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DEPARTMENT OF JUSTICE  
CIVIL ENFORCEMENT DIVISION

September 20, 2012

Scappoose Community Swim Council  
Carolynn Collie, President  
52660 North Road  
Scappoose, OR 97056

Scappoose Community Swim Council  
Carol Kangas, Treasurer  
52804 NW Shoe Factory Lane  
Scappoose, OR 97056

Scappoose Community Swim Council  
Debra Braun, Secretary  
54102 Kalberer Road  
Scappoose, OR 97056

Re: Scappoose Community Swim Council & Bob Casswell Pool Fund  
DOJ file #137300XCT0034-12.

Dear Board Directors,

The purpose of this letter is to outline the results of our review of the above-referenced matters and provide our recommendations on how best to move forward.

Nature of Review

The Charitable Activities Section of the Oregon Department of Justice ("Department") initiated this review in March, 2012 as a result of a complaint it received expressing concerns about the disposition of The Bob Caswell Pool Fund ("Pool Fund"). According to the complaint, the Pool Fund was started in the 1970's and named in honor of former Scappoose resident Bob Caswell. The Pool Fund has held various fundraisers over the years in Scappoose and, recently, people in the community started to question how much money is in the Fund and where the funds are held. In the process of its investigation, the Department determined that it was necessary and appropriate to examine the Scappoose Swim Council ("Swim Council") as it shares the same purpose as the Pool Fund, namely the building of a public swimming pool in Scappoose, they have overlapping board members, and it was initially thought the Pool Fund may have been managed by or part of the Swim Council.

The Department has previously investigated the Swim Council. In 2009, the Department opened an investigation into the Swim Council for its failure to file the annual financial reports required by ORS 128.610 *et seq.* The 2009 review revealed that the organization had become dormant and was no longer actively pursuing fundraising or other activities in support of its mission. At that time, the Department was able to verify that all of the Swim Council's funds were accounted for and recommended that the organization either dissolve or commence activities again. The Swim

Council indicated it intended to begin actively pursuing its goals again and the Department closed its investigation.

### Pool Fund

As noted above, it appears the Pool Fund started in the early 1970's. In an undated Spot Light article about the life and death of Bob Caswell, reporter Lisa Loving states that shortly after his death in 1970, "spontaneous fundraisers were launched to help complete his project -- the swimming pool". According to Loving, Casswell's widow, Vivian Casswell, stated that within two months of his death, more than \$1,000 had been raised through donations, door-to-door egg sales, and other fundraisers held by schoolchildren and civic leaders. The Department believes that this was the beginning of the Pool Fund. There are no formal organizational documents for the Pool Fund such as a trust agreement or articles of incorporation. No attempt has been made to incorporate, apply for tax-exempt status, apply for a tax i.d. number or otherwise treat it as a separate entity. Since its inception, the Fund has simply been maintained by members of the Caswell family by applying any funds received to a designated bank account. Vivian Casswell Urie maintained the fund during her lifetime and since her death, the fund has been maintained by her daughter, Carolyn Collie.

Despite the absence of formal documentation, no one disputes the public and charitable nature of the Pool Fund. The evidence of community support of the fund is abundant. For example, a fundraising billboard depicting the current balance of the Pool Fund and the fundraising goal was documented in a photograph, believed to be from 1997. Witnesses informed the Department that the billboard was posted along Highway 30, which is corroborated by minutes from a May 24, 2001 Swim Council board meeting referencing a fundraising billboard displayed at the intersection of Highway 30 and J.P. West Road. Similarly, Vivian Casswell Urie's obituary, dated June 11, 2008, includes a reference to her fundraising efforts and states -- "a community activist, she sold sauerkraut at the Sauer-Kraut Festival for her favorite cause, the creation of a community swimming pool." The documents and witnesses aptly demonstrate that over the years the community has supported fund raisers for the Pool Fund with the understanding that those funds would one day be used for the construction and/or operation of a public pool within the City of Scappoose.

As part of its investigation, the Department reviewed the financial records for the Pool Fund. The Pool Fund provided bank statements for the period December 2008 through March 2012. The statements show that the money is currently being held in an account under Carolyn Collie's name, in a Certificate of Deposit, with a balance of approximately \$34,000. The statements show that since 2008 no disbursements have been made. And it appears that other than a short time when the funds were inadvertently deposited into the Swim Council's account, the Pool Fund monies have always been held in an account under the name of a Casswell family member.

The Department was unable to obtain bank statements for the period before December 2008. But other documents indicate that the Pool Fund's balance has grown steadily over the years. In a letter dated May 2, 1996, Jeanine Wehage of Western Bank states that the Pool Fund was opened on April 22, 1971 with a deposit of \$2,000 and that the balance as of the date of the letter was

\$22,407.55. An isolated bank statement from March 2007 shows that at that time the balance was approximately \$31,000.

The Department examined Swim Council board minutes for references to the Pool Fund since the Pool Fund itself has no board or minutes. The Department found one reference to the Pool Fund. In the May 15, 2009 meeting, the Swim Council noted the approximate balance of the Pool Fund was \$32,000, which is corroborated by the bank statements for that time period. The minutes further state that the Pool Fund was initially funded by public donations.

Although the financial records produced for our review were incomplete, especially for the earliest years of the Pool Fund, there is no indication that any of the funds were ever used inappropriately or otherwise misappropriated.

### Swim Council

The Swim Council is a 501(c)(3) domestic non-profit corporation, registered with this office since 1996. The stated purpose of the organization is "to promote the construction of a public aquatic and fitness facility in the Scappoose area, to promote and support a competition swim team..." Annual CT-12 reports filed with this office show that in its earliest years the Swim Council generated annual revenues as high as \$17,000, but since 2004 the organization has reported no income other than the small amount of interest earned on the cash on deposit in the organization's bank account.

As noted above, the Department first investigated the Swim Council back in 2009. The Department's review was initiated, in part, because the Swim Council failed to file the required annual CT-12 reports with the Department. The purpose of the investigation was, first, to verify that none of the organization's funds had been misappropriated or otherwise misused and, second, to address the reasons for the Swim Council's failure to file its annual reports.

For the 2009 review, the Department requested bank statements and other financial records going back to January 2005. The Swim Council provided the requested documents which showed it had approximately \$15,000 as of 2009. The Department was satisfied that the funds were accounted for and that there had been no inappropriate distributions. As a result, the Department issued a letter to the organization on February 26, 2009, indicating the Department would close its investigation, noting that the Swim Council had become dormant, and suggesting the Swim Council either dissolve or take steps to commence activities in support of its mission again.

In response, the Swim Council sent the Department a copy of its minutes from a May 15, 2009 meeting in which the directors resolved to keep the organization open and become active again. The minutes further stated that the Swim Council would explore alternate uses of its money because the Scappoose pool project had come to a standstill.

After receiving the Pool Fund complaint earlier this year, the Department determined it was appropriate to examine the activities of the Swim Council again, in part, because the person managing the Pool Fund also served on the board of the Swim Council. For the 2012 review, the

Department once again requested bank statements and other documentation from the Swim Council.

The Swim Council produced bank statements from December 2008 through March 2012. In December 2008, the Swim Council had approximately \$16,000. As of March 2012, its balance was approximately \$14,300. Other than a couple expenses paid from the account and a \$1,000 donation to the Scappoose Swim Team in September 2009, the money has remained untouched. It appears the Swim Council has continued to be dormant since the 2009 review.

In response to the Department's requests, the Swim Council produced additional documents, some of which go back to the mid-1990's when the Swim Council first incorporated. These documents include financial reports, solicitation materials, board meeting minutes, governing documents, and the like. These documents confirm the fact that in the early years the organization was actively soliciting donations and conducting fundraisers. For example, the November 9, 2000 board meeting minutes state that the organization had obtained a \$10,000 "donation" from the City of Scappoose. The minutes contain other references to fundraisers such as a Bear donation jar, raffle drawings, a dunk tank, a food booth at the annual Sauerkraut Festival, and button sales. Financial documents prepared by the organization also list small donations from members of the community being deposited into the Swim Council bank account. In recent years, however, the Swim Council has not been actively engaged in fundraising or grantmaking.

During the most recent review, the directors of the Swim Council expressed a desire to close the organization and transfer its funds in accordance with the dissolution provisions of their Articles of Incorporation. Article X of the Swim Council's Articles of Incorporation, adopted on April 17, 1996, state that..."upon dissolution, the assets of this corporation shall be distributed equally between the City of Scappoose and the Scappoose School District, Scappoose, Oregon."

#### Review and Recommendation

Ms. Collie, on behalf of the Pool Fund, and the Swim Council were cooperative in providing documents and explanations as requested. The Department saw no evidence that the Pool Fund monies have ever been used inappropriately or otherwise misappropriated. Similarly, the Department was able to verify the account balances of the Swim Council and is satisfied no funds have been misappropriated or misapplied from those accounts.

Historically, the Pool Fund has been held in a bank account under the name of a Casswell family member, which is not appropriate. The funds were clearly raised by the community for the purpose of building a pool in Scappoose and should therefore be on deposit in an account under the Fund's name or with a charitable organization where proper oversight and internal controls are in place. But since the death of Vivian Caswell Urie, it appears the interest and ability to continue fundraising for the Fund has diminished dramatically. Given the lack of formal structure or operating documents for the Fund and the lack of activity in fundraising, it seems most appropriate to transfer the Pool Fund to another organization dedicated to building a public pool in Scappoose.

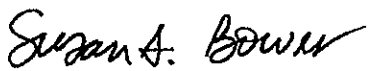
The only organization the Department has identified with such a mission is the City of Scappoose. The City has a restricted "pool fund" account dedicated to building a public pool with approximately \$230,000. The City has identified a site for the pool and purchased the land. Its annual payment for the site is approximately \$45,000. Though actual construction of a public pool is still a long way away, this appears the best possible chance for a public pool in Scappoose. The initial step of locating and purchasing the land necessary for an aquatic center is a significant step and represents measurable progress toward the goal of a public pool in Scappoose.

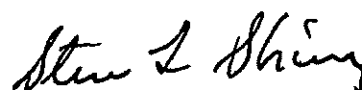
Given the Swim Council's desire to dissolve and the need to transfer the Pool Fund to an organized institution, the Department recommends that all funds held by the Swim Council and Pool Fund be distributed to the City of Scappoose to be held as part of the restricted "pool fund." Although the Swim Council's Articles provide that 50% of its assets should be distributed to Scappoose School District at dissolution, the Department does not see this as a significant obstacle. Except for one \$1,000 distribution to the swim team, the Swim Council has not provided significant support to the swim team or school historically. It does not appear that the school or swim team have been dependent on funding from the Swim Council and at least \$10,000 of the Swim Council's initial funding came from the City. The combined funds would cover the City's annual payment on the property selected for a public pool and the use of the funds in this manner seems most consistent with the fundraising and public donations from which the funds derive.

To effectuate a transfer to the City, both the Swim Council and the Pool fund must send a letter to the Scappoose City Council requesting that the city accept the funds and hold them as part of their restricted "pool fund". The City Council will most likely accept the gift and then the transfer can be completed. Prior to the actual transfer of the assets, the Swim Council will need to file a Closing Form with the Department outlining the distribution of assets as described above. This form must be received by the Department no less than 20 days before the planned transfer. The Department will approve the transfer.

If the directors of the Swim Council have other thoughts or concerns regarding the distribution of the Pool Fund and Swim Council funds, please contact me directly at (971) 673-1895. Otherwise, we look forward to finalizing this process in the near future. The Department appreciates your cooperation during this review.

Sincerely,

  
Susan A. Bower  
Assistant Attorney General  
Charitable Activities Section

  
Steven L. Shirey, CFE  
Financial Investigator  
Charitable Activities Section

CC: Jon Hanken, Scappoose City Manager