

**FAIR HOUSING PLAN:
ANALYSIS OF IMPEDIMENTS AND
STRATEGIES TO ADDRESS THEM**

Washington County
City of Beaverton

Michael F. Sheehan, Ph.D.
Roger D. Colton, MA, JD

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FISHER, SHEEHAN & COLTON
PUBLIC FINANCE AND GENERAL ECONOMICS
33126 S.W. CALLAHAN ROAD ** SCAPPOOSE, OREGON 97056
503-543-7172 FAX: 503-543-7172

TABLE OF CONTENTS

I.	Introduction and General Summary	6
A.	Conduct of the Analysis and Funding	6
B.	Methodology	7
C.	Conclusions	7
II.	Background Data	9
A.	Introduction	9
B.	The Protected Classes	9
1.	Race and Ethnicity	9
2.	Familial Status	15
3.	Disability Status	17
4.	Public Assistance Status	19
C.	Housing Affordability, Quality and Accessibility	22
1.	The Availability of Affordable Housing	23
2.	The Availability of Quality Housing	24
3.	The Accessibility of Affordable Housing	26
4.	Applying Affordability Considerations to a Fair Housing Impediments Analysis	28
5.	Racial and Ethnic Impact of Minimum Income Requirements	30
D.	Housing and Employment	32
III.	Evaluation of Fair Housing Profile: Complaints and Compliance Reviews	37
IV.	Impediments	42
A.	Introduction	42
B.	Supply of Housing	42
1.	Home Ownership	42

2.	Rental Housing	43
C.	Impediments in the Rental Process	47
D.	Problems in the Apartment	49
E.	Education and Outreach	50
F.	County Government	50
G.	Independence	51
V.	Assessment of Current Public & Private Fair Housing Programs and Actions	53
A.	Fair Housing Enforcement	53
B.	Education and Information Programs	54
VI.	Action Plan: Strategies to Address Impediments to Fair Housing	56
A.	Direct Discrimination	56
B.	Supply of Housing	57
C.	Impediments in the Rental Process	58
D.	Impediments in Ongoing Tenancy	60
E.	Education and Outreach	61
F.	County Programs and Policies	62
G.	Independence	63
	Appendix I: Review of the Fair Housing Act	65
	Appendix II: Bibliography	71
	Appendix III: Interviews	74

TABLES

Table	Title	Page
1	Persons in Washington County by Race and Ethnicity	10
2	Hispanics as Percent of Low-Income and Very Low-Income Population Washington County, Oregon	11
3	Hispanic Representation Within Population at 0-30% of Median Income: Selected Communities	12
4	Persons Below 100 Percent of Federal Poverty Level: By Race and Ethnicity Washington County, Oregon	13
5	Washington County: Tenure by Race and Hispanic Status	14
6	Washington County: Geographic Dispersion by Race	14
7	Washington County: Geographic Dispersion by Hispanic Status	15
8	Housing Cost Burdens by Large Family Status	16
9	Families With Available Parent(s) in the Workforce	17
10	Sex By Work Disability Status and Employment Status	18
11	Mobility and Self-Care Limitations by Sex, Age and Work Disability Status Washington County, Oregon	19
12	Public Assistance in Census Tracts with Disproportionate Number of Non-White Residents Washington County	21
13	Rents Available to Recipients of Public Assistance in Census Tracts with Disproportionate Number of Non-White Residents Washington County	22
14	Availability of Affordable Housing at Different Levels of HUD-Adjusted Median Family Income (HAMFI) By Number of Bedrooms Washington County	24
15	Selected Characteristics of Affordable Housing at Different Levels of HUD-Adjusted Median Family Income (HAMFI) Washington County	25
16	Selected Characteristics of Affordable Housing	

TABLES

Table	Title	Page
	at Different Levels of HUD-Adjusted Median Family Income (HAMFI) Selected Communities: Washington County	26
17	Housing Affordability at Different Levels of HUD-Adjusted Median Family Income (HAMFI) Washington County	27
18	Housing Affordability at Different Levels of HUD-Adjusted Median Family Income (HAMFI) Selected Communities: Washington County	28
19	Household Income by Gross Rent as a Percentage of Income in 1989 Washington County	29
20	Number of Households with Specified Rents by Number of Bedrooms Washington County	30
21	Household Income in 1989 by Gross Rent as a Percentage of Household Income in 1989 Census Tracts with Above-Median Penetration of Non-White Residents with Incomes \$0 - \$10,000	31
22	Household Income in 1989 by Gross Rent as a Percentage of Household Income in 1989 Census Tracts with Above-Median Penetration of Non-White Residents Income \$10 - \$19,999	32
23	Number of Workers Who Reside in Washington County Who Also Work in Washington County	33
24	Number of Workers Who Reside in Washington County Who Work in the Community In Which They Reside	35
25	Fair Housing Complaints by Jurisdiction	37
26	Fair Housing Complaints by Category	38
27	Bases for HUD Investigated Complaints	39
28	Complaints Arising in Washington County: 1995 and 1996 to Date	40
29	Building Permits Issued in Washington County: 1975-1995	45
30	Minority Population: Three County Area	46

TABLES

Table	Title	Page

I. INTRODUCTION AND GENERAL SUMMARY¹

A. CONDUCT OF THE ANALYSIS AND FUNDING

Impediments to fair housing choice include:

"Any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status or national origin which restrict housing choices or the availability of housing choices; or

Any actions, omissions, or decisions which have the effect of restricting housing choices on the basis of race, color, religion, sex, disability, familial status or national origin."²

The analysis of impediments is a comprehensive review of a jurisdiction's laws, regulations, and administrative policies, procedures, and practices affecting the location, availability, and accessibility of housing, as well as an assessment of conditions, both public and private, affecting fair housing choice.

The analysis is not limited to the identification of actions purposefully meant or designed to disadvantage members of a protected class. Impediments also include,

"Policies, practices or procedures that appear neutral on their face, but which operate to deny or adversely affect the provision of housing to persons of a particular [protected class]."³

The class of impediments includes actions or policies which have a disparate, i.e., a disproportionate, impact on the housing choices of protected classes, even though the actions or policies are neutral on their face and were adopted without any *intent* to produce a discriminatory impact.⁴ The impacts test is, in this way, *result* oriented and not *intent*

¹ Much of the data in this report is taken from the initial *Analysis of Impediments to Fair Housing Choice*, completed by the Washington County Department of Housing Services in February 1996.

² HUD, *Fair Housing Planning Model (Draft)*, (Washington, D.C.: HUD, nd) p. 4-2.

³ HUD, *Fair Housing Planning Model (Draft)*, (Washington, D.C.: HUD, nd) p. 4-2.

⁴ Facially neutral actions adopted for the purpose of

oriented.

The task of this study is to evaluate the current situation in Washington County to determine: (1) whether impediments to fair housing confront protected classes; (2) if such impediments do exist, to understand why; (3) to set forth what is being done to eliminate these impediments; and (4) to make recommendations for improvement.

Fisher, Sheehan and Colton, a firm of consulting economists, with a background in low-income issues, public programs, and land use planning, were hired to do the analysis and complete the study. The analysis was conducted by Dr. Michael F. Sheehan and Roger Colton. Funding for the study was provided by Washington County and the City of Beaverton.

B. METHODOLOGY

The methodology employed in the study was straightforward. Census and other data was collected in order to augment the data presented in the County's initial analysis of impediments. Over forty interviews were conducted of local and regional planners, advocates, housing industry representatives, care providers, police, housing providers, fair housing regulators, and county housing officials.⁵ Written materials on fair housing problems and programs, regional and local demographics, transportation, and local planning were collected and reviewed. Various federal, state and local statutes and ordinances (and the literature around them) were consulted. This report is the product of these analyses.

C. CONCLUSIONS

The central fair housing problem facing Washington County is the deficiency of affordable housing at locations accessible to jobs, services and opportunities. This lack of affordable housing has a substantial impact on members of minority groups and other protected classes directly, or due to the large over-representation of protected classes in the low-income population.

The tight housing market has produced an economic environment where the financial loss associated with discrimination against members of protected classes is minimal or zero. A

disadvantaging members of a protected class are clearly prohibited by the Act. See, for example, *United States v. West Peach Tree Tenth Corp.*, 437 F.2d 221 (5th Cir. 1971).

⁵ A list of interviewees is provided in Appendix III.

minority of housing providers take advantage of this situation by refusing to rent to or by evicting households because of their protected class status; by discriminating in rental terms, conditions, and privileges; and by denying requests for reasonable accommodations of tenants' disabilities. Moreover, under these conditions, facially neutral screening tools that have a substantial and disparate impact on protected classes are easy to devise and defend.

This shortage of affordable housing is expected to grow substantially worse over time and be exacerbated by sharp decreases in federal funding of housing programs, rapidly increasing rents, and continuing increases in housing construction costs.

The result is to accelerate the movement toward poverty of a significant share of low-income families and individuals. Washington County is currently at the top of the business cycle; the natural evolution of the business cycle will produce increased unemployment, unaffordability, and general distress among the significant low-income portion of the population.

There are many things the county and local jurisdictions could do to increase supply and moderate these problems. There are ways to do this cost effectively and efficiently. The final section of this report combines a concise review of the problems identified with strategies for improvement.

II. BACKGROUND DATA

A. INTRODUCTION

This empirical review of fair housing in Washington County explores three different issues. The first section below examines certain classes of persons who have been provided specific protections under anti-discrimination statutes. The second section below examines the intersection between housing affordability and fair housing issues. The third section looks at the intersection between employment considerations and fair housing.

B. THE PROTECTED CLASSES

This section of the fair housing analysis for Washington County examines the available empirical evidence which might provide insights into what impediments might exist to fair housing within the county. The analysis examines four distinct factors:

- (1) race and ethnicity;
- (2) family status;
- (3) disability status; and
- (4) receipt of public assistance.

While the analysis may overlap in some instances, each population deserves specific individual attention. The analysis that follows will concentrate on both the affordability and quality of housing available to the identified populations.

1. Race and Ethnicity

An evaluation of the fair housing implications of public and private decisions, actions, and inactions or omissions must take into account the disparate (i.e., disproportional) impacts which those actions have on protected classes. A facially neutral action may, in other words, nonetheless raise fair housing concerns if it has a disparate impact on protected classes of households. Because of this fact, one step in assessing the impediments to fair housing is to determine what proportion of the population is represented by the various protected classes. The discussion below focuses on racial and ethnic populations.

a. Racial and Ethnic Representation in the Total Population

According to the 1990 Census, there are 311,554 persons in Washington County, Oregon. Of those persons, more than 90 percent are white. Only one percent (1%) of the Washington

County population is Black; five percent (5%) of the total county population is Hispanic.

TABLE 1 PERSONS IN WASHINGTON COUNTY: BY RACE AND ETHNICITY		
Race/Ethnicity	No. Persons	Percent
White	286,862	92%
Black	1,998	1%
American Indian, Eskimo, Aleut	2,002	1%
Asian, Pacific Island	12,891	4%
Other	7,801	3%
Total	311,554	100%
Hispanic	14,210	5%

SOURCE: U.S. Census, Summary Tape File (STF) 3A, Tables P008 and P010.

b. Ethnic Representation in the Low-Income Population

The proportionate representation of the various racial and ethnic groups is important within the context of this fair housing discussion when compared to the proportionate representation of the same groups within the *low-income* population. Under the Fair Housing Act, socio-economic status is not *per se* a protected class. In Washington County, however, actions that create impediments to fair housing for low-income persons will likely have a disproportionately adverse impact based on ethnicity as well. Since (unlike socio-economic status), ethnicity *is* a protected class, these impediments to housing for low-income persons thus raise fair housing concerns. A basic thesis of this analysis of impediments is that socio-economic impacts raise fair housing concerns if one or more protected classes is disproportionately represented in the adversely affected socio-economic stratum.

Within this context, factors affecting the availability of affordable housing in Washington County must be considered in a fair housing impediments study. The affordability of housing takes into consideration the housing stock in the county as well as the socio-economic status of the county's residents.

i. Area Median Income as a Measure of Low-Income Status

Socio-economic status can be examined using area median income. Two levels of income are commonly considered to be "poor": 0 - 30 percent of median income, which is considered

"very low-income"; and 31 - 50 percent of median income, which is considered to be "low-income."⁶

Hispanics are particularly over-represented in the lower income stratum of Washington County. As noted above, Hispanics represent roughly five percent (5%) of the total Washington County population. As shown below, however, they represent a substantially greater proportion of the lowest income households. Moreover, as Table 2 shows, Hispanics in Washington County represent an increasingly smaller proportion of the population as income increases.

TABLE 2 HISPANICS AS PERCENT OF LOW-INCOME AND VERY LOW-INCOME POPULATION WASHINGTON COUNTY, OREGON			
	Total Households	Hispanic	
		Number	Percent
0 - 30 Percent Median Income			
Renter Occupied	5,052	672	13%
Owner Occupied	2,669	201	8%
Total	7,721	873	11%
31 - 50 Percent Median Income			
Renter Occupied	5,942	412	7%
Owner Occupied	3,646	64	2%
Total	9,588	476	5%
SOURCE: HUD Comprehensive Housing Affordability Study (CHAS) Data Base.			

This observation does not necessarily hold true for all of the individual communities within Washington County. As Table 3 shows, Hillsboro in particular finds a large population of low-income Hispanics. Data is not available for all twelve communities in Washington County. The five communities for which data is available are set forth below.

TABLE 3

⁶ Households at 51 - 80 percent of median income are considered to be "moderate" income.

HISPANIC REPRESENTATION WITHIN POPULATION AT 0 - 30% MEDIAN INCOME SELECTED COMMUNITIES: WASHINGTON COUNTY, OREGON				
	Pct Hispanics in Total Population (All Incomes)	Population at 0 - 30% Median Income		
		Total Population	Number Hispanic HHs	Pct of Total Population
Beaverton				
Renter Occupied	4%	1,149	53	5%
Owner Occupied	1%	225	0	0%
Total	3%	1,149	53	5%
Forest Grove				
Renter Occupied	8%	708	30	4%
Owner Occupied	2%	145	8	6%
Total	5%	853	38	4%
Hillsboro				
Renter Occupied	14%	783	173	22%
Owner Occupied	2%	385	10	3%
Total	6%	1,168	183	16%
Tigard				
Renter Occupied	9%	494	28	6%
Owner Occupied	1%	121	10	8%
Total	4%	615	38	6%
Tualatin				
Renter Occupied	10%	230	14	6%
Owner Occupied	1%	45	0	0%
Total	5%	275	14	5%
SOURCE: HUD CHAS Data Base.				

ii. Federal Poverty Level as a Measure of Low-Income Status

The conclusion that Hispanics are disproportionately represented in the low-income population of Washington County is further confirmed by examining the population of Washington County residents living at or below the federal Poverty Level as well. Hispanics are disproportionately represented in this population. While Hispanics comprise only five

percent of the total population in Washington County, they represent 18 percent of the total population at or below 100 percent of Poverty (Table 4).

TABLE 4 PERSONS BELOW 100 PERCENT OF FEDERAL POVERTY LEVEL: BY RACE AND ETHNICITY WASHINGTON COUNTY, OREGON							
	White	Black	Hispanic	Am. Indian	Asian	Other	Total /a/
Total	16,494	166	3,565	220	1,123	2,195	20,198
Pct Total	82%	1%	18%	1%	6%	11%	100%
SOURCE: U.S. Census, STF 3A, Tables P119 and P120.							
NOTES:							
/a/ Since Hispanic is not a race (but rather an ethnicity), Hispanics are not separately included in the "total" column.							

Given this disproportionate presence of a protected class within the low-income population, the discussion in the sections below look at some of the issues that raise fair housing concerns in Washington County within an "affordability" framework.

iii. Tenure: Race and Hispanic Status

Table 5 presents data on tenure by race and Hispanic status in Washington County. The data shows that except for Asians and Pacific Islanders, minority and Hispanic populations tend to be over-represented in the population of renters.

Tables 6 and 7 present data on the geographic dispersion of minority concentrations by census tract. Approximate locations of the tracts are provided.

Table 5	WASHINGTON COUNTY Tenure By Race and Hispanic Status
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Race/Ethnic Status	Owners	Renters	% Renters
White	69,426	42,842	39%
African American	241	459	66%
Native American	282	349	55%
Asian/Pacific Islander	2,006	1,805	47%
Other Race	381	1,206	76%
Hispanic	915	2,267	71%

SOURCE: Census, STF 3A, Tables H10 and H12.

Table 6 WASHINGTON COUNTY Geographic Dispersion by Race (By Percent)					
Census Tract	White	Black	Native American	Asian or P.I.	Other Races
324.03 (Hillsboro)	72%	0.5%	1.0%	1.2%	25.4%
312 (Beaverton)	85%	0.6%	1.2%	10.6%	2.9%
329 (Cornelius)	87%	0.5%	1.4%	1.0%	10.2%
316.05 (Aloha)	87%	0.5%	0.6%	10.0%	1.6%
332 (Forest Grove)	85%	0.2%	0.5%	4.2%	9.9%
313 (Beaverton)	86%	2.6%	0.6%	9.7%	1.0%
315.05 (West Union)	90%	0.1%	0.1%	9.4%	0.1%
315.07 (Cornell Road)	91%	0.7%	0.0%	8.5%	0.2%
325 (Hillsboro)	89%	0.2%	1.6%	0.4%	8.5%
327 (North Plains)	91%	0.0%	0.6%	0.2%	8.3%

SOURCE: Washington County Affordable Housing Study, December 1993 (CHAS p.9).

Table 7 WASHINGTON COUNTY Geographic Dispersion by Hispanic Status	

Census Tract	Population	Hispanic	Percent
324.03 (Hillsboro)	6,567	2,150	32.7%
332 (Forest Grove)	4,749	722	15.2%
329 (Cornelius)	7,366	1,095	14.9%
327 (North Plains)	4,046	485	12.0%
325 (Hillsboro)	6,256	736	11.8%
323 (Hillsboro/Aloha)	2,660	271	10.2%
326.01 (Hillsboro)	7,616	754	9.9%

SOURCE: Washington County Affordable Housing Study, December 1993 (CHAS p.9)

2. Familial Status

In addition to race and ethnicity, "familial status" is a protected class pursuant to the Fair Housing Act. As with other discussions in this analysis, it is assumed that the Act's guarantee of the right to obtain housing implies a right to obtain adequate and affordable housing. As will be evident below, the costs of housing in Washington County redound to the particular detriment of larger families.

Table 8 shows the number of "large related families" in Washington County, along with five selected communities within the County. This table further shows the number of those large families (again, in the County as a whole as well as in each community) who cannot obtain affordable housing within the community.

TABLE 8 HOUSING COST BURDENS BY LARGE FAMILY STATUS	
No. of Large Families at Different Levels of Median Income and Shelter Burdens	
Area	

	0 - 30% Median Income			31 - 50% Median Income		
	Total No.	Burden Above 30%	Burden Above 50%	Total No.	Burden Above 30%	Burden Above 50%
Washington County	292	245	200	557	399	113
Beaverton	39	39	31	158	117	52
Forest Grove	35	23	18	66	35	0
Hillsboro	88	88	66	119	63	13
Tigard	13	13	13	8	0	0
Tualatin	0	0	0	28	28	11
SOURCE: HUD CHAS Data Base.						

A second family-related impediment to local housing involves the proximity of adequate child care facilities to serve families with working parents. Even in those areas where sufficient employment opportunities exist, the lack of day care facilities may serve as an impediment to choice in housing.

Table 9 presents data on the extent to which Washington County has families with children with all available parents being in the work force. For example, the table presents data on those instances where there are children living with two parents when both parents are in the labor force. The table also presents data on the number of instances where there are children living with one parent, when that parent is in the work force.⁷

⁷ Table 9 separately presents data on children under six as well as children aged 6 to 17. There may be some duplication here, however. A household with two children, aged 5 and 8, for example, would appear in both places.

TABLE 9 FAMILIES WITH AVAILABLE PARENT(S) IN THE WORKFORCE						
City	Under Age 6			Age 6 - 17		
	2 Parents /a/	Father /b/	Mother /c/	2 Parents /a/	Father /b/	Mother /c/
Beaverton	2,253	118	501	4,100	292	1,258
Cornelius	446	18	33	748	79	118
Forest Grove	525	72	88	1,150	101	268
Hillsboro	1,826	110	357	4,059	292	1,105
Sherwood	118	17	18	366	16	151
Tigard	1,483	67	165	2,070	154	804
Tualatin	800	0	166	1,682	152	315
Washington Cnty	13,879	697	2,237	28,911	1,915	7,073

SOURCE: U.S. Census, STF 3A, Table P074.

NOTES:

/a/ Both in work force. /b/ Father in work force. /c/ Mother in work force.

In turn, the availability of child care facilities in Washington County will affect the ability of families with children to choose to live in Washington County. Data on available licensed day care facilities (whether they be family day care, day care centers, or other) should be available from the state. Further inquiry should be made as to the availability of child care to families with children, and particularly to low-income families with children (or to families with non-white parents).

3. Disability Status

Data on disabled individuals is not accessible on a county-specific or community-specific basis for Washington County, Oregon. Nonetheless, information taken from national sources can provide an insight into the probable fair housing impediments to disabled individuals in the County. Consider that:

- o Persons with low incomes are more likely to have disabilities than persons with high incomes. Nationally, more than one-in-six (16.7%) households with incomes of at or below 100 percent of Poverty had disabilities. An additional 14.7 percent of households with incomes of from 100 to 150 percent of Poverty had disabilities.

- o Amongst persons aged 35 to 54, persons with no disability had mean monthly earnings of \$2,446 while persons with a severe disability had earnings of \$1,562.

The extent and consequences of a work disability have been detailed in a variety of circumstances. The four major governmental surveys of disability show some consistency in the number and proportion of persons who indicate that they are "limited" in the kind of work they can perform.⁸

Washington County has a substantial population with work disabilities. Amongst the non-institutionalized persons aged 16 to 64, there were 14,073 persons with a work disability in Washington County. Of those, 8,154 (58%) were in the labor force and 7,438 (53%) were employed. Of the 5,919 disabled persons in Washington County who were not in the labor force, 4,564 (77%) were prevented from working.

TABLE 10 SEX BY WORK DISABILITY STATUS AND EMPLOYMENT STATUS WASHINGTON COUNTY			
	Male	Female	Total
In Labor Force			
Employed	4,370	3,068	7,438
Unemployed	388	328	716
Not in Labor Force			
Prevented from working	2,001	2,563	4,564
Not prevented from working	321	1,034	1,355
Totals	7,080	6,993	14,073
SOURCE: U.S. Census, STF 3A, Table P066.			

While work disabilities raise primarily economic issues within the fair housing context, the type and quality of housing as well as access to services and accessibility of economic support services should be considered as well. Table 11 shows the extent of the disabled population

⁸ The four surveys include: (1) the Current Population Survey; (2) the Survey of Income and Program Participation; (3) the Decennial Census; and (4) the National Health Interview Survey.

in Washington County who have mobility or self-care limitations.

TABLE 11 MOBILITY AND SELF-CARE LIMITATIONS BY SEX, AGE AND WORK DISABILITY STATUS Washington County, Oregon								
	Age 16 to 64 Years				Age 65 Years and Over			
	With a Work Disability		With No Work Disability		With a Work Disability		With No Work Disability	
	Mobility or Self-Care Limitation?		Mobility or Self-Care Limitation?		Mobility or Self-Care Limitation?		Mobility or Self-Care Limitation?	
	Yes	No	Yes	No	Yes	No	Yes	No
Male	1,064	6,016	1,185	92,561	1,152	2,399	441	8,340
Female	1,395	5,598	1,135	94,912	2,939	2,547	870	11,744
Total	2,459	11,614	2,320	187,473	4,091	4,946	1,311	20,084

SOURCE: U.S. Census, STF 3A, Table P068.

Several items are of importance in this table within the context of identifying fair housing impediments. Of the 7,080 males (aged 16 - 64) with work disabilities, 1,064 (15%) also had mobility or self-care limitations; 20 percent of the women (aged 16 - 64) with work disabilities also had mobility or self-care limitations. In addition, a small (but significant) number of Washington County residents who did not have work disabilities nonetheless had mobility or self-care limitations. Within the population aged 16 - 64, 2,320 (1%) had such limitations even without having a work disability. Both the numbers and proportions of persons with mobility or self-care limitations were greater within the population aged 65 and older.

For these households, even if economically affordable, housing may not be suitable. Housing needs to be barrier-free, in safe locations, and conveniently located nearby supportive services including transportation lines. In addition to coping with disability, special needs population groups face additional burdens of housing accessibility and suitability. Lack of adequate, available housing reduces the effectiveness of social services and health care assistance and may, in fact, exacerbate the disability.

4. Public Assistance Status

Minimum income requirements are a significant impediment to housing choice for households who are recipients of public assistance and may be unlawful discrimination based upon a prohibited class. The Fair Housing Act does not represent the only source of law prohibiting discrimination in housing in the United States. Additional protections can be derived from the federal Equal Credit Opportunity Act (ECOA). Under the ECOA, persons extending "credit" cannot "discriminate" based on certain designated classes. In addition to race, ethnicity, gender, family status, religion, and the like (as also covered by the Fair Housing Act), the

ECOA prohibits discrimination based upon the receipt of public assistance.

The ECOA defines "credit" to include the right granted by a creditor to: (1) defer payment of a debt; or (2) incur debt and defer its payment; or (3) purchase property or services and defer payment. The legal conclusion that rents represent "credit" under these terms of the ECOA is based on two lines of analysis. First, in situations not involving a month-to-month lease, a consumer is obligated for the entire payment for the lease term. Payments on that obligation are then deferred over monthly installments. Second, even if a lease is month-to-month, if lease payments are made on any basis other than the first day of the month, there is a deferral of payments which would bring the lease within the ECOA.

The applicability of the ECOA is important because age, marital status, and receipt of public assistance are protected classes, even though they are *not* protected classes under the Fair Housing Act. An example of how this broader extension can be brought to play within the fair housing context is discussed below.

Minimum income requirements for the lease of rental property serve as an impediment to the free choice of housing for recipients of public assistance. Indeed, because of the disparate impact that such requirements would have on recipients of public assistance, a discrimination challenge against such requirements may well have merit.

The U.S. Census reports the number and aggregate income for households receiving public assistance. According to the Census Bureau, "public assistance" includes any funds provided through supplemental security income payments by federal or state welfare agencies to low-income persons who are aged (65 years old or older), aid to families with dependent children (AFDC), or general assistance. County-wide, the 4,107 public assistance recipients received a total public assistance income of roughly \$16.4 million (an average of \$4,002 per household).

Moreover, Table 12 shows the extent of public assistance for the same Census tracts examined above. These include those tracts which have disproportionately high numbers of non-white residents.

TABLE 12
PUBLIC ASSISTANCE IN CENSUS TRACTS WITH DISPROPORTIONATE NUMBER OF NON-WHITE RESIDENTS
WASHINGTON COUNTY

Census Tracts	Number of Recipients	Aggregate Amount of Public Assistance	Average Annual Amount of Public Assistance
312	174	486,311	\$2,795
313	92	429,460	\$4,668
314.02	36	191,552	\$5,321
315.05	41	140,964	\$3,438
315.07	21	64,772	\$3,084
316.05	73	321,097	\$4,399
323	12	103,086	\$8,591
324.03	276	907,316	\$3,287
325	104	465,044	\$4,472
326.01	108	381,733	\$3,535
327	33	138,683	\$4,203
329	114	361,924	\$3,175
332	133	286,980	\$2,158

SOURCE: U.S. Census, STF 3A, Table P095 and P103.

As is evident from the data presented, the probability that a household who is a public assistance recipient will face a rental burden of less than 35% is minuscule. To assert, therefore, that no rentals will be made unless incomes equal at least three times the monthly rent is, in effect, simply to assert that no rentals will be made to public assistance recipients.

Indeed, Table 13 sets out the average monthly public assistance income for recipients of public assistance in the Census tracts in which 40 percent or more of the population lives at the federal Poverty Level or below. The table then sets forth the monthly rent which such an income would support, given a requirement that income must be three times the rent. As the table shows, there is virtually no rental housing available at those prices.

TABLE 13
RENTS AVAILABLE TO RECIPIENTS OF PUBLIC ASSISTANCE
IN CENSUS TRACTS WITH DISPROPORTIONATE NUMBER OF NON-WHITE RESIDENTS
WASHINGTON COUNTY

Census Tracts	Non-White Tract?	Monthly Public Assistance	Rent at One-Third of Income	No. Units w/ Rents <\$200 /a/			
				0 BR	1 BR	2 BR	3+ BR
312	yes	\$233	\$78	0	53	0	9
313	yes	\$389	\$130	0	0	20	0
314.02	yes	\$443	\$148	0	0	0	0
315.05	yes	\$287	\$96	0	0	0	0
315.07	yes	\$257	\$86	0	0	0	0
316.05	yes	\$367	\$122	0	0	7	0
323 /b/	yes	\$716	\$239	0	0	0	0
324.03	yes	\$274	\$91	7	66	66	0
325	yes	\$373	\$124	14	9	16	0
326.01	yes	\$295	\$98	0	33	11	15
327	yes	\$350	\$117	0	8	6	0
329	yes	\$265	\$88	0	0	0	0
332	yes	\$180	\$60	0	122	30	0

SOURCE: Calculations derived from U.S. Census, STF 3A, Tables P096 and P103.

NOTES:

/a/ Information not disaggregated for rents lower than \$200.

/b/ While this data may appear high, it is correct.

C. HOUSING AFFORDABILITY, QUALITY AND ACCESSIBILITY

The impact which housing affordability has on fair housing depends in turn on an evaluation of three factors. First, one should inquire into whether affordable housing exists given the existing distribution and demographics of low-income households in Washington County. Second, one should inquire into whether housing, even if affordable, is of acceptable quality as well. "Affordable" housing which has physical problems with it, in other words, does not provide appropriate opportunities for housing choice. Finally, even if affordable housing exists, one should inquire into whether that housing is available to those who need it. Each of these factors is considered below.

1. The Availability of Affordable Housing

A cursory examination of the populations of low-income persons in Washington County would seem to indicate that a shortage of "affordable" housing exists only for the lowest income range (0 - 30% of median income). While there are 7,721 households at 0 - 30% of median income (Table 2), there are only 5,524 units of housing that are affordable at that level of income.⁹ In contrast, while there are 9,588 households at 31 - 50% of median income (Table 2), there are 11,402 units of housing that are affordable at that level. The units of affordable housing at the various levels of median income are set forth in Table 14.

The analysis must not stop at this simple level, however. Merely because the number of units which would be affordable to households at 31 - 50% of median income exceeds the number of households who live at that level of median income does not mean that there is an adequate supply of affordable housing. To be "adequate," the supply of affordable housing must be sufficient such that the people who need it have an opportunity to obtain it. What this means is that the supply will likely need to be substantially larger than the population. Otherwise, households in different income ranges (either higher or lower, but likely higher) can rent these "affordable" units, thus still leaving a shortfall of housing for households in the 31 - 50% of median income range.¹⁰

One area for future inquiry in Washington County, therefore, is *why* the existing housing units which are affordable to households at 31 - 50% of median income are not available (or accessible) to those households. Such an analysis may find that many higher income households live in those affordable units.

⁹ The 5,524 consists of the 1,169 units with 0 - 1 bedrooms; 2,834 units with two bedrooms; and 1,521 units with 3 or more bedrooms.

¹⁰ Consider a hypothetical. Assume that there are 100 households who live at 31 - 50% of median income and that there are exactly 100 housing units that are affordable at that income. If, however, 20 of those units are occupied by households at 51 - 80% of median income, there will still be a shortage of housing (20 units) for the persons living at 31 - 50% of median income.

TABLE 14
 AVAILABILITY OF AFFORDABLE HOUSING
 AT DIFFERENT LEVELS OF HUD-ADJUSTED MEDIAN FAMILY INCOME (HAMFI) BY NUMBER OF BEDROOMS
 WASHINGTON COUNTY

Income Range	No. of Affordable Units by Tenure and By Number of Bedrooms in Unit								
	0 - 1 Bedrooms			2 Bedrooms			3+ Bedrooms		
	Renter	Owner	Total	Renter	Owner	Total	Renter	Owner	Total
0 - 30% HAMFI	828	341	1,169	887	1,947	2,834	659	862	1,521
31 - 50% HAMFI	2,324	262	2,586	4,449	1,094	5,543	1,399	1,874	3,273

Source: HUD CHAS Data Base.

2. The Availability of Quality Housing

The conclusion that adequate supplies of affordable housing exist for households living at 31 - 50 percent of median income is misleading in a second way also. The mere *existence* of "affordable" housing does not, unto itself, indicate that there is a lack of fair housing impediments in Washington County. When the Fair Housing Act refers to impediments which make housing unavailable, it refers not simply to *any* housing, but to *quality* housing.

Indeed, another fair housing impediment which is evident in Washington County is the lack of housing which is both affordable *and* of sufficient size and quality. The size and quality of housing can be measured using two factors: (1) whether the housing is over-crowded; or (2) whether the housing has physical problems. Table 15 sets forth information on those housing units that have been found to be affordable.¹¹

¹¹ The *total* number of housing units with physical problems or with over-crowding would be much larger.

TABLE 15
 SELECTED CHARACTERISTICS OF AFFORDABLE HOUSING
 AT DIFFERENT LEVELS OF HUD-ADJUSTED MEDIAN FAMILY INCOME (HAMFI)
 WASHINGTON COUNTY

Income Range	No. Households			No. Housing Units		
	Overcrowded			With Physical Problems		
	Renter	Owner	Total	Renter	Owner	Total
0 - 30% HAMFI	83	86	169	486	1,073	1,559
31 - 50% HAMFI	505	46	551	3,368	919	4,287

Source: HUD CHAS Data Base.

As can be seen, when quality is taken into consideration, the lack of affordable housing becomes acute.¹² Roughly 4,300 of the 11,000 units that are affordable at 31 - 50% of median income have physical problems with them.¹³ Nearly 1,600 of the 5,500 units that are affordable at 0 - 30% of median income have physical problems associated with them. If, therefore, quality is taken into account, there is an inadequate supply of affordable housing even in the 31 - 50 percent of median income range.¹⁴ As shown below, these problems are present throughout the various communities in Washington County.

¹² Overcrowding occurs when there is more than one person per room.

¹³ Physical problems are categorized by HUD into "moderate" or "severe." The "severe" classification is based on an assessment of five different factors, including: plumbing, heating, electric, upkeep, and hallways. The "moderate" classification examines each of these five factors along with the kitchen.

¹⁴ There is a demand for 9,588 units of housing for households at 31 - 50 percent of median income, but there would be only 7,115 such units available (11,402 affordable units minus 4,287 affordable units with physical problems = 7,115 units).

TABLE 16
 SELECTED CHARACTERISTICS OF AFFORDABLE HOUSING
 AT DIFFERENT LEVELS OF HUD-ADJUSTED MEDIAN FAMILY INCOME (HAMFI)
 SELECTED COMMUNITIES; WASHINGTON COUNTY

Income Range	No. Households			No. Housing Units		
	Overcrowded			With Physical Problems		
	Renter	Owner	Total	Renter	Owner	Total
Beaverton						
0 - 30% HAMFI	37	0	37	855	202	1,057
31 - 50% HAMFI	91	7	98	1,397	250	1,647
Forest Grove						
0 - 30% HAMFI	32	0	32	568	606	1,174
31 - 50% HAMFI	32	22	54	304	105	409
Hillsboro						
0 - 30% HAMFI	68	0	68	640	306	946
31 - 50% HAMFI	103	8	111	673	241	914
Tigard						
0 - 30% HAMFI	32	10	42	433	108	541
31 - 50% HAMFI	0	0	0	585	153	738
Tualatin						
0 - 30% HAMFI	0	0	0	187	45	232
31 - 50% HAMFI	17	0	17	218	33	251
Source: HUD CHAS Data Base.						

3. The Accessibility of Affordable Housing

What the data in Washington County shows is that households at the bottom rungs of the socio-economic ladder do *not* live in affordable housing. If one engages in the assumption that households would not *choose* to live in units where they pay inordinate amounts of income for shelter (thus presumably leaving less-than-adequate income for other household necessities), the conclusion must be that inadequate supplies of affordable housing exist for households living at these income ranges. A substantial number of households currently reside in housing that is *not* affordable under standards established by the U.S. Department of Housing and Urban Development (HUD). According to HUD, if a household pays more than

30 percent of its income for total shelter costs --total shelter costs include rent/mortgage plus all utilities other than telephone-- the household is over-extended. Table 17 presents the number of low-income households in Washington County who pay more than 30 percent of their income, as well as the number who pay more than 50 percent of their income, for their shelter costs.

The table also sets forth the number of vacant units of "affordable" housing that are either "for rent" or "for sale" in Washington County. The disparity between what is needed and what is available is evident. While 6,087 units of unaffordable housing existed for households at 0 - 30 percent of median income, there were only 122 vacant units of affordable housing available for that income class. While there were 7,258 units of unaffordable housing for households at 31 - 50 percent of median income, there were only 632 vacant units of affordable housing for that class.

TABLE 17 HOUSING AFFORDABILITY AT DIFFERENT LEVELS OF HUD-ADJUSTED MEDIAN FAMILY INCOME (HAMFI) WASHINGTON COUNTY								
Income Range	Affordable Vacant Units		Housing Burden > 30%			Housing Burden > 50%		
	For Rent	For Sale	Renter	Owner	Total	Renter	Owner	Total
0 - 30% HAMFI	83	39	3,910	2,177	6,087	3,533	1,610	5,143
31 - 50% HAMFI	601	31	5,067	2,191	7,258	1,947	1,019	2,966

Source: HUD CHAS Data Base.

The unavailability of affordable housing exists throughout the five Washington County communities that were identified above: Beaverton, Forest Grove, Hillsboro, Tigard and Tualatin.

TABLE 18 HOUSING AFFORDABILITY AT DIFFERENT LEVELS OF HUD-ADJUSTED MEDIAN FAMILY INCOME (HAMFI) SELECTED COMMUNITIES: WASHINGTON COUNTY								
Income Range	Affordable Vacant Units		Housing Burden > 30%			Housing Burden > 50%		
	For Rent	For Sale	Renter	Owner	Total	Renter	Owner	Total
Beaverton								
0 - 30% HAMFI	0	0	855	202	1,057	772	170	942
31 - 50% HAMFI	209	3	1,385	250	1,635	567	88	655
Forest Grove								
0 - 30% HAMFI	0	0	544	97	641	476	67	543
31 - 50% HAMFI	31	3	284	95	379	41	37	78
Hillsboro								
0 - 30% HAMFI	13	0	640	297	937	509	180	689
31 - 50% HAMFI	39	15	605	241	846	200	129	329
Tigard								
0 - 30% HAMFI	0	0	428	108	536	408	95	503
31 - 50% HAMFI	64	0	585	153	738	319	102	421
Tualatin								
0 - 30% HAMFI	9	0	170	45	215	170	45	215
31 - 50% HAMFI	40	0	218	33	251	103	24	127
Source: HUD CHAS Data Base.								

As these tables show, there is a significant penetration of unaffordable housing in Washington County. Moreover, there is insufficient vacant affordable housing to address (and redress) the extent of *unaffordable* housing in the county as a whole as well as in the individual communities.

4. Applying Affordability Considerations to a Fair Housing Impediments Analysis

Public and private actions, alone or in combination, can have fair housing implications if they affect the terms, conditions or privilege of a sale or rental. One example of a private-sector impediment to fair housing which, while facially based simply on socio-economic status may well have a disparate impact on area Hispanics, involves rental requirements that income equal at least three times the monthly rent.¹⁵

¹⁵ See discussion at page 15.

For Washington County as a whole, median gross rent was 24 percent of household income in 1989. This average, however, masks the adverse impact which a decision rule based on rent as a percentage of income would have on lower income households. Table 16 sets forth household income by gross rent as a percentage of household income in 1989. As can be seen, not surprisingly, the households who are called upon to pay more than 35 percent of their income for their gross rent are those households with incomes of \$0 to \$10,000 or with \$10,000 to \$20,000 a year. Even by the time a household reaches the income range of \$20,000 to \$35,000, the rental burdens as a percentage of income begin to fall to the lower levels (below 25%).

TABLE 19 HOUSEHOLD INCOME BY GROSS RENT AS A PERCENTAGE OF INCOME IN 1989 WASHINGTON COUNTY					
Rental Burden	No. Households at Different Levels of Annual Income				
	Less Than \$10,000	\$10,000 - \$19,999	\$20,000 - \$34,999	\$35,000 - \$49,999	\$50,000+
Less than 20%	161	261	4,528	6,138	4,709
20 - 24%	211	877	5,466	1,199	222
25 - 29%	263	1,810	3,379	382	82
30 - 34%	202	1,884	1,279	109	20
35% or more	4,782	5,527	1,238	90	6

SOURCE: U.S. Census, STF 3A, Table H050.

It is not simply private actions such as minimum income requirements that can create impediments to fair housing, however. Public policies that drive up the cost of housing can create such impediments as well. For example, a policy that prohibits more than two children per bedroom (or that requires children of opposite genders to be in separate bedrooms) push households into larger, and more expensive, housing in Washington County. The extent to which rent levels are affected by the number of bedrooms in a unit is set forth in Table 20.

TABLE 20 NO. OF HOUSEHOLDS WITH SPECIFIED RENTS BY NUMBER OF BEDROOMS WASHINGTON COUNTY						
	No. of Housing Units at Different Rent Levels					
	Below \$200	\$200 - \$299	\$300 - \$499	\$500 - \$749	\$750 - \$999	\$1000+
0 Bedrooms	24	115	672	113	161	67
1 Bedroom	620	825	7,366	2,048	200	369
2 Bedrooms	320	604	11,823	8,180	525	262
3+ Bedrooms	55	153	1,568	6,193	2,171	733
SOURCE: U.S. Census, STF 3A, Table H034.						

5. Racial and Ethnic Impact of Minimum Income Requirements

The minimum income requirements have a substantial impact on households who are seeking to rent units within areas that have disproportionate numbers of non-white households. As Table 21 shows, in those 13 Census tracts which have high poverty and higher than average concentrations of non-white residents, there is a predominant penetration of rents which equal or exceed 35 percent of household income for households with incomes of at or below \$10,000.

TABLE 21 HOUSEHOLD INCOME IN 1989 BY GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1989 CENSUS TRACTS WITH ABOVE-MEDIAN PENETRATION OF NON-WHITE RESIDENTS WITH INCOMES \$0 - \$10,000					
Census Tract	No. Households by Gross Rent as Percentage of Income				
	0 - 20%	21 - 24%	25 - 29%	30 - 34%	35+%
312	7	20	18	0	281
313	9	0	11	0	182
314.02	0	0	0	0	23
315.05	0	0	0	0	10
315.07	0	0	0	0	48
316.05	0	0	0	0	37
323	0	0	0	0	4
324.03	20	20	25	53	230
325	7	14	4	0	122
326.01	0	11	22	11	161
327	3	0	8	5	17
329	0	0	0	0	145
332	21	66	25	10	313

SOURCE: U.S. Census, STF 3A, Table H050.

As Table 22 shows further, the same observation can be made for households with incomes as high as \$10,000 to \$20,000.

TABLE 22
HOUSEHOLD INCOME IN 1989 BY GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1989
CENSUS TRACTS WITH ABOVE-MEDIAN PENETRATION OF NON-WHITE RESIDENTS INCOME \$10 - \$19,999

Census Tract	No. of Households by Gross Rent as Percent of Income				
	0 - 20%	21 - 24%	25 - 29%	30 - 34%	35+%
312	8	105	121	86	320
313	0	28	74	68	267
314.02	7	6	33	0	71
315.05	5	0	0	0	28
315.07	0	14	33	50	93
316.05	19	0	15	18	39
323	0	0	7	10	21
324.03	31	45	96	41	118
325	12	6	51	42	136
326.01	0	39	61	40	109
327	0	25	3	0	17
329	0	29	23	85	100
332	50	58	79	15	99

SOURCE: U.S. Census, STF 3A, Table H050.

D. HOUSING AND EMPLOYMENT

A commonly recognized impediment to choice of housing is the inability to obtain employment in proximity to affordable housing. According to the February 1996 Analysis of Impediments for Washington County, for example, there has been a "long-standing surplus of jobs over housing units" in the county. Moreover, the February report indicated, this surplus "is projected to continue on through the beginning of the next century." The report concluded that "this ongoing imbalance in the County's jobs-housing ratio means that many lower-income households are not able to live where they work (*i.e.*, in Washington County)."

The discussion below extends this jobs and housing analysis. Since the previous AI looked at the jobs/housing ratio, that discussion is not repeated.

Despite the "surplus" of jobs over housing, low-income households are not able to find housing in Washington County in close proximity to their place of employment. In

Washington County as a whole, roughly 62 percent of all workers (over 16 years old) who live in Washington County¹⁶ work in Washington County. In contrast, frequently, much higher percentages of workers who lived in low-income Census tracts had that same work pattern. Table 23 presents data for Census tracts which had 40 percent or more of total households living at or below 100 percent of the federal Poverty Level.

	Minority Tract	Work Inside County of Residence			Percent Worked Inside County
		Inside	Outside	Total	
304.01		919	1092	2,011	46%
304.02		797	1239	2,036	39%
305.01		1101	1377	2,478	44%
305.02		862	984	1,846	47%
306		1275	1309	2,584	49%
307		332	342	674	49%
308.02		1372	1691	3,063	45%
309		1209	839	2,048	59%
310.05		1601	1106	2,707	59%
310.06		1869	1494	3,363	56%
311		880	402	1,282	69%
312	yes	2003	972	2,975	67%
313	yes	1934	1412	3,346	58%
314.01		3152	2171	5,323	59%
314.02	yes	456	171	627	73%
315.05	yes	1566	1151	2,717	58%
315.07	yes	1356	1074	2,430	56%
316.05	yes	1997	883	2,880	69%
317.02		1773	762	2,535	70%
319.01		1982	1450	3,432	58%
320		2280	2689	4,969	46%

¹⁶ Of the 158,899 Washington County workers (over 16 years old), 98,258 worked within the county.

TABLE 23 NUMBER OF WORKERS WHO RESIDE IN WASHINGTON COUNTY WHO ALSO WORK IN WASHINGTON COUNTY					
	Minority Tract	Work Inside County of Residence			Percent Worked Inside County
		Inside	Outside	Total	
321.01		1103	764	1,867	59%
323	yes	935	393	1,328	70%
324.03	yes	2435	620	3,055	80%
325	yes	2195	525	2,720	81%
326.01	yes	2605	791	3,396	77%
327	yes	1513	546	2,059	73%
328		616	122	738	83%
329	yes	2942	654	3,596	82%
331		1957	334	2,291	85%
332	yes	1761	239	2,000	88%
335		868	281	1,149	76%
336		833	144	977	85%

SOURCE: U.S. Census, STF 3A, Table P045.

Of the 33 low-income Census tracts, 16 involved workers who live within the county working inside the county at proportions that were higher than the county average. Moreover, of those 16 tracts, ten were Census tracts where the population was disproportionately non-white. Examined from the opposite perspective, of the 13 non-white Census tracts, 10 involve in-county workers at disproportionately high rates. Reasons for this racial disparity are not readily evident.

A further analysis can be done of the place where Washington County employees work. For the county as a whole, roughly 21 percent of the workers who live within the county are employed within the same community where they live.¹⁷ A number of the low-income communities, however, experienced situations where the proportion of workers working inside the community was less than the county average, frequently substantially so. This data is set forth in Table 24. In sum, non-white workers tend to work in the county where they live, but not in the community where they live. Future research should explore the reasons for this phenomenon.

¹⁷ Of the 136,221 workers who report living in a "place," 28,352 report working in that same place.

TABLE 24
NUMBER OF WORKERS WHO RESIDE IN WASHINGTON COUNTY
WHO WORK IN THE COMMUNITY IN WHICH THEY RESIDE

	Work Inside Community of Residence			Percent Worked Inside Community
	Inside	Outside	Total	
304.01	387	1652	2,039	19%
304.02	242	1849	2,091	12%
305.01	327	2099	2,426	13%
305.02	237	1637	1,874	13%
306	473	2132	2,605	18%
307	173	501	674	26%
308.02	640	2112	2,752	23%
309	559	1529	2,088	27%
310.05	934	1829	2,763	34%
310.06	926	2508	3,434	27%
311	586	722	1,308	45%
312	1093	1932	3,025	36%
313	467	2855	3,322	14%
314.01	252	2791	3,043	8%
314.02	279	367	646	43%
315.05	180	2616	2,796	6%
315.07	282	2211	2,493	11%
316.05	355	2628	2,983	12%
317.02	315	2196	2,511	13%
319.01	370	1140	1,510	25%
320	778	4116	4,894	16%
321.01	275	1109	1,384	20%
323	35	121	156	22%
324.03	940	2171	3,111	30%
325	938	1752	2,690	35%
326.01	1043	1985	3,028	34%
327	58	404	462	13%

TABLE 24
NUMBER OF WORKERS WHO RESIDE IN WASHINGTON COUNTY
WHO WORK IN THE COMMUNITY IN WHICH THEY RESIDE

	Work Inside Community of Residence			Percent Worked Inside Community
	Inside	Outside	Total	
328	0	0	0	n/a%
329	362	2658	3,020	12%
331	732	1414	2,146	34%
332	837	951	1,788	47%
335	47	193	240	20%
336	0	0	0	n/a

SOURCE: U.S. Census, STF 3A, Table P046.

III. EVALUATION OF FAIR HOUSING PROFILE: COMPLAINTS & COMPLIANCE REVIEWS

Washington County's Community Action Organization receives about 700 to 750 calls alleging housing discrimination each year, with the largest number of complaints made by families with children, persons with disabilities and Hispanic households.¹⁸ Hillsboro is a notable exception, with the largest group being Hispanics with 33%, followed by disabilities at 20%, and familial status at 14%.

Table 25 FAIR HOUSING COMPLAINTS BY JURISDICTION	
Jurisdiction	Percentage
Beaverton	53%
Tigard	14%
Hillsboro	12%
Portland (within Wash. Co.)	7%
Aloha	5%
Other Areas	9%
TOTAL	100%

SOURCE: Community Action Organization, July 1996.

Virtually all the calls received by the Community Action Organization are from renters and the majority are from low-income renters. While part of the low-income concentration is probably due to the emphasis of the organization, low-income families are more vulnerable to discrimination, and the market for housing is tighter for low-income households, which means that discrimination has a greater adverse impact for the typical low-income household than it would for a middle class household with a greater range of choices.

¹⁸ Washington County, *Housing and Community Development Plan, 1995-2000*, May 1995, p.12.

Table 26
FAIR HOUSING COMPLAINTS BY CATEGORY

Category	Percentage
Familial Status	31%
Disabilities	26%
African Americans	13%
Hispanics	8%
Marital Status	4%
Criminal History	4%
Asians	3%
Religion	3%
Gender	3%
Arab-Americans	3%
Age	2%
TOTAL	100%

SOURCE: Community Action Organization, 1996.

Call numbers represent those who are motivated to seek redress for housing discrimination, but do not necessarily represent an accurate reflection of the scope or magnitude of the problem. Many discrimination victims choose not to register a complaint for a variety of reasons. Many are not aware of their Fair Housing rights; they may be in a hurry to find rental housing and not want to take the time to deal with filing a complaint; they may feel uncomfortable going to a government office because of their legal status or language or cultural barriers.

The U.S. Department of Housing and Urban Development’s Northwest/Alaska Regional Office investigated the following complaints in Washington County from FY 1993 to FY 1995:

Table 27 BASES FOR HUD-INVESTIGATED COMPLAINTS			
Category	FY93	FY94	FY95
Race/Color	10	3	3
Sex	3	5	1
National Origin	7	11	4
Disability	3	4	3
Familial Status	9	25	18
Religion	0	1	0

SOURCES: Multnomah County Consortium, *Fair Housing Plan: Analysis of Impediments and Strategies to Address Them*, January, 1996, IV:A2(a); FY95 data provided by HUD in response to a FOIA request/ June 11, 1996.

It should be noted that the filing of a complaint does not necessarily mean that housing discrimination has taken place. Any person who believes their rights have been violated may file a complaint with HUD. HUD will investigate the complaint and try to reach a conciliation agreement between the parties involved. If, after investigating the complaint, HUD finds reasonable cause to believe that discrimination occurred, the case may be heard in either an administrative hearing or in federal district court.

In 1994–95, the Fair Housing Council of Oregon (FHCO) completed 40 intakes for individuals living in Washington County who alleged some form of housing discrimination. The largest number of complainants (14) alleged discrimination on the basis of familial status; 11 cases involved complaints of racial discrimination; 11 alleged discrimination on the basis of national origin.

Statewide, the FHCO reports that an overwhelming number of cases pertain to denial of rentals (53 percent), evictions (22 percent), or disparate treatment (20 percent), and that two-

thirds of complainants are of low or moderate income.¹⁹

The Fair Housing Council maintains a database of complaints by county. For calendar 1995 and 1996 to date the following complaints have been received from Washington County.

Table 28 COMPLAINTS ARISING IN WASHINGTON COUNTY Calendar 1995 and 1996 to Date				
		Test Results		
Basis of Allegation	Intake	Evidence	No Evidence	Inconclusive
Race	13	1	6	4
National Origin	18	4	9	1
Religion	1			
Sex	1		1	
Familial Status	23	10	9	2
Disability	5		1	
Marital Status				
Age				
Income Source				
TOTAL	61	15	26	7

SOURCE: Fair Housing Council of Oregon, May 31, 1996. "Results" don't sum to "intake" since many complaints--for various reasons--don't reach the testing stage.

In its most recent annual report, the FHCO cites two unidentified Washington County fair housing cases in its summary of case results:

- o The largest settlement was a race case in Beaverton with two complainants; HUD

¹⁹ Fair Housing Council of Oregon (FHCO), *Annual Report, Fiscal Year 94/95*, 1995.

found cause and the respondent elected federal court. The Department of Justice settled the case for \$10,000;

- o A private attorney settled a familial status case in Tigard for \$7,500. In this case a park claimed to be a senior park and denied a woman with a child the opportunity to rent a site. This was the fourth complaint we are aware of [at] this park.²⁰

In sum, a large number of Fair Housing complaints are registered on an annual basis dealing with housing discrimination in Washington County. This is consistent both with the shortage of affordable housing (giving some property owners the opportunity to discriminate without financial penalty), and the general consensus that there is a substantial unmet need for more education for both property owners/managers as well as renters.

The high percentages of complaints relating to families with children throughout the county, and Hispanics, especially in Hillsboro, may be taken as a signal that special emphasis should be placed on enforcement and education targeted to those areas. The small number of complaints involving other minority populations does not, of course, mean that discrimination is not a serious problem for those groups, but may relate either to their small share of the Washington County population or cultural factors.

²⁰ Fair Housing Council of Oregon (FHCO), *Annual Report, Fiscal Year 94/95*, 1995.

IV. IMPEDIMENTS

A. INTRODUCTION

There are two core impediments to fair housing in Washington County. The tight knot of factors that have sharply restricted the supply of affordable housing in the county, and the tendency of property owners to take advantage of the very tight housing market to adopt measures and policies that have a substantial disparate impact on protected populations.

B. SUPPLY OF HOUSING

1. Home Ownership

One of the more arresting findings of Washington County's 1993 Survey of Housing Needs and Priorities was that 58 percent of renters interviewed believed they could not afford to purchase a home in Washington County. Most often perceived as obstacles to homeownership were high home prices and down payment expenses. The 1990 U.S. Census found that the vacancy rate for large (3+ bedroom) homes affordable to low- and moderate-income families was 0.47 percent. Beaverton had no vacant affordable homes in that size, and Tigard had no affordable vacant homes of *any* size.

Single-family home prices in Washington County have risen rapidly, with fall 1994 Realtors' Multiple Listing Service average prices ranging from \$116,500 to \$176,200 in different subareas. In contrast, median income for a family of four in the metropolitan area in 1995 is \$42,700; families at 80 percent of median earn \$34,150 annually. The standard federal measure of affordability sets shelter costs (rent or house payment, plus utilities) at 30 percent of gross monthly income. Using this measurement, these families could afford maximum mortgages of \$90,600 and \$62,800, respectively. In this market context, many area lenders offer loan products tailored for middle-income purchasers. However, the basic cost of homes in the county far exceeds the mortgage amounts for which low-income and moderate-income families could qualify.

In its 1993 study of Washington County's general housing market, Western Economic Services reported that record numbers of single-family building permits were being issued. However, market conditions favor the sale of existing homes at premium prices and the development of expensive to upper-end single-family houses. As pointed out in the Market Conditions section, the 1994-1995 housing market offers little incentive for building

affordable homes.²¹

There is relatively low homeownership among Hispanics in the active farming areas of Outer Washington County. However, homeowning African-Americans and Asians in Inner Washington County (Beaverton, Tigard, Tualatin) are able to live in housing that is equal to or superior to that of white homeowners.²²

A number of interviewees were asked to comment on impediments to homeownership, including redlining and mortgage-related problems. Several said that they were aware that there had been CRA-related violations in Portland some years ago, but were not aware that any data existed on such problems in Washington County currently. Since homeownership is disproportionately low among a number of protected population groups (Table 5), it would be useful for the County or some other entity to review available data on CRA and HMDA compliance in the near future to determine the scope of the problem (if any) in Washington County, and its connection to the low level of homeownership among many protected classes.

2. Rental Housing

In 1990, the Census identified 10,994 renter households with low incomes, 5,480 of whom pay over 50 percent of their income for rent. Seventy percent of renters with incomes at or below 30 percent of the area median income--3,533 households--paid more than half of their income on rent and utilities. As of 1990, less than 5 percent (or 2,457) of all rental units in Washington County were affordable to the more than 5,000 renter households earning less than 30 percent of median income. Beaverton had the largest number of affordable rentals of any city in the county, although a comparatively smaller percentage of its entire rental housing stock was affordable to low- and moderate-income households. The 1990 Census found 8,977 low-income households and 13,593 moderate-income households living in unaffordable housing in Washington County.

Using the 1990 Census as a "snapshot" of housing availability, we also see a shortage of *vacant* affordable rental units, finding 83 vacancies in the county that would be affordable to a family earning between zero and 30 percent of median income. (Only 13 of these were located in the county's three largest cities, with none in Beaverton or Tigard.) Overall, the vacancy rate for these units was 3.4 percent, less than half of the 1990 vacancy figures for the

²¹ Washington County, Department of Housing Services, *Housing and Community Development Plan, 1995-2000*, p.11.

²² Multnomah County, Housing and Community Development Commission, *Fair Housing Plan: Analysis of Impediments and Strategies to Address Them (Draft)*, January 1996, IV:A1.

rental market as a whole (7.1 percent). The 1990 shortage of affordable rental units was particularly severe in Hillsboro, where the vacancy rate for units affordable to low- and moderate-income households was just 2.5 percent--approximately one third of the overall market rate. Tigard and Beaverton had no large (3+ bedroom) vacant rentals that were affordable to households in the lowest income categories in 1990.

Overcrowding, defined as more than one person per room, also has a serious impact on renters. In 1990, 5 percent of all renters in Washington County (about 2,335 households) lived in overcrowded housing; the city of Hillsboro had more overcrowded rental housing than any other city over 25,000 in Oregon (10.1 percent of all renters, 521 households). This means that over half of the large-family renters and almost three-quarters of large low-income renters were living in overcrowded conditions. The 1990 Census also found that large family renters in Beaverton who earned 0-30 percent of median income were overcrowded, making Beaverton the second worst city in the state.²³

Since homeownership is largely outside the financial capabilities of a disproportionate share of protected class households, the supply of apartments is critical if these households are to be housed affordably in Washington County at all. Table 29 shows that new building permits for apartments were highly cyclical²⁴, whereas the growth in the minority population in Washington County was explosive throughout the period 1980-90, with the Asian population growing by 161%, Hispanics by 88%, Native Americans by 42%, African Americans 21%, and whites at 12%.²⁵ Moreover, new construction for both single family and apartments has generally not been in the affordable range.

²³ Washington County, Department of Housing Services, *Housing and Community Development Plan, 1995-2000*, p.9.

²⁴ Much more so than for single family housing.

²⁵ Multnomah County, Housing and Community Development Commission, *Fair Housing Plan: Analysis of Impediments and Strategies to Address Them (Draft)*, January 1996, II:2.

Table 29 BUILDING PERMITS ISSUED IN WASHINGTON COUNTY 1975-1996		
Year	Single Family	Multi-Family
1975	1,992	719
1976	3,321	1,668
1977	3,803	2,144
1978	3,579	3,159
1979	1,869	2,732
1980	1,934	1,136
1981	1,161	906
1982	826	336
1983	1,260	156
1984	1,338	414
1985	1,548	2,287
1986	1,834	1,273
1987	1,946	1,407
1988	2,113	1,355
1989	2,584	4,563
1990	2,746	2,577
1991	2,110	516
1992	2,828	327
1993	3,277	703
1994	3,146	1,933
1995	1,481	415
1996	3,654	3,355

SOURCE: Washington County, *Affordable Housing Study* (December 1993), p.6 for 1972-1992. Data for 1993-6 from, Neal Higgins, *Real Estate Report* (Beaverton, Spring 1996), p.8.

There is also data that shows that the number of jobs in Washington County is increasing much more quickly than population. This means that people are commuting to work in Washington County who cannot afford to live there.²⁶ Those that cannot afford to live in Washington County are those in the lower income brackets, and these brackets are those where protected classes, once again, are disproportionately represented.

The following table shows the percentage of minority population in each of the three Metro counties.

Table 30 MINORITY POPULATION THREE COUNTY AREA 1990 Census		
Location	Number	Percent of Pop
3-County Region	134,506	11.4%
Multnomah	87,583	15.0%
Clackamas	15,061	5.4%
Washington	31,662	10.0%

SOURCE: The Multnomah County Coalition, *Fair Housing Plan: Analysis of Impediments and Strategies to Address Them* (January 1996), Table 1, page 2.

To the degree that minorities are finding jobs in Washington County but face disproportionately limited housing choices, this could constitute an impediment to fair housing.

The situation is liable to become worse in both the short run and the long run. Data from

²⁶ Multnomah County, Housing and Community Development Commission, *Fair Housing Plan: Analysis of Impediments and Strategies to Address Them (Draft)*, January 1996, II:C.

interviews with real estate industry professionals estimate that rents in Washington County will increase on the average of 5 to 8% per year over the near term. In comparison, the housing component of the CPI-U was only 3.0% for April 1996 (over the previous April). A rate of 7% per annum would double rent levels in 10 years.

In the longer term, the current deficit of roughly 10,000 units of affordable housing is estimated to grow to about 30,000 units over the course of the next 20 years.²⁷ This would have a disproportionate impact on minorities and other protected classes. It should also be noted that Washington County is currently at or near the top of the business cycle. This means that unemployment rates are relatively low, and incomes are relatively high. The problems in evidence under these favorable conditions can be expected to be significantly more poignant when the inevitable downturn occurs.

C. IMPEDIMENTS IN THE RENTAL PROCESS

The very tight housing market produces a climate which favors abuse in the rental process. Problems with the rental process ranked high as impediments among a large number of persons interviewed for this study. Of particular concern were the following:

High Application Fees Application fees in the \$30 to \$75 range appear to be common in Washington County. Given the tight housing market, a household searching for an apartment might have to make a number of applications before getting an apartment. However justifiable from a business perspective, these fees, especially for households which have imperfect rental or credit histories²⁸, constitute a serious impediment in the search for a place to live.²⁹

Rejection Criteria in the Screening Process The typical screening process is in three parts. The property owner develops criteria that the screening agency uses to screen applicants; applicants apply for housing and fill out an application and pay the fee; the screening agency then runs the checks and decides--based on the pre-supplied criteria--whether the applicant qualifies.³⁰

²⁷ Derived from data in ECO Northwest, *Westside Light Rail Corridor: Economic Analysis*, August 1994.

²⁸ A phenomenon probably correlated with both poverty and protected class status.

²⁹ A \$35 fee at \$4.75 per hour is almost a day's pay.

³⁰ Some management companies use a pre-screening process where a copy of the criteria to be used is provided to the applicant. If the applicant thinks he or she meets the criteria only then do they

There are problem areas in the screening process. Past bankruptcies, past FEDs, bad references from previous property owners, and a criminal record are all factors used as disqualifiers by property owners. While all these disqualifiers can be used appropriately, when the market is tight and property owners can pick and choose their tenants, there is a tendency to use them inappropriately. For example, it may be the case that while a past bankruptcy in a particular case *may* have an impact on current ability to pay rent, there is no *necessary* connection between the two. Rejecting all applicants for the sole reason that they have a bankruptcy on their record may thus not have a sound business purpose, and may disproportionately impact members of protected classes.

Possession of a Section 8 Certificate Several interviewees noted that an increasing number of property owners are refusing to accept section 8 certificates. Different interviewees had different explanations for this phenomenon. One was that the section 8 program as administered in Washington County was bureaucratic and time consuming in the best of times, but recently had gotten even more so with the decision on the part of DHS to sharply restrict payments to property owners for tenant damage to property. The alternative view is that the demand for housing is so strong that property owners can earn more with fewer restrictions by placing their property on the open market.

At least one interviewee also said that she had received complaints that one or more landlords were not renting to *holders* of section 8 certificates, i.e. even putting aside the disinclination of the landlord to accept the certificate, the property owner(s) did not want to rent *on any basis* to people who were holders of a section 8 certificate.

More work is necessary before a determination can be made whether either of these problems constitute a fair housing violation or an impediment to fair housing.

High Deposits A disproportionate share of a number of protected classes is low-income. Many property owners require substantial deposits to gain occupancy. The size of these deposits may significantly reduce the housing choices available to low-income members of protected classes. High deposit requirements together with substantial outlays for application fees are, according to some interviewees, a substantial factor in driving low-income *families* into homelessness.³¹

3-Times Income Requirement Many property owners require that applicants have

pay the fee.

³¹ A study done in November 1993 reported that "1,700 homeless people, 3,420 family units, and 1,080 childless couples who are homeless each year in Washington County," Washington County, *Housing and Community Development Plan* (May 1995), p.16.

monthly incomes that meet or exceed some multiple (often 3X) of the rent in order to qualify. Given the large number of Washington County residents paying more than 30% of their income for rent and utilities (see the discussion under Background Data, above), such a rule would be a substantial barrier to housing choice for the generally lower income protected classes.

D. IMPEDIMENTS IN ONGOING TENANCY

Overcrowding Much of affordable housing is overcrowded. According to a number of interviewees the problem is particularly pervasive among the Hispanic population, though other minority groups with a tendency toward large families are also impacted. The difficulty relates both to demand and supply. Incomes tend to be low, and the supply of larger affordable apartments tends to be even lower relative to the demand than for affordable housing at large.³²

Poor Design for Children Federal law prohibits discrimination against families with children. However, some apartment complexes in Washington County are not designed to be children friendly. Several interviewees noted that some managers tend to be punitive with respect to families with children in order to suppress the childrens' natural play activities and normal noisiness. Poor design exacerbates these problems. This results in evictions and subsequent difficulty in getting housing.

Premium Rents to House Minorities Several interviewees suggested that some property owners were "specializing" in housing minorities but only at "top dollar" rents. If true, this would of course be a violation.

Dilapidated Housing The *American Housing Survey for the Portland Metropolitan Area for 1990* reports that "0.5 percent of all housing units in Washington County have severe physical problems and another 1.4 percent have moderate physical problems."³³ This totals some 2,300 units. Various interviewees have noted that County enforcement is less than energetic except in cases of severe structural problems. Soggy carpets from leaky pipes, drippy drains, sweating walls, etc., which may have serious respiratory health impacts on children, may be seen by the County's building and health departments as being outside the scope of County enforcement. Interviews with the County's Health, Building and Planning

³² Washington County, Department of Housing Services, *Housing and Community Development Plan, 1995-2000*, May 1995, p.10.

³³ Washington County, *Affordable Housing Study* (December 1993), p.16.

Code enforcement personnel confirm that the County does not provide an enforcement mechanism for inside sanitation problems.

E. EDUCATION AND OUTREACH

A large number of interviewees agreed on the need to provide education to both property owners and tenants on what was allowed and what was not. Generally all agreed that "mom and pop" property owners were likely to be less educated on fair housing issues than management companies. It was also noted that certain ethnic populations were less likely for cultural reasons to file complaints involving fair housing, which might leave them more vulnerable to abuse. All agreed that ongoing emphasis on training and assistance was vital to minimize problems in a difficult market.

F. COUNTY GOVERNMENT

Building Fees There is sense among both the advocacy and the property owner/developer community that the level of processing fees and system development charges act as a deterrent to the development of more affordable housing. The County's response is that the fee structures in those two areas are designed to recover the costs involved in reviewing proposals and building infrastructure. It is County policy not to give preferential rates, since these functions are designed to be self-supporting.³⁴

Density Issues There was a feeling among a number of interviewees that not enough was being done to make land available for apartments renting in the affordable range, and to encourage developers to make available housing affordable to the high percentage of those in protected classes who are low-income. The county's response is that adequate land is currently zoned for high density development, but "market conditions" are not conducive to its development at maximum density.

Washington County's Limited Own-Funds Commitment to Fair and Affordable Housing There was a sense among a variety of interviewees that Washington County should exercise more leadership in confronting fair housing and affordability issues. The lack of substantial general fund support for what is seen across the county as a significant problem is perceived in many quarters as an impediment to achieving substantial progress; but even beyond the issue of funding, many people thought that a solution couldn't be found if the County did not take an energetic, leadership role. The problem is liable to get worse, they noted, with the substantial cuts in federal housing programs enacted by Congress. The

³⁴ The only exception appears to be for low-income individuals.

County's response is that the practice of providing only limited general fund support for Fair Housing-related programs and projects is fully consistent with the Washington County 2000 strategic plan and Board policy.

G. INDEPENDENCE

Opportunities for Self-Improvement High housing costs, high aggregate application fees, the general cost of moving, and the cost of having to work far from home all tend to drive low-income members of protected classes into a spiral of poverty. A number of interviewees discussed the need for programs and infrastructure to counteract these factors. So, for example, low-income Hispanics in North Plains need access to educational opportunities in order to improve their earning ability. Improved earning ability may lead to car ownership which may provide access to reduced-cost health care in Hillsboro or Portland, which may improve health and result in a reduction of expenses and an increase in income. This is especially important with respect to disabled individuals, and women with children.

Transportation Public transportation is a serious problem for low-income members of protected classes. It was noted by a number of interviewees that many low-income members of protected classes do not have cars. This means that they either walk or rely on public transportation. Public transportation is limited in Washington County, especially in the smaller towns to the west. North-south transportation is particularly limited. Tri-Met reports that their federal operating subsidies have been eliminated by Congress and they will have difficulty maintaining current service levels. Extensions of bus service to new job centers and other sites will require that those sites provide an operating subsidy. An adequate public transportation system would increase mobility and economic opportunity while reducing costs.

Further study needs to be devoted to the comparative access to transportation of protected classes versus non-protected classes. The role of transportation as an important factor in poverty needs more work.

Location: Housing, Jobs, and Services One of the characteristics of "the other side of the tracks" is the lack of housing choice, services, and jobs within reach.³⁵ Further work needs to be done on the degree to which protected classes are deprived of fair housing opportunities by disparate treatment in the provision of services and other opportunities, especially in outlying areas.

³⁵ Haar & Fessler, *The Wrong Side of the Tracts* (New York: Simon & Schuster, 1986), p.67, inter alia.

V. ASSESSMENT OF CURRENT PUBLIC & PRIVATE FAIR HOUSING PROGRAMS AND ACTIONS

A. FAIR HOUSING ENFORCEMENT

Both state and federal agencies are involved in the enforcement of state and federal fair housing laws.

In Oregon state law prohibits discrimination in housing on a less inclusive basis than the federal Fair Housing Act. Oregon's civil rights act, ORS 659, for example, explicitly excludes from coverage discrimination based on receipt of certain federal benefits.³⁶ Moreover, it permits landlords to refuse to rent to "unrelated persons of the opposite sex" if it would result in the "common use of bath or bedroom facilities by unrelated persons of the opposite sex." ORS 659.033(6). Marital status coverage is narrowly interpreted in Oregon so as not to apply to unmarried couples when a shared bedroom or bath is involved.³⁷ ORS 659.033(1).

Although the Oregon Act does not explicitly cover facially neutral actions relating to housing that have a disparate impact on one or more protected classes, nothing in the statute nor in any of the case law would prohibit a strong case based on disparate impact.

Oregon law also prohibits discrimination on the basis of disability. (ORS 659.430). And ORS 93.270 outlaws discriminatory provisions in restrictive covenants.

Enforcement of these provisions is the responsibility of the State of Oregon's Civil Rights Division, which handles complaints made under the state's fair housing laws using an administrative enforcement process.³⁸

On the federal side, the U.S. Department of Housing and Urban Development (HUD) provides an investigation and enforcement mechanism for complaints arising under the Fair Housing Act, 42 U.S.C. 3601 et. seq. Persons with housing discrimination complaints covered under the federal law may submit their complaints directly to the HUD

³⁶ ORS 659.033(5) source of income exclusion, and ORS 659.033(6) unmarried heterosexual couples.

³⁷ Although one major commentator views the exemption for unmarried couples as largely irrelevant because of the Act's separate prohibition of discrimination on the basis of *marital status*. Michael Marcus, *Landlord/Tenant Rights in Oregon*, (Vancouver, B.C.: Self-Council Press, 1988), p.209.

³⁸ State laws dealing with discrimination in housing are found at ORS 659.033 and 659.400 et seq.

Northwest/Alaska Region in Seattle, Washington. HUD uses an administrative law process to resolve complaints.³⁹

In addition to the two official enforcement agencies, the Fair Housing Council of Oregon (FHCO) (a nonprofit organization) provides testing services to individual complainants. The Fair Housing Council operates a hotline for victims of discrimination, conducts tests on bona fide complaints, and refers complainants to attorneys willing to represent them in state and federal court.

Finally, both ORS 659.121 and the Fair Housing Act provide for civil actions in the courts by aggrieved parties.

B. EDUCATION AND INFORMATION PROGRAMS

A number of entities provide information and education to tenants, property owners, and others. Washington County's Community Action Organization provides Fair Housing information, referrals, assistance with processing discrimination complaints, mediation and/or advocacy with landlords, assistance with enforcement efforts as appropriate, and follow-up. It also provides community education for consumer and social services provider groups and for landlords, with smaller unaffiliated landlords being the primary focus.

Independent Living Resources, a non-profit, provides housing location and tenant advocacy for physically and mentally disabled tenants who have special housing needs. Other programs include mediation and advocacy with landlords to help maintain tenants in rental units, and technical assistance to landlords, developers, architects, builders and governmental entities in developing accessible housing.

Oregon Legal Services Corporation maintains a Tenants Hotline which dispenses information on tenants' rights and responsibilities and also provides a full range of mediation, advocacy, and legal assistance when appropriate.

All three agencies receive funding through the Washington County and City of Beaverton Community Development Block Grant programs.

In addition, various other groups and official agencies provide educational programs. The Washington County Association of Realtors provides educational programs to property owners to keep them up to date on developments in the Fair Housing area. Other classes and programs deal with sensitizing property owners to the increasingly multi-cultural aspects of

³⁹ The U.S. Department of Justice also has a Oregon Hotline for landlord/tenant as well as other consumer problems.

the marketplace.

Various police agencies sponsor classes in good management for property owners, including the requirements of both the Oregon and federal acts.

VI. ACTION PLAN: STRATEGIES TO ADDRESS IMPEDIMENTS TO FAIR HOUSING

A. DIRECT DISCRIMINATION

o Findings

Complaint statistics from various entities along with interview data show a substantial amount of direct discrimination in housing in Washington County against protected class populations.⁴⁰

The complaint statistics tend to underestimate discrimination due to three factors:

1. Cultural differences which inhibit members of some groups from filing complaints with authorities;
2. Lack of awareness of fair housing rights;
3. Fear of retaliation.

o Strategies

It is important that the County, along with other local governments, ensure adequate access to fair housing enforcement remedies and monitor the effectiveness of enforcement efforts. This will involve a significant ongoing commitment of resources.

Strong education and outreach programs targeting both renters and property managers are necessary to reach Fair Housing goals. This will involve an ongoing commitment of resources by the County, other local governments, and the housing industry.

B. SUPPLY OF HOUSING

⁴⁰ Protected classes include any person or group against whom it would be illegal to discriminate on the basis of "race, color, religion, sex, disability, family status, or national origin." See page 6 supra.

o Findings

A disproportionate share of the population of protected class members living and/or working in Washington County are poor.⁴¹

The poverty of protected class members is in part systemically related to and reinforced by the economic impact of identifiable impediments in the fair housing area. This is to say that many of the impediments identified operate to drive protected class households toward poverty and increased vulnerability in subsequent periods.

The shortage of affordable housing exacerbates the significant ongoing problem of discrimination against low-income protected class households.⁴² This includes discrimination in choice of tenants, in evictions, in terms, conditions, and privileges in rental housing, and against disabled individuals, especially with respect to the denial of reasonable accommodations.

There is a large and growing divergence between the supply and demand of affordable housing. A disproportionate share of members of protected classes are living in unaffordable housing in Washington County. The situation will get worse over the planning horizon with implemented and proposed cuts in federal spending, the inevitable turn of the business cycle, and the forecasted sharp increase in rents at 5-8% per annum.

It is generally agreed that state funds for affordable housing are awarded to a significant degree in proportion to the non-debt funding made available by local jurisdictions and others. A number of interviewees were of the opinion that the shortage of affordable housing was so pressing that the County should shoulder the responsibility of making more non-debt resources available to leverage more state money.

o Strategies

The county, along with local governments, community organizations, and private

⁴¹ See Tables 1 and 2, pages 10 and 11, respectively.

⁴² "Affordability" is a fair housing issue when--as here--protected classes are over-represented in the low-income population. See pages 6-7 and footnote 4 above, as well as Appendix I on the Fair Housing Act for further discussion of this issue.

entities should take a more active leadership role in the development of affordable housing targeted to low-income protected class families.

The county, along with local governments, community organizations, and private entities should recognize that resolving fair housing problems may involve significant commitments of local resources so as to make local affordable housing project proposals more competitive in the competition for state funding.

C. IMPEDIMENTS IN THE RENTAL PROCESS

o Findings

Low-income protected class families have limited disposable incomes and savings.

Limited resources, together with the variety of impediments discussed below, make such families particularly vulnerable to financial emergencies resulting in eviction.

Virtually all interviewees in organizations and businesses dealing directly with tenants agreed that low-income protected class families tend to be uneducated in how best to apply for and obtain housing and how to manage an ongoing relationship with the property owner or manager. There is a substantial need to educate protected class individuals about their Fair Housing rights. Similarly, many housing providers (especially managers) have a need for additional education in their Fair Housing responsibilities.

High cumulative application fees, deposit requirements, and income-to-rent requirements, all tend to overpower low-income protected-class renters. The costs of searching and finding an apartment are often so high that the search costs themselves produce failure, or so exhaust savings that the family is more vulnerable to passing financial crises leading to eviction.

The screening criteria used by many property owners appear to go beyond assuring the property owner that the applicant family meets a reasonable minimum standard of creditworthiness. Instead, the criteria adopted have the result of placing a substantial number of higher income families in what would otherwise be affordable housing for protected low-income families.

The cost of making housing accessible is a substantial burden especially for low-income members of the disabled population.

A number of interviewees on both sides of the market agreed that a significant number

of property owners refuse to accept section 8 certificates, and there is some indication that some property owners discriminate against prospective tenants on as soon as they know the tenant has a section 8 certificate.

The Northwest Pilot Project has recently completed a study in Portland based on a sample of single men in both public and private housing. The results indicated that moderating the required income to rent ratio had no adverse impact on evictions for either financial or behavior problems. An expanded one year pilot project for public housing in Portland has been proposed. Washington County should closely monitor the progress and results of this project.

o Strategies

County and local governments needs to consider a mechanism for reducing the cumulative costs to applicant families of duplicate screening fees, while at the same time protecting the interests of property owners. A pilot program could be considered.⁴³ Central provision of information would reduce costs to the applicant while still providing the same product to the property owner.

The County, other local jurisdictions, and public and private entities, should provide adequate outreach programs to educate protected class individuals and housing providers in the their Fair Housing rights and responsibilities.

Further study needs to be undertaken of the economics of accessibility modifications in existing housing, especially with respect to the low-income disabled population.

A review should be made of the factors underlying the reluctance of property owners to rent to section 8 certificate holders with an eye to improving program performance.

Work should be undertaken to arrive at combinations of circumstances and criteria which would normally trigger a no-rent decision in the screening process, but shouldn't.⁴⁴ In such cases property owners may be willing to ease or elaborate on the criteria or, alternatively, some entity may be willing to become a limited cosigner. A central guarantee fund for some such applicants may produce net benefits. The idea should be researched and a pilot considered.

⁴³ The Portland Police Bureau, for example, works closely with the public housing managers in Portland to screen applicants.

⁴⁴ For example, a medical bankruptcy when the applicant has recovered and is again employed.

The County should build stronger relationships with social service providers who refer high-risk applicants for housing or who provide support/case management for high-risk applicants.

D. IMPEDIMENTS IN ONGOING TENANCY

o Findings

Overcrowding is a problem for a significant number of low-income protected-class families.

Too many low-income protected class families with children will be evicted for problems related to children, when poor design of apartment blocks and authoritarian managers are significant contributing factors. Given the screening process, this will make it more difficult and costly in the future for these families to find housing.

Several interviewees (on both sides of the industry) noted that certain property owners charge premium rents to protected class renters.

There is a significant amount of dilapidated housing being rented in Washington County. There is a concern that any efforts to force property owners to correct serious problems will result in the withdrawal of the property from the market.

o Strategies

Managers and owners should be educated to understand that rules relating to the normal activities of children which are unreasonable or impossible to comply with may constitute violations of the Fair Housing Act and/or ORS 659.033(1).

County and local jurisdictions should encourage proper design in apartment houses to provide a reasonable accommodation for normal childhood activities.

County and local jurisdictions should consider adopting housing codes which would provide for improvement and retention of dilapidated housing in the affordable housing stock. The experience of the City of Portland with its Housing Maintenance Regulations should be reviewed.⁴⁵

Property owners should be educated to understand that charging premium rents to rent

⁴⁵ Ordinance 130672 (1970).

to minorities is a violation of the Fair Housing Act and the Oregon Civil Rights Act, ORS 659.033(1)(c).

E. EDUCATION AND OUTREACH⁴⁶

o Findings

There is a need for further education and outreach to promote ongoing awareness of Fair Housing rights and responsibilities in the community generally and among service providers.

Property owners, managers and tenants are all in need of substantial ongoing training on how to manage the rental process in a mutually satisfactory way that minimizes unnecessary costs.

There is a need for education for developers, builders and architects on Fair Housing issues related to accessibility.

o Strategies

Everyone agrees that education for property owners, managers, realtors, lenders and tenants needs to be strongly emphasized. Lack of education on both sides creates problems that waste substantial resources and further push low-income tenants closer to poverty.

There is a significant need to provide education on Fair Housing issues to social service providers and so indirectly to their clients who may be adversely affected and unaware of their rights.

Developers, builders and architects should be included within the ambit of County, other local government and private educational efforts on Fair Housing issues related to accessibility.

F. COUNTY PROGRAMS AND POLICIES

⁴⁶ Specific findings and strategies in response to particular problems are found in the sections dealing with those specific problem areas.

o Findings

Based on County policy, the Department of Land Use and Transportation does not have the *encouragement* of affordable housing as part of its mission. A number of interviewees were of the opinion that this policy should be changed, since the Department could usefully play a pivotal role in reducing impediments to Fair Housing.

It is County policy and fully consistent with the County's *Washington County 2000* strategic plan not to devote significant general fund resources to the amelioration of fair housing problems.

Several interviewees were of the opinion that the county and local jurisdictions had in the past not been energetic enough in helping to leverage state money for affordable housing projects. Performance figures improved sharply in 1995 in terms of state funding acquired for affordable housing projects in the county (though they were off again in the Spring 1996 cycle).⁴⁷ Even at the rate of the improved performance of 1995, however, the forecasted need for affordable housing is increasing at a rate substantially higher than the available supply.

The City of Beaverton, in the periodic review of its comprehensive plan now underway, is devoting significant attention to affordable housing issues.

o Strategies

Were the county, local jurisdictions, community organizations and private groups to put more resources (grants, fee waivers, property tax abatements, etc.) into affordable housing proposals, Washington County projects would receive proportionately more state funding, and proportionately more affordable housing would be built. Though other public and private entities need to take more responsibility for getting the job done and the affordable housing problem solved, the county might wish to consider committing its own resources (i.e. non-federal money), to leverage state dollars for critically needed affordable housing which would not otherwise be built.

⁴⁷ Comparisons are based on the following funds: federal Low Income Housing Tax Credits (LIHTC), Oregon Affordable Housing Tax Credits (OAHTC), Oregon Trust Funds, and the HELP program. Figures are from the Oregon Department of Housing and Community Services and do not include such sources as tax exempt private activity bonds or the state's Elderly and Disabled Bond program.

The County might wish to consider the adoption of cost effective measures to expand the supply of affordable housing. These might include a requirement that development that displaces affordable housing contribute to replacing that housing; a look at surplus real property with an eye toward its use for affordable housing; inclusionary zoning requirements; devoting some portion of the real estate transfer tax to leveraging state affordable housing dollars; and other similar programs.

The County should review the forthcoming study sponsored by the Coalition for a Livable Future for recommendations on revising land use practices that may constitute impediments to Fair Housing.

G. INDEPENDENCE

o Findings

Low-income protected class families tend to have poorer access to services, opportunities to advance themselves, and transportation, than other families in Washington County, especially if they live in the western part of the county. This tends to exacerbate fair housing problems and reinforce poverty.⁴⁸

Public transportation is inadequate to provide for the transportation needs of many protected class families. Poor access to jobs, health care, and educational opportunities for all, but especially for women with children and mobility impaired people, sharply limits the opportunities for self-improvement and economic independence. Conversations with Tri-Met planners portray a difficult future, at least in the near term, for public transportation due to cuts in federal funds and other factors.

o Strategies

The County should conduct or commission a review of public transportation as an impediment to Fair Housing choice in the County with special emphasis on the

⁴⁸ One way for low-income protected class households to avoid or minimize disparate impact fair housing problems is for those households to improve their economic status through access to education, related services, and better paying employment. To the extent that public and/or private policies make these services and opportunities differentially less available or accessible to protected class members, these policies may be impediments to the achievement of fair housing goals.

disabled and families with children.

Before granting further tax abatements or other special incentives to industries, jurisdictions in Washington County should:

- o Assess the proximity and availability of housing affordable to new employees of the industry;
- o Ensure that a range of housing types which are affordable to lower wage workers of the new industry is in close proximity to the work place or will be developed;
- o Require the industry to address other barriers, such as the lack of transportation and child care, which have a substantial impact on the practical availability of housing.

APPENDIX I
REVIEW OF THE FAIR HOUSING ACT

REVIEW OF THE FAIR HOUSING ACT

The Fair Housing Act of 1968, 42 U.S.C. §§ 3610, *et seq.*, as amended in substantial part in 1988, is a legislative enactment enforcing, with exceptions, a policy of equal access to all types of housing for classes of persons within its protection. To this end, the Act prohibits not only purposeful, intentional discrimination, but also practices which, applied equally to all without any intent to discriminate, have the practical effect of discriminating against groups protected by the Act. The Act, in other words, looks at discrimination from the perspective of the victim and concludes that one who is excluded from a type of housing by a policy suffers the impact of that exclusion irrespective of the intent of the practice.

The Protected Classes

The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, familial status, or national origin. In addition, the Act bans discrimination based on disabilities. Relevant issues with the two more recent additions to the FHA --disability status and familial status-- are discussed below.⁴⁹

Disability Status

The Fair Housing Act, as it applies to persons with disabilities, is intended to accomplish three purposes: (1) to end segregation of the housing available to people with disabilities; (2) to give people with disabilities the right to choose where they wish to live; and (3) to require reasonable accommodation to their needs in securing and enjoying appropriate housing. Under the principle of "reasonable accommodation," the Act "would require that changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling."⁵⁰ The House Report states further that "to the extent that terms, conditions, privileges, services or facilities operate to discriminate against a person because of a handicap, elimination of the discrimination would be required in order to comply with the requirements of this subsection."⁵¹

Under the Fair Housing Act, "handicapped" means:

⁴⁹ This discussion is not in any way intended to be a comprehensive discussion of Fair Housing law. That discussion could take volumes.

⁵⁰ H.R. Rep. No. 711, 100th Cong., 2d Sess. 22, at 25 (1988).

⁵¹ *Id.*, at 23-24.

- o a physical or mental impairment which substantially limits one or more of such person's major life activities;
- o a record of having such an impairment; or
- o being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.

Families with Children

Until the Fair Housing Act Amendments of 1988 took effect, no federal statute provided comprehensive protection to families with children when those families suffered discrimination in housing. While some constitutional law had developed protecting familial status under constitutional right to privacy, because of the need for state action to bring a constitutional challenge, the rights were of limited impact; purely private action was not reached.

The term "familial status" means one or more individuals (who have not attained the age of 18 years) who are domiciled with a parent or a person having legal custody of the individual or who are domiciled with a person designated by the parent or other person having such custody with the written permission of such parent or other person. The term also encompasses persons who are pregnant as well as persons who are seeking to obtain legal custody of any individual who has not attained the age of 18 years.

While the Act does not prohibit discrimination based on marital status, it clearly prohibits discrimination against single parents or those who have a child born out of wedlock. It also clearly prohibits discrimination against single fathers, as well as single mothers, who have custody of their children.

Provision of Services "in Connection with" Housing

Despite the popular focus on a limited number of fair housing players, the Act does not limit its proscriptions to owners of residential housing, to real estate agents, and to banks. Instead, the statute also encompasses discrimination "in the provision of services or facilities in connection with the sale or rental of a dwelling".⁵² The Act makes it unlawful to discriminate against "any person ... in the provision of services or facilities in connection (with the sale or rental of a dwelling) because of race, color, religion, sex, familial status, or national origin."⁵³

⁵² 42 U.S.C. § 3604(a) and (b), (f)(1) and (2).

⁵³ 42 U.S.C. § 3604(b).

A like provision prohibits discrimination against the handicapped⁵⁴ in the provision of services.⁵⁵

The Department of Housing and Urban Development (HUD) regulations explain that the reach of these provisions includes "any conduct relating to the provision of ... services and facilities in connection [with housing] that otherwise makes unavailable or denies dwellings to persons."⁵⁶ This includes "refusing to provide municipal services or providing such services . . . discriminatorily".⁵⁷ Discrimination by service providers limits the choices available for a provider of low-income housing, and increases the costs for that service,⁵⁸ which will be passed on to tenants.

Housing Quality

The statute contains provisions protecting housing quality,⁵⁹ as well as other provisions which protect access. It is obvious that a high-rise apartment building without elevator service, or any unit without utility service, is as effectively foreclosed to a tenant as if she were not allowed access to the unit at all.⁶⁰

Exemptions

⁵⁴ Handicap is broadly defined to include ... those who are perceived to be handicapped as well as those who have a physical or mental disability impacting one or more major like activities.

⁵⁵ 42 U.S.C. § 3604(f)(2).

⁵⁶ 24 C.F.R. 100.70(b) (1996).

⁵⁷ 24 C.F.R. § 100.70(d)(4) (1996).

⁵⁸ In the form of higher charges, inconvenience or quality of service.

⁵⁹ 42 U.S.C. § 3604(b).

⁶⁰ There is a longstanding practice of continuing the provisions of Title VII and the FHA in lockstep. Under Title VII, courts have extended relief where discrimination foreclosed employment opportunities, although the perpetuator was not an employer, but controlled access to the employment. For example, equal employment challenges have been brought against bar associations, licensing boards, hiring agencies, and the like.

The Act itself exempts from liability certain transactions: for example, and with certain limitations, sales of single family homes by owners, and rental of units in an owner occupied building containing four or less units.⁶¹

Discrimination Under the Act

Despite occasional references in cases and comments to the contrary, the FHA clearly prohibits practices which are neutral in form, but which disproportionately impact upon protected groups, as well as actions motivated by invidiously discriminatory motives. The Supreme Court has indicated a disparate impact standard under the FHA, and nearly every Federal Circuit has directly so held.⁶²

Some confusion has been caused by statements appearing in some cases that a violation of the Act (and not merely the establishment of a *prima facie* case) may be established upon a showing of disparate impact, *plus* some other factors.⁶³ These cases should be construed within the context that whatever the legal standard purportedly relied upon, as a practical matter, it is unlikely that any court would find a violation on a showing of disparate impact alone, without considering the defendant's reasons for its policy or the alternatives available to it (at least where the defendant is a private party). In today's society, a society in which discrete groups continuously hold the bottom positions on the economic continuum, nearly every policy will disproportionately affect protected groups. Accordingly, the kinds of considerations implicated by the "plus factors" are likely to play a part in every court's decision.

In having some courts require plaintiffs to prove more in order to make their case under FHA, the "plus factors" include:

1. Strength of the showing of impact;

⁶¹ 42 USC § 3603(b).

⁶² Annotation, "Evidence of Discrimination Effects Alone As Sufficient to Prove Violation of the FHA" 100 ALR Fed. 97 (1990). *See also*, Milslein, et al, "FHA of 1988 - What It Means For People with Mental Disabilities," 23 Clearinghouse Rev. 128, 133 (1989). *See also*, 114 Cong. Rec. 5221-5222 (1968) (proposal to require showing of discrimination intent rejected).

⁶³ *See e.g., Dreher v. Rana Management*, 493 F.Supp. 930 (ED NY 1980); *MetroHousing Dev. Corp. v. Arlington Heights*, 588 F.2d 1283, cert. den'd, 434 U.S. 1025 (7th Cir. 1977).

2. Any evidence of discriminatory intent;
3. The defendant's action in adopting the policy; and
4. Whether the plaintiff seeks to compel the defendant to take affirmative action or merely to restrain interference with individual property owners.

Even for courts which do not formally adopt these considerations, like factors are bound to enter the decisionmaking process.⁶⁴ Recent cases have devalued the importance of the second factor, "some proof of discriminatory intent," so the analysis is reduced to a familiar balancing of the defendant's interest in the policy against its discriminatory impact, with the *proviso* that, if the policy only seeks to enjoin interference with the transactions between landlords and tenants, it is entitled to less deference.

Governmental entities, however, may not justify a discriminatory housing policy on any grounds.⁶⁵

Business Necessity

Until recently, it seemed clear that the defendant, at least in the employment context seeking to justify a policy which has discriminatory effects had the burden to prove both that the policy was compelled by a legitimate business necessity and that no less discriminatory alternative to the policy was available. Indeed, more relevantly, courts in housing cases have given little weight to asserted business necessity defenses, particularly if the defendant is a state actor.⁶⁶

⁶⁴ See *e.g.*, *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 935 (2nd Cir. 1988).

⁶⁵ See *e.g.*, *Resident Advisory Board v. Rizzo*, 564 F.2d 126 (3d Cir. 1977); see also, *Brown v. Artery Organization, Inc.*, 654 F.Supp. 1106 (D.D.C. 1987).

⁶⁶ McCormack, "Business Necessity in Title VIII: Employment Discrimination Doctrine Into the Fair Housing Act," *JF Fordham L. Rev.* 563, 580 (1986).

APPENDIX II
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BIBLIOGRAPHY

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APPENDIX III

INTERVIEWS

INTERVIEWS

Person	Organization	Interview
Nelly Rodriquez	U.S. Bank	N/A
Barbara Smith	U.S. Bank	N/A
Linda Gray	Wash. Co. Extension Office	N/A
Peggy Lynch	Wash. Co. CCI	Yes
Diane Hess	Community Action Organization	Yes
Cynthia Ingebretson	Fair Housing Council of Oregon	Yes
Janet Hawkins	Mult. Co. CD Program	Yes
Rebecca Sweetland	City of Beaverton	Yes
Diane Henderson	Oregon Legal Services (OLS)	Yes
Ellen Johnson	OLS	Yes
Janet Bird	Oregon Housing Now	Yes
Lisa LeSage	Ginsburg & Neal	N/A
Jean Harrison	City of Beaverton	Yes
Susan Wilson	Wash. Co. Dept. of Housing Services	Yes
Henry Alvarez	Wash. Co. Dept. of Housing Services	N/A
Freddy Lunt	Princeton Property Management	Yes
Emily Cedarleaf	Multifamily Housing Council of Oregon	Yes
Barry Brenneke	Guardian Management	Yes
Sam Wade	Beaverton Police	Yes
Betew Hagos	International Refugee Center of Oregon	Yes
Ben Langston	Oregon Employment Division, Hillsboro	N/A
Shinok Lee	Wash. Co. Dept. of Aging Services	Yes
Charlie Harris	CASA of Oregon	N/A

INTERVIEWS

Person	Organization	Interview
Sabino Sardineta	Centro Cultural	Yes
Wink Brooks	City of Hillsboro	N/A
John Rosenberger	Wash. Co. Dept. of Land Use and Trans.	Yes
Kim Brown	Interfaith Outreach Services	Yes
Joanne Truesdell	Portland Community College	N/A
Kei Quitevis	Oregon Adult & Family Services, Hillsboro	Yes
Leon Laptook	Community Action Organization	Yes
Verla Fuller	Housing Services of Oregon	Yes
Liora Berry	Community Action Organization	Yes
Kathy Steiner	Wash. Co. Assn. of Realtors	Yes
Jane Fortin	Independent Living Resources	Yes
Caryl Knudsen	Edwards Center	Yes
Bill Faricy	Homestreet, Inc.	N/A
Christine Fore	Banyan Tree	N/A
Patrick Rogers	Beaverton	N/A
Kathe Coleman	Aloha	Yes
Marsha Moskowitz	Cascade AIDS Project	Yes
Sue Cramer	Boys and Girls Aid Society of Oregon	Yes
Andy Miller	OLS	Yes
Bob Pike	§504 Consultant	N/A
Jeanie Kuzmin-Wallin	Clackamas Co. Soc. Services	N/A
Chuck Robbins	Clackamas Co. Comm. Dev.	Yes
Micky Ryan	Mult. Co. Legal Aid	Yes

INTERVIEWS

Person	Organization	Interview
James Hergert	Tri-Met	Yes
Dick Walter	Metro Transportation	Yes
Judy Keeler	HUD Seattle	Yes
Marge Ille	Portland Bu. H&CD	Yes
Zack Semke	Coalition for a Livable Future	Yes
Shauna Aucsmith	Wash. Co. Office of Community Development	Yes
Jim Tierney	Community Action Team	Yes
Vince Chiotti	Oregon Housing and Community Services	Yes
Sheila Fink	Comm. Partners for Affordable Housing	Yes
Bill Rosser	Wash. Co. Sanitarian	Yes
Andre Bjornskov	Wash. Co. Environmental Health	Yes
Bob Kelly	Wash. Co. Dept. of Land Use and Trans.	Yes

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