BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of the Livestock Attack on a Calf Owned by Randy Holdner	)))	ORDER NO. 60-2009

WHEREAS, on July 3, 2009, Columbia County Animal Control Officer Roger Kadell received an after hours call reporting a livestock attack by two dogs at 50843 Dike Road, Scappoose, Oregon, where as a result of the attack a calf was injured; and

WHEREAS, upon arrival at the location the Animal Control Officer investigated the report and, after viewing injured calf and the chained dogs at the property and checking for dog licenses, concluded that the two chained dogs at the location were likely involved in the attack on Mr. Holdner's livestock and took the dogs into custody; and

WHEREAS, the Animal Control Officer filed a report stating there was evidence at the location where the livestock attack occurred that indicated the location was used for dogfighting training activities, including a dog treadmill, spring lines, pull lines and a clearing in the brush to allow for a dogfighting ring; and

WHEREAS, the Animal Control Officer photographed the property where the livestock attack occurred, the alleged dogfighting training equipment, the dogs and the injured calf; and

WHEREAS, pursuant to ORS 609.156, Mr. Ribaya was provided notice of the opportunity to request a hearing in a letter dated July 7, 2009; and

WHEREAS, a hearing was requested within the statutory fourteen-day period in a letter from Mr. Ribaya's attorney dated July 20, 2009; and

WHEREAS, a hearing on the matter was scheduled for August 12, 2009 at the Board of Commissioners' regularly scheduled meeting; and

WHEREAS, Mr. Ribaya's attorney was provided notice of the scheduled hearing in a letter dated July 28, 2009 ; and

WHEREAS, a hearing was held on the matter at the Board of County Commissioners' regular meeting on August 12, 2009, to hear testimony and receive documents into a record developed in order to provide a full and fair inquiry into the facts necessary to determine the matter alleged; and

WHEREAS, at the hearing the Animal Control Officer provided a summary of his investigation to the Board, after which the hearing was opened to public testimony from Mr. Ribaya,

his attorney and members of the public, and such testimony was received; and

WHEREAS, several documents, and two dog collars were received into the record at the August 12, 2009 hearing, a list of which is attached hereto as "Exhibit A" and incorporated herein by this reference; and

WHEREAS, at the end of the public testimony portion of the hearing, Mr. Ribaya and his attorney were given an opportunity to rebut any other testimony received; and

WHEREAS, after the public testimony portion of the hearing was closed, the Board continued the matter to September 2, 2009 at 10:00 A.M., leaving the record open to Mr. Ribaya for further written rebuttal until August 26, 2009; and

WHEREAS, on August 26, 2009, Mr. Ribaya's attorney submitted additional written rebuttal in a letter dated August 26, 2009, with attached Enrolled Oregon House Bill 3417 (2009), which is part of the record in this matter; and

WHEREAS, at the continued hearing on September 2, 2009 the Board deliberated on the matter;

NOW, THEREFORE, based on the evidence submitted and received into the record on this matter, the Board of County Commissioners makes the following findings:

1. Eduardo Ribaya was the owner of the dogs involved in this matter on July 3, 2009, the dogs impounded by the Animal Control Officer at 50843 Dike Road, Scappoose, Oregon on that date.

2. The Board finds that both of those dogs, found at the location of the livestock attack, engaged in injuring the calf owner by Randy Holdner on July 3, 2009, based on the evidence presented by the Animal Control Officer and in the record for this matter. Mr. Ribaya's attorney conceded that at least one dog had been involved in the attack during the hearing on this matter, but argued at the hearing and in his letter dated August 26, 2009, that there was not sufficient evidence for the Board to determine that both dogs were involved in the livestock attack. The Board does not find that argument convincing, and instead concludes that there is substantial evidence in the record that both dogs were involved in the livestock attack, including (but not limited to) photographs showing blood on both dogs, testimony from the Animal Control Officer of blood in both dogs' mouths, and the initial report of the incident to Columbia 911 from Laura Tott indicating two dogs involved in the attack. The Board finds that, while there may have been one initial and/or primary attacker, the unrefuted substantial evidence contained in the record indicates that both dogs were involved in the attack.

3. There was no evidence presented to establish a history that either dog involved in this matter has previously killed, wounded, injured or chased livestock in the past under ORS 609.162(2). The Board therefore finds that neither dog has previously killed, wounded,

injured or chased livestock.

4. Mr. Ribaya's attorney argues that the calf involved in the attack, and not Mr. Ribaya's dogs, was the initial aggressor, and that but for the trespass by the calf the attack would not have occurred. In support of this argument Mr. Ribaya's attorney has submitted into the record Enrolled Oregon House Bill 3417 (2009) regarding potential liability under ORS 607.300, as amended, for owners of livestock that break through fences and thereby cause damage. The Board finds that the House Bill 3417 language referenced that amends ORS 607.300 only applies to livestock that breaks through fences in the "Open Range" as that term is defined under ORS 607.005(6), and is therefore inapposite to the matter before the Board.

5. The Board additionally finds that ORS 609.125 to ORS 609.190 do not make exceptions for livestock attacks based on whether a dog is on its owner's property or not, other than in the context of ORS 609.150 which does not apply in this case. There was conflicting and inconclusive evidence and testimony presented as to whether the dogs were chained up the entire time or not, and as to whether the calf wandered onto or was dragged onto the property where it was found. The Board finds that the above-referenced statutes apply whether the dogs dragged the calf onto the property or the calf came onto the property before it was attacked.

6. The Board finds that returning the dogs to Mr. Ribaya is not suitable under any circumstances, and that notwithstanding the request of his attormney no safeguards can be put in place to adequately protect against the dogs attacking livestock again. The substantial record evidence clearly indicates that the dogs involved in the livestock attack are extremely aggressive towards livestock and other dogs, and have likely been so trained by their owner. For example, the Animal Control Officer's Report indicates that the male dog has attempted to scale kennel walls in an attempt to attack other dogs and was required to be isolated in the Animal Control Facility. Therefore, the Board finds that there is nowhere where the dogs will not be an immediate threat to livestock, and particularly in the possession of Mr. Ribaya. Accordingly, the Board finds that returning the dogs to Mr. Ribaya is not suitable under any circumstances.

7. The Board additionally finds that adoption of the dogs by a new owner approved by the County is not available due to the substantial evidence that indicates the dogs' very aggressive nature. County staff was directed to look into the possibility of adopting the dogs out to a Pit Bull rescue organization. Staff indicated prior to deliberations that several Pit Bull rescue organizations were contacted and none were interested in taking in dogs that had attacked livestock and that may have been involved in dogfighting. Staff also indicated that the Oregon Humane Society was contacted and could not provide assistance. Accordingly, given the aggressive nature of the dogs involved in this matter, the Board finds that based on the record evidence it is not possible adopt the dogs out to a new owner acceptable to the County.

8. Based on Finding 6 and Finding 7, above, and the substantial record evidence supporting those findings, pursuant to ORS 609.162(1)(b)(C) the Board finds that other measures are

not available, are not adequate to remedy the problem or are otherwise unsuitable.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Based on the livestock attack carried out by Eduardo Ribaya's male dog carried out on July 3, 2009, a $1,000.00 penalty is imposed pursuant to ORS 609.162(1)(b).

2. Based on the livestock attack carried out by Eduardo Ribaya's female dog carried out on July 3, 2009, a $1,000.00 penalty is imposed pursuant to ORS 609.162(1)(b).

3. Pursuant to ORS 609.155(3)(a), in addition to the $2,000.00 in civil penalties imposed above, Eduardo Ribaya shall pay all impound and boarding costs and fees arising from the impoundment of her dogs in this matter, a Statement of which is attached hereto as "Exhibit B" and incorporated herein by this reference.

4. The Animal Control Officer shall have Eduardo Ribaya's two dogs impounded on July 3, 2009 put to death in a humane manner.

5. Any penalties or impound and boarding costs imposed by this Order, not paid within twenty-one (21) days of the mailing of this Order, shall be recorded without costs in the County Clerk Lien Record, pursuant to ORS 609.167.

DATED this 9th day of September, 2009.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____
Chair

By: _____
Commissioner

By: _____
Commissioner

Approved as to form

By: _____
Office of County Counsel

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Legal Counsel's File -EXHIBIT 1

(1) Letter to Eduardo Ribaya with Attachments dated July 7, 2009
(2) Letter from Attorney Antonio Porras, Jr. Dated July 20, 2009
(3) Letter to Attorney Antonio Porras, Jr. dated July 28, 2009
(4) Animal Control Complaint Report with Attachments dated July 3, 2009
(5) Columbia County Animal Control Service Invoice dated August 3, 2009
(6) Columbia County Sheriff's Office Incident/Offense Report dated July 3, 2009
(7) Photo Log with Attached Photographs (34) taken by Animal Control Officer

Ex. 2 - Dog Collar submitted by Animal Control Officer
Ex. 3 - Dog Collar submitted by Animal Control Officer
Ex. 4 - Letter from Antonio Porras, Jr. Dated August 26, 2009

EXHIBIT A

SERVICE INVOICE

Columbia County Animal Control
230 Strand Street
St. Helens, Oregon 97051

Fax: (503)366-3990

SERVICE FOR:
Animal Control Services

BILL TO:

Eduarado Ribaya
50776 Dike Road
Scappoose, Oregon 97056

INVOICE NUMBER	
ORDER NUMBER	Case 1994C
TAX NUMBER	[Tax Number]
JOB DESCRIPTION	Kennel services
DATE	Sept 9th, 2009

DATE	SERVICE DESCRIPTION	AMOUNT	RATE	TOTAL
7/3/09	After hours call out fee	1	75.00	75.00
7/3/09	Impound fees 6935 A and 6934 A	2	30.00	60.00
9/9/09	Boarding fees 6935 A	68	10.00	680.00
9/9/09	Boarding fees 6934 A	68	10.00	680.00
	Euthanasia fee	2	65.00	130.00
				$1,625.00
				TOTAL DUE

MAKE CHECKS PAYABLE TO:
Columbia County Animal Control
2084 Oregon Street
St. Helen, Oregon 97051

EXHIBIT B