 2000-02

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

		ANNUALIZED			
FTE Increase (Decrease)	POSITION TITLE	BASE PAY Increase (Decrase)	Increase/(Decrease		TOTAL Increase (Decrease)
			Fringe	Ins.	
No Change					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
0	TOTAL CHANGE (ANNUALIZED)	0	0	0	0

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

		CURRENT FY			
Permanent Positions, Temporary, Overtime, or Premium	Explanation of Change	BASE PAY Increase (Decrease)	Increase/(Decrease		TOTAL Increase (Decrease)
			Fringe	Ins.	
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
TOTAL CURRENT FISCAL YEAR CHANGES		0	0	0	0

EXPENDITURE

TRANSACTION EB GM [ ] TRANSACTION DATE ACCOUNTING PERIOD BUDGET FY

Document Number	Action	Fund	Agency	Organi-zation	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description
									0			
									0			
CCFC 2000-02									0			
		156	050	9130			7601	179,925	429,925	250,000		Cash Transfer to CCFC
									0			
		100	010	9130			7601	5,235,645	4,985,645	(250,000)		Cash transfer to DCFS
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
TOTAL EXPENDITURE CHANGE										0	0	

REVENUE

TRANSACTION RB GM [ ] TRANSACTION DATE ACCOUNTING PERIOD BUDGET FY

Document Number	Action	Fund	Agency	Organi-zation	Activity	Reporting Category	Revenue	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description
									0			
CCFC 2000-02		156	050	9035			7601	179,925	429,925	250,000		CGF from DCFS
		156	050	9035		9341	2398	901,444	651,444	(250,000)		Great Start to DCFS
		156	010	1122			7601	5,235,645	4,985,645	(250,000)		CGF subsidy to CCFC
		156	010	1122		9341	2398	50,908	300,908	250,000		Great Start from CCFC
									0			
									0			
									0			
									0			
									0			
									0			
TOTAL REVENUE CHANGE										0	0	

Supplemental Staff Report

TO: Multnomah County Board of Commissioners

FROM: Jim Clay, Executive Director,
Commission on Children, Families and Community

DATE: August 4, 1999

SUBJECT: Budget Modification CCFC 2000-02. Exchange CCFC Great Start Carry-over for General fund in Department of Community and Family Services Family Center Contracts.

---

1. Recommendation/Action Requested:
Recommend approval of the budget modification.

2. Background/Analysis:
Early childhood support has emerged as a critical interest of the Multnomah County Board of Commissioners, as well as the Commission on Children, Families, and Community. This bud mod will support advancing that interest.

Beginning a year ago the CCFC directed some of its human and financial resources toward an Early Childhood Collaborative Initiative in which the system of care would be improved through the use of public and privately leveraged funds. The intent was for part of the public funds to come from state carryover revenue (Great Start funding steam), that must be used by December 31, 1999. This time limit now seems to jeopardize the recently confirmed and privately leveraged funding ($150,000) from Legacy Health System, which is on a longer time frame. By replacing the state carry-over funds with CGF currently budgeted for on-going family center services we can ensure a more thoughtful Early Childhood Language and Literacy Project, with better alignment of private and public funds.

3. Financial Impact:
Revenue neutral. Does not increase either agency net budget amount. This is a one time exchange of revenue sources.

4. Legal Issues:
The *Oregon Commission on Children and Families* must also approve this change in the Carry-over plan.

5. Controversial Issues:
None identified.

6. Link to Current County Policies:
The efforts advanced through this initiative are a good fit with and are well coordinated with other early childhood initiatives being advanced through Commissioner Naito's workgroup on early childhood. Also, County policies

commission on children families & community

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

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

7. Citizen Participation:
This is a collaborative initiative, and so citizen involvement has been the foundation of the process. We have involved diverse community stakeholders, including the Early Childhood Care and Education Council, Portland Public Schools, SMART, Head Start, Mount Hood and Portland Community Colleges, Multnomah County Library, Multnomah County Health Department, Metro Childcare Resource and Referral, Portland-Multnomah Progress Board, Leaders Roundtable and many others.

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

#1

SPEAKER SIGN UP CARDS

DATE Aug 12 99

NAME BARBARA FIELTA

ADDRESS 3226 SE 13 Ave
PORTLAND OR

PHONE 510-1446

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC DUII R-5

GIVE TO BOARD CLERK

#2

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Jerry Hoffman

ADDRESS

Portland Ore

PHONE None

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Auto Forfeiture

GIVE TO BOARD CLERK

R-5

#3

SPEAKER SIGN UP CARDS

DATE 8.12.99

NAME Jeffrey Birrer

ADDRESS 1 SE 2nd Ave Portland
(American Medical Response

PHONE 736.3425

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC County Forfeiture law R-5

GIVE TO BOARD CLERK

#4

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME JASON SNIDER

ADDRESS ~~83~~ 1 SE 2ND AVE. (AMR)

PORTLAND

PHONE (503) 736-3420

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-5

GIVE TO BOARD CLERK

#85

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME Jim Whitehead

ADDRESS 1037 NE 173rd

Portland OR

PHONE 252-6362

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Auto Forfeiture R-5

GIVE TO BOARD CLERK

#6

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME Marlene Wirtanen

ADDRESS 3309 SW Idaho St.
Portland 97201

PHONE 503-244-6729

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Forfiture due to DUI

GIVE TO BOARD CLERK

R-5

#7

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME E. H. Collins

ADDRESS 17661 S.E. Alder St

Portland, Or 97233

PHONE 503 254-6750

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-5

GIVE TO BOARD CLERK

#8

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Tom Buhler

ADDRESS Metropolitan Public Defenders

PHONE 225.9100

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-5

GIVE TO BOARD CLERK

#9

SPEAKER SIGN UP CARDS

DATE 8/12/97

NAME Ray Mathis

ADDRESS Citizens Crime Commission

PHONE

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC DUI R-5

GIVE TO BOARD CLERK

F10

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Phillip Windell

ADDRESS Dept. of Community Family Servic

PHONE 248-6464 X26494

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Dril Forfeiture R-5

GIVE TO BOARD CLERK

#11

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME DOUG BROWN

ADDRESS 1224 SW UPLAND DR

PORTLAND OR 97221

PHONE 295-4488

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC DUII AUTO FORFEITURE

GIVE TO BOARD CLERK

R-5

#12

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME Pontine Rosteck PONTINE ROSTEEK

ADDRESS 424 NE 44

Portland, Oregon 97213

PHONE 236-2471

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Fureiture, haul R-5

GIVE TO BOARD CLERK

#13

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME Carolyn Harrington

ADDRESS 17711 SE Clay

Portland, OR

PHONE 503-760-4852

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Auto Forfeiture R-5

GIVE TO BOARD CLERK

#14

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Rosanne Lee

ADDRESS 814 SE 54th Ave.
Portland, OR 97215

PHONE 234-5576

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Auto Forfeiture - 2 x DUII

GIVE TO BOARD CLERK

#15

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Jacqueline M Bethke

ADDRESS 4360 SE 15
Gresham

PHONE 667 8154

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Drunk Driving R-5

GIVE TO BOARD CLERK

MEETING DATE: AUG 1 2 1999
AGENDA NO: R-5
ESTIMATED START TIME: 10:00

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Ordinance for Vehicle Forfeiture of Drunk and Suspended Drivers

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

REGULAR MEETING: DATE REQUESTED: 8-12-99

AMOUNT OF TIME NEEDED: 45 Min.

DEPARTMENT: Non-Dept. DIVISION: District 3

CONTACT: Charlotte Comito/ Dan Oldham TELEPHONE #: 248-5217
BLDG/ROOM #: 106/1500

PERSON(S) MAKING PRESENTATION: *Commissioner Lisa Naito, Rep. Earl Blumenauer, Sheriff Dan Noelle, Judge Dorothy Baker, ADA Chris Carey, Gresham Police Chief Bernie Giusto, Troutdale City Councilor Jim Kight, Captain Jim Ferraris (City of Portland) and invited others*

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Ordinance Providing for Vehicle Forfeiture for Repeat Driving Under the Influence or Driving While Suspended or Revoked.

SIGNATURES REQUIRED:

ELECTRONIC SIGNATURE
OREGON
99 AUG -4 AM 11:25
BOARD OF COUNTY COMMISSIONERS

ELECTED OFFICIAL: Lisa Naito
(OR)
DEPARTMENT MANAGER:

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

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

MULTNOMAH COUNTY OREGON

SUPPLEMENTAL STAFF REPORT

TO: Board of County Commissioners

FROM: Commissioner Lisa Naito

DATE: August 4, 1999

RE: Amending Ordinance 15.350 Providing for Forfeiture of Vehicle for Repeat Driving Under the Influence and Driving While Suspended or Revoked.

---

1. Recommendation/Action Requested:

Approval of Ordinance to Reduce Driving Under the Influence and Driving While Suspended or Revoked, and Declaring Vehicles a Nuisance and Providing for the Forfeiture of Those Vehicles.

2. Background/Analysis:

The rate of recidivism for driving under the influence can be reduced by half when vehicles are seized. Other jurisdictions throughout the County will adopt this ordinance to reduce recidivism, which will result in fewer traffic accidents and fatalities.

3. Financial Impact:

If such a Forfeiture Ordinance is adopted there will be some startup capital costs associated with its operation, but the program is designed to be self-sustaining and revenue neutral. The Sheriff will create administrative rules for the

operation of the program and negotiate with involved jurisdictions as to day to day operations.

4. Legal Issues:

The ordinance is consistent with ORS 475A.001 et seq., the forfeiture statute.

5. Controversial Issues:

Some of the vehicles seized are co-owned. Innocent owner's exceptions are included.

6. Link to Current County Policies:

This resolution is linked to Multnomah County's long term benchmark, *Reduce Crime*. It is further linked to the Public Safety Urgent Benchmarks, *Reduce Violent Crime, and Reduce Recidivism.*

7. Citizen Participation:

The Ordinance was discussed by representatives of all jurisdictions within Multnomah County and members of Mothers Against Drunk Driving and other interested citizens.

8. Other Government Participation:

Representatives from law enforcement from each of the jurisdictions within Multnomah County participated in the committee. The DUII Advisory Committee and A & D work group of the Local Public Safety Coordinating Council.

MULTNOMAH COUNTY
DUII COMMUNITY ADVISORY BOARD

421 SW 6th Avenue, Suite 600 Portland, Oregon 97204-1619 (503) 248-5464 x 26370

July 15, 1999

Commissioner Lisa Naito
1120 SW 5th RM 1500
Portland, OR 97230

Dear Commissioner Naito:

The Multnomah County DUII Advisory Board voted at their June 1, 1999 to support the County Forfeiture Ordinance.

We are appreciative of your interest in the DUII Board issues and are particularly grateful to Charlotte's regular attendance at our meetings.

Sincerely,

Richard Drandoff

Richard Drandoff
Board Chair

cc: Deb Bogstad

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. _____

An ordinance amending county Forfeiture Law (MCC 15.350, et seq.)

(Language ~~stricken~~ is deleted; double- underlined language is new.)

Multnomah County Ordains as follows:

Section 1. MCC § 15.350 is amended to read as follows

15.350- Title.

This subchapter shall be known and cited as the Impoundment and Vehicle Forfeiture Law ~~of the county~~.

Section 2. MCC § 15.351 is amended to read as follows

15.351 Definitions.

~~(A)~~ For the purpose of this subchapter, the following definitions shall apply unless the context requires a different meaning.

(A) ***PROHIBITED CONDUCT.*** Operating a motor vehicle while driving privileges are suspended or revoked under ORS 811.182(3)(g) (Driving Under the Influence of Intoxicants under 813.010), or in violation of driving restrictions imposed as a result of conviction for driving under the influence of intoxicants, or driving under the influence of intoxicants in violation of ORS 813.010, or in violation of any court order suspending, revoking or restricting driving privileges.

(B) ***FORFEITURE COUNSEL.*** The district attorney, county counsel or any qualified attorney may represent the county in any action under this subchapter.

(C) ***VEHICLE RELEASE AGREEMENT***. The terms and conditions under which a person may obtain release of a vehicle that is subject to forfeiture provided the operator is eligible for diversion under state law as outlined in ORS 813.215.

~~***PROHIBITED CONDUCT.*** Includes violation of, solicitation to violate, attempt to violate or conspiracy to violate any provisions of ORS 164.005 through 164.125 (Theft), ORS 164.135 (Unauthorized Use of a Vehicle), ORS 164.205 through 164.225 (Burglary), ORS 167.002 through 167.027 (Prostitution and Related Offenses), ORS 167.117 through 167.153 (Gambling Offenses) and ORS 163.665 through 163.695 (Visual Recording of Sexual Conduct by Children), and ORS 811.182(3)(g) (Driving While Driving Privileges are Suspended or Revoked for a Driving Under the Influence of Intoxicants Conviction).~~

~~(B) This chapter incorporates by reference as though fully set forth 1989 Oregon Laws, Chapter 791, §§ 2(1) through (10) and §§ 2(12) through (14), inclusive.~~

Section 3. MCC § 15.352 is amended to read as follows

15.352 Impoundment.

Any motor vehicle operated by a person engaged in prohibited conduct shall be subject to impound at the time of arrest or citation of the operator. The operator and/or vehicle owner will be required to reimburse the impounding agency for all administrative fees, towing and storage costs related to the impound.

~~(A) The Board finds that:~~

~~(1) The use of profits, proceeds or instrumentalities in theft (ORS 164.005 through 164.125); unauthorized use of a vehicle (ORS 164.135); burglary (ORS 164.205 through 164.225); gambling offenses (ORS 167.117 through 167.153); prostitution and related offenses (ORS 167.002 through 167.027) and visual recording of sexual conduct by children (ORS 163.665 through 163.695) and driving while driving privileges are suspended or revoked resulting from a conviction for driving under the influence of intoxicants (ORS 811.182(3)(g)) have and are proliferating in the county, and the presence of such activities is detrimental to the public health, safety, welfare and quality of life in the county;~~

~~(2) In particular, gambling and prostitution activities involving the use of conveyances and real property and conveyances used by drivers whose driving privileges have been suspended or revoked resulting from a conviction for driving under the influence of~~

~~intoxicants have been and are proliferating in the county, and the presence of these activities is detrimental to the safety and quality of life in the county and therefore the specified conveyances and real property are nuisances;~~

~~(3) The prohibited conduct defined in this chapter is undertaken in the course of profitable activities which result in, and are facilitated by, the acquisition, possession or transfer of property subject to civil forfeiture under this subchapter;~~

~~(4) Transactions involving property subject to forfeiture under this subchapter escape taxation;~~

~~(5) Local government's attempts to respond to prohibited conduct require additional resources to meet its needs;~~

~~(6) There is a need to provide for the civil forfeiture of certain property subject to forfeiture under this subchapter, to provide for the protection of the rights and interests of affected persons, and to provide for uniformity with respect to the laws pertaining to the forfeiture of real and personal property; and~~

~~(7) The instrumentalities, profits and proceeds of prohibited conduct are often used to commit the same or another prohibited conduct and the return of the property thus serves to encourage and perpetuate the commission of prohibited conduct in the county.~~

Section 4. MCC § 15.353 is amended to read as follows

15.353 Forfeiture.

(A) A motor vehicle is declared a nuisance if operated by a person engaged in prohibited conduct as defined in MCC § 15.351. The vehicle is further subject to civil in rem forfeiture in accordance with ORS Chapter 475A and its amendments.

(B) Where the operator of the vehicle that is subject to forfeiture under (A) of this section is eligible for diversion as outlined in ORS 813.215, the operator/owner is eligible to enter into a Vehicle Release Agreement. Upon signing the agreement and paying administrative fees, towing and storage costs, the vehicle will be returned to the operator/owner.

~~The following will be subject to civil in rem forfeiture:~~

~~(A) All property, products and equipment of any kind which are used, or intended for use, in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct.~~

~~(B) All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use, to transport or in any manner facilitate the transportation, sale, receipt, possession or concealment of property described in division (A) of this section, and all conveyances including aircraft, vehicles or vessels, which are used or intended for use in prohibited conduct or to facilitate prohibited conduct in any manner. Such conveyances specifically include, but are not limited to, the following:~~

~~(1) A conveyance operated by a person whose operator's license is suspended or revoked as a result of conviction for driving under the influence of intoxicants in violation of the provisions of local or state law;~~

~~(2) A conveyance within which an act of prostitution as prohibited by local or state law; or~~

~~(3) A conveyance used or intended to be used to facilitate activities defined in ORS 167.012 (Promoting Prostitution), ORS 167.017 (Compelling Prostitution), or ORS 167.122 through 167.137 (Gambling Offenses).~~

~~(C) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless the owner or other person in charge of such conveyance was a consenting party or knew of and acquiesced in the prohibited conduct.~~

~~(D) No property shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or any state. Such property shall be returned to the owner following a determination by the court that the property was unlawfully in the possession of a person other than the owner, and the owner did not know it, and did not consent to the use of the property for prohibited conduct.~~

~~(E) This subchapter incorporates by reference state law.~~

Section 5. MCC § 15.354 is amended to read as follows

15.354 Innocent Owner Provision.

(A) A person claiming an interest in the seized property (claimant), who has complied with the statutory requirements for filing a claim specified in ORS 475A.055(3) or 475A.075(2), may plead as an affirmative defense that the person took the interest in the seized property:

(1) (a) Before it was seized for forfeiture;

(b) In good faith and without intent to defeat the interest of any forfeiting agency; and

(c) Continued to hold the property or interest without acquiescing in the prohibited conduct; or

(2) By co-ownership or co-tenancy taken in good faith, without intent to defeat the interest of any forfeiting agency and continued to hold the property or interest without acquiescing in the prohibited conduct.

(B) If, by a preponderance of the evidence, the claimant proves a defense under this section, then judgment shall be entered for the claimant as provided in ORS 475A.110(6). However, as long as reasonable suspicion is demonstrated for seizing the property, the seizing agency and forfeiture counsel shall not be liable for attorney fees or any damages resulting from the seizure.

(C) This defense may not be asserted by a financial institution which holds a security interest in the property.

(D) For the purposes of this section, a person shall be considered to have acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed to take reasonable action under the circumstances to terminate or avoid use of the property in the course of prohibited conduct.

~~The forfeiture procedures of state law are incorporated by reference.~~

Section 6. MCC § 15.355 is amended to read as follows

15.355 Forfeiture Procedures.

All forfeiture proceedings shall be conducted in accordance with ORS Chapter 475A and its amendments. The Sheriff shall adopt administrative rules for forfeiture proceedings.

~~After the forfeiture counsel distributes property under the provisions of state law, the forfeiture counsel shall disperse of and distribute property in the following manner:~~

~~(A) If the seizing agency has an intergovernmental agreement pursuant to state law, the terms of the intergovernmental agreement shall control the distribution of the property.~~

~~(B) If the seizing agency does not have an intergovernmental agreement pursuant to state law, the seizing agency shall recover 50% of the property, the county district attorney's office shall recover 35% of the property and the remaining 15% shall be credited to the county general fund for criminal justice services.~~

~~(C) If more than one law enforcement agency has participated in the investigation leading to forfeiture, the participating agencies shall share the 50% of the proceeds ordinarily remitted to the seizing agency equitably between the participating agencies.~~

~~(D) Except as otherwise provided by intergovernmental agreement, the forfeiting agency may:~~

~~(1) Sell, lease, lend or transfer the property or proceeds to any federal, state or local law enforcement agency or district attorney;~~

~~(2) Sell the forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property;~~

~~(3) Retain the property; or~~

~~(4) With written authorization from the district attorney for the forfeiting agency's jurisdiction, destroy any firearm or contraband.~~

~~(E) The forfeiting agency, and any agency which receives forfeited property or proceeds from the sale of forfeited property, shall maintain written documentation of each sale, decision to return, transfer or other disposition.~~

FIRST READING: _____

SECOND READING AND ADOPTION: _____

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

_____
Beverly Stein, Chair

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

By _____
Jacqueline A. Weber

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 98-207

Establishing a Committee to Reduce Drunk Driving and Driving While Suspended or Revoked, and Recommending an Ordinance Declaring Their Vehicles a Nuisance and Providing for the Forfeiture of Those Vehicles.

The Multnomah County Board of Commissioners Finds:

a. Many drivers who are convicted of driving under the influence of drugs or alcohol are not effectively deterred from re-offending.

b. Repeat offenders continue to drive their vehicles drunk or under the influence of drugs and constitute a serious threat to themselves and the citizens of Multnomah County.

c. Offenders who have had their vehicles forfeited re-offend at a rate which is half that of offenders who have not had their vehicles seized.

d. Seizure of vehicles from offenders driving under the influence or while suspended or revoked can reduce re-offenses and protect the public.

The Multnomah County Board of Commissioners Resolves:

1. To authorize the Sheriff to convene a committee, with representatives of the other local jurisdictions in Multnomah County, and others with an interest in promoting the public safety through forfeiture of cars of drivers convicted of driving under the influence, felony driving while suspended, or related crimes, and recommending a Forfeiture Ordinance which would be adopted by all the jurisdictions within the County.

2. The Sheriff shall include on the committee nominees forwarded to him by individual members of the Board of County Commissioners.

3. Prior to returning to the Board of County Commissioners, the Committee shall forward and discuss its recommendations with the DUII Advisory Committee as well as the Alcohol and Criminal Justice Working Group of the Local Public Safety Coordinating Council.

4. The Sheriff and committee are further charged with developing recommendations regarding the administration of such a Forfeiture Ordinance.

Approved this 17th day of December, 1998.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
For Multnomah County, Oregon

By Thomas Sponsler
Thomas Sponsler, County Counsel

HANDBOOK FOR EFFECTIVE AUTO FORFEITURE PROGRAMS

by Congressman Earl Blumenauer

WARNING!

DRIVE DRUNK - LOSE YOUR CAR

CONTENTS

THIRD DISTRICT, OREGON

COMMITTEE:
TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEES:
RAILROADS
WATER RESOURCES AND ENVIRONMENT

1113 LONGWORTH BUILDING
WASHINGTON, DC 20515-3703
(202) 225-4811

DISTRICT OFFICE:
THE WEATHERLY BUILDING
516 S.E. MORRISON STREET
SUITE 250
PORTLAND, OR 97214
(503) 231-2300
email: write.earl@mail.house.gov
website: http://www.house.gov/blumenauer

Congress of the United States
House of Representatives
Washington, DC 20515–3703

Dear Friend:

People across America are frustrated. They see repeat drunk drivers receiving punishments which are not effective deterrents. They are dismayed as these chronic offenders continue to drive drunk until they eventually kill themselves or others. And while they know more needs to be done, many in our communities are at a loss for how to effectively combat this epidemic.

As a City Commissioner, I initiated Portland, Oregon's auto forfeiture program and have witnessed firsthand the powerful effect forfeiture has at lowering the recidivism rate among repeat drunk drivers. In the past, many of these motorists ignored fines and kept driving even after we suspended their licenses. In the words of Jeanne Canfield, from the Oregon Chapter of Mothers Against Drunk Driving, "taking away the car gets their attention and gets them off the road."

Because of my strong belief in the merits of forfeiting repeat drunk drivers' cars, I have introduced a bill in Congress to provide an incentive for states, cities and counties to adopt auto forfeiture laws. This booklet was created to provide interested communities with the resources they need to establish programs of their own.

The booklet includes information on Portland's auto forfeiture program -- including the only statistical analysis of auto forfeiture's deterrent effect. This booklet also highlights three other auto forfeiture programs, confirming that forfeiture is a cost effective, litigation proof tool which can be used successfully in any community.

The last section has contact information for the various forfeiture programs -- feel free to contact them, or my office, for assistance.

Sincerely,

Earl Blumenauer

Earl Blumenauer
Member of Congress

The Oregonian

9/22/96

Targeting drunk drivers

Blumenauer offers a Portland tool to others who want to get drunk drivers off their streets

It's not too surprising, but the first bill introduced by Oregon's newest congressman, Earl Blumenauer, is modeled after a successful program he initiated in Portland as a city councilor: seizing the cars of repeat drunk drivers.

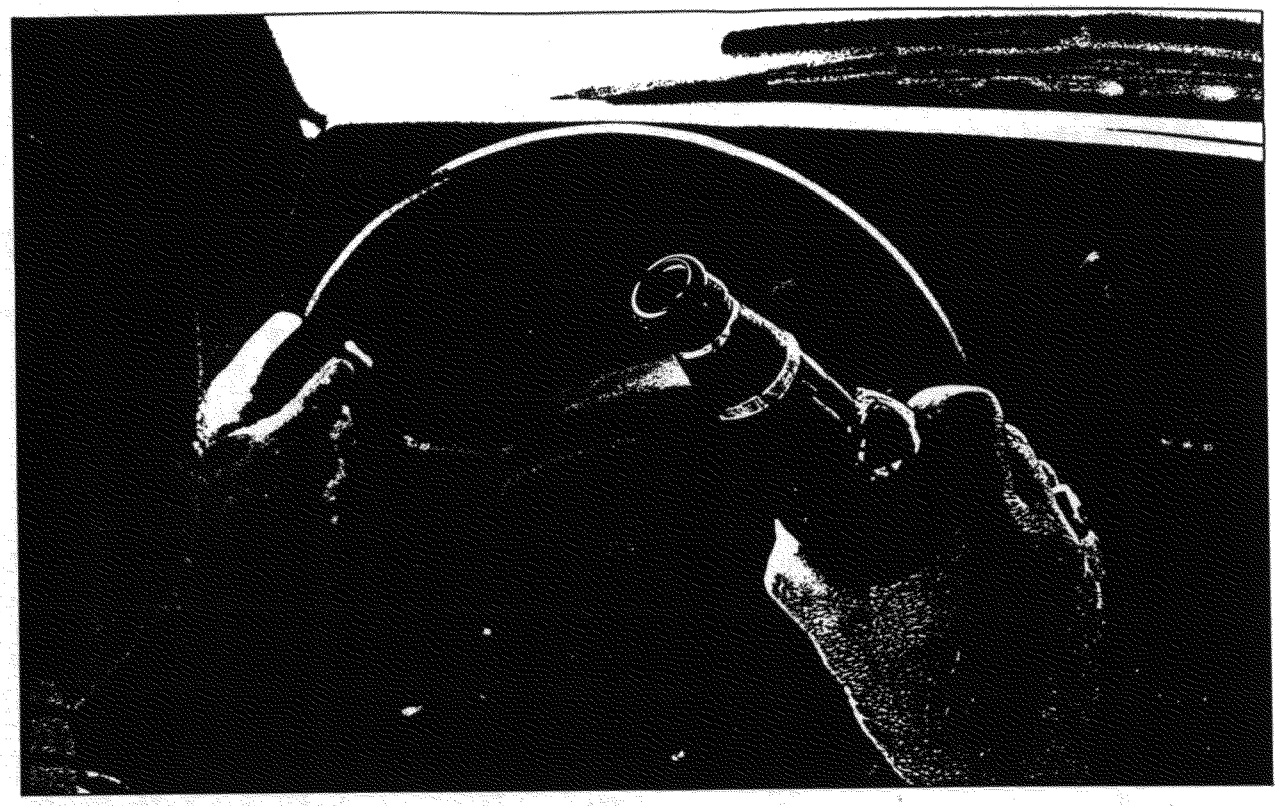
In the hands of such drivers, cars are deadly weapons against law-abiding citizens. That terrible reality and the success of Portland's seizure and forfeiture law are reasons why Congress ought to look favorably on Blumenauer's proposal to give other states and local governments another way to get those drivers off the streets.

Analyses in the first year of the Portland program and a new study this year by the Reed College Public Policy Workshop confirms that the ordinance works: Over the program's seven years, only 4 percent of the repeat drunk drivers who had their cars seized by police repeated the offense again. That compares to about 50 percent where cars are not seized.

The federal government long ago acknowledged a national interest in transportation safety, but Blumenauer isn't proposing more government. His measure simply would make forfeiture and seizure one of the options available to states that want to qualify for the $25 million federal anti-drunk-driving grant program.

Gresham Police Chief Bernie Giusto, a former Oregon State Police commander, is among the measure's supporters. He pointed out that drunk drivers often ignore fines and keep driving even after their licenses are suspended. "Seizing their cars gives law enforcement an important tool and leaves a lasting imprint on the life of the offender."

Congress ought to encourage other states to add this weapon to their arsenal for fighting drunk drivers and the deadly national toll they take.



Portland forfeiture program on national agenda

By Ian B. Crosby '95

A Reed study suggests that deterring drunk driving and protecting civil liberties are not exclusive goals

An innovative program to curb drunk driving by seizing the vehicles of repeat offenders has made its way from the streets of Portland to the national agenda in legislation proposed by Oregon congressman Earl Blumenauer.

The congressman wants to establish a vehicle forfeiture system as a qualifying program for federal anti–drunk-driving grants. Backing Blumenauer's proposal is a study conducted by the Reed College Public Policy Workshop that found that vehicle seizure substantially reduced re-arrest among repeat drunk drivers under the Portland program. Most importantly, the study found that unusual steps taken to assure civil liberties did not have an adverse effect on the effectiveness of the program.

The Portland forfeiture program's origins lie in Blumenauer's days in the Oregon State Legislature. Blumenauer was concerned with the difference in treatment of drunk drivers and other less serious offenders. "A hunter could

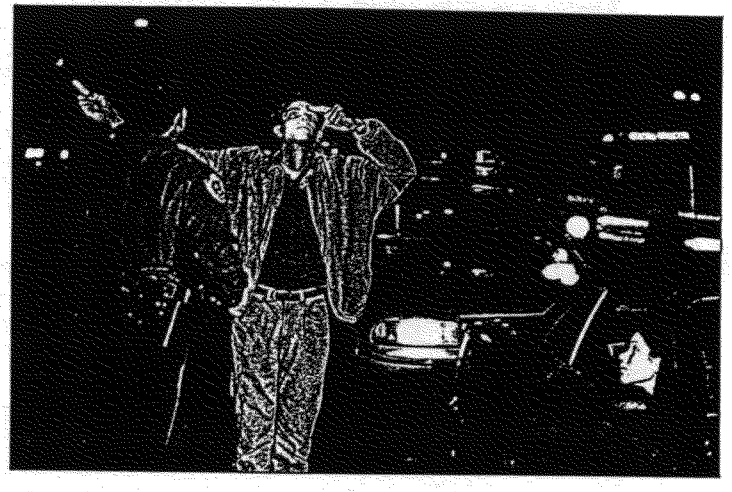
kill a deer out of season, and he would lose his rig, his guns, and other equipment and would spend significant time in jail, while the drunk driver who killed a little girl a block from my house could be out of jail and driving again in a week," Blumenauer commented. Blumenauer was struck by the logic of depriving offenders of the instrument of their offense. While recalcitrant drunk drivers could disregard license suspensions and insurance requirements, they could not pose a threat to highway safety without their automobiles. Blumenauer attempted to pass a statewide vehicle forfeiture bill in the legislature, but was stymied by bank lien holders, civil libertarians, and indifference.

Later, as a Portland city councilman, Blumenauer had more success. Opposition was softened by involving concerned parties in the process and drafting an ordinance that met their concerns. Blumenauer also simply had fewer people to convince on the City Council. Portland's forfeiture ordinance was passed by a unanimous vote and went into effect in 1989. The Portland ordinance subjected to forfeiture vehicles of offenders arrested for driving with a license suspended as a result of driving while intoxicated, or those arrested as habitual offenders who have committed three or more serious traffic offenses, at least one of which was driving while intoxicated. Concerns of banking interests and civil libertarians were addressed through provisions allowing the return of vehicles to lien holders or other innocent owners not implicated in the offense. According to Blumenauer, the program was an immediate political success. "It was simple, direct, and cost effective, and the logical linkage between the sanction and the offense resonated with the public," he recalled.

Despite such claims, others were more skeptical about the untried program. No other jurisdiction appeared to have operated a similar program, and no data existed concerning the effectiveness of such a program in keeping drunk drivers off the streets. Noting that many of the vehicles seized were inexpensive and uninsured "junkers," some, including Reed political science professor Stefan Kapsch, speculated that many offenders might simply purchase other "disposable" vehicles, fail to register or insure them, and continue driving.

Reed policy workshop tests program

Professor Kapsch and a group of his students set out to empirically test the putative success of the program in research funded by the Rose E. Tucker Charitable Trust. A literature review discovered many anecdotal claims about the effectiveness of forfeiture in depriving offenders of the instrumentality of their offenses, but no hard data actually linking forfeiture to reductions in recidivism. The Reed team surveyed households of documented offenders and a randomly selected control group in the spring of 1992, and the data were analyzed for statistically significant variations.



The results were inconclusive, and significant doubts emerged about the validity of the data. Responses to control questions, such as whether a member of the household had been arrested for drunk driving, exhibited minimal or insignificant variation between the target group and the control group. While the survey results posed interesting methodological questions, they provided no answers for the question at issue: does forfeiture have an effect on driving behavior?

My involvement with the forfeiture project began in the fall of 1994. It was readily apparent to both Professor Kapsch and me that no amount of analysis of the original survey results could yield definitive results or overcome the methodological qualms, and I looked for other sources of data. Working from the Portland Police data system's main arrest files, the Asset Forfeiture Unit's forfeiture database, and handwritten patrol records from the traffic division, I constructed a unified data file on nearly 17,000 perpetrators that included information on virtually all factors with theoretical relevance to re-offense. With the guidance of mathematics professor Albyn Jones, I learned to use and interpret the sophisticated Cox Proportional Hazards statistical analysis model to test the independent effects of seizure and forfeiture on expected time from an initial offense to subsequent re-arrest.

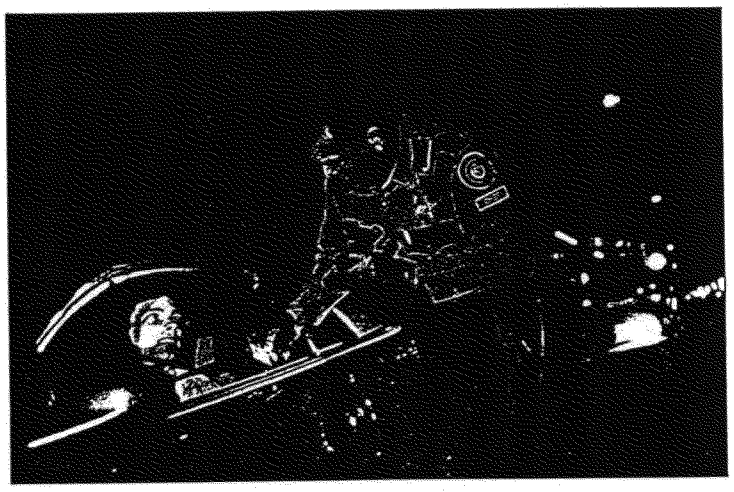
The results of the analysis were as unequivocal as they were remarkable. To a near-statistical certainty, all other significant factors being equal, having a vehicle seized correlated with a nearly doubled expected time to re-arrest. In other words, offenders whose vehicles were seized re-offended only half as often as those whose vehicles were not seized.

Equally interesting, whether the vehicle subsequently was actually forfeited and sold or instead returned to a lien holder or innocent owner had no significant effect on re-offense beyond the mere fact of seizure itself. The conclusion was clear: Portland's forfeiture program worked, and

the careful compromise that had facilitated its enactment had not hampered its effectiveness.

Supreme Court rules

In the meantime, a number of developments significant to forfeiture had occurred on the Oregon and national political scenes. *Bennis v. Michigan*, an important forfeiture case, was handed down by the Supreme Court. Bob Packwood resigned from the U.S. Senate and was replaced by Portland's popular Representative Ron Wyden. This left an open seat in Congress that was filled by



Blumenauer, who immediately began laying the groundwork for placing vehicle forfeiture on the national agenda. While Blumenauer's efforts have the potential to have a positive effect on highway safety nationwide, a congressional failure to require greater forfeiture protections than those afforded by the lax constitutional standards enunciated recently by the Supreme Court may result in a deleterious—and in light of the Reed study, probably a needless—erosion of civil liberties.

In *Bennis*, the Supreme Court upheld the constitutionality of a Michigan law authorizing the forfeiture of a vehicle used in the solicitation of prostitution over the constitutional objections of the co-owner of the car (and unfortunate wife of the offender). Tina Bennis's central claim was that the statute failed to provide a defense to forfeiture based on her lack of knowledge or authorization of the offending use to which the car was put, depriving her of due process under the Fourteenth Amendment to the U.S. Constitution.

Law traced to Middle Ages

The Supreme Court's rejection of her claim lies in the peculiar legal status of the civil *in rem* proceeding used in forfeiture cases, which is rooted in the idiosyncrasies of ancient English law. Modern forfeiture processes stem from the medieval law of the deodand, by which property used in breaking a law was to be returned to God, or his representative on earth, the Crown. In the scholastic jurisprudential logic of the era, the proceeding was against the property itself, not the owner, and hence any interest of the owner was simply irrelevant.

Though this fiction has been abolished in other areas of American law, it persists in nearly unaltered form in respect to forfeitures. In *Bennis*, the Supreme Court relied on an unbroken string of decisions beginning with Justice Story's opinion in the 1827 forfeiture case of *The Palmyra* and culminating in the 1974 case *Calero-Toledo v. Pearson Yacht Leasing Co.* which concluded that "the innocence of the owner of property has almost uniformly been rejected as a defense" [against forfeiture].

Civil liberties affected

The omission in Congressman Blumenauer's proposed legislation of a requirement that state forfeiture programs provide innocent-owner defenses, coupled with the Supreme Court's decision in *Bennis v. Michigan*, raises the prospect that many more Tina Bennises will find their property confiscated due to actions beyond their authorization or control as states respond to the incentive. Furthermore, Blumenauer's intention is that the current proposal is a first step toward a larger goal of providing even greater incentives, or perhaps even requiring states to enact forfeiture programs to qualify for certain federal funds.

Blumenauer admits that the breadth of its innocent-owner defense in the Portland ordinance was in part due to uncertainty about whether a more restrictive law could withstand constitutional challenge. Now that *Bennis* makes it clear that no such defenses need be provided, Blumenauer claims that he would "crank down" the exceptions if he were writing the ordinance today, but he would not eliminate them because he feels that such exceptions are correct as a matter of fairness and necessary to maintain the base of support for forfeiture, regardless of what the Supreme Court says.

If Blumenauer thinks so, then why doesn't the proposed Congressional legislation have an innocent-owner defense? He has a variety of answers, including the hope that states will do so without being required, possibly in response to the same pressures as in Oregon, and the availability from his office of model statutes that do include the defense. Let's hope that Blumenauer is right, and that in future legislation, Congress will protect the Tina Bennises of the world, because the Supreme Court clearly will not. Vehicle forfeiture has the potential to take drunk drivers off our highways nationwide as it has in Portland, but it need not do so at the expense of our civil liberties.

Ian B. Crosby, from Juneau, Alaska, graduated from Reed in 1995 with a B.A. in philosophy. He is currently a second-year law student at the University of Texas and an editor of the Texas Law Review.

Municipality of Anchorage

P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4545

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

CAR WARS - HOW TO TAKE THEM AND HOW TO GET RID OF THEM

By: Cliff John Groh and Scott A. Brandt-Erichsen

Cars and other vehicles pose some sticky problems. Two of the ways that they become problematic are the subject of this paper: 1) when they are used by drunk drivers and 2) when they are disposed of improperly. There are a couple of strategies which have been used lately to try to address both of these problems. To a certain extent they involve common issues and common procedures. Each will be discussed in turn.

The Municipality of Anchorage has been a leader in the field of DWI vehicle seizure and forfeiture in Alaska. Separately, the Ketchikan Gateway Borough has recently been making strides to address junked and abandoned vehicles. This report on experiences with these programs identifies the program and discusses some of the cases which have touched on relevant issues. The discussion of cases is not exhaustive, but is generally representative of the themes which are repeated in these areas.

I. VEHICLE IMPOUNDMENT AND FORFEITURE FOR DWI

A. Program

1. Context

Recognition of the carnage and destruction caused by Driving While Intoxicated (DWI) has increased in the past decade and a half. In four of the past 16 years, for example, a person in Anchorage was statistically more likely to be killed by a drunk driver than by someone using a firearm or a knife. This increased recognition has led to an increased emphasis on responding to the problem of DWI. The increased emphasis shows up in:

- increased devotion of police resources to enforcing the law against DWI
- improved techniques for detection of intoxicated drivers, including the use of standardized field sobriety texts, particularly the horizontal gaze nystagmus (HGN) test
- immediate administrative suspensions and revocations of the driver's license
- institution of the crime of Refusal to Submit to a Chemical Test (Refusal), making a crime of what formerly had led only to administrative license suspensions and

revocations

- mandatory minimum sentences, particularly the mandatory minimum three days in jail for the first offense of DWI

- the introduction of the crime of felony DWI, leading to longer jail sentences and more intensive probation for the worst recidivists

- impoundment and forfeiture of the vehicles driven by those arrested for DWI

Increased law enforcement and the use of improved detection techniques are widespread throughout the country. All the legal provisions listed above are applicable throughout Alaska except for impoundment and forfeiture. In Alaska, only the Municipality of Anchorage and the City of Ketchikan routinely tow the vehicles of persons arrested for DWI. Only the Municipality of Anchorage tows vehicles of all DWI arrestees and seeks 30 days of impoundment for a first offense as well as forfeiture for a subsequent offense. The combination of these DWI countermeasures--particularly the three-day mandatory minimum sentence for a first offense and the impoundment/forfeiture program--give Anchorage the toughest laws against DWI in the United States.

2. State Statutes Concerning Impoundment and Forfeiture

AS 28.35.036 (Appendix A) provides that the State may move for forfeiture of the vehicle used in DWI or Refusal upon conviction for a third or subsequent offense. This provision is invoked relatively rarely, however, because the penalty is discretionary with the court and the police do not routinely seize the vehicles at the time of arrest. Even if the court does order forfeiture at sentencing, the order is often never executed because the vehicle cannot be located.

3. Municipality of Anchorage's Ordinances

The Municipality of Anchorage has enacted its own ordinances for impoundment and forfeiture of vehicles used in DWI and Refusal. AS 35.28. 038 (Appendix A) allows these ordinances, which are codified at AMC 9.28.020-.027 (Appendix B).

Anchorage's ordinances declare that the vehicles driven by drunk drivers are public nuisances and allow seizure of the vehicle incident to the arrest of the driver. Since the law was implemented in April of 1994, the police in Anchorage have routinely seized the vehicles used by drivers arrested for DWI. The Municipality seeks 30 days of impoundment if the offense is the driver's first, and seeks forfeiture of the driver's interest if it is a second or subsequent offense. Approximately one-third of the vehicles towed have been driven by a driver with a previous conviction within the past 10 years and are thus eligible for forfeiture. Also noteworthy is the license status of these arrested drivers. More than one-third of all drivers arrested for DWI have licenses which are revoked, suspended, or otherwise invalid. In many cases, the license is invalid because of a previous DWI conviction.

other than the driver through a civil action filed before the Municipality's administrative hearings officer. Service upon owners and lienholders is usually accomplished by mail, supplemented when necessary by or personal service or publication.

More than half of the vehicles seized are owned or co-owned by the driver charged with DWI. Whatever the ownership of the vehicle, an owner can get a vehicle released upon payment of a bond and the $160.00 administrative fee plus towing and storage fees. Bonds are set within two working days of the seizure of the vehicle. The bond on a vehicle is like bail on a person: it secures the release of the vehicle pending a civil administrative hearing, criminal trial, or other resolution of the matter. Vehicle return bonds are tied to the age of the vehicle as a proxy for the value of the vehicle, and minimum amounts for the bonds are set out in the ordinances.

The ordinances set out a number of consequences for someone who secures the release of a vehicle through posting a vehicle return bond and then fails to return the vehicle when ordered. The bond is routinely forfeited. The conduct is a civil offense exposing the offender of up to a $300 a day fine for each day the vehicle is not returned. The police may recover the vehicle.

4. Dispositions of Seized Vehicles

Vehicles seized are disposed of through: a) settlements or stipulations; b) release pursuant to dismissal or reduction of criminal charge or order at a hearing; c) recovery after 30 days of impoundment (in cases in which the Municipality is only seeking 30 days of impoundment); d) forfeiture and sale or other disposal; and e) abandonment after 30 days of impoundment and subsequent sale by the towing and storage contractor to satisfy the statutory towing and storage lien.

a. Settlements (Stipulations)

The civil actions against the interests of the owners and lienholders (other than the driver) are usually resolved through settlements, traditionally called stipulations. These stipulations typically involve the payment of fees, including an $160 administrative fee, costs of $6-$12, an attorney's fee of $102, and the towing and storage fees. Towing fees are $25 for a day-time tow and $1 for a night-time tow plus mileage fees of $4 per mile, and storage fees are $2 a day.

Stipulations also include a promise by the owner or lienholder recovering the vehicle not to allow the DWI arrestee to drive the vehicle while intoxicated or while unlicensed. The stipulation provides that the Municipality may seize the vehicle and sue for forfeiture if this promise is breached. If the Municipality is seeking forfeiture, a stipulation will also require that the person recovering the vehicle give the Municipality any equity owned by the DWI arrestee.

A stipulation ends the civil case and takes the vehicle out of the criminal case, thus ending the Municipality's efforts to obtain forfeiture or additional days of impoundment against the vehicle.

The Municipality will not stipulate with owners or lienholders who have promoted the offense. Evidence of such promotion can come from presence in the vehicle at the time of the arrest

or from an admission that the owner allowed the driver to use the vehicle with knowledge that the driver was not properly licensed.

b. Release of Vehicle Pursuant to Reduction or Dismissal of Criminal Charge or Order at Hearing

A disposition of a criminal case which results in other than a conviction for DWI or Refusal results in dismissal of the civil administrative case against owners or lienholders who are not the criminal defendant. Owners and lienholders may ask for a hearing on the civil administrative case and contest the impoundment or forfeiture.

Any person recovering a vehicle following a reduction or dismissal of a criminal charge or pursuant to a dismissal or order of release in the administrative case must pay the administrative fee and the towing and storage fee. The only two exceptions are (a) the police did not bring Municipal charges against the alleged driver or (b) the police had no reasonable suspicion to stop the vehicle or probable cause to arrest the alleged driver.

c. Recovery of Vehicles After 30 Days of Impoundment

Vehicles for which the Municipality is seeking 30 days of impoundment may be released to owners or lienholders at the end of the 30 days. Those recovering the vehicle pay administrative and towing and storage fees.

d. Forfeiture

About 10 percent of all vehicles towed incident to a DWI arrest are forfeited and sold at auction. This represents approximately one-third of all the vehicles for which the Municipality has sought forfeiture. To date, all vehicles forfeited have been sold at auction, but the ordinance also provides that the police may use forfeited vehicles for purposes of law enforcement.

Auctions of forfeited vehicles are held once a month, casually on the fourth Saturday of each month.

e. Sale of Abandoned Vehicles Pursuant to Towing and Storage Lien

Vehicles for which the Municipality seeks 30 days of impoundment are disposed of by the towing and storage contractor if no one recovers the vehicle after being sent notice of the intent to sell the vehicle if there is no recovery. This disposal occurs under the state's towing and storage lien created in AS 28.10.502.

f. Dispositions in Year to Date

Dispositions of Vehicles Towed Incident to DWI Arrest,

January 1 - October 31, 1996

Recovered after 30 days of impoundment	457
Released pursuant to stipulation	326
Forfeited and sold at auction	127
Abandoned after impoundment and sold	156
Pending/Other	498
	1,564

5. Revenues and Costs of Program

The Municipality has added staff at the Municipal Attorney's Office and the Anchorage Police Department to operate the DWI vehicle impoundment/forfeiture program. The Municipality also collects revenues from administrative fees, attorney's fees, net auction proceeds, and vehicle return bond forfeitures. It appears that the revenues will cover approximately three-quarters of the costs in 1996.

6. Publicity

Municipal ordinances require that bars, liquor stores, and restaurant which serve alcohol post signs warning of the impoundment/forfeiture law. The signs say "DRIVE DRUNK--LOSE YOUR CAR!" and "Don't Get Hooked on Drinking and Driving." These signs are intended to be eye-catching, with bold print underscoring the simple message. Additional publicity, particularly on radio and television, would also be helpful in increasing deterrence.

7. Effects on Incidence of Driving While Intoxicated

The program's effects on the incidence of DWI are difficult to measure. The number of DWI arrests fell in 1995--the program's first full year of operation--but appear likely to rise in 1996. The difficulty of assessing the program's effect on incidence of DWI is caused by an increased law enforcement focus on DWI which has occurred since the program started in April of 1994. The total number of Anchorage Police Department (APD) patrol officers has increased since that date. Probably more significant than the total number of patrol officers, however, is the number of hours of police resources specifically devoted to DWI enforcement. A special federal grant has allowed APD to pay overtime to officers to work on traffic enforcement. Enforcement of traffic laws against speeding, improper turns and lane changes, and stoplight violations, particularly at night, is a proven method of producing DWI arrests. Officers assigned to DWI enforcement also routinely process

persons arrested for DWI by other patrol officers, thus allowing patrol officers to be more efficient and increase their total DWI arrests. The use of grant-funded overtime for DWI enforcement dramatically increased beginning in the fall of 1995, and has generally stayed at a higher level since then (see Appendix J). The amount of grant-funded overtime for DWI enforcement was almost three times higher from June through September of 1996, for example, than for that four-month period in 1995.

A more accurate measure of the true incidence of DWI than the number of DWI arrests is the number of deaths from alcohol-related DWI automobile crashes.

Number of Deaths from Alcohol-Related DWI Automobile Crashes,

1990 - 1996

1990	13
1991	13
1992	12
1993	12
1994	13
1995	9
1996 (through 10-29-96)	7

Some anecdotal evidence of deterrence exists. In addition, the program does prevent an infrequent but troubling phenomenon occurring previously. In a number of cases over the years, the police recall arresting a person for DWI who would secure release on bail or on own recognizance who would return to the vehicle and drive drunk again, occasionally causing a crash with death or injury. Since the impoundment/forfeiture program began, no one has driven drunk in the same vehicle after being arrested for DWI that same night.

B. Law

The statutory provisions applicable are included in the appendix. The state provisions, AS 28.35.036 are in Appendix A. The ordinance used in Anchorage is in Appendix B.

The legal issues involved are seizure, due process, double jeopardy and excessive punishment questions.

1. Seizure

Under what circumstances may a vehicle be seized? Given the fact that DWI seizures are all accompanied by an arrest, the seizure itself does not present a difficult issue under 13 AAC 02.345. Some other instances in which seizure of a vehicle and related search issues may arise are noted

Given appropriate circumstances and sufficient time any vehicle may be seized with a warrant. We know this already and this is not where the problems usually come up. We will skip further discussion of seizures with a warrant at this point.

b. Without warrant

Warrantless seizure may be justified in several circumstances, most of which boil down to where the public interest in the vehicle being seized is sufficiently great to justify the intrusion on the constitutional rights of the owner or person entitled to possession. Those of primary relevance to DWI vehicle seizures are search and seizure incident to arrest. See State v. Richs, 816 P.2d 125 (Ak. App. 1991), and see 13 AAC 02.345(c). Other justifications which may arise in given circumstances are as follows:

Search in exigent circumstances - Where there is a probable cause but insufficient time to obtain a warrant. See Gustafson v. State, 854 P.2d 751 (Ak. App. 1993);

Emergency aid doctrine - Where there is reasonable grounds to believe that there is an immediate need to take action to prevent death or to protect persons or property from serious injury. See Williams v. State, 823 P.2d 1 (Ak. App. 1990); and

Protective search. See Murdock v. State, 664 P.2d 589 (Ak. App. 1983).

Statutorily authorized search and seizure. Notable among these are evidentiary exceptions and where the vehicle is a public nuisance. Statutory authority to seize a vehicle includes the following:

Vehicle unsafe - Vehicles which are so unsafe they should not be driven. See AS 28.05.091;

Outstanding parking tickets - See, for example, AMC § 9.30.260;

Public Nuisance - impound to summarily abate. See 13 AAC 02.345;

Accident - AS 28.35.070; and

Vehicle obstructing a roadway or creating a hazard. 13 AAC 02.345.

2. Due Process

Due process looks at what notice and opportunity to be heard must be afforded prior to seizure or disposal of a vehicle. It also may require a remission procedure for innocent owners, although after Bennis v. Michigan, 134 L.Ed.2d 68 (1996), the innocent owner defense is no longer available

under the U.S. Constitution. The State Supreme Court has not yet adopted the **Bennis** reasoning as applicable to claims under the Alaska Constitution. The test under state law look to three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

a. State cases:

Badoino v. State, 785 P.2d 39 (Ak. App. 1990).

Badoino involved forfeiture of certain money under AS 17.30 as part of a sentence for a conviction for misconduct involving a controlled substance in the third degree. The court held that it is satisfied that due process requires that a criminal defendant be given advance notice of the specific property which the state seeks to have forfeited. Where the property is not contraband, the defendant should be informed of the connection. The state will attempt to prove between the property to be forfeited and illegal activity. The defendant is also entitled to know in advance the steps he or she MUST take in order to contest forfeiture, who will have the burden of proof, and what the burden will be. Finally, a reasonable opportunity MUST be afforded the defendant to resist forfeiture. The court should make findings of fact regarding contested issues and set out its conclusions of law.

F/V American Eagle v. State, 620 P.2d 657, 667 (Alaska 1980).

American Eagle involved an action for civil in rem forfeiture of a vessel used in violation of crab harvest regulations under AS 16.05.195. The vessel owners challenged that the absence of an in rem procedure and a prompt post-service hearing denied the owners of due process of law. While this case resolved the due process issue on its particular facts, the court stated, in dicta, that we find no merit in the owners' apparent claim that due process requires that any owner of a vessel seized by the state for suspected use in illegal activity has an absolute right to obtain release of the property upon the posting of an adequate bond. To permit this would frustrate one purpose of forfeitures, which is to prevent possible use of the property in further illicit acts.

Graybill v. State, 545 P.2d 629, 631 (Alaska 1976).

Graybill was convicted of a game violation (attempted illegal transportation) and had his aircraft forfeited as part of his sentence. Graybill urged that where the property is not contraband forfeiture could not be pursued in the criminal case, but must be a separate civil proceeding. The court held that a separate civil proceeding was not necessary.

Hilbers v. Municipality of Anchorage, 611 P.2d 31, 36 (Alaska 1980).

Hilbers involved an appeal from a superior court order upholding ordinances regulating massage parlors. The court addressed the issue of due process holding that in order to determine what due process requires, three factors must be considered:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

State v. F/V Baranof, 677 P.2d 1245 (Ak. 1984).

This case was an in rem forfeiture of a vessel used for harvesting crab under AS 16.05.195. The court held that due process does not require notice or a hearing prior to seizure by government officials of property allegedly used in an illicit activity. However, when the seized property is used by its owner in earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent.

State v. Rice, 626 P.2d 104 (Ak. 1981).

Rice was a big game guide convicted of an illegal transportation violation. The state sought forfeiture of a Cessna used in the violation under AS 16.05.195. Cessna Finance was an "innocent third party" with an interest in the aircraft. The court held that under substantive due process a remission procedure is mandated under the Alaska Constitution. Not to allow innocent owners and security holders to show that they have not been involved in the criminal activity that triggered the forfeiture proceeding violates Alaska's constitutional due process provision. It remains to be seen whether **Bennis** will revise this view.

b. Federal cases:

1. Supreme Court

Bennis v. Michigan, 116 S.Ct. 994 (1996).

Bennis involved a vehicle forfeiture under a Michigan law which provided for forfeiture of Mr. Bennis's car on the basis that he was convicted of patronizing a prostitute in the vehicle. The "innocent owner" issue has involved due to the fact that Mr. Bennis's wife was a joint owner of the vehicle. The Supreme Court rejected the innocent owner defense asserted by Ms. Bennis although all parties agreed she had no knowledge of the use to which the vehicle was put by her husband. The court rejected both due process and takings claims asserted by Ms. Bennis.

Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 40 L.Ed.2d 452 (1974).

In **Pearson Yacht**, a yacht owned by Pearson had been leased to two persons, one of whom used it for transportation of marijuana, and thus it was subject to seizure under a Puerto Rican forfeiture statute. The Supreme Court, in determining that there was no constitutional violation in such seizure, offered a succinct discussion of the applicable law in this area.

The Court observed that the history of forfeiture is deeply rooted in the common law with even Biblical origins. It has received widespread use and approval throughout the history of American jurisprudence. Despite this proliferation of forfeiture enactments, the innocence of the owner of property subject to forfeiture has almost uniformly been rejected as a defense.

Robinson v. Hanrahan, 409 U.S. 38 (1992).

Robinson involved proceedings for forfeiture of an automobile belonging to an accused who was in jail on a robbery charge. The notice of forfeiture proceedings was sent to the accused's home rather than the jail. The accused did not receive the notice until his release, after forfeiture had been ordered. The accused moved for, but was denied, a rehearing. The Supreme Court reversed on due process grounds. The court held that due process requires notice of forfeiture proceedings to be reasonably calculated to appraise the property owner of the proceeding.

2. Court of Appeals

Lee v. Thornton, 538 F.2d 27 (2d Cir. 1976).

In Lee, Plaintiffs' vehicles were detained by customs officials after crossing of the Canadian border. Plaintiffs challenged the statutory scheme under which the vehicles were detained. The vehicles were held without an opportunity for a prompt hearing. The court held that a prompt opportunity for a hearing, if only a probable cause hearing, should be provided within 24-72 hours.

United States v. One 1972 Chevrolet Blazer, 563 F.2d 1386 (9th Cir. 1977).

In One 1972 Chevrolet Blazer, the government sought forfeiture of a vehicle used to transport a contraband firearm. The district court granted summary judgment despite a thirty-party claim of equitable ownership. The Ninth Circuit remanded for full evidentiary hearing based on issues of fact precluding summarily denial of a petition for remission under federal forfeiture statute. The third-party owner of car alleged he had not known of or condoned the illegal carrying of a gun silencer in the vehicle by his father, and government had not alleged negligence by the owner.

3. District Courts

United States v. One Mercury Cougar XR7, 397 F. Supp. 1325 (C.D. Cal. 1975).

In One Mercury Cougar, the owner loaned her car to boyfriend to pick up passenger at airport and the car was seized when the boyfriend and passenger were arrested for sale of heroin. The court held that failure to return the car to the owner where record showed she had no awareness of the car's possible illegal use and had done all which reasonably could be expected to prevent the illegal use violated her due process rights. It is unclear whether this decision would survive Bennis.

3. Double Jeopardy

This has been a hot issue for the last year and a half or so. On the federal level it was settled this past year by a major decision in U.S. v. Ursery, 518 U.S. _____, 135 L.Ed.2d 549 (1996). This pretty much settled the issue on the national level, but we have yet to get a definitive decision on the state level.

The Alaska Court of Appeals recently considered a challenge to the Anchorage DWI forfeiture program in Skagen v. Municipality of Anchorage, Case No. A-5765/5795, Opinion No. 1474 issued June 21, 1996. This case involved both double jeopardy and waiver issues. The Court of Appeals did not squarely address double jeopardy as it found a waiver based on failure to assert a claim in the forfeiture action. The Court of Appeals adopted the Ninth Circuit's reasoning in U.S.

v. Washington, 69 F.3d 401 (9th Cir. 1995) (further discussion of Washington below).

a. State Cases

Calder v. State, 619 P.2d 1026 (Alaska, 1980).

Mr. Calder pled no contest to a reckless driving charge and was tried on an assault charge arising out of the same incident based upon his striking an officer with his vehicle. The jury convicted him of the lesser included offense of reckless driving. The court held no double jeopardy applying the rule for determining whether separate statutory crimes constitute the "same offense" for purposes of prohibiting double punishment, whether differences in intent or conduct between the statutory offenses are substantial in relation to the basic social interests protected or vindicated by the statutes.

Mitchell v. State, 818 P.2d 1163 (Alaska Ct. App., 1991).

Ms. Mitchell challenged conviction on two counts of unsworn falsification on double jeopardy grounds. Mitchell had signed an agreement to repay unlawfully obtained unemployment benefits. Subsequently, she was charged with unsworn falsification based upon her fraudulent unemployment applications. The court held that the civil repayment agreement, even with a penalty of 50%, would not take away the remedial character of the civil penalty and thus would not be sufficient for double jeopardy.

State of Alaska v. Kyle J. Zerkel, 900 P.2d 744 (Ak. App. 1995).

Several defendants on state or municipal DWI or refusal charges sought dismissal of criminal charges on double jeopardy grounds after having their driver's license revoked in an administrative proceeding. Administrative license revocation is premised on substantial remedial purposes. Even though administrative license revocation has always contained an element of deterrence, the case law demonstrates that it has traditionally been viewed as remedial rather than punitive. We conclude that administrative license revocation continues to be a "remedial" sanction, not a "punitive" sanction, for purposes of the federal double jeopardy clause. Therefore, the administrative revocation of the defendants' licenses is no impediment to their later prosecution for driving while intoxicated, refusing the breath test, or both.

City of New Hope v. 1986 Mazda 626, ____ N.W.2d ____, 1996 W.L. 175811 (Minn App., April 16, 1996).

In City of New Hope, the lower court dismissed a civil action for forfeiture of a vehicle used in a DWI by a person who had previously been convicted of DWI. The Minnesota Court of Appeals found that the forfeiture was remedial in nature. The case was brought by the city separate from the criminal prosecution. The court

held that the vehicle was essential to the underlying offense as an instrumentality of the crime.

> **Loui v. Board of Medical Examiners**, 78 Haw. 21, 889 P.2d 705, 711 (Hawaii 1995).

Mr. Loui was convicted of attempted first-degree sexual assault and kidnapping. Based on this conviction, the Hawaii State Board of Medical Examiners suspended him from practicing medicine for one year. Mr. Loui challenged the suspension on double jeopardy grounds. The court noted that while the imposition of the one-year revocation of Loui's license to practice medicine [for the attempted rape of his medical assistant] may 'carry the sting of punishment'... it is clear that the statute in question is not designed to 'punish' Loui; rather, it is designed to protect the public from unfit physicians."

b. Federal Cases

1. Supreme Court

Bell v. Wolfish, 441 U.S. 520 (1979).

Bell involved a class action prisoner challenge to practices of a federal short term custodial facility. Practices challenged included double-bunking, limits on hard cover books and limits on packages, among others. The court recognized that "Governmental action does not have to be the only alternative or even the best alternative for it to be reasonable, to say nothing of constitutional." at 538-42. This was in reference to the traditional test that the government action which is discomforting to the person acted upon is not "punishment" if it is reasonably related to a legitimate government objective.

> **Dept. of Revenue of Montana v. Kurth Ranch**, 114 S.Ct. 1937, 128 L.Ed.2d 767 (1994).

Montana levied a civil tax on possession and storage of dangerous drugs. The tax rate was equivalent to $100 per ounce of marijuana. The **Kurth** family operated a marijuana farm and were arrested and convicted for the operation. The state then sought $900,000 in a separate proceeding for collection of taxes. The court held that post-conviction imposition of the civil "drug tax" constituted "punishment" and was barred by double jeopardy. The court relied heavily on the fact that the tax was only levied after an arrest and was purported to be a property tax, but the taxpayer neither owned nor possessed the property when the tax was imposed. Forfeitures may be distinguished from the drug tax imposed in **Kurth Ranch**. **Kurth Ranch** court did not apply the **Halper** analysis as to determining the appropriate level of tax to be compensation for law enforcement costs, but rejected the tax based on the manner of imposition.

Heath v. Alabama, 474 U.S. 82 (1985).

Mr. Heath hired two men to murder his wife. She was kidnapped from their home in Alabama and shot. Her body was found in Georgia. Mr. Heath pleaded guilty in Georgia and was subsequently charged in Alabama. He challenged his conviction in Alabama on double jeopardy grounds. The court held that the double jeopardy clause is inapplicable when separate governments prosecute the same defendant because the defendant has offended both sovereigns.

North Carolina v. Pearce, 395 U.S. 711 (1969).

Pearce involved two cases where the defendants were convicted and sentenced. After serving part of their sentences, their convictions were set aside and they were re-tried and re-convicted. The resulting sentences, when combined with time served, were more severe than the original sentences. The court ruled that the trial judge must affirmatively set forth the reasons for imposing a more severe sentence to ensure that there is not a retaliatory motive. The court also held that credit must be given for the time served on the first conviction. The court held that the double jeopardy clause protects against a second prosecution for the same offense after acquittal.

United States v. Halper, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989).

Halper involved a conviction for making fraudulent claims on the government. The court held that collection of a civil fine ($130,000) more than 220 times the amount of which the government had been defrauded ($585.00) constituted "punishment" and was barred by the double jeopardy clause based upon the defendant's prior federal criminal conviction. Civil penalties which are grossly disproportionate to the damages caused by the offender are punitive for double jeopardy purposes. A civil penalty is grossly disproportionate if it is not rationally related to the goal of making the government whole.

U.S. v. Ursery, 518 U.S. _____, 135 L.Ed.2d 549 (1996).

Consolidated ruling reversing the 6th Circuit's decision in Director of Transportation Services in **Ursery** and the 9th Circuit's decision in **U.S. v. 405,089.23 in U.S. Currency**, 33 F.3d 1210 (9th Cir. 1994), held that double jeopardy does not prohibit the government from convicting a defendant for a criminal offense and forfeiting his property for that same offense in a separate civil proceeding. Future double jeopardy challenges must still satisfy a two-part test articulated in **U.S. One Assortment of 89 Firearms**, 465 U.S. 354 (1984); either 1) that the legislature intended the particular forfeiture to be a criminal penalty and not a civil sanction; or 2) that, regardless of the law's intent, it is so punitive in fact that

it cannot be considered civil in nature. This ruling distinguishes **Harper** as involving in personam penalties rather than in rem; **Austin** as relating to excessive fines rather than double jeopardy; and **Kurth Ranch** as dealing with a punitive state tax, not an in rem forfeiture statute.

2. Court of Appeals

Bae v. Shalala, 44 F.3d 489 (7th Cir., 1995).

Bae involved a challenge to the Generic Drug Enforcement Act provision mandating permanent debarment of any individual convicted of a felony under federal law relating to development or approval of a drug product. Bae was convicted in 1990 for providing an FDA official with an "unlawful gratuity." By letter in 1993, the FDA notified Bae of the proposed debarment. The FDA ordered debarment. Bae appealed. The court held that lifetime disbarment from drug companies was sufficiently remedial under **Halper**. Bae's ex post facto argument was also rejected.

United States v. Payne, 2 F.3d 706, 710-11 (6th Cir. 1993).

Mr. Payne was a postal carrier. He didn't deliver all the mail. He was indicted for his misconduct. Before being indicted, he was fired and had his termination reviewed by an Administrative Law Judge. Mr. Payne prevailed in his challenge to the termination. Mr. Payne then sought dismissal of the indictment based upon collateral estoppel or double jeopardy. The court rejected the arguments holding that suspension of a mail carrier for illegal conduct was not "punishment" for double jeopardy purposes.

United States v. Furlett, 974 F.2d 839, 844 (7th Cir. 1992).

In **Furlett**, a commodities broker defrauded his clients. In an administrative proceeding, his license to deal commodities was revoked. He was later indicted for conspiracy, mail fraud, obstruction of justice, and subornation of perjury. The broker objected that this criminal prosecution violated the double jeopardy clause. The court held that the administrative order prohibiting the broker from engaging in commodities trading was not "punishment" for purposes of the double jeopardy clause.

United States v. Bizzell, 921 F.2d 263, 267 (10th Cir. 1990).

In **Bizzell**, two contractors committed fraud in the sale of various properties whose mortgages were held by the Department of Housing and Urban Development (HUD). The Tenth Circuit ruled that an order barring the two contractors from participating in HUD contracts for 18 and 24 months, respectively, was not "punishment" for their fraudulent conduct. The court said, "Removal of persons whose participation in those programs is detrimental to public purposes is remedial

by definition."

3. District Court

Orallo v. United States, 887 F.Supp. 1367 (D. Haw., 1995).

Orallo involved administrative forfeiture of a vehicle, cash and a cellular phone. Mr. Orallo received notice of the forfeiture proceedings. Orallo asserted that he filed a petition for remission of the property, but that the petition was denied. He then sought dismissal of his criminal charges for double jeopardy. The court held that a petition for remission does not contest the forfeiture and thus there was no adjudication of Orallo's culpability in the forfeiture action. Therefore, he was not placed in jeopardy or "punished." **But see Quinones-Ruiz v. U.S.**, 864 F.Supp. 983 (S.D. Cal. 1994).

Quinones-Ruiz v. U.S., 864 F.Supp. 983 (S.D. Cal. 1994).

Mr. Quinones-Ruiz entered a guilty plea to making a false statement to customs agents. Customs agents had seized $40,000 in cash when searching a vehicle at a border crossing. The government sought and obtained forfeiture of the funds after sending notices and publishing notice. Mr. Quinones-Ruiz did not respond to the notice, but sued for return of the money claiming he did not receive notice. The court held that the notice was adequate for due process purposes even though it was not sent to his criminal defense attorney. The court analyzed the issue of double jeopardy under **Austin** and **U.S. v. $405,089.23**, 33 F.3d 1210 (9th Cir. 1994), and concluded that the forfeiture was punitive. This case was decided prior to **Ursery**.

A sidelight to the double jeopardy analysis is the issue of whether a particular defendant waived the double jeopardy by failing to contest the in rem forfeiture. After **Ursery**, this may be a non-issue. However, the following are some cases discussing waiver in the double jeopardy context:

United States v. Arreola-Ramos, 60 F.3d 188 (5th Cir., 1995).

Omar Arreola-Ramos was charged with drug related offenses. He sought dismissal of his drug charges based upon the civil forfeiture proceeding involving $11,408 in cash seized from his residence. The forfeiture was initiated after Mr. Arreola-Ramos had been indicted, but before his trial. He did not appear as a party to the civil forfeiture proceedings. The court held that summary forfeiture cannot be considered punishment when the defendant fails to respond or appear in the civil forfeiture.

United States v. Hudson, 14 F.3d 536, 541-42 (10th Cir. 1994).

In **Hudson**, the defendants were indicted under federal law for their alleged

illegal operation of several banks. The violations were based on the same lending transactions which were the subject of prior administrative sanctions imposed by the Comptroller of Currency. As part of the administrative proceedings, the defendants signed a consent order which included a waiver clause allowing other state or federal entities to bring other actions deemed appropriate. The court held that the waiver language was not sufficiently clear to be a valid waiver of the right to assert double jeopardy. The court implied that an explicit waiver may have been adequate, but was not present. Despite the lack of waiver, the court held that the administrative order barring defendants from future banking activities was not "punishment" for their illegal activities.

United States v. Washington, 69 F.3d 401 (9th Cir., 1995).

In Washington, Mr. Washington was arrested for a drug violation. At the time of his arrest, $1,150 was taken from his person. The government sought forfeiture of the money as proceeds of illegal narcotics transactions. Mr. Washington received notice, but did not submit a claim to the funds. The funds were forfeited. Mr. Washington then challenged his criminal charge on double jeopardy grounds. The court held that an owner who receives notice of an intended forfeiture and fails to claim an ownership interest in the property has effectively abandoned that interest. Because abandonment constitutes a relinquishment of all rights in the property, taking of such property imposes no "punishment" and does not place the former owner in jeopardy. The court reached the same conclusion in United States v. Cretacci, 62 F.3d 307, 310-311 (9th Cir. 1995), which is relied upon in Washington.

4. Excessive Punishment

The issue of excessive fines under the 8th Amendment to the U.S. Constitution and Article I, Section 12, of the Alaska Constitution is unlikely to arise in connection with a vehicle forfeiture. The value of the vehicle will rarely if ever cause a problem following the Austin analysis, particularly if the vehicle is used in the offense. Some relevant cases are as follows:

a. State Cases

McNabb v. State, 860 P.2d 1294 (Ak. App. 1993).

Elmer McNabb was charged with fishing violations. He pled guilty to one charge in exchange for a dismissal of nineteen others. The maximum fine for the violation was $15,000. He was sentenced to a fine of $15,000 with $5000 suspended. The court also ordered forfeiture of the fair market value of all of the fish aboard Mr. McNabb's boat on the date of violation, a total of $39,758.40, with $20,000 of that amount suspended. Mr. McNabb challenged the forfeiture and additional fine on several grounds including violation of the United States and Alaska Constitutional prohibitions against excessive fines. The court of appeals held

that "The Alaska Supreme Court has consistently held that Alaska Constitution does not require that penalties be proportionate to the offense. Only punishments that are 'so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of judgment' may be stricken as cruel and unusual under Alaska's Constitution." The court then concluded that the fine imposed in **McNabb** was not grossly disproportionate to Mr. McNabb's crime.

b. Federal Cases

Austin v. United States, U.S. 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993).

In **Austin** the defendant was convicted by the State of South Dakota for possession of cocaine for distribution and was sentenced to 7 years. The U.S. then filed a civil in rem action against Austin's home and business plus $4,700 in cash and other property seized at the time of arrest. Austin challenged the forfeiture under the excessive fines clause (8th Amendment). The court held that the excessive fines clause did not apply to civil forfeitures, but remanded the case for a determination of whether the clause was violated in Austin's case. The court recognized that forfeiture does not solely serve a remedial purpose.

5. Other rights

The right to counsel and right to jury trial may be raised as issues, but will not be problematic:

Baker v. City of Fairbanks, 471 P.2d 386, 402 (Alaska 1970).

Baker involved prosecution for assault under a city ordinance. Mr. Baker claimed that he was entitled to a jury trial. The Alaska Supreme Court extended the right of jury trial to a defendant in any "criminal prosecution". The court defined "criminal prosecution' to encompass any offense for which a conviction "may result in the [defendant's] loss of a valuable license, such as a driver's license or a license to pursue a common calling, occupation or business."

Resek v. State, 706 P.2d 288 (Ak. 1985).

Resek involved an in rem forfeiture of used or intended for use in violation of state drug laws under AS 17.30.112. The in rem case was filed after indictment but before the criminal trial. The court held that an indigent claimant does not have a constitutional right to appointed counsel at public expense in an in rem forfeiture proceeding, but acknowledging discretion of the trial court to require appointment of counsel, based in part on the self incrimination concern, where the forfeiture action precedes a criminal prosecution. The court also implied that civil forfeiture proceedings should be stayed pending the outcome of the criminal case. In **Resek**, the court noted that AS 17.30.116(c) specifically authorizes such a stay.

The exclusionary rule has been applied in civil forfeiture cases:

One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1984).

This case involved a warrantless stop and search of an automobile by state liquor control board offices. Cases of liquor without state tax seals were discovered. The state sought forfeiture of the automobile. The Pennsylvania Supreme Court allowed the forfeiture, rejecting the argument that the exclusionary rule applied to civil forfeiture proceedings and confining the exclusionary rule to criminal cases. The Supreme Court reversed and applied the exclusionary rule. The court there also stated that vehicles are not instrumentalities of crime because "there is nothing even remotely criminal in possessing an automobile." This statement is undercut in DWI cases where the vehicle itself is essential to the crime. **See**, e.g., **City of New Hope** and **Bennis**.

Similarly, the right against self incrimination has been applied:

United States v. United States Coin & Currency, 401 U.S. 715, 28 L.Ed.2d 434 (1971).

Coin and Currency involved an action for forfeiture of money in possession of a person at the time of his arrest for illegal gambling. The Supreme Court held that the Fifth Amendment privilege against self incrimination could be invoked in forfeiture proceedings.

Finally, due to its outstanding and entertaining facts, **State v. Stagno** is worth noting for the reminder that ambiguities in criminal statutes must be read narrowly and strictly construed against the government.

State of Alaska, v. Frank Stagno, 739 P.2d 198 (Ct. App. 1987).

Stagno was convicted of DWI for driving an airboat down a roadway. The state sought revocation of Stagno's license to drive and forfeiture of the boat. The court, relying on the principle of statutory construction that ambiguities in criminal statutes must be narrowly read and construed strictly against the government, held that driving a boat did not fall within the terms of the license revocation and forfeiture statutes in effect at the time, but that discretionary license revocation might be available. The relevant statutes have since been revised.

PORTLAND'S ASSET FORFEITURE PROGRAM:

THE EFFECTIVENESS OF VEHICLE SEIZURE IN REDUCING REARREST AMONG "PROBLEM" DRUNK DRIVERS

IAN B. CROSBY

A JOINT PROJECT OF

THE REED COLLEGE PUBLIC POLICY WORKSHOP

AND

THE PORTLAND POLICE BUREAU

AUGUST, 1995

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by

Ian Crosby
1044 Camino La Costa #3087
Austin, TX 78752
(512) 371-0683

A Joint Project of

Reed College
Public Policy Workshop
3203 SE Woodstock Blvd.
Portland, OR 97202
Stefan J. Kapsch, Director
(503) 771-1112, ext. 7303

and

City of Portland
Bureau of Police
Asset Forfeiture Unit
111 S.W. Second Avenue
Portland, OR 97204
Sgt. Roger Hediger
(503) 823-0023

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CONTENTS

EXECUTIVE SUMMARY

Many drunk drivers are seemingly impervious to traditional sanctions and continue to drive when their licenses are suspended or revoked. Since 1989, Portland has used asset forfeiture to deprive these drivers of the instrumentality of their offenses: their vehicles. While Portland's asset forfeiture program is unique and innovative, it has arisen in the context of a burgeoning of policies nation-wide extending forfeiture to ever more areas of law enforcement. Yet even as forfeiture's targets have multiplied, serious study of its effectiveness has been neglected. In Portland, as in the rest of the nation, a question whose answer is crucial to the success of asset forfeiture has remained unanswered. **Does the seizure of instrumental assets actually disrupt criminal activity and incapacitate or deter criminals? In Portland, it now appears that it has.**

This study employs multivariate statistical analysis techniques to arrest data covering five years of forfeiture enforcement. With race, age, sex, prior arrest history and level of police enforcement held constant, **perpetrators whose vehicles were seized could reliably be expected to be rearrested on average half as often as those whose vehicles were not. The most plausible explanations for this result point to a reduced threat to public safety from these problem motorists as a result of Portland's forfeiture program.**

It is hoped that the information contained in this report will aid policy makers in informed decision making. **Portland should share its experience through contacts with local, state and national law enforcement agencies, and encourage research on the effectiveness of forfeiture in combating the other activities against which it has been deployed.**

BACKGROUND AND INTRODUCTION

FORFEITURE'S IMPACT ON CRIME: PAST RESEARCH AND DEBATE

The Reed Forfeiture Project

This study is a successor to another study of asset forfeiture initated in the Fall of 1991 by Professor Stefan Kapsch, director of the Reed College Public Policy Workshop (PPW). The PPW is a organization dedicated to the empirical study of "ideas in good currency" — policy issues generating great public interest and debate. Forfeiture was then and remains now such an issue. After languishing in relative disuse since prohibition, the wars on drugs and organized crime promulgated new statutes and an explosion of interest which revived first criminal and ultimately civil forfeiture as common prosecutorial tools. Across the nation in the late 1980s, many state and local jurisdictions passed measures authorizing novel uses of forfeiture against crime. In 1989 one such measure, Portland's Forfeiture Ordinance, began targeting problem drunk drivers. For the PPW, the Portland forfeiture program promised to afford a unique opportunity for empirical investigation of forfeiture's effectiveness against a highly recidivistic group of lawbreakers. The forfeiture study consisted of two stages: a comprehensive review of the literature on forfeiture in general and a survey to study Portland's program.

PPW researchers discovered an abundant body of literature regarding the legal issues surrounding forfeiture, but they were surprised to find little material relating to forfeiture's effectiveness in deterring crime. This dearth of research was even more bewildering in light of the frequency with which they found the effectiveness of forfeiture cited in justification of its employment. The introduction to their report states: "Considering the appeals that the courts so often make to the effectiveness of forfeiture as an apology for occasional abuses, it is astounding that so little empirical evidence of

that effectiveness has been produced."[1] Since the 1991 report, forfeiture has continued to be a frequent topic of articles in academic and legal publications, as well as the subject of court decisions and public debate. Unfortunately, this attention has done little to provide any systematic evidence of forfeiture's widely touted effectiveness against any of the many types of crime against which it is now frequently used.

The Federal "War on Drugs"

According to the U.S. Justice Department Executive Office for Asset Forfeiture (EOAF), "[t]he mission of the Department's Asset Forfeiture Program is to maximize the effectiveness of forfeiture as a deterrent to crime."[2] While, in the opinion of the EOAF, "revenue is an ancillary benefit,"[3] and not the primary goal of the forfeiture program, the amount of revenue derived from seizures and deposited in the Asset Forfeiture Fund "serves as a barometer to measure the success of the program."[4] This amount has grown from $27 million deposited in FY 1985 to more than one half billion dollars in FY 1993, and totals over $3.2 billion since the Fund's inception in 1985.[5] Excluding special

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1. Kapsch, et al., Forfeiture: History, Precedents, and Current Debate (1991) (unpublished report of the Reed College Public Policy Workshop Forfeiture Project, on file with the Secretary of the Division of History and Social Science, Reed College).

2. EXEC. OFF. FOR ASSET FORFEITURE, U.S. DEP'T OF JUSTICE, ANNUAL REPORT OF THE DEP'T OF JUSTICE ASSET FORFEITURE PROGRAM at v (1994) [hereinafter EOAF ANNUAL REPORT].

3. *Id.* at 15.

4. *Id.* at 16.

5. *Id.*

deposits related to the Drexel Burnham Lambert case in 1989 and the Michael Milken case in 1991, regular deposits have increased in each year of the Fund's existence.[6]

If the fund truly is a barometer of the Asset Forfeiture Program's objective of deterring crime, we might expect to see an impact on the U.S. drug supply which roughly mirrors the growth in annual asset seizures. Yet in the case of cocaine, the flagship target of the national "war on drugs," prices have remained consistently low and purity has remained consistently high in recent years. The number of individuals reporting using cocaine at least once a week has remained relatively constant over the same period.[7] While the number of people reporting infrequent use of the drug has dropped dramatically since the mid-1980s, it is not clear whether this drop is related in any way to the Asset Forfeiture Program, or if it is the result of increased drug education, cultural trends or a combination of factors.[8] Absent a better measure of the impact of the Asset Forfeiture Program than the mere value of assets seized, it remains an open question whether, "[a]sset forfeiture has proven to be an effective tool in stripping criminals of the instrumentalities and proceeds of their illicit activities," as Attorney General Janet Reno asserts,[9] or whether criminals have merely absorbed the costs imposed by the Program as an inevitable cost of doing business in the multi-billion dollar international drug trade.

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6. *Id.* at 15.

7. NAT'L NARCOTICS INTELLIGENCE CONSUMERS COMM. (NNICC), U.S. DRUG ENFORCEMENT ADMIN., THE NNICC REPORT 1993: THE SUPPLY OF ILLICIT DRUGS TO THE UNITED STATES 1 (1994).

8. *See id.* at 1.

9. Att'y General Janet Reno, *Foreward* to EOAF REPORT, *supra* note 2.

State and Local Efforts

At the state and local level, a number of law enforcement jurisdictions have implemented enforcement programs which have included the use of forfeiture and other forms of administrative property seizure against a variety of criminal activities. Studies evaluating these programs, some of them quite sophisticated, nevertheless fail in a variety of ways to conclusively assess the effectiveness of forfeiture in any of the capacities in which it has been employed. Some efforts studied have targeted the "supply side" of criminal activities.

- In Phoenix Arizona, the attorney general's office used forfeiture to seize the assets of "chop shops" which dismantle stolen cars and sell their parts. Even as judgements under the program topped five million dollars, auto theft continued to increase far more quickly in Phoenix than nationally. The report was unable to conclude whether the theft rate would have increased even more had the program not been in place, or whether the effort was simply ineffectual.[10]
- In New York City, civil forfeiture was used to evict drug dealers from privately owned buildings by threatening or actually effecting the seizure of the properties. The program has been successful in removing problem drug dealers from chronically afflicted properties. The report does not address to what extent or whether drug activities resumed in the targeted properties after the evictions, nor the degree and duration of the disruption of the activities of the individual dealers evicted.[11]

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10. PETER FINN & MARIA O'BRIEN HYLTON, NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, USING CIVIL REMEDIES FOR CRIMINAL BEHAVIOR: RATIONALE, CASE STUDIES, AND CONSTITUTIONAL ISSUES 31-35 (1994) [hereinafter USING CIVIL REMEDIES].

11. *Id.* at 46-49.

Other efforts have attempted to control or hold accountable individuals who use drugs, or whose possession and use of legal but controlled items, such as weapons, poses a threat to society:

- In Maricopa County, Arizona, a "demand reduction" program was implemented which included the seizure of the vehicles of individuals caught purchasing any quantity of illegal drugs.[12] Although a follow up study was conducted, it did not assess any independent effects of asset forfeiture in achieving the program's objectives.[13]
- In Los Angeles, authorities seized weapons from the mentally ill absent the commission of a crime and without search warrants under the Welfare and Institutions Code. While the report notes reasons why this strategy should have been effective, it offers no hard evidence that it actually reduced violence among the mentally ill or that the confiscated weapons were not simply replaced.[14]

Some programs have used forfeiture in combatting both supply and demand of illegal drugs:

- As part of "Operation 'Caine Break," a multi-pronged attack on the activities of drug dealers and users in Birmingham, Alabama, 32 vehicles were seized from 80 individuals charged with soliciting narcotics from undercover officers. During and after the operation, violent and property crimes in the targeted areas of the city stayed relatively constant, in contrast to sharp rises in other areas of the city. However, since forfeiture was only one part of a larger strategy, it is impossible to determine the extent to which it independently influenced this outcome. The report also

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12. JAN CHAIKEN, ET AL., NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, MULTIJURISDICTIONAL DRUG LAW ENFORCEMENT STRATEGIES: REDUCING SUPPLY AND DEMAND 7-9 (1990).

13. *See* JOHN R. HEPBURN, ET AL., NAT'L INST. OF JUSTICE, DEP'T OF JUSTICE, DO DRUGS, DO TIME: AN EVALUATION OF THE MARICOPA COUNTY DEMAND REDUCTION PROGRAM (1994).

14. USING CIVIL REMEDIES, *supra* note 10, at 26-30.

fails to address the concern that the reported results are consistent with the possibility that rather than reducing crime in Birmingham, 'Caine Break merely caused criminals to relocate their activities to non-targeted areas of the city.[15]

- In San Diego, asset forfeiture was used vigorously against dealers and purchasers as part of a comprehensive strategy to combat drug sales and use. While sophisticated multivariate techniques were used to test the effectiveness of certain elements of the strategy in obtaining convictions of suspects, no such techniques were employed to assess the effectiveness of forfeiture. A survey of offenders assessed their opinions on the importance of asset seizure in reducing drug use and sales. Offenders were ambivalent: 41% claimed that asset seizure was very important in achieving these goals, 41% said it was not important at all, and the remaining 18% felt that it was only somewhat important. While the report draws interesting conclusions about offender psychology from these results, it rightly does not attempt to draw any conclusions about the usefulness of forfeiture from them.[16]

While all of these studies provide interesting information on how forfeiture is being employed around the country to address a variety of law enforcement needs, none provides any conclusive evidence of forfeiture's effectiveness as a deterrent of crime.

Forfeiture and Policy Making: Need for Study

If any conclusive studies of forfeiture's effectiveness do indeed exist, certainly none have reached the attention of those who would have the greatest stake in citing their outcomes: the policy makers, public officials and academics who regularly square off in the forfeiture debate. Several papers delivered to a 1994 New York Law School Law

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15. CRAIG D. UCHIDA ET AL., NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, MODERN POLICING AND THE CONTROL OF ILLEGAL DRUGS: TESTING NEW STRATEGIES IN TWO AMERICAN CITIES 33-51 (1992).

16. SUSAN PENNELL AND CHRISTINE CURTIS, NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, DRUG CONTROL STRATEGIES IN SAN DIEGO: IMPACT ON THE OFFENDER 152 (1994).

Review symposium[17] debating forfeiture assert that forfeiture is an effective crime deterrent. Yet none cites statistics which adequately substantiate this claim. At a 1993 congressional hearing in which civil forfeiture came under intense criticism sparked by well-publicized tales of abuse, a U.S. representative,[18] a state representative,[19] a high ranking Department of Justice official,[20] and a county sheriff[21] all characterized forfeiture as a "powerful weapon" against crime. Yet none cited studies to substantiate this characterization, nor do any documents entered into the record of the hearing contain references to any such studies. A 1992 report by the Bureau of Justice Statistics on drug crime characterizes forfeiture in an almost identical manner, again without citation of evidence.[22]

In academic and legal journals, in government reports, and ultimately before the political bodies where policy is shaped, forfeiture continues to be portrayed as a potent weapon against crime without the benefit of any systematic knowledge of its effectiveness. This does not seem to be the result of disingenuousness, but rather of a

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17. Symposium, *What Price Civil Forfeiture? Constitutional Implications and Reform Initiatives*, 39 N.Y.L. SCH. L. REV. 1 (1994).

18. *Review of Federal Asset Forfeiture Program: Hearing Before the Subcomm. on Legislation and Nat'l Security of the Comm. on Gov't Operations*, 103d Cong., 1st Sess. 11 (1993) (statement of Rep. McCandless).

19. *Id.* at 56 (statement of Florida State Rep. Elvin Martinez).

20. *Id.* at 71 (statement of Cary H. Copeland, Director and Chief Counsel, Executive Office for Asset Forfeiture).

21. *Id.* at 307 (statement submitted for record of Robert L. Vogel, Sheriff, Volusia County, Fla.).

22. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, DRUGS, CRIME, AND THE JUSTICE SYSTEM 186 (1992) [hereinafter 1992 DRUG CRIME REPORT] (calling forfeiture a "powerful sanction against illegal drugs").

pervasive conflation of the power of forfeiture to seize assets, which neither proponents nor critics doubt, with the power of forfeiture to deter crime, which is untested. The two are not synonymous. The words of Cary H. Copeland, Director and Chief Counsel of the EOAF, suggest a martial analogy which illustrates why this distinction is crucial to the forfeiture debate. Copeland states: "Asset forfeiture can be to modern law enforcement what airpower is to modern warfare: it attacks and destroys the infrastructure of criminal enterprises."[23]

No matter how tactically successful airpower may be in destroying targets, if it fails to materially effect the ability of the enemy to wage war, then strategically it is little more than a waste of ordinance. The value of assets seized has little relevance to the effectiveness of forfeiture in achieving its stated goals if the deprivation of those assets neither deters criminals nor incapacitates them from engaging in further crime. Forfeiture is also of little practical use if its benefits are outweighed by the "collateral damage" — the unfortunate but inevitable civilian casualties, in current military euphemism — it inflicts. The need for proof that the benefits of forfeiture are tangible and significant increases with every *cause celebre* whose tale of alleged injustice is trumpeted in the newspaper headlines and paraded before congressional committees. Without knowing whether forfeiture achieves its ends, it is impossible to state whether the costs of its occasional abuse are justified. Rational public policy making requires well-defined, quantifiable assessments of what forfeiture has and has not achieved. Such assessments are sadly lacking from current policy debate.

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23. *Department of Justice Asset Forfeiture Program: Hearing Before the Subcomm. on Legislation and Nat'l Security of the Comm. on Gov't Operations*, 102d Cong., 2d Sess. 85 (1992)

PORTLAND'S FORFEITURE PROGRAM

User Accountability

The most well known, debated and publicized aspect of forfeiture in the U.S. in the last decade has been the cooperative efforts of federal, state and local law enforcement authorities to wage the war on drugs against the various parts of the organizations which supply narcotics, from the giant international cartels to the dealers on the street. However, asset forfeiture programs aimed at "[ensuring] user accountability"[24] have been employed in various jurisdictions at least since 1986.[25] Typically, these efforts have targeted the demand-side of the drug equation, seizing the property — typically vehicles — of users who attempt to purchase drugs. Portland has taken this approach to new areas by using forfeiture to target other crimes in the commission of which a motor vehicle is instrumental. Under Portland's Forfeiture Ordinance, in effect since December of 1989, vehicles may be seized and forfeited from offenders arrested for driving while their licenses are suspended or revoked (DWS) if the suspension resulted from driving under the influence of intoxicants (DUII), and from offenders who are arrested as habitual traffic offenders (HO) — people who have committed three or more serious traffic offenses, at least one of which must be a DUII to meet the criteria for forfeiture.[26]

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24. 1992 DRUG CRIME REPORT, *supra* note 22.

25. Todd S. Purdum, *New York Police Now Seizing Cars in Arrests for Possession of Crack*, N.Y. TIMES, Aug. 5, 1986, at A1-1. (describing cooperative effort between U.S. DEA and New York Police Department to seize vehicles of persons attempting to purchase small amounts of "crack" cocaine); Kirk Johnson, *Seized*, N.Y. TIMES, Oct 14, 1986, at B1-1 (reporting results of first month of New York seizure effort).

26. The Ordinance also authorizes the seizure of vehicles which are used in connection with the solicitation of prostitutes. The effectiveness of this aspect of the forfeiture program is not a subject of this study.

Questions and Concerns

Portland's program raises a number of questions and issues. Drinking and driving is a devastatingly serious problem, a problem which is made more troublesome by the fact that many perpetrators are hard-core recidivists whose behavior seems to be all but impervious to modification by means of conventional sanctions. The Forfeiture Ordinance targets these individuals specifically, since one must be a repeat offender to be subject to its provisions. Does seizing these people's vehicles succeed where other measures often fail, or, as some suspect, do they simply replace the seized vehicles with unregistered "junkers" and continue to drive?

In addition to the impact of the Ordinance on offenders, its impact on taxpayers and law-abiding citizens must be considered. Contrary to popular (and often cynical) beliefs about the financial benefits of asset forfeiture to law enforcement, the Portland forfeiture program costs more to administer than it takes in from sales of seized poperty. Most vehicles seized are never auctioned, but are instead released to third parties, such as spouses and lenders. Of those that are forfeited and auctioned, most tend to be older vehicles of relatively little value. Another concern with the widened use of forfeiture by law enforcement is its perceived potential for abuse. Although the Portland Ordinance contains important safeguards and is administered by men and women of the highest integrity, the entrustment of such a powerful tool to the hands of law enforcement should be accompanied by clear benefits to public safety. Only if the program is effective in protecting lives on the highways by depriving drunks of their weapon of choice will the real cost in tax dollars and potential cost in liberty seem worth paying.

The 1992 Survey of Offenders

In the Spring of 1992, the PPW conducted its planned survey to examine the effectiveness of the Portland program in deterring alcohol-related driving activity. The

study was designed as a phone survey of a target group consisting of households of offenders, as well as of a control sample of households selected at random from the Portland metropolitan area. It was decided to request to speak with the individual in each household with the birthday nearest to the survey date rather than ask to speak to the offenders directly. It was felt that asking for offenders by name and posing questions relating to their criminal histories might result in a large number of refusals, hang-ups or untruthful responses. The survey was conducted in coöperation with the Portland Police Bureau (PPB) using the facilities of the PPW and funded through a grant from the Rose E. Tucker Charitable Trust.

Analysis of the data from the survey unfortunately revealed problems with the target group data. Of the 194 households surveyed in the target group, only 78 reported that any member had been stopped for DUII. Of those, only 12 reported having had a vehicle seized or forfeited. This was especially puzzling given the care with which the survey instrument had been adapted from instruments which had already been tested and found to be relatively reliable. It must be concluded either that the perpetrators were no longer or never had been at the phone numbers provided from the PPB computer files, or that the respondents did not answer accurately or truthfully on a wide scale. While there are no doubt important methodological lessons to be learned from the 1992 survey results, they cannot be used to answer the question of whether Portland's forfeiture program has been an effective crime deterrent.

The Current Study

The current research effort seeks to answer this question using offender data acquired internally from PPB, rather than from a survey. For the purposes of this investigation, the broad notion of deterrence is addressed operationally along the lines of the familiar dichotomy between general deterrence and specific deterrence. General

deterrence is the reduction in criminal activity caused by the threat of a sanction in those potentially subject to its imposition. Specific deterrence is the reduction in criminal activity caused by the imposition of a sanction in those to whom it has actually been applied. Despite exploration of a variety of techniques to circumvent the inherent shortcomings of arrest data, the lack of crucial information regarding individual knowledge and perceptions of forfeiture as a sanction prevented a methodologically sound assessment of the general deterrent effect of the forfeiture program. This study therefore focuses on the impact of forfeiture as a specific deterrent in reducing rearrest rates among those whose vehicles have been subjected to it. The body of the report is organized in three sections. *Data* describes the sources from which the data for the study were collected and the organization of the data file used in the analysis. *Methods* gives an account of the rationale behind the choice of the statistical model employed, as well as a discussion of the basic concepts involved in regression and event-history analysis. It is written for the interested layman with little knowledge of statistics and may be glossed over by those either familiar with the subject matter or wholly uninterested by it. *Results* reports and discusses the interpretation of the outcome of multivariate analysis which tests the effect of the forfeiture sanction on rearrest rates among a sample of offenders. The study as a whole should be of interest to policy makers and law enforcement officials in Portland, as well as to those from other jurisdictions who wish to implement similar programs or evaluate the effectiveness their own forfeiture efforts.

DATA

SOURCES

The data for this study were acquired from PPB's Portland Police Data System (PPDS), from the PPB Asset Forfeiture Unit's vehicle seizure records, and from the monthly reports of the PPB Traffic Division. The PPDS data consists of all citations issued from January 1, 1989, to December 31, 1994, for DUII, felony DWS, and HO (N = 22,525). Data prior to 1989 were unavailable due to regular purging of old citation records by the Data Processing Division. Multiple citations may be issued for a single custody, and of course many perpetrators have multiple citations. Each record of a citation contains variables for unique PPB perpetrator and custody identification numbers, allowing grouping and relational linking of records by perpetrator or custody. There are 21,220 unique custodies and 16,801 unique perpetrators represented in the PPDS data set.

The vehicle seizure data consist of records for all seizures of vehicles for felony DWS or HO subsequent to the institution of the forfeiture ordinance in mid-December, 1989 (N = 746). Traffic Division data consist of a record of hours patrolled by Traffic Division officers by shift (morning or evening) and the total number of DUII citations they issued for each month from January, 1986, to December, 1993. There are gaps of missing values in these data due to transitions in record-keeping staff. The data sets for all analyses were created via manipulation of these three sources.

ORGANIZATION

Unobserved Sources of Heterogeneity

Any individual charged with HO, or with felony DWS during a license suspension for DUII, is potentially subject to vehicle seizure and subsequent forfeiture. In answering

the question of whether having a vehicle seized specifically deters, we wish to examine whether rearrest rates differ between individuals arrested for HO or felony DWS based on whether or not their vehicles were seized at the time of initial arrest. Ideally, there should not be any unobserved sources of heterogeneity — unmeasured differences between groups — which make people in one group more or less likely to be arrested than those in another. For example, if seizure were only applied to offenders with particularly egregious driving histories, and data about those driving histories were unavailable for inclusion as controls in analysis, we would be unable to sort out the effects of forfeiture on recidivism from the effects of having such a driving history. Fortunately, this is not the case. However, there is one difference which we must consider between the group of individuals whose vehicles were seized and the group whose vehicles were not.

We know that all individuals whose vehicles were seized for felony DWS were operating under a suspension for an alcohol related offense, since such a suspension is a criterion for seizure. However, due to the way that offenses are coded in the PPDS data and the purge by PPB Data Processing of all data prior to 1989, it is impossible to know whether the license of an individual charged with felony DWS whose vehicle was not seized was suspended for an alcohol related offense or for some other reason. However, the non-alcohol related license suspensions during which a felony (as opposed to misdemeanor) DWS citation may be issued are generally related to severe and relatively rare offenses, such as suspensions for negligent vehicular homicide or hit-and-run.[27] Consequently, only a very small proportion of felony DWS citations are given to individuals whose licenses were suspended for non-alcohol related reasons. This fact, the fact that we may introduce controls for recent alcohol related driving convictions from

27. OR. REV. STAT. § 811.182(3) (1993-94).

the available data, and the large sample size all make it unlikely that the inevitable inclusion of non-alcohol related felony DWS custodies in the group whose vehicles were not seized introduces significant bias.

It should also be noted that even if any bias were introduced by the inclusion of such custodies, such a bias would be conservative with respect to the effect of vehicle seizure on rearrest, if one assumes, plausibly, that offenders charged with felony DWS for driving during non-alcohol related suspensions are less likely to be subsequently commit alcohol-related offenses. All individuals charged with felony DWS whose vehicles were seized are known to have been operating during an alcohol related suspension. Some individuals charged with felony DWS whose vehicles were not seized presumably were operating under non-alcohol related suspensions. If the non-seizure group as a whole were somewhat less likely to offend, then any reduction of the risk of rearrest attributable to having one's vehicle seized would be *underestimated*, since the group of individuals whose vehicles had been seized would be in general more likely to offend. Since the null hypothesis we wish to reject is that seizure has no effect in reducing recidivism, if seizure exhibits such an effect in analysis, we can be certain that this effect is not due to an unobserved source of heterogeneity related to the inclusion of non-alcohol related felony DWS custodies, and that if the estimation of this effect is at all in error, then such an error is on the side of conservatism.

Structure of the Data Set

With this in mind, the data set was chosen to consist of all custodies between January 1, 1990, and December 31, 1994, for which a citation for felony DWS or HO was issued (N = 5,493). Only custodies for 1990 and later were used to allow the creation of a variable for number of prior offenses in the previous year. Since no data exist prior to 1989, including cases prior to 1990 in the analysis would have introduced bias, as the

prior arrest variable for such cases would not reflect a full year of data, as it would for all subsequent cases. For each case, a variable was created for the date on which the next subsequent felony DWS, HO or DUII arrest was observed for the individual involved in the custody. Many individuals were not rearrested within the observation period. A "dummy variable," that is, a dichotomous variable having the value of either one or zero, was created to indicate whether the rearrest variable contained the date of a subsequent arrest, or whether there was no rearrest observation in the study period. Cases for which there was no rearrest are considered to be *censored* by the end of the study period. Censoring of data is discussed in the methods section, below. Another dummy variable was flagged to indicate cases where there had been a vehicle seizure at the time of arrest (N = 610).[28] An additional dummy variable was flagged for cases for which the vehicle was subsequently auctioned (N = 226). In addition to these variables, each case contains a variable for age at time of offense and a dummy variable indicating the sex of the subject. The race of the offender was broken down in to six categories: White, Black, Hispanic, Asian, American Indian and Other.

Enforcement Level Covariate Vector

It is likely that the probability of being arrested at any given time depends in part on the level of police enforcement in effect at that time. Traffic enforcement is carried out both by the officers of the Traffic Division and by regular patrol officers on the street. There are, unfortunately, no available data on Bureau-wide traffic enforcement activity. Missing data can often be extrapolated from available data if a model with reasonable

28. Due to errors in data entry in the PPDS system, a number of custodies where a citation for DWS was issued were not included in the sample, and thus there are fewer cases in the data set corresponding to seizures than there were actual seizures. As there is no reason to believe that these cases are not missing at random, their omission presents no difficulties for the data analysis.

assumptions can be fitted which reliably predicts missing values as a function of other complete data. The Traffic Division in the past has issued monthly reports containing information on its patrol activities. Complete data does exist for the total number of DUII citations issued per month Bureau-wide through December, 1994, as well as for the number of DUII citations per month issued by the Traffic Division through August, 1993. If a model were found which could reliably predict Traffic Division hours patrolled as a function of Traffic Division DUII citations issued, then this model could be used to predict Bureau-wide patrol hours on traffic enforcement from Bureau-wide DUII citations issued, assuming that regular officers, when engaged in traffic enforcement, are approximately as efficient at issuing citations as Traffic Division officers.

Unfortunately, the best model capable of being constructed with the available data was only able to account for approximately 39% of the variance in Traffic Division hours patrolled as a function of Traffic Division citations issued. Introduction of controls to account for seasonal variation in offense rates did not significantly improve the model. In other words, approximately 60% of the variation in DUII citations issued by the Traffic Division is accounted for by factors other than hours patrolled and seasonal variance. As sufficient data is not available to reliably predict missing values for Traffic Division hours patrolled, there is no way to predict Bureau-wide traffic enforcement, even if the assumption of equal enforcement efficiency were justified.

While we cannot extrapolate the total Bureau-wide traffic enforcement, the number of patrol hours by the Traffic Division in the evening (when most citations are issued) does significantly predict over 37% of the variance in Bureau-wide DUII citations issued. Traffic Division evening patrol hours may therefore be a significant predictor of a portion of the variance in the likelihood that an individual will be arrested for DWS, DUII or HO at any given time. We may test this hypothesis by analyzing the subset of cases for which complete Traffic Division evening patrol data are available. The data on

Traffic Division enforcement were used to create for each case a vector of 44 variables containing values for hours patrolled in each of the up to 44 months subsequent to the date of arrest for which data exist. Although this is less than ideal, the subset of complete cases from January, 1990, through August, 1993, is sufficiently large to allow testing of whether Traffic Division hours patrolled had a significant effect on rearrest rates.

METHODS

REGRESSION

Basic Concepts

Fitting a model to data which estimates how the value of a dependent variable, such as time to rearrest, depends on values for a number of independent variables, such as age, sex, vehicle seizure, etc., is usually accomplished by means of multiple regression. While there are many types of regression, in general each employs a "regression equation" which expresses the dependent variable as a function containing terms for each of the independent variables. Constants for each of the independent terms in the regression model are estimated in such a way as to maximize the goodness of fit of the predicted values with the actual values observed for the dependent variable. The significance of the contribution of a variable, that is, the likelihood that the variation in the dependent variable explained by it is attributable to random chance (often measured by the statistic p), can be assessed by constructing a restricted model from which the variable is omitted, and comparing the improvement of fit of the full model (including the variable) over the restricted model, given certain other parameters.

Problems with Time-to-Event Data

The most common regression methods are often inappropriate for analysis of the effects of independent variables on a dependent variable containing time to an event. In most techniques, values for the dependent variable be a number or must be dichotomous categorical. Although these methods can be used with time-to-event data, for example, if the dependent variable is coded to reflect whether or not, or how often, an event has occurred in an arbitrarily specified follow-up period, such an approach is wasteful of information for a number of reasons. First, and most obviously in the present case, all custodies whose follow-up period extends beyond the end of the study period would have

to be eliminated from analysis, since we could not specify a value for the dependent variable for them. If the follow-up period were, for example, one year, no custodies after December 31, 1993 could be used as cases in the analysis, since the period for which data exist ends December 31, 1994, and these custodies would not have a full year of subsequent observations for the determination of the dependent variable. Second, even for cases where the initial offense occurred before December 31, 1993, information about reoffenses which may occur subsequent to the follow-up period would be lost to analysis. Lengthening the follow-up period only reduces the number of usable cases by lengthening the period prior to the end of the study in which cases could not be used, while ameliorating the loss of cases by shortening the follow-up period exacerbates the loss of potentially interesting reoffense data beyond the follow-up period.

A third problem with customary regression techniques when applied to time-to-event data is apparent when we consider that in the case of criminal recidivism, the amount of time from initial offense to reoffense is highly interesting. This information is available in our data set, but is wasted when only whether or how often an individual is rearrested within a given period is considered. It might be thought that this deficiency could be corrected in a linear regression model by using time to reoffense as the dependent variable. However, for individuals who are not rearrested by the end of the study period, the value of the dependent variable is unknown, or *censored* by the arbitrary imposition of the time cut-off at the end of the study period. Assigning the end date of the study period to the dependent variable would introduce bias by underestimating the actual time to reoffense in most cases, while assigning any other date would be completely arbitrary and result in an under or overestimation for an unknowably large part of the sample. The only other alternative would be to treat censored cases as missing, and thus exclude them from analysis, introducing yet a different bias and losing valuable cases. A further problem with common regression methods for time-to-event data is the fact that

certain independent variables, such as an individual's age, are not constant, but vary through time. Ordinary regression techniques offer no way to estimate the effects of time-dependent variables. A different approach is obviously needed.

EVENT HISTORY ANALYSIS[29]

Basic Concepts

The various techniques of event history analysis are superior to other regression techniques for time-to-event data in that they allow censored observations adequately to be taken in to account, and they permit the use of time-dependent variables. A number of concepts are common to all methods of event history analysis. A case for which an event, such as reoffense, could occur at some time is said to be "at risk" at that time. The total number of cases at risk in any given time period is known as the "risk" set. The probability that an event will occur in a particular time period for a particular case in the risk set is termed the "hazard rate." Certain event history models incorporate regression techniques to allow the estimation the effects of covariates on hazard rates. Of these, the Cox proportional hazards log-linear regression model[30] is especially powerful and non-restrictive, given that certain assumptions are adequately fulfilled.

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29. *See* PAUL D. ALLISON, EVENT HISTORY ANALYSIS: REGRESSION FOR LONGITUDINAL EVENT DATA (1984), for an accessible discussion of the various techniques of event history analysis and their relative merits.

30. D. R. Cox, *Regression Models and Life Tables*, 34 JOURNAL OF THE ROYAL STATISTICAL SOCIETY, SERIES B at 187 (1972).

Advantages of the Cox Proportional Hazards Model

Two of the advantages which Cox models have over many other methods of event history are worthy of note. First, as we have noted, certain covariates, such as the age of a research subject, may change in value during the time that the subject is at risk, and Cox models can use time-dependent variables in regression analysis. Second, many other continuous-time methods use "parametric" models. Such models require the researcher to specify prior to analysis the over-all form of the hazard rate as a function of time. Often, there is very little information available on which to base such a specification. As "non-parametric" models, Cox models require no specific assumptions about the form of the underlying hazard function, and are thus much more general and flexible than parametric models. It is primarily because the Cox model combines the use of time dependent variables with a non-parametric model that it has become the method of choice for event history analysis when it is appropriate.

The Proportionality Assumption

Cox models are not, however, always appropriate for all data. For a Cox model to be appropriate, it must be assumed that the effects of differing values for the independent variables are proportional over time. For example, if the covariate "sex" is included in the model, the Cox model is appropriate just in case the hazard function for males differs from that for females only by a constant factor at all times. A simple statistical method of checking proportionality with respect to a variable is available by means of testing the significance of the effect of the interaction of that variable with the log of the time on study minus the log of the mean time to event for the entire sample. If the effect of this interaction variable is not significant at a chosen level of significance (as it is not for the variables used in this analysis at $p \leq 0.05$), then the data may be assumed to be roughly proportional and the Cox model may be used.[31]

Stepwise Regression and Model Building

Building the best model for predicting observed values of a dependent variable involves testing candidate independent variables for inclusion and removal from the model such that the final model contains only those independent variables which contribute significantly to the overall goodness of fit of the model, and excludes those which do not. With any more than a few explanatory variables, manually building a model can be very time consuming. A stepwise regression is an automated procedure for performing this potentially tedious task. In our analysis, variables considered likely to contribute to the model based on theoretical considerations and exploratory results were included in the model on the first step, and those considered unlikely to make a significant contribution were excluded. In subsequent steps, variables in the model were tested for removal and variables not in the model were tested for inclusion. Variables were removed if their removal did not significantly degrade the predictive accuracy of the model, and were included if their inclusion significantly improved the model (p to include$\leq$0.1, p to remove$\geq$0.15). Significance levels were calculated using the maximum partial likelihood ratio method. Stepwise regression proceeds iteratively until no variables meet the significance criteria for inclusion or removal. The variables still remaining at this point constitute the final model.

Constant explanatory variables tested for inclusion and removal were the sex and race of the subject, the number of prior felony DWS, HO or DUII offenses in the preceding year, whether the subject's vehicle had been seized at the time of custody, and

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31. HANS-PETER BLOSSFELD ET AL., EVENT HISTORY ANALYSIS: STATISTICAL THEORY AND APPLICATION IN THE SOCIAL SCIENCES 147-149 (1989); *but see* ALLISON, *supra* note 29, at 38 (suggesting that because of the generality of the proportional hazards model, concern for the violation of the proportionality assumption may often be exaggerated.)

whether the vehicle was subsequently auctioned. The time-dependent variable of the age of the perpetrator was tested using the entire sample, as was the monthly number of evening hours patrolled by the Traffic Division in a model using only cases through August of 1993.

RESULTS

EFFECTS OF VARIABLES ON REARREST RATE

Table 1 shows the effects of explanatory variables on time to rearrest in terms of regression coefficients with associated significance levels from the Cox proportional hazards regression model. Only variables having a significant effect on time to rearrest are included in Table 1. Evening hours patrolled by the Traffic Division did not have a significant effect on rearrest in the subset of cases through August, 1993. The model therefore was estimated using all available cases from January 1, 1990, through December 31, 1994.

Table 1
Effects of Explanatory Variables on Time to Rearrest

Variable	Coeff.	Predicted # Rearr./Mo. % Increase (Decrease)	Predicted Time to Rearr. % Increase (Decrease)
Sex (Male)	0.4467*	56.32	(36.03)
Age	-0.0192*	(1.90)	1.94
Race: Black	0.6900*	99.38	(49.84)
Asian	-1.8141*	(83.70)	513.50
Other	0.3934**	48.19	(32.52)
No. Prior Offenses	0.2543*	28.96	(22.46)
Vehicle Seized	-0.6887*	(49.78)	99.12

* $p \leq 0.01$.
** $p \leq 0.05$.

Model Chi-Square=724.02, DF=7, $p \leq 0.01$.

Regression coefficients indicate the magnitude and the direction of the effect of each explanatory variable on the hazard rate. A positive coefficient indicates a greater

number of expected rearrests in a one month period of time based on an increase of one unit in the value of an explanatory variable, and a shorter expected time to rearrest based on the same increase. A negative coefficient indicates the opposite effect. By calculating the exponent of the coefficient, we arrive at the percent increase or decrease in the hazard rate predicted by a positive change of one for an explanatory variable. Thus being male, as opposed to female (the arbitrarily chosen reference category), corresponds to a 56.32% increase in the number of expected rearrests per month. 100% minus the inverse of this percentage gives the percent expected increase or decrease in time to rearrest — for males, a 36.03% decrease in expected time to reoffense as opposed to females.

No entry for "Race: White" is included in Table 1, as Whites are the reference category for the categorical variable "race" (though any other category could have been chosen). All estimates for the effect of race contrast the effect of being in a certain racial category as opposed to being White. We can thus see that expected time to rearrest is slightly less than half as long for Blacks than for Whites, and over five times longer for Asians than for Whites. Time to rearrest did not differ significantly for Hispanics or American Indians from that for Whites, and these categories are therefore not shown in Table 1. Considered together, other races than those considered specifically had a predicted time to rearrest about a third shorter than that for Whites. Each additional year of age increased the expected time to rearrest by about 2%. We can also see that each prior arrest predicts a 32.52% decrease in expected time to rearrest. Most interestingly, having a vehicle seized nearly doubled expected time to rearrest. Having a vehicle actually forfeited did not have a significant effect over and above that associated with simply having it seized. All of these results are highly statistically significant. Vehicle seizure is a strong and significant predictor of reduced rearrest for DWS, HO and DUII with several other important factors taken into account.

INTERPRETATION

Interpretation of statistical results is not a deductive process, but rather involves choosing among explanations which are consistent with an outcome based on their plausibility. Before concluding that seizure has resulted in reduced recidivism, we must consider consistent alternatives. A classic example of a sanction reducing rearrest rates within a certain geographical area without affecting recidivism is the case of prostitution. There is good reason to believe that when stronger anti-prostitution enforcement is applied in a certain area, arrests in that area may fall, but often only because prostitutes and "johns" relocate to a different area where they may conduct their business with less interference. A similar phenomenon is common with respect to drug activity and enforcement. As state-wide data on offenders were not available for analysis, it may be questioned whether individuals whose automobiles were seized merely continued to reoffend in jurisdictions other than Portland, just as prostitutes or drug-dealers may ply their trades in less well-patrolled sections of town when enforcement is strengthened in their customary area of operations. Could individuals whose vehicles have been seized simply have continued to reoffend at the same rate, but in another jurisdiction as subsequent to vehicle seizure?

There is a fundamental difference between driving on the one hand, and prostitution and drug-dealing on the other, which suggests that the answer to this question is negative. Stepped-up enforcement in one area only requires that a prostitute or drug-dealer travel to a different area to conduct his or her business. No relocation of domicile is required. But an individual whose license has been suspended cannot simply continue to drive in another jurisdiction without relocating his or her place of residence. To completely avoid the prospect of seizure while continuing to drive, an offender must physically relocate his or her residence to another jurisdiction. Such an individual might theoretically reduce his or her chances of apprehension by striving to the greatest degree

possible to drive in other jurisdictions when conducting business, minimizing time spent driving within Portland. Yet such a strategy would still involve the risk of regular driving within the city limits, and require a great deal of additional time in performing even the most routine errands. It is highly unlikely that such relocation, either or domicile or driving, is responsible for the dramatic increase in expected time to rearrest predicted by vehicle seizure. More plausible than relocation is the possibility that offenders are continuing to drive after seizure or forfeiture, but that they are driving more carefully to avoid detection. While it is highly likely that this occurs, it seems doubtful that it accounts for the magnitude of the effect on rearrest rates. Presumably, the offenders did not try to get caught the first time. It should also be noted that even if the only effect of the forfeiture program were to run offenders out of town, to cause them to drive as much a possible in other jurisdictions or just to drive much more carefully, this result in itself would be highly desirable from the standpoint of Portland motorists.

If seizure does result in reduced recidivism, how does it do so? Could seizure of vehicles be physically preventing people from driving? While actual forfeiture did not predict any reduction in rearrest over and above that predicted by seizure alone, this does not mean that physical prevention of driving through the loss of a vehicle is not an important factor in reducing rearrest rates. Vehicles which are not forfeited are released to lien holders, spouses and other innocent owners on the understanding that their use will be withheld from offenders. Yet any offender who is able and who wishes to may purchase a beat-up used car for very little money, neglect to register and insure it, and continue driving. If offenders are not driving subsequent to seizure, it is likely not because, strictly speaking, they are physically prevented from doing so, but rather that they choose not to take the necessary steps and resume driving, that is, *they are deterred.*

Why would seizure deter where other sanctions have failed? While offenders may view brief jail terms with indifference and simply fail to pay fines, the loss of use of a

vehicle through seizure or forfeiture is a tangible penalty. Many offenders have few financial resources. The investment which is lost in a vehicle which is forfeited may be considerable to them, even if the vehicle was of relatively little value. The cost of replacing a vehicle can serve as an unavoidable fine, even if a vehicle is only seized and released, if an offender also loses access to it. With vehicles which are released, thc consequenses incurred at the hands of third parties also may enhance the deterrent effect of seizure. New York prosecutor Sterling Johnson, speaking of suburbanites who travel to the city to buy crack and whose cars are seized, put it well: "When they come home without momma's car or without daddy's car, the criminal justice system is going to be the least of their worries...."[32]

32. Purdum, *supra* note 25, at A24-1.

CONCLUSION

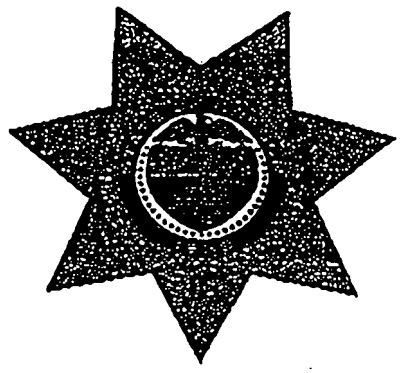
Proper consideration of the outcome of this study requires that the sharp distinction between the facts revealed and their theoretical explanation be reiterated. One may perhaps dispute the explanation, but inasmuch as our data are accurate and our methods sound, the facts are known to be true beyond dispute. It is a fact that, other things being equal, having a vehicle seized reliably predicts a doubled expected time to rearrest for individuals arrested for DWS in the city of Portland between Jan 1, 1990 and December 31, 1994. Explanation of the facts is based on inference and is open to interpretation. Reduced driving as a result of physical incapacitation or deterrence, or driving more carefully are plausible explanations and are consistent with the observed reduction in rearrest rates. Most probably, a combination of these factors is responsible for this result. What is important is that following any of these plausible strategies for avoiding rearrest also serves to make an offender less of a danger on Portland's roads. Any positive modification of the behavior of a group of offenders as recalcitrant as the subjects of this study is an accomplishment indeed. If Portland's forfeiture program achieves nothing else, it is still a verifiable success story.

It is believed that this study represents the only application of multivariate statistical analysis techniques to the assessment of the effectiveness of a forfeiture policy directed at any kind of criminal activity in the United States. While it may serve as a vindication for Portland's forfeiture program and an incentive to move forward, it still does little to fill the research void with respect to this issue of national importance. Portland's forfeiture program must be considered within the broader context of the proliferation of uses for forfeiture across the nation over the last decade. In examining the current state of knowledge about forfeiture, we considered a number of jurisdictions which have extended the use of forfeiture to new areas of law enforcement. Not only is Portland's forfeiture program at least as innovative as that of any jurisdiction which has

received national attention, it also has the unique attribute of having verifiably worked. As Portland shares its experience with other law enforcement jurisdictions around the state, the region and the country, it is hoped that those who wish to follow Portland's leadership in policy will also be encouraged to take the steps necessary to encourage more and better research of this type in the future.

Greg Brown
Sheriff

DESCHUTES COUNTY SHERIFF'S DEPARTMENT



Redmond-Terrebonne Sheriff Substation
737 SW Cascade
Redmond, OR 97756
541-923-8270
Fax 541-923-8814

LaPine Sheriff Substation
51590 Huntington Rd
LaPine, OR 97739
541-536-1758
Fax 541-536-5766

Sisters Sheriff Substation
Sisters, OR 97759
541-549-9141

Adult Jail
63333 W Hwy 20
Bend, OR 97701
541-388-6661
Fax 541-383-5054

Emergency Services Search & Rescue
1100 NW Bond St
Bend, OR 97701
541-388-6502

May 6, 1997

The Honorable Senator Smith
Dirkson Building
Washington, DC 20510

Dear Senator Smith:

Since its inception, the Deschutes County county-wide forfeiture program has been successful in reducing drunk driving. Deschutes County is growing at the fastest rate of any county in the State of Oregon. Arrests have declined from a high of 1052 to 628 in 1995, while the population grew from 74,958 to 100,000 this year.

Financially the program has more than broke even, returning approximately $150,000 to the area law enforcement agencies and the Sheriff's Department who administers the program. There has been no increased liability encountered with the program and court challenges, all successfully resolved in favor of the County, have been limited.

It is my understanding that Administration's proposed Alcohol-Impaired Driving Countermeasures grants would give states credit for implementing auto forfeiture programs. Having seen first hand the effectiveness of forfeiture, I strongly encourage you to support this aspect of the Administrations NEXTEA proposal.

Respectfully,

Greg Brown, Sheriff

DESCHUTES COUNTY

Sheriff's Department

1100 N.W. Bond Street, Bend, Oregon 97701 • (541) 388-6655
Darrell D. Davidson Sheriff

October 4, 1996

TO: Michael Harrison

FROM: Lieutenant Greg Brown GTB

SUBJECT: Forfeiture Program

In 1992 a group of citizens met with Deschutes County law enforcement officials to address the continuing problem of drunk driving. Deschutes County was growing, and continues to grow at the fastest rate of any county in the state. The Sheriff's Department had a very pro-active traffic safety team that had reduced serious injury accidents from 350 per year to 175.

A group called the Criminal Justice Advisory Coalition which was a spinoff from a defunct MADD group was proving effective with court watch programs but felt more needed to be done with Driving Under the Influence of Intoxicants. The group proposed a vehicle seizure program and enlisted my help.

At the meeting with law enforcement officials and the advisory group it was first agreed that Deschutes County would take the lead in the proposed ordinance and that the Cities of Bend, Redmond, and Sisters would then follow.

THE ORDINANCE

An ordinance was crafted that did the following:

1. The vehicle was declared a nuisance. This effectively removes several legal arguments effecting forfeiture programs. It is argued in court that the vehicle is the nuisance and is being abated.

2. The ordinance allowed for the seizure of vehicles from operators arrested for DUII who had one prior diversion or conviction for DUII within a prior ten year period.

3. The ordinance allowed for the seizure of vehicles from operators arrested for Criminal Driving While Suspended which includes Misdemeanor - Felony - or Habitual Offender.

4. The ordinance also allowed for vehicle forfeitures based upon serious traffic offenses such as Eluding, Vehicle Manslaughter and other such offenses.

There was a lot of debate about when to seize a DUII vehicle. Some committee members wanted to seize on the first arrest and others on the second or third. It was finally agreed that a vehicle could be seized after one prior conviction or diversion.

PROGRAM IMPLEMENTATION

Deschutes County was first to adopt the ordinance which went into effect in August 1992. Because it was a county ordinance it could not be enforced within incorporated cities. The Cities of Sisters and Redmond followed in December and the City of Bend in March of 1993.

VEHICLE RELEASE PROGRAM

A vehicle release program was established as a means of allowing certain offenders the opportunity to have their vehicle released. The driver and registered owner if different have to agree to sign a vehicle release agreement that establishes the reason for the seizure, a stipulated judgement is signed for a future arrest while operating the same vehicle, and a $125.00 administrative fee is paid. The vehicle hold is then released and the operator pays their tow bill. Vehicles eligible for release are those operated by a driver who is DWS-M and/or DUII who has one arrest or diversion for DUII.

TOWING

Deschutes County put the forfeiture towing program out to bid and selected one vendor. A two tiered rate structure was established. For vehicles released through a VRA, standard two rates are charged and 10% of the total bill is credited back to the Sheriff's Department. A lower rate is charged for vehicles that the Sheriff's Department receives a judgement on. For example normal storage costs are $15 per day but the Sheriff is charged $1 per day. These charges are offset by the 10% credit which means a vehicle that is towed and stored for 45 to 60 days will have and average $100 bill owed by the Sheriff.

COURT CHALLENGES AND CLAIMS

Of the 861 vehicles seized through forfeiture action since the programs inception less than 10% have been involved in claims and other legal action.

Only one vehicle has been released back to an owner with a claim. Several vehicles have been sold back to the owner after a claim was filed for an average of 50c on the dollar of the value of the vehicle.

Approximately 30 court hearings have been held challenging the forfeiture program. The majority of the hearings challenged the $125 administrative fee which repeatedly has been ruled to be an approved fee that covers costs of the program and not punitive. Other challenges include the legality of the ordinance, the policy of which vehicles qualify for vehicle release, and whether a vehicle can be seized civilly when the criminal charges have been reduced or dismissed. Deschutes County has prevailed in every legal challenge and has not appeared in a hearing in over three months.

LIEN HOLDERS

Deschutes County immediately notifies lien holders when a vehicle is seized with a lien. At times depending upon the amount of the lien the County has paid the lien and retained the vehicle. If the lien exceeds or is close to the value of the vehicle it is usually released to the lien holder who is charged towing and storage.

FINANCIAL IMPLICATIONS

An administrative Lieutenant and Secretary coordinate the forfeiture program for Deschutes County and all the cities. Deschutes County receives 50% of any clear proceeds. Legal costs have been kept to a minimum as each jurisdiction uses its own counsel which is usually in-house. Deschutes County does have a recognized expert forfeiture counsel on retainer who also does all the narcotic forfeitures. This counsel is available to assist the in-house counsels with forfeitures.

Vehicles obtained by court judgement are sold at a bi-yearly auction. A local auctioneer who lost her sister to a drunk driver donates her time to the auction.

To date Deschutes County has received slightly over $200,000 from administrative fees and the sale of vehicles obtained by court judgements. Costs have approximated $60,000 for advertising and towing and storage costs and $140,000 has been retained by Deschutes County and the Cities of Bend, Redmond and Sisters.

PROGRAM SUCCESS

Deschutes County is the fastest growing county in the State of Oregon. It is also a hub for tourist activity which is reflected in the fact that it has the highest use National Forest in the nation and daily traffic counts on Highway 97 in Bend match traffic counts on Interstate 5.

Eighteen thousand persons have moved to Deschutes County since the forfeiture program began. DUII arrests which peaked in 1990 with a very aggressive traffic safety program have declined dramatically since.

It should be noted that individual forfeiture statistics can be somewhat skewed. Forfeitures are left up to the discretion of each individual officer with a standard policy in place for all agencies. Additionally, an individual arrested for DUII and DWS will only be entered under one category so the total number of forfeitures per year is more valid than each individual category listing.

DESCHUTES COUNTY
Sheriff's Department
1100 N.W. Bond Street, Bend, Oregon 97701 • (541) 388-6655
Darrell D. Davidson Sheriff

Deschutes County Sheriff's Department, The Oregon State Police
and
The Cities of Bend, Redmond, and Sisters

DESCHUTES COUNTYWIDE DUII ARRESTS

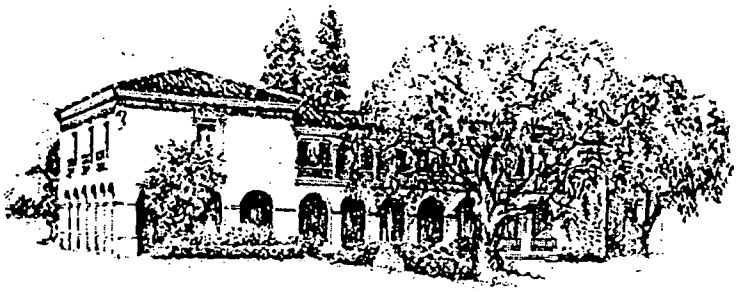
Year	Arrests	Population
1989	1000	68,000
1990	1052	74,958
1991	1036	79,800
1992	930	82,600
1993	831	86,800
1994	791	89,500
1995	628	94,100
Jan-June 1996	408	(Jan-June approximate) 100,000

FORFEITURE PROGRAM TOTALS

Year	DUII	DWS-1	DWS-M	HOUSE FORFEITURES	POPULATION
1992*	9	4	8	21	82,600
1993*	117	25	56	198	86,800
1994	116	43	89	248	89,500
1995	98	60	51	209	94,100
Jan-Jun 1996	101	13	51	165	(approximate) 100,000

*Deschutes County forfeiture program began in August 1992
*Redmond Police and Sisters Police Departments - December 1992
*Bend Police Department - March 1993

CITY OF SANTA BARBARA



AUG 08 1997
POLICE DEPARTMENT

CHIEF OF POLICE
Richard A. Breza

215 EAST FIGUEROA
MAIL: POST OFFICE BOX 539
SANTA BARBARA, CA 93102

TELEPHONE: (805) 897-2300
FAX: (805) 897-2405

August 5, 1997

Mr. Michael Harrison
1113 Longworth H.O.B.
Washington, DC 20515

Dear Mr. Harrison

This is in response to your request for our opinion of the cost effectiveness of our vehicle forfeiture program for unlicensed drivers.

It should be noted that most law enforcement activities, programs and prevention measures are not cost effective from a monetary basis but need to be measured for their effect on public safety and law and order. The vehicle impound and forfeiture program enacted by California law in 1995 for unlicensed drivers is an exception. Not only does it help make streets safer for the general public and reduce accidents, it also provides sufficient income to at least cover all department expenses if not show a profit.

In Santa Barbara since the program started January 1, 1995, we have impounded 4,338 vehicles driven by unlicensed drivers of which 243 have met the criteria for forfeiture. Each vehicle is assessed a $45 administrative fee upon release. The moneys received from the sale of forfeited vehicles, after payment of tow fees and liens due to legal owners, yielded enough to cover $10,935 in release fees, $12,150 in additional agency cost to process the forfeiture and sale and still have $66,346 remaining which was split 50/50 between the state and our department.

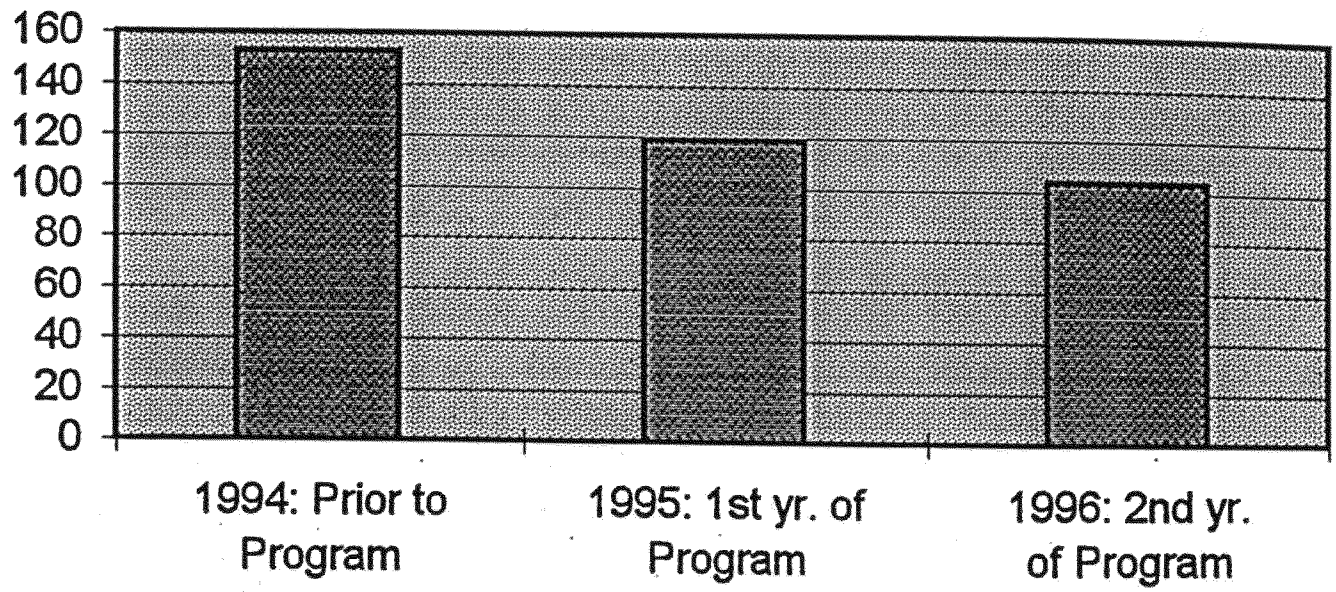
While we definitely consider the program cost effective in the monetary sense, we do not view it as a revenue producing activity. The money is a useful byproduct of what we consider to be an extremely beneficial tool to keep unlicensed drivers off the roads. Our accident and hit and run rates are down and we'll never know how many lives have been saved, injuries prevented and property damage avoided. We would keep this program in effect even if there were no cost recovery.

Sincerely,

Errol L. Murphy
Police Business Manager

Effectiveness of Auto Forfeiture Program for Repeat Drunk Drivers Santa Barbara, CA

DUI Related Auto Accidents Per Year



CONTACTS

PORTLAND, OREGON

Michael Harrison
Representative Earl Blumenauer's Office
1113 Longworth H.O.B.
Washington, D.C. 20515
(202) 225-4811

ANCHORAGE, ALASKA

Cliff Groh
Municipal Attorney's Office
P.O. Box 196650
Anchorage, Alaska 99519
(907) 343-4545

DESCHUTES COUNTY, OREGON

Sheriff Greg Brown
Deschutes County Sheriff's Department
1100 NW Bond Street
Bend, Oregon 97701
(541) 388-6655

SANTA BARBARA, CALIFORNIA

Errol L. Murphy
Police Department
P.O. Box 539
Santa Barbara, California 93102
(805) 897-2300

Jim Whitehead

Jim Whitehead, Portland native, was recruited by Mothers Against Drunk Driving when an intoxicated driver killed his 26 year old son in 1991. Mark Whitehead, a reserve deputy for the Multnomah County Sheriff's office, was killed while on duty. He and his partner, reserve Sgt. Scott Collins, were traveling along Interstate 84 when Ervin Vandervoort rounded a curve and his car sailed over the median and sheared off the top of the patrol car. Vandervoort's toxicology report revealed a blood alcohol level of .20. Mr. Vandervoort had been previously convicted of Driving Under the Influence of Intoxicants several times, his most recent arrest had been weeks before the crash.

Mr. Whitehead and his wife, Beverly Whitehead, have been active in MADD and Concerns of Police Survivors. He has conducted several workshops for law enforcement agencies on line-of-duty death notification and speaks on behalf of MADD to high school students on the perils of drinking and driving. Mr. Whitehead has been a counselor for Reynolds School District since 1997. He is also currently the president of the Multnomah/Hood River Chapter of MADD>

Tiana Tozer

Tiana Tozer was just 20 years old, a sophomore at the University of Oregon, when she was run over by an intoxicated driver. She spent 35 days in intensive care and to date has undergone 34 surgeries. After four years of struggling to walk, Ms. Tozer learned that a wheelchair would be a permanent part of her life. After her crash, Ms. Tozer shared her experiences with high school students throughout Oregon. The man who caused the crash, Juan Mejia, had a blood alcohol level of .09. He was subsequently convicted of driving under the influence of intoxicants, his third DUII conviction. His driving privileges had been suspended at the time of the crash.

Ms. Tozer went on to graduate school where she played wheelchair basketball. In her sport, Ms. Tozer holds four national titles, a silver medal from the Barcelona Paralympics and a bronze medal from the Atlanta Paralympics. In 1993 she graduated from the University of Illinois with an MA in International Relations. In 1998, Tiana returned to Oregon, where she is a public affairs consultant in the firm of Robertson, Grosswiler & Co.

Greg Brown
Sheriff

DESCHUTES COUNTY SHERIFF'S OFFICE

Terrebonne Station
8222 N Hwy 97
Terrebonne, OR 97760
541-548-2022

Redmond Station
737 SW Cascade
Redmond, OR 97756
541-923-8270
Fax 541-923-8814

La Pine Station
51590 Huntington Rd.
La Pine, OR 97739
541-536-1758
Fax 541-536-5766

Sisters Station
541-549-2302
Fax 541-549-1762

Riverwoods Station
19745 Baker Road
Bend, OR 97701
541-318-8361

Bend Station
541-388-6655
Fax 541-389-6835

Administration
541-388-6659
Fax 541-389-4454

Adult Jail
541-388-6661
Fax 541-383-5054

Regional Jail Facility
541-617-3312
Fax 541-389-6368

Special Services/SAR
541-388-6502
Emergency Services
541-617-3313
Fax 541-388-0793

August 11, 1999

TO: Commissioner Lisa Naito

FROM: Sheriff Greg Brown GB

SUBJECT: Vehicle Forfeiture Ordinance

I apologize for not being able to attend your hearing on the proposed Vehicle Forfeiture Ordinance. I strongly endorse this program and can't attend as I had a prior commitment.

You will probably hear rhetoric about Vehicle Forfeiture during the hearing from people that believe it targets certain population or economic groups. Please remember that nothing can be further from the truth.

The other night one of my deputies escaped serious injury when his patrol vehicle was totaled after being struck head-on by a drinking driver. At impact, my deputy knew nothing about the social economic class of the other driver, only that he had become a victim.

Vehicle Forfeiture is about **saving lives.** Commissioners, law enforcement officials, and many social service groups have tried to affect the problem of drinking drivers – all with somewhat limited success.

Vehicle forfeiture is not the complete answer but it is a very important tool. Back in 1992 when we started the vehicle forfeiture program, I was amazed by the change in drivers attitudes who understood there was no second chance for their vehicle. Drinking and driving behavior was immediately affected.

In 1992 Deschutes County enacted our Vehicle Forfeiture Ordinance followed by the City of Sisters, City of Redmond, and the City of Bend.

I made presentations at each of the hearings. Four governing boards and over twenty individual personalities on those boards presented some challenges as we were breaking new ground.

Each council or commission ultimately passed identical ordinances and we remain one of the few countywide forfeiture ordinances in the country.

To this day what impacted me the most during the hearings was the number of innocent victims who attended the hearings. These people came from all walks of life, from varied ethnic groups and with different economic levels. They came because they heard about the proposed ordinance and wanted to tell their story.

Even with the number of alcohol related incidents that I had been involved in over the years as a deputy sheriff, I had no idea that so many people had been impacted.

As you consider the proposed forfeiture ordinance please help remember and honor the many victims in our society and vote to give your law enforcement an important tool.

Following is a rebuttal to Mr. Windell's paper entitled "Driving Under the Influence of Intoxicants (DUII): Sanctions and Treatment – A Brief Review of the Literature

- In recent years, vehicle forfeiture has been proposed as an allegedly effective means of curbing DUII among chronic offenders.
  In 1994, California initiated a law which authorized the impoundment of all first time DUII vehicles. Studies show there was a substantial reduction (over 30%) of alcohol related accidents by those whose vehicles were impounded compared to the DUII drivers whose vehicles were not impounded. (California Dept. of Motor Vehicles)

  Minnesota law (confiscate vehicles and license plates)- recidivism rate 50% compared to those not impounded/seized. (MADD)

  New York City reports alcohol related traffic fatalities down 40% since Police Dept. has begun their focus on seizing the instrumentality of the crime of DUII – <u>The Vehicle</u>. (NYPD)

  Anchorage Alaska Forfeiture Program reports that deaths from DUII's dropped over 20% each of the past four years. (MADD)

- To the best of anyone's knowledge, there is but one study that focuses on the effectiveness of vehicle forfeiture as a penalty for DUII. According to an official of the National Highway Traffic Safety Administration, the primary reason for the deficiency is that, although several jurisdictions have laws permitting forfeiture, there have been too few cases to support a valid analysis of the effectiveness of the sanction.
  "It is believed that this study represents the only application of multivariate statistical analysis techniques to the assessment of the effectiveness of a forfeiture policy directed at any kind of criminal activity in the United States...Not only is Portland's forfeiture program at least as innovative as that of any jurisdiction which has received national attention, it also has the unique attribute of having verifiably worked." (Crosby, 1995, pg. 31-32)

- The single study that purports to support the effectiveness of forfeiture, in fact does not. Thus
  Most interestingly, having a vehicle seized nearly doubled expected time to rearrest. Having a vehicle actually forfeited did not have a significant effect over and above that associated with simply having it seized. (Crosby, 1995, pg.27)

  "While actual forfeiture did not predict any reduction in rearrest over and above that predicted by seizure alone, this does not mean that physical prevention of driving through the loss of a vehicle is not an important factor in reducing rearrest rates. Vehicles which are not forfeited are released to lien holders, spouses and other innocent owners on the understanding that their use will be withheld from offenders...If offenders are not driving subsequent to seizure, it is likely not because, strictly speaking, they are physically prevented from doing so, but rather that they choose not to take the necessary steps and resume driving, that is, THEY ARE DETERRED...While offenders may view brief jail terms with indifference and simply fail to pay fines, the loss of use of a vehicle through seizure or forfeiture is a tangible penalty...The investment which is lost in a vehicle which is forfeited may be considerable to them, even if the vehicle was of little value." (Crosby, 1995, pg.29-30)

- There is considerable support for various forms of separating the multiple DUII offender from his or her vehicle, including impoundment, license plate seizure or immobilization (DeYoung, 1997). However, "there is virtually no difference in recidivism rates between those who receive jail time or public service only and those who do not." (NCADD, 1999)

The Ordinance does not speak to the ability of Courts to sentence offenders to jail or public service or to mandatory treatment. The Ordinance provides a tool to aid in removing the instrumentality of the crime.

- The most effective programs are those that combine legal sanctions with treatment (NCADD, 1999, RIA, 1995). This is exactly what Oregon has been doing for nearly 20 years. The Oregon program has received national accolades and appears to be quite effective.
  In 1995 Portland police report 2169 arrests for DUII. Of these, 780 or 35.9% had prior arrests, and 674 or 31% related accidents were recorded, with 7 alcohol involved fatal accidents. In 1998, PPB reported 2604 arrests for DUII with 891 or 34.2% being re-offenders. The related accident rate was 813 or 31.2%, with 24 alcohol related fatal accidents reported. An increase of 29%.

- Nevertheless, there remains a small group of chronic DUII offenders that continues to trouble and frustrate citizens and law enforcement officials.
  Public Safety officials recommend Autoforfeiture and mandatory secure treatment as expanded weapons in the fight against these dangerous criminals.

- Rather than devising additional penalties, it might be worth pursuing further who these chronic offenders are and what might work to reduce their recidivism and perhaps reduce their problems with alcohol abuse. McCarty & Argeriou found that participation in a fourteen residential treatment program reduced the rearrest by half (20% to 10%).
  Public Safety officials would agree that mandatory secure treatment as well as Autoforfeiture would most likely decrease recidivism in these offenders. Multnomah County is constructing a 300-bed secure residential treatment center, which could accommodate any number of these offenders.

- Wilson (1991?) reported the results of a multi-variant cluster analysis of DWI and high-risk drivers in an effort to identify clinically relevant subtypes. Two of the subtypes, "characterized by thrill-seeking, hostility and irresponsibility, appear to conform to a 'problem-behavior' profile" (Wilson, 1991(?), pg. 1

- In sum, rather than additional penalties (Oregon and Multnomah County already have provisions for vehicle seizure and impoundment), what is likely required is additional study of chronic DUII recipients and the development of clinically appropriate treatment modalities. In some cases, this may mean occupational development programs, in others it may mean mental health care, particularly treatment for clinical depression.

Mr. Windell views Autoforfeiture as an additional penalty in the sentencing of DUII offenders. Public Safety officials view the process as one of removal of the instrumentality of the crime from repeat offenders, while they are appropriately treated for their crimes. The ultimate goal is the protection of Multnomah County citizens and the reduction of an unacceptable level of death and injury caused by these dangerous repeat offenders.

Dan Oldham 7/9/99

FAX TRANSMISSION

UNITED STATES DISTRICT COURT
1010 Fifth Ave Rm 609
Seattle WA 98104
206-553-4424
Fax: 206-553-0143

To:	Sgt. Pat Kelly Bob Azorr	**Date:**	July 30, 1999
Fax #:	(503) 823-0030	**Pages:**	1, including this cover sheet.
From:	Ian Crosby, Law Clerk		
Subject:	Forfeiture Study		

COMMENTS:

I am writing regarding Mr. Windell's drunk driving literature review and letter that you sent me. It appears to me that Mr. Windell misunderstands the findings of my 1995 study. In that study, I found that forfeiture predicted no statistically significant increase in recidivism over seizure alone *when cars that were seized from repeat offenders but not forfeited were returned to innocent third-party owners*. My study does not support the conclusion, which Mr. Windell apparently draws, that seizure alone is as effective as forfeiture when seized vehicles are instead returned to culpable owners. Indeed, my study could not support that conclusion, because my data set of arrests under the 1987 law contained no identifiable cases of returns to perpetrators.

Thank you for the opportunity to clarify my research. I look forward to hearing from you if I may be of further assistance.

Ian B. Crosby

DAVID DeYOUNG
Research Program Specialist

Department of Motor Vehicles
Research and Development Branch
2415 1st Avenue, MS F126
Sacramento, CA 95818
(916) 657-7954
ddeyoung@smtp.dmv.ca.gov

AN EVALUATION OF THE SPECIFIC DETERRENT EFFECT OF VEHICLE IMPOUNDMENT ON SUSPENDED, REVOKED AND UNLICENSED DRIVERS IN CALIFORNIA

By

David J. DeYoung

November 1997

Research and Development Branch
Licensing Operations Division
California Department of Motor Vehicles
RSS-97-171

EXECUTIVE SUMMARY

Background

The automobile is the primary mode of transportation in the United States, and while it offers the benefits of convenience and quick mobility, crashes involving autos exact a high societal toll and present a major public health problem. In 1995, there were more than 6.6 million motor vehicle crashes in the United States, with about one-third resulting in injury (NHTSA, 1996).

One avenue that has been pursued to ameliorate the crash problem in the United States is to identify and better control high risk drivers, typically through sanctions applied by the courts or law enforcement. Sanctions traditionally prescribed for high-risk drivers include fines, license actions (restriction/suspension/revocation), jail, community service, and alcohol treatment (and more recently ignition interlock) for alcohol-involved problem drivers. Studies examining the effectiveness of these sanctions have consistently found that license actions (plus alcohol treatment for drivers convicted of driving-under-the-influence [DUI]) are some of the most effective countermeasures available for reducing the subsequent crash and traffic conviction rate of high-risk drivers (DeYoung, 1997; Peck, 1991; Peck & Healey, 1995; Wells-Parker, Bangert-Drowns, McMillen & Williams, 1995).

While license actions, particularly suspension/revocation, are effective, it has been recognized for some time that they have significant limitations. Perhaps their major weakness is that they don't fully incapacitate the driver—as many as 75% continue to drive during their period of license suspension/revocation (Hagen, McConnell & Williams, 1980; van Oldenbeek & Coppin, 1965). And, while research has shown that suspended/revoked (S/R) drivers drive less often and more carefully during their period of license disqualification (Hagen et al., 1980; Ross & Gonzales, 1988), it has also been shown that they still pose an elevated traffic risk; DeYoung, Peck and Helander (1997) found that S/R drivers in California have 3.7 times the fatal crash rate as the average driver.

So, while license suspension/revocation is one of the most effective countermeasures currently available to attenuate the traffic risk posed by problem drivers, it is clear that there is considerable room for improvement. One relatively recent approach to strengthen license actions, and also to incapacitate S/R and

unlicensed drivers, targets the vehicles driven by such drivers. Vehicle-based sanctions can take a number of forms, from marking or confiscating license plates of drivers convicted of driving-while-suspended (DWS)/driving-while-unlicensed (DWU), to actually seizing and impounding/immobilizing the vehicle.

Impoundment/forfeiture programs have been implemented in Manitoba, Canada (1989); Portland, Oregon (1989), and; Santa Rosa, California (1993). While anecdotal evidence suggests that Santa Rosa's program may be associated with traffic safety benefits, the lack of systematic and rigorous study of this program precludes any conclusions about its effectiveness. However, both Manitoba and Portland's vehicle impoundment programs have been formally evaluated. The study of Manitoba's program, while limited due to the lack of statistical or design controls, indicates that impoundment is associated with reductions in both DWS/DWU recidivism and traffic convictions overall (Beirness, Simpson & Mayhew, 1997). The quasi-experimental study of Portland's program did employ statistical controls and thus is more definitive (Crosby, 1995). This study showed that impoundment reduced the recidivism rate of drivers whose vehicles were seized to about half that of a similar group of drivers whose vehicles were not taken.

More recently, Ohio implemented an impoundment and immobilization program for DWS and multiple DUI offenders. Voas, Tippetts and Taylor evaluated the implementation of this law in two counties, one of which impounded vehicles (in press) and the other which towed vehicles to the homes of offenders and immobilized them by installing a "club" device on the steering wheel (1997). Both programs were found to be effective, both in preventing recidivism through incapacitation while the vehicle was impounded/immobilized, and in deterring people from reoffending once the vehicle was released.

Current Study

The California legislature passed two bills during the 1994 legislative session prescribing vehicle impoundment (Senate Bill (SB) 1758) and vehicle forfeiture (Assembly Bill (AB) 3148), effective January, 1995. SB 1758 authorizes peace officers to seize and impound for 30 days vehicles driven by S/R or unlicensed drivers, while AB 3148 goes a step further by providing for the forfeiture of vehicles driven by S/R and unlicensed drivers who are the registered owners of the vehicles and who have a prior conviction for DWS/DWU.

California's impoundment/forfeiture laws are the first to attempt such sanctions on a large scale; there are about one million drivers in the state who are suspended/revoked at any given time, and another estimated one million who are unlicensed. The few rigorous studies of vehicle-based sanctions that have been conducted to date examine these sanctions undertaken on a relatively limited scale. The current study evaluates California's large-scale attempt at vehicle impoundment, and is designed to provide useful information to policy makers so that informed decisions on traffic safety can be made. This study is part of a joint project funded by NHTSA, which is being undertaken by the California Department of Motor Vehicles (DMV) and the National Public Services Research Institute (NPSRI). The California DMV has primary responsibility for the current study, which evaluates how impounding vehicles affects the subsequent driving behavior of S/R and unlicensed drivers who experience this sanction, as well as a follow-up study, which will examine the effects of impoundment on all S/R and unlicensed drivers in California, regardless of whether their vehicles are impounded.

Research Methods

Because there is no centralized database containing information on vehicles that have been impounded, it was necessary to rely on police departments and courts to provide this information. Four jurisdictions (Riverside, San Diego, Stockton and Santa Barbara) that had record systems which would allow impoundment data to be linked to driver record data in the DMV database were selected for inclusion in the study.

This study compares the 1-year subsequent driving records of subjects whose vehicles were impounded with similar subjects (i.e., S/R and unlicensed drivers) who would have had their vehicles impounded, but who did not because their driving offense occurred in 1994, the year before the impoundment/forfeiture laws were implemented. Because it was not feasible to randomly assign subjects to impound or no-impound groups, statistical controls were used to attempt to control potential biases resulting from pre-existing differences between the groups. While statistical techniques, such as the analysis of covariance (ANCOVA) used in this study, help control bias, they do not ensure that all sources of bias have been

controlled. Thus, the results of the analyses do not prove that differences in subsequent traffic convictions/crashes between impound and control group subjects are due to the effects of vehicle impoundment, as much as they portray the associations between the two.

Results and Discussion

Subsequent DWS/DWU convictions

The results from the ANCOVA analysis showed that drivers who had their vehicles impounded had a significantly lower average rate of subsequent DWS/DWU convictions than drivers whose vehicles were not impounded. Furthermore, the effects of impoundment were more pronounced for repeat offenders. That is, while impoundment was associated with lower rates of subsequent DWS/DWU convictions for both first and repeat offenders in the impound group, relative to their counterparts in the control group, this difference was significantly greater for repeat offenders than it was for first offenders. The results are presented in Figure 1, below.

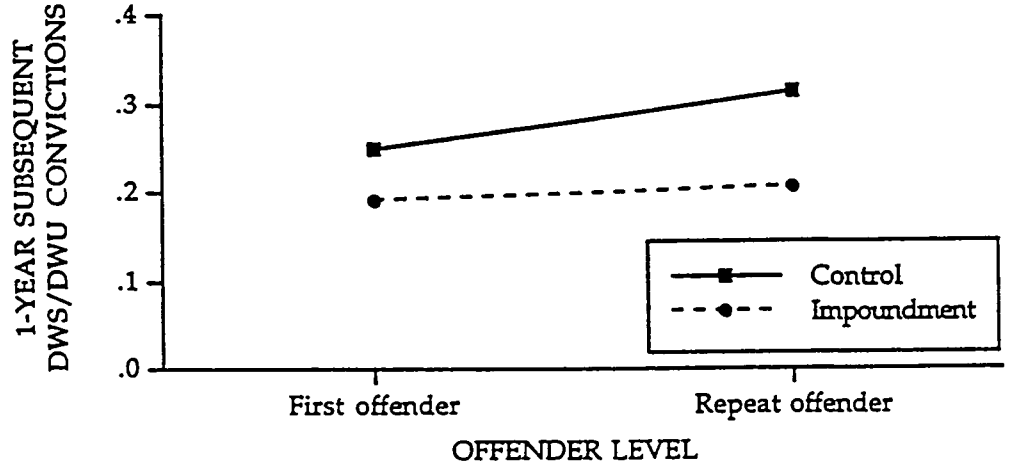


Figure 1. Adjusted subsequent DWS/DWU convictions for vehicle impoundment versus control groups, by number of prior DWS/DWU convictions.

Importantly, the effects of vehicle impoundment on subsequent DWS/DWU convictions are not only statistically significant, they are also large enough to be meaningful from a policy perspective. For first offenders in the impound group, the subsequent DWS/DWU conviction rate is 23.8% lower than the first offender control group rate, and for repeat offenders it is 34.2% lower. These findings are similar to those found for civil forfeiture in Portland Oregon (Crosby, 1995), and for vehicle immobilization (Voas et al., 1997) and impoundment (Voas et al., in press) in Ohio, and thus provide further evidence that such vehicle-based sanctions can lower recidivism rates of suspended/revoked and unlicensed drivers.

Subsequent total traffic convictions

The overall ANCOVA analysis demonstrated that drivers whose vehicles were impounded had a lower average rate of subsequent total traffic convictions than drivers who did not lose their vehicles, and that this difference was highly statistically significant. The analysis also showed that this lower rate of subsequent traffic convictions for impound versus control group drivers was greater for repeat offenders than for first offenders, although this finding approached but did not quite reach conventional levels of statistical significance. These results are portrayed in Figure 2 below.

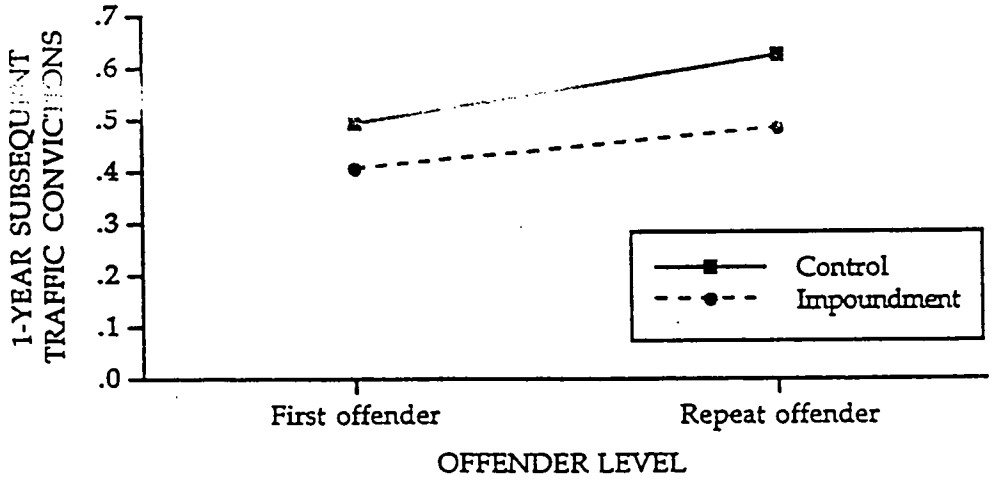


Figure 2. Adjusted subsequent traffic convictions for vehicle impoundment versus control groups, by number of prior DWS/DWU convictions.

The effects of vehicle impoundment on subsequent total traffic convictions are both statistically significant and large enough to be considered meaningful; the rate for first offenders in the impound group is 18.1% lower than for their counterparts in the control group, and it is 22.3% lower for repeat offenders in the impound group relative to repeat offenders in the control group. Thus, these findings show that vehicle impoundment not only keeps S/R and unlicensed drivers from driving when they shouldn't be (e.g., subsequent DWS/DWU convictions), it also appears to have salutary effects on their overall subsequent driving behavior.

Subsequent crashes

The results from the ANCOVA model evaluating the effects of vehicle impoundment on subsequent crashes revealed that drivers whose vehicles were impounded had significantly fewer crashes, on average, than drivers whose vehicles were not impounded. As with the previous analysis (which examined subsequent traffic convictions), the analysis of subsequent crashes showed that while the difference between impound and control subjects on this measure was greater for repeat offenders than it was for first offenders, this result approached but did not quite reach statistical significance. Given that this trend of stronger effects of impoundment for repeat offenders was observed with all three outcome measures, it is likely that impoundment may, in fact, actually be more effective in curbing crashes for repeat offenders. The results of the analysis are shown in Figure 3 below.

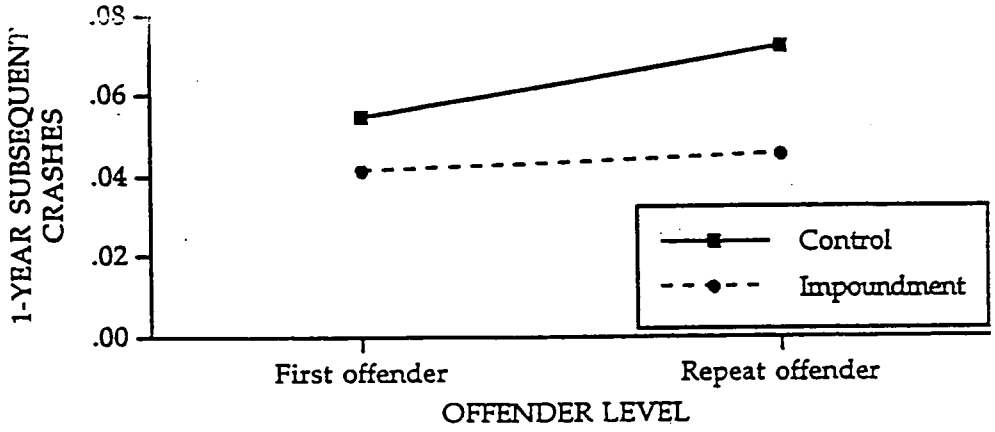


Figure 3. Adjusted subsequent crashes for vheicle impoundment versus control groups, by number of prior DWS/DWU convictions.

The findings from the analysis of subsequent crashes, like those from the other two outcome measures previously described, are of a sufficient magnitude to be both statistically significant and also to have important policy implications. First offenders who have their vehicles impounded have 24.7% fewer subsequent crashes than first offenders in the control group, while repeat offenders in the impound group have 37.6% fewer crashes than their counterparts in the control group. These findings, considered along with those evaluating the effects of vehicle impoundment on traffic convictions, strongly suggest that this countermeasure has a substantial effect in improving traffic safety.

Conclusion

The findings reported here provide strong support for impounding vehicles driven by suspended/revoked and unlicensed drivers. They add weight to a small but growing body of evidence that vehicle-based sanctions, whether they involve immobilizing vehicles for a period of time through such devices as a "club" on the vehicle's steering wheel, or whether they consist of simply seizing and impounding vehicles, are an effective means for controlling the risk posed by problem drivers. It is especially noteworthy that vehicle impoundment appears to be even more effective with repeat offenders, a group whose high-risk driving has traditionally been resistant to change.

Information obtained from a survey of law enforcement agencies in the state has shown that while vehicle impoundment has been widely implemented, forfeiture is simply not being used on any significant scale; thus, this study is really a study of vehicle impoundment, not vehicle forfeiture. While concern has been expressed about the failure of California law enforcement agencies and courts to utilize vehicle forfeiture, in the end this lack of utilization of forfeiture may not matter much. Impounding vehicles is having a substantial positive effect in California, and if Crosby's (1995) findings in Oregon hold in California as well, going the extra step of forfeiting vehicles may not produce much added benefit.

CITY OF
PORTLAND, OREGON
BUREAU OF POLICE

VERA KATZ, MAYOR
Charles A. Moose, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

MEMORANDUM

July 14, 1999

TO: The Honorable Mayor Vera Katz
Portland Police Bureau Commissioner
Chief Charles A. Moose

FROM: Captain James C. Ferraris
Drugs & Vice Division

SUBJECT: Proposed Revision to City of Portland Forfeiture Ordinance

Last year, drunk drivers caused 813 accidents in the City of Portland. Hundreds of citizens were injured. Twenty-five people died. Since 1995, the rate of drunk driving-related fatalities in Portland has been increasing by 40% annually. On average, seven drivers a day are arrested in this city for driving under the influence of intoxicants. Hundreds more are not caught. Every one is a potential tragedy ready to occur. The number of people killed is rising each year; 7 in 1995, 12 in 1996, 19 in 1997.

The twenty-five (25) Portlanders killed last year were from every part of society. They were truly innocent victims. The burden on the citizens of Portland is widespread. Millions of dollars are spent on medical bills, police services, jails, courts, insurance payments, etc. The cost in human misery is incalculable.

Traditional sanctions—license suspension, incarceration, fines and mandatory treatment have had minimal effect on the severity of the drunk driving problem in the U.S. It is still the nation's most frequently committed violent crime.

In a recent poll conducted by the U.S. Dept. of Transportation (1997), over 50% of Americans ranked drunken driving as the #1 social issue which needs addressing. Last year the total number of drunk drivers arrested by Portland police equaled one-half of 1% of the City's population. Also, one-third of these drivers were repeat offenders. The fact that nationwide, over 17,000 people are killed annually, does not have a deterrent effect on the offenders.

The City of Portland has proven that it is possible to deter drunk drivers. Other cities and states have also found that positive, common sense approaches to this problem can work. The basic idea being used in various cities, with great success is this: A drunk driver, when caught, has his or her vehicle impounded. When it is released, the driver is warned that a second offense could result in the actual forfeiture of the vehicle. This impoundment and the threat of, or actual forfeiture of the vehicle, for repeat offender reduces the recidivism rate by half in almost all of studies referenced. (See attached statistics.)

Since 1989, Portland has been at the forefront in forfeiture law, following the lead of the State of Oregon Legislature. Our current City ordinance allows for the forfeiture of a vehicle when soliciting prostitution or driver is arrested for driving with a suspended license for a past DUII (driving under the influence), or other specific criminal driving offenses.

The application of this ordinance as it applies to prostitution "johns" works very well. Over 95% of the "johns" arrested have their vehicles seized. First-time offenders are able to get their vehicles back the next working day. A second offense can result in the forfeiture of the vehicle.

The proposed revisions to this ordinance will allow for more clear and consistent application of the law as it relates to the DUII drivers, criminal suspended drivers, and drivers that attempt to elude the police. For example, in 1998, only 172 of the 891 repeat DUII offenders' vehicles were seized. Hundreds of drivers with criminally suspended licenses repeatedly are cited and continue to drive their cars. Finally, drivers that attempt to outrun the police in a chase and are caught—as detrimental to society as this act is—do not currently have to fear the loss of their vehicles.

The simplicity of the revisions would be as follows:

> All second time DUII offenders, repeat criminally suspended drivers, and "johns" or prostitutes that are arrested at least 2 times and use their vehicles to facilitate the crime will face possible forfeiture of their vehicles. People who engage in police pursuits could face forfeiture for a first offense. This more serious response is needed because one-third of these chases ends in death, injury, or property damage.

All of the following safeguards will continue to accompany the forfeiture process:

1. A forfeiture notice is given to the offender upon impoundment of the vehicle. This notice explains the full process and is signed by the issuing officer.
2. A review of the investigation by a supervising officer.
3. The review of all aspects of the case by the Forfeiture Unit Sergeant. If satisfactory, it is forwarded to the City or District Attorney's office.
4. A review and filing of the case by the City or District Attorney.

5. The opportunity to have the case heard in civil court, and in the appellate court.
6. The Internal Affairs complaint process.
7. The State of Oregon's Asset Oversight Review Committee's complaint process.
8. The opportunity to return to present their case to the Forfeiture Unit Supervisor if they are acquitted in their criminal case. All cases are considered on an individual basis.
9. The open-door policy of the Forfeiture Unit to discuss a case with a complainant at any time.
10. The adherence to State Forfeiture Policy guidelines involved (under ORS485A).

The Portland Police Bureau is very responsible in our decision-making, and we consider it extremely important to be fair when the seizure and possible forfeiture of an individual's property is at stake. We are confident that the process in Portland works. The Internal Affairs Division has received fewer than a handful of complaints, relating to the thousands of forfeiture cases the Portland Police Bureau processes. These complaints are usually resolved immediately.

It is expected that the number of cars impounded each year will triple with the revisions proposed in this ordinance. This will cause an increased workload in the Forfeiture Unit, the City Attorney's Office, and will create a need for a larger vehicle storage arrangement. These administrative troubles will be absorbed. The most important changes that will undoubtedly occur will be the fact that lives will be saved, scores of injuries will be avoided, and the tiny percentage of the population that continues to drive intoxicated will have ample reason and warning to stop repeating their crimes.

The following statistics and case studies are from cities throughout the U.S. and organizations such as MADD, the National Highway Transportation & Safety Administration (NHTSA), and various law enforcement agencies. The first group of statistics will detail the depth of the problem that needs to be addressed, and the second section will show some very successful programs and results, whose main component is the impoundment and forfeiture of vehicles driven by drunk drivers.

Portland DUII Statistics

	1993	1994	1995	1996	1997	1998
• Arrests:	2054	1970	2169	2318	2153	2604
• Prior Arrests:	745	757	780	900	806	891
• Accidents Involved:	635	662	674	820	734	813
• Fatal Accidents (Alcohol involved):			7	12	19	24

(Source: Portland Police Bureau Traffic Division)

- Approximate fatalities in alcohol-related deaths average over 16,000 per year in the U.S. (MADD 1998)

- In 1997, two alcohol-related deaths on the highways per hour (the equivalent of two jet airliners crashing each week. (NHTSA 1997)

- While most drivers involved in fatal crashes have not had prior convictions for DUII, those who do are at significantly greater risk of causing a drunk driving crash. (NHTSA 1997)

- A driver with a blood alcohol content of .15 is more than 300 times more likely to be involved in a fatal crash. (NHTSA 1997) Note: Average blood alcohol of DUII suspects arrested in Portland: .17.

- In California, drivers with suspended or revoked licenses have 3.7 times the fatal crash rate as the average driver. (NHTSA 1998)

- 38% of all traffic fatalities in the U.S. involve alcohol. (NHTSA 1998)

- Over 1,000,000 people were injured in alcohol related accidents in 1997. (NHTSA 1998)

- Drunk driving is the nation's most frequently committed violent crime. (MADD)

Use of the impoundment forfeiture laws to address these problems:

- In 1994, California initiated a law, which authorized the impoundment of all, first time DUII vehicles. Studies show there was a substantial reduction (over 30%) of alcohol-related crashes by those whose vehicles were impounded compared to the DUII drivers whose vehicles were not impounded. (California Dept. of Motor Vehicles)

- In Hamilton County, Ohio, seizure of DUII vehicles resulted in a "substantial reduction" in the recidivism rate. (NHTSA1999)

- A Minnesota law, which confiscates vehicles and/or license plates, lowered the recidivism rate 50% compared to those offenders not subjected to impoundment and confiscation. (MADD)

- "Booze It and Loose It" crackdown in North Caroline has cut late night DUII driving incidents in half. (MADD)

- Deschutes County, Oregon, reduced DUII incidents by 50%, while the population increased 100%. This was done with an impoundment ordinance, leading to the possible forfeiture of repeat DUII offenders. (Deschutes County, Oregon)

- New York City – Alcohol-related traffic fatalities down 40% since the NYPD has begun their focus on seizing the instrumentality of the crime of driving while intoxicated—the vehicle. (NYPD)

- NYPD Civil Enforcement Unit claims forfeiture actions/policies are main contributors to the 40% average reduction in all index crimes.

- Anchorage, Alaska, Forfeiture Program – Deaths from DUII's dropped over 20% each of the past four years. (MADD)

- Cost of Forfeited Programs – If not revenue neutral, is offset by the police resources conserved each time a condition is corrected. Additionally, the public benefits from improved livability and the reduction of the fear and frequency of serious crime. (Reed College Study)

- The City of Portland's DUII vehicle forfeiture law has resulted in "an unqualified success—it significantly reduces the threat to innocent parties on the public roadways." (Reed College Study)

The Portland Police Bureau wants to improve on this success. We have been working diligently to determine how the City Forfeiture Ordinance could be used more effectively and applied more fairly. We have met repeatedly with local judges, attorneys, citizen groups, alcohol industry lobbyists, and government leaders. All are in agreement that repeat DUII offenders should not be driving. Lisa Naito of the Multnomah County Board of Commissioners has spearheaded this cooperative effort and will present a similar DUII forfeiture ordinance to the Multnomah County commissioners. We support her in that effort.

Attached to this letter is the draft City of Portland Forfeiture Ordinance, with revisions inserted. Also, attached is our flow chart that describes the procedures followed by the Portland Police Bureau during the impoundment and possible forfeiture of an arrested subject's vehicle.

Thank you very much for your time and for your attention to this serious issue.

Sincerely,

JAMES C. FERRARIS
Captain

JCF/cd

CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
City Hall, Suite 430
1221 S.W. 4th Avenue
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax No.: (503) 823-3089

July 13, 1999

INTEROFFICE MEMORANDUM

TO: Lt. Larry Kochever, Drugs and Vice Division
Sgt. Patrick Kelly, Drugs and Vice Division

FROM: Linda S. Law
Deputy City Attorney

SUBJECT: Forfeiture Ordinance

For ease of reading, enclosed you will find a copy of how Portland City Code Chapter 14.90 will appear if the proposed ordinance is approved by council. It does not show the bracketing and underlining, and written directions of council that are required in a draft ordinance.

As I informed you earlier, it is anticipated that the council will be making city wide cleanup of the city code, deleting unconstitutional or redundant code sections, clarifying current sections, adding new sections, and changing section numbers. Thus, even upon passage by city council, there will be certain technical amendments to the forfeiture code.

LSL:il
Enc.

\\ATTORNEY\SYS\ATLINDAL.WRK\FORFEITU\kochever713.doc

Chapter 14.90

FORFEITURE
(Proposed July 12, 1999)

Sections:

14.90.010 Certain Vehicles as Nuisances.

The following motor vehicles are hereby declared to be nuisances and subject to seizure and in rem civil forfeiture:

A. A motor vehicle operated by a person whose operator's license is criminally suspended or revoked under ORS 811.182.

B. A motor vehicle used to commit Driving Under the Influence of Intoxicants in violation of ORS 813.010.

C. A vehicle within which an act of prostitution as prohibited by PCC 14.36.065 or as defined in ORS 167.007 has occurred.

D. A motor vehicle used to commit Fleeing or Attempting to Elude Police under ORS 811.540.

14.90.020 Forfeiture Proceedings.

All in rem civil forfeiture proceedings pursuant to this Chapter shall be done in accordance with the provisions of Oregon Revised Statutes Chapter 475A.

14.90.030 Prostitution.

(Added by Ord. No. 162675, Jan. 11, 1990.) Conduct involving violation of, solicitation to violate, attempt to violate or conspiracy to violate any provision of ORS 167.002 to 167.027 is hereby declared to be prohibited conduct, and any property that is used to commit or which is proceeds of the prohibited conduct is hereby declared to be subject to forfeiture, as limited by the provisions of 14.90.020.

14.90.040 Gambling.

(Added by Ord. No. 162675, Jan. 11, 1990.) Conduct involving violation of, solicitation to violate, attempt to violate or conspiracy to violate any provision of ORS 167.117 to 167.166 is hereby declared to be prohibited conduct, and any property that is used to commit or which is proceeds of the prohibited conduct is hereby declared to be subject to forfeiture, as limited by the provisions of 14.90.020.

Chapter 14.90

FORFEITURE

(Added by Ord. No. 162568,
effective Dec. 6, 1989.)

Sections:

14.90.010 Certain Vehicles as Nuisances.
(Amended by Ord. No. 163438; and 165594, July 8, 1992.) The following motor vehicles are hereby declared to be nuisances and subject to forfeiture:

A. A motor vehicle operated by a person whose operator's license is suspended or revoked as a result of conviction for:

1. Driving under the influence of intoxicants in violation of the provisions of ORS 813; or

2. Any degree of manslaughter or criminally negligent homicide, as those terms are defined in ORS Chapter 163 involving a motor vehicle.

B. A motor vehicle operated by a person who has been determined to be a habitual traffic offender under the terms of ORS 809.600 to 809.660 and who has been convicted within 5 years of the date of the seizure for driving under the influence of intoxicants in violation of the provisions of ORS Chapter 813.

C. A vehicle within which an act of prostitution as prohibited by 14.36.065 or as defined in ORS 167.007 has occurred.

14.90.020 Forfeiture Proceedings.
All forfeiture proceedings pursuant to this Chapter shall be done in accordance with the provisions of Oregon Laws, Chapter 791 (1989).

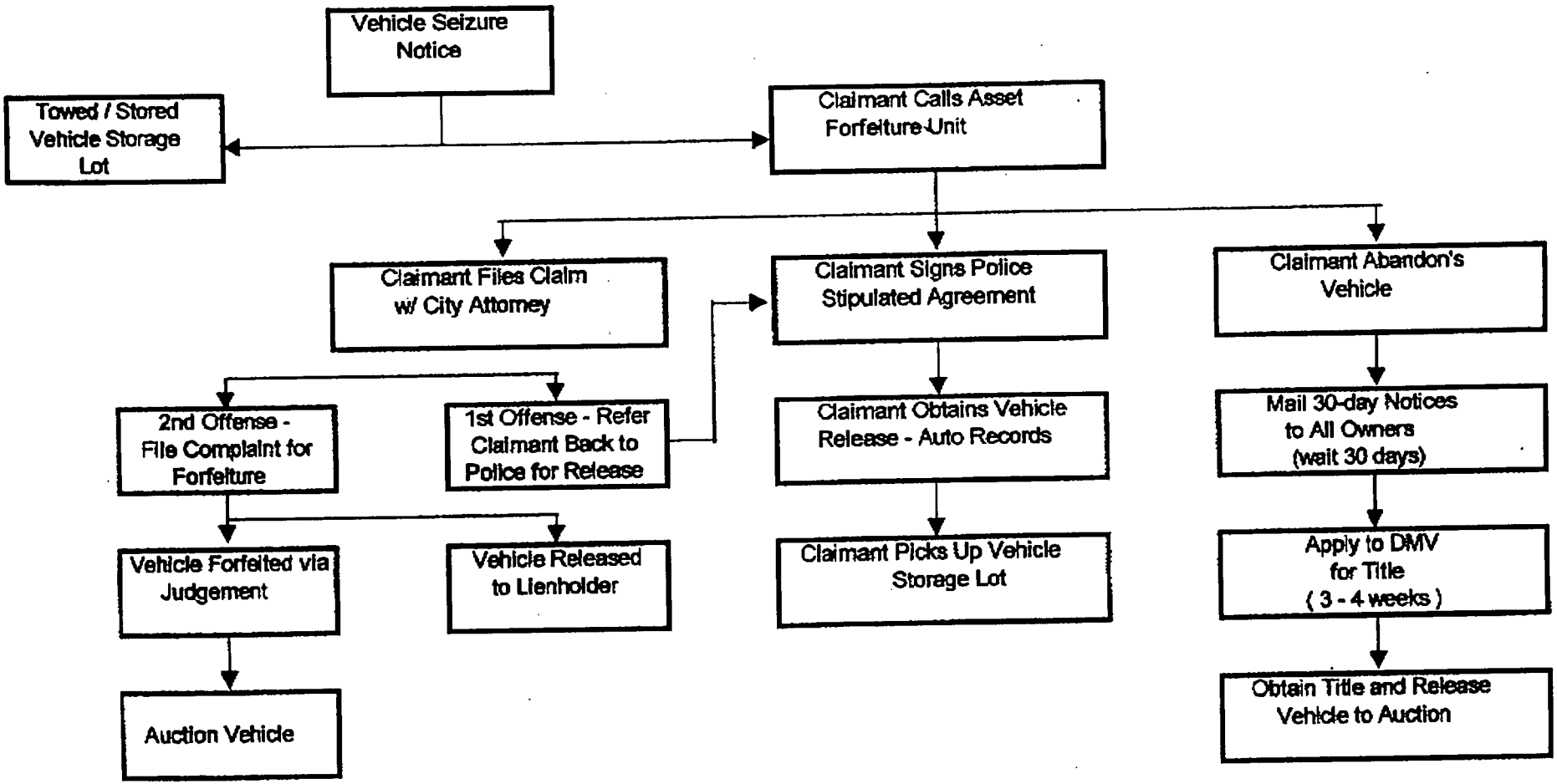
14.90.030 Prostitution.
(Added by Ord. No. 162675, Jan. 11, 1990.) Conduct involving violation of, solicitation to violate, attempt to violate or conspiracy to violate any provision of ORS 167.002 to 167.027 is hereby declared to be prohibited conduct, and any property that

is used to commit or which is proceeds of the prohibited conduct is hereby declared to be subject to forfeiture, as limited by the provisions of 14.90.020.

14.90.040 Gambling.

(Added by Ord. No. 162675, Jan. 11, 1990.) Conduct involving violation of, solicitation to violate, attempt to violate or conspiracy to violate any provision of ORS 167.117 to 167.166 is hereby declared to be prohibited conduct, and any property that is used to commit or which is proceeds of the prohibited conduct is hereby declared to be subject to forfeiture, as limited by the provisions of 14.90.020.

FLOW CHART OF VEHICLE SEIZURES - Police Agencies



SHARRON KELLEY
Multnomah County Commissioner
District 4

Portland Building
1120 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204
(503) 248-5213
E-Mail: sharron.e.KELLEY@co.multnomah.or.us

MEMORANDUM

TO: Board of Commissioners

FROM: Commissioner Sharron Kelley

RE: DUII Forfeiture Ordinance
Agenda Item R-5

DATE: August 12, 1999

I write to share with you the numerous problems with the ordinance on the agenda.

1. The ordinance gives to much power to law enforcement.

   A. Individuals would be subject to forfeiture on their very first arrest if they do not sign the last chance agreement.

   B. Individuals would be subject to forfeiture on their very first arrest after the ordinance passes if they have a prior DUII arrest within ten years and are therefore not eligible for diversion and the last chance agreement.

   C. Individuals would be subject to forfeiture even if they are never convicted.

   D. The state legislature extensively considered this topic and came up with a less punitive approach (HB 3304 has passed both houses and is on the governor's desk). Under HB 3304, individuals would be subject to forfeiture for driving under the influence within three years of a prior conviction or bail/security forfeiture. The state essentially would forfeit on

the third strike: diversion, conviction, forfeiture – whereas this is a one or two strike ordinance.

E. The ordinance before you is even more punitive than the Deschutes County ordinance on which it claims to be modeled. In Deschutes County, individuals become subject to forfeiture on the second arrest, and are then are given a last chance agreement (or a third chance if they sign).

2. Impoundment alone is sufficient to address public safety issues in the aftermath of a drunk driving incident. The Board should adopt an ordinance that more effectively impounds vehicles if the state impoundment law is a problem. The county also has the option to use forfeiture if the Governor signs HB 3304 when those underlying criteria are met.

3. Multnomah County ordinances only apply to the unincorporated areas. Most DUIIs (about 74 percent) take place in the City of Portland. The current County code matches the City of Portland Code. It makes more sense for the county consider updating its code in the unincorporated areas if and when the City deliberates over the issues and updates its code.

4. The Board should not adopt the ordinance without reviewing the budget for costs under the ordinance and the allocation of revenues. There is no budget yet, but MCSO will seek advance funds from contingency for an unknown amount. If the ordinance fails to fund itself it will detract from other county efforts. There should also be advance agreements on the allocation of revenues in the event these exceed the original expenditure plan.

5. Forfeiture has not been shown to have a deterrent effect beyond the effect of impoundment. Forfeiture is not comparable to gun regulations such as background checks. Repeat offenders can still buy or rent cheap cars and reoffend. They can even repurchase their own cars at auction.

6. The effect on offenders is unnecessarily punitive and in some cases will increase resistance to treatment. DUII offenders in Multnomah County are already subject to an array of consequences:

Current DUII Fees and Fines

DUII Diversion

Filing Fee under ORS 813.240; 813.210(2).	$237
Diagnostic Assessment Fee under ORS 813.240(2); 813.210(3).	$ 90
Victim Impact Treatment Fee under ORS 813.235	$ 5 – 50
Provider Assessment	$95 - 150
Information = 12 – 20 hours x $35 - $50 per hour	$420 - $1000
Rehabilitation = 40+ hours x $35- $50 per hour	$1400+
Tow Fee	$81
Impound Fee @ $15 per day	$15
Annual Auto Insurance Increase	$1500 - $3000
DMV Hearing Attorney Fees	$1000 - $3000

DUII Conviction

I. Jail under DA Guidelines

First Conviction: If no prior diversion, 3 days jail or 80 hours alternative community service

If prior diversion, 4 days jail or 120 hours alternative community service

2 years bench probation

Second Conviction: 5 – 30 days of jail
3 years bench probation

Third Conviction:

If pleading guilty: 5 days jail followed by electronic and random monitoring

If guilty at trial: 30 – 90 days jail + 3 years formal probation

Fourth Conviction:

If pleading guilty: 10 days jail followed by electronic and random monitoring

If guilty at trial: six months jail with credit for up to 90 days for in-patient treatment

Fifth Conviction:

If pleading guilty: 15 days jail followed by electronic and random monitoring

If guilty at trial: 180 days jail or Intensive Supervision Program

Sixth conviction -

If pleading guilty: 20 days jail followed by electronic and random monitoring

If guilty at trial: 12 months jail

Seven or more convictions: 12 months jail

II. In addition to jail, fines (under DA Guidelines as follows)

First or Second Conviction: $565 or 100 hours alternative community service

Third Conviction -

If pleading guilty: $565 or 100 hours alternative community service

If guilty at trial: $700 or 140 hours alternative community service

Fourth Conviction:

If pleading guilty: $700 or 140 hours alternative community service

If guilty at trial: $800 or 160 hours alternative community service

Fifth Conviction -

If pleading guilty: $800 or 160 hours alternative community service

If guilty at trial: $1000 or 200 hours alternative community service

Sixth Conviction -

If pleading guilty: $900 or 180 hours alternative community service

If guilty at trial: $1000 or 200 hours alternative community service

Seven or more convictions: $1000 or 200 hours alternative community service

III. Other Expenses in addition to Jail and Fines

Unitary Assesment (court costs)	$ 90
Court Fee under ORS 813.020(1)(a); 813.030	$130
Examination Fee under ORS 813.020(1)(b)(B)(Central Intake)	$ 90
Provider Assessment	$ 95 - 150
Information = 12 – 20 hours X $35 - $50 per hour or	

Rehabilitation = 40+ hours x $35- $50 per hour		$420 - $4000
Victim Impact Panel Fee ORS 813.020(3)		$ 15
Formal Probation Fee: $25 per month		$150 - 900
Tow Fee		$ 81
Impound Fee @ $15 per day	$ 15	
DMV Suspension Restoration Fee ORS 809.030	$ 10	
Attorney Fees	$350 -	$10,000
Increase in cost of private insurance	$1800 -	$3600

Suspension of Drivers License: ORS 813.400(2); 809.420(Schedule II) =

One Year for First Offense;

Three Years for a Second Offense and subsequent if within five years after the prior conviction; one year for subsequent offense if more than five years have passed since the prior conviction.

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

Enrolled

House Bill 3304

Sponsored by Representative UHERBELAU; Representatives ATKINSON, BACKLUND, GARDNER, HOPSON, JENSON, LEHMAN, LEONARD, LUNDQUIST, MANNIX, MORRISETTE, PATRIDGE, PIERCY, ROSENBAUM, SHETTERLY, STARR, TAYLOR, THOMPSON, Senators BROWN, BRYANT, HANNON (at the request of Angela Barber)

CHAPTER .....

AN ACT

Relating to driving offenses.

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

SECTION 1. { + Section 2 of this 1999 Act is added to and made a part of ORS chapter 809. + }

SECTION 2. { + (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been convicted of or forfeited bail or security for:

(a) Driving while under the influence of intoxicants in violation of ORS 813.010, or its statutory counterpart in another jurisdiction; or

(b) Murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state or in another jurisdiction.

(2) All seizure and forfeiture proceedings under this section shall be conducted in accordance with ORS chapter 475A. + }

SECTION 3. { + (1) The seizure and forfeiture provisions of section 2 of this 1999 Act do not preempt a city or county ordinance enacted and in effect on June 22, 1999, relating to forfeiture of a motor vehicle operated by a person described in section 2 of this 1999 Act.

(2) The seizure and forfeiture provisions of section 2 of this 1999 Act do not preempt a city with a population exceeding 400,000 or a county with a population exceeding 500,000 from enacting, on or before January 1, 2000, an ordinance relating to seizure and forfeiture of a motor vehicle operated by a person described in section 2 of this 1999 Act.

(3) Notwithstanding subsections (1) and (2) of this section, seizure and forfeiture procedures in a city or county ordinance relating to seizure and forfeiture of a motor vehicle operated by a person described in section 2 of this 1999 Act shall be in accordance with ORS chapter 475A. + }

Deschutes County

Chapter 10.20. VEHICLE NUISANCES - FORFEITURE

10.20.010. Certain vehicles as nuisances.
A motor vehicle is hereby declared to be a nuisance and subject to forfeiture when either of the following occurs:

A. The motor vehicle is operated by a person whose operator's license is suspended or revoked or in violation of a hardship or probationary permit in violation of the provisions of Oregon Revised Statutes 811.182; or

B. The motor vehicle is operated by a person under the influence of intoxicants in violation of Oregon Revised Statutes 813.010, and, in addition, the person has:
   1. Habitual offender status under Oregon Revised Statutes 809.640 or its statutory counterpart in any jurisdiction; or
   2. Participated in a driving under the influence of intoxicants diversion program as provided for by the Oregon Statutes, or its statutory counterparts in any jurisdiction within ten years prior to arrest or citation; or
   3. Been convicted or forfeited bail or security within the previous ten years of:
   a. Driving Under the Influence of Intoxicants under Oregon Revised Statutes 813.010 or its statutory counterpart in any jurisdiction; or
   b. Any degree of murder, manslaughter, criminally negligent homicide, assault, recklessly endangering another person, menacing, or criminal mischief resulting from the operation of a motor vehicle, or its statutory counterparts in any jurisdiction; or
   c. Any crime punishable as a felony with proof of a material element involving the operation of a motor vehicle, or its statutory counterparts in any jurisdiction; or
   d. Failure to perform the duties of a driver under Oregon Revised Statutes 811.705, or 811.700 (commercial motor vehicle), or its statutory counterparts in any jurisdiction; or
   e. Reckless driving under Oregon Revised Statutes 811.140 or its statutory counterpart in any jurisdiction; or
   f. Fleeing or attempting to elude a police officer under Oregon Revised Statutes 811.540 or its statutory counterpart in any jurisdiction.

(Ord. 98-045 § 1, 1998; Ord. 92-022 § 1, 1995)

10.20.020. Impoundment.
Any vehicle declared a nuisance and subject to forfeiture by this chapter may be impounded at the time of arrest or citation of the driver for:

A. Criminal driving while suspended or revoked or in violation of a hardship or probationary permit in violation of Oregon Revised Statutes 811.182; or

B. Driving under the influence of intoxicants in violation of Oregon Revised Statutes 813.010.

(Ord. 92-022 § 1, 1992)

10.20.030. Forfeiture proceedings.
All forfeiture proceedings pursuant to this chapter shall be conducted in accordance with sections 1 to 14 and 22 chapter 791, Oregon Laws, 1989, as amended by chapters 218, 237, 276, 291, 791, 800, 924, and 934 sections 4, 5 and 6, Oregon Laws, 1991, and chapter 699, sections 13-16, Oregon Laws, 1995.
(Ord. 98-012 § 1, 1998; 92-022 § 1, 1992)

DESCHUTES COUNTY

Sheriff's Department

1100 N.W. Bond Street, Bend, Oregon 97701 • (541) 388-6655
Darrell D. Davidson Sheriff

October 4, 1996

TO: Michael Harrison

FROM: Lieutenant Greg Brown GTB

SUBJECT: Forfeiture Program

In 1992 a group of citizens met with Deschutes County law enforcement officials to address the continuing problem of drunk driving. Deschutes County was growing, and continues to grow at the fastest rate of any county in the state. The Sheriff's Department had a very pro-active traffic safety team that had reduced serious injury accidents from 350 per year to 175.

A group called the Criminal Justice Advisory Coalition which was a spinoff from a defunct MADD group was proving effective with court watch programs but felt more needed to be done with Driving Under the Influence of Intoxicants. The group proposed a vehicle seizure program and enlisted my help.

At the meeting with law enforcement officials and the advisory group it was first agreed that Deschutes County would take the lead in the proposed ordinance and that the Cities of Bend, Redmond, and Sisters would then follow.

THE ORDINANCE

An ordinance was crafted that did the following:

1. The vehicle was declared a nuisance. This effectively removes several legal arguments effecting forfeiture programs. It is argued in court that the vehicle is the nuisance and is being abated.

2. The ordinance allowed for the seizure of vehicles from operators arrested for DUII who had one prior diversion or conviction for DUII within a prior ten year period.

3. The ordinance allowed for the seizure of vehicles from operators arrested for Criminal Driving While Suspended which includes Misdemeanor - Felony - or Habitual Offender.

4. The ordinance also allowed for vehicle forfeitures based upon serious traffic offenses such as Eluding, Vehicle Manslaughter and other such offenses.

There was a lot of debate about when to seize a DUII vehicle. Some committee members wanted to seize on the first arrest and others on the second or third. It was finally agreed that a vehicle could be seized after one prior conviction or diversion.

PROGRAM IMPLEMENTATION

Deschutes County was first to adopt the ordinance which went into effect in August 1992. Because it was a county ordinance it could not be enforced within incorporated cities. The Cities of Sisters and Redmond followed in December and the City of Bend in March of 1993.

VEHICLE RELEASE PROGRAM

A vehicle release program was established as a means of allowing certain offenders the opportunity to have their vehicle released. The driver and registered owner if different have to agree to sign a vehicle release agreement that establishes the reason for the seizure, a stipulated judgement is signed for a future arrest while operating the same vehicle, and a $125.00 administrative fee is paid. The vehicle hold is then released and the operator pays their tow bill. Vehicles eligible for release are those operated by a driver who is DWS-M and/or DUII who has one arrest or diversion for DUII.

TOWING

Deschutes County put the forfeiture towing program out to bid and selected one vendor. A two tiered rate structure was established. For vehicles released through a VRA, standard two rates are charged and 10% of the total bill is credited back to the Sheriff's Department. A lower rate is charged for vehicles that the Sheriff's Department receives a judgement on. For example normal storage costs are $15 per day but the Sheriff is charged $1 per day. These charges are offset by the 10% credit which means a vehicle that is towed and stored for 45 to 60 days will have and average $100 bill owed by the Sheriff.

#1

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME Paul Thalhofer

ADDRESS 220 SW Cherry Park Rd
Troutdale OR 97060

PHONE 666-7748

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-6

GIVE TO BOARD CLERK

#2

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME Vicki Thompson

ADDRESS 647 SW Birdsdale Dr
Gresham Or 97080

PHONE 503-661-2572

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC AMR R-6

GIVE TO BOARD CLERK

#3

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME Deputy Chief Riley Caton

ADDRESS Gresham Fire & Emergency Svs.
1333 NW Eastman Pky

PHONE 618-2355

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-6

GIVE TO BOARD CLERK

#4

SPEAKER SIGN UP CARDS

DATE Aug. 12, 1999

NAME JON ALTMANN

ADDRESS RURAL/METRO CORP.

PHONE 800-398-6263 x3667

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-6

GIVE TO BOARD CLERK

#5

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME NIC WILDEMAN - BURN/METRO

ADDRESS 6405 - 218th STREET SW #201

MOUNTLAKE TERRACE WA 98043

PHONE 425-744-8720

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-6 EMS CONTRACT

GIVE TO BOARD CLERK

#6

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Jacqueline J McIntire

ADDRESS 1036 NE 15th St

Gresham OR 97030

PHONE 667-8154

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC AMR Contract R-6

GIVE TO BOARD CLERK

#7

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Terris Hedges, MD

ADDRESS OHSU
Portland OR

PHONE 494-7014

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-6

GIVE TO BOARD CLERK

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Terry Marsh

ADDRESS One SE Second Ave
Port Or 97214

PHONE 239-0389

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Ambulance renewal

GIVE TO BOARD CLERK

AMR

#9

SPEAKER SIGN UP CARDS

DATE 6/12/99

NAME Benson Meyers

ADDRESS 18015 SE Portland Ave

Milwaukie, OR 97267

PHONE 777-8090

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC ambulance service

GIVE TO BOARD CLERK

#10

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Bruce Dunn - AMR

ADDRESS One SE Second
Port Or 97214

PHONE 239 0357

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC ambulance renewal

GIVE TO BOARD CLERK

#11

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Susan Holtsclaw

ADDRESS One SE. Second Ave
Port Or 97124

PHONE 2390389

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC ambulance renewal

GIVE TO BOARD CLERK

#12

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME Jay Cahlk

ADDRESS 5201 NE 35th Ave
Portland, OR 9721n

PHONE 503-249-7657

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC AMR Contract Extension

GIVE TO BOARD CLERK

#13

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME NEAL DIETZ

ADDRESS (GRESHAM PROF. FIREFIGHTERS)
Home 14686 S.E. GARLAND LN
MILWAUKIE

PHONE 794-1014

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC AMR CONTRACT

GIVE TO BOARD CLERK

#14

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME CHARLES SAVOIE

ADDRESS 7739 SW CAPITOL HWY

PORTLAND

PHONE 245-1367

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC AMR CONTRACT EXTENSION

GIVE TO BOARD CLERK

#15

SPEAKER SIGN UP CARDS

DATE 6/12/99

NAME BOB BREHNAN

ADDRESS 1272 HIDE-A-WAY CT.
LAKE OSWEGO 97034

PHONE 635-8458

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC AMBULANCE CONTRACT

GIVE TO BOARD CLERK

#16

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME Randy Bauer

ADDRESS One SE Second

Port O 97214

PHONE 239-0389

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC ambulance renewal

GIVE TO BOARD CLERK

#17

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME MARK WIENER

ADDRESS 2124 NE 44th
PORTLAND OR

PHONE 287-3483

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-6

GIVE TO BOARD CLERK

#18

SPEAKER SIGN UP CARDS

DATE 8-12-99

NAME JERRY SHORT

ADDRESS 295 SE GIBSON C

ESTACADA, OREGON

PHONE 630-4351

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC

GIVE TO BOARD CLERK

#19

SPEAKER SIGN UP CARDS

DATE Aug 12 1999

NAME John Pragastis

ADDRESS 225 SE 64th Ave

Portland OR 97215

PHONE 232 8675

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Ambulance Renewal

GIVE TO BOARD CLERK

#20

SPEAKER SIGN UP CARDS

DATE 8/12/99

NAME REGINA ATCHESON

ADDRESS _____

_____

PHONE _____

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC _____

GIVE TO BOARD CLERK

#21

SPEAKER SIGN UP CARDS

DATE 8.12.99

NAME Jeff Birkel

ADDRESS 7005 SW Algonkin St.

Tualatin OR

PHONE 692-5547

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-6

GIVE TO BOARD CLERK

#22

SPEAKER SIGN UP CARDS

DATE Aug-12-99

NAME Rufus Fuller

ADDRESS 5907 N.E. 49th Dr.

PHONE

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC R-6

GIVE TO BOARD CLERK

MEETING DATE: AUG 12 1999
AGENDA NO: R-6
ESTIMATED START TIME: 10:45

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: EMS-AMBULANCE CONTRACT RENEWAL

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

REGULAR MEETING: DATE REQUESTED: August 12, 1999

AMOUNT OF TIME NEEDED: 1 Hour

DEPARTMENT: Health DIVISION: Regulatory Health/Health Officer

CONTACT: Bill Collins TELEPHONE #: 248-3220
BLDG/ROOM #: 160/10th fl EMS

PERSON(S) MAKING PRESENTATION: Gary Oxman, MD, Bill Collins, EMS Adm.

ACTION REQUESTED:

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

SUGGESTED AGENDA TITLE:

Resolution to renew the EMS Ambulance Service.

BOARD OF COUNTY COMMISSIONERS
99 AUG -4 AM 11:42
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL:
(OR)
DEPARTMENT MANAGER: For Lillian Shirley

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 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

SUPPLEMENTAL STAFF REPORT

TO: Board of County Commissioners

FROM: Health Department

DATE: August 4, 1999

RE: EMS Ambulance Contract Renewal

1. Recommendation/Action Requested: Approval of the Resolution to renew the EMS Ambulance Service Agreement

2. Background/Analysis: The current contract requires a renewal decision by August 31, 1999. The Contract allows for a three-year renewal. The EMS Office finds the current contractor in compliance with the contract and recommends renewal.

3. Financial Impact: None.

4. Legal Issues: None.

5. Controversial Issues: There are persons who wish the contract be re-bid.

6. Link to Current County Policies: The contract was executed as required by the County EMS Ambulance Service Plan.

7. Citizen Participation:

8. Other Government Participation: The cities of Gresham and Portland are part of the EMS system planning 1st Response and Dispatch.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Declaring Intent to Extend Agreement for Exclusive Emergency Ambulance Services, Contract No. 200726, with Buck Medical Services, dba American Medical Response, Northwest (AMR) and authorizing negotiations for extension.

The Multnomah County Board of Commissioners Finds:

a. On July 20, 1995, the Board approved Contract 200726 with AMR, providing exclusive ambulance franchise services through 911 ALS response (Agreement).

b. Section IV.A.1. of the Agreement provides it will terminate on September 1, 2000 at 8:00 A.M., unless extended; and Section IV.A.2. provides:

"Any decision regarding the extension of this agreement shall be made at least twelve months prior to the scheduled termination date, so that if no extension is approved, a new bid process can be conducted...."

c. The Board wishes to extend the Agreement for three years as provided in Section IV.A.3.

d. MCC § 21.421 provides that the EMS Program Office (MCEMS) is responsible for administration of the emergency ambulance service contract.

The Multnomah County Board of Commissioners Resolves:

The Board declares its intent to extend the Agreement for Exclusive Emergency Ambulance Services, Contract No. 200726 and authorizes the MCEMS Administrator to enter into negotiations with AMR for a three-year extension.

Adopted this 12th day of August, 1999.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

_____
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
For Multnomah County, Oregon

By _____
Jacqueline A. Weber

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Declaring Intent to Extend Agreement for Exclusive Emergency Ambulance Services, Contract No. 200726, with Buck Medical Services, dba American Medical Response, Northwest (AMR) and authorizing negotiations for extension.

The Multnomah County Board of Commissioners Finds:

a. On July 20, 1995, the Board approved Contract 200726 with AMR, providing exclusive ambulance franchise services through 911 ALS response (Agreement).

b. Section IV.A.1. of the Agreement provides it will terminate on September 1, 2000 at 8:00 A.M., unless extended; and Section IV.A.2. provides:

"Any decision regarding the extension of this agreement shall be made at least twelve months prior to the scheduled termination date, so that if no extension is approved, a new bid process can be conducted...."

c. The Board wishes to give notice of intent to extend the Agreement for three years as provided in Section IV.A.3.

d. MCC § 21.421 provides that the EMS Program Office (MCEMS) is responsible for administration of the emergency ambulance service contract.

The Multnomah County Board of Commissioners Resolves:

The Board declares its intent to extend the Agreement for Exclusive Emergency Ambulance Services, Contract No. 200726 and authorizes the MCEMS Administrator to enter into negotiations with AMR for a three-year extension.

Adopted this 12th day of August, 1999.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

_____
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
For Multnomah County, Oregon

By _____
Jacqueline A. Weber

CHRISTOPHER P. THOMAS
ATTORNEY AT LAW
2611 NE 12TH AVENUE
PORTLAND, OR 97212

TELEPHONE (503) 281-0302
FAX (503) 281-0304
Email: cpthomas@uswest.net

August 10, 1999

Multnomah County Commission
c/o Board Clerk
1120 SW 5th Avenue, Room 1515
Portland, OR 97204

Subject: Findings of EMS Contract Compliance Committee

Dear Commission:

At its meeting on August 3, 1999, the EMS Contract Compliance Committee adopted findings regarding compliance by AMR over the term of its contract with the County, to date. The full adopted findings are enclosed.

To summarize, the Committee finds (unanimously) that AMR has met the 8/ minutes/90% of the time response time requirement throughout the contract term to date, with the exception of one month in each year. As stated in the findings, this particular finding may be subject to future revision under certain circumstances. On the other hand, the Committee finds (by a 3-1 vote), for reasons stated in the findings, that AMR has not complied with the equalized response time performance requirement over the term of the contract to date, as that requirement is understood by the Committee. The Committee recognizes, in the findings, that AMR and the County's EMS Administrator and Health Officer do not agree with the Committee's understanding of the requirement; and that County Counsel may have a different interpretation of the requirement. Nevertheless, the Committee believes its interpretation is consistent with the language of the contract.

Very truly yours,

Christopher P. Thomas
Chair, Contract Compliance Committee

cc. County Commissioners
EMS Administrator
Contract Compliance Committee Members
AMR

FINDINGS
OF
CONTRACT COMPLIANCE COMMITTEE

1. The response time requirement for the Urban area is as follows:

> "Each month, within the Urban area, Contractor shall respond to all Code-3 calls within 8 minutes or less, a minimum of 90% of the time."

Regarding the 8 minutes/90% of the time response time requirement, the Committee finds that, when the exceptions authorized by the contract are taken into consideration, AMR has met the requirement throughout the contract term to date, with the exception of one month in each year. This finding may be subject to future revision following a pending refinement of the 24-second downward adjustment in response times that was applied by the EMS Office to calls during Contract Year Four as described in Attachment B to the staff's July 22, 1999 report to the County Commission, if the refinement indicates a need to change the number of seconds in the adjustment; and following application of the refined adjustment retroactively to Contract Year 3 calls after March 1998. This finding also may by subject to future revision following completion of the pending audit review of the process for granting exceptions to the response time requirement, if the audit findings indicate a revision would be appropriate.

2. Regarding the requirement about equalized response time performance, the Committee interprets the contract as requiring AMR to design its System Status Management Plan with the intention and goal of providing equalized response time throughout the service area. The Committee believes that "equalized response time throughout the service area" means that when the service area is broken down into reasonably identified subareas, the response time performance is essentially equivalent in each subarea. Thus the contract requires that AMR design its System Status Management Plan with the intention and goal of providing essentially equivalent response time performance in each subarea.

The Committee does not interpret the contract as requiring that the System Status Management Plan actually achieve essentially equivalent response time performance in each subarea. In other words, the contract does not mean that AMR cannot make good faith mistakes in its System Status Management Plan, which mistakes result in the response time performance not achieving essential equivalence. However, the contract does mean that AMR must be attempting, in good faith, to achieve essential equivalence. This means that whenever the System Status Management Plan is not achieving essential equivalence, AMR should be proposing — and the EMS Administrator should be approving — System Status Management Plan changes whose purpose is to achieve essential equivalence.

In so interpreting the contract, the Committee takes no position on the merits or demerits of the equalized response time performance requirement as understood by the Committee.

The Committee recognizes that its interpretation of the equalized response time performance requirement is not the same as the interpretation of the County's EMS Administrator and Health Officer. They believe that the requirement was intended to prevent AMR from discriminating among subareas based on racial/ethnic, economic, or similar considerations; but that the requirement does not prevent AMR from planning to achieve lesser response time performance performance in hard-to-serve subareas, so long as AMR meets the 8 minute/90% of the time requirement area-wide.

The Committee also recognizes that its interpretation may be different than that of County Counsel, although this is not clear.

3. The Committee finds that, to date, the System Status Management Plan has not achieved essentially equivalent response time performance in each subarea. This, in itself, is not a violation of the equalized response time performance requirement. Over the course of the contract to date, AMR has periodically made changes in the System Status Management Plan, in response to concerns expressed about the failure to achieve essentially equivalent response time performance. These changes have brought the System Status Management Plan closer to achieving essentially equivalent performance, even though they have not actually achieved essential equivalence.

4. The Committee also finds, however, that AMR has not had the intention and goal of achieving essentially equivalent response time performance in each subarea. Rather, AMR has only had the intention and goal of achieving closer equivalence. AMR has been up front about this, taking the position that it did not understand the contract as requiring it to have the intention and goal of achieving essentially equivalent performance. AMR's position has been that this would create too expensive a system, would not be good public policy, and is not what AMR or the County intended when they executed the contract. The County staff, over the time the Committee has considered this issue, has agreed that this is not what the contract requires and would not be good public policy.

5. Based on the Committee's understanding of the equalized response time performance requirement, the Committee finds that AMR has not complied with this requirement over the term of the contract to date. In other words, although AMR has planned and attempted to reduce the disparity in response time performance among subareas, AMR has not planned or attempted to eliminate the disparity. Or, put differently, AMR has been satisfied to retain some level of response time performance disparity among the service area's subareas.

6. AMR's satisfaction with some level of response time performance less than equivalence

at least has contributed to a continuing lack of equivalence among the subareas reviewed by the Committee. The disparity has not been insignificant. It is likely that the disparity would have been greater had AMR not attempted to reduce the disparity, especially taking into consideration an apparent shift of call volume from the easier-to-serve subareas to harder-to-serve subareas. However, it also is likely that the disparity would have been less had AMR planned and attempted to eliminate it rather than only planning and attempting to reduce it.

7. The Committee does not understand its job to include taking a position on whether AMR's lack of compliance with the equalized response time performance requirement merits a non-renewal of AMR's contract. That question depends on whether the County Commission agrees with the Committee's interpretation of the requirement; if so, on how important the equalized response time performance requirement is to the County Commission; and also if so, on how seriously the County Commission takes the level of unequal performance that remains in the system.

8. As stated in paragraph 5, the Committee has found that AMR did not plan to eliminate, and in fact has not eliminated, the response time disparity in some subareas of the Urban area. The Committee therefore requests that AMR submit a plan to the EMS Administrator to equalize response time performance in those subareas with other subareas of the Urban area and submit the plan to the Committee for review and, if approved by the EMS Administrator, monitoring.

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

MEMORANDUM

TO: County Chair Beverly Stein
Commissioner Diane Linn
Commissioner Serena Cruz
Commissioner Lisa Naito
Commissioner Sharron Kelley

FROM: Bill Collins, EMS Administrator
Gary Oxman, MD, MPH, Health Officer

SUBJECT: Responses to Questions raised at July 29 EMS Briefing

DATE: August 11, 1999

This memo is to address questions that Board members raised at the July 29 briefing on renewal of the ambulance franchise agreement with American Medical Response. Please contact Bill Collins, EMS Director (248-3220) or Gary Oxman, MD, Health Officer (248-3674) if you have any questions about these responses or other issues.

Question:
Is possible to use a bid process to "lock " a contractor into a five year agreement that guarantees a fixed charge regardless of anticipated changes in Medicare's (and perhaps other third party payers') reimbursement practices?

NOTE: In preparing this response, the Department sought further consultation with Mike Williams, the consultant who designed and managed the RFP leading to the County's current contract.

It is questionable whether such a "lock-in" could be accomplished at all. It is very doubtful that it could be done without putting service quality and response time at risk. There are really three issues involved.
First, a contractor could conceivably "front load" their revenue by attempting to collect more in the first years of a contract to hedge against expected shortfalls

in subsequent years. This strategy would tend to produce initial rates that are higher than the current rates (although the bid process would determine the actual rate). In addition, this approach has practical limits. For the approach to be successful, there must be payers (insurance and individuals) that are willing to pay an inflated charge. About 20-25 percent of current EMS users are covered by Medicare. Another 20 percent are indigent or covered by Medicaid. Reimbursement for these groups is essentially fixed; the same amount is paid no matter how much the charge is. Therefore, the impact of inflated charges would fall on the payers that cover the remaining 55 percent of patients (private insurers, and patients and their families). Some insurers would pay the increased charges; others would not. There are two implications: 1) more individuals would be responsible for paying a larger portion of their bill, and 2) the attempt to front load profits might not succeed, leaving the provider with inadequate revenues to do their work.

Second, it is improbable that a provider would allow itself to be locked into a situation that could become financially untenable. According to Mr. Williams, the existing publicly-held companies simply will not put themselves at financial risk. This arises from high earnings expectations on the part of stock-holders. Providers are very aggressive in avoiding risk. Our present contract includes a mechanism for increasing rates under certain circumstances. Other recently developed ambulance contracts (e.g., Sonoma, California) include "meet and confer" clauses that allow the contract to be opened and amended if revenues fall below a certain level. In effect, these features allow a contractor an alternative to defaulting on service requirements in an unsustainable financial environment. Providers actively avoid getting into potential default situations because of negative impacts on reputation and the ability to capture business in other markets. For example, a contractor could precipitously withdraw from the County system if revenues are less than those required to run the system. However, if they withdrew under our current "fail safe" contract, they would forfeit their $2,500,000 bond. While this might protect them from further short term losses, forfeiture would make it difficult for them to obtain bonds and do business in other markets in the future. A more likely scenario would be for the contractor to request a subsidy with public funds, or to request a change in performance standards (e.g., a lengthening of response time, or a change in staffing requirements). The name of the game for providers these days is to ensure that contracts contain language that allows for financial and performance changes rather than frank default. The County's contract is relatively strong compared to those under development in other communities.

Finally, front-loading puts response time and quality of service at risk. In conditions of extreme financial stress, a provider is motivated to be very aggressive both in controlling costs and in collecting payment. As outlined in our July 22 memo, a provider has limited opportunities for controlling costs (i.e., reducing the number of ambulances deployed, reducing equipment costs, and reducing paramedic costs). If carried out to excess, all these methods can have significant negative impacts on response time and quality of care.

Similarly, overly aggressive collection efforts can be a burden for patients and their families.

Question:
Can contract compliance review (especially the response time data correction and exception processes) be more open to public scrutiny?

Opening up these activities to more public scrutiny would strengthen both the process and the credibility of the process for determining response time compliance. One constraint is that we would have to make sure that there were mechanisms in place to protect the confidentiality of patients' medical information.

Question:
Why was the 24 seconds factored into the response time compliance report for year four? Shouldn't response time be considered from when the alert process starts the BOEC data base clock?

The contract clearly specifies how ambulance response times should be calculated (see Attachment B, page 3 in the July 22 briefing report).

There have been two basic periods during which the dispatch system has operated in different ways.

Prior to the contract, a dispatcher contacted an ambulance by radio, provided call information and then made the computer entry that started the response time clock. This form of dispatch was the model on which the current contract's language was based. By the time the contract was implemented, BOEC had installed a new computer system, but continued the original voice notification system. Later, a commercial pager system was added as a back-up mechanism for ambulance crew notification. Throughout this entire period (through February, 1998), the dispatch system was designed to be aligned with contractual language. There were variations in exactly when different dispatchers started the response time clock, but these were not identified by either EMS or the contractor as a major concern.

In March 1998, BOEC began to use the 800 MHz radio system to page ambulance crews. When this change was made, the response time clock was started by the computer entry that triggered radio transmission. There was no ability for dispatchers to make a routine computer entry for the time that voice transmission and crew acknowledgement were complete. Thus March, 1998 was the point at which the system clearly began to measure contractor performance according to a standard more stringent than that in the contract. Because of questions raised by the contractor about performance of the radio system, the EMS Office requested that BOEC program its computer to capture the time that the radio acknowledged receipt of the page. It was not until May, 1999 that this programming change was implemented. In July, 1999 the EMS

Office carried out a study to determine how long it took a dispatcher to give dispatch information by radio. The average time it took for the radio to respond was 2 seconds. The median voice dispatch time was 22 seconds. Twenty-four (24) seconds was judged to be a reasonable and somewhat conservative adjustment. It is conservative in that it does not include delays introduced by the Zetron radio system which activates fire responders prior to ambulance dispatch (at least two additional seconds), nor the time required to acknowledge receipt of dispatch information (perhaps a few more seconds). This adjustment is also conservative compared to the 30 second subtraction suggested by national experts as a standard adjustment to account for dispatch time.

The adjustment methodology was reviewed by the Contract Compliance Committee on August 3, 1999. The Committee supported the methodology in principle, although members expressed a desire for the EMS Office to refine the numbers used for the adjustment.

The twenty-four second adjustment was applied to the year four data presented in Attachment C of the July 22 briefing memo. We feel it is appropriate to apply that adjustment to data for all the months since the system changed in March 1998. We plan to continue to make adjustments to the response time calculations in the future. We also plan to continually refine the adjustment figure to reflect periodic and ongoing changings the operation of BOEC's radio and computer systems.

Question:
Are the wages paid to AMR paramedics sufficient to attract and retain a quality workforce?

The current wage scale at AMR is the product of a negotiated collective bargaining agreement. AMR provided the pay scale shown in the table below. The average length of service for paramedics at AMR is 7.8 years, with lead paramedics having a somewhat longer tenure than non-leads.

Paramedic	**Start**	**1 Year**	**2 Years**	**3 Years**	**4 Years**	**5 Years**	**8 Years**	**12 Years**
Regular	12.28	12.98	13.66	14.41	14.98	15.72	16.57	17.05
Overtime	18.42	19.47	20.49	21.62	22.46	23.57	24.86	25.57
Annual	25,612	27,071	28,496	30,060	31,235	32,776	34,564	35,552
Lead Paramedic								
Regular	12.86	13.56	14.24	14.99	15.55	16.29	17.15	17.62
Overtime	19.28	20.33	21.36	22.48	23.33	24.44	25.72	26.43
Annual	26,812	28,271	29,696	31,260	32,435	33,976	35,764	36,752

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Declaring Intent to Extend Agreement for Exclusive Emergency Ambulance Services, Contract No. 200726, with Buck Medical Services, dba American Medical Response, Northwest (AMR) and authorizing negotiations for extension.

The Multnomah County Board of Commissioners Finds:

a. On July 20, 1995, the Board approved Contract 200726 with AMR, providing exclusive ambulance franchise services through 911 ALS response (Agreement).

b. Section IV.A.1. of the Agreement provides it will terminate on September 1, 2000 at 8:00 A.M., unless extended; and Section IV.A.2. provides:

"Any decision regarding the extension of this agreement shall be made at least twelve months prior to the scheduled termination date, so that if no extension is approved, a new bid process can be conducted...."

c. The Board wishes to give notice of intent to extend the Agreement.

d. Based on the Multnomah County and City of Portland auditors' review of Health Department methods for determining ambulance response time compliance, the Board believes that additional evaluation of AMR's compliance with the Agreement requirements is needed.

e. Until that additional evaluation is completed, the Board is unwilling to extend the Agreement for more than one year.

f. MCC § 21.421 provides that the EMS Program Office (MCEMS) is responsible for administration of the emergency ambulance service contract.

The Multnomah County Board of Commissioners Resolves:

The Board declares its intent to extend the Agreement for Exclusive Emergency Ambulance Services, Contract No. 200726 and authorizes the MCEMS Administrator to enter negotiations with AMR to extend the Agreement for at least one year.

Adopted this 12th day of August 1999.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
For Multnomah County, Oregon

MULTNOMAH COUNTY OREGON

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

MEMORANDUM

TO: County Chair Beverly Stein
Commissioner Diane Linn
Commissioner Serena Cruz
Commissioner Lisa Naito
Commissioner Sharron Kelley

FROM: Bill Collins, EMS Administrator
Gary Oxman, MD, MPH, Health Officer

SUBJECT: Revised Health Department Recommendations re: Ambulance Franchise Agreement Renewal

DATE: August 12, 1999

The purpose of this memo is for the Health Department to make revised recommendations to the Board regarding renewal of the franchise contract with American Medical Response (AMR). These revised recommendations are being made in light of the recent report of the Multnomah County and City of Portland Auditors about reliability of response time compliance.

As you know from the Auditors' report, there are about weaknesses in the Health Department's approach to determining response time compliance. These weaknesses exist in both some of the methods employed, and in documentation of the methods and how they are applied. The Department concurs that the weaknesses compromise the confidence we, the Board, and the community can have about whether the contractor is clearly in compliance.

While we accept that there are weaknesses in our methods, these weaknesses do *not* demonstrate non-compliance on the contractor's part. Rather, these weaknesses raise questions about compliance. Thus the Department feels

that the most appropriate approach revolves around a comprehensive reexamination of response time compliance, using strengthened and more accountable methods.

The fundamental policy issues facing the Board have not changed. We have a very good fee-supported emergency ambulance system that will face an increasingly difficult financial environment in the coming years. The challenge for the County will be to ensure that the people of the County have access to high quality EMS services in this changing environment.

The Department's previous recommendation had two components:

1) maintaining our current level of service, and

2) analyzing the environment, and redesigning the EMS system so that it will be better suited to the changing environment.

We still feel this basic two-pronged approach is appropriate.

What has changed is our ability to clearly demonstrate the contractor's compliance with contractual standards. Given this, we do not feel that an three-year extension is appropriate at this time. Instead, we feel it is more appropriate to negotiate a one-year extension, and to reexamine contract compliance. If it is clear that the contractor is in compliance, the Department would recommend a further contract extension, consistent with the language and intent of the original contract.

Specific Health Department Recommendations:

- The Board should renew the present contract with AMR for a one-year period (i.e., through August, 2001), to allow a comprehensive re-evaluation of response time compliance as discusses below.

- The Department should expeditiously address all weaknesses identified in its methods for evaluating response time compliance as identified by the Portland and County Auditors.

- The Department should then reevaluate response time compliance for all of contract year four, and the first four months of contract year five, using revised and strengthened evaluation methods.

- The Department should make a report to the Board regarding response time compliance in about February, 2000.

- At that time, the Board should consider whether further contract extensions should be considered, and should define what criteria should be used for granting any such extensions. There is a need to balance two forces: 1) the contractor's incentives to earn extensions through good performance, and 2) the value of the Board considering and acting on larger policy issues.

- The Board should instruct the Department to develop provisions to improve monitoring of compliance with requirements on County-wide response times and geographic equalization of service to be incorporated into the contract renewal.

- In the longer term, the Board should direct the Department to undertake a strategic planning process to evaluate EMS system design and consider system redesign EMS system by August 2003 (i.e., three years after the end of the original contract period). As discussed previously, this process should be driven by desired policy and service outcomes, supported by knowledge of best practices and local circumstances, and should utilize the resources, creativity, and energies of current system participants and other interested parties.

Review of the Multnomah County Ambulance Contractor's Compliance with the Urban Response Time Requirement

August 1999

Prepared Jointly by
The Multnomah County and City of Portland Auditors

Suzanne Flynn, County Auditor
1120 S.W. Fifth Ave., Room 1410
Portland, OR 97204
(503) 248-3320
FAX: (503) 248-3019

Gary Blackmer, City Auditor
1221 S.W. Fourth Ave., Room 140
Portland, OR 97204
(503) 823-4078
FAX: (503) 823-4571

August 11, 1999

TO: Beverly Stein, County Chair
Diane Linn, County Commissioner
Serena Cruz, County Commissioner
Lisa Naito, County Commissioner
Sharron Kelley, County Commissioner
Gary Oxman, MD, MPH, Multnomah County Health Officer

SUBJECT: Review of the County EMS Program's Compliance Review Process

We have completed our review of the County Emergency Medical Services Program's process for evaluating response time performance of the County ambulance contractor. The review was conducted within a two-week period at the request of County Health Officer, Gary Oxman. We have reviewed a draft of the report with Dr. Oxman, and we believe he is in general agreement with our findings and recommendations. Dr. Oxman's written response to our findings is included at the back of the report.

We ask that the County Health Officer prepare a written status report in six months on the progress made in implementing our recommendations. Distribution of the response should include the County Chair, the County Auditor, and the City of Portland Auditor.

We appreciate the cooperation we received from the County EMS Program, staff at the City's Bureau of Emergency Communications, and representatives of the ambulance contractor, American Medical Response, in conducting this review.

Suzanne Flynn, CIA
Multnomah County Auditor

Gary Blackmer, CIA
Portland City Auditor

Audit Team: Matthew Nice
Doug Norman

Table of Contents

Chapter 1 Introduction

The Multnomah County and City of Portland Auditors were asked by the County Health Officer to review the County Emergency Medical Services (EMS) Program's process for assessing response time performance of the County's ambulance service contractor. The County's contract with American Medical Response specifies that ambulance units must respond to Priority-1 medical emergencies in urban Multnomah County within 8:00 minutes at least 90% of the time. We reviewed the EMS Program's process for assessing ambulance response time performance and conducted limited tests of supporting documents and records. We conducted our review in accordance with the General Standards section of *Government Auditing Standards*.

Background

The County EMS Program is responsible for providing high quality, timely, and cost-effective response to approximately 48,000 requests a year for emergency medical service. The EMS Program has a FY 1999-00 budget of $885,000 that includes four full-time positions plus a part-time EMS Medical Director. The EMS Program prepares a State-mandated ambulance service plan and promulgates rules and protocols that direct the County's EMS system, which

includes an exclusive ambulance contractor. The contract with American Medical Response (AMR) spans the five-year period from September 1, 1995, through August 31, 2000. In the County's EMS system, AMR is responsible for pre-hospital emergency care plus transport of patients to hospitals, whereas first response to medical emergencies is the responsibility of the Portland Fire Bureau, the Gresham Fire Department, and the Port of Portland's Airport Fire.

The County EMS Program has reported that AMR has complied with the urban response time requirement (arrive within 8:00 minutes at least 90% of the time) during each of the past four years. However, ambulance response times have increased during the past year (by an average of about 26 seconds) and the County Health Officer and the Contract Compliance and Rate Regulation Committee have expressed concerns about the contractor's response time performance. In accordance with contract provisions, County Commissioners must decide whether or not to renew the contract with AMR before the end of August 1999.

The County Health Officer convened a group of analysts and EMS system participants to review response time data and identify possible reasons for the slower response times. The group met on four occasions in June and July, 1999, and identified several factors which may have contributed to slower response times. These factors included higher demand on the EMS system, changes in dispatch procedures that occurred in May 1998, and a change in how ambulance crews report on-scene arrival times. Questions were also raised about the growing number of exceptions (i.e., EMS calls exempted from the contractual response time requirement) that were granted by the EMS Program.

The EMS Program's Compliance Review Process

The EMS Administrator determines ambulance response time compliance once a month based on EMS call data received from the City of Portland's Bureau of Emergency Communication (BOEC). The Administrator adjusts the call data by going through a three-step "normalization" process (see Appendix A for the EMS Program's description of the normalization process). First, cancelled calls, Code-1 (i.e., non-emergency) calls, and calls in which an ambulance did not actually respond are removed from the call data. Second, the call data is sorted by area into urban, rural, and frontier (i.e., remote). Third, corrections are made to the call data wherein wrongly coded calls are removed and certain over-8:00 minute calls are changed to under-8:00 minute calls. These include calls downgraded to Code-1, "staged" calls in which the ambulance was prevented from entering the emergency scene by police, and calls that were cancelled while the ambulance unit was en route to the scene.

The final step in the compliance review process involves the granting of exceptions. Certain calls judged to be beyond the control of the ambulance contractor are exempted from the 8:00-minute response time requirement. These include:

- calls in which a closer ambulance was, or should have been, substituted for the one originally dispatched;
- calls in which a change in location or a difficult location caused a delay in response;
- calls in which there was a problem with unit notification by the dispatcher;

- calls which occurred when there was excessive demand on the system; and,
- calls in which a delay was caused by inclement weather. (See Appendix A.)

The process of identifying corrections and exceptions actually begins with AMR staff who, on a weekly basis, obtain incident reports from BOEC and identify calls that AMR requests for exclusion. These calls are referred to the EMS Administrator who makes the final decision as to whether or not corrections and exceptions will be granted. Most decisions are based on information contained in CAD incident reports, but in some cases EMS Program staff listen to BOEC audio tapes or review maps to make a determination.

The results of the EMS Administrator's response time calculations are presented to the Contract Compliance Committee, which is charged with reviewing response times and other performance requirements of the ambulance service contractor, and making recommendations to the EMS Administrator.

Objectives, Scope, and Methodology

Because questions were raised concerning the validity of the ambulance contractor's response time compliance and the growing number of exceptions granted to the contractor, the City and County Auditors were asked to review the EMS Program's compliance review process. Specifically, we were asked to review the process for evaluating compliance with the urban response time requirement.

We conducted our review in less than two weeks, beginning on July 29, 1999. We interviewed the EMS Administrator responsible for compliance review, a representative of AMR, and staff who oversee EMS dispatch operations at BOEC. We obtained raw EMS call data for the past year from BOEC's computer-aided dispatch (CAD) system and compared it to the data set used by the EMS Program. We conducted a detailed analysis of the April 1999 call data and the EMS Program's handling of 257 requests for corrections and exceptions, including 171 that were approved.

Our objective was to determine the reasonableness of the EMS Program's compliance review process, and to obtain some assurance of the reliability of the Program's calculation of response time compliance. Our review did not include tests of BOEC CAD data or analysis of call audio tapes. We do not provide conclusions on the ambulance contractor's level of compliance with response time requirements.

Chapter 2 Results

We found several weaknesses in the County EMS Program's process for evaluating the ambulance contractor's compliance with the 8:00-minute response time requirement. Specifically, the EMS Program lacks well-defined procedures for ensuring consistency in their process, and criteria for making corrections and exceptions to the EMS call data are unclear. In addition, the Program lacks adequate procedures for correcting errors in the BOEC call data and for ensuring that adequate records and documentation are maintained. Because of ambiguities in the criteria used to make corrections and exceptions to the call data, we cannot provide assurance that the EMS Program's calculation of response time compliance is reliable.

We also found that members of the Contract Compliance Committee have not been appointed by the Board of County Commissioners as required by the County Ambulance Ordinance. Only four members have participated in Committee meetings held during the past year, and we do not believe the functioning members have provided the breadth of interests and expertise outlined in the Ambulance Ordinance.

Lack of Clear Criteria and a Well-Defined Process

While the basic steps in the compliance review process seem reasonable, the EMS Program has not developed a complete description of the steps and decisions involved in the process. For example, the data normalization sheet attached as Appendix A does not include steps for identifying duplicate or missing calls, nor does it describe the steps followed in sorting call data into urban and rural calls.

The lack of written procedures is exacerbated by the fact that the criteria for making decisions on corrections and exceptions are unclear. For example, EMS program staff and the ambulance contractor have interpreted the ambulance service contract and EMS Administrative Rules to allow exclusion of calls when there appeared to be a closer ambulance than the one originally dispatched. In addition, if a second ambulance driver states that s/he can arrive at an emergency scene faster than the ambulance originally dispatched, the "dispatch time" is re-set to the time the second ambulance began its run. Officials from the EMS Program and AMR base their interpretation on EMS Administrative Rules that state BOEC is responsible for dispatching the closest available ambulance. In addition, they interpret "dispatch computer failure" cited as an exception in the contract to include instances in which a dispatcher fails to dispatch the closest available ambulance.

We believe the exceptions described above (closer and exchanged ambulance units) are subjective in nature and can sometimes lead to an erroneous exception – sometimes to the benefit of the contractor and sometimes to their detriment. Furthermore, these two types of exceptions are significant because they represent a large number of the

exceptions granted by the EMS Program. Closer and exchanged units represented 48 (91%) of the 53 total exceptions granted in April 1999.

In our review of the April 1999 corrections and exceptions, we found one ambulance that was exchanged for an earlier ambulance when the second ambulance driver stated, "M306 gets off in 10 minutes; we're the same distance". This call was granted an exception although we are not sure it is reasonable to allow the contractor to re-set the dispatch time in this particular case.

In another instance, a call was inadvertently duplicated in the call data, and was reviewed twice for a possible exception. The EMS Program granted the exception in its first review, based on information in the text of the incident report that indicated there was an exchange of units. However, when the same call was reviewed on a separate occasion, EMS Program staff listened to the audio tape and determined that the request for an exception should be denied. These two exceptions illustrate the judgmental nature of exceptions and the difficulty of trying to correctly assess whether or not an exception should be approved.

We reviewed the 171 corrections and exceptions granted by the EMS Program for the month of April 1999. Table 1 displays the results of our review, which was conducted with the assistance of staff from both the EMS Program and BOEC. We found it was essential to involve BOEC staff because of their detailed understanding of the CAD system and EMS dispatch operations.

Of the 118 corrections granted, the group agreed that 69 (58%) were valid. The group could not come to an agreement on three corrections (3 %), and there was insufficient information for the group to come to a conclusion on the validity of 46 corrections (39%). See Table 1.

Table 1 Results from Review of April 1999 Corrections and Exceptions Performed by BOEC, EMS Program, and Auditors' Staff

	Corrections				
Correction Category	Group agreed correction was valid	Group agreed correction was invalid	Group disagreed on validity	No conclusion due to lack of info	Total
Code-1 Dispatch	10			2	12
Code-1 Downgrade	35				35
Canceled or Clear	9		1	24	34
Out of County	2		1		3
Redispatched Call	2				2
Rural Call	1				1
Staged	1			5	6
Time on Tape				14	14
Time in Text	9		1	1	11
Total	69	0	3	46	118

	Exceptions				
Exception Category	Group agreed exception was valid	Group agreed exception was invalid	Group disagreed on validity	No conclusion due to lack of info	Total
Access	2		1		3
Changed Location	1				1
Closer Unit	3	1	5	21	30
Dispatch Problem				1	1
Excessive Demand					0
Exchanged Unit			2	16	18
Weather					0
Total	6	1	8	38	53

SOURCE: City and County Auditors' Staff

Of the 53 exceptions granted, the group agreed that 6 (11%) were valid and that one exception should have been denied. The group could not come to an agreement on eight exceptions (15%) and there was insufficient information for the group to come to a conclusion on the validity of 38 calls (72%). See Table 1.

Need to Improve Record Keeping

The EMS Program does not keep clear and comprehensive records of corrections and exceptions. The EMS Administrator keeps a summary log for monthly corrections and exceptions. However, the log has multiple monthly tally sheets that were not consolidated. For example, there were three duplicate tally sheets for the month of April 1999, making it difficult to identify the corrections and exceptions, and the disposition of each request. In addition, the specific correction and exception codes were handwritten in the margins of the tally sheets, which in some cases were illegible.

We also found missing files during our review of corrections and exceptions for April 1999. We were told that the contractor keeps all copies of the requested corrections and exceptions for each month. However, 44 calls from April 1999 were not located in the contractor's files, but were later found at the EMS Program office.

Need Consistent Procedures for Identifying Errors in the EMS Call Data

We compared the raw call data used by the EMS Program to call data we received from BOEC for the period, September 1998 through April 1999. We found several problems with the accuracy of the data used by the EMS Program. For example, there was an average difference of 58 calls per month (1.5% of the total monthly average) between the

EMS Program's data set and the data set we received from BOEC. In all months, calls were either missing or there were duplicate calls included in the EMS Program's data set. We found 22 duplicate calls in the EMS Program's March 1999 data set and 27 duplicate calls in its April 1999 data set. In addition, our test of the EMS Program's April 1999 data set (before normalization) showed the Program had 32 more medical calls and 25 more urban calls than the data set we received from BOEC for the same month. The missing and duplicate raw data do not appear to be the result of the EMS Program's handling of the data.

Our discussions with EMS officials indicates that they lack a formal, consistent process for checking the accuracy of raw data received from BOEC each month. Without testing to find missing days or duplicate calls, monthly call volume used to determine compliance could be under or over stated, affecting the calculations of response time compliance.

Compliance Committee Not Properly Constituted

The County Ambulance Ordinance stipulates that the Board of County Commissioners shall appoint members of the Contract Compliance Committee upon recommendations from the EMS Program. The Committee is to be comprised of (1) a person with expertise in ambulance operations, (2) an attorney with health care expertise, (3) a person in the business of health care administration or health care financing, (4) an accountant, (5) an EMS provider other than the contractor, (6) a citizen of Multnomah County, (7) a representative from the City of Portland, and (8) a representative from the City of Gresham.

We understand that the members of the Contract Compliance Committee have not been approved by County Commissioners because a list of candidates was not submitted to the Board by the EMS Program. In addition, we do not believe the Committee includes persons with the breadth of interests and expertise outlined in the Ambulance Code. Furthermore, only four Committee members have attended meetings during the past year, and three of these four members were associated with organizations that bid on the current ambulance service contract.

Chapter 3 Conclusions and Recommendations

Because of the absence of clear criteria for making corrections and exceptions, and the lack of a well-defined compliance review process, we cannot provide assurance that the EMS Program's calculation of response time compliance is reliable. We make several recommendations to address the problems identified in the compliance review process:

1. ***The EMS Program should seek to establish clearer criteria and guidelines for making corrections and exceptions to the urban response time requirement.***

   Absent clear criteria, the Program should provide better documentation and explanation of the rationale followed in making exceptions and corrections to the EMS call data.

2. ***To ensure the criteria for making exceptions and corrections are understood, reasonable, and appropriate, the EMS Program should ask the Contract Compliance Committee for review and comment.***

3. ***The EMS Program should develop more complete written procedures for its compliance review process.***

   The procedures should include steps for ensuring the accuracy of the EMS call data, and describe consistent documentation and record keeping procedures.

4. ***BOEC staff should have more involvement in the compliance review process, including participation in the review of potential corrections and exceptions to the call data.***

   This will not only help improve the accuracy of the compliance review process, but also facilitate improvements in EMS dispatch operations.

5. ***Ensure that all members of the Contract Compliance Committee are appointed by the Board of Commissioners, and that they represent the full array of interests and expertise outlined in the County Ambulance Ordinance.***

Appendix A
BOEC Medical Call Data
Data Normalization Process

All data used in evaluating ambulance performance is from the dispatch computer at BOEC (911 dispatch). A data set with selected fields is provided to EMS weekly, via E-mail. The weekly sets are combined into a month that is the unit used for contract compliance. The set contains all medical calls created in the time period.

The data received must go through a considerable normalization process in order to be in a form that can be used for the evaluation:

BOEC Monthly Data

|

Canceled Calls - Removed

(These are calls coded as canceled with no on_tm entry)

Code One (Non-Emergency) Calls - Removed

(These are calls with a priority 3)

Fire Response OnlyCalls - Removed

(These are calls with priority 9 and no ambulance assigned)

Calls Run by Units Other Than AMR - Removed

|

(For time calculations, calls without an on scene time are removed. For percent compliance these calls are retained and counted as over 8 minutes)

|

BOEC Monthly Data
Completed Emergency Responses Only

Urban Area Calls	**Rural Area Calls**	**Frontier Area Calls**
(within urban growth boundary)	(outside boundary)	(if any)

The above process is completed by using the computer to sort the calls. The remainder of the process is completed by looking at individual call records, also obtained from BOEC. There are two parts to this phase of the process, data corrections and exception made for calls over eight minutes. Calls are identified for further review by AMR. These are only over eight-minute calls. No further review is done for calls under eight minutes.

DATA CORRECTIONS

The following calls are removed from the data set:

1. CALLS DISPATCHED CODE ONE (non-emergency). The record shows them as code three calls but the text of the incident states they were dispatched code one.
2. CANCELED CALLS. These calls were wrongly coded and show in the incident record as a call without an on scene time.

The following calls stay in the data set. However, the record shows them to be less than eight minutes:

3. STAGED CALLS. The ambulance is prevented from entering a crime scene and the response time to the staging area is used as the response time.
4. CODE ONE DOWNGRADE. The call changes from emergency to non-emergency prior to eight minutes into the call.
5. The actual arrival time is entered IN THE TEXT of the call by the dispatcher and did not correct in the computer time stamp or the record shows an entry by the ambulance crew that indicates they are on the scene within the eight minute requirement.
6. The times for the call are obtained from the AUDIO TAPE at BOEC.
7. The call was CANCELED AND THEN RE-DISPATCHED. The correct time is from the re-dispatch to on scene.
8. The call was OUT OF THE COUNTY with the exception of a small portion of the City of Portland in Washington County.
9. The call was in the RURAL area, but did not sort out earlier. These calls are considered under the rural area standard.

CALL EXCEPTIONS

The following calls are over eight minutes. However, there is a reason, not under the control of the contractor, that caused the call to be over eight minutes:

10. Calls with exchanged units. If a second ambulance is substituted for the original ambulance and the second ambulance was available for dispatch at the start of the call and the second ambulance runs the call in eight minutes or less, the call is excepted.

11. CLOSER UNITS. If an ambulance was closer to a call by time and distance and could have made the call in eight minutes or less, the call is exempted.
12. If the LOCATION OF THE CALL CHANGED to the extent that it caused the long response, the call is excepted.
13. If ACCESS TO THE CALL location is such that it caused the long response, the call is excepted.
14. If there was a problem with the dispatch such as a failure of the notification process, the call is exempted.
15. If there is an excessive demand on the system such as concurrent multiple ambulance calls, the call is exempted.

In addition, during INCLEMENT WEATHER such as snow or ice, the response time requirements are suspended and those calls are removed from the data set.

Source: Multnomah County Emergency Medical Services Program

Response to the Report

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

TO: Suzanne Flynn, Multnomah County Auditor
Gary Blackmer, City of Portland Auditor

FROM: Gary Oxman, MD, MPH
County Health Officer

RE: Response to Ambulance Response Time Compliance Review

DATE: August 11, 1999

This memo is in response to the report of your review of the Health Department's methods for determining ambulance response time compliance.

First, I want to thank you and your staff for the rapid and professional way in which this review was done. Despite a very short time line, and the complexities inherent in the question and the data, you produced information and insights that are will be valuable to our department, the Board of County Commissioners, and the community.

From your report, it is clear that your review focused on the *process* for determining response time compliance; it was *not* an independent determination of compliance. Therefore, I agree that the proper interpretation of your report has to do with how confident one can be regarding response time compliance.

I agree with your overall conclusion. There are weaknesses in our methodology for determining response time compliance – weaknesses in both some of the actual methods employed, and weaknesses in documentation. These weaknesses are such that it is appropriate to question how confident we can be about our ability to clearly demonstrate contract compliance.

With regard to the substance of your analysis, there is only one point I would like to clarify. In the section entitled "Lack of Criteria and a Well-Defined Process," you cite 84 calls for which there was insufficient information for your group to come to a conclusion about the appropriateness of granting an exception or data correction. I would point out that your group did not listen to BOEC radio transmission tapes or access other information that the EMS Office used in considering a good number of these calls.

I also want to reinforce the point your report made regarding the size and direction of the data discrepancies you outlined. As you discuss in the analysis of April, 1999 data, the actual number and percent of calls in question is quite small. In addition, the discrepancies run in both directions; some could degrade response time compliance, some could have no effect, and some could enhance compliance. Thus while I believe you have correctly pointed out a number of important problems and opportunities for improvement, I believe the primary questions relate to reliability, consistency and accountability – not to compliance itself.

I concur with and support your recommendations fully. When implemented, I think the changes you have suggested will ensure that the Health Department, Board and community can have a high degree of confidence in judging the contractor's compliance with response time standards. The Health Department will move rapidly to enhance its system for determining response time compliance. We will incorporate your recommendations into our work.

Thank you again for the fine job you and your staff did on this review.

CITY OF GRESHAM
EMERGENCY SERVICES
FIRE

Quality • Integrity • Respect

1333 NW Eastman Parkway, Gresham, OR 97030-3813 • Telephone (503) 618-2355 • FAX (503) 666-8330

August 2, 1999

The Honorable Beverly Stein, Chair
Multnomah County Board of Commissioners
Multnomah County
1120 SW 5th Avenue, 15th Floor
Portland, OR 97204

Subject: Renewal of Ambulance Contract

Dear Chair Stein:

The City of Gresham Department of Fire and Emergency Services would like to thank yourself, the Board of Commissioners, and your staff in considering issues raised by our Mayor regarding the County ambulance contract. After reading the County report, Gresham Fire continues to have concerns over:

- **Equalization of response times,** which is a critical issue to East County residents. Gresham Fire measures the level of response time performance by what is delivered, which does not include exceptions, because the impact to patients is our main concern
- **Response time compliance** and the **issue of exceptions** which should be considered together. The Contract Compliance Committee and the City of Gresham have raised issues about the validity of some of the exceptions being granted, which impacts compliance issues.

Gresham Fire & Emergency Services is committed to working with the City of Portland Fire Bureau and the County to resolve these issues that allow for our citizens to receive the best possible services at the lowest available price. I am available to meet with you or your staff to discuss these issues or answer questions at your convenience.

Respectively,

Mark Maunder, Deputy Chief

CITY OF GRESHAM

Office of the Mayor & City Council

July 21, 1999

The Honorable Beverly Stein, Chair
Multnomah County Board of Commissioners
Multnomah County
1120 SW 5th Avenue, 15th Floor
Portland, OR 97204

Subject: Renewal of American Medical Response (AMR) Ambulance Contract

Dear Chair Stein:

The Gresham City Council continues to be concerned with the unequal level of ambulance service east Multnomah County has consistently endured under the current ambulance contract. We urge the County not to renew that contract with AMR.

On May 21, 1999, the Multnomah County Ambulance Contract Compliance Committee requested that the Multnomah County Board of Commissioners conduct an audit of the compliance data for the current ambulance service contract with AMR. The Gresham City Council, the Troutdale City Council and the Multnomah Fire District #10 Board subsequently advised you in writing of our strong support of the Ambulance Contract Compliance Committee and their request for a audit.

Since that time, Dr. Gary Oxman, Multnomah County Public Health Officer, initiated a series of meetings to discuss the compliance evaluation process. These meetings were conducted for the benefit of representatives of the City of Portland and Multnomah County Auditor's Office. The apparent goal was to determine if a compliance audit was necessary or if system-wide issues adequately explained recent changes to AMR's response times.

At the meeting held on July 13, 1999, the geographic distribution of service and the inequities that existed across the eight service zones identified by the Ambulance Contract Compliance Committee was discussed. The County EMS Office stated that the contract itself failed to adequately address the issue of equalized service throughout the County. Dr. Oxman stated that the contract language on equalized service was ambiguous and prevented the enforcement of equal service in each of the identified zones. He further suggested that this flaw might be fixed in negotiating a contract extension with the current contractor.

1333 N.W. Eastman Parkway • Gresham, Oregon 97030-3813
Phone (503) 618-2584 • Fax (503) 665-7692

In light of these new observations from Dr. Oxman's meetings, Gresham representatives are concerned that a compliance audit will not resolve the ambulance service issues in the East County area identified as "Zone 8". Therefore, we respectfully submit the following for your further consideration in the matter:

- Since Dr. Oxman's discussions were not related to actual contract compliance, Gresham continues to support the request for an audit by the Ambulance Contract Compliance Committee.

- The current ambulance service contract fails to provide for an ability to enforce equalized service throughout the County and requires significant revision. As such, it should not be renewed or extended.

It is in the best interests of the citizens that a major revision of the ambulance service contract be followed by a new bidding process to insure the services are provided at the least possible cost.

Yours truly,

Charles J. Becker

Charles J. Becker
Mayor

CJB:RS/js

c: Multnomah County Commissioners
Mayor Vera Katz, City of Portland
Portland City Commissioners
Bonnie R. Kraft, City Manager
Gresham City Councilors
Dr. Gary Oxman, Multnomah County

CITY OF GRESHAM
Office of the Mayor & City Council

June 2, 1999

The Honorable Beverly Stein, Chair
Multnomah County Board of Commissioners
Multnomah County
1120 SW 5th Avenue, 15th floor
Portland, OR 97204

Subject: Renewal of American Medical Response (AMR) Ambulance Contract

Dear Chair Stein:

On May 20, 1999, the Multnomah County Contract Compliance Committee (Committee) met to discuss the performance of American Medical Response (AMR), the private emergency ambulance provider for Multnomah County. The Committee is charged with reviewing AMR's performance and adherence to the ambulance contract.

Several concerns were raised at the meeting regarding AMR's inability to meet contract requirements in the following areas:

- Response time performance.
- Equalization of response times in all areas of the County within the Urban Growth Boundary (UGB).

Response time is critically important in any emergency medical services (EMS) system, as certain categories of patients require rapid transports to medical facilities for life-saving procedures to be performed. AMR is supposed to provide emergency ambulance services within 8 minutes on ninety percent of all calls. According to information presented at the meeting, AMR is currently not meeting this requirement.

AMR is supposed to provide these services so that no area of the County within the UGB is underserved. Currently two areas are being underserved: Southwest Portland and Gresham, including Fairview, Wood Village, and Troutdale as well as the area in Fire District 10.

The committee noted that since May of 1998, AMR's response time performance has deteriorated, and in year three of the contract they have made no significant improvements in equalizing response times in the Gresham and East County cities. The Gresham Fire and Emergency Services Department has been increasingly concerned about AMR's lack of improvement in the East County cities, and has raised these concerns in prior Contract Compliance Committee meetings.

1333 N.W. Eastman Parkway • Gresham, Oregon 97030-3813
Phone (503) 618-2584 • Fax (503) 665-7692

As a result of the concerns by committee members about AMR's compliance with contractual response time requirements, the committee voted to have an independent audit of the response time performance and the equalization of responses. Representatives from the County, and the cities of Portland and Gresham would perform the audit.

In addition, the County EMS office is planning to extend AMR's contract for three years. According to the current contract between Multnomah County and AMR, the County must notify AMR of the decision to extend by August 31, 1999, twelve months prior to the end of the five-year contract, which ends August 31, 2000. It is the understanding of Gresham that the County EMS office plans to ask the County Board for an extension as allowed in the contract in June 1999.

After examining the information presented at the Committee meeting, Gresham representatives are forwarding the following position for your consideration:

- Response times are a critical measurement of the quality of medical delivery in an EMS system. If response times standards are not being met, then the quality of care is impacted.

- Since the Contract Compliance Committee voted for an audit of AMR's response time performance, Gresham believes it is in the best interest of its citizens that the audit be completed and AMR be allowed to respond before any contract renewal is allowed.

Sincerely,

Charles J. Becker
Mayor

c: Multnomah County Commissioners
Mayor Vera Katz, City of Portland
Portland City Commissioners
Bonnie R. Kraft, City Manager
Gresham City Councilors

CJB:JXD/js

Bev Stein, Chair
Multnomah County Commission
1120 SW 5th Ave., Room 15th Floor
Portland, OR 97204

Dear Commissioner Stein,

Thank you for the opportunity to communicate my views. I am a resident and voter in Multnomah County and I am writing to express my displeasure over the very thought that American Medical response will not have their contract extended to serve our community.

As our elected officials we rely on you to see through the erroneous and many times slanderous statements made by public employees without adequate restraint. As a supporter of our suffering educational system, I do not expect our trusted county officials to squander desperately needed tax dollars, catering to the whims of a few over paid public employees and unethical businessmen. Please show us the leadership we know you are capable of and put an end to this debate – vote for the extension and lead your peers to do the right thing.

Please do not expend the county's tax dollars in a pointless effort to find a better provider, you have the best provider now. Please show the small agencies without proven track records that the Commission is in charge, vote for the extension and put this issue to rest.

Thank you for your time,

Bonnie Roberts
424 NE. 44
Portland, Oregon
97213

JOHN PRAGGASTIS

225 SE 44th Avenue
Portland, Oregon 97215 - 1004

(503) 232-8675

July 29, 1999

Dear County Chair Stein and Commissioners Cruz, Kelley, Linn and Naito:

Once again, the ambulance service issue is before you. And as before, the questions of quality, response times, and choosing of providers are at the heart of the matter.

In reading the Health Department's briefing to you, only two solutions are presented; either renew the contract with American Medical Response for the next term, or rebid.

Another solution is possible. It answers both the criticisms of the Contractor and the interests of the Board. A solution which is already available to you within the current contract. And it is fair to all parties.

I suggest you renew the contract conditioned on hearings and/or an audit on the numerous questions regarding past contract compliance. And I recommend that you appoint a Special Master to conduct such an inquiry. The criticisms of the Contractor have been serious and should be independently answered, once and for all.

The County should use an independent, non-ambulance industry or County associated person as the Special Master. The Special Master should be a person with an investigative, accounting or an auditing background. This person should be a local person, and well respected in the community; perhaps a retired judge. EMS experience is not necessary; it is, after all, either a contract or its not.

The advantages of this renewal and review process are many for all involved. For the County, these include:

1) It keeps the County's security lien on the ambulance equipment and bond in place against default while the process is conducted, and, if necessary, while a new provider is being named. A refusal to renew the contract triggers the release of both the bond and equipment lien on September 1, 2000, whether the County has an acceptable replacement provider or not. This could leave the County without a new vendor or way to provide services in the event of a default.

Those of you who were present for the last bid remember it took nearly six months just to conduct the last bidding process. An additional four months was needed for the already operating provider to supply the necessary equipment.

2) It provides enough time for the contract compliance questions to be answered to the Board's satisfaction. A decision not to renew on August 12th, results in the Board reaching a conclusion with the little information you have before you. Some of which is of questionable quality or understanding, even by EMS staff.

3) It allows the Contractor enough time to complete the fourth year of the contract and have that data reviewed by the Contract Compliance Committee or Special Master for the specified "last two year" compliance reports needed for the renewal decision as the RFP provided. This fourth year's performance is now only rumor, it may, in fact exonerate the Contractor.

4) It allows enough time for the County, the current Contractor and potential bidders to understand the proposed changes in Medicare payments to be announced in December, while keeping a Contractor committed to provide ambulance service during the period, and if found in compliance, the entire three years renewal.

5) And assures the County that emergency ambulance service will be provided during an extended bidding process, allowing the Board to reject any or all bids it receives as unsatisfactory. It also assures the County that rates will not go up as a result of the new bidding cycle if the bids are rejected, or none are received, and the current provider retained.

These are a few of the advantages to the County. To the Contractor, some of the benefits are:

1) A Special Master provides an independent source to review and chance to comment on the findings as the contract currently provides. This should remove any question of favoritism or bias for both the process and findings.

2) It provides a forum for the Contactor to answer and provide additional information during the course of the review. It also provides an opportunity for the questions of compliance to be answered in detail. It also provides an independent finding which the Board may accept or reject with limited controversy.

3) This approach assures the Contractor, and its employees, of a reasonable expectation for continuation of the contract during the review process. Should the information supplied and services provided be acceptable, it does not interfere with the continuation of services or employee wages.

4) It allows the questions raised by both the County's changing of the terms during the contract period and the effects those changes had on the Contractor's compliance, to be resolved by an independent source.

5) And it allows Contractor's employees to comment and participate in the next RFP process should that be necessary.

Opinions that the contract is vague or not enforceable are simply not true. Within the current contract are a number of provisions which trigger penalties, from monetary fines to the cancellation of the contract for poor performance or falsification of bid or other information regarding the Contractor's service. The Board also retains final approval authority. The Board risks nothing by adopting this renewal and review option.

Emergency Medical Services are a matter of public safety equal to that of the Sheriff's handling of law enforcement matters. In Emergency Medical Services, the collection and review of incident data are the keys to both progressive treatment and patient outcomes. The fact that the County Health Department can not even provide basic response time information MONTHS after an incident is without excuse, particularly since "Quality Indicators" were expected of the Contractor during the bidding process and contract period.

Finally, the Board should consider having the EMS office placed under the direct control of the Commissioners. The life-saving responsibilities of Emergency Medical Services are too important not to have a higher profile within County operations.

Sincerely,

John Praggastis

John Praggastis

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 99-162

Declaring Intent to Extend Agreement for Exclusive Emergency Ambulance Services, Contract No. 200726, with Buck Medical Services, dba American Medical Response, Northwest (AMR) and authorizing negotiations for extension.

The Multnomah County Board of Commissioners Finds:

a. On July 20, 1995, the Board approved Contract 200726 with AMR, providing exclusive ambulance franchise services through 911 ALS response (Agreement).

b. Section IV.A.1. of the Agreement provides it will terminate on September 1, 2000 at 8:00 A.M., unless extended; and Section IV.A.2. provides:

"Any decision regarding the extension of this agreement shall be made at least twelve months prior to the scheduled termination date, so that if no extension is approved, a new bid process can be conducted...."

c. The Board wishes to give notice of intent to extend the Agreement.

d. Based on the Multnomah County and City of Portland auditors' review of Health Department methods for determining ambulance response time compliance, the Board believes that additional evaluation of AMR's compliance with the Agreement requirements is needed.

e. Until that additional evaluation is completed, the Board is unwilling to extend the Agreement for more than one year.

f. MCC § 21.421 provides that the EMS Program Office (MCEMS) is responsible for administration of the emergency ambulance service contract.

The Multnomah County Board of Commissioners Resolves:

The Board declares its intent to extend the Agreement for Exclusive Emergency Ambulance Services, Contract No. 200726 and authorizes the MCEMS Administrator to enter negotiations with AMR to extend the Agreement for at least one year.

Adopted this 12th day of August 1999.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

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

Thomas Sponsler, County Counsel