

# A G E N D A

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**METRO**

MEETING: METRO COUNCIL REGULAR MEETING - REVISED  
DATE: July 18, 1996  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Council Chamber

Approx.  
Time\*

Presenter

2:00 PM		<b>CALL TO ORDER AND ROLL CALL</b>	
(5 min.)	1.	<b>INTRODUCTIONS</b>	
(5 min.)	2.	<b>CITIZEN COMMUNICATIONS</b>	
(5 min.)	3.	<b>EXECUTIVE OFFICER COMMUNICATIONS</b>	
	4.	<b>CONSENT AGENDA</b>	
2:15 PM (5 min)	4.1	Consideration of Minutes for the July 11, 1996 Metro Council Meeting.	
	5.	<b>INFORMATIONAL PRESENTATION</b>	
2:20 PM (20 min)	5.1	Disparity Study Briefing - Scott Moss.	
	6.	<b>EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(E). DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS</b>	
2:40 PM (5 min)	6.1	<b>Resolution No. 96-2372, For the Purpose of Authorizing the Executive Officer to Purchase Property within the Tryon Creek Linkages Regional Target Area.</b>	Cooper
2:45 PM (10 min)	7.	<b>COUNCILOR COMMUNICATIONS</b>	
2:55 PM		<b>ADJOURN</b>	

***Agenda Item Number 4.1***

**Approval of Minutes**

***For the July 11, 1996 Metro Council Meeting***

**Metro Council Meeting  
Thursday, July 18, 1996  
2:00 PM - Council Chamber**

## MINUTES OF THE METRO COUNCIL MEETING

July 11, 1996

Council Chamber

Councilors Present: Jon Kvistad (Presiding Officer), Patricia McCaig, Rod Monroe, Ed Washington, Don Morissette, Susan McLain

Councilors Absent: Ruth McFarland.

Presiding Officer Jon Kvistad called the meeting to order at 2:02 p.m.

### 1. INTRODUCTIONS

None.

### 2. CITIZEN COMMUNICATIONS

None.

### 3. EXECUTIVE OFFICER COMMUNICATIONS

**Executive Officer Mike Burton** presented a document which consolidated Metro publications and includes a master index by department as well as a chronological listing. This list will allow Metro to have a handle on what we are publishing, charge for publications and what may be redundant.

**Councilor McLain** thanked Executive Officer Burton for this list, the MCCI has asked for this list for the last three years. Arleda, a MCCI member, should also be recognized for initiating this process. Her persistence in making this list happen should be acknowledged, something that has not been accomplished in the last six years.

**Mike Burton** presented a Metro tee-shirt to the Council which included the Growth Management 2040 map.

**Councilor McLain** loved the tee-shirts, there was a suggestion from one of the outlying jurisdictions to do a second and third tee-shirt, one for the west and one for the east. This could be a way to add to our tee-shirt sales at the fair.

**Mike Burton** submitted his recommendations on the Growth Management Functional Plan. (These written recommendations are attached.) The bill to be filed with the Council has some differences than the MPAC recommendations but slight differences. The functional plan that has been filed, is those sets of recommendations developed by the Policy Advisory

Committee. Mr Burton concurred with those recommendations and would urge the Council to give the work done by MPAC careful consideration.

He noted the following: the Functional Plan includes the specific actions for cities and counties, the attachment outlines livability targets for local jurisdictions and a proposal for implementing benchmarks. The recommendation that Mr Burton has filed adds pieces to what MPAC has. First, the recommendations that have been made by various groups about how we determine where we are in this system is very important. There is need to look at these benchmarks, applying them to each jurisdiction to meet the standards of 2040 growth concept for design type and zoning. Those benchmarks include, but are not limited to, the amount of land converted from vacant to other uses, the numbers and types of housing constructed, including the location, density and cost, the number of jobs created, housing and job growth as a result of redevelopment or infill, and the amount of environmentally sensitive land that is protected as well as developed. He recommended that we have a system, on at least a bi-annual basis that allows us to take a look at whether we are meeting these goals. 2040 Business Committee and others have recommended that we have some sort of reality check, these are the benchmarks that will help in doing this reality check. Mr Burton will be discussing this concept with Council as it goes forward.

The questions of urban reserve will also be taken up soon. This is a powerful issue which has been laying on the back burner as we have looked at the functional plan but clearly the growth management plan needs urban reserves to maintain the land supply that we are required to have. However, Mr Burton believes that action must be taken quickly and decisively on the designation of those urban reserves or we will continue to fuel the fires of speculation and uncertainty in the region.

Once the urban reserves have been selected, the third concept that needs to be reviewed is the questions of master planning. While the accepted livability targets by local governments allow some breathing space and the necessity to move the boundary immediately, in their view at some point the region will run out of land. The 2040 Growth Concept is important to remember calling for compact urban form but also puts a limit on density. With those limits and the forecasted population increase, the region must plan ahead for land additions to the master plan for those areas long before the last usable lot is developed. It makes far more sense to identify urban reserves and then require local governments to get the land prepared to become part of their community. Required master planning should have elements of 1) zoning for density at urban levels, 2) public facilities such as water, sewer and schools, 3) transportation elements that include connectivity, transit services, bicycles, pedestrian access, and movement of freight and automobiles, 4) open spaces, 5) governance and capital planning. He advocates that we not add a single acre to the boundary unless it is master planned in accordance with the 2040 growth concept.

The Council is embarking on an historic precedent, Mr Burton looks forward to assisting the Council in anyway he can at this point.

**Councilor Monroe** added the we hope it will be a precedent and not just an aberration.

4. **CONSENT AGENDA**

4.1 Consideration of the Minutes for the June 27, 1996 Metro Council Meeting.

**Motion:** **Councilor McCaig** moved the adoption of the minutes of the June 27, 1996 Metro Council Meeting.

**Second:** **Councilor McLain** seconded the motion.

**Discussion:** **Councilor Morissette** corrected the minutes of June 27, 1996 to read as follows: 7.1 Resolution 96-2316 should read transit oriented "developments" and 9.0 Councilor Communication under Councilor Morissette should read after talking "with" Larry Hildebrand.

**Vote:** The vote was 6 aye / 0 nay / 0 abstain. Presiding Officer Jon Kvistad declared the minutes unanimously approved as amended by all those voting.

5. **INFORMATIONAL PRESENTATION**

5.1 Presentation by MPAC Recommendations on the Urban Growth Management Functional Plan by Portland City Commissioner Charlie Hales.

**Commissioner Charlie Hales** stated that some two dozen local governments came before their elected regional government and asked for strong regional planning to be applied in an effective and consistent way over an entire metropolitan region. There are a lot of firsts within the Urban Growth Management Plan. Commissioner Hale noted the high points, this is the first time that; 1) we have attempted a housing allocation like this, this precise and detailed, 2) the region has paid attention to parking and come up with a regional strategy and a set of parameters for what parking ought to look like and work like, 3) regional minimum density, 4) we have paid attention to mode split as the driving rationale behind transportation decisions, and 5) we have attempted a regional affordable housing policy.

Commissioner Hale acknowledged Presiding Officer Kvistad and Councilor McLain for their work on MPAC as the advisory committee. He also thanked the planning staff and legal counsel for giving excellent service and good advise. He thanked the broad and diverse cross section of interests that have dealt with the growth issues, those who have come before MPAC and submitted ideas. MPAC has attempted to incorporation these groups ideas.

Mr Hale touched on some particulars 1) The livable share allocation of housing that is found in Title 1 is designed to avoid expanding the regional urban growth boundary. There is a table of housing allocation which MPAC has unanimously agreed upon that accommodates population growth inside the boundary we have, 2) In Title 2, the notion of a regional parking policy; this is a minimal change in terms of current behavior but it is an important principle that we start looking at how parking effects the use of land in this region and attempt to have some coherent effort to reduce the amount of land that is dedicated to parking lots, 3) In Title 3, flood mitigation, water quality and wildlife habitat do not know boundaries or city limits and must be addressed regionally, 4) In Title 4, a concept that

needs immediate attention is the retail in employment and industrial areas and making sure that there is some limit on how much these valuable employment areas get used up for non-employment purposes, 5) In Title 5, there must be a dialogue with neighboring cities, other jurisdictions and the region if we are going to have a livable region. This must be coordinated with what the region is planning, 6) In Title 6, a tool kit for transportation design for local governments to use has been developed to make these concepts and the regional plan work together. These are is not a big change in the nature of the tool kit but there is a big change in the emphasis, the most important performance standard for a transportation standard in the 2040 era and the most important criterion to use for making transportation funding decisions is mode split; bicycles, pedestrians, Max, or driving automobiles, 7) Title 7, is another tool kit, a moral instruction, that affordable housing is everyone's business, this is something that must be shared and coordinated throughout the metropolitan area, 8) Title 8, enforcement - the message is "we mean it", transportation dollars can be used to ensure compliance. Metro needs to have real regional planning authority, the authority to require changes in local comprehensive plans and the authority to use power inherent in the purse to assure local governments follow through in their responsibilities.

Commissioner Hale referred to Jim Kunstler's book The Geography of Nowhere Oregonians are going to have to find new ways of doing things, of making a living without destroying land, building real towns, eliminating unnecessary car trips and local commutes, and most important thinking about long term consequences instead of mere short term gain. Oregonians are acting intelligently and setting an example in regional land use policy that the rest of the nation would do well to heed. MPAC has attempted to respond to the spirit of that praise in the document brought forward today. The effort that Metro is leading is to make sure that things live differently here, they live better than they do in "the geography of nowhere", that people flee to come here. We value this place, the economy, the environment so much that we are willing to make difficult changes, sometimes painful changes, in order to have a community that is worthy of that name. MPAC thinks that these recommendations gives Metro the ability to follow through on the planning mandate.

**Councilor Morissette** asked about the growth targets, and, referring to the chart in the back, asked what allocations would be for each jurisdiction for population numbers, jobs and housing?

**Commissioner Hale** responded that local jurisdictions could go through the exception process if they disagreed with the transportation analysis zones. A local government could come in and justify either a lower or higher allocation. If the region needs to find room for more housing units and other local jurisdictions can't take as much, there are some cities willing to add housing. The document sets up a process by which local governments can prove that they will not be able to accommodate quite as many living environments as were planned. However, Mr Hale does not believe that this will make much of a difference in the bottom line number.

**Councilor Morissette** indicated that for a long time now he has attempted to figure out where we were going to put 243,000 more housing units in his jurisdictions. It is probably easier for some of the smaller cities to define this, but for larger cities, it is a little more difficult. When related down to a neighborhood, your neighborhood is going to have this many more housing units in it, is MPAC really with this or not? As a builder, he sees all of the time the resistance to accomplishing some of these densities. He wishes to be able to figure out with this document how many units are planned for in a particular neighborhood.

**Commissioner Hale** responded that on the technical side we need to be honest about one aspect of this plan and not scare people needlessly, as a practical matter. Nearly fully developed high value single family neighborhoods are not going to be redeveloping and not going to account for very many, if any, new units. If you have a neighborhood full of \$200,000 houses, its not going to redevelop in the foreseeable future and very few people in this process are counting those neighborhoods as the locus for significant new development. On the political side, his point is that he doesn't think that the City of Portland is all that different philosophically from the other jurisdictions around the table at MPAC but Portland has had more experience with conversations between policy makers and planners on one side and neighborhoods on the other about the willingness to take a share of this growth in order to avoid the bad things that come from urban sprawl. There are neighborhoods slated for 24 to 30 units to the acre which have supported the community plan and a neighborhood plan that has that effect on their community. For example, a neighborhood President from the Woodstock neighborhood came to City in the course of doing a neighborhood plan and said we have looked around and have seen all of these pressures of growth and change and we believe that we could spend our time as a neighborhood organization trying to fight individual developments or we could try to turn that change to our purposes and try to make some things about our neighborhood better by allowing greater intensity along Woodstock Blvd and that it the choice made and that is why we are in front of the City Council asking to up some of our neighborhood. This does mean that everyone will have to stretch.

**Councilor Morissette** asked if Mr Hales had a pretty good idea where the 70,000 housing units will be placed and can this be obtained?

**Commissioner Hales** answered in the affirmative. The 70,000 unit projection is actually conservative assuming that we do not loose heart with our community planning process.

**Councilor Morissette** reiterated that he should be able then to figure out where the 240,000 housing units are going to be and through that process, generally, maybe not specific to neighborhood, be able to figure out how this is all going to be distributed not just in Portland but throughout the region.

**Commissioner Hale** responded affirmatively and indicated that these units are allocated by Transportation Analysis Zone and those are pretty small.

**Councilor Morissette** followed up by asking if MPAC has done the cross section of the density that would be required with it. This TAZ is going to have this many 7,000 sq.ft. lots, this TAZ is going to have this many 2,000 sq. ft. lots.

**Commissioner Hale** agreed and reiterated that even though these numbers are scary and they look big, it doesn't really change things as much as that fear might lead people to believe. We are not talking about making every neighborhood into Northwest Portland. We are talking about more neighborhoods that have the density of some of the projects that were built by Councilor Morissette or Murrayhill or Mountain Park, rather than half acre lots. We are talking about an average lot size of 6,000 sq.ft. not 2,000 or 3,000 sq. ft. It is not a radical change, its a tune-up in a direction that this region has already taken.

**Councilor Morissette** indicated that he had been here a year and a half and is still unable

to figure out where these housing units are going to go. And if with this report there is a mechanism that he can be able to grab that and analyze that, he would love it. So, can the Growth Management staff break this down by density sizes and units per area generally?

**Commissioner Hale** affirmed his question and suggested that Councilor Morissette do regionally what has been done in the City and, that is, take a sample of those districts, of those TAZs, and say, show me how you have arrived at the allocation for that sub-area, then, walk through the assumptions that were used. In each case there are judgment calls, but the staff has made those calls well.

**Councilor Morissette** addressed the Presiding Officer and asked that if he could direct his question to John Fregonese.

**Presiding Officer Kvistad** responded that this question should be directed to the Growth Management Committee but a follow-up could be done.

**Councilor Morissette** thanked Commissioner Hale for all of the hard work and the accomplishments made.

**Councilor McLain** thanked all of MPAC. She is impressed with the amount of professional work and commitment. She reiterated that MPAC believes that this report is realistic and doable, demonstrating the vision that a number of jurisdictions in this particular region have agreed to. It is historic that they are committing themselves to the hard work that Councilor Morissette has started to discuss at this meeting. We are excited to accept this report and to carry it to the Growth Management Committee with the commitment that we will do as much and will try as hard to make sure that we can get to that 2040 Growth Concept and to the implementation to make it a reality.

**Councilor Washington** conveyed to MPAC his thanks for all of the work. A lot of hours, night meetings were spent putting this together. "We now have something we can really use."

**Councilor McCaig** asked about the last preliminary document before the GM Committee from the Executive which had a percentage included in it as a potential expansion, a 3% to 5% expansion which would have resulted in 4000 to 9000 acre expansion. What factors were different in MPAC's review and proposal that allowed a representation to be made to Council that the boundaries should be maintained at its current level? There must be something different.

**Commissioner Hale** responded that MPAC went back through the housing allocations and each took a measure that assured that there isn't a 4000 acre embedded UGB assumption but that we accommodate projected growth inside today's boundaries.

**Councilor McCaig** clarified that the initial information received was embedded and MPAC took that number apart and in taking that number apart and reviewing the individual jurisdictions housing allocations, was able to reconstruct the number in a way that would allow us to accomplish the density spoken of by Commissioner Hale.

**Commissioner Hale** agreed and reiterated that some jurisdictions, not just Portland, said that they could accommodate more than the plan. So if there is a need in the adjustment



process to find room for more population there is a choice there of asking or requiring jurisdictions to take more rather than simply expanding the boundaries. He added that if we have pretty close consensus on this, it is about right. There is nothing like having the whole community say to a part of the community, "hey you need to do a little bit more".

**Councilor McCaig** followed up by asking if MPAC participated in the development of the benchmarks as part of the recommendation that is being forwarded?

**Commissioner Hale** affirmed that they had a chance to review them.

**Councilor McCaig** indicated that she had not seen these yet and asked if there was a sense from MPAC about what the role of the Council is in the long term strategy that needs to evolve for managing the boundary. Where and in what context do we have a broader discussion of the long term management and the process that should be put in place for managing the boundary?

**Commissioner Hale** responded that he is not sure yet. But he would look after the completion to the framework, look at the charter, at how MPAC has worked, and see about using MPAC to do some monitoring, giving periodic reports from the street level of local government implementation. There is a period review element built into the plan but there is a need for more frequent signals. Council needs to have MPAC shift roles a bit after implementation of the plan and look to MPAC to be more of a resource for implementation and adjustment. How do we all make this work together? The amount of consensus that we have around the MPAC table is a valuable resource to the Council. He encouraged the Council to use MPAC as needed.

**Councilor Washington** indicated that they are building housing in the Albina area.

**Presiding Officer Kvistad** noted that he is concerned about rural sprawl, what the Council allows outside of the UGB in terms of small parcel development of farmland. He believes this is where we will need to start focusing, these outlying counties. Senate Bill 100, the planning process, the framework plan elements all support what we are doing inside the boundaries. It is his hope that in the next step, the Council can begin talking about the rural sprawl.

**Commissioner Hale** acknowledged this danger and noted that the Council has the ability through the allocation and transportation dollars to make sure that we are not building roads to make mansions in exception areas with scarce regional transportation dollars. He would, however, disagree with Kvistad that the battle is over inside the boundary. In his experience, the City of Portland is regarded as this place where it all done and has been doing land use planning for years. There is some bad zoning in the City. "We have a lot of places where you can not walk to a neighborhood store or get to the shopping center from the apartment complex. We are still not done, we still have too much general commercial zoning in the City. There is plenty of work for all of us to do to make sure that the concepts of the 1950s gets addressed neighborhood by neighborhood."

**6. ORDINANCES - FIRST READING**

- 6.1 **Ordinance No. 96-647.** For the Purpose of Adopting a Functional Plan for Early Implementation of the 2040 Growth Concept.

**Ordinance No. 96-647** was assigned to the Growth Management Committee.

**7. RESOLUTIONS**

- 7.1 **Resolution No. 96-2352,** For the Purpose of Approving Current and Future Leases Related to Metro's Open Spaces Property Acquisition.

**Motion:** Councillor McLain moved the adoption of Resolution No. 96-2352.

**Second:** Councillor Washington seconded the motion.

**Discussion:** Councillor McLain indicated that this resolution is to provide retroactive approval of all existing leases and approval of certain future leases that are related to the open space acquisition. Future leases which fall within the parameters which are described in the resolution would be executed without the Council's review and approval. There seem to be three of these leases right now and those three existing leases and grants with perspective of approval of future leases because of the wide variety of actual property that we might acquire would include the following criteria; 1) that it must be related to the open spaces acquisition, 2) that it is less than one year term, and 3) that the monthly lease payments are less than \$1000.

Councillor Washington added that this resolution was to make sure that we really take care of business and make sure that we don't get ourselves into any hot water with regards to these leases. We are involved in having some property that has to be dealt with on a short term basis and this is just to cover us because of an oversight on the part of the department.

**Vote:** The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

- 7.2 **Resolution No. 96-2354,** For the Purpose of Authorizing Change Order No. 2 to the Contract for Safety Railing at Metro South Household Hazardous Waste Facility.

**Motion:** Councillor McCaig moved the adoption of Resolution No. 96-2354.

**Second:** Councillor McLain seconded the motion.

**Discussion:** Councillor McCaig indicated she had several procedural questions after the vote was taken. This is a change order to a contract which authorized a \$6000 expenditure for purchasing a railing for Metro South Household Hazardous Waste Facility, It was delayed being put in because of the flood and as a result did not get put in the fiscal year so the Council needs to approve an extension through August 31st.

**Vote:** The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

**Councilor McCaig** wondered why an item of this significance comes to committee and to the full Council. Do we have a standard that any item less than \$10,000 or \$25,000 must come before committee and Council?

**Presiding Officer Kvistad** answered that there are two or three reasons why this would come before Council. If it was a change order that causes a budget requirement outside of current budget, this would require the Council to take formal action or if it was requested by a councilor to be heard it would come before Council to be approved. Normally, such an item would go on the contracts list and would be automatically forwarded unless a member of the Council had a concern.

**The Metro Council was recessed and the Metro Contract Review Board was convened to hear Resolutions Nos. 96-2353, 96-2364, and 96-2365 at 2:52pm.**

- 7.3 **Resolution No. 96-2353**, For the Purpose of Authorizing an Exemption of Metro Code Chapter 2.04.041(c) Competitive Bidding Procedures and Authorizing a Sole Source Purchase with CyroGenetics Technology, Inc. for Two Computerized Controlled-Rate Semen Freezing Units.

**Motion:** Councilor Monroe moved the adoption of Resolution No. 96-2353.

**Second:** Councilor Washington seconded the motion.

**Discussion:** Councilor Monroe indicated that this resolution has to do with the technology in the freezing of bull elephant semen for genetic reproduction. Our Zoo is at the head of this process. There is only one company, Cyrogenetics Technology Inc. that owns all the patents, does all the manufacturing of the system to provide for acquiring bull elephant semen, freezing it and protecting it. He believes it is appropriate to waive the normal bidding procedure.

**Councilor McLain** noted that she has had 2 or 3 phone calls that wanted to know if this came out of the Regional Facilities Committee or the Growth Management Committee. She assured them that it did indeed come out of the Regional Facilities Committee which listened to Zoo business.

**Vote:** The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

- 7.4 **Resolution No. 96-2364**, For the Purpose of Authorizing an Exemption to Competitive Bidding Procedures Pursuant to Metro Code 2.04.041(c) and Authorizing a Source Contract with the Portland Oregon Visitors Association (POVA), for National Marketing Services at the at the Oregon Convention Center for the Metropolitan Exposition Recreation Commission.

**Motion:** Councilor Washington moved the adoption of Resolution No. 96-2364.

**Second:** **Councilor Monroe** seconded the motion.

**Discussion:** **Councilor Washington** indicated that in 1989 there was a national search for someone to market the Convention Center. POVA was awarded the contract. This has been an ongoing contract. Mr Qualman from POVA is available for questions and comments. POVA provides the service for marketing the Convention Center. There was an 11% increase in the contract, a basic increase in doing business.

**Councilor Morissette** asked if there were no other contractors that could bid on a proposal?

**Councilor Washington** responded that he is sure there are other contractors but no one has come forward. He felt if there was a need to do this that it would have been brought before committee and that has not happened. They are satisfied with the services that have been rendered by the current contract holder.

**Councilor Morissette** indicated that we have an 11% increase for a facility that has 100% occupancy. Why are we reaching out from more people? Why are we spending 11% more for a maxed out facility. It doesn't make sense to implement more outreach.

**Councilor Washington** responded that the 11% will allow the contractors to work more strongly together and to reach markets that were previously non-contactable as well as the cost of doing business is increasing.

**Roger Qualman**, the President of POVA, indicated that the reason there are no other contractors is that there is no one else in town who does this type of business, it is highly specialized. It is not the sort of thing that any PR or advertising firm can do. The facility is full this year but it is not full in future years. This increase allows POVA to work out years in the future, to get out and make sure that the Center is full in the future.

**Jeff Blosser** also indicated to Councilor Morissette that POVA has had no increases in the last two years, the budget has been held flat. There has been an 3-4% cost increase in terms of doing business.

**Councilor Morissette** reiterated that the 11% increase has to do with the fact that there has been no increase over the past several years and with a 3-4% increase annually, this is not an extreme amount of increase. These moneys are not so much to do with a lot of additional outreach but that the budget has been held flat for the last couple of years.

**Jeff Blosser** affirmed that there are some additional approaches that POVA will be looking at. "You can't stay stagnant in this business, you must adjust to the market. Some of these needs have been addressed in that budget too."

**Councilor Morissette** asked about POVA's contract as we spend \$5 million for a three year contract that we asked to make sure that no one else is interested in

putting something like this together especially since the last request was made in 1989.

**Joe D'Alessandro**, Executive Director of POVA, responded that most cities that are in the business of attracting convention business only have one entity that does the marketing and it is normally the Visitors Bureau. It is well recognized within the industry that they are the representative for the City to attract major convention business here, represent the hotel community, the hospitality community and also the City in those endeavors. Attempting to find another contractor and get them up to speed to develop those kinds of contacts is virtually impossible in a three year contract. To turn the whole thing over to a brand new group we would start below ground zero to get ourselves back up to the speed that has already been proven on the track record that POVA has.

**Councilor Morissette** asked about the contract being for \$1,386,000,000 and the services add up to \$1,394,066,000.

**Joe D'Alessandro** responded by saying that they normally like to see the entire contract, if POVA expends over that figure to do the entire program then this is a cost that they bear.

**Councilor Morissette** added that he thought the working relationship we have with POVA is excellent.

**Mr D'Alessandro** closed by saying the POVA looks forward to continuing a positive relationship and making sure mutual goals are met.

**Vote:** The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

- 7.5 **Resolution No. 96-2365**, For the Purpose of Authorizing an Exemption to Competitive Bidding Procedures Pursuant to Metro Code 2.04.041(c) and Authorizing a Sole Source Contract with the Oregon Convention and Visitor Services Network (OCVSN), For Ethnic Minority Marketing Services at the Oregon Convention Center for the Metropolitan Exposition Recreation Commission.

**Motion:** **Councilor Washington** moved the adoption of Resolution No. 96-2365.

**Second:** **Councilor McLain** seconded the motion.

**Discussion:** **Councilor Washington** indicated that the women and minority contract approved two years ago is merging with POVA. This contract will be in conjunction with the contract that POVA has to maximize the work being done in the area of women and minority marketing. There are no problems and the committee feels it will benefit this region and this Council.

**Councilor Morissette** asked what the contract amount was previously.

Jeff Blosser responded that the last years contract was \$216,000.

Councilor Morissette confirmed that this contract went from \$216,000 to \$225,000 and next year it would go up to \$250,000 and then stays flat.

Mr Blosser affirmed Councilor Morissette's question.

Mr Jay introduced himself.

Mr Blosser added that he felt this was a very important step for POVA and OCVSN. This is the type of effort needed in Portland. This kind of merger will help both staffs.

**Vote:** The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

The Contract Review Board was adjourned, and the Metro Council Meeting was reconvened at 3:07pm.

**8. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e). DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS.**

- 8.1 Resolution No. 96-2357, For the Purpose of Approving A Refinement Plan for the Multnomah Channel Target Area as Outlined in the Open Space Implementation Work Plan.
- 8.2 Resolution No. 96-2358, For the Purpose of Approving A Refinement Plan for the Sandy River Gorge Target Area as Outlined in the Open Space Implementation Work Plan.
- 8.3 Resolution No. 96-2359, For the Purpose of Approving a Refinement Plan for the Beaver Creek Canyon Greenway Target Area as Outlined in the Open Space Implementation Work Plan.

Presiding Officer Kvistad opened an Executive Session pursuant to ORS 109-660(1)(e) at 3:10 pm.

Present: Charlies Ciecko, Chris Rigby, Barbara Edwardson, Amy Kirschbaum, Cable Access person, Jim Desmond.

Presiding Officer Kvistad closed the Executive Session pursuant to ORS 109-660(1)(e) at 3:30 pm.

Councilor McLain announced that she had additional postcards made up for any of the Councilors who wish to deliver them to particular interested parties, this postcard is a reminder of the Public Hearing on Ordinance 96-647.

**Motion:** Councilor Washington moved the adoption of Resolution No. 96-2357.

**Second:** Councilor Monroe seconded the motion.

**Discussion:** Councilor Morissette indicate he would be abstaining from this resolution as he believed this property was close at hand to his.

**Vote:** The vote was 5 aye/ 0 nay/ 1 abstain. The motion passed with five ayes and one abstention, Councilor Morissette abstained.

**Motion:** Councilor McLain moved the adoption of Resolution No. 96-2358.

**Second:** Councilor Washington seconded the motion.

**Vote:** The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

**Motion:** Councilor Morissette moved the adoption of Resolution No. 96-2359.

**Second:** Councilor Washington seconded the motion.

**Vote:** The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

**Motion:** Councilor McCaig moved approval of purchase of the Foley property in the Tryon Creek area under the unique circumstances that were outlined by staff during the Executive Session.

**Seconded:** Councilor Monroe seconded the motion.

**Discussion:** Councilor Morissette indicated he would be abstaining on this motion as he owned something relatively close to this site.

**Vote:** The vote was 5 aye/ 0 nay/ 1 abstain. The motion passed with five ayes and one abstention. Councilor Morissette abstained.

Councilor McLain announced there would be a resolution coming forward for the Rock Creek Refinement area. She added that there was apparently a process glitch in the refinement process and she will be bringing forward an amendment. The Regional Facilities Chair, Councilor Washington, had indicated he will make sure that it comes before his committee as soon as possible. She hopes to have it before Council before the Council break in August.

Councilor Washington asked if there was an urgency to get this before committee and the Council.

Councilor McLain indicated that we needed to be proactive on this resolution or we could lose several partners. She encourage acting upon this resolution as soon as possible.

**Michael Morrissey** indicated that this resolution could be ready for committee the first week in August and then to Council on August 15th.

**9. Request for Council approval of the Water Supply Comments.**

**Discussion:** **Councilor McLain** indicated that the Council has already received a staff report dated July 9, 1996 on this item. There was a recommendation with three Councilors voting in favor of this letter with several changes and additions suggested by Councilor McCaig. Councilor McLain has reviewed this letter and would be in favor of this letter going forward to the regional group working on this particular supply plan.

**Rosemary Furfey**, Senior Planner in the Growth Management Services Department, brought the July 9, 1996 Water Supply letter forward. The Management Committee of the Regional Water Supply Study is anxious to move forward with the Water Supply Plan that will go out again for public review and comment to ensure that this agency is secure that they have addressed issues that were raised last fall in a communication to them. This letter highlights comments to the management team expanding a variety of issues with regard to public involvement, for example, a recommendation for a citizen advisory committee, a variety of public involvement activities that would be carried out by the individual agencies participating in the consortium as well as the interest Metro has expressed in adding water conservation to our hotline which has been very successful at the regional and national levels. They will be meeting with Columbia Water Conservation Coalition to suggest this addition.

**Motion:** **Councilor McLain** moved to send the letter to the Supply group.

**Seconded:** **Councilor McCaig** seconded the motion.

**Vote:** The vote was 5 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

**10. COUNCILOR COMMUNICATIONS**

**Presiding Officer Kvistad** announced that the August 15th Council meeting was still on the calendar. If Council accomplishes the work needed prior to the August 15th meeting, at the August 8th meeting, the meeting on the 15th may be canceled. It will remain on the agenda until we have a better idea of what needs to be accomplished. We should know within two to three weeks and will try to move everything to the meeting on the 8th of August.

**Councilor Morissette** indicated he would not be at the Council meeting on August 15th.

**Councilor McLain** asked the August 15th Council meeting be held as an emergency item date for items that must be taken care of before September. She also reminded the Council and those in attendance that a public hearing will be held



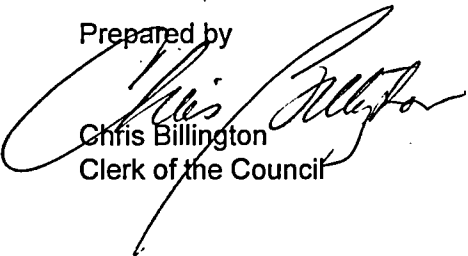
on July 16th for Ordinance 96-647 in front of the Growth Management committee. She encouraged attendance at the public hearing.

**Councilor Washington** indicated he would be available for the August 15th Council meeting if held.

**10. ADJOURN**

With no further business to come before Metro Council this afternoon, the meeting was adjourned by Presiding Officer Jon Kvistad at 3:47pm.

Prepared by



Chris Billington  
Clerk of the Council

*Agenda Item Number 5.1*

**Disparity Study Briefing - Scott Moss**

**Metro Council Meeting  
Thursday, July 18, 1996  
2:00 PM - Council Chamber**

## STAFF REPORT

### FOR THE PURPOSE OF PROVIDING INFORMATION TO COUNCIL ON THE REGIONAL DISPARITY STUDY.

---

Date: July 11, 1996

Presented by: Scott Moss

### PROPOSED ACTION

None at this time. Staff will be analyzing recommendation provided by Mason Tillman for the operation and legal impact. Staff will return to Council in approximately 90 days with recommendations that can be performed internally, and in approximately 180 days for regional recommendations.

### FACTUAL BACKGROUND AND ANALYSIS

The Regional Disparity Study was commissioned in FY 1993-94. Ordinance No. 93-521 authorized Metro's contribution of \$100,000. The study was performed by Mason Tillman & Associates for an approximate total cost of \$660,000.

According to the ordinance, the study was authorized for the following reasons:

- To meet legal requirements showing "compelling interest" to provide equitable opportunities to minorities and women in order not to perpetuate or reinforce past and present discriminatory practice;
- Evidence suggests that MBE and WBE utilization is higher with mandated programs;
- A documented disparity study is necessary to sustain any race-based preference programs;
- These studies demonstrate governmental concern on discrimination issues.

Participants: City of Portland, Portland Development Commission, Metro, Multnomah County, Tri-Met, State of Oregon, City of Gresham, and Washington County. The City of Portland acted as the project manager.

Scope of Study: The study analyzed construction-related contracts for MBE and WBE utilization and interviewed majority and minority contractors for anecdotal information about their experiences in dealing with local governments. The study period was between the years 1991 and 1994.

**DISCUSSION**

The disparity study only applied to construction-related contracts. Metro tends to have very few construction contracts (less than 5% of all contracts). The study analyzed 27 contracts from 1991 through 1994.

Since the study period, many enhancements have been made to the contracting process and the supplier diversity programs (MBE/WBE Programs). See the attached press release.

**Results**

Utilization Numbers - Utilization using the number of contracts as criteria

Race	Utilization (%)	Availability (%)	Disparity (%)	Statistically Legal Disparity
African American	1.69	3.75	(55.04)	
Asian American	0	1.69	(100)	X
Hispanic American	6.18	4.07	52.01	
Native American	1.12	2.16	(48.10)	
Caucasian Female	6.18	11.51	(46.31)	X
Caucasian Male	84.83	76.82	10.43	

Utilization Dollars - Utilization using the dollar amount of contracts as criteria

Race	Utilization (%)	Availability (%)	Disparity (%)	Statistically Legal Disparity
African American	2.38	3.75	(36.63)	
Asian American	0	1.69	(100)	
Hispanic American	5.29	4.07	32.51	
Native American	.98	2.16	(54.87)	
Caucasian Female	6.98	11.51	(39.36)	
Caucasian Male	84.28	76.82	9.71	

Although utilization numbers illustrate a disparity for all ethnic categories (with the exception of Hispanic American and Caucasian Male), only Asian American and Caucasian Female reflect a "legal" disparity when using the number of contracts as criteria. The Disparity Study makes no documentation of a "legal" disparity for any ethnic category when using the dollar amount of contracts as criteria.

## Final Report

The final report of the Disparity Study completed by Mason Tillman Associates consists of 14 volumes. Volume 1A, which includes the Executive Summary, Legal Framework and Historical Discrimination is attached to this report. Other volumes are available upon request.

## RECOMMENDATIONS

Mason Tillman provides over 100 recommendations to Metro, of which 20 have been implemented prior to the study results, 25 are regional in nature, and 10 are outside Metro's control. Staff will continue to analyze the remaining recommendations with the goal of implementing those that will directly enhance the supplier diversity programs (MBE/WBE) and/or increase utilization among the listed ethnic categories. As well, meetings will continue with consortium representatives to move forward with region-wide recommendations.

### Alternative to Low Bid

There were many recommendations encouraging alternatives to Metro's current low bid criteria. Some of those include: 1) creating a sheltered market for M/W/ESBs\*; 2) utilizing Construction Manager/General Contractor (CM/GC) contracts; and direct contracting with M/WBEs for informal construction projects (under \$25,000).

\*It was also recommended that Metro develop an Emerging Small Business (ESB) program.

### Good Faith

It was determined that many Good Faith Effort programs were not effective in generating M/WBE participation. There were several recommendations to modify and/or enhance the good faith effort program criteria. Specifically, it was recommended that Economically Feasible Units (EFUs) be identified more carefully, creating a more realistic scope of work for each project. Other recommendations related to good faith effort programs included increased notification time to subcontractors, verification of subcontractor participation and penalties for M/WBE substitutions

### Business Development

Recommendations included implementing additional financial, bonding and technical assistance. This includes raising the threshold for bonding (which Metro has already implemented) and reducing the size of project segments.

### Staff Enhancement

It was recommended that Metro develop a Compliance Office to monitor contractors' M/WBE participation on construction projects, as well as increase staff's authority to enforce program compliance. Enhanced training for all staff with contracting authority and contract management responsibilities was also recommended.

### Administrative

Improving outreach efforts, developing in-depth tracking and monitoring systems and increased monitoring of change orders and amendments were some of the administrative recommendations made.

### Compliance

Compliance was a major recommendation for all consortium members. All agencies received recommendations to develop and/or enhance their compliance procedures. Those recommendations ranged from paying subcontractors directly to auditing payroll and labor records of prime contractors.

### Outside Metro

There were several recommendations that fall outside of Metro's authority. Included were: 1) modifying the certification process, which is now performed by the Office of Minority, Women and Emerging Small Businesses; 2) establishing an Interagency Ombudsperson; and 3) reform to the Construction Contractors Board (CCB).

Again, staff will continue to analyze the recommendations made by Mason Tillman Associates, and make implementations where feasible.

RSM:bjc

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METRO

## REGIONAL DISPARITY STUDY

### General background

Metro participated with our regional partners in the regional disparity study commissioned in FY 1993-94 and performed by Mason Tillman & Associates.

The disparity study was conducted to: (a) determine if disparity exists in construction contracting with minority- and women-owned firms, (b) meet legal requirements if considering affirmative action programs with contracting, and (c) demonstrate our dedication to resolving discrimination issues.

Participants in the regional study were: city of Portland, Metro, the city of Gresham, Tri-Met, some departments within the state of Oregon, Washington County, Multnomah County, and Portland Development Commission.

### Types and number of contracts studied

As shown in the chart below, Metro conducts relatively few construction-related contracts. While Metro regularly contracts with various vendors, Metro does very few construction-related projects -- which is the only type of contract examined by the disparity study.

### Type and number of contracts studied (Comparison between consortium and Metro)

	Consortium Total	Metro Total & Percentage
Prime Construction Contracts	717	15 (2%)
Construction Subcontracts	2,486	176 (7%)
Architecture & Engineering Prime & Sub-Contractors	417	18 (4%)

For example, Metro awarded only 15 prime construction contracts during the time of the study, between 1991 and 1994. That represented only 2 percent of Metro contracts. While Metro certainly will continue to improve its contracting with minority construction firms, the reality is that Metro simply does not do many construction projects.

Another limitation to the disparity study is that, not only did the study examine only construction contracts, it looked only at ones that were under \$500,000. Metro in the past several years has conducted a couple of large construction projects that exceeded the \$500,000 level. Therefore, even though both of those projects (\$19 million for renovation of Metro Regional Center and \$7 million for closure of St. Johns Landfill) had very high minority contracting and sub-contracting participation, they were not counted as part of the regional disparity study. Also coming up is the \$13.5 million expansion of the Expo Center, with excellent minority contracting participation so far.

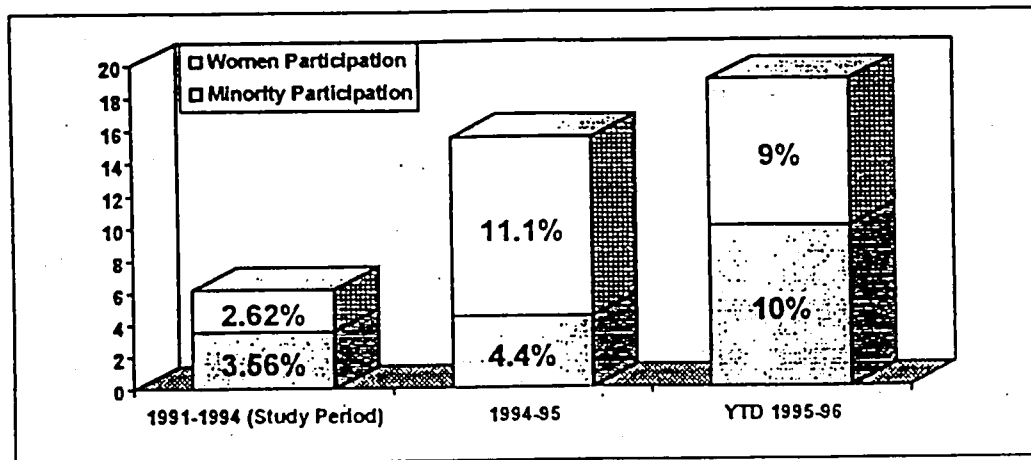
### **Recent improvements in Metro's contracting program**

The disparity study covered only the contracts issued between 1991 and 1994. Since 1994, however, the Metro Council and Executive Officer have made many changes to enhance and diversify Metro's contracting practices.

- Metro introduced one of the region's first minority and women business programs requiring a bid from minority- and women-owned firms on all of Metro's purchases over \$500.
- A Good Faith Program has been developed.
- New staff has been appointed to revitalize supplier diversity programs.
- Bids, proposals and contracts have been standardized throughout the agency.
- Monitoring and reporting of utilization has been increased to occur on a quarterly basis.
- Outreach activities have been substantially increased.
- An "Invitation to Participate" and newsletters have been developed and distributed to let firms know of upcoming projects.
- Staff now makes personal calls to firms encouraging them to bid on Metro projects.
- Bonding requirements have been reduced to allow smaller firms to compete. Monitoring and compliance have been increased to ensure that minority- and women-owned businesses and good faith programs are being utilized.



The following chart demonstrates the improvements made during the last two years of Metro's minority- and women-owned business contracting program.



#### The of minority and women contracting at Metro

While many of the study's recommendations have already been implemented, Metro recognizes the need to improve contracting with minority and women-owned firms on a regional basis. The disparity study is another tool needed by Metro to continue improving its programs.

Metro and its regional partners, along with private firms, will work jointly in improving the development of minority- and women-owned firms.

*Agenda Item Number 6.1*

**Resolution No. 2372, For the Purpose of Authorizing the Executive Officer  
To Purchase Property within the Tryon Creek Linkages Regional Target Area.**

**Metro Council Meeting  
Thursday, July 18, 1996  
2:00 PM - Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING )  
THE EXECUTIVE OFFICER TO )  
PURCHASE PROPERTY WITHIN THE )  
TRYON CREEK LINKAGES REGIONAL )  
TARGET AREA )

RESOLUTION NO. 96-2372

Introduced by Mike Burton  
Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the electors of Metro approved Ballot Measure 26-26 which authorizes Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements pursuant to Metro's Open Spaces Program; and

WHEREAS, Tryon Creek Linkages regional target area was designated as a greenspace of regional significance in the Greenspaces Master Plan and identified as a regional target area in the Open Space, Parks and Streams Bond Measure; and

WHEREAS, on May 16, 1996 the Metro Council adopted a refinement plan for the Tryon Creek Linkages regional target area, including objectives and a confidential tax-lot-specific map identifying priority properties for acquisition; and

WHEREAS, the property owned by Leona Jensen, as identified in Exhibit A, is in the Tryon Creek Linkages Target Area and qualifies as a property to be acquired; and

WHEREAS, the Open Spaces Implementation Work Plan adopted in November, 1995 provides that Metro Council approval is required for purchases that do not exactly conform to the work plan requirements; and

WHEREAS, the purchase of the Jensen property must be authorized specifically by the Council, now therefore

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to execute the Purchase and Sale Agreement and purchase the Jensen property in the Tryon Creek Linkages Target Area, subject to the terms and conditions set forth in the Purchase and Sale Agreement.

ADOPTED by Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

Assessor:   
 Lot Data:   
 Situs:   
 Mktvalland: 62800   
 Mktvalimps: 0   
 Exmvalland: 0   
 Exmvalimps: 0   
 Exmptype:   
 Acres: 2.33

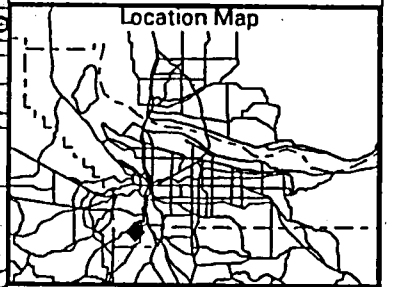
**CONFIDENTIAL**

**Measure 26-26**

Possible Acquisition Site: R534001500  
Multnomah County

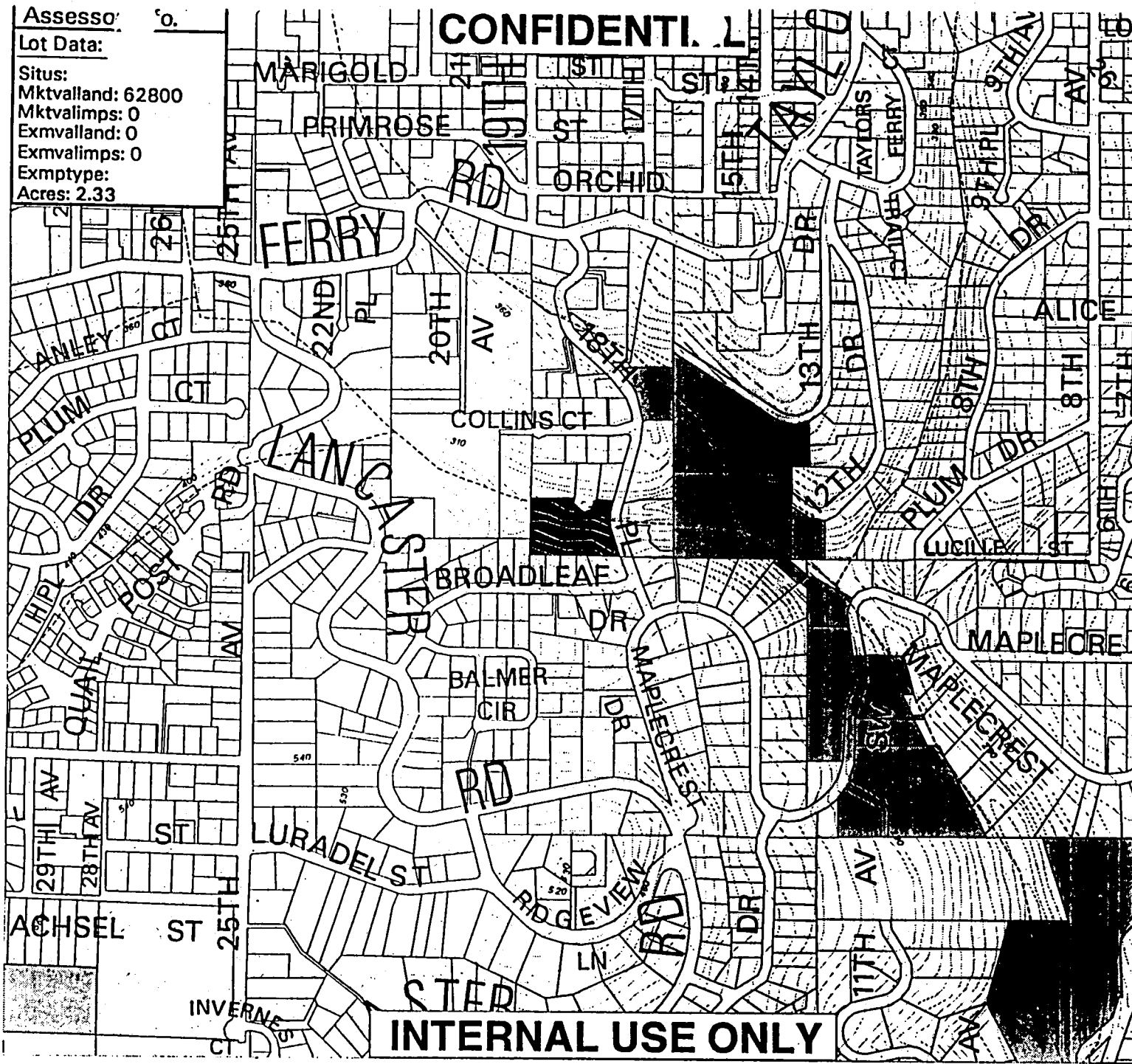
- Subject Property
- ▨ Parks
- Natural Areas
- ~ Rivers/Streams
- ~ Topography
- ~ Taxlots
- City boundary
- ~ Urban Growth Boundary

Council District: 7  
Councilor: Patricia McCaig



Owner Name:  
**JENSEN**

600 NE Grand Ave  
Portland, OR 97232-2736  
(503) 797-1742



**INTERNAL USE ONLY**

# OREGON REGIONAL CONSORTIUM DISPARITY STUDY

VOLUME 1A

## Executive Summary Legal Historical



Mason Tillman Associates, Ltd.  
May 1996



# Oregon Regional Consortium Disparity Study

## **Funding Agencies**

City of Portland  
Portland Development Commission  
Multnomah County  
Metro  
Oregon Department of Transportation  
Oregon Department of Administrative Services  
Oregon State System of Higher Education  
Tri-Met  
Washington County  
City of Gresham

Consortium Lead Agency  
**City of Portland**  
**Vera Katz, Mayor**

Prepared by  
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Consortium Project Manager  
Madelyn Wessel  
Chief Deputy City Attorney  
City of Portland  
For inquiries: (503) 823-3089 (facsimile)

## **ACKNOWLEDGMENT**

The Oregon Regional Consortium Disparity Study could not have been successfully completed without the leadership and support of Madelyn Wessel, Chief Deputy City Attorney, Portland, acting as the Consortium Project Manager. In the individual agencies, the following departments were among those which provided invaluable assistance — the City of Portland Bureau of Purchases including the Business Development Division; Multnomah County Purchasing Department; Metro Risk and Contracts Services Division; Oregon Department of Transportation DBE/EEO/ESB Unit; State System of Higher Education Office of the Chancellor; Tri-Met Legal Department; Washington County Purchasing Department; and numerous departments and staff members in the Portland Development Commission, Oregon Department of Administrative Services, the City of Gresham and other agencies as well. The State of Oregon's Office of Minority Women and Emerging Small Business also provided invaluable information and insight regarding the certification process and certified firms.

This Study could not have been conducted without the participation of 125 business owners including prime contractors and subcontractors, who demonstrated their commitment to the Study by spending hours being interviewed.

Finally, we appreciate the work of Elizabeth McLagan, who wrote the chapter on the historical experiences of minorities and women in the Portland area, the extensive interviewing conducted by the Portland-based Ross Business Development Group, and the technical expertise provided by ECONorthwest, who provided statistical advice early in the project.

Eleanor Mason Ramsey, Ph.D., Project Manager

Debra Murphy Lawson, Assistant Project Manager

Eric Frandson, Project Administrator

Law Offices of Edward Norton, Legal Consultant

Gail Kurtz, Oral Historian

Mike Leong, Statistician

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### **CHAPTER 1**

#### **LEGAL FRAMEWORK OF MINORITY AND WOMEN BUSINESS**

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# **EXECUTIVE SUMMARY**

## **OVERVIEW**

In 1989, the United States Supreme Court, through *City of Richmond v. J.A. Croson Co.*, determined that public contracting affirmative action policies based on *assumed* past acts of discrimination were no longer valid. State and local entities would now be required to justify race-conscious programs by demonstrating the existence of systematic discrimination through statistical and anecdotal evidence.

The *Croson* court outlined rigorous standards establishing that many of the benign race-conscious techniques utilized by public entities to ensure access to public contracting dollars for minorities must be justified as specific remedial tools aimed at identified discrimination. Additionally, in June 1995, the U.S. Supreme Court held in *Adarand v. Peña* that federally funded race-conscious programs would need to satisfy the same standard of scrutiny as local and state programs.

A Consortium of governmental entities in the tri-county metropolitan area, with the City of Portland acting as the lead agency (Consortium) commissioned two studies to guide the Consortium members' jurisdictions in formulating policies to improve opportunities for minorities and women acting as business owners and as workers in the regional construction industry. The studies addressed the letting of public construction and architecture and engineering (A & E) contracts and the participation of individual minorities and women in the construction trades. The Consortium members also sought an examination of the general effects of their procurement policies and practices on all contractors regardless of race or gender. Volumes 1 through 12 of the Regional Disparity Study contain the results of the construction and architecture and engineering contracting study. This executive summary covers the 12-volume Disparity Study findings. The results of the study of employment and training in the construction trades are reported in Volume 13.

## ***The Disparity Study Consortium***

The Consortium is comprised of the following agencies:<sup>1</sup>

- City of Portland
- Portland Development Commission
- Multnomah County
- Metro
- Oregon Department of Transportation (ODOT)
- Oregon Department of Administrative Services (ODAS)
- Oregon State System of Higher Education (OSSHE)
- Tri-County Metropolitan Transportation District (Tri-Met)
- Washington County
- City of Gresham

The Consortium encompasses two federally oriented agencies operating mainly federal "DBE" programs, two large state agencies, two municipalities, two county governments, a regional government with jurisdiction over the tri-county area, and the regional urban development agency. Each of the Consortium members has operated its own unique minority/women business programs during the study period, July 1, 1991 through June 30, 1994. Some have operated both federal and agency specific programs. For those agencies operating significant federally driven DBE programs such as ODOT and Tri-Met, the legal landscape changed substantially in the wake of the U.S. Supreme Court decision in *Adarand v. Pena*, which was issued while this Study was in process.

### ***Disparity Study Team***

The Consortium commissioned Mason Tillman Associates and its subconsultants, Ross Business Development Group, ECONorthwest and the Law Offices of Edward Norton, to assess whether the requisite factual conditions exist, pursuant to the *Croson* guidelines, to justify an M/WBE Program for construction and architecture and engineering projects and to report its findings. The City of Portland, as lead agency, separately commissioned Professor George LaNoue, Ph.D., to provide expert advice on the formulation of the study's initial Request for Proposals and the methodology for the actual study. In addition, local historian Elizabeth McLagan was commissioned to research the history of minorities and women in Oregon, with a particular emphasis on post-World War II economic development in the Portland area. Ms. McLagan's research is presented in the Ethnic and Gender Discrimination in Portland: 1844-1980 Chapter. Madelyn Wessel, Chief Deputy City Attorney for the City of Portland, was the Consortium Project Manager.

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<sup>1</sup> The Consortium also wishes to acknowledge a \$5,000 contribution to the Studies, which was provided by the Housing Authority of Portland.

## ***Methodology***

The Study compares the impact of different programs on a community that shares a common history and contracting environment, allowing for a comparison of the effectiveness of program elements found in the various agencies. Agencies represented in the Consortium have implemented a variety of programs including M/WBE programs, DBE programs, emerging small business programs, programs requiring prime contractors to select subcontractors using good faith outreach processes, and programs that solely provide outreach to the M/WBE community. The unusual variation in programs and the large number of participants in this study have given Mason Tillman a unique opportunity to examine the effects of very different M/WBE programs and contracting systems on the minority-owned, woman-owned, emerging and majority businesses operating in the Portland metropolitan region. Moreover, through anecdotal and statistical information Mason Tillman has been able to assess some of the differences between legal or regulatory commands and actual practice in the industry. Additionally, Mason Tillman has revealed the contrast between the rationalizations for some of those systems and the real outcomes in the regional industry.

The Study was a collaborative effort. The Consortium agencies provided information about the contracts they awarded between July 1, 1991 and June 30, 1994. The agencies made extraordinary efforts to collect information on subcontracting, including second tier subcontracting, through review of agency records, multiple contacts with prime contractors and focused outreach. The information the agencies were able to provide, although still incomplete in some respects, allows for a more extensive picture of subcontracting than has been possible in the past. Agency staff committed considerable amounts of time and energy in interviews regarding their contracting processes, review of contracting data, and development of detailed descriptions of their purchasing systems. Staff were open to in-depth review of their programs and records, despite the potential for critique of the programs.

## ***Objectives***

- The Regional Disparity Study examines each Consortium member's public construction contracting methods in order to ascertain whether these processes are affected by race or gender discrimination.
- This study also examines the complex world of public procurement systems affecting public contracting and construction-related professional services for all contractors, regardless of race and gender, with an eye towards improvements for all participants in these systems.
- The study of apprenticeship training and employment in the construction trades sought to examine whether those systems are affected by race or gender discrimination, how such systems could be improved, and whether a substantial nexus between apprenticeship/journey work and construction business ownership exists.

## ***Notable Findings***

Mason Tillman interviewed more than 300 individuals and examined all available agency records in the course of this Study. The most notable findings, briefly provided below, are summarized in the individual sections of this Executive Summary:

- ▶ There are an estimated 1,894 available construction companies and 471 available architectural and engineering firms in the market area.
- ▶ On average, 47 percent of minority- and women-business owners report experiencing harassment, intimidation, or unreasonable pressure on the job.
- ▶ More than 52 percent of that group have also experienced barriers from the “good old boy” network which prevented them from getting jobs.
- ▶ Once contracts have been awarded, 53 percent of M/WBEs interviewed report difficulties with reductions in their scope of work after work commenced.
- ▶ In no instance did any Consortium agency possess complete data on subcontracting, and, in the case of the reported examples, 59 percent of the subcontractors could not be verified.
- ▶ It is estimated that less than 25 percent of the contractors utilized during the period studied were State licensed, despite legal requirements that they all be.
- ▶ Caucasian males receive two out of three construction subcontracts and three out of four architecture and engineering subcontracts.
- ▶ The examination of whether contracts were distributed equitably based on availability shows that minority and women business owners were victims of discrimination — during the period studied, they “lost” an estimated 126 construction contracts worth more than \$2 million and 55 architecture and engineering contracts, worth almost \$4 million.
- ▶ Most of the contracts go to the same M/WBE firms, according to a special “high use” analysis that examined firms receiving more than five contracts.

## **Report Structure**

The report is divided into three volumes. Volumes 1A and 1B contain information applicable to all of the agencies, and Volumes 2-11 include unique reports for each Consortium member. Volume 12 contains an appendix of additional statistical information. Volume 13 contains the Employment Study. The Disparity Study reports are organized into the following chapters:

### Volume 1A

- Chapter 1 summarizes the **legal framework** given *Croson* and its progeny.
- Chapter 2 provides a **historical overview** of the social and economic conditions within which minority- and woman-owned businesses operated in the Portland market area.

### Volume 1B

- Chapter 3 presents the **anecdotal evidence** and a summary of the patterns and practices of discrimination and other obstacles and opportunities encountered within the market area by minorities, women, emerging small businesses, and prime contractors.
- Chapter 4 describes the **State of Oregon contracting laws** governing the Consortium agencies.
- Chapter 5 contains the analysis of the agencies' current **Good Faith Programs**.

### Volumes 2-11

- Chapter 6 describes the individual jurisdictions' **contracting procedures** including any programs that may affect the participation of M/WBEs.
- Chapter 7 presents the findings on the jurisdictions' **utilization of all contractors** between July 1, 1991 and June 30, 1994.
- Chapter 8 presents the findings on the jurisdictions' **utilization of subcontractors** between July 1, 1991 and June 30, 1994.
- Chapter 9 presents the analysis of the **availability of contractors** in the market area.
- Chapter 10 evaluates the **results of the utilization and availability analyses**.
- Chapter 11 presents **recommendations** for changes the agency may make to its contracting processes and M/WBE programs based on the evidence amassed in this report.

### Volume 12

- The **Appendix** presents important statistical information, including a listing of all contractors actually utilized by the Consortium, sorted by prime and subcontractor status, and with regard to race, ethnicity, and gender. This appendix also lists major prime contractors' utilization of M/WBEs.

This Disparity Study leaves each Consortium agency with the tools to continue the statistical exploration of contractor availability and utilization, as well as suggestions about how to improve data collection procedures for the future. Based on the findings from this Study, it is clear that intergovernmental cooperation in key arenas is essential for real progress to be made in removing barriers experienced by the M/WBE community and other contractors.

## **CHAPTER 1: LEGAL FRAMEWORK**

This chapter discusses the state of the law applicable to affirmative action programs in the area of public contracting. Two Supreme Court decisions, *City of Richmond v. J.A. Croson Co.*<sup>2</sup> and *Adarand v. Peña*,<sup>3</sup> raised the standard by which federal courts will review such programs. In those decisions, the Court announced that the constitutionality of affirmative action programs that employ racial classifications would be subject to "strict scrutiny." General notions of equity or mere allegations of historical and societal discrimination against minorities are insufficient to meet the requirements of the Equal Protection clause of the Constitution. Instead, governments can adopt race-conscious programs only as a remedy for identified discrimination. Such programs must also be narrowly tailored to pose minimal economic burdens on unprotected classes.

### **RACE-CONSCIOUS PROGRAMS**

Strict scrutiny requires that a government show that the classification is narrowly tailored to achieve a compelling state interest.<sup>4</sup> In *Croson*, the U.S. Supreme Court recognized that a state or local entity may take action, in the form of a Minority Business Enterprise program, to rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.<sup>5</sup> Justice O'Connor speaking for the majority postulated various methods of demonstrating discrimination and set forth guidelines for crafting MBE programs so that they are "narrowly tailored" to address systemic racial discrimination.

*Croson* enumerates several ways an entity can establish the requisite factual predicate. First, a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service, and the number of such contractors actually engaged by an entity or by the entity's prime contractors may support an inference of discriminatory

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<sup>2</sup> 488 U.S. 469 (1989).

<sup>3</sup> 132 L.Ed.2d 158 (1995).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 509.

exclusion.<sup>6</sup> In other words, when the relevant statistical pool is used, a showing of gross statistical disparities alone may constitute *prima facie* proof of a pattern or practice of discrimination.<sup>7</sup>

Second, "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified."<sup>8</sup> Thus, if an entity has anecdotal evidence before it that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it may act to end the discriminatory exclusion.<sup>9</sup> Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system.

It is likely that courts would look more favorably upon anecdotal evidence which supports a less intrusive program than a more intrusive one. For example, if anecdotal accounts related experiences of discrimination in obtaining bonds this may be sufficient evidence to support a bonding program that assists M/WBEs. However, these accounts would not be evidence of a statistical availability that would justify set-asides in a racially limited program.

## **GENDER-CONSCIOUS PROGRAMS**

Since *Croson*, the Supreme Court has remained silent with respect to the appropriate standard of review of Woman-owned Business Enterprise programs. The decisions of the Ninth Circuit are of particular importance, since Oregon is within its jurisdiction. In *Coral Construction*, the Ninth Circuit ruled that the standard of review applied to WBE programs is different than the standard imposed upon MBE programs. Whereas MBE programs must be "narrowly tailored" to achieve a "compelling state interest," WBE programs must be "substantially related" to "important governmental objectives."<sup>10</sup> Thus, while an MBE program would only survive constitutional scrutiny by demonstrating a pattern and practice of systemic racial exclusion or discrimination,<sup>11</sup> a WBE program would survive constitutional scrutiny merely by showing that women face particular disadvantages in an industry as a result of their gender.<sup>12</sup> Other Circuits have likewise ruled that WBE programs pass constitutional muster with less exacting scrutiny than MBE programs.<sup>13</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 501 (citing *Hazelwood School District v. United States*, 433 U.S. 299, 307-308 (1977)).

<sup>8</sup> *Id.* at 509.

<sup>9</sup> *Id.*

<sup>10</sup> *Coral Construction*, 941 F.2d at 930-931.

<sup>11</sup> *Croson*, 488 U.S. at 409.

<sup>12</sup> *Coral Construction*, 941 F.2d at 931-932.

<sup>13</sup> See, e.g., *Contractors Ass'n of Eastern Pa., Inc. v. City of Philadelphia*, 6 F.3d 990 (3rd Cir. 1993).

## **CHAPTER 2: HISTORICAL ANALYSIS**

History must be grounded in space and time in order to function as a useful context for the present and future. Fully understanding the situation of contemporary minority and woman-owned businesses in the Portland area demands not only scrutiny of recent statistics but an examination of the historical conditions that suppressed business development in the community among minority people and women. The rich historical analysis contained in this Study cannot adequately be summarized in a matter of pages. All public policy makers likely to become involved in implementing decisions arising out of the present Study should take the time to review the chapter in-depth.

### ***Oregon's First Century***

The laws enacted in Oregon's first century denied Native Americans, African Americans, Chinese, Japanese and women essential rights, including citizenship and voting rights, as well as property ownership and control. Further, the long resistance to removing exclusionary language from the state constitution coupled with the failure to enact any civil rights legislation meant that economic freedom for ethnic minorities and women was suppressed.

Nevertheless, minority businesses, sometimes restricted to serving the minority community, often marginally financed and small in size, did exist in Portland, a testament to an enduring desire to achieve the American Dream. In some minority communities, these businesses provided employment and the community thrived as a self-sufficient economic entity. Other businesses, undercapitalized and marginal, provided only limited employment opportunities and were extinguished during the harsh years of the Great Depression.

In the decades before World War II, patterns of social discrimination set the stage for segregated housing, segregated schools, and the legacy of social ills and economic marginalization which plagues Portland even today.

For many minority people and women, employment opportunities were confined to marginal jobs at the bottom of the wage scale, jobs which did not pay wages sufficient to support a family or develop a business. In order to survive, entire families worked, sometimes at multiple jobs. In many instances, economic prosperity became vested in the next generation, and their education was obtained at great sacrifice.



## ***World War II***

World War II provided a brief season of equal opportunity in the Portland area, as women and minorities were welcomed into the industrial workplace for the first time. However, while war workers moved to Portland in search of economic opportunity, Japanese Americans were stripped of their rights and property and spent the war interned in camps. On the battlefield, African American, Native American, Latino and Japanese American soldiers shed their blood for democracy, and returned to resume the fight for equal opportunity.

Explicit codes of discrimination began to fall and the first civil rights laws were enacted in the decade following the end of the war. Despite modest legal gains, however, the heightened expectations of the war years were dashed for many minority peoples. Native Americans endured the misguided governmental policy of termination and forced urbanization. Latinos entered Oregon for the first time in significant numbers, but typically found only marginal opportunity at subsistence wages in the agricultural sector. Japanese Americans struggled to rebuild their businesses and community after the destruction and dislocation of the war.

In general, minorities and women resumed their pre-war economic status, characterized by low wages, barriers to business financing, denial of access to entrepreneurial skills, denial of access to apprenticeship programs and other critical training, and perpetual resistance among businesses to hire and promote them.

While many minority residents simply left the State in search of a more tolerant climate, those who remained struggled hard, often at two jobs or in modest businesses, to sustain and celebrate viable communities despite limited economic opportunities. Businesses reappeared, often financed out of war wages or by pooling economic resources, and thrived despite limited access to conventional financing or government support. A modest middle class began to emerge in many minority communities, despite real estate restrictions, barriers to union membership, and limited economic opportunities.

## ***1950s-1980s***

The patterns of segregated housing and the urban renewal practices of local agencies of the 1950s and 1960s resulted in widespread economic and cultural disruption and deprivation, and reinforced the false perceptions that linked poverty and underachievement with gender and race. Many African American homes, businesses, and community institutions were displaced or destroyed in the inner city areas.

The Great Society programs concentrated mainly on social issues. These programs were well-intended and produced important results for many — significantly, a generation of local leaders, some of them still very active in local politics, emerged from the ethnic communities

and produced notable successes. Native American, Latino and African American communities began to build a larger base of first generation middle class families. The Great Society's band-aid approach nevertheless failed to create adequate and permanent public and private sector family-wage jobs, failed to alleviate inadequate schools in minority neighborhoods, and failed to alter the effects of entrenched patterns of segregated housing and poor access to financing necessary to business development in Portland. Thus, minority communities themselves lacked adequate resources to maintain their new grassroots institutions when government support was withdrawn in the 1980s.

### ***The Present***

It is incontestable that great social progress was achieved from the *de jure* discrimination of the 1850s to the legislated promise of the Equal Opportunity Act of 1964. This Disparity Study suggests, however, that progress exists more on government paper than as an economic fact for many minorities in the Portland area. While explicit social attitudes toward minorities and women may have changed, the residual stigma of racial and gender inferiority tacitly informs the practices of Oregon's financial institutions, unions, and major employers. Continuing discrimination within the construction industry and the community at large serves as an enduring barrier to the minority business development that a century of inequity has suppressed.

Much of the record of government intervention to protect the economic status quo has been both forgotten and taken for granted. From the first laws passed by the territorial legislature to the alien land laws of the 1940s, economic prosperity has been protected as the birthright of the Caucasian male. Federal, state and local laws and administrative actions contributed time and time again to the preservation and centralization of economic and social power in the non-minority community, and with men rather than women. The fact that significant progress has been created for individual minorities and women in construction and business does not change this central fact. **Only thoughtfully conceived and appropriately implemented strategies which take this history into account are likely to help communities of color, in particular, to emerge from the shadows of the past.**

## ***CHAPTER 3: ANECDOTAL FINDINGS***

*Anecdotal evidence — oral accounts of the experiences of individuals seeking to establish or operate their businesses — can play two very important roles in establishing a factual predicate. One function of such information is to supplement quantitative, statistical data which reveals a disparity between a jurisdiction's utilization of businesses owned by minorities and women as vendors of goods and services, and the number of such businesses which are available to provide these items.*

The other role of anecdotal information is to provide a description of various aspects of the market area as a whole. In this capacity, anecdotal evidence can provide the information which can be used by legislators to devise and implement changes in the jurisdiction's contracting procedures which do not have as their sole purpose enhancing the utilization of MBEs and WBEs, even though the changes may produce this result.

### ***Interviewee Profiles***

Three hundred and three people were screened and a total of 125 in-depth interviews were conducted. Of these, 28 were African American, nine were Asian Americans, 14 were Hispanic Americans, 12 were Native Americans, 32 were Caucasian women, and 30 were Caucasian males. The group of Caucasian males was comprised of 14 large general contractors and 16 owners of emerging small businesses. The total population of business owners interviewed included 82 male business owners and 43 female business owners.

### ***Harassment and Stereotyping***

An average of 47 percent of the 77 M/WBEs in this Study report experiencing harassment, intimidation or unreasonable pressure during the course of operating their businesses. Anecdotal testimony from the interviewees in this study indicates that race and gender issues continue to negatively impact minorities and women in professional settings. M/WBEs report that some Caucasian co-workers and project managers make verbal slurs regarding race and gender, as well as form negative opinions of an individual's capabilities solely on the basis of his/her race or gender. Comments have included "dumb Indian," "dumb Oriental," "gook," and "nigger." Negative opinions include the beliefs that minorities will not stay in business, women cannot perform as well as men, and minorities do inferior work. Many of the minority and women business owners in this Study explain that experiencing such verbal slurs and stereotyping causes them great discomfort while undertaking a project. In addition, some minorities and women feel pressured to repeatedly go above and beyond required work levels in order to prove themselves and their capabilities. In some instances, an MBE's desire to be a team player meant the firm performed work needed on an urgent basis without waiting for formal confirmation of the expanded work scope. When the prime refused, after the fact, to pay for the work, the MBE faced significant economic hardships, ranging from reduced or no profits to being forced out of business. Many explain that encountering verbal slurs or stereotypes causes them to wonder if such comments are only the tip of the iceberg, and that other, more serious, forms of discrimination are occurring.

The interviewees also recount that they encounter other barriers related to racial and gender discrimination. Some of these barriers take the form of open harassment, while others entail a determination to keep minorities and women from working on certain projects. Barriers include difficulty for M/WBEs in getting as much information about a job as Caucasian male counterparts; several women cite incidents of sexual harassment on the job; others report that

they are held to higher standards than are their Caucasian male colleagues; yet others describe harassment on the job due to disparate treatment of them and their crews.

A substantial number of interviewees are negatively impacted by the reaction of Caucasian colleagues to their race and gender. The testimony recounted in this section indicates that some M/WBEs are prevented from obtaining work because of their race or gender and, in addition, that attempts have been made by some Caucasian contractors to hinder M/WBEs from successfully carrying out their work.

In addition, some minorities and women find that they are unable to obtain assistance when they complain about harassment. Interviewees as well as Consortium agency staff confirm that M/WBEs who have complained about mistreatment have been blacklisted. Due to this, others fear retaliation if they complain, and consider it necessary to endure harassment or mistreatment while carrying out a job.

## ***Networking***

Minorities and women report both positive and negative networking experiences in equal measure. An average of 52 percent of the M/WBE interviewees indicate that they experienced barriers from the "good old boy" network, and 44 percent state they encountered difficulties when networking with other contractors in their field.

Of those who have had positive experiences in the area of networking, many indicate they received assistance from a supportive individual. One interviewee referred to such an individual as "enlightened," due to their ability to deal fairly with minorities. Others credit former employers, prime contractors and public agencies with helping them network in their field.

Many of the interviewees in this study state that, unless program goals are in place that require the inclusion of M/WBE firms, their networking efforts often result in very little or no new work.

Those who cite negative experiences when attempting to network on behalf of their firms state that there is a "good old boy" network in which long-standing relationships between old friends or colleagues are honored. This, interviewees explain, is extremely difficult to break into. Others explain that they are excluded from the normal social events in their field, such as golf tournaments, at which networking often occurs. Some explain that at pre-bid conferences, where networking often occurs, minorities and women are often conspicuously absent.

## ***Institutional Barriers***

Difficulties encountered in the financial arena appear to pose the greatest risk to M/WBEs and their companies. The inability to obtain financing, credit, bonding and timely payment of invoices causes M/WBE firms to grow slowly which, in turn, inhibits them from being considered for the financing they need. In many cases, such lack of financing coupled with late payment of invoices has caused some M/WBE firms to go out of business.

- **Lack of financing cited as barrier to growth.** In regard to obtaining loans and credit lines, those interviewees who have been successful state that they have borrowed from relatives or colleagues, taken out personal loans, or "begged and borrowed" to stay afloat. Many M/WBEs state that their companies are considered small and young by bankers, factors for which they receive denials. However, it is precisely the lack of financing that often keeps these companies small.
- **Agency programs set up to aid M/WBEs with financing receive mixed reviews.** While many interviewees report that these programs assisted them in obtaining financing after banks had turned them down, others state that the program assistance did not help them.
- **Although suppliers generally receive high marks from M/WBEs, there are problems with some.** Many suppliers are credited with excellent service and good performance, but this area is not without its issues. Problems mentioned include price advantages for big firms and capricious price-setting on the part of some suppliers.
- **Bonding is an extremely difficult issue for many M/WBEs.** The difficulty in obtaining bonding is closely linked to that of obtaining financing. M/WBEs are often considered too small or young, or collateral requirements are too high for them to qualify. As was indicated earlier, these denials create a vicious circle in which M/WBE firms are unable to grow and take on larger jobs.
- **Late payment aggravates problems endured by M/WBE firms.** Late payment of invoices by prime contractors and agencies compounds all of the financial problems outlined above. Due to lack of financing, many M/WBE firms are on tight budgets and are greatly jeopardized when payments are late. Many interviewees indicate that prime

Those who have encountered difficulties in this area explain that experience has shown them Caucasian male colleagues are held to less rigorous standards than are they. Some women report that their husbands are required to co-sign on loans, whereas the reverse never occurs. Some minorities report that their associates who work in financial institutions see disparate treatment between minority and Caucasian customers.

contractors do not pay in a timely manner, and that agencies offer little assistance in collecting payment. Some interviewees report that colleagues have gone out of business due to late payment problems.

- **Inspectors and project managers may treat M/WBEs differently.** Those M/WBEs who experience difficulties with inspectors and or project managers state that they are treated more harshly than are their majority peers. Some also state that they are hassled on job sites, sometimes more so than majority contractors.

### ***Barriers to Bidding Opportunities***

Several patterns that prevent M/WBEs from obtaining access to bidding opportunities are identified by interviewees in this study. The majority of these patterns involve prime contractors who are attempting to avoid meeting the good faith effort requirement.

Inadequate lead time to bid a job is cited as the greatest problem for M/WBEs. Most indicate that in order to meet good faith effort requirements without actually hiring M/WBEs, prime contractors send bid notices extremely late — as late as six hours before a bid is due — so that subcontractors do not have a reasonable amount of time to assemble a bid. Those primes that do wish to do business with M/WBEs tend to give adequate time to bid and to follow up the bid request with personal contact. There are almost no reports from interviewees of agencies monitoring these activities.

M/WBEs also report the barrier of being denied a contract despite having submitted the low bid. After a contract has been awarded, minority- and woman-owned firms may be told they lack experience, may not be informed when the job starts, or may just have the job taken away without a concrete explanation. Again, there is very little evidence of agency monitoring of such activities.

While an average of 68 percent of the interviewees do not have trouble obtaining bid notices, 32 percent state that, despite efforts to be put on bidders lists, they never receive information. Some attribute this to individuals within agencies who do not want to carry out program mandates. Other interviewees with difficulties in this area explain that they are dependent on general contractors for bid information, and often it appears that these contractors do not want to do work with them.

#### **Most program failures result from lack of monitoring and enforcement**

- Inadequate lead time
- Low M/WBE bidder not awarded contract
- Use of “fronts” to achieve goals

Finally, some prime contractors use "front" companies to do their work. This happens in one of two ways: either a legitimate M/WBE firm is asked to allow contract dollars to be funneled through their company for a small fee and without performing any or a significant amount of the work; or a sham company is set up under the name of a contractor's wife, minority or female employee or associate. Legitimate M/WBE firms may or may not have the capacity or capability to perform the work; instead the work is conducted by a non-M/WBE firm. M/WBEs report losing contracts to firms known to be fronts, and again report very little monitoring of such companies.

### ***Barriers Experienced During Performance of Work***

The greatest problem for M/WBE firms after work has commenced entails a reduction in their scope of work. An average of 53 percent of the interviewees report difficulties in this area. Those who do not have problems in this area state that they do experience reductions, but that the practice is standard, often due to legitimate reasons, and is not detrimental to them. Those who do encounter difficulties explain that they have had contracts reduced by hundreds of thousands of dollars. One minority reports that he was told that his firm was working on a trial basis, which had ended. A woman states that a prime had no faith in her abilities. Others were put on the job to stand around but not work, for a greatly reduced fee. And some M/WBEs were asked to reduce their bid after the contract had been awarded.

A City of Portland audit of post-award records showed that many subcontractors listed on their bids may not have performed any work at all. Eighty percent of the subcontractors who had actually been utilized but had not been listed by the prime were found to be Caucasian males while nearly 73 percent of the M/WBEs listed on bid award documents had not been utilized.

Relationships with managers, both in the private and public sectors, were varied for M/WBEs. One reason offered for this was that there is a great diversity in the attitudes of individuals managing jobs in the market area. Some individuals may resent the presence of minorities and women and may not necessarily carry out the mandates of a set-aside program. Of those who have had difficulties with managers, many believe that this occurs because the manager does not want a minority or woman on his/her project. In one reported case that led a worker to file a formal complaint, negative comments about the City's affirmative action hiring policies were made by inspectors having lunch at a local restaurant.

It is interesting to note that private sector managers were given much higher marks than were public sector managers; there is very little indication as to why this is so, other than an allusion to the difficulties of public sector bureaucracies. Finally, those who report positive relationships with managers state that these are individuals who are fair and care about getting the job done.

### ***Program Success Stories***

Across the board, most interviewees in this Study state that they encounter barriers to the successful development of their businesses. There are, however, reports of positive experiences and successful business development, indicating that while disadvantaged business programs are not working for most M/WBEs, they are working for some.

The patterns of positive experience and business development in this study include the exposure minorities and women gain from the programs set up to ensure their participation within the marketplace. Business owners report that they obtain more contracts and are, therefore, able to develop their businesses better because of the disadvantaged business programs operating within Consortium and other agencies. Programs given the highest marks are the City of Portland and the State of Oregon, especially the Oregon Department of Transportation.

Particularly positive areas recounted by the interviewees include relationships with and assistance from suppliers in the marketplace; assistance and support garnered from government agency assistance programs including IMPACT Business Consultants, Oregon Association of Minority Entrepreneurs, and Keith Crawford and Associates; and the encouraging improvement of programs at such agencies as the City of Portland and the Oregon Department of Transportation. The Port of Portland AGC mentoring program also receives high marks.

### ***Summary of M/WBE Experiences***

Although minorities and women indicate positive experiences in some contracting areas, the numbers and anecdotes do not indicate predominantly positive experiences in these areas. A small number of interviewees are experiencing success, developing positive working relationships, and expanding their businesses within the market area, while a still larger number are encountering barriers both inside and outside of the race- and gender-based programs established to assist them.

The barriers encountered by M/WBEs in the market area are widespread and often prevent adequate business development, causing minority- and woman-owned businesses to remain small and, in some cases, to go out of business. Barriers to the inclusion of M/WBEs in



contracting opportunities occur at many levels in the marketplace: in both private and public sectors, from individual managers and agencies, both in contracts with and without M/WBE program goals, and in the financial arena as well as the areas of bidding, contractual agreements, and work inspections.

Minorities and women in the market area continue to experience incidents of racial or gender discrimination that negatively affect their professional relationships and business development. Discriminatory acts occur in many areas of the marketplace by private sector employees, public agency personnel, employees in financial institutions, and majority colleagues. It is clear from the anecdotal evidence that the M/WBE programs in the market area are not ensuring the opportunities for minorities and women that they are set up to provide. Prime contractors are easily able to avoid good faith effort requirements and reduce the scope of contracts, while little monitoring of such activities takes place. Minorities and women, therefore, continue to lose contracting opportunities on the basis of their race or gender without receiving sufficient support from the M/WBE programs in the market area set up to aid them.

### ***Majority Anecdotal Information***

The majority business owners interviewed in this study express resistance to the race- and gender-based programs within the Consortium market area. Many believe that they experience reverse discrimination due to the encouragement public agencies give to minorities and women, including those occasions when M/WBEs are "awarded" contracts on a goal basis. In addition, majority interviewees repeatedly express resentment about the requirements involved in administering race- and gender-based programs, primarily excessive paperwork. These requirements, they state, tax their resources and create unnecessary hardships for them.

- **Awareness of Discrimination in Market.** Regarding discrimination against minorities and women in the marketplace, there is a wide range of views and experiences on the part of majority interviewees. Some have witnessed firsthand discrimination against minorities and women; others suspect strongly that it occurs although they have no firsthand information; and still others state that they have neither seen nor heard of discrimination against M/WBEs.
- **No Acute Barriers to Market Entry Cited.** In general, majority business people report positive experiences in the areas of networking, solicitations by public agencies, and the assistance of professional or trade associations. Repeatedly throughout the interviews, majority business people explain that individuals at many levels of the marketplace, including friends, relatives, bankers, bonding agents, and agency personnel, assisted them in developing their businesses, advocating for them and introducing them to individuals who were in positions to help them.

The major contracting barriers encountered by majority business people include obtaining financing and bonding; dealing with late payment by agencies and prime contractors; obtaining bid information; dealing with reduced scopes of work after a contract award; and relationships with inspectors and managers in the process of executing a job.

It is interesting to note that the emerging small businesses repeatedly report much greater difficulty with the above-referenced barriers than do prime contractors. The smaller the business, the higher is the incidence of reported barriers.

Not all of the barriers reported by majority interviewees are acute, according to their reports. In the case of obtaining bonding, for example, interviewees report high incidents of assistance from family, friends, and associates. They also report encountering barriers for the first two or three years of business followed by very little problem with bonding thereafter. In other cases, such as reduction in the scope of work, interviewees report that they experience reductions but continually state that such reductions are standard business practice and do not adversely affect their revenues. In fact, some state that they have additions as often as reductions in scope.

- **Resistance to M/WBE Programs.** With Consortium agencies, majority interviewees again register resistance to M/WBE programs, particularly in the case of the City of Portland. The City receives much criticism for its contracting requirements regarding M/WBEs, as well as a perceived favoritism toward M/WBEs. The State earns mixed reviews on this issue, although overall is given positive marks for the cooperation and quality of its staff and inspectors.

Majority interviewees report very little contact with the other Consortium agencies — Tri-Met, Metro, Multnomah County, Washington County, and the City of Gresham. Reasons for that lack of contact are not revealed through this anecdotal material.

Finally, some majority interviewees openly advocate the abolishment of D/M/WBE programs within Consortium agencies. Those who do not recommend the abolishment of the programs state that program modifications should be geared toward creating more stable and secure D/M/WBE businesses. This, state interviewees, should be accomplished through a closer partnering between contracting agencies and D/M/WBEs, mentoring programs, and training and educational programs. Many majority interviewees in this study believe that minority- and woman-owned businesses have been offered too many contracting opportunities too quickly — before they have had an opportunity to develop the skills and experience that will enable them to handle such volume in their businesses. In fact, many majority interviewees claim that slow growth has been one of the influential factors in their success. As a result, utilizing some of the suggestions listed above, majority interviewees advocate finding a system in which D/M/WBE businesses can develop at such a rate that they will remain in business and continue to grow at a sustainable rate.

## **Comparison of M/WBE and Majority Anecdotal Data**

The comparison of the anecdotal information gathered from M/WBE and majority business owners centers on four categories: attitudes towards and experiences with race and gender issues in the marketplace; barriers encountered; recommendations regarding M/WBE programs; and conclusions, including Mason Tillman's recommendations developed in light of anecdotal testimony.

- **Attitudes Toward and Experiences with Race and Gender Issues Within the Marketplace.** Minorities and women encounter resistance to their presence in the marketplace, they report the need to prove themselves and their abilities continually due to stereotyping and prejudice based on their race or gender, and they have experienced discrimination. Racial slurs, sexual harassment and physical and verbal harassment all take place during the execution of business in the market area. M/WBEs cite barriers to contracting opportunities, from networking to the bidding process, to the execution of contracts, despite the existence of programs set up to aid them in obtaining contracts.

Majority interviewees reported no instances of resistance or noticeable pattern of the need to prove themselves on the job, no suspicions of their abilities, and no harassment for the color of their skin or their gender. Of note is the fact that majority businessmen claim they have encountered reverse discrimination due to the preference they say some agencies give to M/WBE firms in the bidding process. These claims stand in marked contrast to the numerous barriers actually encountered by M/WBEs in the bidding process.

Several majority interviewees believe that the programs have set up M/WBE businesses to fail by offering them too much work before their companies have had an opportunity to gain adequate training and become stable businesses. Some majority business persons actually blame M/WBE programs for the high number of M/WBE firms going out of business. The abolishment of M/WBE programs in the market area was also advocated.

Majority businessmen who have participated in mentoring programs for M/WBE firms appear generally satisfied with their partnerships and advocate further mentoring and training opportunities rather than the abolishment of the M/WBE programs.

Caucasian male, minority and women business owners report that they do not receive fair access to contracting opportunities within Consortium agencies. Neither M/WBE nor majority interviewees cite generally positive relationships with agencies. Their concerns are various: from relationships with program managers and inspectors, to barriers encountered within M/WBE programs, to issues of late payment, excessive paperwork, and difficulty obtaining bid information.

- **Barriers Encountered in Conducting Business Within the Market Area.** M/WBEs report high incidences of barriers within the market area. Obtaining financing is one of the most acute problems facing M/WBE businesses.

M/WBEs encounter discrimination due to their race and gender, double standards, and they are subjected to harassment and intimidation. Barriers encountered during the bid process are often cited including difficulties obtaining bid notification, bid shopping, inadequate lead time to bid, listing M/WBE contractors without their permission, denial of contracts despite being low bidder, and front companies which are used by majority businesses to fulfill M/WBE program requirements. M/WBEs also experience inadequate lead time to commence work.

Caucasian males encounter fewer barriers in conducting business than do minorities and women, and when they do encounter those barriers, their effects are less acute. Majority interviewees report a much higher level of assistance from family, friends, and associates, especially in the areas of networking, financing, bonding and insurance. They have much broader and more influential networks of associates in place to assist them, subsequently they get more personal assistance in obtaining loans, they wait shorter periods of time to obtain financing, and they even report that financial barriers have not posed serious problems for their firms.

Majority businessmen cite problems with the bid process as well. Bid notification and bid shopping are frequently mentioned, and, during the execution of work, they report experiencing a reduction in their scope of work and having difficult relationships with public sector managers and inspectors.

In the bid process, both M/WBE and majority businessmen encounter many of the same barriers. M/WBEs, however, repeatedly report higher instances of negative experiences within all of the reported areas. The patterns of race/gender-neutral problems appear to result from the bureaucracy within the marketplace and within Consortium agencies or from long-standing practices in the construction industry such as bid shopping and autocratic inspectors.

Both M/WBE and majority businessmen report abuses of the "system." The evidence strongly suggests that majority prime contractors are attempting to prevent M/WBEs from getting jobs by manipulating the system: last minute notification of bids, using front companies, and listing M/WBE companies without ever intending to use them are reported by majority and M/WBE interviewees alike. Insufficient monitoring by responsible agencies is cited by both groups as the primary cause of the problem.

Both sides agree that size plays a substantial role in the process. Barriers encountered by ESBs, regardless of ownership, closely duplicate some of those obstacles reported by M/WBEs. Small businesses find it harder to prove themselves in the marketplace, making it more difficult to obtain financing, bonding, insurance bid solicitation, and even

fair treatment when executing a job. A variety of factors, including racial and gender discrimination, may actually work to keep M/WBEs small.

- **Recommendations for M/WBE programs.** M/WBEs recognize that current M/WBE programs are a start, but that there are many areas for improvement. They have identified critical needs in the following areas: programs to provide assistance in obtaining adequate, cost-effective financing and bonding for their businesses; bid notification system improvements; bidding practice changes through better monitoring and enforcement of existing programs; and, the further subdivision of contracts into manageable portions which may be worked effectively by smaller firms. M/WBEs also advocate the creation of more mandatory goals within M/WBE programs, along with better enforcement of those goals.

Some majority businessmen recommend that M/WBE programs be abolished and that bidding systems should return to awards based solely on low bid. This, they claim, will give no advantage to race or gender, but will simply make awards based on price.

Other majority businessmen, particularly those who have participated in M/WBE mentoring and training programs, take the position that further improvements are needed. They not only advocate better training and mentoring programs, they request more active participation in these programs by the responsible agencies so less burden will be placed on majority firms to support and mentor M/WBE businesses. M/WBEs also support the need for these programs and additional agency involvement; the concept gets high marks from both groups.

## ***CHAPTER 4: PROGRAM DESCRIPTION***

Chapter 4 of the report describes the contracting rules for construction contracts and architecture and engineering contracts. Specific discussion relating to each Consortium agency's contracting rules and M/WBE or DBE Program are contained in Chapter 6 in the agency's individual volume.

Oregon's applicable contracting laws are codified in Oregon Revised Statutes (ORS), Chapter 279. ORS 279.049(1) instructs the State Attorney General to prepare model rules of contracting procedure based on ORS 279 that are appropriate for use by all public contracting agencies. These rules are embodied in the State Rules Manual, of the Oregon Administrative Rules (OAR) Chapter 137, Divisions 30, 35 and 40. The Model Public Contract (Model Rules) were first published in 1984, revised in 1990, and recently updated

in January 1995. The most recent revision added rules that required architectural and engineering personal service contracts to be subject to the competitive proposal process.

The Model Rules contain commentaries that are helpful in illuminating the purpose and intent of the statutory provisions embodied in ORS 279. The Model Rules must be formally adopted by a state or local agency prior to being utilized.

## **AFFIRMATIVE ACTION PROGRAMS**

Oregon's affirmative action program was formed in 1987 in ORS, Chapter 200, and through the U.S. Department of Transportation (DOT) Regulations, as published in Title 49, Code of Federal Regulations, Part 23 (49 CFR 23). It is administered through the Office of Minority Women and Emerging Small Business (OMWESB), located in the Department of Consumer and Business Services. The Advocate for Minority, Women and Emerging Small Business reports directly to the Governor. The Advocate's responsibility, pursuant to ORS 200.025(3), is to advise the Governor and the Director of the Department of Consumer and Business Services on activities designed to increase M/WBE/ESB participation in the State.

OMWESB is responsible for certifying DBEs, M/WBEs, and ESBs (collectively termed D/M/WBE/ESBs). OMWESB also provides a subscription service to the M/WBE/ESB Directory. The State also established the Oregon Association of Minority Entrepreneurs (OAME Center) to coordinate minority business participation in Oregon's economy.

Per ORS 200.025(4), OMWESB is responsible for assisting D/M/WBE/ESBs to compete in the public contracting arena; maintaining an Oregon Opportunity Register and Clearinghouse (OR Clearinghouse) for information on public agency bid opportunities with the State Board of Higher Education, ODOT, and other state and local entities; monitoring the certification and compliance programs for D/M/WBE/ESBs; and investigating complaints and possible abuses of the certification program.

ORS 279.053 allows (but does not mandate) an agency to limit competitive bidding to disadvantaged businesses on any public contract of \$50,000 or less. Similarly, ORS 279.059(1) allows agencies to require that contract awardees subcontract some part of a contract to ESBs. An agency may not make the same requirement for M/WBEs without risk of legal liability, particularly as to MBEs.

## **EMERGING SMALL BUSINESSES PROGRAM**

Oregon's race- and gender-neutral program is its Emerging Small Business (ESB) program created by OMWESB in the late 1980s as a result of the U.S. Supreme Court decision in *City of Richmond v. J. A. Croson*. An ESB is defined in ORS 200.005(3) and 200.150(1) and, except as otherwise provided in ORS 200.005(4) and (5), as:

- An independent business with fewer than 20 employees whose average annual gross receipts over the last three years does not exceed \$1 million for construction firms and \$300,000 for non-construction firms
- A business with its principal place of business in Oregon that is properly licensed and legally registered in the State<sup>14</sup>

Certification of Emerging Small Businesses began in 1989. Certification applications must be signed and notarized, are processed on a "first in/first out" priority basis, and are valid for up to seven years.

## **CHAPTER 5: GOOD FAITH EFFORTS CASE STUDY**

A case study analyzed the implementation and effectiveness of good faith efforts programs. The City of Portland, Metro, and Multnomah County have established programs that require prime contractors to make "good faith efforts" to acquire M/WBE subcontractor participation. While these programs do not require the prime contractors to acquire a specified level of the targeted groups' participation, they are among the more aggressive race-neutral measures that governments may implement. Portland's requirements also apply to ESBs, while Metro's do not.

Metro's program has been in effect since September 1992, Portland's program, which was modeled after Metro's, has been in effect since February 1995, and Multnomah County's program was also implemented in 1995. This analysis focuses on Portland's and Metro's programs.

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<sup>14</sup> State Rules Manual, Appendix K, Standard General Conditions, Section A (General Provisions).

## **Good Faith Utilization**

Metro's good faith program applied to ten projects during the study period. Metro's utilization of women and minorities on these projects is presented in the table below.

### **Metro Good Faith Contract Awards — Construction Utilization Analysis of All Contractors September 1992 - June 30, 1994**

<b>Ethnicity</b>	<b>Number of Awards</b>	<b>% of Awards</b>	<b>Amount</b>	<b>% of Amount</b>
African American	1	1.27%	\$7,505	0.05%
Asian American	0	0.00%	\$0	0.00%
Hispanic American	8	10.13%	\$316,251	1.95%
Native American	1	1.27%	\$503,306	3.11%
Caucasian Female	8	10.13%	\$291,135	1.80%
Caucasian Male	61	77.22%	\$15,065,494	93.09%
<b>Total</b>	<b>79</b>	<b>100.00%</b>	<b>\$16,183,691</b>	<b>100.00%</b>

Portland awarded contracts utilizing its good faith efforts program for 41 projects in 1995, the first year of the program's implementation. Portland's utilization of women and minorities on these projects is presented in the table on the next page.

### **Portland Good Faith Contract Awards — Construction Utilization Analysis of All Contractors February 1995 - December 1995**

<b>Ethnicity</b>	<b>Number of Awards</b>	<b>% of Awards</b>	<b>Amount</b>	<b>% of Amount</b>
African American	21	15.22%	\$419,555	0.73%
Asian American	5	3.62%	\$686,381	1.19%
Hispanic American	7	5.07%	\$633,695	1.10%
Native American	15	10.87%	\$537,486	0.93%
Caucasian Female	33	23.91%	\$1,702,277	2.95%
Caucasian Male	57	41.30%	\$53,669,865	93.10%
<b>Total</b>	<b>138</b>	<b>100.00%</b>	<b>\$57,649,259</b>	<b>100.00%</b>



The review of prime contractor bids for the City of Portland reveals that few subcontractors have been listed — M/WBE or non-M/WBE. A year-by-year comparison (in Chart 5.1 of the full Disparity Study) also indicates that M/WBE utilization dropped off dramatically in 1995 from previous years. MBE utilization by dollar amount fell from seven percent in fiscal year 1993-94 to 3.95 percent during the “good faith” program. WBE utilization fell from 5.63 percent to 2.95 percent. The dramatic drop in overall subcontracting reported by the prime contractors, from 29.20 percent in 1994 to 8.07 percent in 1995, strongly suggests that primes are not reporting all subcontracting.

## ***Case Study Findings and Recommendations***

### **Utilization**

- The utilization by the two agencies is comparable although Metro’s is slightly higher for MBEs and lower for WBEs. The rates of utilization for both agencies are below those for M/WBE availability in the market area.
- Metro’s slightly higher utilization could be attributed to its lower threshold for entry (\$50,000) versus Portland’s program (\$200,000). *Portland should consider lowering its threshold for application of the program where subcontracting opportunities are present.*

### **Outreach**

- *The agencies should increase the notice that prime contractors are required to give to subcontractors to 14 days. This would provide M/WBEs a better opportunity to assemble their bids.*
- *Notices of pre-bid conferences should be mailed at least 10 days in advance of the conference.*
- *Prime contractors should be required to contact M/WBEs whether or not the subcontractors attend the pre-bid conference.*

### **Selection of Economically Feasible Units**

- *Economically Feasible Units (EFUs) should be selected with more care. In many instances there is little correlation between the units selected and the items of work actually subcontracted to M/WBEs.*
- *Prime contractors should be required to contact at least five M/WBEs for each EFU they identify. The purpose of selecting EFUs is to select areas of work for which there are M/WBEs available to participate.*

### **Good Faith Evaluation**

- *Agencies need to take additional measures to verify the information provided by prime contractors in the subcontracting plan.* This includes requiring bidders to submit copies of all subcontractor bids received, from M/WBEs and from non-M/WBEs. Little good faith documentation is required of primes by Metro, and there was little evidence of other verification of prime contractors' representations.
- *Metro should take care to evaluate whether contractors have actually complied, and take further measures to determine that prime contractors' efforts were not merely pro forma.*

### **Post Award Monitoring**

- *Both agencies need to carefully monitor subcontractors actually utilized on projects.*
- *The City should make it more difficult for bidders to assert that they have no subcontractors at time of award.* The City needs to carefully monitor utilization, and to incorporate penalties for prime contractors who substitute subcontractors without the City's and the Business Development Division's express approval.

### **Other**

- If prime contractors are not using subcontractors on projects, then opportunities for M/WBEs are reduced. As a result, there is a need to implement programs based at the small prime contracting level.

## **CHAPTER 7: UTILIZATION\***

The initial step in the statistical analysis dictated by *Croson* is an examination of the local agency's actual contractor utilization. Consortium agencies provided contract data for projects awarded between July 1, 1991 and June 30, 1994. All agencies reported on construction projects, and some agencies also submitted information on architecture and engineering contracts. One agency also reported on construction loans disbursed during the time frame.

\* Chapter 6 is in individual agency volumes.

Utilization was calculated by both number of contracts received and by dollar value. Subcontracting dollar amounts were deducted from the contract award amounts to determine the amounts retained by prime contractors. Overall utilization included prime contractors and subcontractors.

*The utilization findings which follow are subject to substantial qualifications. As both the anecdotal study and the investigation documented in the Subcontracting Chapter establish, there is an enormous discrepancy between dollars and contracts included in this study, and those dollars and contracts reported actually received by minority- and woman-owned firms. Two problems were discovered with subcontractor data: reported awards include M/WBE subcontracts that did not actually take place and reported subcontracts understate awards and contracts granted to non-M/WBE subcontractors. Because none of the agencies had detailed post-award compliance monitoring systems, none of the agencies could verify that those contracts and dollars attributed to M/WBEs and reported to Mason Tillman were actually received to the extent reported.*

### **Utilization in the Marketplace**

- **Construction**

In order to capture one broad picture of utilization in the Portland metropolitan area, numbers and amounts of construction contracts were analyzed in combination for all agencies. The results of this analysis show that minorities were utilized at a lower rate than others, and minority females received the smallest portions of work, 2.02 percent by number of contracts and 0.48 percent by dollar value. Native Americans and African Americans had the lowest utilization by dollar volume, receiving 1.11 percent and 1.22 percent, respectively.

#### **Utilization Analysis of All Construction Contractors For Contracts of All Sizes**

<b>Ethnicity</b>	<b>Total Contracts</b>	<b>% of Total</b>	<b>Amount</b>	<b>% of Amount</b>
African American	155	3.73%	\$10,286,324	1.22%
Asian American	69	1.66%	\$12,225,730	1.45%
Hispanic American	142	3.42%	\$31,409,990	3.72%
Native American	144	3.47%	\$9,371,272	1.11%
Caucasian Female	432	10.41%	\$38,846,111	4.61%
Caucasian Male	3,209	77.31%	\$741,345,323	87.89%
<b>Total</b>	<b>4,151</b>	<b>100.00%</b>	<b>\$843,484,751</b>	<b>100.00%</b>

- **Architecture and Engineering**

Numbers and dollar value of contracts were also combined for all agencies' architecture and engineering contracts. African Americans and Hispanic Americans were utilized at a lower rate than others, 0.21 percent and 0.84 percent, respectively. Only one contract out of the 477 architecture and engineering contracts awarded was given to an African American contractor.

**All Agencies — Architecture & Engineering  
Utilization Analysis of All Contractors  
For Contracts of All Sizes**

<b>Ethnicity</b>	<b>Total Contracts</b>	<b>% of Total</b>	<b>Amount</b>	<b>% of Amount</b>
African American	1	0.21%	\$10,000	0.01%
Asian American	35	7.34%	\$8,032,532	6.02%
Hispanic American	4	0.84%	\$423,983	0.32%
Native American	5	1.05%	\$1,792,895	1.34%
Caucasian Female	48	10.06%	\$1,614,058	1.21%
Caucasian Male	384	80.50%	\$121,453,805	91.09%
<b>Total</b>	<b>477</b>	<b>100.00%</b>	<b>\$133,327,273</b>	<b>100.00%</b>

### **Agency Analyses**

An analysis of the M/WBE utilization for the Consortium agencies with their different programs reveals the following results:

- **Construction utilization**

For MBE contract dollar amounts, the two agencies with federal goal programs — ODOT federally-funded contracts and Tri-Met — reported the highest utilization. Those agencies with solely outreach programs, such as Washington County, Multnomah County, and the City of Gresham, reported the lowest. The agency with the highest MBE utilization, ODOT (federally-funded contracts) with 10.89 percent, had almost six times higher utilization than the agency with the lowest, Washington County, with 1.83 percent.

PDC and OSSHE, which have ESB programs, and Metro, which has a good faith program, were toward the middle. Three agencies with outreach programs, ODAS, City of Portland, and ODOT (state-funded contracts), reported higher utilization than PDC, OSSHE and Metro. In fact, the only agencies reporting higher utilization than this second group of agencies with solely outreach programs are those with federal DBE goals programs, ODOT (federal) and Tri-Met.

Agencies with only outreach programs acquired very different levels of MBE participation. Three showed the lowest utilization and the other three were among the highest. This suggests that some of the Consortium agencies have been effective at addressing barriers experienced by M/WBEs through agency outreach programs.

Unlike MBEs, for WBEs the utilization results bear little relationship to the type of program in effect. The top three agencies represent a goals program, an ESB program and an outreach program. ODOT (federally funded contracts) had the highest participation with 10.34 percent. There is a significant drop between ODOT (federal) and PDC, who had the next highest level of WBE participation, 7.20 percent.

- ***Architecture and Engineering Utilization***

For MBEs in the architecture and engineering industry, there was also a wide range of participation, from 9.49 percent for Tri-Met to 0.55 percent for Multnomah County. As with MBE construction utilization, the agencies with goals programs had the highest utilization and those with only outreach had the lowest. PDC's ESB program garnered the second highest utilization with 6.18 percent. There was a large drop to the next highest MBE utilization, Portland, with 3.38 percent.

For WBEs in architecture and engineering, as in construction, the type of program seemed to have little effect on utilization. Multnomah County had the highest WBE utilization with 5.52 percent. There was a large drop from Multnomah County to PDC and Portland with the next highest utilization, 2.12 percent, and 2.09 percent utilization respectively. The agency with a DBE goals program, Tri-Met, had 0.85 percent utilization, the second lowest. Metro had no WBE utilization.

- ***D/M/WBE Program Comparison***

M/WBE utilization was also compared based on the type of D/M/WBE programs that were in effect during the study period. By dollar value of contracts, MBEs received the largest amount under the goals programs, 9.75 percent. There was a large drop to the purely outreach, programs which achieved 5.46 percent.

Projects partially financed by PDC loans experienced the lowest MBE utilization (2.75 percent) and the second lowest WBE participation (3.98 percent). PDC's loan program, discussed more fully below, does not apply to total project dollars, only to the value of the assistance provided by PDC. Thus, a large portion of these projects were awarded with no M/WBE requirements.

There is a large difference between the number of contracts and the dollars awarded under the programs. For example, MBEs received 12.17 percent of the contracts awarded under all the programs, but only 7.67 percent of the dollars. This means that M/WBEs are receiving a disproportionate number of smaller contracts.

**Comparison by Program Types**

**Utilization Analysis of All Contractors by Ethnicity and Gender**

Loans: PDC Goals: ODOT(Federal), OSSHE, PDC(ESB only), Tri-Met Good Faith: Metro

Outreach Only: Gresham, Multnomah, ODAS, ODOT(State), Portland, Washington

Ethnicity	Dollar Amount					Number				
	Loans	Goals	Good Faith	Outreach	Combined	Loans	Goals	Good Faith	Outreach	Combined
African American	\$226,542	\$4,037,461	\$204,859	\$5,817,462	\$10,286,324	6	34	3	112	155
Asian American	\$29,105	\$7,157,909	\$0	\$5,038,716	\$12,225,730	2	25	0	42	69
Hispanic American	\$34,699	\$26,774,768	\$464,570	\$4,135,952	\$31,409,990	4	55	11	72	142
Native American	\$32,000	\$6,417,781	\$587,547	\$2,333,944	\$9,371,272	1	45	3	95	144
Caucasian Female	\$395,849	\$23,932,274	\$601,878	\$13,916,110	\$38,846,111	13	181	11	227	432
Caucasian Male	\$10,994,723	\$410,671,030	\$33,451,552	\$286,228,017	\$741,345,323	195	670	163	2,181	3,209
	\$11,712,918	\$478,991,223	\$35,310,407	\$317,470,202	\$843,484,751	221	1,010	191	2,729	4,151

Ethnicity	Percent of Amount					Percent of Number				
	Loans	Goals	Good Faith	Outreach	Combined	Loans	Goals	Good Faith	Outreach	Combined
African American	1.93%	0.84%	0.58%	1.83%	1.22%	2.7%	3.4%	1.6%	4.1%	3.7%
Asian American	0.25%	1.49%	0.00%	1.59%	1.45%	0.9%	2.5%	0.0%	1.5%	1.7%
Hispanic American	0.30%	5.59%	1.32%	1.30%	3.72%	1.8%	5.4%	5.8%	2.6%	3.4%
Native American	0.27%	1.34%	1.66%	0.74%	1.11%	0.5%	4.5%	1.6%	3.5%	3.5%
Caucasian Female	3.38%	5.00%	1.70%	4.38%	4.61%	5.9%	17.9%	5.8%	8.3%	10.4%
Caucasian Male	93.87%	85.74%	94.74%	90.16%	87.89%	88.2%	66.3%	85.3%	79.9%	77.3%
	100.00%	100.00%	100.00%	100.00%	100.00%	100.0%	100.0%	100.0%	100.0%	100.0%

Ethnicity/Gender	Dollar Amount					Number				
	Loans	Goals	Good Faith	Outreach	Combined	Loans	Goals	Good Faith	Outreach	Combined
MBE	\$322,346	\$44,387,919	\$1,256,977	\$17,326,074	\$63,293,316	13	159	17	321	510
WBE	\$465,977	\$26,873,937	\$924,914	\$14,638,658	\$42,903,486	16	214	17	269	516
M/WBE	\$718,195	\$68,320,193	\$1,858,855	\$31,242,185	\$102,139,427	26	340	28	548	942
Caucasian Male	\$10,994,723	\$410,671,030	\$33,451,552	\$286,228,017	\$741,345,323	195	670	163	2,181	3,209

Ethnicity and Gender	Percent of Amount					Percent of Number				
	Loans	Goals	Good Faith	Outreach	Combined	Loans	Goals	Good Faith	Outreach	Combined
MBE	2.75%	9.27%	3.56%	5.46%	7.50%	5.88%	15.74%	8.90%	11.76%	12.29%
WBE	3.98%	5.61%	2.62%	4.61%	5.09%	7.24%	21.19%	8.90%	9.86%	12.43%
M/WBE	6.13%	14.26%	5.26%	9.84%	12.11%	11.76%	33.66%	14.66%	20.08%	22.69%
Caucasian Male	93.87%	85.74%	94.74%	90.16%	87.89%	88.24%	66.34%	85.34%	79.92%	77.31%

## **CHAPTER 8: SUBCONTRACTING**

This Chapter addresses the subcontractor utilization data that Consortium agencies were able to reconstruct. Such data is important for understanding utilization in the marketplace since it captures prime contractors' choices in selection of subcontractors, and it also presents the results of the M/WBE programs that are targeted at the subcontractor level.

In no instance did a Consortium agency possess complete data on the names and/or ethnicity of subcontractors. Only two agencies maintained records on non-M/WBE/ESB subcontractors. As a result, the Consortium members made extraordinary efforts to gather the names, ethnicity and gender of subcontractors used on each contract reported in their records. Sources that were used include agencies' project officer files, M/WBE reports, prime contractors' reports, and the subcontractors themselves. In some instances agency managers, such as the head of the City of Portland Bureau of Purchases, became involved in contacting prime contractors and encouraging them to provide the information.

Typically, where records contained no preexisting subcontractor information, agencies' first step was to mail letters to the prime contractors and request that they provide information on their subcontractors, including the dollar value of all subcontracts, and the subcontractors' ethnicity and gender. Several agencies, including the City of Portland, Metro, Multnomah County and Tri-Met, followed up these initial solicitations with telephone calls and facsimiles to non-responsive prime contractors.

ODOT utilized mainly its contracting files to identify subcontractors. This was supplemented through contact with prime contractors and subcontractors. The City of Portland and OSSHE kept records of M/WBE subcontractor utilization as reported by primes at the time of award, but these records did not yield information on non-M/WBE subcontractors. This data was included if there was no other information reported for a subcontractor.

### **COMPLETENESS OF DATA**

Ultimately, while there was notable success in reconstructing subcontractor records, the record is substantially incomplete; the Consortium could not collect a substantial portion of the data.

The percentage of Consortium records that included subcontractor information varied by agency. The number and total dollar value of prime contracts and corresponding percentages of subcontractor data are listed in Tables 8.1 and 8.2, on the following pages. Those agencies marked with an asterisk (\*) identified all prime contractors responding to requests for subcontracting data, including those primes reporting "no subcontractors" on specific contracts. However, because these figures represent the responsive primes only, it is not known for certain whether the remaining contracts included subcontractors or not. The other agencies did not identify primes who reported "no subcontractors." Therefore, there is even

more uncertainty about whether the contracts listing only primes *did not have* subcontractors or whether they had *unreported* subcontractor information.

**Table 8.1**  
**Subcontractor Utilization as Reported by Prime Contractors**  
**By Number of Contracts**

<b>Agency</b>	<b>Industry</b>	<b>Total Number of Projects</b>	<b>Projects with Subcontractor Information</b>	<b>Percent of Projects with Subcontractor Information</b>
<b>Gresham*</b>	<b>Construction</b>	87	42	48%
<b>Metro</b>	<b>Construction</b>	12	6	50%
	<b>A &amp; E</b>	15	14	93%
<b>Multnomah County*</b>	<b>Construction</b>	101	66	65%
	<b>A &amp; E</b>	138	51	37%
<b>ODAS</b>	<b>Construction</b>	47	20	43%
<b>ODOT</b>	<b>Federal-Funded Construction</b>	56	52	93%
	<b>State-Funded Construction</b>	39	30	77%
<b>OSSHE</b>	<b>Construction</b>	45	33	73%
<b>Portland**</b>	<b>Construction</b>	264	191	72%
<b>PDC</b>	<b>Construction</b>	19	14	74%
	<b>A &amp; E</b>	16	9	56%
	<b>Loan-Financed Construction</b>	14	14	100%
<b>Tri-Met*</b>	<b>Construction</b>	8	7	88%
	<b>A &amp; E</b>	8	8	100%
<b>Washington County</b>	<b>Construction</b>	52	34	65%



**Table 8.2**  
**Dollar Value of Projects With and Without Subcontractor Information**

<b>Agency</b>	<b>Industry</b>	<b>Total Value of Projects</b>	<b>Value of Projects Without Subcontract Information</b>	<b>Value of Projects With Subcontract Information</b>	<b>Percent of Projects With Subcontract Information</b>
<b>Gresham</b>	<b>Construction</b>	\$13,513,183	\$8,059,404	\$5,453,779	40.36%
<b>Metro *</b>	<b>A &amp; E</b>	\$433,893	\$253,814	\$180,079	41.50%
	<b>Construction</b>	\$35,310,407	\$6,669	\$35,303,738	99.98%
<b>Multnomah County</b>	<b>A &amp; E</b>	\$9,158,554	\$1,023,585	\$8,134,969	88.82%
	<b>Construction</b>	\$55,408,918	\$7,688,558	\$47,720,360	86.12%
<b>ODAS</b>	<b>Construction</b>	\$3,382,279	\$1,932,367	\$1,449,912	42.87%
<b>ODOT</b>	<b>Federal-Funded Construction</b>	\$171,120,173	\$4,837,280	\$166,282,893	97.17%
	<b>State-Funded Construction</b>	\$24,094,874	\$788,417	\$23,306,456	96.73%
<b>OSSHE **</b>	<b>Construction</b>	\$44,306,725	\$15,517,201	\$28,789,524	64.98%
<b>Portland **</b>	<b>Construction</b>	\$186,858,310	\$10,389,322	\$176,468,988	94.44%
<b>PDC</b>	<b>A &amp; E</b>	\$6,086,360	\$2,962,258	\$3,124,102	51.33%
	<b>Construction</b>	\$43,050,032	\$6,776,883	\$36,273,149	84.26%
<b>Tri-Met</b>	<b>A &amp; E</b>	\$95,817,029	\$ -	\$95,817,029	100.00%
	<b>Construction</b>	\$220,514,293	\$1,154,291	\$219,360,002	99.48%
<b>Washington County</b>	<b>Construction</b>	\$30,619,033	\$4,909,721	\$25,709,311	83.97%

\* Many subcontractors are listed with no dollar amounts.

\*\*Some projects have only M/WBE reports as a source for subcontractor data.

## **VERIFICATION OF SUBCONTRACTOR REPORTING**

Given the concern about the completeness and veracity of the subcontracting data, a small sample of the data from several large contracts was reviewed. An effort was made to verify the accuracy and completeness of the subcontracting reports submitted by prime contractors on the City of Portland's projects. The first step was to mail a survey to subcontractors requesting information on actual payments. Due to a low response rate to this survey, further efforts were undertaken. The next step was to contact subcontractors who were listed and request that they identify other subcontractors on the project. Anecdotal information was received that two of the prime contractors frequently utilized on the City's projects deliberately kept M/WBE utilization minimal and that most subcontractors on their projects had been Caucasian males. The two prime contractors had reported predominantly M/WBE subcontractors in response to the City's request for information.

A member of the City staff investigated the identity of subcontractors actually utilized on selected projects awarded to these two prime contractors and one other prime by reviewing the contract files in City archives. The research sought to determine whether the certified payroll records or other contract documents demonstrated the presence of the subcontractors reported by the prime contractors and whether the records demonstrated the presence of unreported subcontractors. Sixteen contracts were selected that listed 62 subcontracts.

Tables 8.3 and 8.4 present the results of the investigation. It found that 59 percent or 37 of the subcontractors reported by the prime contractors could not be found in certified payroll records. These contractors were listed on the City's M/WBE reports as having been utilized. Of the 37, a disproportionate percentage were minorities, and particularly African American subcontractors. A second audit of City archival material documented similar findings, as well as very minimal compliance monitoring of certified payroll records. Although this does not necessarily prove that these firms were dropped from the projects, the absence of any certified payroll information suggests that the subcontractor data reported by these contractors on both their bid documents and in response to the City's subcontractor survey over-stated M/WBE utilization. This reporting pattern is suggested by the subcontracting records provided by other agencies.

The compliance monitoring problem identified by this audit, which Mason Tillman believes may be common to all agencies, is a serious problem that the City and other Consortium members should investigate.

**Table 8.3**  
**Subcontractors Not Found on Payroll Records**

<b>Ethnicity</b>	<b>Subcontracts Reported by Primes</b>	<b>Subcontracts Reported by Prime But Not Found in Certified Payroll</b>	<b>Percent of Subcontracts Reported by Prime But Not Found in Certified Payroll</b>
African American	15	12	80%
Asian American	3	2	60%
Hispanic American	2	1	50%
Native American	8	5	62%
Caucasian Female	15	7	46%
Caucasian Male	19	10	52%
<b>Total</b>	<b>62</b>	<b>37</b>	<b>59%</b>

The certified payroll records also revealed that 31 subcontractors who had not been reported by the prime contractors actually had worked on the projects (Table 8.4). This is a 50 percent increase over the number originally reported (62). Of the 31 unreported subcontractors, 80.6 percent are Caucasian male firms (25).

**Table 8.4**  
**Unreported Subcontractors Found on Payroll Records**

<b>Ethnicity</b>	<b>Subcontractors Not Reported by Primes Found on Payroll Records</b>	
	<b>Number</b>	<b>Percent</b>
African American	3	9.6%
Asian American	—	—
Hispanic American	2	6.4%
Native American	—	—
Caucasian Female	1	3.2%
Caucasian Male	25	80.6%

Thus, certified payroll records confirm the presence of unreported Caucasian male subcontractors on the projects and they suggest the elimination of some minority and female subcontractors from actual contract performance. All three primes whose subcontracting was investigated had responded to the City's faxed, written and telephoned requests for complete subcontracting information. All three primes provided information, and are included in the percentage reporting subcontracting data in Tables 8.1 and 8.2.

Because the prime contractors failed to provide complete subcontractor data for Caucasian male subcontractors and may have over reported M/WBE utilization, the City of Portland's M/WBE utilization is inflated, and Caucasian male utilization is undercounted. Potentially, the same factors may apply to the other Consortium agencies, each of which relied on prime contractors to provide data on subcontractor utilization and only one of which had any non-M/WBE subcontractor information in their bid or project records.

## **CONSORTIUM CONSTRUCTION SUBCONTRACTING UTILIZATION**

As indicated below in Table 8.6, minority men and women collectively received roughly one-third of the construction subcontracts and dollars awarded by prime contractors, which include loan-financed projects.

**Table 8.6**  
**All Agencies — Construction and Loans**  
**Utilization Analysis of Subcontractors Found**  
**For Contracts of All Sizes**

<b>Ethnicity</b>	<b>Total Contracts</b>	<b>% of Total</b>	<b>Amount</b>	<b>% of Amount</b>
African American	145	5.49%	\$10,540,778	3.68%
Asian American	54	2.04%	\$10,574,520	3.69%
Hispanic American	130	4.92%	\$30,613,229	10.68%
Native American	142	5.37%	\$9,368,464	3.27%
Caucasian Female	376	14.23%	\$36,231,040	12.64%
Caucasian Male	1,796	67.95%	\$189,288,683	66.04%
<b>Total</b>	<b>2,643</b>	<b>100.00%</b>	<b>\$286,616,713</b>	<b>100.00%</b>

Although there are clearly limitations in conclusions that can be drawn from the subcontractor data because of the incompleteness of the data and potential inaccuracies in reporting Caucasian males, there is no indication that there are substantial inaccuracies or biases in reporting within ethnic minority groups and females. Therefore, it is instructive to compare utilization between different ethnic groups. When utilization of minorities and

women are compared across agencies, it is clear that some ethnicities, particularly African Americans and Asian Americans, are frequently utilized at lower rates than other ethnicities.

## **CONSORTIUM ARCHITECTURE AND ENGINEERING SUBCONTRACTING UTILIZATION**

As indicated in Table 8.8, Caucasian males received close to three of every four subcontracts and dollars awarded by prime contractors working on Consortium architecture and engineering projects.

Table 8.8  
All Agencies — Architecture & Engineering  
Utilization Analysis of Subcontractors Found

<b>Ethnicity</b>	<b>Total Contracts</b>	<b>% of Total</b>	<b>Amount</b>	<b>% of Amount</b>
African American	1	0.64%	\$10,000	0.03%
Asian American	21	13.46%	\$7,520,169	20.17%
Hispanic American	2	1.28%	\$191,063	0.51%
Native American	2	1.28%	\$1,756,522	4.71%
Caucasian Female	15	9.62%	\$971,880	2.61%
Caucasian Male	115	73.72%	\$26,833,442	71.97%
<b>Total</b>	<b>156</b>	<b>100.00%</b>	<b>\$37,283,076</b>	<b>100.00%</b>

Among individual Consortium agencies, the percentages of M/WBE subconsultant utilization by dollar value was much lower for architecture and engineering than for construction. In many instances M/WBEs were not utilized at all. African Americans had the lowest utilization for each agency, and in three of four instances they were not utilized at all. Asian Americans had the highest M/WBE utilization.

## **HIGH USE CONTRACTOR ANALYSIS**

In order to capture a more in-depth look at subcontracting and the selection of subcontracts, a "high use" subcontractor analysis was performed for construction and architecture and engineering projects. Highly used subcontractors are defined as those receiving five or more subcontracts or more than \$500,000 on an agency's projects.

The objective of the analysis is to separate those dollars going to frequently-used subcontractors from others to assess how thoroughly an agency's dollars are being spread

throughout the M/WBE and non-M/WBE business community. This analysis provides a tool for policy makers to use as they assess their current programs and select methods to alter and enhance their contracting procedures.

The results of this analysis, which are too complicated to summarize here, may be found in Chapter 8 of each Consortium member's individual volume. *Key findings from a policy perspective include the common pattern that a relatively small number of minority and women contractors have obtained the majority of all contracting opportunities and dollars generated from M/WBE programs.*

## **CHAPTER 9: AVAILABILITY**

*Croson* directs that the percentage of utilized contractors be compared to those that are available to perform work in the market area. In order to be counted as available, a firm must have had the qualifications and ability to have worked on an agency's contracts, and been willing to do so. Raw census data is an inappropriate source to determine the availability of qualified, willing and able firms and, as such, has never been utilized by Mason Tillman in disparity studies. The process of establishing availability for the present study was complicated and only the results are shown in this summary.

### ***Sources of Available Firms***

The following sources were used to identify firms available to perform on the Consortium's projects:

- utilized firms
- bidders lists
- plan holders lists
- pre-bid conference attendee lists
- OMWESB certified contractor's directory
- firms identified through outreach

### ***Construction Availability***

There are an estimated 1,894 ready, willing, and able construction companies.

### Construction Availability

<b>Ethnicity</b>	<b>Number of Businesses</b>	<b>Percent of Businesses</b>
African American	71	3.75%
Asian American	32	1.69%
Hispanic American	77	4.07%
Native American	41	2.16%
Caucasian Female	218	11.51%
Caucasian Male	1,455	76.82%
<b>TOTAL</b>	<b>1,894</b>	<b>100.00%</b>

### ***Architecture and Engineering Availability***

There are an estimated 471 ready, willing, and able architecture and engineering companies in the market area.

### Architecture and Engineering Availability

<b>Ethnicity</b>	<b>Number of Businesses</b>	<b>Percent of Businesses</b>
African American	15	3.18%
Asian American	24	5.10%
Hispanic American	13	2.76%
Native American	5	1.06%
Caucasian Female	93	19.75%
Caucasian Male	321	68.15%
<b>TOTAL</b>	<b>471</b>	<b>100.00%</b>

Because of limitations in evaluating specialization and qualifications for all contractors in this database, including Caucasian male firms, the disparity analysis in Chapter 10 is limited to contracts under \$500,000 in size.

## ***Findings of Note***

The State of Oregon's Contractors License Board's list of licensed contractors was investigated as a source of available contractors. Mason Tillman sought to make an assessment of these contractors' willingness to do business with public agencies by conducting a survey of a sample of these contractors. In addition, it was anticipated that the Contractors Board would be a universal source of contractors doing business with Consortium agencies and that the four-digit SIC code information available through the Board would be a way of classifying contractors by speciality. The researchers hoped this would make possible a detailed speciality-related analysis for all contractors.

A sample of 1,001 contractors located in the market area was drawn from the licensed construction contractors who had not been utilized, in order to survey these firms about their willingness and ability to do business with the Consortium agencies. Companies were surveyed by telephone, and attempts were made to contact each firm at least twice. Surveys were completed with 164 firms. For the 633 that were not reached, messages were left, stating that the firms were being contacted to survey them to assess their willingness and interest in performing public work.

Of those firms who agreed to be surveyed, only 66 stated that the contractors were interested in working for the Consortium as a prime contractor. Eighty-nine expressed willingness to participate as a subcontractor. Less than one percent of the 1,001 surveyed were willing to provide capacity information.

A list of 4,675 licensed commercial contractors in the tri-county market area was compared to the list of market area businesses utilized by Consortium agencies. Only 223 of the 1,752 utilized firms were found to be licensed in the tri-county area. Less than 25 percent of the utilized firms were located outside of the tri-county geographic market area. It cannot be determined what percentage the firms outside the market area were licensed by the Contractors License Board. Even assuming that most of these firms were licensed as is required by Oregon law, this means that no more than one-third of firms involved are licensed.

These results, coupled with the fact that the majority of contractors that have been actually utilized by the Consortium are not licensed, made the Contractors License Board an inappropriate source for identifying contractors interested in doing public work. The Board's database does not represent the body from which Consortium contracts are actually drawn. Consequently, this method was abandoned as a source for locating contractors who were willing and available to participate on Consortium projects.



# **CHAPTER 10: DISPARITY ANALYSIS**

Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs would be equal to the proportion of qualified, willing, and able M/WBEs in the relevant market area. If these proportions are not equal, or if a disparity exists between these proportions, the probability that the disparity is due to chance could be determined using a statistical test. If there is a very low probability that the disparity is due to chance,<sup>15</sup> the Supreme Court has stated that an inference of discrimination can be made.

In analyzing the data of actual contract dollars received by a given ethnic/gender group and the expected contract dollars that a given ethnic/gender group should receive, any difference between the actual and expected dollars can be interpreted to be due to either discriminatory treatment or preferential practices in the process of awarding contracts.

## **METHODOLOGY**

As is stated above, the methodology for establishing availability is a detailed process that cannot be summarized. The complete discussion can be found in Chapter 9 of each agency's individual volume. The conclusions drawn from the availability analysis lead to the finding that the availability data is particularly appropriate and accurate for contracts under \$500,000. These represent 93.8 percent of all contracts awarded by the Consortium.

It is appropriate to use a disparity analysis as the basis for race-conscious programs only in the context of detailed disparity findings specific to a particular governmental entity. Those analyses are found in Chapter 10 of each agency's volume. However, it is instructive to observe patterns of disparity for the Portland Metropolitan Area. Therefore, the following disparity analyses includes a Consortium-wide assessment.

The statistical findings which follow are subject to very substantial qualifications. As both the Anecdotal Analysis and the investigation documented in the Subcontracting Chapter establish, there is an enormous discrepancy between dollars and contracts included in this study, and those dollars and contracts awarded to minority- and woman-owned firms. Because none of the agencies had adequate post-award compliance monitoring systems, none of the agencies could verify that those contracts and dollars reported to Mason Tillman were actually received by M/WBEs. The effort to survey subcontractors regarding payments actually received by those firms was unsuccessful due to a low response rate.

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<sup>15</sup>

When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the Courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, this analysis was done within the 95 percent confidence level.

Because of the evidence that there are inaccuracies in the City of Portland's construction utilization data, discussed in the Subcontracting Chapter, Portland's utilization data was not included in the Consortium disparity analysis.

Two types of statistical disparity analyses were conducted. The first examined the *number of contracts* awarded by ethnicity and gender. The second examined the amount of *contract dollars* awarded by ethnicity and gender. The following details the results of the statistical disparity analysis.

### ***Summary of Consortium-Wide Disparity Analysis Construction Contracts for July 1, 1991 - June 30, 1994***

As indicated in Table 10.1, African Americans, Asian Americans, Hispanic Americans and Caucasian females received fewer contracts than expected given their availability. Native Americans and Caucasian males received more contracts than expected. This disparity was statistically significant for African Americans and Hispanic Americans.

**African Americans:** Whereas African Americans represent 3.75 percent of the available construction firms, they received 1.91 percent of the construction contracts.

**Asian Americans:** Whereas Asian Americans represent 1.69 percent of the available construction firms, they received 1.63 percent of the construction contracts.

**Caucasian Females:** Whereas Caucasian females represent 11.51 percent of the available construction firms, they received 10.25 percent of the construction contracts.

**Caucasian Males:** Whereas Caucasian males represent 76.82 percent of the available construction firms, they received 81.14 percent of the construction contracts.

**Hispanic Americans:** Whereas Hispanic Americans represent 4.07 percent of the available construction firms, they received 2.79 percent of the construction contracts.

**Native Americans:** Whereas Native Americans represent 2.16 percent of the available construction firms, they received 2.28 percent of the construction contracts.

## ***Construction Contracts Lost to Minority Businesses***

Column 5, entitled "Expected Number" in Table 10.1 on the following page, represents the number of contracts M/WBEs and Caucasian males should have received given the availability of each. Conversely, Column 7 reflects the difference between the expected and actual number of contract awards, with losses shown as a negative number.

Column 6, the Z statistic, standardizes the difference between the actual contract amount and the expected contract amount by indicating how much the actual contract amount received should deviate from the expected contract amount. The larger the Z statistic, or the larger the number of standard deviations (SDs) away from the expected amount, the lower the probability that the difference or disparity could have occurred by chance.

Minority and women business owners lost about 127 construction contracts during the study period. For African Americans, 54 contracts were lost. Hispanic Americans and Caucasian females each received 37 fewer contracts than would be expected. Caucasian males received 127 more contracts than would be expected.

**Table 10.1**  
**Consortium-Wide Disparity Analysis -- Number of Prime and Sub Construction Contracts**  
**All Agencies except Portland -- Fiscal Years 1992 - 94**  
**Contracts Less Than \$500,000**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Number	Utilization%	Availability %	Expected Number	Z	Net Loss or Gain	Net %
African American	56	1.91%	3.75%	110.10	* -5.26	-54.10	-49.14%
Asian American	48	1.63%	1.69%	49.62	-0.23	-1.62	-3.27%
Hispanic American	82	2.79%	4.07%	119.40	* -3.49	-37.40	-31.32%
Native American	67	2.28%	2.16%	63.58	0.43	3.42	5.38%
Caucasian Female	301	10.25%	11.51%	338.05	* -2.14	-37.05	-10.96%
Caucasian Male	2,383	81.14%	76.82%	2,256.25	* 5.54	126.75	5.62%
<b>TOTAL</b>	<b>2,937</b>	<b>100.00%</b>	<b>100.00%</b>	<b>2,937.00</b>			

Minority and Gender	Actual Number	Utilization%	Availability %	Expected Number	Z	Net Loss or Gain	Net %
Minority Female	58	1.97%	1.74%	51.17	0.96	6.83	13.34%
Minority Male	195	6.64%	9.93%	291.53	* -5.96	-96.53	-33.11%
Caucasian Female	301	10.25%	11.51%	338.05	* -2.14	-37.05	-10.96%
Caucasian Male	2,383	81.14%	76.82%	2,256.25	* 5.54	126.75	5.62%
<b>TOTAL</b>	<b>2,937</b>	<b>100.00%</b>	<b>100.00%</b>	<b>2,937.00</b>			

Minority and Woman	Actual Number	Utilization%	Availability %	Expected Number	Z	Net Loss or Gain	Net %
MBE	253	8.61%	11.67%	342.70	* -5.16	-89.70	-26.17%
WBE	359	12.22%	13.25%	389.22	* -1.64	-30.22	-7.76%
M/WBE	554	18.86%	23.18%	680.75	* -5.54	-126.75	-18.62%

An asterisk ( \* ) denotes statistical significance at the .05 level.

## **Summary of Consortium-wide Disparity Analysis Construction Contract Dollars for July 1, 1991- June 30, 1994**

The distribution of construction contract dollars is depicted in Table 10.2. African Americans and Native Americans received fewer construction contracting dollars than expected given their availability. Caucasian males, Asian Americans, Hispanic Americans, and Caucasian females received more than would be expected. The disparity was significant for African Americans and Asian Americans:

**African Americans:** Whereas African Americans represent 3.75 percent of the available construction firms, they received 2.38 percent of the construction contract dollars.

**Asian Americans:** Whereas Asian Americans represent 1.69 percent of the available construction firms, they received 3.55 percent of the construction contract dollars.

**Caucasian Females:** Whereas Caucasian females represent 11.51 percent of the available construction firms, they received 12.58 percent of the construction contract dollars.

**Caucasian Males:** Whereas Caucasian males represent 76.82 percent of the available construction firms, they received 75.82 percent of the construction contract dollars.

**Hispanic Americans:** Whereas Hispanic Americans represent 4.07 percent of the available construction firms, they received 4.28 percent of the construction contract dollars.

**Native Americans:** Whereas Native Americans represent 2.16 percent of the available construction firms, they received 1.45 percent of the construction contract dollars.

### **Construction Contract Dollars Lost to Minority Businesses**

On the following page, the Net Dollars number in Table 10.2, Column 7, represents the difference between expected and actual dollars, shown as a loss or gain over the expected dollar amount. African Americans lost more than \$2 million.

**Table 10.2**  
**Consortium-Wide Disparity Analysis -- Prime and Sub Construction Dollars**  
**All Agencies except Portland -- Fiscal Years 1992 - 94**  
**Contracts Less Than \$500,000**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization%</b>	<b>Availability %</b>	<b>Expected Dollars</b>	<b>Z</b>	<b>Net Dollars</b>	<b>Net %</b>
African American	\$3,529,849	2.38%	3.75%	\$5,550,472	* -1.90	(\$2,020,623)	-36.40%
Asian American	\$5,255,233	3.55%	1.69%	\$2,501,621	* 3.82	\$2,753,612	110.07%
Hispanic American	\$6,331,681	4.28%	4.07%	\$6,019,526	0.28	\$312,156	5.19%
Native American	\$2,144,333	1.45%	2.16%	\$3,205,202	-1.30	(\$1,060,869)	-33.10%
Caucasian Female	\$18,546,435	12.53%	11.51%	\$17,042,294	0.84	\$1,504,142	8.83%
Caucasian Male	\$112,257,166	75.82%	76.82%	\$113,745,584	-0.63	(\$1,488,418)	-1.31%
<b>TOTAL</b>	<b>\$148,064,698</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$148,064,698</b>			
<b>Minority and Gender</b>	<b>Actual Dollars</b>	<b>Utilization%</b>	<b>Availability %</b>	<b>Expected Dollars</b>	<b>Z</b>	<b>Net Dollars</b>	<b>Net %</b>
Minority Female	\$3,506,682	2.37%	1.74%	\$2,579,797	1.27	\$926,885	35.93%
Minority Male	\$13,754,415	9.29%	9.93%	\$14,697,024	-0.56	(\$942,609)	-6.41%
Caucasian Female	\$18,546,435	12.53%	11.51%	\$17,042,294	0.84	\$1,504,142	8.83%
Caucasian Male	\$112,257,166	75.82%	76.82%	\$113,745,584	-0.63	(\$1,488,418)	-1.31%
<b>TOTAL</b>	<b>\$148,064,698</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$148,064,698</b>			
<b>M/WBE Grouping</b>	<b>Actual Dollars</b>	<b>Utilization%</b>	<b>Availability %</b>	<b>Expected Dollars</b>	<b>Z</b>	<b>Net Dollars</b>	<b>Net %</b>
MBE	\$17,261,097	11.66%	11.67%	\$17,276,821	-0.01	(\$15,724)	-0.09%
WBE	\$22,053,117	14.89%	13.25%	\$19,622,090	1.28	\$2,431,027	12.39%
M/WBE	\$35,807,532	24.18%	23.18%	\$34,319,114	0.63	\$1,488,418	4.34%

An asterisk ( \* ) denotes statistical significance at the .05 level.

**Summary of Consortium-wide Disparity Analysis  
Architecture and Engineering Contracts for July 1,  
1991- June 30, 1994**

The number of architecture and engineering contracts issued during the study period appears in Table 10.3. African Americans, Hispanic Americans and Native Americans all received fewer contracts than expected. The disparity in number of architecture and engineering contracts received is statistically significant for African Americans, Hispanic Americans and Caucasian females:

**African Americans:** Whereas African Americans represent 3.18 percent of the available architecture and engineering firms, they received 0.22 percent of the architecture and engineering contracts.

**Asian Americans:** Whereas Asian Americans represent 5.10 percent of the available architecture and engineering firms, they received 6.71 percent of the architecture and engineering contracts.

**Caucasian Females:** Whereas Caucasian females represent 19.75 percent of the available architecture and engineering firms, they received 10.74 percent of the architecture and engineering contracts.

**Caucasian Males:** Whereas Caucasian males represent 68.15 percent of the available architecture and engineering firms, they received 80.54 percent of the architecture and engineering contracts.

**Hispanic Americans:** Whereas Hispanic Americans represent 2.76 percent of the available architecture and engineering firms, they received 0.89 percent of the architecture and engineering contracts.

**Native Americans:** Whereas Native Americans represent 1.06 percent of the available architecture and engineering firms, they received 0.89 percent of the architecture and engineering contracts.

**Table 10.3**  
**Disparity Analysis -- Number of Prime and Sub Architecture and Engineering Contracts**  
**All Agencies -- Fiscal Years 1992 - 94**  
**Contracts Less Than \$500,000**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
<b>Ethnicity</b>	<b>Actual Number</b>	<b>Utilization%</b>	<b>Availability %</b>	<b>Expected Number</b>	<b>Z</b>	<b>Net Loss or Gain</b>	<b>Net %</b>
African American	1	0.22%	3.18%	14.24	* -3.57	-13.24	-92.98%
Asian American	30	6.71%	5.10%	22.78	1.55	7.22	31.71%
Hispanic American	4	0.89%	2.76%	12.34	* -2.41	-8.34	-67.58%
Native American	4	0.89%	1.06%	4.75	-0.34	-0.75	-15.70%
Caucasian Female	48	10.74%	19.75%	88.26	* -4.78	-40.26	-45.62%
Caucasian Male	360	80.54%	68.15%	304.64	* 5.62	55.36	18.17%
<b>TOTAL</b>	<b>447</b>	<b>100.00%</b>	<b>100.00%</b>	<b>447.00</b>			

<b>Minority and Gender</b>	<b>Actual Number</b>	<b>Utilization%</b>	<b>Availability %</b>	<b>Expected Number</b>	<b>Z</b>	<b>Net Loss or Gain</b>	<b>Net %</b>
Minority Female	4	0.89%	2.34%	10.44	* -2.02	-6.44	-61.68%
Minority Male	35	7.83%	9.77%	43.66	-1.38	-8.66	-19.83%
Caucasian Female	48	10.74%	19.75%	88.26	* -4.78	-40.26	-45.62%
Caucasian Male	360	80.54%	68.15%	304.64	* 5.62	55.36	18.17%
<b>TOTAL</b>	<b>447</b>	<b>100.00%</b>	<b>100.00%</b>	<b>447.00</b>			

<b>Minority and Woman</b>	<b>Actual Number</b>	<b>Utilization%</b>	<b>Availability %</b>	<b>Expected Number</b>	<b>Z</b>	<b>Net Loss or Gain</b>	<b>Net %</b>
MBE	39	8.72%	12.10%	54.10	* -2.19	-15.10	-27.91%
WBE	52	11.63%	22.08%	98.70	* -5.33	-46.70	-47.32%
M/WBE	87	19.46%	31.85%	142.36	* -5.62	-55.36	-38.89%

An asterisk ( \* ) denotes statistical significance at the .05 level.



## ***Summary of Consortium-wide Disparity Analysis – Architecture and Engineering Dollars for July 1, 1991 - June 30, 1994***

The architecture and engineering dollars expended during the study period are depicted in Table 10.4. African Americans, Hispanic Americans, Native Americans, and Caucasian females received fewer contracts than expected. More than 68 percent of those dollars went to Caucasian male-owned businesses. The disparity is statistically significant for African Americans, Caucasian females and Caucasian males:

**African Americans:** Whereas African Americans represent 3.18 percent of the available architecture and engineering firms, they received 0.04 percent of the architecture and engineering dollars.

**Asian Americans:** Whereas Asian Americans represent 5.10 percent of the available architecture and engineering firms, they received 5.31 percent of the architecture and engineering dollars.

**Caucasian Females:** Whereas Caucasian females represent 19.75 percent of the available architecture and engineering firms, they received 6.97 percent of the design consultant dollars.

**Caucasian Males:** Whereas Caucasian males represent 68.15 percent of the available architecture and engineering firms, they received 85.62 percent of the architecture and engineering dollars.

**Hispanic Americans:** Whereas Hispanic Americans represent 2.76 percent of the available architecture and engineering firms, they received 1.83 percent of the architecture and engineering dollars.

**Native Americans:** Whereas Native Americans represented an 1.06 percent of the available architecture and engineering firms, they received 0.22 percent of the architecture and engineering dollars.

### ***Architecture and Engineering Dollars Lost to Minority Businesses***

Minority- and woman-owned companies lost almost \$4 million in architecture and engineering dollars over the study period. As depicted in Column 7 of Table 10.4, African Americans lost over \$700,000 and Caucasian females lost almost \$3 million.

**Table 10.4**  
**Disparity Analysis -- Prime and Sub Architecture and Engineering Dollars**  
**All Agencies -- Fiscal Years 1992 - 94**  
**Contracts Less Than \$500,000**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
<b>Ethnicity</b>	<b>Actual Dollars</b>	<b>Utilization%</b>	<b>Availability %</b>	<b>Expected Dollars</b>	<b>Z</b>	<b>Net Dollars</b>	<b>Net %</b>
African American	\$10,000	0.04%	3.18%	\$737,511	* -1.87	(\$727,511)	-98.64%
Asian American	\$1,230,100	5.31%	5.10%	\$1,180,018	0.10	\$50,083	4.24%
Hispanic American	\$423,983	1.83%	2.76%	\$639,176	-0.59	(\$215,193)	-33.67%
Native American	\$51,373	0.22%	1.06%	\$245,837	-0.86	(\$194,464)	-79.10%
Caucasian Female	\$1,614,058	6.97%	19.75%	\$4,572,568	* -3.36	(\$2,958,511)	-64.70%
Caucasian Male	\$19,828,333	85.62%	68.15%	\$15,782,736	* 3.92	\$4,045,596	25.63%
<b>TOTAL</b>	<b>\$23,157,846</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$23,157,846</b>			

<b>Minority and Gender</b>	<b>Actual Dollars</b>	<b>Utilization%</b>	<b>Availability %</b>	<b>Expected Dollars</b>	<b>Z</b>	<b>Net Dollars</b>	<b>Net %</b>
Minority Female	\$292,500	1.26%	2.34%	\$540,841	-0.74	(\$248,341)	-45.92%
Minority Male	\$1,422,956	6.14%	9.77%	\$2,261,701	-1.28	(\$838,744)	-37.08%
Caucasian Female	\$1,614,058	6.97%	19.75%	\$4,572,568	* -3.36	(\$2,958,511)	-64.70%
Caucasian Male	\$19,828,333	85.62%	68.15%	\$15,782,736	* 3.92	\$4,045,596	25.63%
<b>TOTAL</b>	<b>\$23,157,846</b>	<b>100.00%</b>	<b>100.00%</b>	<b>\$23,157,846</b>			

<b>M/WBE Grouping</b>	<b>Actual Dollars</b>	<b>Utilization%</b>	<b>Availability %</b>	<b>Expected Dollars</b>	<b>Z</b>	<b>Net Dollars</b>	<b>Net %</b>
MBE	\$1,715,456	7.41%	12.10%	\$2,802,542	-1.51	(\$1,087,086)	-38.79%
WBE	\$1,906,558	8.23%	22.08%	\$5,113,410	* -3.49	(\$3,206,852)	-62.71%
M/WBE	\$3,329,514	14.38%	31.85%	\$7,375,110	* -3.92	(\$4,045,596)	-54.85%

An asterisk ( \* ) denotes statistical significance at the .05 level.

# **CHAPTER 11: PROGRAM RECOMMENDATIONS**

## **RECOMMENDATIONS COMMON TO THE CONSORTIUM AGENCIES FOR INTERNAL SYSTEM CHANGES**

Recommendations have been developed for alterations and enhancements to each agency's contracting procedures and are contained in the agency's individual volume. Many of the recommendations applicable to contracting systems and M/WBE programs are common to all or virtually all of the Consortium members. These recommendations are summarized here.

Most of the Consortium's current contracting programs contain some of the elements that could address barriers to contracting that are experienced by M/WBEs in the Portland area. Specifically, the programs have requirements that M/WBEs be solicited to bid on Consortium projects, at the prime and the subcontractor level. The programs also have outreach mechanisms. However, all Consortium programs, to a varying degree, are lacking in monitoring and compliance components to ensure that all parties are in compliance with the contracting program. The programs also need to incorporate key components to business development that would develop M/WBEs as prime contractors.

### ***Small Business/Sheltered Market Program***

A two-staged sheltered market will increase the opportunity for M/WBE/ESBs to compete for competitively bid contracts. Furthermore, it could also build the capacity of minority- and woman-owned businesses to bid as primes.

Recommendation	Description
<i>Create an M/WBE/ESB sheltered market for contracts under \$100,000</i>	<p>Methods to Allocate Contracts</p> <ul style="list-style-type: none"> <li>● Informal Contracts: <ul style="list-style-type: none"> <li>- low bidder from within a prescreened group of M/WBE/ESBs</li> <li>- percentage allocation for MBEs WBEs and ESBs based on availability</li> <li>- percentage allocation based on applicant pool for the program</li> </ul> </li> <li>● Formal Contracts under \$100,000: <ul style="list-style-type: none"> <li>- substantial portion set aside for M/WBE/ESBs</li> </ul> </li> </ul>
<i>Reduce size of contracts</i>	<ul style="list-style-type: none"> <li>● Design projects that are smaller in size</li> <li>● Divide larger items of work into a series of smaller prime contracts</li> </ul>

### ***Informal Procurement***

Due to their size and relaxed bonding requirements, informal procurement contracts are accessible to M/WBEs who have experienced the barriers to business development discussed in the History Chapter and Anecdotal Analysis, above. These contracts offer a unique opportunity for the development of M/WBEs' capacity, and provide an opportunity to work directly with agency staff. Many of the agencies' procedures contain components to encourage M/WBE participation on informal contracts; however, it is not clear that such procedures have been implemented consistently. Measures should be taken to ensure that at least one MBE and one WBE is solicited for each informal procurement, and that the buyers' solicitation for these contracts focus on minority- and woman-owned firms.

Recommendation	Description
<i>Require M/WBE solicitation</i>	Ensure that at least one MBE and one WBE is solicited for each informal procurement opportunity not in the sheltered market program
<i>Establish standard method to record solicitation</i>	Develop a standard form to report the results of informal solicitations with reference to ethnicity and gender of businesses contacted
<i>Publicize informal procurement opportunities</i>	<ul style="list-style-type: none"> <li>● Publicize informal procurement opportunities in a Consortium Contracts Register</li> <li>● Post future opportunities and the results of recent informal solicitations</li> </ul>
<i>Rotate the contractors who are solicited for informal procurement</i>	Implement processes to distribute bid opportunities throughout the contracting community
<i>Periodically review the lists of firms contacted for informal solicitations</i>	<p>Monitor the solicitations of contractors at the smaller contract level</p> <ul style="list-style-type: none"> <li>● Spread opportunities throughout community</li> <li>● Ensure M/WBEs are being contacted with regularity</li> </ul>
<i>Track bidding patterns by computer</i>	<ul style="list-style-type: none"> <li>● Record the bidder's ethnicity and gender</li> <li>● Include the reasons that companies have chosen not to bid</li> </ul>
<i>Report results of informal solicitations</i>	<ul style="list-style-type: none"> <li>● Issue quarterly reports of informal solicitations</li> <li>● Distribute reports to general public</li> <li>● Post results at regional technical assistance centers</li> </ul>

## ***Direct Contracting***

Consortium members can enhance cost control over informal contract amounts while increasing bid opportunities to M/WBEs by implementing direct contracting procedures.

<b>Recommendation</b>	<b>Description</b>
<i>Create direct services and commodity agreements in specified areas</i>	<ul style="list-style-type: none"><li>● Areas: trucking, landscaping, and surveying</li><li>● Draw bidders from pool of prequalified M/WBE/ESBs</li></ul>
<i>Issue blanket purchase orders</i>	<ul style="list-style-type: none"><li>● Type of goods: supplies, material, and equipment needed for routine informal contracts</li><li>● On Consortium contracts, allow prequalified M/WBE/ESBs to purchase at the letting agency's prices</li></ul>

## ***Alternatives to Low Bid Requirements***

All Consortium agencies should experiment with alternatives to low bid requirements. The Construction Manager/General Contractor (CM/GC) model allows for a better qualitative screening of prime bidders. Alternatives also permit more flexibility and creativity on the part of prime contractors with respect to the type of special efforts to include and mentor M/WBEs that they choose to propose on a particular project.

## ***FINANCIAL AND BONDING ASSISTANCE***

The History discussion presents a pattern of discrimination and economic exclusion against minorities and women the effects of which are still being felt. Historically, minorities and women were not allowed to accumulate capital at the rate of their majority counterparts. The effects of this discrimination can be seen in the Anecdotal Analysis where M/WBEs reported considerable difficulty with financial institutions. ESBs also reported difficulties; however, they were more frequently able to overcome their difficulties through contacts with friends and family, and with personal assets that had been accumulated.

<b>Recommendation</b>	<b>Description</b>
<i>Implement a bonding program</i>	<ul style="list-style-type: none"> <li>● Work with sureties to assure competitive rates for M/WBEs</li> <li>● Operate in conjunction with technical and business assistance programs</li> </ul>
<i>Work with sureties</i>	<ul style="list-style-type: none"> <li>● Negotiate guarantees with local sureties</li> <li>● Compile and disseminate a list of cooperative sureties</li> </ul>

Financial assistance is another significant barrier reported by M/WBEs.

<b>Recommendation</b>	<b>Description</b>
<i>Guarantee loans and establish management support programs</i>	<ul style="list-style-type: none"> <li>● Make Consortium-guaranteed loans available to M/WBEs <ul style="list-style-type: none"> <li>- establish percent of loans available</li> <li>- set qualification criteria</li> </ul> </li> <li>● Establish mentor relationships with M/WBEs where loan guarantees support contracts</li> </ul>
<i>Encourage private financial programs</i>	<ul style="list-style-type: none"> <li>● Request cooperation of banks used by the Consortium agencies</li> <li>● Forge partnership programs with lending institutions</li> <li>● Develop/support a clearinghouse of financial information</li> </ul>

## **COMPLIANCE**

All Consortium members must take steps to ensure that contractors comply with procedures and any M/WBE programs implemented. M/WBEs report being substituted after being listed by the prime contractors. They and other contractors also report experiencing a reduction in their scope of work following contract award on Consortium projects. Portland's experience in reviewing certified payroll records to verify subcontractors demonstrates that measures need to be taken to ensure that listed M/WBEs are actually utilized. While a few of the Consortium agencies have had post-award compliance mechanisms in place, none have completely monitored M/WBE participation throughout the life of a project. Such monitoring is critical.

Recommendation	Description
<i>Formalize communications</i>	Establish formal procedures for informing and notifying prime contractors and subcontractors of program requirements and contracting opportunities
<i>Develop and implement pre-award compliance process to M/WBE program</i>	Refer to recommendations presented in the Good Faith Effort Case Study
<i>Standardize proposal and bid reviews</i>	<ul style="list-style-type: none"> <li>● Standardize contract provisions for greater consistency in the proposal process</li> <li>● Implement preconstruction meetings that are mandatory for all prime and subcontractors</li> </ul>
<i>Develop and implement procedures to ensure post-award compliance</i>	<ul style="list-style-type: none"> <li>● Implement policy of progressive discipline for late payments</li> <li>● Penalize contractors if M/WBE subcontractors listed on proposal are underutilized</li> </ul>
<i>Enforce Non-discrimination Policies</i>	<ul style="list-style-type: none"> <li>● Monitor adoption of non-discrimination policies</li> <li>● Implement enforcement procedures <ul style="list-style-type: none"> <li>- make non-compliance a material violation of the contract</li> <li>- include penalty provisions for non-compliance in contract</li> </ul> </li> </ul>

## ***TRACKING AND REPORTING UTILIZATION***

Each agency should undertake regular monitoring and reporting of actual M/WBE utilization by the prime contractors and subcontractors on all contracts. Each agency should charge an independent compliance officer or unit with the responsibility for monitoring utilization of targeted contractors and authorize the officer or unit to undertake investigations necessary to determine utilization and program compliance. Central to the success of these efforts is the development of a uniform computerized system to track and monitor payments and contract modifications after the award. Such systems ought ideally to be developed by Consortium members in a coordinated fashion, so that data can be shared.



<b>Recommendation</b>	<b>Description</b>
<i>Develop a uniform computerized system to track and monitor utilization</i>	<ul style="list-style-type: none"> <li>● Monitor payments</li> <li>● Record post-award modifications</li> </ul>
<i>Create periodic reports of utilization</i>	<ul style="list-style-type: none"> <li>● Issue quarterly reports on actual utilization of all prime contractors and subcontractors</li> <li>● Reports should include <ul style="list-style-type: none"> <li>- method of contract award</li> <li>- size of contract</li> <li>- awarding agency, bureau or buyer</li> </ul> </li> </ul>

## ***STAFFING AND ADMINISTRATIVE RESOURCES***

Proper administration of the recommended program enhancements and modifications will require implementation of initiatives in staffing and administrative resources.

<b>Recommendation</b>	<b>Description</b>
<i>Educate staff on the program</i>	Define and communicate roles at all levels (staff, managers, inspectors)
<i>Establish Contract Compliance Office or other equivalent unit</i>	<ul style="list-style-type: none"> <li>● Designate a Contract Compliance Officer</li> <li>● Charge Contract Compliance Officer with responsibility to monitor M/WBE participation</li> <li>● Assign adequate staff and resources to achieve objective</li> </ul>
<i>Initiate staff training program and increase accountability</i>	<ul style="list-style-type: none"> <li>● Application: all staff with contracting authority and contract management responsibility</li> <li>● Subject matter: M/WBE program elements, objectives, and procedures</li> <li>● Scheduling: employee orientation, new program initiatives</li> <li>● Evaluation: include program compliance as a performance evaluation standard</li> </ul>

Recommendation	Description
<i>Inspector and manager training</i>	Increase training and monitoring of inspectors and managers to address problems cited in Anecdotal Analysis

## **CERTIFICATION**

The Oregon Office of Minority Women and Emerging Small Business currently certifies all D/M/WBEs and ESBs. Previously, it lacked sufficient resources to process certification and recertification applications on a timely basis. However, recently the backlog in certification applications has been eliminated. Some of the following recommendations seek to streamline the certification process and provide assistance to OMWESB in critical areas to ensure that the Office has adequate resources to continue to certify firms in a timely basis.

Recommendation	Description
<i>Strengthen qualification criteria for certification</i>	<ul style="list-style-type: none"> <li>● Require all firms to meet the 49 CFR 23 standards for commercially useful function to be certified</li> <li>● Require contractors to demonstrate ability to perform a commercially useful function to be counted for participation</li> <li>● Credit brokers or suppliers for the percentage of the contract actually performed</li> <li>● Reduce size classifications for ESBs</li> <li>● Develop guidelines for program graduation</li> </ul>
<i>Initiate changes in certification processing to tighten controls</i>	<ul style="list-style-type: none"> <li>● Engage local government involvement in certification processing</li> <li>● Maintain adequate staffing levels</li> <li>● Develop and implement a formal complaint process</li> <li>● Streamline the recertification process</li> <li>● Require site visits for all certifications</li> </ul>

## **OUTREACH**

Some of the agencies were both praised and criticized by contractors for their efforts to inform contractors of bidding opportunities. Typically, however, M/WBEs report difficulty obtaining notice of bid opportunities and exclusion from networking circles. Most agencies could enhance their outreach methods and procedures to effect greater access to bid information.

Printed notices, electronic (on-line) services, telephone hot-lines, and official bulletin boards are several methods that should be employed to disseminate bid and contract information to M/WBEs. It is important to ensure that notices of bid and contracting opportunities are current and are disseminated to M/WBEs in a timely manner.

## **RECOMMENDATIONS RELATING TO INTERAGENCY COOPERATION AND STATEWIDE LEGISLATIVE OR ADMINISTRATIVE CHANGE**

### ***Coordination of Programs***

- *Coordinate technical/business training programs and direct services*

Several agencies have technical and business training programs. Coordinating these programs would reduce duplication of efforts and allow resources to be spread further. Agencies could alternate topics for contractor training and provide complementary technical and business assistance services.

- *Establish a Consortium-wide business and technical services program*

The Agencies should consider establishing a Consortium-wide business and technical services program. The Agencies and potentially major prime contractors and the AGC could fund the program and inform M/WBE/ESBs bidding on their projects of the services.

- *Institute more frequent periodic meetings for M/WBE personnel to learn about what other agencies have found to be successful*

Agencies currently hold periodic meetings to discuss M/WBE/ESB program issues. These should be continued and should occur on a more frequent basis with agencies sharing the success of efforts they have undertaken.

- *Establish interagency training for construction inspectors and project managers*

The anecdotal accounts find that M/WBEs are experiencing considerable difficulties with construction inspectors. Training for these inspectors and contract managers should address the concerns and needs of M/WBEs and other contractors, many of which are discussed in the Oral History Chapter. This training should also include routine technical and mandatory EEO training.

- *Establish Interagency Ombuds Office*

The Consortium should consider establishing an interagency Ombuds function to mediate contractor disputes. Such an office could quickly identify patterns in disputes and alert agencies. Contractors would have a central location to report disputes. This Ombuds Office could operate in conjunction with intergovernmental technical and business assistance programs.

- *EEO Certification/Tracking at Interagency Level*

All Consortium members should move toward a system that verifies EEO certification information. The City of Portland's program could act as a model. Compliance should be a requirement of a responsible bid. Failure to comply should disqualify a bidder.

### ***Reform Construction Contractors Board Registration System***

- *Separate requirements of private and public registration systems*

The current state contractor licensing system protects homeowners and private parties through its bonding and insurance requirements. Public agencies protect their interests with other systems, such as separate bonding requirements, prequalification and technical inspections. As a result, despite state law requiring that all contractors be licensed, public agencies may not have an incentive to ensure that contractors are currently licensed. Due to the expense of registration, contractors may choose to not register, and in fact, most of the public contractors actually utilized by Consortium agencies were not registered. Two systems should be enacted, one system that provides the protections necessary for private parties and another, inexpensive, system to register contractors so that the State has an accurate record of the contractors operating in its market.

- *Track contractors by race and gender status*

The Contractors License Board Registration system can track all firms that work in the State and can thus form the basis of a list of potentially available firms. Race and gender information would need to be tracked in addition to information currently collected by

the Board. By adding race and gender information, along with specialty areas already tracked, the State Contractor's License Board could become an instant source of availability information for future utilization and disparity analysis.

### ***Common Program Requirements***

- *Regularize systems and requirements among agencies*

Where agencies have similar programs, they should attempt to conform requirements to reduce confusion and administrative costs for prime and subcontractors.

Where feasible, the Consortium should also attempt to conform systems and documents to reduce contractor confusion and administrative cost to comply.

- *Compare prime contractors across agencies for M/WBE/ESB program compliance*

The agencies should compare the performance of prime contractors for compliance with M/WBE/ESB program requirements. In this way, agencies can identify techniques of successful prime contractors and any common problems. Any issues with respect to prompt payment or prevailing wage compliance could also be tracked.

- *Establish periodic interagency review of common programs*

Agencies can benefit greatly from sharing common experiences with program components (e.g. good faith, set-asides). In this way, agencies can learn from the experiences of others and make better informed decisions on strategies to increase program effectiveness.

### ***State of Oregon Recommendations***

The State of Oregon has a potential role in regulating all the disparate local agency processes and programs so that they are somewhat less confusing to the construction contracting community. The State needs to exhibit more leadership to regularize contracting processes, and to offer programs to reduce the barriers experience by M/WBEs.

- *Increase executive level direction*

The State of Oregon should increase its executive level policy direction on M/WBE programs. In addition, the resources allocated to the State's Advocate Office should be increased. The Office constitutes a single person without adequate staff or apparent authority.

- *Revise ESB and technical assistance programs*

There needs to be a change in the legislative and administrative guidelines for the ESB program that is spearheaded by the State. The current ESB program is over-inclusive, covering the vast majority of all contractors in the state with respect to size. The State should also invest more in technical training, lending, bonding, and other business assistance programs which affect all contractors.

### ***Program Evaluation Criteria***

Agencies should evaluate the success of M/WBE/ESB programs through more than the percentage of dollars awarded to targeted groups. Agencies should start reporting and monitoring new criteria such as the number of *different* firms utilized, dollars awarded to them at the prime contractor level, and the number of businesses progressing through new mentoring and training programs. As the Subcontracting Chapter demonstrates, the majority of M/WBE/ESB program dollars are currently being captured by relatively few firms. Success from a public policy perspective may be far greater when more firms are benefitting.

### ***Program Development***

Each Consortium agency should utilize this study to develop programs to address the barriers experienced by M/WBEs. Such programs should be submitted for approval by the Consortium members' governing bodies within 180 days.

All facets of the business community should be allowed to participate in the development of specific components of the M/WBE/ESB program. A working group should be assembled that includes representatives of trade associations, agency staffs, elected officials, and contractors. The group's specific task will be to develop components of the program based upon relevant criteria such a likelihood of success, cost of implementation and legality for each Consortium member.

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# 1

## **LEGAL FRAMEWORK OF MINORITY AND WOMEN BUSINESS ENTERPRISE PROGRAMS**

### **I. BACKGROUND**

This section discusses the state of the law applicable to affirmative action programs in the area of public contracting. Two Supreme Court decisions, *City of Richmond v. J.A. Croson Co.*<sup>1</sup> and *Adarand v. Peña*,<sup>2</sup> raised the standard by which federal courts will review such programs. In those decisions, the Court announced that the constitutionality of affirmative action programs that employ racial classifications would be subject to "strict scrutiny." General notions of equity or bare allegations of historical and societal discrimination against minorities are insufficient to meet the requirements of the Equal Protection clause of the Constitution. Instead, governments can adopt race conscious programs only as a remedy for identified discrimination — and that pose minimal economic burden on unprotected classes.

An understanding of *Croson*, which applies to state and local governments, is necessary in developing sound Minority Business Enterprise (MBE) and Woman-owned Business Enterprise (WBE) programs. *Adarand*, decided in June 1995, applied the strict scrutiny standard to federal programs. Its implications will not be fully appreciated until lower courts interpret the decision. Nevertheless, much of the analysis under *Croson* will determine the constraints that now apply to federal programs and those of states and localities that are federally funded.

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<sup>1</sup> 488 U.S. 469 (1989).

<sup>2</sup> 132 L.Ed.2d 158 (1995).

A caveat is appropriate here: because the review under strict scrutiny is fact-specific, it is difficult to predict with certainty whether evidence gathered about a particular entity and its surrounding business community will pass constitutional muster. Even so, post-*Croson* opinions do provide guidelines on what evidence would most likely meet that test.

## **II. STANDARDS OF REVIEW**

The standard of review represents the basis and measure upon which a court evaluates a particular legal issue. This section discusses the standard of review that the Supreme Court set for state and local programs in *Croson* and the implications for program design that arise from that decision.

### **A. Minority Business Enterprise Programs**

In *Croson*, the U.S. Supreme Court affirmed that the proper standard of review for state and local programs relying on racial classifications is strict scrutiny under the 14th Amendment.<sup>3</sup> Specifically, the government must show that the classification is narrowly tailored to achieve a compelling state interest.<sup>4</sup> The Court recognized that a state or local entity may take action, in the form of a Minority Business Enterprise program, to rectify the effects of *identified, systemic racial discrimination* within its jurisdiction.<sup>5</sup> Justice O'Connor speaking for the majority postulated various methods of demonstrating discrimination and set forth guidelines for crafting MBE programs so that they are "narrowly tailored" to address systemic racial discrimination.

While legal scholars continue to debate the implications of *Croson*,<sup>6</sup> the Ninth Circuit Court of Appeals (which includes Oregon) has achieved some degree of harmony on *Croson's* implications. In *Coral Construction Co. v. King County*<sup>7</sup> (*Coral Construction*) and *Associated General Contractors of California v. City and County of San Francisco*<sup>8</sup> (*AGCC*),

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<sup>3</sup> 488 U.S. at 486.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 509.

<sup>6</sup> See "Constitutional Scholars' Statement on Affirmative Action after *City of Richmond v. J.A. Croson Co.*," 98 *Yale Law Journal* 1711 (1989); Fried, "Affirmative Action after *City of Richmond v. J.A. Croson Co.*: A Response to the Scholars' Statement," 99 *Yale Law Journal* 155 (1989); "Scholars' Reply to Professor Fried," 99 *Yale Law Journal* 163 (1989); Rosenfeld, "Decoding *Richmond: Affirmative Action and the Elusive Meaning of Constitutional Equality*," 87 *Michigan Law Review* 1729 (1989); "Economics of Discrimination: Three Fallacies of *Croson*," 100 *Yale Law Journal* (1991).

<sup>7</sup> 941 F.2d 910 (9th Cir. 1991), cert. denied, 112 S.Ct 875 (1992).

<sup>8</sup> 950 F.2d 1401 (9th Cir. 1991), cert. denied, 112 S.Ct 1670 (1992). Note there are two AGCC cases, one pre-*Croson* [813 F.2d (9th Cir. 1987), cited as AGCC I] and the post-*Croson* case cited here which through the remainder of the discussion is cited as AGCC II.



the Ninth Circuit elaborated on the requirements set out in *Croson*, and thus further delineated the careful specificity with which MBE and WBE programs are to be crafted. The opinions of other Circuits are generally in accord. The specific evidentiary requirements are detailed in Section IV.

### **B. Woman-owned Business Enterprise, Local Business Enterprise, and Disadvantaged Business Enterprise Programs**

Since *Croson*, the Supreme Court has remained silent with respect to the appropriate standard of review of Woman-owned Business Enterprise, Local Business Enterprise (LBE), and Disadvantaged Business Enterprise (DBE) programs.

The decisions of the Ninth Circuit are of particular importance, since Oregon is within its jurisdiction. In *Coral Construction*, the Ninth Circuit ruled that the standard of review applied to WBE programs is different than the standard imposed upon MBE programs. Whereas MBE programs must be "narrowly tailored" to achieve a "compelling state interest," WBE programs must be "substantially related" to "important governmental objectives."<sup>9</sup> Thus, while an MBE program would only survive constitutional scrutiny by demonstrating a pattern and practice of systemic racial exclusion or discrimination,<sup>10</sup> a WBE program would survive constitutional scrutiny merely by showing that women face particular disadvantages in an industry as a result of their gender.<sup>11</sup> Other Circuits have likewise ruled that WBE programs pass constitutional muster with less exacting scrutiny than MBE programs.<sup>12</sup>

Regarding LBE programs, the Ninth Circuit ruled that a local entity may give a preference to local businesses to address the economic disadvantages these businesses face in doing business within the city or county.<sup>13</sup> In *AGCC I*, a pre-*Croson* case, the City of San Francisco conducted a detailed study of the economic disadvantages faced by San Francisco-based businesses versus businesses located outside the City and County boundaries. The study showed a competitive disadvantage in public contracting for businesses located within the City versus businesses from other areas.

San Francisco-based businesses had higher administrative costs of doing business within the City. Such costs included higher taxes, higher rents, higher wages, higher insurance rates,

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<sup>9</sup> *Coral Construction*, 941 F.2d at 930-931.

<sup>10</sup> *Croson*, 488 U.S. at 409.

<sup>11</sup> *Coral Construction*, 941 F.2d at 931-932.

<sup>12</sup> See, e.g., *Contractors Ass'n of Eastern Pa., Inc. v. City of Philadelphia*, 6 F.3d 990 (3rd Cir. 1993).

<sup>13</sup> *AGCC I*, 813 F.2d 922 (9th Cir. 1987).

and higher benefits for labor. In upholding the LBE Ordinance, the Ninth Circuit held that ". . . the City may rationally allocate its own funds to ameliorate disadvantages suffered by local business, particularly where the City itself creates some of the disadvantages."<sup>14</sup>

If DBE programs do not include racial or ethnic factors and are limited to economic considerations, there would only have to be a "rational basis" for the particular program design.<sup>15</sup> *Croson* and *Adarand* caution, however, that to the extent that race and ethnicity play a part, the standard of review is likely to be a more rigorous one.

### **III. BURDEN OF PROOF**

The procedural protocol established by *Croson* imposes an initial burden of production upon the government to demonstrate that the challenged MBE program is supported by a strong factual predicate. Notwithstanding this requirement, the plaintiff bears the ultimate burden of proof: to persuade the court that the MBE program is unconstitutional. The plaintiff may challenge government's factual predicate on any of the following grounds:

- neutral explanation for the disparity
- methodology flawed
- statistically insignificant data
- controverting data

The plaintiff may also challenge the design or execution of the MBE program by proving that the program is not narrowly tailored to rectify the effects of discrimination established by the factual predicate. Thus, a disparity study must be analytically rigorous—to at least the extent that the data permits — if it is to withstand legal challenge.

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<sup>14</sup> *Id.* at 943.

<sup>15</sup> The Third Circuit took the same "rational basis" approach to disabled business owners that it has applied to legislation that does not involve race, ethnicity, the First Amendment, or gender. In *Contractors Ass'n of Eastern Pa., Inc.*, the Third Circuit found that the City of Philadelphia's two-percent preference for businesses owned by individuals with a disability was rationally related to its goal of encouraging such businesses to seek City contracts. The City offered only anecdotal evidence of discrimination and the Court ruled that this was sufficient to infer discrimination against individuals with a disability. Hence, the City was entitled to conclude the Ordinance would encourage disabled persons to form businesses and to win City contracts. As the court said, "[t]he Supreme Court recently reaffirmed the permissiveness of this test in *Heller v. Doe*, 113 S. Ct. 2637, 2642-43 (1993), indicating that 'a [statutory] classification' subject to rational basis review 'is accorded a strong presumption of validity,' and that 'a state..has no obligation to produce evidence to sustain the rationality of [the] classification.'" *Id.* At 1011.

## **A. Strong Basis in Evidence**

*Croson* requires defendant jurisdictions to produce a "strong basis in evidence" that the objective of the challenged MBE program is to rectify the effects of discrimination.<sup>16</sup> The issue of whether or not the government has produced a strong basis in evidence is a question of law.<sup>17</sup> Because the sufficiency of the factual predicate supporting the MBE program is at issue, factual determinations relating to the accuracy and validity of the proffered evidence underlie the initial legal conclusion to be drawn.<sup>18</sup>

The adequacy of the government's evidence is "evaluated in the context of the breadth of the remedial program advanced by the [jurisdiction]."<sup>19</sup> The onus is upon the jurisdiction to provide a factual predicate which is sufficient in scope and precision to demonstrate that historical or contemporaneous discrimination necessitated the adoption of the MBE program. The various factors which must be considered in developing and demonstrating a strong factual predicate in support of MBE programs are discussed in Section IV.

## **B. Ultimate Burden of Proof**

The party challenging an MBE program will bear the ultimate burden of proof throughout the course of the litigation — despite the government's obligation to produce a strong factual predicate to support its program.<sup>20</sup> The plaintiff must persuade the court that the program is constitutionally infirm by challenging the adequacy of the government's factual predicate for the program or demonstrating that the program is over-broad.

Justice O'Connor explained the nature of the burden of proof borne by the plaintiff in her concurring opinion in *Wygant v. Jackson Board of Education (Wygant)*.<sup>21</sup> She states that following the production of the factual predicate supporting the program, "[I]t is incumbent upon the nonminority [plaintiffs] to prove their case; they continue to bear the ultimate burden of persuading the court that the [government's] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently 'narrowly tailored.'"<sup>22</sup>

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<sup>16</sup> *Concrete Works of Colorado v. City & County of Denver*, 36 F.3d 1513, 1522 (10th Cir. 1994).

<sup>17</sup> *Id.* (citing *Associated General Contractors v. New Haven*, 791 F.Supp. 941, 944 (D.Conn. 1992).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (citing *Croson* at 509.)

<sup>20</sup> *Id.*

<sup>21</sup> 476 U.S. 293(1986).

<sup>22</sup> *Id.*

## **IV. CROSON EVIDENTIARY FRAMEWORK**

Government entities must construct a strong evidentiary framework to stave off legal challenges and ensure that the M/WBE programs adopted comport with the requirements of the Equal Protection clause of the Constitution. The framework must be built based on the stringent requirements of the strict scrutiny standard that there is a strong basis in evidence and that a race-conscious remedy is "narrowly tailored," as set forth in *Croson*. The following summarizes the critical elements.

### **A. The Entity's Remedial Power**

*Croson* requires an entity enacting an M/WBE program to demonstrate that it has the legislative power, under the law of the governing jurisdiction, to remedy the effects of discrimination within its own legislative jurisdiction.<sup>23</sup> *Croson* held that where state law granted the City of Richmond legislative authority over its procurement policies, the City could use its spending powers to "remedy private discrimination, if it identifies that discrimination with the particularity" required by the Court.<sup>24</sup>

The Supreme Court in *Croson* noted the Court of Appeal's finding that the City of Richmond had the power to enact a minority set-aside under Virginia's Public Procurement Act.<sup>25</sup> The lower court found that the authority to enact the set-aside was "implied" from the power expressly granted by the Procurement Act to the City of Richmond to develop its own procurement procedures.<sup>26</sup>

### **B. Active or Passive Participation**

*Croson* also requires that the local entity seeking to adopt an MBE program must have somehow perpetuated the discrimination to be remedied by the program. However, the local entity need not be an active perpetrator of such discrimination; passive participation will satisfy this part of the Court's strict scrutiny review.

An entity will be considered to be an "active" participant if the evidence shows that it has created barriers that actively exclude MBEs from contracting opportunities. In addition to

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<sup>23</sup> The Ninth Circuit's opinion in *Coral Construction* is consistent with this requirement. In *Coral Construction*, the court held that the entity seeking to establish the necessary factual predicate for an MBE/WBE program should limit its factual inquiry to the presence of discrimination within its own jurisdiction.

<sup>24</sup> *Croson*, 488 U.S. at 493.

<sup>25</sup> *Croson*, 779 F.2d 181, 185 (4th Cir. 1985).

<sup>26</sup> *Id.* at 185.

examining the government's contracting process. MBEs who have contracted, or attempted to contract, with that entity can be interviewed to determine their experiences in pursuing contracting opportunities with that entity.

On the other hand, if discriminatory practices can be shown in the private sector, an entity can demonstrate that it is a "passive" participant in a private system of discriminatory exclusion where it infuses tax dollars into that discriminatory industry.<sup>27</sup> As the Court said in *Croson*, "It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from tax contributions of all citizens, do not serve to finance the evil of private prejudice."<sup>28</sup>

Increasingly, this inquiry has focused on the subcontracting practices on government prime contracts. In *Concrete Works*, the Tenth Circuit questioned whether purely private sector — (no government funds were involved) — discrimination is likely to be a fruitful line of inquiry.<sup>29</sup> In *Philadelphia*, the District Court's January 1995 evaluation of the merits of that disparity study treated "passive participation" as being the same thing as discriminatory subcontracting in City contracts.

### **C. Systemic Discriminatory Exclusion**

*Croson* clearly establishes that an entity enacting a business affirmative action program must demonstrate identified, systemic discriminatory exclusion on the basis of race or any other suspect criteria (arguably gender).<sup>30</sup> Simple statistics and broad assertions of societal discrimination will not suffice to support a race- or gender-conscious program. Thus, it is essential to demonstrate a pattern and practice of such discriminatory exclusion in the

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<sup>27</sup> *Croson*, 488 U.S. at 492; *Coral Construction* 941 F.2d at 493.

<sup>28</sup> *Croson*, 488 U.S. at 492.

<sup>29</sup> The following discussion is instructive:

What the Denver MBA data does not indicate, however, is whether there is any linkage between Denver's award of public contracts and the Denver MSA evidence of industry-wide discrimination. That is, we cannot tell whether Denver indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE in other private portions of their business or whether the private discrimination that is in no way funded with public tax dollars can, by itself provide the requisite strong basis in evidence necessary to justify a municipality's affirmative action program. A plurality in *Croson* simply suggested that remedial measures could be justified upon a municipality's showing that "it had essentially become a 'passive participant' in a system of racial exclusion practiced by elements of the local construction industry." [citing *Croson*] Although we do not read *Croson* as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination, such evidence would at least enhance the municipality's factual predicate for a race- and gender-conscious program. The record before us does not explain the Denver government's role in contributing to the underutilization of MBEs and WBEs in the private construction market in the Denver MSA, and this may will be a fruitful issue to explore at trial. *Id.* at 1529.

<sup>30</sup> *Id.* at 509.

relevant market area to establish the necessary factual predicate required by *Croson*.<sup>31</sup> That showing must cover each racial group to whom a remedy would apply.<sup>32</sup>

*Croson* enumerates several ways an entity can establish the requisite factual predicate. First, a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service, and the number of such contractors actually engaged by an entity or by the entity's prime contractors may support an inference of discriminatory exclusion.<sup>33</sup> In other words, when the relevant statistical pool is used, a showing of gross statistical disparities alone may constitute *prima facie* proof of a pattern or practice of discrimination.<sup>34</sup>

Such a showing should include subcontracting data. The Court observed in *Croson* "[w]ithout any information on minority participation in subcontracting, it is quite simply impossible to evaluate overall minority representation in the city's construction expenditures."<sup>35</sup> Subcontracting data is also important as a means to assess future remedial suggestions. Since the decision makers are different for the awarding of prime and subcontracts, the remedies for discrimination identified at a prime versus subcontractor level might also be different.

Second, "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified."<sup>36</sup> Thus, if an entity has anecdotal evidence before it that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it may act to end the discriminatory exclusion.<sup>37</sup> Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system.

The Ninth Circuit, in *Coral Construction*, further elaborated upon the type of evidence needed to establish the factual predicate that justifies a race-conscious remedy. The Court held that both statistical and anecdotal evidence should be relied upon in establishing systemic discriminatory exclusion in the relevant marketplace, as the factual predicate for an M/WBE program.<sup>38</sup> The Court explained that statistical evidence, standing alone, often

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<sup>31</sup> *Id.*

<sup>32</sup> As the Court said in *Croson*, "[t]he random inclusion of racial groups that as a practical matter, may have never suffered discrimination in the construction industry in Richmond, suggests that perhaps the City's purpose was not in fact to remedy past discrimination." *Id.* at 506.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 501 (citing *Hazelwood School District v. United States*, 433 U.S. 299, 307-308 (1977)).

<sup>35</sup> *Id.* At 502-03.

<sup>36</sup> *Id.* at 509.

<sup>37</sup> *Id.*

<sup>38</sup> *Coral Construction*, 941 F.2d at 919.

does not account for the complex factors and motivations guiding employment decisions, many of which may be entirely race neutral.<sup>39</sup>

Likewise, anecdotal evidence, standing alone, may not suffice to establish a systemic pattern of discrimination.<sup>40</sup> Nonetheless, anecdotal evidence is crucial because the individuals who testify about their personal experiences bring "the cold numbers convincingly to life."<sup>41</sup>

## 1. Market Participation

While *Croson* did not speak directly to the geographic boundaries or limitations of M/WBE programs, the Ninth Circuit in *Coral Construction* ruled that an MBE program must also be limited to the geographical boundaries of the enacting jurisdiction.<sup>42</sup> In defining eligibility, an entity crafting an M/WBE program must be careful not to sweep into its scope M/WBEs who have never had contact with the entity's business community.<sup>43</sup> In *Concrete Works*, the Tenth Circuit specifically approved the Denver Metropolitan Statistical Area (MSA) as the appropriate market area since 80 percent of the construction contracts were let there.<sup>44</sup>

Eligibility is a question of business participation, not location.<sup>45</sup> If systemic discrimination is shown in the geographic area where the entity enacting the M/WBE program does business, then there is a presumption that a M/WBE who entered the business market in that area has been victimized by the discrimination.<sup>46</sup> However, before the presumption attaches to an M/WBE, it must be established that the M/WBE is, or has attempted to become, an active participant in the local business community.<sup>47</sup>

In *Coral Construction*, for example, the Ninth Circuit held that the definition of "minority business" used in King County's MBE program was over-inclusive.<sup>48</sup> The Court reasoned that the definition was over-broad because it included businesses other than those who were

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<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id. (quoting *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 339 (1977)).

<sup>42</sup> Id. at 925.

<sup>43</sup> Id.

<sup>44</sup> Id. at 1529.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> Id.

discriminated in the King County business community.<sup>49</sup> The program would allow, for instance, MBE participation by MBEs who had no prior contact with the County. Hence, location within the geographic area is not enough. An MBE must show that it previously sought business, or is currently doing business in the market area.

## 2. Pre- versus Post-Program Evidence

In assessing the existence of identified discrimination, through demonstration of a disparity between M/WBE utilization and availability, it is important to examine disparity data both prior to and after the entity's current M/WBE program was enacted. This will be referred to as "pre-program" versus "post-program" data.

On the one hand, *Croson* requires that an MBE program be narrowly tailored to remedy current evidence of discrimination.<sup>50</sup> Thus, goals must be set according to the evidence of disparity found. For example, if there is a current disparity between the percentage of an entity's utilization of Hispanic construction contractors and the availability of Hispanic construction contractors in that entity's marketplace, then that entity can set a goal to bridge that disparity.

It is not necessary to examine a long history of an entity's utilization to assess current evidence of discrimination. In fact, *Croson* indicates that it may be legally fatal to justify an M/WBE program based upon evidence that is outdated.<sup>51</sup> Therefore, the most recent two or three years of an entity's utilization data would suffice to determine whether a statistical disparity exists between current M/WBE utilization and availability.<sup>52</sup>

On the other hand, data regarding an entity's utilization of M/WBEs prior to enacting an M/WBE program may be relevant to assessing the need for the agency to keep such a program intact. An opinion by Judge Henderson of the U.S. District Court for the Northern District of California, in *RGW Construction v. San Francisco Bay Area Rapid Transit District (BART)*<sup>53</sup>, sets forth the significance of statistical data during an entity's "pre-program" years. The Court ruled that statistics that provide data on a period when no M/WBE goals were operative are often the most relevant data in evaluating the need for remedial action by an entity. Indeed, "to the extent that the most recent data reflect the impact of operative DBE goals, then such data are not necessarily a reliable basis for

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<sup>49</sup> Id.

<sup>50</sup> *Croson* at 507.

<sup>51</sup> Id. at 499 (stating that "it is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination").

<sup>52</sup> See AGCC II, 950 F.2d at 1401 (consultant study looked at City's MBE utilization over a one year period).

<sup>53</sup> See November 25, 1992 Order by Judge Thelton Henderson (on file with Mason Tillman Associates).



concluding that remedial action is no longer warranted.<sup>54</sup> The Court noted that this is particularly so given that M/WBEs report that they are seldom or never used by a majority prime contractor absent M/WBE goals.

Thus, an entity should look both at pre-program and post-program data in assessing whether discrimination exists currently and whether it would exist absent a M/WBE program.

### 3. Statistical Evidence

In determining whether the statistical evidence is adequate to give rise to an inference of discrimination, courts have looked to the "disparity index"—which consists of the percentage of minority (or women) contractor participation in local contracts divided by the percentage of minority (or women) contractor availability or composition in the population of firms in the local market area. Disparity indexes have been found highly probative evidence of discrimination where they ensure that the "relevant statistical pool" of minority (or women) contractors is being considered.

The Third Circuit, in *Contractors Association*, ruled that the "relevant statistical pool" includes those businesses that not only exist in the marketplace, but that are qualified and interested in performing work by the entity in question. In that case, the Third Circuit rejected a statistical disparity finding where the pool of minority businesses used in comparing utilization to availability were those that were merely licensed to operate in the City of Philadelphia. Because merely being licensed to do business with the City does not indicate either a willingness or capability to do work for the City, the Third Circuit concluded the statistical disparity did not satisfy *Croson*.<sup>55</sup>

Statistical evidence demonstrating a disparity between the utilization and availability of M/WBEs can be shown in more than one way. First, the *number* of M/WBEs utilized by an entity can be compared to the number of available M/WBEs. This is a strict *Croson* "disparity" formula. A significant statistical disparity between the number of MBEs that an entity utilizes in a given product/service category and the number of available MBEs in the relevant market area specializing in the specified product/service category would give rise to an inference of discriminatory exclusion.

Second, M/WBE dollar participation can be compared to M/WBE availability. This could show a disparity between the award of contracts by an entity in the relevant locality/market area to available majority contractors and the award of contracts to M/WBEs. Thus, in *AGCC II*, an independent consultant's study compared the number of available MBE prime contractors in the construction industry in San Francisco with the amount of contract dollars

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<sup>54</sup> *Id.*

<sup>55</sup> The courts have not spoken to the non-M/WBE component of the disparity index. However, if only as a matter of logic, the 'availability' of non-M/WBEs requires that their willingness to be a government contractor be established. The same measures used to establish the interest of M/WBEs should be applied to non-M/WBEs.

MBEs received far fewer construction contracts in proportion to their numbers than their available nonminority counterparts.<sup>56</sup>

Whether a disparity index supports an inference that there is discrimination in the market not only turns on what is being compared, but also on whether any disparity is statistically significant. In *Croson*, Justice O'Connor opined, "[w]here the gross statistical disparities can be shown, they alone may be in a proper case constitute a *prima facie* proof of a pattern or practice of discrimination." However, the Court has not assessed nor attempted to cast bright lines for determining if a disparity index is sufficient to support an inference of discrimination. Rather, the analysis of the disparity index and the finding of its significance are judged on a case by case basis.<sup>57</sup>

Critics of disparity studies look to see whether there is data that shows that MBEs are ready, willing, and able to perform.<sup>59</sup> *Concrete Works* made the same point: capacity — i.e., whether the firm is 'able to perform' — is a ripe issue when a disparity study is examined on merits:

[P]laintiff has identified a legitimate factual dispute about the accuracy of Denver's data and questioned whether Denver's reliance on the percentage of MBEs and WBEs available in the market place overstates "the ability of MBEs or WBEs to conduct business relative to the industry as a whole because M/WBEs tend to be smaller and less experienced than nonminority-owned firms." In other words, a disparity index calculated on the basis of the absolute number of MBEs in the local market may show greater underutilization than does data that takes into consideration the size of MBEs and WBEs.<sup>60</sup>

Therefore an assessment should be made about the ability of M/WBEs and non-M/WBEs to perform the work of the government entity.

#### 4. Anecdotal Evidence

Anecdotal evidence should be gathered demonstrating that minority contractors are systematically being excluded from contracting opportunities in the relevant market area. The following types of anecdotal evidence have been presented, and relied upon by the Ninth Circuit, in both *Coral Construction* and *AGCC II*, to justify the existence of a M/WBE program:

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<sup>56</sup> Specifically, the study found that MBE availability was 49.5% for prime construction, but MBE dollar participation was only 11.1 percent; that MBE availability was 36 percent prime equipment and supplies, but MBE dollar participation was 17 percent; and that MBE availability for prime general services was 49 percent, but dollar participation was 6.2 percent.

<sup>57</sup> *Concrete Works*, 36 F.3d at 1522.

<sup>59</sup> This was the great vulnerability of the Philadelphia study when it was reviewed on the merits by the District Court in 1995.

<sup>60</sup> *Id.* at 1528.

Circuit, in both *Coral Construction* and *AGCC II*, to justify the existence of a M/WBE program:

- M/WBEs' inability to obtain contracts for private sector work - *Coral Construction*<sup>61</sup>
- existence of a good old boy network - *AGCC II*
- M/WBEs denied contracts despite being the low bidder - *AGCC II*
- M/WBEs told they were not qualified although they were later found to be qualified when evaluated by outside parties - *AGCC II*
- M/WBEs being refused work even after they were awarded the contract as low bidder - *AGCC II*
- M/WBEs being harassed by an entity to discourage them from bidding on entity's contracts - *AGCC II*

Remedial measures fall along a sliding scale determined by their intrusiveness on non-targeted groups. At one end of the spectrum are race-neutral measures and policies such as outreach to the M/WBE community. Set-asides are at the other end of the spectrum. Race-neutral measures by definition are accessible to all segments of the business community regardless of race. They are not intrusive, and in fact, require no evidence of discrimination before implementation. On the other hand race-conscious measures such as set-asides fall at the other end of the spectrum and require a larger amount of evidence.<sup>62</sup>

It is likely that courts would look with more favor upon anecdotal evidence which supports a less intrusive program than a more intrusive one. For example, if anecdotal accounts related experiences of discrimination in obtaining bonds then this may be sufficient evidence to support a bonding program that assists M/WBEs. However, these accounts would not be evidence of a statistical availability that would justify set-asides in a racial limited program.

In upholding the Fourth Circuit's rejection of the City of Richmond's MBE program in *Croson* because the program lacked proof that race-conscious remedies were justified, the U.S. Supreme Court nonetheless opined that "evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local

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<sup>61</sup> For instance, the Ninth Circuit upheld a finding of discriminatory exclusion of women in the private sector where the evidence demonstrated that, in addition to a general discriminatory attitude towards women businesses by the private sector in the relevant locality, only a small percentage of a WBE's business came from private contracts and most of its business comes from race or gender-based programs. *Coral Construction* at 933 (WBE's affidavit indicated that less than 7 percent of the firm's business came from private contracts and that most of its business resulted from gender-based set-asides).

<sup>62</sup> Cf. *Assoc. Gen'l Contr. of California v. Coalition for Economic Equity* at 1417-1418 (in finding that an ordinance providing for bid preferences was narrowly tailored, the Ninth Circuit stated that the program encompassed the required flexibility and stated that "the burdens of the bid preferences on those not entitled to them appear relatively light and well distributed. . . . In addition, in contrast to remedial measures struck down in other cases, those bidding have no settled expectation of receiving a contract. [Citations omitted.]")

government's determination that broader remedial relief is justified. See *Teamsters*, 431 U.S. at 338.<sup>63</sup>

Indeed, it was in part the absence of such evidence that proved lethal to the program because "[t]here was no direct evidence of race discrimination on the part of the city in letting contracts or any evidence that the city's prime contractors had discriminated against minority-owned subcontractors."<sup>64</sup>

This was not the situation confronting the Ninth Circuit in *Coral Construction*. There, the 700-plus page appellate record contained the affidavits of "at least 57 minority or women contractors, each of whom complains in varying degrees of specificity about discrimination within the local construction industry [and these affidavits] certainly suggest that ongoing discrimination may be occurring in much of the King County business community."<sup>65</sup> Nonetheless, this anecdotal evidence was insufficient to justify King County's MBE program because "[n]otably absent from the record, however, is *any* statistical data in support of the County's program."<sup>66</sup> After noting the Supreme Court's reliance on statistical data in Title VII employment discrimination cases and cautioning that statistical data must be carefully used, the Circuit elaborated on its mistrust of pure anecdotal evidence:

Unlike the cases resting exclusively upon statistical deviations to prove an equal protection violation, the record here contains a plethora of anecdotal evidence. However, anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. Indeed, anecdotal evidence may even be less probative than statistical evidence in the context of proving discriminatory patterns or practices.<sup>67</sup>

The Court concluded its discourse on the potency of anecdotal evidence in the absence of a statistical showing of disparity by observing that such evidence "rarely, if ever, can show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan."<sup>68</sup>

Two other Circuits also suggested that anecdotal evidence might be dispositive, while rejecting it in the specific case before them. Thus, speaking in *Contractors Association*, the Third Circuit noted that the Philadelphia City Council had "received testimony from at least fourteen minority contractors who recounted personal experiences with racial discrimination," which the district court had "discounted" because it deemed this evidence

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<sup>63</sup> *Croson*, 488 U.S. at 509.

<sup>64</sup> *Id.* at 480.

<sup>65</sup> *Coral Construction*, 941 F.2d 917,918.

<sup>66</sup> *Id.* at 918 (emphasis supplied).

<sup>67</sup> *Id.* at 919.

<sup>68</sup> *Id.*

to be “impermissible” for consideration under *Croson*.<sup>69</sup> The Circuit deplored the district court’s actions because in its view the court’s rejection of this evidence betrayed the court’s role in disposing of a motion for summary judgment.<sup>70</sup> “Yet”, the Circuit mused,

given *Croson*’s emphasis on statistical evidence, even had the district court credited the City’s anecdotal evidence, we do not believe this amount of anecdotal evidence is sufficient to satisfy strict scrutiny [quoting *Coral*, supra]. Although anecdotal evidence alone may, in an exceptional case, be so dominant or pervasive that it passes muster under *Croson*, it is insufficient here.<sup>71</sup>

Similarly, although echoing the Ninth Circuit’s acknowledgment of the rare case in which anecdotal evidence is singularly potent, in *O’Donnell Construction v. District of Columbia (O’Donnell)* the D.C. Circuit has ruled flatly, in the face of conflicting statistical evidence of disparity, that anecdotal evidence alone can never carry the day:

It is true that in addition to statistical information, the Committee received testimony from several witnesses attesting to problems they faced as minority contractors. Much of the testimony related to bonding requirements and other structural impediments any firm would have to overcome, no matter what the race of its owners. The more specific testimony about discrimination by white firms could not in itself support an industry-wide remedy [quoting *Coral*, supra]. Anecdotal evidence is most useful as a supplement to strong statistical evidence – which the Council did not produce in this case.<sup>72</sup>

The Tenth Circuit in *Concrete Works* described the type of anecdotal evidence that is most compelling. In approving of the anecdotal evidence that the City of Denver had marshaled in the proceedings below, the Circuit observed that “[w]hile a factfinder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a municipality’s institutional practices carry more weight due to the systemic impact that such institutional practices have on market conditions.”<sup>73</sup> The Court noted that the City had provided such systemic evidence.<sup>74</sup>

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<sup>69</sup> Philadelphia, 6 F.3d 990, 1002.

<sup>70</sup> Id. at 1003.

<sup>71</sup> 6 F.3d at 1003.

<sup>72</sup> Id. at 1003.

<sup>73</sup> Concrete Works 36 F.3d at 1530.

<sup>74</sup> The Circuit’s dichotomy is not entirely unassailable. There is little doubt, of course, that because in classical constitutional jurisprudence only “state action” is actionable, the conduct of civil servants is the *sine qua non* of a finding of constitutional liability. *Croson* does not vitiate this doctrine, and thus the Tenth Circuit is not wrong in according great weight to anecdotal recapitulations of this type of behavior. However, in a move that is not without doctrinal problems, *Croson* clearly sweeps within

The Ninth Circuit has articulated what it deems to be permissible anecdotal evidence in *AGCC II*.<sup>75</sup> There, the Circuit approved a "vast number of individual accounts of discrimination" which included numerous reports of MBEs being denied contracts despite being the low bidder, MBEs being told they were not qualified although they were later found qualified when evaluated by outside parties, MBEs being refused work even after they were awarded the contracts as low bidder, and MBEs being harassed by City personnel to discourage them from bidding on City contracts. On appeal, the City points to numerous individual accounts of discrimination to substantiate its findings that discrimination exists in the City's procurement processes, that an "old boy network" still exists, and that racial discrimination is still prevalent within the San Francisco construction industry.<sup>76</sup>

Based on *AGCC II*, it would appear that the Ninth Circuit's standard for acceptable anecdotal evidence is more lenient than other Circuits which have considered the issue.

Taken together, these statements constitute a taxonomy of appropriate anecdotal evidence. The cases suggest that, to be optimally persuasive, anecdotal evidence must satisfy six particular requirements. These are that the accounts:

- be gathered from minority contractors, preferably those that are "qualified"
- concern specific, verifiable instances of discrimination
- involve the actions of governmental officials
- involve events within the relevant jurisdiction's market area
- discuss the harm that the improper conduct has inflicted on the businesses in question
- collectively reveal that discriminatory exclusion and impaired contracting opportunities are systemic rather than isolated or sporadic<sup>77</sup>

Given that no *Croson* cases identify the circumstances under which anecdotal evidence alone will carry the day, it is not surprising that none of these cases explicate bright line rules specifying the quantity of anecdotal evidence needed to support a race-conscious remedy. However, the foregoing cases, and others, provide some guidance by implication.

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the ambit of official liability the discriminatory actions of wholly private "prime contractors" whose conduct is effectively underwritten by the locality's "passive participation" in the local economy. By these lights, the Tenth Circuit's failure to clarify what are "isolated incidents" of discrimination leaves open the possibility that the Court is simply wrong in proposing that anecdotal accounts of such incidents be accorded less weight.

<sup>75</sup> 950 F.2d 1401 (9th Cir. 1991).

<sup>76</sup> *Id.* at 1415.

<sup>77</sup> Or, in the words of the Third Circuit, the anecdotal evidence must be "dominant or pervasive." 6 F.3d at 1003.

*Philadelphia* makes clear that 14 accounts will not suffice<sup>78</sup> while *Associated General Contractors of Connecticut v. New Haven*,<sup>79</sup> suggests that 15 will not do. While the matter is not free of countervailing considerations, 57 accounts, many of which appeared to be of the type called for above, were insufficient to justify the set aside program in *Coral Construction*. The number of anecdotal accounts relied on by the district court in approving Denver's M/WBE program in *Concrete Works* is unclear, but by one count the number might have exceeded 139.<sup>80</sup> It is, of course, a matter of speculation how many of these accounts were indispensable to the court's approval of the Denver M/WBE program.

In addition, as noted above, the quantum of anecdotal evidence that a court would likely find acceptable may depend on the remedy in question. The remedies that are least burdensome to non-targeted groups would likely require a lesser degree of evidence. Those remedies that are more burdensome on the non-targeted groups such as set asides, would require a stronger factual basis likely extending to verification.

## **VI. CONSIDERATION OF RACE-GENDER-NEUTRAL OPTIONS**

A remedial program must address the source of the disadvantage faced by minority- or woman-owned businesses. If it is found that race discrimination places MBEs at a competitive disadvantage, an MBE program may seek to counteract the situation by providing MBEs with a counterbalancing advantage.<sup>81</sup>

On the other hand, an M/WBE program cannot stand if the sole barrier to minority or woman business participation is a barrier which is faced by all new businesses, regardless of ownership.<sup>82</sup> If the evidence demonstrates that the sole barrier to MBE participation is that MBE's disproportionately lack capital, or cannot meet bonding requirements, then only a

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<sup>78</sup> See 6 F.3d at 1002-03.

<sup>79</sup> 791 F.Supp. 941, 947 (D.Conn.1992).

<sup>80</sup> The Denver City Council enacted its M/WBE ordinance in 1990. The program was based on the results of public hearings held in 1983 and 1988 at which numerous people testified (approximately 21 people and at least 49 people, respectively), and on a disparity study performed in 1990. See 823 F.Supp. at 833-34. The disparity study consultant examined all of this preexisting data, presumably including the anecdotal accounts from the 1983 and 1988 public hearings, as well as the results of its own 69 interviews, in preparing its recommendations. *Id.* at 833-34. Thus, short of analyzing the record in the case, it is not possible to determine a minimum number of accounts because it is not possible to ascertain the number of consultant interviews and anecdotal accounts that are recycled statements or statements from the same people. Assuming no overlap in accounts, however, and also assuming that the disparity study relied on prior interviews in addition to its own, the number of M/WBE interviewed in this case could be as high as 139, and, depending on the number of new people heard by the Denver Department of Public Works in March 1988 (see *id.* at 833), the number might have been even greater.

<sup>81</sup> AGCC II, 950 F.2d at 1401.

<sup>82</sup> *Croson*, 488 U.S. at 508.

race-neutral program of financing for all small firms would be justified.<sup>83</sup> In other words, if the barriers to minority participation are race-neutral, then the program must be race-neutral or contain race-neutral aspects.<sup>84</sup> If the barriers appear race-related, but are not *systemic*, then the remedy should be aimed at the specific arena in which exclusion or disparate impact has been found.

If the evidence shows that in addition to capital and bonding requirements, which are race-neutral, MBEs also face race discrimination in the awarding of contracts, then a race-conscious program will stand, so long as it also includes race-neutral measures to address the capital and bonding barriers.<sup>85</sup>

Inclusion of race-neutral measures is one factor suggesting that an MBE program is narrowly tailored.<sup>86</sup> However, the Ninth Circuit in *Coral Construction* ruled that there is no requirement that an entity exhaust every possible race-neutral alternative.<sup>87</sup> Instead, an entity must make a serious, good faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing low MBE utilization, it is incumbent to examine barriers to MBE participation that go beyond "small business problems." The impact on the distribution of contracts of programs that have been implemented to improve MBE utilization should also be measured.

## **VII. CONCLUSION**

As explained above, the decision of the U.S. Supreme Court in the *Croson* case changed the landscape of business affirmative action programs, and altered the ability of public entities to institute remedial programs in the area of public contracting. It is the purpose of this study, from a legal standpoint, to examine the conditions that exist in the market area within which the Consortium members operate, and to determine from an analysis of those conditions whether, pursuant to the *Croson* standard, the conditions justify the creation and implementation of a race conscious affirmative action program on the part of each member of the Consortium.

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<sup>83</sup> Id at 507.

<sup>84</sup> *Coral Construction*, 941 F.2d at 923.

<sup>85</sup> Id. (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses).

<sup>86</sup> Id.

<sup>87</sup> Id.



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# 2

## **ETHNIC AND GENDER DISCRIMINATION IN PORTLAND: 1844-1980**

History must be grounded in space and time in order to function as a useful context for the present and future. Fully understanding the situation of contemporary minority- and woman-owned businesses in Portland demands not only close scrutiny of recent statistics but a rigorous examination of the historical conditions that suppressed business development in this community among minority peoples and women. Indians were displaced from their traditional land base. Women for the most part made the overland journey with their husbands and children. African Americans arrived from the South and Midwest, and other immigrants arrived from China, Japan and Mexico in search of prosperity or the modest hope of seasonal farm work. All endured social and economic discrimination that began in the exclusionary decades of the mid-eighteenth century and survive as subtle forms of exclusion in the present decade. The recent postwar history in particular continues to illuminate current issues of discrimination and suppression of equal access to economic opportunity.

The trend toward urbanization began in the earliest years of Oregon's history and still continues. Portland in particular has seen tremendous population growth from other areas of the country and the world, beginning in World War II. Since then, urban growth has continued, sometimes slowly, sometimes with frightening speed. The experience of minorities and women also reflects these shifts. In some minority communities, a significant record of history occurred outside the Portland area, and this history continues to influence urban concerns.

Our Declaration of Independence invokes the now-sacred language of economic opportunity when it proclaims the inalienable rights of all persons to "life, liberty and the pursuit of happiness." In this American way of creating economic opportunity, the system demands access to resources, the ability to create and use capital, an open market regulated by free competition, and minimum government interference.

In order to understand the present, the past must also be examined for its allegiances to these sacred ideas that promised but have yet to deliver equal economic opportunity for all of Portland's citizens.

## ***Legal Barriers to Racial and Gender Equality: 1844-1940***

The settlement of Oregon is essentially the story of immigrants who traveled west in search of prosperity. For many of the first settlers, the promise of free land made the arduous trip from the East across the Oregon Trail worth risking. But under the provisions of the Donation Land Law, only white male citizens and their wives could claim the free land. As migrants poured into Oregon Territory, Indians were displaced and EuroAmerican values were transferred from the eastern United States, values that favored the fortunes of white men only. Laws were enacted and barriers erected that limited economic opportunities for women and people of color. Relegated to the margins, as they had been elsewhere, minority peoples and women began the long, unfinished struggle to gain political, social and economic equality, and, in the case of Indians, to reclaim what had been taken from them.

The first task was the removal of legal barriers that had been set up against them as soon or even before they arrived in Oregon.

The object is to *keep* clear of this most troublesome class of population. We are in a new world . . . and wish to avoid most of these great evils that have so much afflicted the United States and other countries.<sup>1</sup>

With this declaration, Peter Burnett, an influential Oregon settler who later became the first governor of California and chief justice of the Supreme Court, articulated the racist beliefs he used to justify the introduction, in 1844, of the first exclusion law designed to bar African Americans from Oregon Territory. Exclusion laws remained part of the political agenda in Oregon and were passed in 1846 and again in 1849 against African Americans. Additionally, attempts in the legislative sessions of 1854-55 and 1856-57 were made to add Chinese to the list of forbidden persons. Although these were defeated, in the latter session a measure passed that levied a monthly tax of \$2 on Chinese miners and \$4 on Chinese commercial operations.

The constitution of the State of Oregon, written in 1857, established the property rights of white immigrants as being equal to those of citizens and proclaimed the right of the legislature to regulate the in-migration of all others not qualified to become citizens. After serious debate, during which members of the convention freely admitted they owned slaves or knew of slave owners in their district, slavery was abolished. Again, an exclusion law against African Americans was debated and passed, and the right to vote was specifically denied to African Americans, Chinese, and persons of mixed blood. Additionally, all Chinese not residents at the time of adoption of the Constitution were barred from holding real estate and working and owning any mining claims. Oregon's new constitution required local consent, and in November, 1857, the white male voters of Oregon approved their new constitution, voted to bar slavery, and overwhelmingly approved the exclusion clause. In

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<sup>1</sup> *Jeffersonian Inquirer*, (Jefferson City, Mo.), October 23, 1845.

1859, Oregon's statehood was ratified by Congress, complete with a constitution limiting the rights of African Americans and Chinese.

The legislature of 1860, charged with passing laws to enforce the exclusion clause of the constitution, again debated the issue, prompted in part by petitioners from Multnomah County, who complained that African Americans and Chinese were "becoming an intolerable nuisance, crowding in and taking over jobs."<sup>2</sup> This bill did not pass, but the legislative assembly of 1862 passed a poll tax of \$5 to be paid by resident African Americans, Hawaiians, Chinese, and persons of mixed race. Exclusion legislation cropped up again in 1864, proposing to add Indians and Hawaiians to the list. This attempt failed, but in 1866 a law was passed that prohibited marriage between whites and "anyone with 1/4th or more Negro, Chinese or Hawaiian blood, or any person having more than 1/2 Indian blood."<sup>3</sup>

Debates and votes over the ratification of the Fourteenth Amendment, which granted citizenship to persons born or naturalized in the United States, and the Fifteenth Amendment, which guaranteed voting rights to men regardless of race, color or previous condition of servitude, serve as a historic barometer of racial intolerance. The 1866 legislature ratified the Fourteenth Amendment and then attempted twice to withdraw ratification in the same session. In 1868, the legislature repealed ratification of the Fourteenth Amendment, which had been ratified nationally only six weeks previously. The Fifteenth Amendment was declared "an infringement on popular rights"<sup>4</sup> and was neither debated nor passed until, as a matter of ceremony, it was ratified by the centennial legislature of 1959.

Oregon's attachment to its racist constitution endured, but not without protest from Portland's African American community. Beginning in 1893, petitions were presented to the state legislature that sought to remove the exclusion clause and the ban on voting, but it was not until 1926 and 1927, respectively, that they were finally deleted. Even after this victory, anecdotal evidence suggests that many African Americans were told that they were purchasing a one hundred year lease rather than buying property outright. Title insurance policies often stated that land or houses could not be sold to African Americans, Chinese, or Japanese, "because they were not supposed to own property."<sup>5</sup>

The Portland Realty Board in 1919 added a provision to its code of ethics that prohibited its agents from selling property to African Americans or Asian Americans in an all-white neighborhood. This provision, which linked race and property values, became the cornerstone of Portland's system of segregated housing. Although the provision was officially deleted in 1952, deep-rooted problems caused by residential segregation remained unsolved.

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<sup>2</sup> *Petition From Citizens of Multnomah County in Relation to Free Negroes and Kanakas*. Oregon Archives.

<sup>3</sup> *Acts and Regulations of the Legislative Assembly of the State of Oregon*. 1866.

<sup>4</sup> *Journal of the Senate*. 1870, p. 654.

<sup>5</sup> Oregon Public Broadcasting video, *Local Color*.

In 1893 and 1917, efforts were initiated to repeal the ban on intermarriage, but the law was not repealed until 1951. In 1919 the African American community began working to pass a state public accommodations bill that would guarantee them access to public facilities, hotels, restaurants and places of amusement, and although a delegation presented its petition to every state legislature after 1919, a public accommodations law was not passed until 1953.

While Oregon's constitution enshrined frontier racist attitudes, the western experience favored the struggles of women to gain equal rights. Wyoming territory, for example, granted women the right to vote in 1869, as well as equal pay for teachers, and separate property rights for married women. The Homestead Act of 1862 allowed women to hold land claims in their own right. Oregon's constitution allowed married women to keep their earnings separate and to retain title to land, but common law gave husbands the right to mortgage property without their wife's consent, and did not protect the wife's right to the value of her contribution in the property.

This inequity, by which Abigail Scott Duniway lost her share of the farm she owned with her husband, prompted the energetic Duniway to work for women's rights in Oregon. Needing to support her invalid husband, she became a school teacher, one of the few professions open to women. For six years, she owned and operated a hatmaker's shop in Albany, and as an independent businesswoman became aware of the need of legislation to recognize the legal existence of married women, which would allow them to protect their personal earnings from creditors of their husbands.

Another businesswoman, whom Duniway loaned money to, was driven by necessity to find a means to support her family. As Duniway recalled, "Her husband, a well-meaning but irresponsible fellow, noted chiefly for poverty and children, was only one of the 'unlucky' heads of families everybody knows, whose wife must make the living--if there is any."<sup>6</sup> Duniway sold her a stock of millinery on credit, but the woman lost her shop when an old creditor of her husband seized the stock. As Duniway recalled, "That was more than thirty-three years ago, and I still hold the woman's note for that stock of millinery."<sup>7</sup>

In 1871, she began publishing a newspaper, *New Northwest*, which quickly became an organ for the suffrage cause. Traveling around the state, she gave lectures, canvassed for subscribers to her newspaper, and organized suffrage associations. In the fall of 1871 she invited Susan B. Anthony to give a lecture tour in the Northwest.

The following year, Oregon's legislature failed by only one vote to approve women's suffrage. It did, however, approve the "Married Woman's Sole Trader's Bill," which allowed married women to independently conduct business. In 1878, a law was passed allowing property tax-paying wives or single women to vote in school elections. In 1880 and 1882, the legislature approved the required constitutional amendment that would allow

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<sup>6</sup> Duniway, Abigail Scott, "A Few Collections of a Busy Life," in Douthit, *Souvenir of Western Woman*, p. 11.

<sup>7</sup> *Ibid.*, p. 11.

women full suffrage, but the issues did not carry in the popular vote. While Duniway campaigned on a platform stressing the need for economic equality, the Women's Christian Temperance Union made prohibition the centerpiece of their fight. Harvey Scott's *Oregonian* launched an antisuffrage editorial campaign, which played on fears that women's suffrage would lead to prohibition. The amendment allowing women to vote was again defeated in 1900, 1906, 1908 and 1910 and finally adopted in 1912, eight years prior to passage of the Nineteenth Amendment.<sup>8</sup>

Some Oregon pioneers came from China, Japan and Mexico, often as temporary laborers. Many, hoping to better themselves economically, chose to stay, raise families and become citizens. Many Oregonians came from Europe, and they too intended to become permanent residents and citizens. While all immigrant groups were subject to numerical quotas, the securing of citizenship rights was much easier for immigrants from Europe. Other immigrant groups faced additional barriers based on racial and ethnic identity.

The Naturalization Act of 1790 restricted citizenship to "free whites," thus excluding African Americans who were brought as slaves. Ironically, Indians were also excluded. After the Civil War, citizenship was extended to African Americans, and in 1894, to aliens who had served in the military, Asians excepted. The Indian Citizenship Act, in 1924, guaranteed citizenship to Indians. The Nationality Act of 1940 lifted the barriers to citizenship of Mexicans, Eskimos and Aleuts, and the same year Filipinos who had served in the military also became eligible for citizenship. In December of 1943, Chinese were allowed to become naturalized citizens, and, finally, in 1952, all racial barriers were removed from the naturalization laws, and Japanese and Korean resident aliens were allowed to apply for citizenship.

In Oregon's first century as a part of the United States, the legislative record is indicative of a strong and persistent bias that favored the fortunes of white men, and limited the economic opportunities of all other people. While some of the legal barriers to equality were dismantled prior to World War II, many remained. Despite conditions of hardship, inequality, and prejudice, Indians remained in Oregon, and other minority peoples and women came to the state, some to settle permanently, others as temporary workers. Some minority people first lived in the rural areas of Oregon, but many eventually moved to the cities, as part of the general pattern of urban migration. Out of shared values and a common experience, Portland's ethnic communities evolved, established institutions, and began the long and still unfinished struggle to challenge the legal and social barriers to equality.

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Moynihan, Ruth Barnes, "Of Women's Rights and Freedom: Abigail Scott Duniway," in *Women in Pacific Northwest History*. (Blair, ed. 1988) and Matsuda, Mari J. "The West and the Legal Status of Women: Explanations of Frontier Feminism," in *Journal of the West*. Vol 24. #1.

# **I. OREGON'S ETHNIC COMMUNITIES BEFORE WORLD WAR II**

## **A. Indians**

For over ten thousand years, Indians have lived in Oregon. The Portland area, situated at the confluence of two major rivers, was a gathering place for Indians long before permanent settlement by fur traders, the military, and predominately white settlers. In the years of European and American exploration and settlement, their traditional culture was severely disrupted, their population decreased nearly to extinction, and their settlements forcibly displaced.

Estimates for the Indian population in the Columbia River region in 1780 range from 88,000 to 111,000. Between 1830 and 1833 an epidemic of malaria resulted in a mortality rate that, depending on the affected tribe, sometimes exceeded 70 percent. By 1860, there were only 177 Indians in Oregon who were living off of the reservations. In 1890, there were 4,971 Indians living on or off Oregon reservations, and during the next fifty years, their population remained between 4,500 and 5,000.

During the treaty-making period, 1851-1865, while the sovereignty of the Indian nations was recognized, they entered into an ongoing relationship with the federal government, a relationship characterized by the taking of tribal lands, forced acculturation, broken promises and great suffering. Against their will, the Indian peoples of Oregon were moved to reservations in Washington, east of the Cascades, or in the coastal mountains, where they began a long struggle to survive, pulled between a desire for autonomy and the federal government's push toward assimilation. In the process, many federal programs imposed on the tribes had long-lasting consequences, and contribute to the continuing struggle of urban Indians to preserve their culture while adapting successfully to life in the larger society. As a pair of modern historians observed, "the greatest of all the Indian wars is their struggle to adapt to a world not of their choosing."<sup>9</sup>

Reservation life meant the loss of freedom and self-sufficiency, Indians become wards of the government and were at the mercy of federally imposed programs that undermined traditional tribal values. Indians experienced a sense of powerlessness that was almost worse than physical deprivation. They were not permitted to follow their seasonal food gathering rounds, and their natural initiative was stifled. Forced to become farmers, they suffered from crop failures, malnutrition, and poor housing.

Furthermore, the reservations existed for the sole purpose of destroying Indian culture while "civilizing" native peoples. Although this effort was ultimately unsuccessful, it severely disrupted the lives of Indians for generations. Families were deliberately broken up and

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<sup>9</sup> Ruby, Robert H. and Brown, John A., *Indians of Western Oregon*, p. 158.

children sent to school to learn English and receive training in manual labor. Agent Ben Simpson of the Siletz Reservation wrote in 1864 that the children must be "wholly weaned from those pernicious habits of their people which are so antagonistic to education and moral advancement."<sup>10</sup> Indians were forbidden to speak their tribal languages and taught to be ashamed of their own culture.

Indians became seasonal laborers in the Willamette Valley hop industry, which by 1910 was the largest hop producing area in the country. Indian men became loggers, an occupation at which they excelled. A few became timber cruisers, assessing tracts of forest for the volume and value of their timber. Although a small percentage were able to gain a higher education in one of the Indian schools in the East, most were educated to be manual laborers. The reservation and boarding school curriculum was heavily oriented toward carpentry, blacksmithing, shoemaking and farming for boys, and sewing, beadwork, and household skills for girls.

Between 1887 and 1934 Indian landholdings across the nation were reduced by nearly two-thirds. The Dawes Indian Severance Act, passed in 1887, sought to destroy tribes by dividing their communal land base. In some cases, these allotments were held in trust for the whole tribe, but many Indian lands were sold outright. In the case of the Siletz tribes of western Oregon, nearly 200,000 acres passed illegally into the control of land speculators and timber companies. One of the perpetrators of this fraud, writing from prison in 1908, stated that this land, sold for \$142,000, was actually worth \$8,000,000. Some Oregon tribes, such as the Grand Ronde, were totally deprived of any land base that could be used for economic development. On the Umatilla and Warm Springs reservations, tribal holdings were interspersed with properties that had been acquired by non-Indians.

Although the Fourteenth Amendment, ratified in 1870, seemed to grant citizenship to all native-born peoples regardless of race or color, the status of Indians was unclear. The Dawes Act promised citizenship to Indians who held title to their allotted lands, and many became citizens under this law. Although some county officials allowed Indians to vote in Oregon as early as the 1890s, citizenship was not extended to all Indians until 1924, when Congress passed the Indian Citizenship Act. Many Indians, including those from Oregon, had served in the military in World War I, and it was largely due to their record of distinguished service that Indian citizenship was finally and unequivocally granted.

Beginning in 1933, progressive Commissioner of Indian Affairs John Collier attempted to reform Bureau of Indian Affairs (BIA) policies. He saw value in traditional cultures, championed Indian art and music, and prohibited BIA schools from denying students the right to practice traditional religious ceremonies. Collier helped secure the passage of the Indian Reorganization Act (IRA) in 1934, which ended allotments, and encouraged tribes to form modern governments and business corporations. Some Oregon tribes ignored the Act. The Klamath Indians and Confederated Tribes of Siletz rejected it. The Grand Ronde Indian

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Quoted in Beckham, Stephen Dow, *The Indians of Western Oregon*, p. 158.

Community and Confederated Tribes of Warm Springs voted in favor of the IRA, and in 1938 the Warm Springs tribes approved a corporate charter. Initially, the act resulted in little change, as the economic conditions of the Great Depression and World War II left little in the way of funding for economic development or land acquisition.

Most, but not all, Oregon tribes lived on reservations. Some, such as the Coos, Lower Umpqua and Siuslaw, had signed treaties which Congress had never ratified. They lived on allotment lands held in trust, and had the status of wards of the government. In 1916, they began a long process to bring suit against the federal government for the loss of their homelands. As they were non-treaty tribes, the BIA gave them no legal or financial assistance. All expenses were born by the tribal members. Each family that was able gave \$5 a month to finance legal, research and lobbying expenses in Washington D.C. The first legal barrier involved the right to sue the federal government, which was not granted by Congress until 1929. Nine years later, the Court of Claims ruled that Indian testimony was hearsay and unacceptable, and that the Coos, Lower Umpqua and Siuslaw tribes did not exist. Even the treaty negotiated in 1855 was deemed unacceptable evidence. The case was appealed to the U.S. Supreme Court, which refused to hear it. Although the tribes continued to pursue their claims, they were never successful in winning compensation for their lands. Despite this failure, their pioneering success in securing the right of Indians to sue the government meant that other Indians were able to make claims, and other Oregon tribes sued the federal government and received compensation for the loss of their lands.

The years between 1845 and 1940 were a time of great hardships for Indians in Oregon. Forced to the edge of extinction, they nevertheless began to adapt to the new order of things, and initiated the first of a long series of legal battles with the federal government over treaty rights and land claims.

## ***B. The Early African American Community***

From the beginning of the settlement of Oregon Territory in 1845 to the beginning of World War II, Oregon's African American population accounted for less than one percent of the population of the state. By ones and twos, they came to Oregon, settling in rural areas or in Portland, hoping to better their lives economically. But freedom proved elusive, and prejudice and discrimination were the order of the day.

It is impossible to determine how many African Americans avoided Oregon because of the exclusion laws and the climate of prejudice they mirrored, but anecdotal evidence suggests that in at least three cases, African Americans of means were directly affected by these laws. George Washington Bush, a wealthy man of color who had left Missouri because of prejudice, deliberately avoided the southern section of Oregon Territory and settled in the wilderness north of the Columbia River when he arrived in 1844 and found that an exclusion law had been passed. Nine years later, in 1853, Washington was organized as a separate territory, and Oregon's exclusion law was no longer the law of the land. As a man of color, George Washington Bush could not secure title to the 640 acres of land he claimed under the



Donation Land Act. His neighbors, who had benefitted from Bush's generosity during hard times, filed a petition in Congress, urging that a special act be passed giving him title to the land. The following year this act was approved.

Among the tiny population of Oregon's early African American settlers, 54 in the census of 1850, at least two entrepreneurs were specifically targeted for exclusion. Jacob Vanderpool, an African American who owned a saloon, restaurant and boarding house in Salem; was expelled from Oregon in 1851 by means of the exclusion law of 1848. In 1851, a successful Portland merchant, O.B. Francis, was arrested under the provisions of the same law. His brother, A.H. Francis, wrote a letter to Frederick Douglass protesting the treatment of African Americans in Portland. The arrest prompted a petition to urge repeal of the exclusion law, and O.B. Francis was set free.

He and his wife continued to do business in Portland, and in 1860 the value of their real and personal property was \$36,000. Drawn by a large expatriate population of African Americans and the promise of greater economic opportunity, O.B. Francis and his wife moved to Victoria, British Columbia in 1860. Thus African Americans of means, who might have made distinguished contributions to their own communities and the State of Oregon, chose to go elsewhere specifically because of the racist laws they encountered here.

In 1870, almost half of Oregon's small population of African Americans resided in Portland, primarily on the west side of the river, where they were employed in restaurants, saloons and hotels. Some owned businesses such as boarding houses, restaurants, saloons, barbershops and hotels that catered to the needs of the African American community, who might, in the absence of a public accommodations law, be refused service elsewhere. By the turn of the century, Multnomah County claimed 70 percent of the total African American population of Oregon, some 1,105 people, according to the census.

Attracted by employment opportunities at the Portland Hotel and with the railroads, Portland's black community thrived. The first African American-owned newspaper, *The New Age*, was established in 1896. It was joined by *The Advocate* in 1903, and *The Portland Times* in 1918. The premier establishment of the African American community was the Golden West Hotel, a home away from home for railroad men, and a gathering spot for the community, which had begun to migrate from the west side into all parts of the growing city. At the Golden West Hotel, people of color came together to socialize after church, to eat a meal, or to have ice cream in the parlor. In 1901 eight African Americans amassed a capital investment of \$10,000 to establish the Enterprise Investment Company. They bought land and erected a building in 1903. It was opened with a formal dance, the first, it was claimed, to be held west of Denver in a building owned by African Americans.

Although there were many black-owned businesses, most were small, and could offer only limited employment to other African Americans. In general, African American men were limited to low-wage jobs as service personnel in hotels, restaurants, office buildings and downtown stores, or on the railroads as waiters, cooks, porters, redcaps and shop laborers.

Women were limited to employment as domestics in private homes or as maids in public restrooms.

Despite the low wages offered to African Americans, they aspired to home ownership and had a strong desire to educate their children. In order to achieve these goals, most men worked two if not three jobs. African American women worked too, and teenage children did their part to supplement the family income. Buying a home was a significant accomplishment, and blacks who fulfilled this dream became part of the "elite" of society, and the subjects of feature stories published in *The Advocate*.

There were only a few African American physicians and dentists in Portland, most notably Dr. Denorval Unthank, a prominent African American community leader. A few African Americans practiced law in Portland, but often as a second job. Eugene Minor supplemented his practice by working as a librarian and messenger for the federal court, and Beatrice Cannady, the first African American woman to practice law in Oregon, also wrote extensively for *The Advocate*, the newspaper she owned with her husband.

The flurry of business activity that Portland's African American community enjoyed did not survive the harsh years of the Great Depression. Most black-owned businesses were small and relied on black customers for their business. During the Great Depression, blacks were displaced from jobs that whites had previously refused to work, such as waiters, elevator operators, and janitors. By 1941, the majority of African American men, as much 98.6 percent according to one source, worked as waiters, cooks, porters, redcaps and shop laborers in the railroad industry, while African American women were almost exclusively employed as domestic servants.

During the first four decades of the twentieth century, the African American population of Oregon increased from 1,105 in 1900 to 2,565 in 1940. Portland's black population likewise grew from 1,556 in 1920 to 1,931 in 1940, still only a tiny fraction of the state's total population of over 300,000. With few employment opportunities available in the professions, well-educated young African Americans, the natural leaders of the next generation, had to accept low-wage unskilled jobs if they wanted to stay in Oregon. Many of the red cap porters who worked at Union Station were, in fact, college graduates. Many parents sent their children East or South to college, and many of them never returned to Oregon.

Despite limited employment opportunities, many African Americans in Portland were homeowners, at first in all parts of the city, later in the inner-northeast area known as Albina. Restrictive covenants and local real estate practices as well as racist attitudes suppressed the growth of home equity values, particularly in the Albina area, limiting the acquisition of wealth and the ability to borrow money to finance business enterprises. The African American community on the eve of World War II was small but stable, largely working-class with a smattering of small businesses, and a few professional elites. Employment bias was the most serious challenge, and blacks faced wide-spread discrimination, but the community itself was relatively stable and safe and developed a vibrant social and cultural life.

Between 1845 and 1940, a determined minority of African Americans made their way to Oregon and settled here, despite economic restrictions and transplanted southern-style racism. Although freedom remained elusive, a cohesive, stable community developed. Hard-working men and women raised and educated the next generation, organized themselves, and began to work for change. As a small, nearly invisible minority, they had little political power. All this would change with the coming of war.

### ***C. The Early Chinese Community***

At about the same time white settlers began migrating west, Chinese began emigrating to Gum-San, the "Gold Mountain," a Chinese name for America, specifically the West Coast, where they hoped to work for a few years, acquire wealth, and return home. In 1851, *The Oregonian* announced that the Tong Sung House, a restaurant and boarding house, was open for business. Owned by a Mr. Sung Sung, it may have been the earliest Chinese business in Portland. In the spring of 1857 a number of Chinese arrived on the steamer *Columbia*. Those who settled in Portland worked in laundries, or as cooks, gardeners and servants, and later, as Chinese came to work in the mines, Chinese merchants settled in Portland to provide them with ethnic foods, clothing and medicines.

Alarmed at the growing population of Chinese, many of whom were single males, *The Oregonian* in 1861 directed its attention to a Chinese brothel, recommending that it be shut down by city ordinance. In 1863 an ordinance was passed, requiring Chinese laundries to pay a burdensome \$25 quarterly license fee. This ordinance, directed at the heart of the Chinese business community where 10 of 12 businesses were wash-houses, was declared unconstitutional two weeks after it was passed. Nevertheless, it reflected an intent to suppress Chinese enterprises on the part of some Portland leaders. By 1872, there were nearly 40 Chinese laundries spread throughout the city, constituting the main source of income derived from the white community.

Intolerance in Portland was more subdued than in Tacoma and Seattle, where mobs drove the entire Chinese population out of town in 1885 and 1886. A mob of angry citizens threatened Portland's Chinese population with expulsion in 1886, but local authorities and leading citizens intervened.

Despite local and state measures designed to discourage Chinese, their numbers increased, and by the mid-1870s, they had become the largest ethnic minority in Portland. In 1880, Multnomah County's Chinese population rose to nearly 2,000 persons, and it kept growing. By 1900 the Chinese community in Multnomah County was nearly 8,000 strong.

Outside Portland, many Chinese were employed in the iron, paper, and textile industries, in salmon canneries, digging canals and doing road work, and most notably, building railroad lines. Portland became the transportation hub and port of entry for the Chinese laborers, and the Chinese community, centered near the waterfront at the intersection of Second Avenue and Alder Street, became a bustling neighborhood of small shops, theaters, and restaurants.

On the upper floors were living quarters, where the Chinese men slept in bunks from floor to ceiling. These living conditions, crowded by western standards, occasioned the passage of a so-called Cubic Air Ordinance in 1873, which required the police to arrest all inhabitants of buildings in which their personal living space contained less than 550 cubic feet of air. In one case, 52 Chinese were arrested and jailed, and the police soon found themselves in violation of the laws regulating jail space. All but two paid the five dollar fine and were released, and the ordinance was no longer enforced en masse against the Chinese community.

Chinese laborers were tolerated as long as they were used for the backbreaking railroad and mining work, but when they competed with non-Chinese for other laboring jobs, hostility surfaced. The City had employed Chinese as street cleaners and laborers on local street expansion and improvement projects. In 1873, for example, Chinese work crews constructed new streets, resurfaced Couch Street and were busy laying a sewer under Stark Street. That year they were the target of a city ordinance which sought to ban them from working on any city contract. Mayor Wasserman vetoed this ordinance shortly before leaving office.

Hostility against the Chinese population was counteracted by a small, wealthy elite of Chinese merchants. In early 1870, four merchants hired a white attorney and published a notice promising to prosecute all persons guilty of acts of violence against the Chinese people. Although anti-Chinese sentiment continued, with occasional acts of violence, the merchant class cultivated good relationships with public officials. In 1906, Moy Back Hin, a wealthy merchant, was named the Chinese consul for the Pacific Northwest, headquartered in Portland.

Because their entrepreneurial skills were highly esteemed, members of the merchant class assumed a higher legal status. Further, the Chinese institution of Hui, a rotating credit association, allowed Chinese business owners to acquire capital for starting enterprises within their community. Yet few Chinese enjoyed these privileges. Before World War II, only a member of the merchant class could bring his wife and family to America, travel unmolested, and enjoy higher status and relative freedom.

The average Chinese immigrant, an unmarried man, came to America hoping to acquire wealth and return home, but for many the dream was illusory. Laborers had difficulty obtaining permanent, year-round employment, and the bulk of the available jobs were low paying and seasonal. In the winter months, jobs were scarce and labor was plentiful. In these times many Chinese would be supported by their clan or district association, incurring debts that had to be worked off the next season.

The imbalance in sex ratios had profound consequences for the personal, social and community life of Portland's Chinese residents. Lacking suitable mates, the largely male population cultivated habits such as gambling, smoking opium and visiting prostitutes, behaviors not unlike those in other areas, such as mining communities, that experienced gender imbalances. Nevertheless, these habits, especially that of gambling, contributed to the negative stereotype of Chinese held by Portlanders.

The in-migration of Chinese laborers had been severely reduced by the Chinese Exclusion Act of 1882, and by 1940, Portland's Chinese population had declined to 1,569. Later events, such as Pearl Harbor, would cast the Chinese people in a new light and contribute to higher status and eventual citizenship for many individuals, and a greatly improved community image.

The early Chinese population of Oregon was largely composed of sojourners, men who came to acquire wealth and eventually return home. For many, permanent settlement was neither an option nor a dream. Anti-Chinese legislation and attitudes reinforced the desire of many to return to China. Nevertheless, a number of Chinese merchants raised families and put down roots. The American-born generation of Chinese who came of age during World War II would be the first to take advantage of changed conditions and new economic opportunities.

#### ***D. The Early Japanese Community***

There were only a handful of Japanese in Oregon before 1887, when a direct steamship line was established between Portland and Kobo, Japan. Early immigrants were young working class men hoping to make a fortune. After passage of the Chinese Exclusion Act in 1882, the Japanese were recruited to meet the labor shortage, and Portland served as the main distribution center for the Japanese labor market. Some of the first urban Japanese were labor contractors, including Shinzaburo Ban, later one of Portland's most prominent merchants.

By 1900, over 200 Japanese immigrants, mostly male, had settled in Portland working as domestics or in restaurants, barber shops, and boarding houses. In 1920, Portland's Japanese population had grown to 1,800. Many owned small businesses and were merchants, owners of restaurants and boarding houses, tailors, and cleaners.

Multnomah County had a large population of Japanese, who sought to own their own farms, buying and transforming marginal acreage of swamps and brush lands into productive farmlands. By 1911, half of the land around the Russellville area east of Montavilla was cultivated by Japanese farmers, who specialized in raising strawberries and vegetables for the urban market.

The Japanese were victims of discrimination and racial hostility, in part due to charges by native-born workers that they were depressing the value of labor. One newspaper complained that Japanese immigrants were "willing to work at wages upon which no white man can live."<sup>11</sup> Bills designed to prohibit Japanese land ownership were introduced in the Oregon state legislature in 1917, 1919, 1921 and finally passed in the Klan-dominated legislature of 1923. Following the notorious *Ozawa* decision of 1922, a Supreme Court ruling which had

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Quoted in OHW Vol 6 #3 (Sept 1975) p. 235.

specifically denied the right of citizenship to alien Japanese, the Alien Land Law of 1923 prevented anyone ineligible for citizenship from acquiring and owning real estate. Ironically, the passage of this law seemed to calm anti-Japanese sentiment, although it did not reduce land purchases among the Issei. These first generation Japanese aliens worked with trusted white friends to buy land. Some Issei bought land in the name of their American-born children, the Nisei.

By 1930 there were nearly five thousand Japanese in Oregon, prospering in rural and urban areas. One source estimated that Japanese farmers produced 75 percent of the vegetables sold on the Portland market. The majority of Japanese workers in Portland were employed as either owners or employees in small Japanese businesses, and by 1935 there were a few Japanese professionals: seven dentists, four teachers, three physicians, one nurse, and one lawyer.

The success of the Japanese in small business is attributable to many factors, such as individual industry, ambition, close family ties and obligations, and the organized and cohesive cultural community. Proprietors worked long hours, and minimized labor costs by hiring members of their own family and other Japanese at relatively low wages. Japanese produce market owners in Portland, because of their contacts with Japanese truck farmers, were assured of higher quality, cheaper produce, and more certain delivery schedules than rival markets. In the era before supermarkets, Japanese grocery stores were common throughout the city.

Strengthening the prosperity of the Japanese community, each type of business organized associations, which in turn were closely tied to the social and cultural organizations of the entire community. These included churches, Japanese language schools, and the Japanese Association of Oregon (*Nipponjin Kai*), which served as a liaison with the larger community and provided financial and legal assistance to Japanese nationals, the Issei. The Japanese American Citizens League, organized nationally in 1930, had a strong Portland chapter. Its purpose was to combat racial discrimination and to help the Nisei, American-born children of Japanese immigrants, cope with problems of dual heritage. In 1940, the Portland chapter sponsored the League's annual convention.

Considering the short time of settlement, and the hardships and discrimination they endured, the Japanese community in 1940 was relatively prosperous. One journalist was especially generous, praising the Japanese as "good citizens--hard working, clean-living, enthusiastic Americans."<sup>12</sup> This was to change, cruelly and dramatically, on December 7, 1941, when Pearl Harbor was bombed and the United States entered World War II.

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<sup>12</sup> *Ibid.*, p. 254.

### ***E. The Early Latino Community***

The oldest European place names in Oregon, Cape Blanco and Cape Sebastian, serve as reminders of a Latino presence dating from the time of the first European explorations. A Spanish explorer, Vasco Balboa, first saw the Pacific Ocean from the top of a Panamanian mountain, and Juan Perez was the first European explorer of the Oregon coastline. Until 1848, the northern border of Mexico was only a few miles south of present day Ashland, and for the remainder of that century Latinos frequently traveled between Mexico and Oregon.

Oregon place names such as Spanish Gulch bear witness to a Latino presence in mining. Despite strong anti-Mexican feelings which prevailed in 1855 and 1856, Mexican mulepackers were hired to supply troops during the Rogue River War in southern Oregon. They were paid the same as Anglo packers, \$6 a day. Mexican American vaqueros from California worked as buckaroos on the high desert ranches of southeastern Oregon beginning in 1872 when John Devine hired them to work his Whitehorse Ranch. They remained, passing on their unique traditions to Anglo cowboys, until the heyday of ranching ended when the range was settled by homesteaders in the early 1900s.

In the first decades of the 20th century, a small number of Latinos began to move to Oregon. Because the census recorded only foreign-born Latinos, and because of the migratory nature of much of the population, it is difficult if not impossible to quantify the Latino presence in Oregon before World War II. Some were attracted by jobs as railroad maintenance workers. Most came to fill a growing need for farm labor, particularly after World War I, when crop production in the state boomed and farmers actively recruited Mexican Americans and Mexicans to bring in the harvest. Isolated in rural labor camps, most Latino laborers returned to their homes in the Southwest and Mexico for the winter, and did not establish permanent residency in Oregon. It was not until World War II that Latinos were drawn to the Pacific Northwest in significant numbers, filling crucial labor shortages on Oregon's farms or working in the shipyards of Portland.

## ***II. WOMEN'S WORK BEFORE WORLD WAR II***

In Oregon, as elsewhere in the United States, the struggle of women to better themselves economically by engaging in wage work was characterized by a fundamental paradox. While women both needed and desired wage work, and were a desirable source of cheap labor, the home and family were supposed to remain the center of their lives. Thus, women were routinely denied access to education, as they were expected to marry, and men's need to support families kept their wages high.

Oregon's frontier settlement represented a brief replay of the colonial economy of the eastern United States, with the family as the basic economic unit. "Throughout the region, whenever possible, women grew and preserved the family food supply, and the lower the family's cash

income, the more important this female provider role became. Accumulating evidence tells us that this provider role was the basic female responsibility throughout the West, even after eastern urban women had been fully incorporated into a cash and consumer economy.<sup>13</sup>

As family providers, women were able to combine essential work within their traditional domestic role, while benefitting from the resurgence of activism over women's rights that followed the Civil War. Local leaders, most notably Abigail Scott Duniway, organized to pass important legislation that allowed married women to engage in independent business activity, vote in school elections, and vote in state elections before the national passage of women's suffrage. Access to free land and higher education provided more opportunities for western women, but as Oregon's economy was transformed from the farms to the urban industrial workplace and wage work became the means to economic prosperity, the paradox of women's work and women's traditional role reasserted itself.

Evidence exists indicating that western women themselves sought to establish civilization on eastern models, rather than building on their relative freedoms to press for greater economic equality. Publicly, at least, Portland's independent businesswomen were eager to cast themselves in traditional roles. A case in point is Helen Spaulding, whose business interests in Portland in the 1890s led to her resignation from a teaching position at Portland High School. Yet the public biographical record of her achievements gives scant attention to her business accomplishments while treating her educational work at great length. Noteworthy also were the educational goals of the Portland Women's Union, a boarding house for young self-supporting and wage earning women established in 1887. The organization offered instruction in kitchen gardens and sewing schools, thus training women for domestic, rather than industrial competency.<sup>14</sup> Despite the relative freedom of the West, Oregon's women chose to identify themselves within traditional female provider roles.

A report on Oregon women's occupations in 1916 reveals the degree to which jobs for women were confined to those same provider roles: 53 percent of all women workers were either domestics, waitresses, teachers, saleswomen, housekeepers, or farmers. While a handful of Oregon women reported such non-traditional occupations as hunters, trappers, contractors, dentists, electricians, lumber dealers, lawyers, plumbers and physicians, most women worked in segregated, low-wage jobs. They were further constrained by specific state legislation that regulated conditions under which they could work.

Oregon passed a ten hour maximum work day for women in 1903. This legislation, which was challenged and eventually upheld by the U.S. Supreme Court, became the basis for legislation regulating women's work in other states. In addition, Oregon in 1913 passed a minimum wage law for women, which became the first enforceable minimum wage law in

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<sup>13</sup> Armitage, Susan H. "The Challenge of Women's History," in *Women in Pacific Northwest History*, p. 237.

<sup>14</sup> Douthit, Mary Osborn, *The Souvenir of Western Women*, pp. 103, 137.



the United States.<sup>15</sup> This legislation did provide protection for women, but as it was applied only to them, it served to reinforce stereotypes about women's competence and endurance, and constrained women from attacking barriers to equality.

The technological advances that occurred after World War I eased housework, and married women began to enter the workforce in increasing numbers. While they remained a distinct minority among women workers before World War II, their presence prompted a new debate over the dual role of women.<sup>16</sup> Working mothers were blamed for antisocial behavior in children, their new independence was seen as a threat to marital happiness, and success in the work world was thought to be coupled with failure on the domestic front. This criticism against married working women became a barrage of propaganda during the Great Depression, when some leaders suggested that all the working women should be fired and their jobs given to men, thus eliminating unemployment. This attack belied the reality of their lives and the value of their work; during the Depression many families were kept alive by the marginal wages women earned.

While opportunities for white women were limited, opportunities for women of color, who could not find work within their ethnic communities, were considerably worse. They faced the double burden of gender and race, and additionally, their work was even more essential to the well-being of their families. As one scholar points out, "The progress of Afro-Americans as a group was clearly linked to the job status of black women, and thus the discrimination encountered by wives and mothers in the marketplace was a crucial factor in inhibiting the upward mobility of their families."<sup>17</sup>

Portland's black women faced limited job opportunities as elevator operators, restroom attendants, and most typically as domestics in white people's homes. One black woman who was able to escape the typical job stereotype was Beatrice Cannady. In 1912 she became assistant editor of *The Advocate*, a newspaper owned by a partnership that included her husband. She became the first African American woman to practice law in Oregon in 1922. Her achievements were possible in part because of her association with a community.

The wage work of other ethnic women in Portland has not been scrutinized in depth, but evidence suggests that often they labored as part of a family earning unit. Japanese women worked alongside their husbands in farms, or in family-owned businesses in Portland. Latino women typically did field work along with their husbands and children. Sometimes this family work served to illuminate a traditional sexual equality. In a Indian plains culture study recently conducted on the Colville Reservation, evidence of sexual equality was found,

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<sup>15</sup> Oregon Bureau of Labor, "They Carry the Burden Alone: the socio-economic living pattern of Oregon women with dependents," p. V.

<sup>16</sup> Nationally, in 1930 married women were 29 percent of the female workforce. Divorced or widowed women were 17 percent of the workforce, and single women were 54 percent of the female workforce.

<sup>17</sup> Jones, Jacqueline, *Labor of Love, Labor of Sorrow*. p. 154.

based to a significant degree on the equal value placed on women's traditional food-gathering role.

Despite limited opportunities, women continued to seek work in ever greater numbers in the decades before World War II, but it was not until the coming of war that Portland's industrial workplace was open to them. Contrary to recruitment posters, many of these women had been working prior to the war, and were eager to take advantage of the opportunity, however fleeting, to work for high skills in the industrial workplace.

### **A. War Work: Women and Minorities in the Shipyards**

World War II was a turning point for Portland, bringing many changes to the city as a whole and to its various ethnic communities. A single industry transformed the economy: shipbuilding. All up and down the West Coast military spending created a booming economy, and Portland was no exception. The war effort was centered in three shipyards built by Henry Kaiser, two on the east bank of the Willamette River, and a third across the Columbia River in Vancouver, Washington. Kaiser conducted an aggressive campaign to bring workers to the Portland-Vancouver area, as the locally available labor pool was quickly exhausted. An estimated 15,000 to 25,000 African Americans moved to Portland, most of them from the South. Women and other ethnic groups were also recruited and trained to work in the Kaiser yards and received some of the highest wages in the defense industry, averaging \$63 a week in September, 1943. War work meant that, for the first time, minorities and women gained access to the industrial workplace.

Before the war, ships were individually built by skilled workers who served lengthy apprenticeships to learn the 40 to 70 individual skills that constituted their craft. In order to produce many ships rapidly, changes in production methods were introduced which, coupled with specialization of tasks, facilitated the use of unskilled labor. Steel plates were joined by welding instead of riveting, as welding was faster and easier to learn. Standardization of products made preassembly of ships possible. The Kaiser company estimated that only 2 percent of its workers had ever built ships before.

The shipyards were nearly the exclusive employer of African Americans and other minorities. Of the 7,541 non-white workers in Portland in September of 1944, 7,250 were employed in the shipyards.<sup>18</sup> In 1945 Kaiser enumerated the African Americans employed on his three sites: 6,946 men and 1,816 women. The 1,149 laborers and helpers constituted the largest category of workers, followed by 1,100 welders, 986 tank scalers and cleaners, and 828 shipfitters. Several hundred men and women each were employed as painters, electricians, pipefitters and janitors. Among the higher skilled jobs were a mere handful of

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<sup>18</sup> Nash, Gerald D. *The American West Transformed*, p. 99.

African Americans: two certified welders, two junior engineers, five riggers, one crane operator and one loftsmen.<sup>19</sup>

Although the labor shortage ensured that African Americans would be allowed to work, they did not experience equitable treatment on the job. Shipyard unions and managers determined work categories, and frequently segregated job assignments. Often blacks were assigned to the most arduous labor in the yards. Beatrice Marshall, a painter's helper, recalled working on her hands and knees scraping rust in the dim light of a ship's hull. The air was so thick with dust that even wearing a mask, "you could hardly breathe."<sup>20</sup> Doris Williams, a skilled welder, took a job as a laborer rather than put up with the abuse from a supervisor and coworkers who refused to accept her. "I am now scaling," she wrote to the Fair Employment Practices Commission. "Our crew is mixed, and we are all treated alike. Why couldn't the same be said for skilled workers?"<sup>21</sup>

African Americans rarely became supervisors, and then only of all-black crews. One black electrical worker in the Vancouver yards, who had come to Oregon with a college degree and teaching experience, was passed over for promotion, although he had personally trained the white male with less seniority who was promoted ahead of him. As the war went on, a few African Americans were promoted into higher-skilled job classifications, but the majority remained in the lowest paying, least skilled jobs.

Statistics were not kept on other categories of minority workers, however anecdotal evidence suggests that Chinese, Latinos and Indians participated in Portland's war work. Raymond Chang was a draftsman, Y. Wee Wong an engineer, and Louis Lee, the chief photographer at the Vancouver shipyard, whose work appeared frequently in the Kaiser publication *Bo's'n's Whistle*; 20 Chinese Americans worked on the outfitting dock. There was one Chinese girl welder, Marguerite Dune.<sup>22</sup>

Among Indians, Arthur Tomeo Kamiakin was a shipwright, chief of the Wenatchee Indian tribe Kiutus Tecumseh was a welder on the outfitting dock, and as part of a "Sponsor a Ship" contest, Lewis Tomahkera, a Comanche from Lawton, Oklahoma recruited seven welder trainees from the Comanche tribe.<sup>23</sup>

Nina Domeneck, a Puerto Rican, was a burner student, and her husband, Nick, was a day electrician leadman. A photograph of war workers dressed in costumes representing the country of their birth included women from Mexico, Honduras, Guatemala, Dominican

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19 *Portland Observer*, 3/31/1945

20 Kesselman, Amy. *Fleeting Opportunities: Women Shipyard Workers in Portland and Vancouver During World War II and Reconversion*, p. 43.

21 *Ibid.*

22 *Bo's'n's Whistle* (hereafter BW) 2/1942, 5/1942, 11/1942, 2/1943, 4/1943.

23 BW 1/1944, 9/1944

Republic, Haiti, Nicaragua, El Salvador, and Cuba.<sup>24</sup>

Out of a Portland wartime labor force estimated at 125,000, approximately one-fourth were women. Despite the image of women war workers as "housewife turned welder," which dominated the recruitment campaigns, over half of these women had been in the work force before the war, and many others were discouraged workers who had been unable to find jobs. During the 1930s, as Beatrice Hadley recalled, "You couldn't buy a job. You couldn't even steal one."<sup>25</sup> Many women worked, but at wages so low that it was difficult, if not impossible, to support a family. Thus, war work signified a profound improvement in the economic status of women workers. And for many, equal wages signified capability.

Women held jobs that were once the exclusive province of white men as welders, burners, electricians and shipfitters, and received the same pay as men for the same class of work. They were hired for shipyard jobs not out of a desire to redress past inequities, but simply because of the scarcity of available men. Yet women proved themselves able workers. Only six months after the first women welders were hired, a study revealed that they nearly equaled men in overall productivity.<sup>26</sup> Women soon entered other jobs such as burners, electricians, machinists, shipfitters, and laborers, until there were few job categories without women.

Despite these statistics, barriers to women remained, primarily in the highest paying craft specialties where the supply of men was sufficient. To succeed as a loftlady or a rigger or as a layout person in the mold loft required a great deal of persistence and initiative, and a few women moved up to these high paying jobs. For the majority, however, welding was almost the only skilled job that allowed them to attain journey worker status, and that was only because of acute shortages in male welders and the relatively short training period required.

Otherwise, women's jobs were concentrated in the helper or laborer category. Twenty five percent of all women workers were employed in one of three "women's jobs" as painter helpers, tool checkers, or shipwright helpers. Although "sweeper" never appears as an occupational classification, it was the job many women actually did. A recent study has uncovered evidence that work was often categorized as either "men's work" or "women's work,"<sup>27</sup> and women frequently worked in the smelliest, dirtiest, and therefore most undesirable jobs, such as tank cleaning.

For women of color, the barriers were even higher. Beatrice Marshall, a college student, was trained as a machinist and sent to the Oregon Shipyards from Illinois. Once here, she was

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24 BW 1/1943, 2/1943, 12/1943

25 *Op. Cite.*, Kesselman, p. 25.

26 Skold, Karen B. "The Job He Left Behind: Women in the Shipyards," in *Women in Pacific Northwest History*, p. 113.

27 *Ibid.*, pp. 107-129.

told that there were no openings for lathe and drill press operators, and she would have to accept work as a painter's helper or a sweeper. Oral history recollections and the records of the Fair Employment Practices Committee confirm the practices that barred black women from skilled work regardless of qualifications or training.<sup>28</sup>

In May 1941, Oregon Shipbuilding Corporation, Henry Kaiser's first yard in the Portland area, signed a closed shop agreement with the AFL Metal Trades Council. Agreements soon followed as the other shipyards were built. One of the metal trades unions, the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (Boilermakers), controlled two thirds of the industrial jobs in the shipyards. Although Kaiser had recruited women and minorities for war work, the Boilermakers resisted any changes in its exclusionary practices. In February 1942, when five machinists and 18 boilermakers, all African Americans trained by the school district, applied for union membership, they were rejected. Under the closed shop system, rejection from the union meant that they were excluded from shipyard jobs as well.

Tom Ray, secretary-treasurer of the Boilermakers, promised to liberalize the membership policy the following month and to admit "Negroes but no Japs".<sup>29</sup> In July 1942 Reverend J. James Clow, pastor of Mt. Olivet Baptist Church, charged that Local 72 of the Boilermakers was still discriminating against African American workers and suggested that black applicants "try California" or "go South" if they wanted a union job.<sup>30</sup> One African American war worker and activist summarized the union's rationale for denying union membership to blacks: "give them any kind of entry to the system, they won't go home after the war."<sup>31</sup>

Instead of granting full membership as promised, the Boilermaker's Union created a Jim Crow auxiliary for black workers that would allow them to work in the shipyards. They would be required to pay membership dues, but all other benefits of union membership, including voting and seniority rights, were denied. Further, the auxiliary could be abolished at any time.

Some African American workers refused to pay union dues, and were fired. In response, they filed a claim with the Fair Employment Practices Commission (FEPC), which ordered their reinstatement. Although the Kaiser Company needed the workmanship of the protestors, they refused to take a stand against the union. The protests and mass firings continued, even as the FEPC ordered the union to reinstate the workers. The union

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28 *Op. cite.*, Kesslerman, pp. 2, 41-42. The Vancouver Yard, the most progressive of the three yards in its treatment of black workers, reported that in 1943, while black women comprised 31 percent of the black work force, they were only 20 percent of black welders, 21 percent of black electricians, and a very small percentage of the other skilled trades.

29 *Oregon Journal*, 3/13/1942.

30 *Oregon Journal*, 7/26/1942.

31 *Op. cite.*, "Local Color."

continued to be obstructionist until the end of the war, when the shipyards were scaled down and workers let go.

In July 1942, prompted by a demonstration of women welders in the San Francisco shipyards, the International headquarters of the Boilermaker's Union submitted a resolution to its members which would allow women to join the union. While one local shipyard worker predicted that some men, "who don't want competition from us gals,"<sup>32</sup> would vote against the measure, it was approved, although the number of votes fell short of the number necessary to change the constitution. Acting by executive order, the president of the International directed its locals to admit women two months later. Clearly, there was no great enthusiasm among the rank and file of members to admit women, even as an emergency measure.

The culture of the shipyard workplace posed special problems for minority workers and women. While the experiences of Indians, Latinos and Chinese have not yet been collected, some anecdotal evidence is known of the experience of women and of African Americans. African American women bore the dual burden to racism and sexism, as one war worker recalled, "They always acted like they resented the women being there. Everybody seemed to have chips on their shoulders."<sup>33</sup>

In the press, the spirit of the yards was often portrayed as harmonious, but both black and white workers were pressured not to cross the color line. When Clarence Williams, a black worker, gave a Christmas card to a white woman on his crew, his foreman had him fired. Doris Avshalomov recalled that they were told "things would be equal," yet when she and a friend from Reed College lunched with black students from a southern college, she was told that these activities constituted a "disturbance," regardless of the fact that "the only people who ever made unwelcome advances to me were white men in the shipyards - but I didn't see my leaderman talking to me about that!"<sup>34</sup>

Women in the shipyards had first to prove themselves, overcoming the image of the incompetent ninny prevalent in the humor of the shipyard magazines. Having accomplished this, they were faced with a new and more disturbing stereotype of themselves: the frivolous sexpot. While some have argued that sexual humor helped to diffuse workplace tensions, it reinforced women's sense of themselves as aliens in a man's world. Further, a modern observer notes that such images of the perpetually sexual woman reinforces "the right of men to harass, control, and/or abuse working women sexually."<sup>35</sup>

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32 Kesselman, *Fleeting Opportunities*, p. 18.

33 *Ibid.*, p. 49.

34 *Ibid.*, pp. 61-62.

35 *Ibid.*, p. 53.

Women who complained of sexual harassment by their bosses were frequently transferred or fired. Women who were harassed by their fellow workers were sometimes able to have the offending person fired, but frequently had to devise individual solutions to the problem, with varying degrees of success. All solutions constituted violations of the shipyard culture, and were implemented at the woman's own peril. One woman tried yelling, and then felt branded as a prude. Others attempted to elude the offender. Some who spoke out were forced to work in the rain, a definite hazard for welders, who were frequently shocked. One brave woman reacted by hammering the hard hat of a man who grabbed her ankle. In the process, his glasses fell off and broke, and she reported that no one ever tried anything again on her. While some women were able to overcome the problem of sexual harassment individually, there was neither the language nor any institutional means that would permit a collective challenge.<sup>36</sup>

As early as 1943, Portland's leaders began to prepare for the process of reconversion that would occur at the end of the war. The Portland Area Postwar Development Committee (PAPDC), 25 community leaders, all white and all male, was dominated by banking and utility interests. Although women had played a prominent role in many wartime volunteer activities, they were excluded. African American leaders, active in protesting the discriminatory practices of the Boilermaker's Union, were not included.

In July 1944 the Oregon Unemployment Compensation Committee warned that all but 1,000 of the 110,000 war workers would have to seek employment in other areas. Massive unemployment would be avoided only by creating jobs in the private sector and in public works projects. A few months later, the PAPDC released a report warning that even under optimum conditions there would be a period of unemployment after the war, optimum conditions meaning "if all women in industry retire gracefully, [and] if at least half of the newcomers go back to their homes . . ."<sup>37</sup>

Various studies contradicted the assumption that women war workers were prepared to "retire gracefully," most notably one conducted in the Kaiser yards in January, 1944. This study revealed that over 53 percent of women workers wanted to continue in an industrial job after the war. After the study was released, women faced a barrage of propaganda from the *Bo's'n's Whistle* designed to discourage them from these post-war ambitions. Unions too informed women that they could not expect to continue union membership when the war was over. Some women persisted in their hopes, and recognizing the need to diversify their skills, attended welding classes at Portland's Benson Polytechnical School. In July 1944, a school administrator reported that almost 80 percent of the trainees were women.<sup>38</sup>

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36 *Ibid.*, pp. 62-63.

37 *Ibid.*, p. 97.

38 *Ibid.*, pp. 100-102.

In the first four months after the war, the shipyards laid off women before men, and the unions terminated women's membership, arguing that they had been only temporary members. Nell Conley remembered feeling "straight blazing anger" when her union card was pulled. "I knew women who were working as electricians, as shipfitters, a number of other jobs out there. Of course all of them were pulled, not just the welders."<sup>39</sup>

African American war workers felt the effects of workforce reductions even before the end of the war. The *People's Observer*, a local black newspaper, reported. "Negro shipyard workers are beginning to feel the economic pressure of the combined forces of fascist-minded industrialists and reactionary trade union leaders. Already, electricians in this area are being eased out of their jobs in certain yards. Many of them have been union members for long periods too. The reason given at the time of the discharge is 'reduction of forces.' When these same workers go to the union hiring headquarters to apply for other available positions in other yards, they are informed that there are no openings. If they loiter around for a few minutes, a white worker may come in and, upon applying for work, be immediately dispatched to another job. Many incidents of this nature have transpired during the first two weeks of this month."<sup>40</sup>

The Kaiser shipyards and the Manpower War Commission collected information only on women and African Americans who entered the industrial workforce during the war, and statistics concerning their layoffs are readily available. Information concerning the layoff of Indian, Latino and Chinese war workers has not yet been collected, but because the postwar industrial workplace was controlled by white males, it is assumed that they also suffered the loss of their jobs.

For the women and minorities who worked in the shipyards, the conclusion of the war represented the end of opportunities for work in the trade unions. Old lines were redrawn and employers became more selective, often specifying "not over 45, male, and white."<sup>41</sup> Although the demand for skilled workers remained strong, shipyard work was not regarded as valuable experience. Minority men were relegated to pre-war job categories. Women were pushed back into "women's work." An African American woman who had been a shipyard scaler finally found work plucking poultry, later working in a laundry. A middle-aged widow, who had been a shipyard electrician earning \$1.20 per hour, returned to her pre-war job as an elevator operator, earning 25 cents an hour. It was not until the 1960s that African American men were able to gain permanent cards in the local Longshoreman's union, a related shipyard union, and not until the late 1960s and early 1970s did women who had worked in the shipyards during World War II obtain work in industrial trades again.

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39 *Ibid.*, p. 111.

40 *The People's Observer*, December 16, 1944 in William H. McClendon, *Straight Ahead: Essays on the Struggle of Blacks in America*, p. 60.

41 Skold, p. 124.



## **B. The African American Community in Wartime Portland**

During World War II, Oregon, Washington, Idaho and California led the nation in percent growth of black population. Yet wartime Portland resisted the assimilation of its new African American workers, and racial tensions and discrimination escalated. Portland was hardly less segregated than most southern cities; as Jim Crow signs in restaurants, saloons, and hotels proliferated, and little housing was available outside crowded Albina. Vanport, the emergency housing for war workers, located in a floodplain north of Portland and south of the Columbia River, was segregated despite protests by the Urban League.

Even the established black community had problems accepting the newcomers. They feared that what they had gained in terms of acceptance was being eroded away. Prejudice against Southerners was common, and the African American Southerners themselves reacted with anger and frustration as their expectations of finding a less hostile environment proved false. African Americans from the South had historically done much of the hard labor. They arrived in Portland only to discover that blue-collar, union work was high paying and reserved for white men.

Before the war, the combined Chinese and Japanese population constituted the largest minority in Portland, but during and after the war, African Americans attained that status, and with it came an increase in political clout. At the end of the war, half of the 25,000 black war workers and their families indicated their desire to remain in Portland.

Alarmed bankers and businessmen called the national office of the Urban League asking for help. Bill Berry was sent to Oregon, and was asked how much it would cost to send the black workers back home. He walked out of the meeting, saying that if they wanted to talk about employment to give him a call. With the closing of the shipyards, many African Americans stayed, but as many as 15,000, lacking a job, left Portland.<sup>42</sup>

World War II was a very challenging time for Portland's black community. Swelled by in-migration, the community faced the back-lash of increased discrimination, and the promise of real political clout. African Americans emerged from the war with new skills based on their first experience in the industrial workplace. In their hands was the first real money they had ever been able to earn. The war raised expectations of economic prosperity. For most, these expectations would be undermined in the decades to come.

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<sup>42</sup>

Estimate by Russel Peyton in "Local Color."

### **C. Portland's Emerging Indian Community**

Portland's Indian community came into existence during the war years, as Indians from many parts of the United States came to Portland to work in the shipyards. The era of the 1930s had produced a net loss in Oregon's Indian population of 182 persons. In 1940 less than 10 percent of Oregon's Indian population of 4,594 lived in urban areas. But between 1940 and 1950 the population grew to 5,820, a 27 percent increase.

Nationwide, at least 25,000 Indians served in the military, and another 40,000 did wartime work or seasonal farm labor. Many remained in urban area following the war, where it was possible to find jobs and where they could hope to give their children a better education. Quite a few alternated between reservation life and city jobs, becoming more acculturated but retaining ties to traditional life.

Indian war veterans in particular stressed the need for more education to compete successfully in the post-war labor market, and some Indians saw progress as a matter of integrating into mainstream economic and political institutions, and abandoning their tribal identities. Other Indians chose to remain on reservations and held to their cultural values, despite the difficulties of reservation life.

The war brought new challenges and rising expectations for Indians. On the battlefields and in the workplace, they met other Indians from widely scattered tribes. Their shared culture and common issues would ultimately help to forge a new Indian identity which would unite them in common cause to continue challenging mainstream values, and begin to reclaim their culture and identity as Indians. But the immediate future was to prove even more challenging, as the federal government implemented a final solution for Indians, designed to remove them, once and for all, from their reservation lands.

### **D. Latinos in Oregon during World War II**

Before the war, Oregon's Latino population was small and largely rural. Oregon farmers utilized many migrant Latinos to harvest crops, and some men found work on railroad track maintenance crews. Latinos too were drawn to war work, and many moved to urban areas to take advantage of these job opportunities. Overall, the west coast Kaiser yards employed 5 percent Mexican Americans. The family of Dr. Joseph Gallegos came to Oregon in the 1940s to work in the shipyards. Now director of Social Work and Gerontology at the University of Portland, Dr. Gallegos was a leader in the creation of Colegio Cesar Chavez.

The urbanization of Latinos during the war coupled with the internment of the Japanese population created a serious shortage in farm laborers. The federal government's answer was to recruit Mexican nationals, *braceros*, to harvest crops essential to the war effort. Housed in tent camps year round and subject to low wages, poor food and unsafe working conditions, these men nevertheless played a significant role in winning the war. Bracero workers in the

Northwest conducted strikes and work stoppages to protest working conditions, but strong anti-union sentiments among farmers prevailed, and the troublesome workers were deported.

Eventually, the bracero program was abandoned, and the labor shortage was solved by recruiting "less troublesome" Mexican American workers, who came with their families to Oregon. This solution to the labor shortage, implemented by local design, was to result in the first generation of Latinos who would come to Oregon to stay.

### ***E. Portland's Chinese Community During the War***

World War II benefitted Portland's Chinese community. Anti-Asian sentiment was directed at the Japanese population, and the Chinese, whose homeland had been invaded by Japanese, quickly found ways to express their loyalty to the United States and to clarify their ethnic origins. Thus, "I'm not Jap" and "We're Chinese" signs appeared in windows, coat lapels, and automobiles.

Chinese worked in the shipyards, and in 1943 were allowed to become citizens. As more Chinese women emigrated, balanced sex ratios resulted in the formation of more families, and the Chinese became more integrated into the broader society. The Chinese entered the professions in greater numbers, while many prospered as owners of Chinese restaurants. Chinese homeowners moved into previously all-white neighborhoods throughout the city, and the long process of assimilation and economic prosperity moved forward.

### ***F. The Japanese Experience***

World War II was a shattering experience for Oregon's Japanese population. The hate and discrimination which followed Pearl Harbor was worse than anything they had ever experienced. Disbelief turned into bewilderment and for some, anger, as they were identified as "the enemy", despite the fact that many had little more than cultural ties to Japan, and were native born U.S. citizens. According to the 1940 census, there were 4,071 Japanese in Oregon; 1,617 Issei, first generation Japanese immigrants, and 2,454 Nisei, their American-born children.

On January 3, 1942 the city council of Portland decreed that no business licenses would be issued to Japanese American entrepreneurs, and many insurance companies canceled the fire insurance policies of Japanese residents. On March 24, 1942, a curfew from 8:00 p.m. to 6:00 a.m. was imposed for all persons of Japanese ancestry. In February, 1942 President Franklin Roosevelt signed Executive Order 9066, which instantly and without any constitutional protections transformed the Japanese community from residents and citizens into virtual prisoners of war.

Following the proclamation of Executive Order 9066, the U.S. Army gave the Japanese people 30 days to get their affairs in order, before reporting to the Pacific International

Livestock Expo on April 28 for forcible evacuation. Everyone was forced to sell their homes, property, and businesses and to give up their land leases and current crops for whatever they could get.

Executive Order 9066 resulted in financial ruin for Portland's Japanese community. Despite much effort, it has been impossible to determine the exact financial impact of 9066 on Portland's Japanese community, but it was by all accounts devastating. Jimmie Mizote owned a grocery store on S.W. 3rd and Montgomery worth \$6,000, but he was only able to realize \$3,750 under the time constraints imposed by the evacuation order. The results of a local post-war questionnaire concluded that the average Portland Japanese family lost \$9,361 because of forced sales, uncollected accounts, damage to property, and pilferage. The Federal Reserve Bank of San Francisco estimated that the national loss was 400 million dollars, or \$3,636 for every man, woman and child interned.<sup>43</sup>

Portland's Japanese farmers were warned that it would be considered an act of treason to destroy their crops, even though they would be unable to derive any income from the hard work they had invested on the truck farms they were forced to abandon. There is no evidence that any crops were destroyed, but the message was clear: the country desperately needed the crops produced by Japanese farmers, while the same people, based on race alone, were automatically and categorically suspect.

A 25-year old Portland lawyer, Minoru Yasui, decided to challenge the constitutionality of Executive Order 9066, and on March 28, 1942, he walked the streets of Portland in violation of the curfew. Finally, he entered a police station and was arrested. The newspapers depicted him as a traitor and a spy for the Japanese government. He was declared guilty by Judge James A. Fee, who ruled that he had voluntarily given up his citizenship because he had once worked for the Japanese Consulate in Chicago. Oddly enough, he also ruled that Japanese American citizens were not subject to the curfew regulations. Minoru Yasui was released pending sentencing, reported to the Portland Assembly Center, and was shipped off to the Minidoka Relocation Center in Idaho. Later, he was brought back to Portland and sentenced to one year in jail and fined \$5,000.

His case was appealed to the Ninth Circuit Court, which overturned Fee's decision on both counts, restoring Yasui's citizenship and at the same time declaring that the curfew was a legitimate exercise of military power during wartime. Again, Minoru Yasui appealed the ruling, and it was sent directly to the Supreme Court, which ruled that he was guilty of violating U.S. laws. Years later, he fought to have his case re-heard before the Supreme Court, to force that body to rule on the constitutionality of Executive Order 9066 and vindicate his claim. Although this effort ultimately failed, his courage and tenacity remain legendary within the Japanese community, as someone who refused to accept the government's wartime actions without a fight.

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*Oregonian*, Nov. 3, 1946, other information supplied by members of Portland's Japanese community.

In the summer of 1942, Portland's Japanese population was detained at the Portland Assembly Center, now the Multnomah County Expo Center, in north Portland. Ironically, this policy created a farm labor shortage of crisis proportions, and almost 250 detainees volunteered to help save the sugar beet harvest in Ontario and Nyssa.

That September, most of Portland's Japanese boarded old, dirty train cars in Union Station, in darkness because the window blinds had been tightly drawn, bound for an unknown destination. Two days later, they arrived at Minidoka Relocation Center in southern Idaho, a landscape filled with sagebrush, tumbleweeds, rattlesnakes and dust clouds where they would remain for the duration of the war. A small number were sent to the internment camp at Tule Lake in California, while others remained in Ontario, in eastern Oregon, in a so-called free zone farming community. Overnight, the Japanese population of Ontario grew to 5,000. There, they raised valuable food crops and contributed to the war effort.

The most profound and long-lasting negative effects of the war were felt by the Japanese community. While others benefited from high war wages, the Japanese community was devastated, socially and economically. It would be many years before reparations were finally paid to the Japanese who had suffered so much, and much of the reparations went not to the adult internees, many of whom had died in the meantime, but to the next generation that benefited most from the changed political climate that existed after the war. The reparations, however, did not replace the economic base that had been destroyed, and the Japanese Americans who returned to Portland after the war had to start from little or nothing to rebuild their lives.

### **III. LEGISLATIVE PROGRESS: 1945-1960**

Overall, and except for a fortunate few, the economic gains achieved by women and minorities during the wartime economy were reversed as veterans returned to the workplace and old racial and gender lines were redrawn. But the influx of larger numbers of minorities created a new attitude of empowerment. Some among the political leadership, dismayed at the evidence of wartime prejudice, and aware of the contributions of women and minority people to the war effort, were ready to enact legislation that would remove some of the barriers to economic progress.

The Fair Employment Practices (FEP) law was passed in 1949, after having been defeated two years earlier. Designed to outlaw discrimination in employment on the basis of race, religion and national origin, it marked the first time a law designed specifically to alleviate past discrimination was passed in Oregon. Its very passage was an acknowledgment that a problem (which needed to be remedied) existed. The FEP law relied, however, on complaints filed by persons who felt they had been discriminated against, and there was no provision for independent investigations to determine compliance.

In the first seven years after its enactment, the FEP law generated only 185 complaints, all but ten claiming discrimination on the basis of race or color. Employers were cited in 153 of the cases, and labor unions in 24 other cases. Refusal to hire comprised 115 of the acts of alleged discrimination. Of the 86 cases decided in favor of the complainant, 53 resulted in actual job offers or admittance to union membership. But as Mark Smith, FEP Division administrator explained, "We can't move without a complaint. We can't initiate . . . We feel safe in saying that if we had twice as many complaints brought to us in that time, we would have seen a great deal more progress."<sup>44</sup>

A flurry of bills were passed in the state legislature of 1951. Among them was a repeal on the ban against intermarriage, repeal of the statute prohibiting the sale of alcoholic beverage to Indians, and a repeal of the statute requiring a government survey of the sanitary and thrift habits of Chinese and Japanese residents. By executive order, the Governor directed the National Guard to adopt a policy of non-discrimination, and the State Insurance Commissioner ordered insurance companies to eliminate surcharges levied against non-white drivers. The Vocational Schools Law was also passed in 1951, guaranteeing for the first time to minority peoples the right of equal access to vocational training.

In 1953 the State of Oregon enacted the Public Accommodations Law, banning discrimination in restaurants, hotels and public places of recreation and amusement. Representative Mark Hatfield was instrumental in blocking a move to refer the measure to a vote. Portland's African American community feared that this measure, like a city-wide referendum on civil rights proposed in 1950, might fail in a general election. This law was a major victory for the African American community, which had fought for a public accommodations law for 60 years, beginning in 1893. The law was not entirely successful in eliminating discrimination in all venues and all parts of the state, and the City Club's 1957 report recommended that it be strengthened by banning discrimination in other specific types of public places, such as trailer parks, campgrounds, barbershops, and beauty parlors. The report also recommended that an Anti-Discrimination Division be formed in the Bureau of Labor and given funds for investigations and the power to impose additional penalties, including the revoking of business licenses. Despite this statewide law, certain cities outside Portland had a reputation for discrimination that endured for decades.

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<sup>44</sup>

City Club of Portland, *The Negro in Portland: 1945-1957*, p. 364.

## **A. Japanese in Portland 1945-1960**

### **Resettlement to Model Minority**

The removal and imprisonment of over 100,000 people, most of them citizens, was arguably the most sweeping violation of civil rights in twentieth century United States history. It was a turning point for Portland's Japanese American community, and their history is divided into two eras: before and after internment. Many returned to Portland after the war, although a sizeable number chose to settle elsewhere. When they returned, they took up the task of rebuilding their lives.

Discrimination in jobs, housing, and public accommodations was common, as overcoming hatred toward Japanese people proved difficult for many Portlanders. Anti-Japanese hate groups met at Gresham High School, and neighborhood stores displayed signs barring Japanese from entering their premises. Service at restaurants was slow, and even school teachers were known to voice anti-Japanese sentiments in the classroom. Two Nisei who had served in the U.S. armed forces were rebuffed when they tried to join Portland's American Legion Post #1. They were told to start their own group, which they did, and the membership soon rose to one hundred men. The newly re-formed Japanese American Citizen's League fought to overcome discrimination and worked to re-establish the image of Japanese Americans as hardworking, loyal citizens.

Only a few Japanese were able to return to their old jobs, such as Yaeko Inuzuka, a library clerk. Jobs with any public visibility were considered to be inappropriate, and many people had to accept menial labor to make ends meet. Under a law passed in January 1942, Japanese aliens were barred from holding a business license in the City of Portland. After the war, when Issei, the first generation immigrants not eligible for citizenship until 1952, applied for business licenses, they were frequently denied. Fortunately, this civil ordinance was soon overturned. The first Japanese business to reopen after the war was the Kinoshita Vegetable and Fruit market on Columbia Blvd. Others opened grocery stores and at first people refused to trade with them. Japanese-owned hotels were among the first businesses to recover, and in 1946, there were over 100 members in the newly reorganized hotel owners association.

Japantown, the area along the west side waterfront where the Japanese lived and worked before the war, had become the Chinese district, and Japanese turned to other parts of the city to find housing. While some families were able to lease their home to friends for the duration of their internment, others, such as Dr. Mitsuo Nakata, a local dentist who spent the war working in the Navy intelligence school, were rebuffed when they sought to obtain housing. Dr. Nakata had deposited earnest money on a modest house on N. Mississippi, only to be told that his family was not wanted there.

Real estate agents sometimes offered to "canvass" in order to find neighborhoods that would accept Japanese Americans, ruling out subdivisions that contained racist covenants. A builder might agree to construct a home and back out later, when he discovered that Japanese people were not wanted in the neighborhood. In one case, the family of Dr. Albert and Masuko Oyama found a sympathetic builder who was willing to challenge the restrictive covenants on their behalf. But for many, finding a home meant facing prejudice, whether subtle or blatant.

Vanport, a shipyard housing project, became the first home to many Japanese returning from the internment camps. Fifteen people died when Vanport was flooded in 1948, including two Japanese: Sadao Mizuno, a photographer, and Mrs. Izumi Oyama. Housing discrimination against Japanese in Portland lingered into the 1950s, and it was not until 1953 that Japanese, as well as other minorities, had any legal guarantee of equal access to housing.

Legislation passed during the war also made it difficult for Japanese farmers to re-establish themselves. The Alien Land Law of 1945 made it illegal for Japanese aliens to own or lease property for agriculture, and the law stated that any property occupied by aliens was presumptively owned by them. Under this law, the Issei not only were barred from leasing or buying land, but they could neither live on nor work the land owned by their American-born children. All parties to such illegal property transactions were subject to imprisonment and fines. The harshness of this law and its timing was seen by many returning internees as a message: Japanese were not wanted in Oregon.

In 1946, the Japanese community, aided by influential white friends, organized a committee to test the Alien Land Law. The following year, Kenji Namba, a native Oregonian and U.S. Army veteran, and his Issei father attempted to lease sixty-two acres of farmland in Multnomah County. The court invalidated this lease, and the Nambas appealed to the Oregon Supreme Court, which, in 1949, reversed the decision of the lower court and declared the Alien Land Laws invalid, basing its decision on the equal protection clause of the Fourteenth Amendment. Oregon thus became the first Pacific Coast state to nullify the Alien Land Laws. The Japanese community, struggling to re-establish itself after the war, contributed moral and financial support to win this important victory.

In 1948, Congress established the Evacuation Claims Act, which was supposed to compensate Japanese for the losses incurred as a result of the evacuation order. Of 400 million dollars in actual property losses estimated by the Federal Reserve Bank, the government reimbursements amounted to only 38 million dollars, less than ten cents on the dollar, and among legislators it was known as the "pots and pans bill." The Evacuation Claims Act contained no provisions for human suffering, for denial of personal liberties or for loss of civil rights.



In the decade of the 1950s, Portland's Japanese American community began to recover from the effects of the war and prosper in a changed atmosphere characterized less by residual hatred and more by acceptance. The Walter-McCarran Act, passed in 1952, made it possible for Issei to become citizens. One hundred and thirty-three Issei completed the course of an Americanization school sponsored by the Japanese Ancestral Society and became citizens in the spring of 1953. Becoming a citizen rather than an alien allowed many Japanese people to circumvent discriminatory laws and to overcome the stigma of being Japanese.

The first Japanese American teacher hired in Portland was George Katagiri, who became an elementary teacher at Abernathy school in 1950. Because teacher's wages were low, he applied to Sears Roebuck for a second job. Although Sears hired many teachers as sales people, the company made it clear that such employment was impossible for a person of Japanese ancestry. As the shortage of teachers became acute, the door was opened for other Japanese Americans, and this in turn led to administrative appointments in later decades. As the second generation of Japanese, the native-born Nisei, began to graduate from college, prejudice in the professions began to disappear.

The era of the 1950s saw the rise of two important Japanese family businesses: the Naito family, whose import businesses and property acquisitions resulted in a revitalized business district in such places as Old Town, Montgomery Park, and McCormick Pier. George Azumano, who started an insurance office in 1946, branched out into a travel agency, travel school, courier service and publications company.

By the end of the 1950s, Portland's Japanese, who had suffered so profoundly during the war, had made a considerable economic recovery. Four years of war had not destroyed the Japanese family or a cohesive community, and the Japanese people were able to rebuild and prosper.

## ***B. African Americans in Portland: 1945-1960***

World War II proved a watershed for Portland's black community. It survived the racist backlash of the war years to gain greater political clout. The increase in permanent population, from 1,931 in 1940 to 9,529 in 1950, transformed the community into Portland's largest minority. The Urban League, brought to Portland to get rid of war workers, now took up the task of working for better jobs. The National Association for the Advancement of Colored People (NAACP) also worked to break down barriers to employment, and between the "reform" strategies of the Urban League and the "protest" strategies of the NAACP in the fifteen year period following the end of the war, barriers to black employment began to fall.

Despite a history of economic marginalization, some of Portland's African Americans had earned college degrees. Nathan Nickerson, later a director of the Urban League's on-the-job training program, who had an undergraduate degree in chemistry, was hired on an all-black custodial crew after the war. The crew included three African Americans with masters degrees who were supervised by a white man with a high school education.

A handful of African Americans became business owners. Charles Maxey, a talented shipyard electrician, was courted by General Motors to teach mechanics, until they found out he was black. With money he saved during the war, he opened a barbershop on N. Cherry Street, and later owned Maxey's Better Buy Grocery and another barber shop. Kelly Stroud worked as a shipyard electrician, and later opened a moving and storage business.

The difficulty of obtaining conventional financing posed a serious barrier for African Americans who wanted to go into business. Charles Maxey recalled that bankers refused him a business loan with his residence as collateral, and that he was able to secure financing for his business only when he secured an additional piece of property as collateral. The Scott family enterprise, Coast Janitorial, was funded by the family, and it was years before they were able to obtain bank financing. There were other methods of discouragement. As Manwell Scott recalled, "We were called in by the IRS about every six months until we got an accountant. We wouldn't have made it without the support of our family."<sup>45</sup>

For the majority of African Americans, the end of the war signaled the end of good jobs and a return to pre-war hardships. Odd jobs were plentiful but low-paying, and many men and women worked several jobs in order to support their families. Some African Americans found seasonal farm work, but many were reluctant to leave the city and miss a chance at a permanent job. A few businesses, such as Ames Harris Neville Bag, a manufacturing company on northwest Hoyt, had all-black shifts. When White Stag, a sporting goods manufacturer, hired 40 African Americans in 1946, they were considered innovative because they had integrated the workforce. Max Hirsch, company president, suggested that other companies follow their strategy by first taking a vote among employees and then trying to educate those who resisted the idea of integration, on the theory that "Negroes can't be shoved at people."<sup>46</sup>

African Americans who earned college degrees were usually able to find work, but often only at jobs for which they were grossly overqualified. Thus, women with college degrees often worked in clerical positions, and college educated men worked in gas stations or as waiters and bartenders. In a repeat of the out-migration patterns of past decades, many college-educated African Americans protested Oregon's entrenched racism and left the state, taking their initiative and talents elsewhere. As Edwin Berry of the Portland Urban League pointed out, the city "has done a good job of getting rid of the Negro."<sup>47</sup>

Apprenticeship programs were difficult if not impossible for African Americans to enter. A 1949 analysis of race relations found that African American women had been refused admittance to beauty schools in Portland, and thus denied the opportunity to become licensed beauty operators. Arthur Cox Sr., having completed a course of study to become an

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45 From a forum on African Americans in Business, 1/20/96.

46 *Oregon Journal*, 9/10/1946.

47 *Ibid.*

embalmer, came to Portland to serve the two-year apprenticeship required by law. He had been accepted by letter and by telephone, but was rejected when he presented himself to the white mortician. Ten years later, the owner of Zeller's Funeral Chapel accepted his credentials, and he became the one of the first African American morticians in Portland.<sup>48</sup>

A Portland City Club Report on the status of African Americans from 1945 to 1957 observed that "a substantial number" of African Americans had, since 1941, obtained union jobs in "certain of the building trades, the dry cleaning industry, the foundries, and the construction and the building service industries."<sup>49</sup> At the same time, some trades had no black members, and some unions were known to discriminate against African Americans. This, the report concluded, meant that there was not much inducement among African Americans to enter the trade apprenticeship programs.

This report also queried the heads of 92 business firms in Portland and reported that of 48 respondents, only 28 employed African Americans, and only one had changed its hiring policy since 1945. Among those firms that had taken the lead in diversifying its employees were the Pacific Telephone and Telegraph Company, as well as major department stores and factories which hired skilled employees. The report concluded, "Too often the lack of any policy is simply the reflection of a company's lack of any real interest in equal opportunities for Negroes, regardless of ability and training."<sup>50</sup>

The report admitted that it was difficult to discover whether African Americans were disqualified or discriminated against in the application process. In the subjective determination of what constituted "the necessary qualifications," conscious or unconscious racial bias often entered the formula. One personnel director believed that "Negroes prefer to work with others of their race and at low pressure jobs."<sup>51</sup> Others cited "undependability" as a disqualifier. The researchers found evidence that some employers used evasive tactics to disqualify African Americans, such as giving an applicant inadequate time to complete an examination. The stubborn resistance of businesses to hire and promote African Americans meant that for many years they were denied opportunities to gain entrepreneurial skills.

The 1950s was the decade of "firsts" as a small elite of Portland's African Americans found middle-class, professional employment. Robert Ford, a former shipyard welder, became the first African American to teach in a Portland high school in 1952. Mark A. Smith was appointed a Deputy Commissioner in the Fair Employment Practices Division and William Carr became the first black fireman the same year. The next year saw the appointment of Dr. William Couch to the faculty of Reed College, and William Hilliard was hired as a sports writer at *The Oregonian*. Notably too, Isaac Alford became the assistant manager of the

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48 Interview with Mr. and Mrs. Arthur Cox, Oregon Black History Project Oral History Collection.

49 *Op. cite*, City Club, p. 364.

50 *Ibid.*, p. 365.

51 *Ibid.*, p. 365.

Columbia Athletic Club, the first black business manager in a local establishment of that size. Andrew Johnson, a graduate of Stanford, became Oregon's first African American highway engineer in 1953. Other notable firsts included the first black-owned funeral home, and professional openings in journalism, teaching, and government.<sup>52</sup>

Nationwide, however, the 1950s were bleak for non-white males, and in every region of the nation they lost ground. In the recessions of 1949 and 1954, unemployment among African Americans were higher than among whites in every major occupation and industrial group in the nation. The shift in unemployment rates among teenagers was particularly dramatic. In 1948 non-white male unemployment among teenagers was 7.6 percent versus 8.3 percent among white males. By 1965 non-white male teenage unemployment was 22.6 percent, versus 11.8 percent for white males.

The prospect for non-white females in the labor force was considerably more promising, according to statistical comparisons between 1948 and 1965. In both time periods, non-white females had higher rates of participation than did white females. In 1948, 44 percent of non-white females were in the labor force, versus 30.6 percent of white females. In 1965, 46 percent of non-white females worked, versus 36 percent of white females.<sup>53</sup>

Beginning in World War II, the most serious, persistent and far-reaching problem faced by Portland's African American community was segregated housing. Before the war, the tiny black population lived in all parts of the city, although some neighborhoods were more hospitable than others. The mass influx of war workers created a general housing shortage, and African Americans encountered Jim Crow racism, real estate red-lining, and virtually no place to live outside crowded Albina.

The Vanport flood of 1948 left an estimated 5,000 African Americans homeless, but their plight was ignored. On June 20, 1948 homeless flood victims, both black and white, picketed City Hall, complaining about high rents and a lack of response from the Housing Authority. One sign read "Trailers: the New Look in Streamline Slums."<sup>54</sup> Mayor Dorothy Lee championed public housing projects, but in 1950, the voters, who associated public housing with Vanport and its population of "undisciplined war workers" and African Americans, rejected a proposal for the construction of 2,000 low income housing units.

By 1957, 50 percent of the African American population lived in the "Albina area," between Union and Interstate Avenues, Fremont and Oregon Streets. Eighty-eight percent of the housing in this area had been built prior to World War I, and for many years it had been the practice of banks to limit loans for improvements on housing more than 40 years old. Real estate restrictions and barriers to employment and economic progress resulted in segregated

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<sup>52</sup> Bureau of Planning, *Portland's Albina community*, pp. 99-100; Bosco-Milligan Foundation. *Cornerstones of Community*, p.80.

<sup>53</sup> Marshall and Briggs, *The Negro and Apprenticeship*, pp. 3-4.

<sup>54</sup> Stein, Ryan and Beach, *Portland, A Pictorial History*, p. 165.

housing, segregated schools, the impression of slum conditions, and the association of blackness with poverty. Thus the City Club reported "overcrowding, below-average living conditions, and the generally lower economic level of Negroes have conspired to produce disquieting symptoms of social disorganization . . . In Eliot school, which serves the neighborhood, 42 percent of the children have only one parent at home."<sup>55</sup>

The City's urban renewal policies of the 1950s and 1960s, which resulted in displacement and the loss of homes, businesses, and equity in the African American community, directly contributed to the worsening of these conditions. By 1962, 80 percent of Portland's black population lived in Albina, whose southern boundary was what is now Broadway.

Plans for a new civic center, containing a sports arena, a convention center, and office buildings, had been proposed as early as 1943. In addition to securing voter approval for funds, a site had to be selected. East side and west side interests vied for the best location. Transportation services favored a west side site, but when put to a vote, the east side won by a narrow margin in 1946, although the whole proposal was defeated. After two other referendums in which alternate west side locations were rejected, the city fathers opted to build a sports arena on the east side of the river, between the Steel and Broadway bridges, in the very heart of the African American community.

Sixty percent of the housing in the path of urban renewal and slated for demolition were said to be substandard, according to a report of the City Planning Commission. But even by that measure, 40 percent of the buildings were in good condition, and some, such as Bethel AME Church, were important edifices, landmarks of the African American community. Within this area were the offices of Dr. Denorval Unthank, the Keystone Cafe, Keystone Investments, Maxey's Better Buy Grocery and Barber Shop, McClendon's Cafe, Charlene's Tot Shop and Beauty Shop, and the offices of the Protective Order of Dining Car Waiters, among others. Of 476 homes destroyed by the construction of Memorial Coliseum, 224 were owned by non-whites, the overwhelming majority of whom were African American.<sup>56</sup>

The process of acquiring property for City projects was much like the forced sale of Japanese property that occurred in 1942. There were no alternatives to negotiating with the City, and African Americans had to accept the value assigned to their properties or face a condemnation process. Compensation did not cover the disruption of businesses, moving expenses, or all the other costs incurred in the disruption of lives, businesses, and social and religious institutions. As a result, many families had to go into debt to establish new homes and businesses.

In the early 1960s, the construction of the Interstate 5 freeway displaced an additional 125 homes and many businesses. Charles Maxey and Dr. Denorval Unthank, who had been displaced by the Memorial Coliseum project, were displaced again.

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<sup>55</sup> City Club, *Op. cite.*, p. 359.

<sup>56</sup> Bosco-Milligan Foundation, *Cornerstone's of Community*, City Archives.

Bethel AME Church, located on the corner of North Larrabee and North McMillen, was one of the most important institutions in the black community. Founded in 1895, the church was originally located on downtown Tenth Street between Everett and Davis. In 1916, it was moved east of the river, to the corner of Larrabee and McMillen. At first the congregation met in the basement, until they could afford to finish the rest of the building. When completed in 1922, the church was an imposing brick structure with two large stained glass windows, and a corner bell tower.

Over the years, the congregation sponsored a host of social, cultural and musical programs. Several of the church organists were particularly renowned, including Henri Le Bel, a theater organist in the days of silent movies. Organist Elmer Bartlett started the Bethel Negro Chorus, which performed a number of concerts at Multnomah Civic Stadium. Young people were provided opportunities for participation and recognition not afforded in the public schools, including dramatic presentations, oratorical contests, and a children's band that participated in the Junior Rose Festival parade. Bethel AME was not just a local institution. Because of its ties to other AME churches in the region and in the nation, the congregation, although small and isolated, felt itself a part of a larger community.

Because of its vital role in the community, the removal of Bethel AME in 1957 to make way for a parking lot was a particularly bitter blow to the community. The City of Portland did not compensate the congregation for the true value of the church. They calculated the appraisal based on cost for duplication of use, not of duplication of facilities. This meant they would not compensate the church for the brick wall construction, but only for a church with plain wooden walls. After deducting 35 percent for depreciation, calculated at one percent per year for 35 years, the City paid the Bethel AME \$75,000. The congregation constructed a new church on the corner of 8th and Jarrett at a cost of \$125,000, and some members of the church mortgaged their homes to pay for the new building.

Urban renewal caused great economic hardship for the African American community. Unwilling to lose one of its most important institutions, the community devoted significant resources to the construction of a new church. This, at a time when the community was economically marginalized, meant that scarce black capital had to be used to preserve an important community institution, and was unavailable as seed capital to nourish new economic institutions.

Despite legislative victories and the successes of a few, Portland's African American community, in the years between 1945 and 1960, suffered the effects of postwar unemployment and chronic underemployment. The pre-war necessity of working multiple jobs continued, and leisure time, which could have been spent in community organization, was required for meeting basic economic necessities. Forced by urban renewal into an ever smaller area, the "disquieting symptoms of social disorganization" predicted by the 1957 City Club report would worsen, and in the decade of the 1960s, flare into militant activism, as Portland's African Americans, inspired by national leaders, would organize new institutions and make demands upon the local government for social and political reforms.

### **C. Indians in Portland: 1945-1960**

The 1940s marked the beginnings of the first series of successful court decisions in favor of Indian claims. Ultimately however, the awards were often outrageously small. Nevertheless, they did represent an acknowledgment on the part of the government that it owed a debt to the people whose lands were taken. In some cases, notably the Confederated Tribes of Warm Springs, the awards were used to buy back allotments and reservation land held by outsiders, thus expanding the resource base that could be used for the benefit of the tribe.

In 1946, the Supreme Court ruled favorably on the land claims of four coastal tribes. The value of their lands, some 2.8 million acres, was set at \$1.20 an acre. Four years later, the tribes were awarded slightly over three million dollars, or less than \$1 per acre. On January 5, 1950, the *Oregonian* was moved to editorialize. "The large outstanding fact is that we were the usurpers—for the land and all its resources were theirs."<sup>57</sup>

In 1946 Congress created the Indian Claims Commission, a special court which for five years considered Indian land claims in order to end, once and for all, the lawsuits and petitions brought by Indians. The rules were strict: no interest would be paid, the settlement would be financial thus no actual land would be returned, and the price of land was to be fixed at the date of taking through warfare, treaty, or removal, not at the land's current value. Almost all Oregon tribes filed claims, and some received compensation, although money for services provided by the BIA were deducted and the claims, unless they were preserved communally, resulted in little long-term economic benefits for the tribe.

Despite judicial victories, the 1950s were a time of great hardship for Oregon's Indians. After the end of the war, demobilized soldiers and shipyard workers who returned to the reservations faced poverty and a lack of jobs. Many moved to urban areas in search of jobs, while retaining ties to reservation culture. Many more were forced to move as the government sought an end to the tribal trust relationship through the policy known as termination.

Termination, which sought the abolishment of reservations, Indian schools, and other services was backed in Congress by former Oregon governor Douglas McKay and the Commissioner of Indian Affairs, Dillon S. Meyer, who had previously headed the relocation program for Japanese Americans. Meyer in particular thought Indians were being coddled because of the special health and education facilities they enjoyed. He wanted to cut big government and turn Indians into taxpayers. Despite strenuous opposition by organizations such as the National Congress of the American Indian, President Eisenhower signed Public Law 588 in 1954, which terminated tribes throughout the United States, including 43 bands of Indians in western Oregon.

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<sup>57</sup>

*Op. cite.*, Beckham, p. 186.

The Klamath Indians had won a lawsuit against the federal government in 1938 and were awarded \$5.3 million in compensation for their lost lands. Allocation of funds to pay the judgment, which by 1954 had been whittled down to \$2.6 million, were tied to tribal termination as a result of heavy lobbying by timber interests, which sought to gain access to valuable tribal timberlands. The Klamath tribe accepted termination and substantial, one-time only cash payments which were sometimes quickly spent. Indians who received title to allotted lands were now required to pay property taxes, and failure to do so resulted in foreclosure.

The termination of the Klamath tribe in 1954 was followed by terminations of the Grande Ronde and Siletz tribes in 1956. The next year, the newly completed dam at The Dalles destroyed Celilo Falls. The flooding of Celilo Falls, a major traditional fishing area on the Columbia River, signified far more than the loss of an economic resource. But the four million dollars that the Confederated Tribes of Warm Springs were paid created a singular opportunity for investment and enterprise. Although some funds were distributed to individuals, the Tribal Council banked the rest and commissioned a study of the reservation's natural and human resources. The five volume document produced by Oregon State University in 1960 was used to direct future tribal development in the areas of timber management and tourism.

In 1952, the federal government began "Voluntary Relocation," a plan to resettle Indians in cities, thus removing them from reservation assistance programs, access to medical care, and other services. Oregon Indians were resettled as far away as Los Angeles, Chicago, and Denver, without much more than the price of a bus ticket and the vague promise of a job. Far from home, cut off from many cultural resources and unprepared for life in urban America, many Indians suffered great hardships. Over 35,000 tribal peoples nationwide moved to urban areas between 1953 and 1960, but more than one-third eventually returned to their reservation homelands.

In the late 1950s, the Bureau of Indian Affairs, which administered the relocation program, began to emphasize employment assistance over migration, and today its focus is on vocational training and education on and off the reservation, and securing desirable, permanent jobs. In the 1950s, there were few federal services available to Indians off the reservations and so, encouraged to migrate to cities, they were essentially on their own once they resettled. Federal housing assistance programs were not open to Native peoples until 1960.

Urban Indians first organized around Indian churches, because it was the only place where they could converse and sing hymns in their native languages. In 1959, the Portland American Indian center held its first meeting, and other groups, such as the Bow and Arrow Club, were organized in the 1960s.

Some Indians were able to adjust to life in an urban setting, but for many others, Portland became a nightmare of baffling institutions, unfamiliar forms and procedures, long waits for service, and rejection. Disappointed and angry, many turned inward, and substance abuse



became a means of escape from displacement and the loss of culture they suffered. Thus, Portland's first visible Indian community lived on the streets or in marginal, derelict housing in the Burnside district of downtown Portland.

The 15 years after World War II marked a time of great suffering and displacement for Oregon's Indians. After the war, many veterans felt the necessity of giving up their identity as Indians in exchange for a better education for their children and the hope of economic improvement. But cultural strengths and resilience, seen as a detriment to assimilation in the 1950s, became, in later decades, vital to the long process of rehabilitation, as Indians reclaimed their heritage and began to heal themselves.

#### ***D. Portland's Latino Community: 1945-1960***

The increased urbanization of the population after World War II affected the available supply of farm workers, and many never returned to their pre-war farming jobs. At first the shortage of labor during the harvest was filled by *braceros*, Mexican nationals, whose labor had been used during the war. Soon, however, protests and strikes against extremely low wages and miserable working conditions resulted in the deportation of many *braceros*, while others voted with their feet and simply left. Unlike the Southwest, where workers were easily replaced, in Oregon the deportation of farm workers resulted in serious labor shortages. As a result, farmers began to hire Mexican American workers, as well as other migrants workers, whole families who followed the crop harvests across the country from the Southwest to Oregon and Washington.

Because of the mobile nature of the migrant population, and the fact that Latinos were not counted separately in the census until 1970, it is difficult to accurately estimate the numbers of Latino migrant workers who came to Oregon in the late 1940s. Oregon's lack of a sales tax and higher wages than the Southwest made it an attractive destination. Most Latino agricultural workers and their families lived in labor camps in the mid-Willamette valley and did field work, but some were able to drive tractors, combines and trucks. Latino men were often hired to maintain railroad tracks, and jobs were also available in warehouses and food processing plants, although they were generally restricted to low-wage, unskilled labor.

In 1950, Portland was chosen as the only Pacific Northwest site for hearings on migratory labor. For three days the Commission on Migratory Labor heard testimony, but because the majority of it came from farmers or their representatives, the commission heard very little testimony on living and working conditions from the migrants themselves.

A 1957 study estimated the number of Latino migrant workers in Oregon to be 11,760. Seventy percent of this population were U.S. citizens, and 30 percent were citizens of Mexico. Ten percent were permanent residents of Oregon and five percent were permanent residents of Washington. Over half of the migrant workers had been recruited by labor contractors and bussed to Oregon from West Texas, with the remainder coming from border towns in Mexico, the Mission Valley of Texas, Arizona, and California. Other migrants

came with their families or banded together to share travel expenses and contracted to work independently of labor contractors. Among the group were 450 school age children who joined their parents in the fields, and 80 children too young to work.

According to this report, the average Latino migrant worker remained in Oregon from seven to nine months. A family's average weekly earnings were \$84, with expenses consuming \$69. Individuals earned an average of \$40 per week, less expenses of \$28.50. All were excluded from the minimum wage law. Transportation expenses to and from the Southwest were deducted from their wages, a portion of their wages was given to the labor contractor and subcontractor, and they were charged high prices for basic necessities at stores near labor camps, which were often owned or controlled by growers. At the end of their time in Oregon they returned to their homes, taking with them an average of \$235 to sustain themselves for the winter. For many migrant families, their yearly earnings only allowed them to pay off old debts. Often, they had to go into debt to carry their families through the winter, and they were never able to make financial progress.

Conditions in Oregon's labor camps were poor. Housing was substandard, and families of six or eight lived in one small room where they did their cooking and eating. Toilets were primitive and unsanitary, and sometimes drinking water was unavailable. These living conditions resulted in poor health among migrant workers, including skin conditions resulting from lack of bathing facilities, insect exposure, and pesticides. Diet was often poor, and food uncooked or improperly prepared. Intestinal parasites were frequent, as was intestinal flu. There were no medical services available, nor were the workers given tetanus shots. Minor wounds often resulted in infections and were difficult to heal.

Isolated in labor camps and ignored by the society at large, the Mexican American migrant worker was too often only one crisis away from severe economic distress. Their children were often unable to attend school because their labor was needed in the fields. They were often discriminated against in nearby towns and by the police. Although most were U.S. citizens, language barriers and unfamiliarity with the system meant that they were frequently not able to take advantage of their rights, nor were they empowered to take legal action when their civil rights were violated.

In 1958 Don Wilner, state Senator from Multnomah County and Chairman of the Legislative Interim Committee on Migrant Labor stated, "Discriminations have contributed to making migrant workers the poorest members of our society, [with incomes between] one and two thousand dollars per year."<sup>58</sup> In 1955 the Portland Archdiocese established a migrant ministry program, and later it sponsored a Mexican priest, Father Ernesto Bravo, to provide services to Spanish-speaking Catholics in the Willamette Valley, but it was not until the decade of the 1960s that migrant workers were able to organize to bring about meaningful progress.

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<sup>58</sup> Quoted in *Nosotros, the Hispanic People of Oregon*, p. 48.

Portland also contained a small Latino population in the years after World War II. Some Latinos who had worked in the shipyards chose to stay in the Portland area. Perhaps typical of the urban Latino in this period is the Gallegos family. Elouise Gallegos came to Portland with her husband and family during the war. They lived in Vanport and Elouise joined the Boilermaker's Union and became a welder. After the war and only three days before Vanport flooded, they moved to southeast Portland. In the summer, the family did field work and lived in labor camps, and during the winter they did janitorial work. In the late 1950s the family opened their first restaurant in the old Weaver Hotel on West Burnside. Later, after a second restaurant failed, Elouise Gallegos worked as a janitor until her retirement.

While jobs in the city were limited to unskilled and semi-skilled labor, children were able to benefit from urban educational opportunities. Some members of the second generation of urban Latinos were able to move into skilled labor or the professions. The experience of the majority of Latinos in Portland, however, suggests that there were significant barriers to economic progress.

The 15 years between 1945 and 1960 marked the first time Latinos settled in Oregon in significant numbers. Drawn by the changing demands for farm labor, many decided to make Oregon their permanent home. While the larger community was not welcoming, there seemed to be less discrimination in Oregon than they had experienced in other regions of the country. At the end of the decade of the 1950s, migrant workers were befriended by charitable institutions, which organized and brought public attention to their plight. The next two decades, marked by a resurgence of ethnic pride and a strong national leadership, would see Oregon's farm workers themselves take control of community institutions, define their own issues, and move forward.

#### ***IV. LEGISLATIVE PROGRESS: 1960-1980***

Nationally, the decade of the 1960s was the first time when the issue of race- and sex- based discrimination entered the mainstream dialogue. Following the March on Washington and other civil rights protests of 1963 and the death of President John F. Kennedy, his successor, Lyndon Johnson, overcame a 57 day Southern filibuster to pass the 1964 Civil Rights Act, the most sweeping federal civil rights legislation since Reconstruction. This legislation outlawed segregation in public accommodations, gave the federal government new powers to fight school segregation and black disfranchisement, and created the Equal Employment Opportunity Commission (EEOC) to fight job discrimination based on race, religion, national origin, and sex.

Federal dollars were directed toward jobs programs in 1961, with the passage of the Manpower Development and Training Act. In 1964 Lyndon Johnson launched a one billion dollar poverty program, the Equal Opportunity Act, which included Project Head Start, the Job Corps, Volunteers in Service to America (VISTA), and an assortment of public works and training programs designed to bring about what Johnson called the Great Society. In

1965, major programs providing educational assistance and low income housing were approved, and in 1966 a "model cities" program was added. In 1969 the Department of Commerce opened an Office of Minority Business Enterprise (OMBE), and in 1973, the Comprehensive Employment and Training Act (CETA) was passed.

President Kennedy established a Commission on the Status of Women in 1961, whose report, released two years later, documented the occupational inequities that women suffered. Activists monitored the EEOC's handling of discrimination complaints by women and, dissatisfied with its commitment to enforcing the law, formed the National Organization for Women (NOW) in 1966. NOW lobbied Congress, filed lawsuits against discrimination, and sought the support of mainstream women in its fight for gender equality. The organization owed much of its success to the publication of Betty Friedan's *The Feminist Mystique*, which stimulated many women to rethink the traditional role of women and their personal expectations.

With a higher level of awareness, an emerging grassroots leadership, and federal dollars, minorities and women were enabled and empowered to tackle the problems of economic injustice. While the civil rights struggle was focused on the South, and national attention was paid to the plight of minorities and to a lesser extent women who suffered from economic inequities, Portlanders tended to overlook their own record of discrimination, until local incidents of protest and empowerment captured their attention.

### **A. African Americans in Portland: 1960-1980**

In the decade of the 1960s, Portland's African American population rose from 15,637 to 21,572. It seemed difficult for whites to get beyond stereotypes about African Americans, as Nathan Nickerson, member of the State Apprenticeship Council declared, "The inability of Caucasians to see the Negro as an individual and not one big glob [has hindered] better relations between the races."<sup>59</sup>

While activists focused attention on issues of urban blight, poverty, and school segregation, the first handful of African American professionals were moving beyond personal success into positions of power in mainstream Portland and in their own community. Aaron Brown, who graduated from Northwestern School of Law in 1959, became the first African American District Court judge for Multnomah County in 1969. Mercedes Deiz began practicing law in Portland in 1960 and later became a Circuit Court judge. James Brooks directed Project Outreach, a 1960s era program designed to prepare and guide minorities through apprenticeship programs. Alonzo Woods was appointed a supervisor in Portland's Department of Public Works in 1967, and Rev. Ellis Cason became Civil Rights Officer for the Federal Highway Administration.

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*Oregon Journal*, 6/30/1967.

Williams Avenue, which had been a commercial strip and business district for the African American community since the 1930s, became the center of business activity after the displacement of homes and businesses in south Albina. Here, among residences, were barbershops, beauty shops, restaurants, grocery stores, auto shops, record shops, a real estate office, the NAACP Federal Credit Union, and various other businesses, many of which remain thriving concerns to this day. Because of the resistance of banks to lend to African Americans and the lack of other financial resources, most of these businesses were small and provided limited employment opportunities.

In 1968, The Albina Corporation, a black-owned and operated manufacturing firm, began a two and a half year experiment in community training and employment of African Americans. Their mission was to stimulate the economic revival of the inner city, as well as to hire the "unemployable" and give them skills, training, and a share of any corporate profits. Unfortunately, the assembly plant relied too heavily on Defense Department contracts; when the Vietnam War ended business declined and they were unable to secure domestic contracts before their reserves were exhausted. Despite its short tenure, the company trained over 500 black males, who went on to secure employment elsewhere.

Segregated housing remained a central concern in the 1960s, and the most contentious civil rights debate in Portland was waged over attempts to integrate neighborhoods and schools. In the early 1960s, Portland's schools were as racially segregated as Alabama, due to segregated housing, the result of real estate practices, lack of affordable housing outside Albina, and limited economic opportunities.

Within these schools, "young blacks were being taught to fail."<sup>60</sup> One African American recalls being told that George Washington Carver was an exception, and that black students should not hope to excel in science, math, or business. A graduate of Jefferson High School in the late 1960s recalls that African Americans were not encouraged to take business courses. He vividly recalls his business teacher tearing up minority scholarship application forms in front of the class, saying she knew of no black students deserving of such an opportunity.

Black students experienced what one African American called "the subtle discouragements . . . that did not reward you or acknowledge what it was that you were doing. You are seeing that other people are rewarded in the classroom, and those who are rewarded are white students."<sup>61</sup> Anecdotal evidence suggests that African American high school students were actively discouraged from seeking a higher education, were not encouraged to take college prep level classes or informed about SAT examinations, and were told that they would not succeed in a four year college.

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60 *Op. cite.*, "Local Color."

61 Interview with African American graduate of Jefferson High School.

In the 1960s, the NAACP led the fight to force the school district to address the problems of racially segregated schools and protested the small numbers of black teachers. The school district eventually began to actively recruit African Americans to correct the longstanding racial imbalance in staff, particularly at the secondary level and in administrative positions. Integration of schools, however, was achieved at the expense of the black community. Although some families were relocated, most students were bused to schools outside their neighborhood, where they faced isolation, lack of cultural support, and to varying degrees distrust, hostility and ignorance on the part of students and teachers. The problems generated by these programs would necessitate new strategies introduced in later decades, including the creating of magnet schools to attract white students to inner city schools and the strengthening of neighborhood schools themselves.

Although the Oregon legislature had adopted the Fair Housing Law in 1957, spot resistance to neighborhood integration remained. In 1960, the partially completed Parkrose home of African American Rowan Wiley was deliberately torched. Mayor Terry Shrunck was quoted as being "shocked and embarrassed" over this incident, and the family rebuilt their home and moved in.

As access to housing opened outside Albina, many middle class black families integrated neighborhoods in Northeast Portland, and some eventually followed their white counterparts to the suburbs, pursuing integration and better schools, availing themselves of the rewards and privileges of success. Such a move signified the growing gulf between the affluent and the impoverished African American community and had a tremendous impact on Albina, draining away vital resources and talent, as well as a commitment to the improvement of the black community.

As it had in the 1950s, Portland's black community again faced economic dislocation in the name of urban renewal. Especially hard-hit was the Eliot neighborhood, which lost almost half of its residents, over 3,000 people, between 1960 and 1970. The cost of revitalizing the downtown core with its ring of inner city industrial sectors, including freeway and major street access, was disproportionately born by the African American community, which suffered displacement and destruction of businesses and homes.

In 1962 the Portland Development Commission (PDC) published a study of Central Albina, in which it noted that "urban renewal, largely clearance, appears to be the only solution to not only blight that presently exists in central Albina but also to avoid the spread of that blight to other surrounding areas."<sup>62</sup> Twin of the myth that African Americans devalue property is the perception that areas populated by people of color are by definition slum areas, and this report not only reflected the inability of governmental entities to see the many thriving homes and businesses in Albina, but also exposed a vested interest in making conditions look as bad as possible. The object was to secure land for development, and the

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Portland Development Commission, Central Albina Study, quoted in *Portland's Albina Community*, p. 111.

PDC, exploiting widely held stereotypes about African Americans, followed the path of least resistance.

Part of the PDC plan was the expansion of Emanuel Hospital, requiring massive clearances to build a 19-acre health campus. The lengthy planning process, which was bitterly opposed by many in the neighborhood, resulted in the clearance of 188 homes before federal budget cuts halted the hospital's expansion plans. Although funds were provided to homeowners and renters for relocation expenses, residents were angered that their homes and businesses had been destroyed for nothing.

Among the businesses demolished for the Emanuel hospital expansion were The Blessed Martin Day Nursery, a day care center dating from World War II, and one of the first day care centers in Portland to offer a sliding fee scale essential to the economic betterment of working mothers. Other businesses displaced included the offices of Dr. Webster Brown and Charlene's Tot and Teen Shop, which had been displaced from south Albina. Again, African Americans had to endure the hardships, disruptions of business, and loss of equity that these projects engendered.

Elsewhere in Albina, African Americans were more successful in halting demolition. Beginning in 1961, the Albina Neighborhood Improvement Project focused on rehabilitation in a 35 square block area north of Fremont. By the end of the program in 1972, almost 300 homes had been rehabilitated and Unthank Park was built. Spared from demolition were many businesses and important cultural and social resources, including the Williams Avenue YWCA, one of the oldest cultural centers in the community, built in 1921.

The Albina Arts Center, established in 1964 as a vital cultural resource was forced to close in 1977 when Model Cities funds ran out. Other community resources organized at this time were the Albina Youth Opportunity School, in 1967, and the Black Education Center and Talking Drum bookstore, opening in the early 1970s.

The first federally funded citizen participation program in Albina was the War on Poverty Program, which began in 1964, and for a time provided expanded services to African Americans. Included in the one stop service center were free legal services, family counseling and planned parenthood, Urban League Job Development and Training, vocational training, and housing and community services. Cuts in funding eroded some programs, while others were transferred elsewhere, but the Head Start program and the Low Income Family Emergency Center still survive.

Another 1960s era attempt to solve problems in the African American community was the Model Cities program, which was funded in Portland beginning in 1967. Citizen participation was a central element of this program, and Portland's leaders were required to listen to Albina residents.

"The product shocked the city bureaucrats, for it was the first official statement that expressed the residents' own perceptions of the problems of Northeast Portland

neighborhoods. Since the Model Cities was 50 percent black, the problem statement spoke directly about racial discrimination. It embarrassed political leaders who maintained that blacks in Portland faced no special problems because of race."<sup>63</sup>

Before the Model Cities program was abolished in 1974, the City of Portland received funding to make improvements in Model Cities neighborhoods. These included rehabilitating housing, planting trees, improving streets, and creating parks. In 1973 the City launched the Union Avenue Development Plan, which created a median strip down the center of Martin Luther King Boulevard in northeast Portland. While the median strip was designed to alleviate high accident rates, manage traffic, and provide left turn signals, it eliminated all on-street parking, which many Albina business people contend resulted in a stagnation of businesses along the main corridor.

Only two permanent structures in Northeast Portland survive from the Model Cities era. One is the King Neighborhood Facility, and the other is the Cascade Center of Portland Community College. Other small programs also survive, including career and business development programs, nutritional programs for children and services for senior citizens.

Although the program did not exist long enough to provide workable solutions for deeply entrenched problems, it was a grassroots organizing training ground for numerous members of the African American community. Most notably, Charles Jordan was appointed as the 4th director of the Model Cities program in Portland. His hiring is in itself a case study of white attitudes toward African Americans. When Charles Jordan met the city officials, they were surprised that he was black. They had assumed no African American would have a resume like his. Jordan also faced controversy from within the black community, as vocal activists wanted the job to go to a person of color who already lived in Portland. Jordan served for two years as executive director of Model Cities, before joining Mayor Goldschmidt's staff. In 1974 he was elected and became the first African American City Council commissioner, a position he served in for ten years.<sup>64</sup>

Despite the dollars that flowed into Albina, the City Club reported in 1968 that there was a lack of funds for job training. While 5,000 disadvantaged people, including 1,250 African Americans, could qualify for training, only a small proportion had actually been enrolled in appropriate programs. Again, only college-educated African Americans were able to find jobs in keeping with their abilities and education. The rest were left behind. As Charles Jordan later concluded, "The Model Cities brought together hundreds of people and threw a lot of money at them — 3.75 million dollars. They were not prepared to deal with those dollars. It was like the federal and city government were saying these are your crumbs and you do what you want to do with them."<sup>65</sup>

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<sup>63</sup> Portland Bureau of Planning, *The History of Portland's African American Community*, p. 129.

<sup>64</sup> *Ibid.*, p. 132.

<sup>65</sup> *Ibid.*, p. 132.



Portland's African American community developed strong institutions and has overcome serious obstacles to achieve a great deal of progress. Yet, economic justice remains elusive. In previous generations, African American families survived and educated their children because wage earners, both men and women, and many with college degrees, worked two or three low wage jobs. In the 1960s and 1970s, government programs were focused primarily on social issues rather than economic development. While a new generation of leaders were trained, little was done to alleviate the economic conditions that kept poor people dependent on entitlement programs. Unfair economic conditions continued to restrain the growth and development of the African American community.

Between 1980 and 1990, Portland's African American population grew by 25 percent, from 28,034 to 33,530. Over 60 percent of Portland's African American people live in North-Northeast Portland today, where they comprise 13.8 percent of the area's population.<sup>66</sup> The overall rate of unemployment in the North-Northeast area in 1990 was 10.4 percent, but among African American males the rate was 17.1 percent, and 11.4 percent among African American females.<sup>67</sup>

Among African American residents of North-Northeast Portland, unemployment and poverty continue to be pressing problems. Over half a century ago, Portland's African American newspaper warned of the dangers of segregation. "We all know what residential segregation means. It means poor housing, bad streets . . . separate schools and their attendant shortcomings."<sup>68</sup> Sixty-six years later, the legacy of housing segregation continues to systematically deprive African Americans of the basic training and education necessary to compete in a modern economic system. Despite lengthy battles waged by the NAACP and the Urban League, barriers to family wage jobs created by unions and employers still severely limit economic prosperity within Portland's African American community.

## **B. Indians in Portland: 1960-1980**

Between 1960 and 1970, Oregon's Indian population grew from 8,026 to 13,510, and the migration to urban areas continued. They moved to Portland to get a better education, to acquire a steady job, and to be part of a family. Some attended Portland State University, and became part of the student movement that opposed the Vietnam War and addressed issues of minority rights.

Influenced by a new generation of leaders who stressed a pan-Indian identity, such as Vine Deloria, author of *Custer Died For Your Sins: An Indian Manifesto* (1969), Indian

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<sup>66</sup> Population growth between 1980 and 1990 among Asians: 50 percent, Latinos: 70 percent, Indians: 40 percent. Statistics from City Club report, 1991.

<sup>67</sup> 1990 census figures from Margulis, Jay, *Opportunities and Strategies for Employment in the Construction Trades for North/Northeast Portland Residents*, pp. 39-40.

<sup>68</sup> *The Advocate*, July 12, 1930 quoted in Elizabeth McLagan, *A Peculiar Paradise*, p. 143.

Portlanders asserted their identities and spoke out about their heritage. A new generation of leaders addressed the serious problems Indians faced in adjusting to urban life. One of the first urban programs was a halfway house, established in the late 1960s on Quimby Street in Northwest Portland. A free clinic on Burnside street soon followed. A survey conducted in 1972 revealed that about one-third of Portland's Indians had achieved a degree of stability, held professional or technical jobs, and had been employed for more than two years. Twenty-three percent reported annual incomes between \$10,000 and \$15,000. Some of these successful Indians had a strong sense of their cultural identity, while others had adopted mainstream values.

On the other hand, two-thirds of Indian Portlanders suffered severe difficulties adapting to urban life. Their difficulties were summarized in a 1972 letter directed to City officials.

Ironically, the relocation and reservation termination policies which brought the first Americans to the urban environment have left them in much the same predicament that European immigrants faced coming into big cities in great numbers in the early part of the century: 'Immigrants' in their own land, urban Indians have faced difficulty in acquiring jobs, finding decent housing, obtaining health care, securing educational opportunities, gaining social benefits to which they are justly entitled, dealing with the complexities of a different life style, and coping with their isolation from the larger population.<sup>69</sup>

Scattered throughout the metropolitan area, urban Indians lacked visibility, and according to the letter, were the most neglected of the ethnic groups.

The Urban Indian Council (UIC) was formed in 1972 to address the difficulties of adjustment to urban life. Funded by federal poverty and manpower programs and the City of Portland, UIC provided a port of entry for Indians coming to Portland, particularly for the 75 percent with a reservation background, where poverty, poor health, and unemployment were common. Dropped into an alien environment, many were not taking advantage of such services as welfare and food stamps. Indians were suspicious of governmental programs, and would turn to other Indians for help. One key goal of the Urban Indian Council was to see its clients achieve stability in an urban setting without being forced to discard their cultural identity. This stability meant a job, being involved in the Indian community, and avoiding substance abuse.

Originally, the UIC was primarily a referral service, and provided limited direct services. Its essential programs included Outreach, Health, Legal Aid, and Employment. The Outreach program was necessitated by traditional Indian values, expressed in a 1972 UIC statement: "the communal, non-aggressive behavioral values of Indian life, combined with a baffling array of bureaucratic procedures, have kept Indian people from pressing for recognition and

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<sup>69</sup> Urban Indian Council files, City Archives.

full entitlement to the benefits of urban living."<sup>70</sup> Outreach workers accompanied clients to social service agencies and served as advocates, insuring that the people received the support to which they were entitled.

UIC's health program included first aid, immunizations, screening, a Well-Baby Clinic, and referral to other services. Many Indians came to Portland with poor health, common on reservations. Tuberculosis, malnutrition, hepatitis, poor vision, and poor teeth condition were all cited as serious health problems by the Grant-Morgan study of Indians in Portland. In addition, the incidence of alcohol abuse and the suicide rate were much higher among the reservation population than in the nation as a whole, and mental health counseling was an important part of the services offered by UIC. As a Portland activist related, "if you are taught to be ashamed of yourself on one level and taught to be proud of yourself on another level . . . no wonder there is so much neurosis in the native community . . . having to live in two worlds and continually adjust."<sup>71</sup>

Legal services provided assistance in obtaining legal aid required because of the unfamiliarity among Indians with the laws and courts of the mainstream society. The Burnside community in particular had suffered at the hands of the police for years. As one Indian leader reported, "back in the 1960s, a lot of the men from Burnside were getting beat up by the police. They'd take them to the Northwest Industrial area from Burnside. The police would beat them up and make them walk back downtown. When the police station was on Third and Oak, they'd stop the elevator between floors and whomp on you."<sup>72</sup>

In 1974, the Urban Indian Council reviewed City of Portland arrest records and discovered that Indians, .5 percent of the population, accounted for 2 percent of Class I arrests, major offenses which include homicide, aggravated assault and auto theft. Indians accounted for 8.6 percent of Class II arrests, which include fraud, vandalism and disorderly conduct. A breakdown of the high incidence of Class II arrests revealed a pattern of substance abuse related offenses and behavior. The report concluded, "rather than expressing their frustration by aggression against others, they tend to release it through self-destructive alcoholism."<sup>73</sup>

In 1972, the unemployment rate in Portland's workforce was 4.8 percent, but among Indians it was 23.5 percent. The high rate of unemployment and underemployment was reflected in household incomes. Over half of the population lived in families of two to five people, and another 27 percent of the households contained six to ten people. Forty-three percent of urban Indians reported household incomes of less than \$3,000, at a time when OEO poverty guidelines were \$2,600 for a family of two.

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70 *Ibid.*

71 Interview with Indian Portlander.

72 Interview with Indian Portlander.

73 Urban Indian Council Contract, 1974," p. 7. City Archives.

One measure of stability is home ownership, and by this assessment Indians were lagging behind. According to the 1970 census, only 24.5 percent of Indian households were purchasing their homes, compared to 47.6 percent of African American heads of households. The Small Business Administration could find only five Indian-owned businesses in Portland in 1972.

The Urban Indian Council addressed the problems of unemployment and underemployment with a job advocacy program. A former UIC job counselor recalled the difficulties of opening the doors for Indian workers: "it was hard for us to get jobs, no matter how much experience or educational background we had."<sup>74</sup> Often, people were hired only long enough to meet affirmative action requirements and then let go. A period of sobriety and being in a program was a prerequisite for some jobs, and many Indians were excluded on that basis.

Originally, the UIC made referrals to mainstream alcohol treatment programs, but in 1974, the Native American Rehabilitation Association (NARA) was founded, to provide rehabilitation in a culturally appropriate setting. Treatment included alcohol education, group and individual counseling, cultural activities, and nutritious meals. After the initial period of treatment, residents were able to move into an independent living house provided they enrolled in school or training program or found employment.

Two years later, the UIC, by then a direct services agency, added to its program GED and adult basic education classes, corrections counseling and services, and a hot lunch program for elders. Like other grassroots programs, the Urban Indian Council faced intense scrutiny from the City of Portland and other funding sources. Surveillance by the police and the FBI was common. Many of the leaders were activists rather than administrators, and burnout was a detriment to program continuity. By 1980, many of the UIC programs were in danger of losing their funding as the federal commitment to waging the war on poverty began to fade.

By the end of the 1970s, Portland's Indian community had made real progress. NARA continued to graduate recovering alcoholics. A new organization, the Native American Business Association was formed in 1979, signaling the presence of economic enterprises in the community. But police harassment was still a concern. Not for the first time, an Indian fell into the river and drowned under suspicious circumstances in 1980. The same year, unemployment in Portland among Indians was still triple that of whites.

Statewide, the Indian population doubled during the decade of the 1970s. In 1972 McQuinn Strip, a 78,611 acre section of the reservation that had been taken away due to a faulty survey, was finally restored to the Confederated Tribes of Warm Springs after a 31 year delay. By 1987 the tribe had been able to secure tribal or individual Indian ownership of all but one percent of the land inside Warm Springs reservation.

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Interview with Indian UIC Job Counselor.

By 1980, the federal commitment to social change had all but disappeared. Indians, as well as other groups, had to adapt their programs to meet new criteria, sometimes changed at the last minute, often ill-suited to the needs of the clientele. One small program of the Urban Indian Council, which provided meals for seniors, continued into the 1980s, but it proved difficult to maintain this program and still serve the elder population. Federal funds were limited to those age sixty and over, while for Indians the crucial decade for survival was the fifties, and life expectancy was significantly less than that of the overall population. Other cultural issues, such as traditional habits of hospitality which were more inclusive than program guidelines, and the decision-making process, which was more democratic than the imposed board of directors structure, created frustration in dealing with the mainstream bureaucracy. In-fighting and politics sometimes resulted in the loss of programs.

Portland's Indian population has seen successes and failures on its path toward a stable urban life while maintaining core traditional values. The Native American Rehabilitation Association is the sole survivor of the programs developed by the Urban Indian Council, and currently operates a health clinic and both residential and outpatient alcohol treatment programs. According to a long-time NARA activist and former employee, there are more Indians in recovery than those not receiving treatment for chemical dependency, and the former group "are the leaders of the community."<sup>75</sup> The treatment program continues to emphasize healing the family, a practice not followed elsewhere. Indians have responded to a program controlled by Indians who are recovering from substance abuse, to a program which deals with issues specific to the Indian experience, a program that addresses the fact that years of federally funded attempts to erase native cultures have created severe dysfunctions. Despite its success, Congress is currently considering cutting funds to the Native American Rehabilitation Association.

In 1990, Multnomah County's Indian population was 6,734, a diverse group representing tribes from Oregon and the Northwest, as well as Eskimo, Aleut, Sioux, Cherokee, and others. While 12 percent of the general population of the state live below the poverty level, the rate is doubled for urban Indians. In addition, unemployment among Indians in Portland in 1990 was the highest of any ethnic group: 13.5 percent, compared to an overall rate of 6.2 percent.<sup>76</sup>

Indians have many serious and ongoing issues with the broader society and governmental institutions. These include laws that blatantly disregard Indian interests, such as the disturbing of ancient burial grounds, while money is spent and great pains are taken not to disturb the burial grounds or historical sites valued by the mainstream society. Even today, Indian Portlanders feel the sting of prejudice, and they identify the source of that prejudice in the historical taking of their lands.

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<sup>75</sup> Interview with Indian.

<sup>76</sup> *Op. cite.*, pp. 39-40.

"Across this city there is a real big deep mistrust for brown people. You walk in the wrong neighborhood and they're going to call the police on you, and the police usually come and start hassling people and it's that kind of paranoia that exists behind taking something that doesn't belong to you."<sup>77</sup>

While all citizens of Portland now share the land base once utilized by Indians, many Indians are still fighting for bare economic survival.

### ***C. Latinos in Oregon: 1960-1980***

In the 1960s, Mexican Americans, or Chicanos as they preferred to be called, also challenged the dominance of white power. They were inspired by Cesar Chavez, born in a migrant labor camp, who organized a strike of grape pickers in California in 1965, and led a nationwide boycott of grapes to protest the low wages and abysmal living conditions of farm workers.

In Oregon, the Migrant Ministry changed its name to Oregon Friends of Migrants in 1964, and organized a coalition of progressive clergy and legislators, as well as migrant labor employers and employees to apply for funds to start a program for migrant workers in the Willamette Valley. This organization, known as Valley Migrant League (VML), was the first organization that empowered Chicanos to create fundamental social change in Oregon.

One of the first tasks of the VML was to contact migrant workers in labor camps to inform them of their services. Some growers refused to allow VML workers, VISTA volunteers, or even health workers to enter their camps, and in a few cases, growers were taken to court or threatened with legal action.

One of the first programs of VML was day care centers, so the young children of migrant workers would not have to go into the fields with their parents. In 1965 these day care centers, employing 26 ex-migrant women and 19 migrant women, were set up in ten locations around the upper Willamette Valley and had a combined attendance of 340 children. Summer schools, many of them staffed by VISTA volunteers, were set up to provide education for children and adults. Seven Opportunity Centers provided referral services and job training and placement with an emphasis on non-agricultural employment. One individual, who went through the VML winter school and earned his GED certificate, was hired at Tektronics. Another ex-migrant worker, an African American, became a cement worker. The VML made referrals to other federal programs as well as to job search classes at Portland Community College.

In the first two years of the program, the Valley Migrant League made 12,127 referrals to medical facilities, immigration services, welfare, legal aid, and housing. Over 1400 adults were enrolled in classes ranging from English, basic education, GED preparation, job

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Interview with Indian.

development, and welding skills. Five hundred seventy four adults were referred into training programs, 75 students entered the Upward Bound college program, 119 people received their high school equivalency diploma, 252 people were placed in full-time jobs, and thousands of children were enrolled in day care and summer school programs.

The VML also helped migrant workers who became involved in the legal system. Latino migrant workers were frequently stopped for no reason, as one former VML director recalled. "They figured if you were brown you didn't have a license, maybe you were drinking."<sup>78</sup> It was difficult for Spanish speakers to defend themselves in a legal system where the only language spoken was English. Many believed if they pleaded guilty they would be released, not understanding that the charges would become part of their permanent record.

Frank Martinez, a former priest from New Mexico, became the first Mexican American to serve as executive director of VML in 1969. The following year, the bylaws were amended and migrants took full control of the board of directors, and were hired in positions of leadership within the organization.

Because of its federal funding, the VML had to distance itself from politics, and could not file complaints about conditions in labor camps or openly support farm-worker union activities. Like all grassroots organizations of the time, the VML and its employees were intensely scrutinized by the government, the media, the FBI, and the police. Not understanding the VML's limitations, some Chicanos criticized the organization for its lack of political involvement. Some employees left the organization to become more involved in direct political action.

Despite these growing pains, the VML continued to expand its services to Oregon farm workers. An economic development department was added, providing assistance for individuals wishing to apply to the Small Business Administration for loans and technical expertise in the areas of record-keeping and money management. In April, 1969, the Aguila Credit Union was organized to provide a means whereby migrants could save money and borrow at a low rate of interest. The Board of Directors and Credit Committee were composed of Chicanos. At the end of the year, the Credit Union had loaned out \$1,646.65 to its members.

A program of self-help housing was added, which served the dual purpose of training Chicanos in the building trades and building housing for low income workers. The first five houses, built in the Independence area, were completed by December of 1970. With the exception of plumbing, the construction work was completed by the families themselves, with the help and supervision of experienced construction workers from the Valley Migrant League.

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Interview with Latino PPS Counselor.

VML made it possible for some migrant workers to make the transition from low paying field work to permanent jobs, home ownership, and economic stability. Some of the children of the first generation of migrant workers to settle permanently in Oregon were able to graduate from high school, go to college, and pursue professional careers. The VML provided leadership opportunities and a sense of empowerment in the Latino community that long outlasted the programs themselves.

A regional self-help program initiated by a coalition of Indians and Latinos, the Chicano Indian Study Center of Oregon (CISCO), operated out of surplus government property at Camp Adair in the mid-Willamette Valley from July, 1973 until March, 1977. The program was designed specifically to help low-income high school drop-outs who were heads of households, particularly Chicanos and Indians, whose drop-out rates were very high. CISCO provided housing, day care, health care, high school equivalency training, college, and vocational training, as well as a substance abuse treatment program.

Often, CISCO would take people that other agencies were unable to help, as one of the co-directors recalled.

People would show up at our front door. They would have sometimes nothing more than a brown paper bag with their worldly belongings in it. Or a family would arrive in a car that barely ran, and where these people came from sometimes was under the bridges, from downtown Portland, or from Burnside, or they would be out in the migrant camps, living in their cars. Many times we would have a family show up and we would move from there. We served as many poor whites as we did anyone else. We moved beyond the racial issues.<sup>79</sup>

Included in the vocational program was Jacalita Construction, which provided on-the-job training for carpentry, masonry, drywall, and related crafts. CISCO set up a job bank and visited construction sites around the state, identifying jobs for minority workers and providing them with pre-apprenticeship training. They also negotiated on behalf of minority subcontractors, insuring that they receive a share of federal contracts, and were able to open doors for some minority people to become part of the first generation of construction workers and minority owned businesses. Unfortunately, CISCO, like the Valley Migrant League, did not survive the shrinkage in federal funding that characterized the late 1970s and 1980s.

In 1973, an independent four year college for Chicanos and other minorities was founded in Mt. Angel. Four years later, Colegio Cesar Chavez granted degrees to twenty-two graduates, exceeding the combined number of Latino graduates from the University of Oregon and Oregon State University. Unfortunately, the college was saddled with an enormous debt of nearly ten million dollars owed to the Department of Housing and Urban Development. This

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Interview with Indian Co-Director of CISCO.



debt, combined with internal problems and critical errors, resulted in the closure of the college in 1983.

Portland's Latinos also organized in the 1970s around issues of particular concern to the urban population. One organization, Aguila, which was funded from 1976 to 1984, sponsored cultural activities, a substance abuse treatment program, and provided counseling to Latinos involved in the criminal justice system. Other organizations, such as COSPO and Image de Oregon participated in the grassroots effort to improve conditions and strengthen cultural awareness among Portland's Latino population.

In the last twenty years, Portland's permanent Latino population has more than doubled, from 6,442 in 1970 to 13,874 in 1990. Portland's unemployment rate among Latinos in 1990 was 8.6 percent, more than white unemployment (5.5 percent), but less than unemployment among African Americans (12.9 percent) or Indians (13.5 percent). The high school dropout rate among Latinos remains a concern. In 1992 the dropout rate for Latinos was 20.7 percent, compared to 6 percent Asian, 8.2 percent white, 16.7 percent African American and 16.7 percent Indian.<sup>80</sup>

The grassroots organizations begun in the 1960s and 1970s suffered from the cutbacks in funding that characterized the 1980s, but the lessons learned in the successes and failures of these programs are ongoing. As a Portland Public Schools advocate for Latino youth reflects:

Today, I'm trying to pass on some of the lessons a lot of us learned during our time at Colegio Cesar Chavez, so that the young people of today don't have to go through all the hassles we did. We need to prepare them so they are competent. Otherwise, they will fail.<sup>81</sup>

Much of Oregon's Latino population came to the state as migrant farm workers, an essential part of the rural economy of the state. The plight of farm workers, which earned national attention under the leadership of California's Cesar Chavez and his courageous struggle to unionize grape workers in Delano, became the heart and soul of the Chicano movement. Many urban Chicanos went to Delano to support the strike and came home with a new sense of what it meant to be Chicano. In Oregon as well, the Chicano movement first centered on the struggle of farm workers to improve their economic conditions. Later, as more Latinos moved to urban areas and faced a new set of problems, new organizations were formed. Like other minority peoples, the Chicano community faced cutbacks in federal dollars and the reduction of important programs. Today, Portland's Latino community is a diverse community with a growing population, and a high drop-out rate, unemployment, and substance abuse continue to be a concern.

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<sup>80</sup> *Op. cite.*, Margulis, pp. 39-40.

<sup>81</sup> Interview with Latino PPS Counselor.

#### **D. Japanese in Portland 1960-1980**

In 1960, trade with Japan was normalized, and in 1962 the Japanese Garden in Portland's Washington Park was open to the public. The completion of this garden, which required cooperation and teamwork from the City of Portland and the entire community, represented for many the flowering of the spirit of unity and cooperation. In 1969 a Japanese student from Wilson High School, Mary Ann Nakadate, became a Rose Festival princess.

In 1970, the Japanese American community began to consider the controversial idea of working for redress. Six years later, Michi Weglyn's book, *Years of Infamy*, was published. In this book Weglyn presented evidence that Congress and the Supreme Court may have been deliberately misled into believing that the evacuation was justified. The idea of redress was controversial within and beyond the Japanese community. While some Japanese wondered why the past was being resurrected, others believed that redress would simply never occur.

Nevertheless, the idea persisted. Some Japanese groups united to file suit against the government for personal injuries, while others sought a legislative solution. During the Carter presidency, Congress created a special committee to study the facts surrounding Executive Order 9066 and to recommend appropriate remedies. Although some Japanese Americans were impatient with a process that sought to study what was already known, the Commission's report was instrumental in convincing the public and Congress that monetary redress was the only ethical solution. In 1988, Ronald Reagan signed the Civil Liberties Act into law and apologized to the Japanese for their internment. One-third of the internees, the older generation who had suffered the most, died before redress payments were authorized. To date, a total of 1.5 billion dollars has been paid. This public apology and the monetary redress that followed erased the stigma of incarceration and was a great victory for the Japanese community.

Portland's Japanese community has largely recovered economically from the hardships suffered during World War II. Today, Japanese- and Japanese American-owned businesses are common throughout the city and the community is thriving. But a garden of stones along the seawall in Northwest Portland bears witness to a different time, when people were deprived of their constitutional rights based on their ethnic identity. Recalling those times, Minoru Yasui declared, "Let us not forget. Let us remember forever."<sup>82</sup>

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Quoted in Deena K. Nakata, *The Gift*, p. 156.

## **V. WOMEN AND MINORITIES IN CONSTRUCTION: THE POSTWAR HISTORY**

World War II provided an opportunity for women and minorities to enter the industrial workplace for the first time. The post war years saw a boom in the construction industry, fueled by a general housing shortage and later by public works programs, and ten years of depression and four years of war had resulted in a shortage of skilled men in the construction trades.<sup>83</sup> Despite the contribution women and minorities had made in the war, old lines of gender and race were redrawn, and they were not able to transfer their wartime skills into peacetime jobs in the construction industry.

Entrance to the trade unions was tightly controlled by insiders, and traditionally apprentices were recruited from the families, friends and associates of union members, who passed on key information about qualifications, apprenticeship openings, and the necessary skills for success. Winning a slot as an apprentice was dependent upon securing employment, and again, insider information and referrals kept the doors closed to outsiders. Oregon was the fifth most unionized state in 1960,<sup>84</sup> but despite the aging of journeymen workers and an acute shortage in some crafts, especially the carpenter's union, women and minorities had not achieved union membership to any significant extent.

In the decade of the 1960s, minorities and women began challenging union policies and practices in order to attain a critical mass of union membership that would ensure them a permanent place in the construction industry as apprentices, journey workers, and owners of construction firms. The strategies used to challenge the unions were varied. A great deal of effort and time was spent in the pre-apprenticeship stage, training and guiding applicants through the labyrinthine process of obtaining an apprenticeship, and then following them until they passed the journeyman exam. It was also necessary for apprentices to secure employment, often a significant barrier for minorities and women.

Minority organizations worked with the city to develop affirmative action plans, a lengthy process rife with political maneuvering, delays and setbacks, frustration and compromise. At times, direct action was taken, as residents of Albina, having seen the bulldozer and wrecking ball tear down their homes and businesses, saw also the lack of minority workers employed on these same construction projects. Class-action suits were filed seeking to ensure minority and female representation on federal construction projects, and suits were filed against unions that continued to discriminate in violation of the law. While these suits were sometimes successful, the victory often came only after protracted litigation and produced limited results in terms of permanent changes in union practices.

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<sup>83</sup> Progress Report, 1945. Postwar Readjustment and Development Commission.

<sup>84</sup> Wollner, Craig. *The City Builders*, p. 98.

Both the NAACP and the Urban League sought to break down barriers to minorities and women in the unions and in the building trades, but the tactics they used were different. While the NAACP sought to keep the issue before the public by issuing statements to the media and threatening strikes and boycotts, the Urban League worked behind the scenes to place individuals in jobs and to provide pre-apprentice training programs that would enable qualified minority and female applicants to enter apprenticeship programs. Other organizations, such as the Valley Migrant League, the Urban Indian Council, and the Chicano Indian Study Center of Oregon provided pre-apprenticeship training and applied pressure on the unions and employers to open the doors to the first generation of women and minority construction workers.

One of the first battles was to break the longstanding refusal of Local 8 of the International Longshoremen's and Warehousemen's Union (ILWU) to admit African Americans to full membership. Some African Americans had entered the union in Seattle and San Francisco as early as 1919, and the national ILWU opened its ranks to African Americans after the Maritime Strike of 1934. In the 1930s, under the leadership of Harry Bridges, the national ILWU became one of the most racially progressive unions in the nation. Despite this record, Local 8 actively resisted integration, and had no registered black longshoremen in 1962, when the Urban League and the NAACP began the fight.

The three-tiered system at the longshoremen's union, which had no apprenticeship program, recognized seniority and work experience. A Class A card, given to someone who was fully registered in the union, allowed a worker first choice of jobs. A Class B card was a probationary standing, and these individuals were next in line for jobs. Class C cards allowed someone to work as casual labor, the most undesirable and lowest paying dock jobs.

In 1963, the Urban League was able to secure the placement of eleven African Americans as casual laborers holding Class C cards. But this victory, which was secured after days and weeks of appearing at the hiring hall, only allowed African Americans to work after all longshoremen with Class A or Class B cards had been hired. The NAACP pressured the national ILWU to force Local 8 to admit African Americans into its registered ranks, threatened a local dock pickét, and called off the action at the last minute when the ILWU sent a telegram stating that Local 8 would process the registration requests of 300 applicants.

In 1964, Nathan Nickerson announced that the Longshoremen and Warehousemen's Union was finally integrated with the registration of 46 African Americans in a group of 300 new longshoremen. This victory was overshadowed by the resistance of many unions to admit African Americans to membership and even the Longshoremen's Union capped its African American membership at the 1964 level. As Nickerson reported in 1967, the South offered more to the African American construction worker than did Oregon.<sup>85</sup>

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*Oregon Journal*, June 30, 1967, p. 3.

The 1965 session of the state legislature passed an apprenticeship reform bill, which would have eliminated discrimination against minorities in apprenticeship training. The bill was opposed by the craft unions, and Governor Mark Hatfield vetoed it.<sup>86</sup> Instead, the Apprenticeship Council was expanded to include public representation, and Nathan Nickerson, director of the Urban League's on-the-job training program, was appointed to the council.<sup>87</sup>

In 1968, when the City Club issued its report on the status of race relations in Portland, there were only 130 African American union members in eight locals comprising nearly 11,000 members. Other unions were still closed to African Americans. As the study noted, "the weapons of union discrimination are subtle and insidious."<sup>88</sup> There was a critical need to find employment, particularly for minority males. In 1966 a Department of Employment study revealed that for males age 24-35, non-white unemployment was 16.6 percent, versus 6.8 percent for whites. In 1968 the statistics were particularly alarming. The unemployment rate among non-white males was 8.2 percent, versus 3.7 percent among white males. In 1960, only Benson High School offered a pre-apprenticeship training program, but at that time most African Americans attended Roosevelt or Jefferson High School.<sup>89</sup>

Six years later, the Urban League was funded by the Department of Labor to offer a pre-apprenticeship program, and it continued to receive funding for apprenticeship training and outreach until the early 1980s. The Urban League actively recruited minorities and women into the program, working with the community and the schools. For several years they took students and vocational counselors on a tour of construction sites, as a former staff member recalled.

We gave the young people a first hand view of what it was all about, that it's not just hard hat and boot and dirt and grit, but there are some talents and skills that you must have to be able to do the trade or craft. It was a great learning experience for the counselors.<sup>90</sup>

Once applicants had been accepted into the Urban League's program, they received academic training, guidance and support during the application process, and continued support throughout their apprenticeship. If individuals needed tools and equipment or help with transportation, the Urban League had funds to assist them. If they experienced difficulties on the job, the Urban League was available to troubleshoot any problems.

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86 *Oregonian*, December 2, 1966.

87 *Ibid.*, March 28, 1967.

88 City Club of Portland, *Problems of Racial Justice in Portland*, p. 12.

89 Interview with African American, graduate of Jefferson High School.

90 Interview with former Urban League Job Counselor.

In December 1969, The Urban League reported that it had placed 34 young people in ten apprenticeship programs, an increase of nearly \$200,000 in annual income for minority young people in the City of Portland.<sup>91</sup> By the summer of 1973, a total of 70 young people of 340 applicants had been placed as apprentices in the construction trades.

One of the first African Americans to become a journeyman electrician, Bonnie Lewis, related his experience as an apprentice. Lewis had attended the University of Oregon for two years, majoring in business. While he was an apprentice, his first employer tried to discourage him from continuing, and kept him at unskilled labor work for two years instead of six months, which was the usual requirement. This employer submitted adverse reports to the apprenticeship board, and Lewis had to enlist the aid of his foreman to challenge the reports. Fortunately, he was able to switch employers for the rest of his apprenticeship, and worked for George Christiansen, an African American electrical contractor. Working with a minority contractor was crucial for Lewis, who stated, "The job is motivating in that Christiansen has made it and he is black."<sup>92</sup>

One federal program that attempted to train minorities in the construction trades was the Job Corps, which had pre-apprenticeship programs in several locations in Oregon. One, near Estacada, was a program sponsored by the United Brotherhood of Carpenters. This program, perhaps because of its rural setting, was not successful in attracting minority youths from Portland, and a three month recruitment campaign produced only one African American apprentice.<sup>93</sup>

Some Indians entered apprenticeship programs through efforts made by job counselors at the Urban Indian Council, but many dropped out, often because "they didn't get enough encouragement to follow through."<sup>94</sup> The Chicano Indian Study Center of Oregon also brought some low income, largely minority workers into the construction industry through its regional program at Camp Adair.

In 1965 and 1966 the Valley Migrant League sponsored welding classes, and some of its graduates were able to move into apprentice welding programs. A cooperative venture with the Salem Technical School resulted in an intensive three week program to train industrial welders. Some of the participants were on welfare, and those who were not received a stipend from VML during their training. In 1967, VML was directly involved in trying to open the doors to trade union apprentice programs by providing pre-apprentice training.

One of the difficulties encountered by pre-apprentice training programs was that many of the trades required a GED score of at least 255, the same required for entrance to state colleges.

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91 Urban League Report, Stella Maris Files, OHS Library.

92 *Oregonian*, June 17, 1973, p. 12.

93 *Op. cite.*, Wollner, p. 112.

94 *Ibid.*

This standard constituted a significant barrier to many minorities and women who might otherwise be highly qualified as skilled workers, and tended to limit opportunities to those who had achieved some academic success in high school and college. Considering the poor quality of the public schools in the African American community, and the frank and open hostility toward minorities expressed by some Portland teachers, it is no surprise that the pool of available and qualified minority candidates for apprenticeship programs remained small. As Nathan Nickerson stated in 1967, "Portland employers are more stringent regarding qualifications than companies in the South, where construction work is considered a low-class job."<sup>95</sup> Such standards were eventually challenged and lowered, but this did not occur until the decade of the 1990s.<sup>96</sup>

While grassroots organizations worked hard to refer skilled individuals to apprenticeship positions, they also had to lobby employers in order to secure employment for their apprentices. As E. Shelton Hill stated in 1960, "There are lots of steps where the apprenticeship opportunity could be denied, but the most important is with the employer."<sup>97</sup> The first female steamfitter was able to enter the apprenticeship program because the Portland Public Schools had specifically requested a female on its construction site.<sup>98</sup>

Some of the work of persuading employers and government entities to hire minority workers was done behind the scenes by groups such as the Urban League, who in general favored negotiation rather than confrontation. Other groups, such as the NAACP, and United Minority Workers, as well as representatives from the Urban Indian Council and other minority coalitions, participated in public actions in order to dramatize the lack of minority representation on construction sites and to urge change.

Both activists and negotiators were involved in working with the City of Portland and the U.S. Department of Labor to prepare a plan designed to increase minority representation on publicly funded construction projects. The so-called "Home Town Plan" began in July 1970 when James Warren of the Labor Department's Office of Federal Contract Compliance in Seattle visited Portland to meet with representatives from labor management, the city, and minority groups. The Minority Coalition, composed of 19 minority organizations in the tri-county area, lobbied for a five year goal that would insure that the percentage of minorities in each craft signing the agreement would be at least as great as the percentage of employable minorities in the tri-county area.

After more than a year of negotiations, an agreement was reached whereby each craft would voluntarily agree to have four percent minority workers after five years, in addition to the immediate placement of 60 minority workers, who had partial or full journeymen level skills.

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<sup>95</sup> *Oregon Journal*, June 30, 1967, p. 3.

<sup>96</sup> Information supplied by administrator, Bureau of Labor.

<sup>97</sup> NAACP Labor Committee Report, Stella Maris Files (OHS Ms. Dept.)

<sup>98</sup> Interview with female steamfitter.

While some minority representatives felt this was an acceptable plan, others refused to sign. John Spence, representing the Urban Indian Council, said the plan was weak because it prohibited work stoppages. Other groups, such as the NAACP, objected to the numbers of minority representatives allowed on the committee that would administer the plan. Another coalition organization, the United Minority Workers (UMW), later charged that all minorities on a construction site could be employed as common laborers and still meet compliance rules.<sup>99</sup>

Although the plan was subsequently revised to strengthen minority representation and received final approval in March of 1972, in November of 1973, representatives from the Urban League and the Columbia-Pacific Building Trades Council stated that any gains that had been made were due to their efforts, and not to the Home Town Plan, which had never been funded.<sup>100</sup>

In 1973, the United Minority Workers temporarily shut down construction of the Piedmont Plaza housing project, charging that minorities were underrepresented on the site. Of 19 workers, only five were African Americans. Officials from Housing and Urban Development stated that there were no specific quotas for compliance required from the general contractor, and that it was only expected that each firm make "an honest effort" to achieve its goal.<sup>101</sup> The following year, United Minority Workers filed a class-action suit against the Department of Labor for failure to implement the Home Town Plan. The action sought to replace the Home Town Plan with a court-prescribed procedure that would insure minority representation of 6.5 percent on construction sites by 1976.

Meanwhile, the City of Portland passed a Contract Compliance Ordinance in 1974, which required every firm doing business with the city to be certified as an equal-opportunity employer. A year later, a manager was hired to enforce the ordinance. Using local workforce data, in 1975 43 percent of each firm's employees were to be women, and 8.3 percent minorities.

While the City of Portland had limited success in insuring that minorities and women would be employed on construction sites in the 1970s, some construction firms did widen employment opportunities. Paul B. Emerick, Portland general contractor, was praised for his hiring of minority workers in 1970, although he admitted that he would not have done it without pressure from the federal government. Among his workforce of 265 at a construction site in Klickitat, Washington, there were 27 minority workers: twelve laborers, two cement apprentices, four cement masons, one carpenter's apprentice, seven carpenters, and one office worker.

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<sup>99</sup> *Oregonian*, December 5, 1975, p. A 22.

<sup>100</sup> *Oregonian*, November 6, 1973, p. 20.

<sup>101</sup> *Oregon Journal*, June 16, 1973, p. 2.



One minority employee of Emerick Construction related the difficulties of the job: "True equal employment [will] not be accomplished until those in the lower ranks of construction [are] able to drop prejudicial attitudes minority group members find demeaning."<sup>102</sup> Another minority worker, who had worked for many years as a general laborer, pointed out the temporary nature of his employment. "When this job is finished, I'll just go on to another one."<sup>103</sup>

Other federally aided work projects, such as federal highway funds, were supposed to meet minority recruitment goals, but contractors were free to hire whites "if no minorities can be found." Often, this resulted in contractors not meeting minority hiring goals. In 1973 the State Highway Division reported that of the most recent trainee program of 69 workers, only 13 were minority recruits. The same year minority business Nero & Associates recruited 29 minorities for jobs with Associated General Contractors. Of the 29, however, only one was able to find a permanent job. Tom Nelson, management consultant to Nero & Associates, described what happened to the others: "Ten of the recruits went to jobs and worked anywhere from one day to five days. Some were hired at the end of the season and when the work ended they were out of jobs. Others were assigned to fill-in jobs."<sup>104</sup> The unions, Tom Nelson charged, had made only a half-hearted effort to comply with the program. This program, which resulted in only one permanent job, cost the federal government \$13,000.

While the Department of Labor required union apprenticeship programs to establish affirmative action plans, no such plan was required for the rank and file of union membership. Only a few unions had more than a token membership of minority workers, and they were concentrated at the bottom of the wage scale. These were the laborers' locals, Local 320 and Local 296. In the early 1970s, Local 320 had a 12 percent minority membership, and Local 296 was 20 percent African American.

Anecdotal evidence suggests that even Local 296 had a hierarchy that discriminated against minorities and women in the construction trades, and kept them in the shipyards, in the dirtiest, most dangerous, and lowest paying jobs. Local 296 controlled laboring jobs both in the shipyards and in building construction. Like the Longshoreman's Union, there was no apprenticeship program, but instead a hierarchy of cards that distributed jobs by seniority. The lowest list, which was composed of non-members, was called the "out of work" list, yet applicants had to pay a monthly fee to remain on it. A person with insider connections was able to get laboring jobs in construction even if they were on the "out of work" list, but for women and minorities without connections, it was nearly impossible to leave the shipyards. While this local might report a relatively high percentage of minority membership, a disproportionate number of them remained in the lowest paying job categories.

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<sup>102</sup> *Oregonian*, November 22, 1970.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Oregonian*, June 17, 1973.

Shipyard work in general, as opposed to construction work, was difficult and dangerous. Workers were exposed to chemicals, including asbestos, and often worked with inadequate safety equipment. For example, a ship cleaner would be required to climb 100 to 150 foot walls without a safety harness or belt, cleaning a 10 inch wide shelf which was also the only means of support.

Local 701, the International Union of Operating Engineers, was one of the most obstinate unions in its refusal to admit minorities or secure work for its small minority membership. Citing poor economic conditions in 1972, Russel Joy, business manager of Local 701 explained: "We have a surplus of skilled laborers. If we can't find work for them, there's no point in trying to bring new people into the market, no matter what their race."<sup>105</sup>

In 1974, United Minority Workers filed a class action suit against Local 701, charging that the union practiced discrimination in admitting and placing minority workers. UMW picketed construction sites claiming that minority non-union heavy equipment operators had been forced off the job by Local 701, after contractors hired them to meet affirmative action requirements. In February of 1975, the U.S. attorney filed suit against Local 701 for the same practices, citing the union's interference in two public works projects, one in Warrenton, Oregon, and the other in Vancouver, Washington.<sup>106</sup>

In June, 1976, the Equal Employment Opportunity Commission filed suit against Local 701 and Associated General Contractors, again charging that the union had excluded minority workers from its ranks, failed to provide job referrals for minority members, causing or attempting to cause contractors to discriminate against minority applicants, and retaliating against minorities that opposed their practices. The EEOC asked for an injunction against discriminatory practices, revision of the collective bargaining agreement and back pay with interest to those who had suffered financial harm from the union's unfair practices.<sup>107</sup>

Federal Judge Gordon Thompson ruled on the charges brought against Local 701 the following year. The judge rejected the government's request that Local 701 supply minority workers if they were specifically requested by the contractor. That, he said, would be a "blatant giving of preferential treatment to minorities in the union over nonminorities." The judge also ruled against the government's allegation of discriminatory practices, stating that while the local had engaged in specific incidents of discrimination, there was no "present or past overall pattern or practice of discrimination."<sup>108</sup>

The suit against Local 701 was settled in April of 1978, when a U.S. District Court decreed that Local 701 would offer training to "experienced apprentices" who were African

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<sup>105</sup> *Oregonian*, March 19, 1972.

<sup>106</sup> *Oregon Journal*, May 23, 1974, p. 4 and *Oregonian*, February 14, 1975, p. A 18.

<sup>107</sup> *Oregonian*, June 25, 1976 p.C4.

<sup>108</sup> *Oregonian*, February 1, 1977 p. C7.

American or Spanish-surnamed and had registered to work with Local 701. In addition, subsistence pay was to be given to these workers during and after their period of training. It is significant that approximately 15 years after this settlement was achieved, Local 701 faced another round of litigation citing race and gender discrimination. This suit was recently settled for a substantial sum of money, and Local 701 agreed to change the referral process for apprentices. One of the witnesses involved with this case was originally hired in the early 1980s, as a direct result of the consent decree, and remained an apprentice for 14 years, never achieving journey-level status.

Grassroots organizations in the 1960s and 1970s provided employment skills and created low-income housing in projects sponsored by CISCO and the Valley Migrant League. In the 1990s, Low Income Housing for Indians of Portland Oregon (LIHNAPO), under the direction of Ernest Woodson, was able to secure funding and construct CELOCKS, a triplex in North Portland for Indians, using a general contractor and subcontractors from the Indian community. Currently, LIHNAPO is involved in constructing a seven plex housing unit, again, using Indian construction workers and contractors.

With the level of support provided by the Urban League, the Urban Indian Council, the Chicano Indian Study Center of Oregon, and the Valley Migrant League, as well as activism, strikes, application of political pressure on government entities and employers, and the creation of the first minority- and woman-owned businesses, the first generation of minority and female workers were able to enter the construction industry as journey workers.

Nevertheless, their overall numbers remained small. In 1976, only 129 African Americans were listed as "construction craftsmen," spread among five major crafts of the building trades and thirteen subcrafts. In 1980, the first woman became a journeyman in Local 235 of the Steamfitters Union. In 1996, Local 48, of the International Brotherhood of Electrical Workers, still counted only one percent of their membership as minority and female.<sup>109</sup> Some organizations, such as the NAACP, decided that apprenticeship training programs were "not an attractive alternative."<sup>110</sup>

While in recent years it has been easier for women and minorities to enter the construction industry, their numbers represent only a small, first generation of success stories. As Quintard Taylor, an African American historian of the Northwest stated, "Racial toleration is meaningless if people are excluded from the vital economic center and relegated to the margins of the urban economy."<sup>111</sup> In order to insure full economic participation in Portland's economy, to overcome the effects of on-the-job discrimination, and to insure that future generations of minority people and women are able to work in the construction

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<sup>109</sup> *Op. cite.*, Wollner, p. 111, Interviews with female steamfitter and African American electrician.

<sup>110</sup> Statement by former NAACP President.

<sup>111</sup> Taylor, Quintard. *The Forging of a Black Community*, p. 239.

industry, a "critical mass" of union membership and employment in the construction industry must be achieved.

## **VI. CONCLUSIONS**

Upon close observation, the history of the settlement of Oregon offers detailed, incontrovertible evidence that social and economic discrimination against ethnic minorities and women was the explicit code of behavior and legislative action. The opening bid in the economic game was the promise of free land, a promise that lured many Americans across the wilderness. But the Donation Land Law itself was a double-edged sword. Congress promised only to the majority, white men and their wives, that which it did not own. The economic prosperity that followed was based, to a significant degree, on the theft of the land base from the Indians.

The laws enacted in Oregon's first century denied Indians, African Americans, Chinese, Japanese, and women essential rights, including citizenship and voting rights, as well as property ownership and control. Further, the long resistance to removing exclusionary language from the state constitution, coupled with the failure to enact any civil rights legislation, meant that economic freedom for minority people and women was suppressed.

Nevertheless, minority businesses, sometimes restricted to serving the minority community, often marginally financed and small, did exist in Portland, testament to an enduring desire to achieve the American dream. In some minority communities, these businesses provided employment, and the community, as a self-sufficient economic entity, thrived. Other businesses, undercapitalized and marginal, provided only limited employment opportunities and were extinguished during the harsh years of the Great Depression.

For many minority people and women, employment opportunities were confined to marginal jobs at the bottom of the wage scale, jobs which did not pay wages sufficient to support a family. In order to survive, entire families worked, sometimes at multiple jobs. In many instances, economic prosperity became vested in the next generation, and their education was obtained at great sacrifice. In the decades before World War II, patterns of social discrimination set the stage for segregated housing, segregated schools, and the legacy of social ills and economic marginalization which plagues Portland even today.

World War II provided a brief season of equal opportunity, as women and minorities were welcomed into the industrial workplace for the first time. While war workers moved to Portland in search of economic opportunity, Japanese Americans were stripped of their rights and property and spent the war interned in camps. On the battlefield, African American, Indian, Latino and Japanese American soldiers shed their blood for democracy, and returned to resume the fight for equal opportunity. While economic gains made during the war were reversed as traditional race and gender lines were redrawn in peacetime, the explicit code of discrimination began to fall, and the first civil rights laws were enacted in the decade following the end of the war.

Despite modest legal gains, the heightened expectations of the war years were dashed for many minority peoples. Indians endured the misguided governmental policy of termination and forced urbanization. Latinos entered Oregon for the first time in significant numbers, seeking economic opportunity in the agricultural sector. Japanese Americans rebuilt their businesses and community after the destruction and dislocation of the war. Minority peoples and women resumed their pre-war economic status, characterized by low wages, barriers to business financing, denial of access to entrepreneurial skills, and perpetual resistance among businesses to hire and promote them.

While many minority residents simply left the state in search of a more tolerant climate, those who remained struggled hard, often at two jobs or in modest businesses, to sustain and celebrate viable communities despite limited economic opportunities. Businesses reappeared, often financed out of war wages or by pooling economic resources, and thrived despite limited access to conventional financing or government support. A modest middle class began to emerge in many minority communities, despite real estate restrictions, barriers to union membership, and limited economic opportunities.

Both the patterns of segregated housing and the urban renewal practices of the 1950s and 1960s resulted in widespread economic and cultural disruption and deprivation, and reinforced the false perceptions that linked poverty and underachievement with gender and race. Thus African American homes, businesses, and community institutions were displaced or destroyed, and African American children, despite new federal programs, were taught to fail.

Elsewhere in Lyndon Johnson's Great Society, government subsidies concentrated on social issues. These programs were well-intended and produced significant results for many — significantly, a generation of local leaders who emerged from the ethnic communities, struggled heroically, and produced notable successes. Indian, Latino and African American communities began to build a larger base of first generation middle class families. The Great Society's band-aid approach nevertheless failed to create adequate and permanent public and private sector family-wage jobs, and thus the communities themselves lacked adequate resources to maintain their new grassroots institutions when government support was withdrawn.

It is incontestable that great social progress was achieved from the de jure discrimination of the 1850s to the legislated promise of the Equal Opportunity Act of 1964. The present disparity study suggests, however, that to a large extent progress exists more on government paper than in actual economic fact. While explicit social attitudes toward minorities and women may have changed, the residual stigma of racial and gender inferiority tacitly informs the practices of Oregon's financial institutions, unions, public contracting procedures, and employment generally. Equally significant, the continuing discrimination within the construction industry and the community at large continues to serve as a barrier to the minority business development that has already been suppressed by a century of inequity.

Much of the record of government intervention to protect the economic status quo has been both forgotten and taken for granted. From the first laws passed by the territorial legislature to the alien land laws of the 1940s, economic prosperity has been protected as the birthright of the EuroAmerican male. As the foregoing pages make clear, federal, state and local laws and administrative actions contributed time and time again to the preservation and centralization of economic and social power in the non-minority community, and with men, rather than women.

This chapter has sought to give voice to many people whose histories and experiences in the Portland area have never adequately been heard. Significant information was gleaned from oral interviews with people who were direct witnesses to the most profound mistreatment, such as the Portland Japanese who returned after World War II, Indians, Latinos, and African Americans who experienced the continuing destruction and rebuilding of the economic and social base of their community. Many of the people whose story has been told experienced such a profound form of discrimination that they found it hard to convey the reality of their lives and experiences, even after the worst forms of exclusion had passed. In commenting on the phenomena that some of the Japanese interviewed after the war made positive statements to the press about their wartime and post wartime experiences, one individual wrote:

They all seemed to say that everything was at least okay, if not wonderful — at least in print — but I tell you frankly in hindsight and personally, that's not what we said among ourselves in those days, nor even many, many years later. That's the great pity of it all — that we felt we had to say something nice and soothing for the greater American public, so that "they" — meaning Caucasians — would be more willing to tolerate us, to put up with us. It was a hell of a note then, and it is still a hell of a note among my people today.

While Oregon's history cannot be altered, it can serve as a guide for the future. Oregon's prosperity owes a debt to its minority peoples and women workers, for success has often been achieved at their expense. The promise of equal economic opportunity enshrined in our sacred texts has yet to be fulfilled, but it is hoped that a better understanding of our common history can lead us towards that unfinished task.

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