

**ANIMAL ISSUES MOVEMENT**  
420 N. Bonnie Brae Street  
Los Angeles CA 90026-4925  
(213) 413-SPAY or (213) 413-2367  
*animalissu@aol.com*

October 2, 2012

President Herb Wesson  
Los Angeles City Council  
City of Los Angeles  
200 N. Spring Street  
Los Angeles CA 90026

Honorable Members:

**CF #12-1508 - ANIMAL WELFARE TRUST FUND / CAT PROGRAM - OPPOSITION to use of donated funds from charitable account for CEQA for TNR - new program - PROPOSAL VIOLATES ADMIN. CODE SEC. 5.200 (Chapter 12, Art. 4)**

Attached is an informal opinion by Jeffrey E. Zinder, Zinder & Koch, Law Corporation, which states:

"Since the AWTF funds are limited to use for "existing" programs, they cannot be used for any start-up costs for a new program, including a "Cat Program." Nor does the Administrative Code provide for setting up accounts in the AWTF for the purpose of studying or establishing new programs and activities...In this case, the only purpose of the CEQA is to establish a new Los Angeles "Cat Program."

Sec. 5.200 of the Administrative Code states: "The Fund shall be used to augment *established programs and activities of the Department of Animal Services, other than those involving pet sterilization*" (emphasis added.) The primary purpose of a Trap, Neuter, Return (TNR) program is the sterilization (neuter) of cats, with trap and return being merely ancillary to this purpose.

Attorney Zinder states that the court opined in *Urban Wildlands Group vs. City of Los Angeles, et al*, that, "...the Department lacked such a [cat/TNR] program, and the informal FELIX program was merely allowing privileges to cat trappers...using City spay/neuter funds (vouchers) for individual "projects" by those individuals who trapped cats on their own or as part of a group which did not involve City employees."

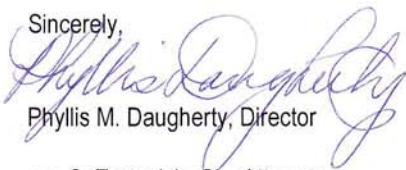
Attorney Zinder concludes, "In my opinion, the use of any donated money for a CEQA ordered for the purpose of establishing a TNR program (as stated in the August 9, 2012, report by GM Brenda Barnette) appears to be in violation of the Administrative Code Section, which establishes and controls the Animal Welfare Trust Fund."

We believe this violation sets a dangerous precedent which will allow private-interest groups to have access to a fund restricted to donations ONLY for uses which directly benefit City shelter animals. There is no nexus that determines TNR reduces nor affects shelter animals or that any of the animals in these programs would actually become part of the City's shelter population, other than conjecture by advocates.

This attempt to establish an unauthorized account within the Fund, regardless of the source of the funds, is still a blatant violation of both the letter and the spirit of the Administrative Code, which assures donors that ALL charitable donations to the AWTF are protected and restricted for use for shelter animals.

We therefore believe this is an inappropriate and/or illegal use of the Animal Welfare Trust Fund and any accounts therein and urge you to vote "No" on this proposal. The Department should be advised to fund the CEQA through some other account.

Sincerely,



Phyllis M. Daugherty, Director

cc: C. Trutanich, City Attorney  
M. Santana, City Administrative Officer  
W. Greuel, Controller

**ZINDER & KOCH**  
A PROFESSIONAL LAW CORPORATION  
700 NORTH BRAND BOULEVARD, STE. 400  
GLENDALE, CALIFORNIA 91203-4276  
818-760-0100  
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*Reply to:*

Jeffrey E. Zinder, Esq.

Writer's Direct E-Mail:  
JEZinder@ZinderKoch.com

*Of Counsel*

Paul R. Ayers, Esq.

September 9, 2012

Ms. Phyllis Daugherty  
420 N. Bonnie Brae Street  
Los Angeles CA 90026

Dear Ms. Daugherty

REQUEST FOR INFORMAL OPINION REGARDING LOS ANGELES ANIMAL SERVICES' PROPOSALS TO (1) USE \$52,000 IN FUNDS DONATED TO THE ANIMAL WELFARE TRUST FUND FOR A CEQA FOR A "CAT PROGRAM"; AND (2) DIRECTING DOG-LICENSING TAX REVENUE TO THE ANIMAL WELFARE TRUST FUND

This is in response to your request for an informal opinion regarding (1) transferring \$52,000 from the Los Angeles Animal Services' Animal Welfare Trust Fund (AWTF) to Pay for the Preparation of an Environmental Clearance Regarding Los Angeles Animal Services' (LAAS) proposed "Cat Program;" and (2) a proposal by LA Animal Services to direct dog-licensing taxes to the Animal Welfare Trust Fund.

Based upon my informal review of the material/information submitted (listed below), my conclusions are:

**(1) USE OF AWTF FUNDS FOR CEQA REVIEW FOR PROPOSED "CAT PROGRAM."**

The use of any funds in Animal Welfare Trust Fund are clearly limited as set forth in the City of Los Angeles Administrative Code section 5.200(b):

"The Fund shall be used to augment *established programs* and activities of the Department of Animal Services, *other than those involving pet sterilization...*"

(emphasis added).

Since the AWTF funds are limited to use for "existing" programs, they cannot be used for any start-up costs for a new program including a "Cat Program." Nor does the Administrative Code provide for setting up accounts in the AWTF for the purpose of studying or establishing new programs and activities. CEQA's are not conducted unless there is some new program or activity being contemplated. It is therefore an initial step in the undertaking of that new program/activity, and not a separate, stand-alone, program of its own. In this case, the ONLY purpose of the CEQA at issue is to establish a new Los Angeles "Cat Program."

September 10, 2012

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A. According to the Court decision in the case of Urban Wildlands Group vs. City of Los Angeles, et al, (Case No. BS 115483), the Department of Animal Services did not—during the period considered by the court--have an “established program/activity” that included Trap/Neuter/Return of feral cats (TNR). The order of the court explains that the Department lacked such a program and the informal FELIX program was merely allowing privileges to cat trappers which included, but were not limited to, using City spay/neuter funds (vouchers) for individual “projects” by those individuals who trapped cats on their own or as part of a group which did not involve City employees.

Additionally, the main purpose of TNR is cat sterilization. Trapping and Returning/Releasing are merely ancillary to this primary purpose. The funds from the AWTF clearly cannot be used for any services/programs/projects (including a CEQA review) wherein the purpose is “pet sterilization,” according to the Administrative Code. Since feral cats are defined as “domesticated cats,” not wildlife, they would fall under the definition of “pets” (although not currently being maintained by the original owner in those cases where they are trapped/neutered and returned under such a TNR program/project.)

If such cats are considered wildlife, they would be governed under the rules regarding the care and feeding laws of a federal agency. (US Dept of Interior – Fish and Wildlife opposition to TNR)

[http://www.abcbirds.org/abcprograms/policy/cats/pdf/letter\\_newjersey\\_dept.of\\_enviornmental\\_protection.pdf](http://www.abcbirds.org/abcprograms/policy/cats/pdf/letter_newjersey_dept.of_enviornmental_protection.pdf)

As previously stated the establishment of the Animal Welfare Trust Fund does not provide for setting up accounts for the purpose of studying or establishing “new programs and activities.” The current proposal can only be characterized as the establishment a *new* Los Angeles “cat program.” If this is allowed then through linguist manipulation any special interest group could obtain funding by merely obtaining approval to establish a separate account within the AWTF.

In my opinion, the use of any donated money for a CEQA ordered for the purpose of establishing a TNR program (as stated in the August 9, 2012, report by GM Brenda Barnette,) appears to be in clear violation of the Administrative Code Section, which establishes and controls the Animal Welfare Trust Fund.

I also believe this proposed deviation from the Administrative Code establishes a dangerous precedent to allow funds to be donated by a private party (possibly with an interest in the outcome) to the Animal Welfare Trust Fund (charitable and possibly tax deductible) for any specific purpose other than that directly involved with the care/benefit of shelter animals, as indicated in the Administrative Code. This appears to be an effort to establish “other” uses for donated money, based upon the premise that such use for feral cat project *could* reduce future shelter population. However, no evidence is provided to prove this theory.

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Page 3

Those who donate money to funds established for shelters and the animals impounded therein—and also legal advisors who prepare such gifts/bequests—must be assured the use of the funds will be used as expected and as indicated on the LA Animal Services Website, as follows:

“Gifts can be made online to the **Animal Welfare Trust Fund**, which is a trust account set up to enhance the quality of life for shelter animals by funding animal supplies, medical equipment and improvements to animal care centers.”  
[http://www.laanimalservices.com/Donate/TD\\_Animal\\_Welfare\\_Fund.htm](http://www.laanimalservices.com/Donate/TD_Animal_Welfare_Fund.htm)

To my knowledge, there is no way to monitor money spent on feral cat projects, nor its effectiveness, as there is with owned/impounded animals; and there is no way to verify that the feral cats that would be Trapped/Neutered/Released under a City program would actually ever become part of the shelter population. Thus any argument that it specifically reduces shelter impounds is conjecture.

**(2) DIVERSION (REDIRECTION) OF DOG-LICENSE TAX REVENUE, as proposed in : COUNCIL FILE NO. 11-4073 - LAAS letter to Mayor Antonio R. Villaraigosa recommending capping dog license money and surplus to AWTF.**  
[http://clkrep.lacity.org/online/docs/2011/11-0473\\_RPT\\_DAS\\_03-14-12.pdf](http://clkrep.lacity.org/online/docs/2011/11-0473_RPT_DAS_03-14-12.pdf)

This letter, signed by John D. Chavez for Brenda Barnette, General Manager, recommends:

1. APPROVE capping dog licensing revenue to the General Fund at \$850,000.
2. APPROVE directing additional revenue that is over the cap to the Animal Welfare Trust Fund;
3. INSTRUCT the City Attorney to amend the Los Angeles Administrative code as needed to effect this change.

The proposed diversion of tax revenue from dog licensing to the Animal Welfare Trust Fund does not appear to be permitted in the wording of the various Code Sections that control the funds (as follows):

**CA Food and Ag: 30652.** All fees for the issuance of dog license tags and all fines collected pursuant to this division shall be paid into the county, city, or city and county treasury, as the case may be, and shall be used:

- (a) First, to pay fees for the issuance of dog license tags.
- (b) Second, to pay fees, salaries, costs, expenses, or any or all of them for the enforcement of this division and all ordinances which are made pursuant to this division.
- (c) Third, to pay damages to owners of livestock which are killed by dogs.
- (d) Fourth, to pay costs of any hospitalization or emergency care of animals pursuant to Section 597f of the Penal Code.

September 9, 2012

Page 4

**CA Gov. Code: 50911.** At the time of each annual tax levy, the legislative body shall direct the payment into the police relief and pension fund of the following amounts: \*\*\*  
(b) One-half of all money received from taxes on dog licenses.

**Health & Safety Code: 121635.** Rabies Fund Continued in Existence. For the purpose of providing funds to pay expenses incurred in connection with the eradication of rabies, the rabies treatment and eradication fund is continued in existence in each county or city in this state.

**121640.** Dog License Allotted to Rabies Fund: Limitation.

All money collected for dog license taxes shall be deposited to the credit of this fund with the treasurer of the county or city; but funds now collected from any dog tax may continue to be collected and used for other purposes specified by local ordinances.

(Note: In further reading the background of this code section, it appears to refer to ordinances/purposes which were created when the law was enacted, not later programs/projects unrelated to rabies control.)


**121650.** Levy and collection of Tax.

This tax shall be levied as follows: An annual tax of one dollar and fifty cents (\$1.50) for each male, two dollars and fifty cents (\$2.50) for each female and one dollar and fifty cents (\$1.50) for each neuter dog. It shall be collected by the proper authority at the same time and in the same manner as other taxes are collected, except that at the first collection the proportion of the annual tax as corresponds to the number of months the tax has been in operation, plus one year advance payment shall be collected.

I see no provision that allows this tax money to be placed in a charitable fund; i.e., the Animal Welfare Tax Fund (AWTF.) It is disturbing that in both these issues, there is the appearance by management of the Los Angeles Department of Animal Services to gaining access to/redirect moneys that have been specified for certain purposes by statute.

It is my opinion on both of the above issues, such appropriation of funding would not be likely to be upheld if challenged. I hope that the forgoing informal review is helpful to you in considering any further action in this matter.

Very truly yours,  
**ZINDER & KOCH**



JEFFREY E. ZINDER, ESQ.

## L.A. Animal Services Website re: Animal Welfare Trust Fund Fund

“Gifts can be made online to the [Animal Welfare Trust Fund](#), which is a trust account set up to enhance the quality of life for shelter animals by funding animal supplies, medical equipment and improvements to animal care centers.”

[http://www.laanimalservices.com/Donate/TD\\_Animal\\_Welfare\\_Fund.htm](http://www.laanimalservices.com/Donate/TD_Animal_Welfare_Fund.htm)

## Animal Welfare Trust Fund: Administrative Code

### Section 5.200 (Chapter 12, Article 4).

**THE ANIMAL WELFARE TRUST FUND (FUND 859) BALANCE IS \$991,404.16, per Los Angeles Animal Services. (See e-mail dated August 28,2012, from Ross Pool.)**

#### **ARTICLE 4 ANIMAL WELFARE TRUST FUND**

##### Section

5.200 Creation and Administration of the Fund.

5.200.1 Receipt of Property.

5.200.2 Registration of Personal Property.

#### **Sec. 5.200. Creation and Administration of the Fund.**

(a) There is hereby created and established within the Treasury of the City of Los Angeles a special fund to be known as the “**Animal Welfare Trust Fund**,” hereinafter referred to in this article as the “**Fund**.”

(b) The Fund shall be used to augment established programs and activities of the Department of Animal Services, other than those involving pet sterilization, and may be used for the acquisition, construction and maintenance of land and capital improvements and the purchase of equipment, services or furnishings in support of such programs and activities, subject to any special terms or conditions attached to individual gifts, contributions or bequests to the City.

(c) Monetary gifts, contributions or bequests to the City, to the Department of Animal Services, to a division or operation thereof or to the General Manager thereof for the acquisition, construction and maintenance of land and capital improvements or for the purchase of equipment, services or furnishings in support of the programs and activities of the Department of Animal Services, other than those involving pet sterilization, which exceed in value the sum of \$25,000, shall be submitted to the City Council for acceptance or rejection. Such monetary gifts,

Subj: **Re: Hi, Ross, just checking up on my request re the Anim. Welf. and S/N Fund Balances**  
Date: 8/28/2012 3:09:34 P.M. Pacific Daylight Time [REDACTED] [REDACTED]  
From: [ross.pool@lacity.org](mailto:ross.pool@lacity.org)  
To: [ANIMALISSU@aol.com](mailto:ANIMALISSU@aol.com)  
Phyllis,

The Animal Welfare Trust Fund (Fund 859) balance is \$991,404.16. There is \$666,169.87 currently available. Fund 859 is broken down into 17 sub-categories, some by shelter or by the estate that donated the monies.

Thanks

Ross Pool

On Sun, Aug 26, 2012 at 10:15 PM, <[ANIMALISSU@aol.com](mailto:ANIMALISSU@aol.com)> wrote:

Good morning, Ross, do you have any idea when you will receive the two total current balances of these funds?

Thanks,

Phyllis

Subj: **Re: Hi, Ross, just checking up on my request re the Anim. Welf. and S/N Fund B...**  
Date: 8/31/2012 3:33:03 P.M. Pacific Daylight Time  
From: [ross.pool@lacity.org](mailto:ross.pool@lacity.org)  
To: [ANIMALISSU@aol.com](mailto:ANIMALISSU@aol.com)  
Phyllis,

The current balance in the Spay and Neuter Trust Fund (Fund 842) is \$1,018,806.69. This total amount is broken down into four fiscal year allotment balances ( FY 2010 through 2013).

ross

On Tue, Aug 28, 2012 at 4:46 PM, <[ANIMALISSU@aol.com](mailto:ANIMALISSU@aol.com)> wrote:

Ross, I had also asked for the balance of the Spay/Neuter Fund (S/N). Can they provide that information also?  
Thanks.

Phyllis



contributions or bequests, the value of which is \$25,000 or less, may be accepted or rejected for the City by the General Manager of the Department of Animal Services.

(d) All monetary gifts, contributions or bequests accepted by the City Council or by the General Manager of the Department of Animal Services for the purposes set forth in this article shall be placed in the Fund.

(e) The General Manager of the Department of Animal Services shall inform the Controller of any special terms or conditions placed upon the use of all moneys accepted for deposit in the Fund. The Controller shall establish a separate account within the Fund for each accepted monetary gift, contribution or bequest which includes any such special term or condition. No money shall be expended from the Fund except in compliance with each special term or condition under which such money was accepted. Any request by the General Manager of the Department of Animal Services for an expenditure of money accepted with any special term or condition placed upon its use shall be accompanied by sufficient information for the Controller to determine that the proposed expenditure of said money does not violate such special term or condition.

(f) All other monetary gifts, contributions or bequests which are accepted without special terms or conditions upon their use shall be placed in a general account in the Fund established by the Controller for such purpose.

(g) The Fund shall be administered and expenditures therefrom may be authorized by the General Manager of the Department of Animal Services in accordance with established City practice, provided, however, that no expenditure shall be made from the Fund for any purpose which is contrary to the budget policy of the Department of Animal Services as established by the Mayor and City Council.

(h) The General Manager of the Department of Animal Services shall report to the City Council regarding and identifying all receipts into, and all expenditures out of, the Fund, as well as the purposes for which the expenditures were made. Each report shall cover the most recent six-month period of time which commenced on April 1 or October 1 and shall be submitted within 15 days after the close of said period.

(i) All interest and other earnings from moneys placed in the Fund shall be credited to each account in the Fund to which they are attributable and shall be devoted to the purposes thereof.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/04/09

DEPT. SE H

HONORABLE THOMAS J. MC KNEW, JR.

JUDGE

T. FRAIA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING

T. LOKUAN

NONE

Deputy Sheriff Reporter

2:30 pm

BS115483

In RE the Matter of:  
THE URBAN WILDLANDS GROUP,  
ET AL.

VS

CITY OF LOS ANGELES, ET AL.  
"CEQA"

Counsel for  
Petitioner NO APPEARANCES

**NATURE OF PROCEEDINGS:**

RULING ON PETITION FOR WRIT OF MANDAMUS HEARD 11/20/09

The Court has reviewed the pleadings filed by counsel and the oral argument made by counsel and rules as follows:

Petitioner THE URBAN WILDLANDS GROUP, et al.'s petition for writ of mandate is GRANTED. CCP sections 1085, 1084.5; PRC sections 21149, 21148.5.

The CITY OF LOS ANGELES is ENJOINED from implementing a Trap Neuter and Release (TNR) Program for Feral Cats unless and until an environmental review in compliance with the California Environmental Quality Act is completed. The City is PROHIBITED from encouraging third parties to carry out such a program by providing incentives for, or otherwise facilitating, the capture, sterilization and release of feral cats by: providing traps free of charge, providing any discounts for spay and neuter surgeries for cats, providing information about such programs sponsored by other entities on its website or providing information about such programs sponsored by other entities on its website or providing cyberlinks thereto, by developing or distributing literature on the TNR Program or by conducting public outreach on TNR using press releases, fliers or other media except in conjunction with the CEQA process. That portion of

MINUTES ENTERED  
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JUDGE

T. FRAIA

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HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING

C. LOKJAN

NONE

Deputy Sheriff Reporter

1:30 pm

BS115483

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Counsel for  
Petitioner NO APPEARANCES

NATURE OF PROCEEDINGS:

Municipal Code Section 53.69(b) which authorizes LAAS to waive cat trap rental fees or security deposits for TNR groups is unenforceable. Petitioner is directed to submit a proposed judgment, writ, and an appropriate and enforceable injunctive order.

Petitioner THE URBAN WILDLANDS GROUP, et al.'s request for judicial notice is GRANTED in part. To the extent that the some of the requests are not judicial noticeable (declarations, e-mails, etc.) the court construes petitioners request as a motion to augment the record and as such GRANTS the motion. The Court considered all exhibits except "J". Extra record evidence may be necessary "when the courts are asked to review ministerial or informal administrative actions [] because there is often little or no administrative record in such cases. SN Sands Corp. v. City and County of San Francisco (2008) 167 Cal. App. 4th 185, 194 (citing Western States Petroleum Ass'n v. Superior Court (1995) 9 Cal. 4th 550, 576.

Respondents (CITY OF LOS ANGELES (LA), BOARD OF ANIMAL SERVICES COMMISSIONERS (BOARD), and DEPARTMENT OF ANIMAL SERVICES (LAAS))'s request for judicial notice is GRANTED.

Respondents' request that the record be entered into evidence is DENIED. The record was received and lodge. PRC section 21167.6(b)(1).

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NATURE OF PROCEEDINGS:

The Court has already ruled on the issue of the statute of limitations. See Minute Order of February 26, 2009. The Court does not find the evidence contradicts the petitioners' allegations of the date of discovery. Despite assurances from officials that "in order for the Department [LAAS] to proceed with establishing a TNR policy, a report outlining the potential effect on the environment must be completed." there is evidence of subsequent and/or ongoing violations. 1818, see infra.

In administrative mandamus actions, the court's review is limited to determination of whether the respondent has proceeded without or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. CCP section 1094.5. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are supported by the evidence. Id.

In all other actions attacking a decision of a public agency on the grounds of noncompliance with CEQA, the court's inquiry shall only extend to whether there was a prejudicial abuse of discretion. PRC section 21168.5. Abuse of discretion is established if the agency has not proceeded in a manner required by law, or if the determination or decision is not supported by substantial evidence. Id. "There are two types of traditional mandamus actions; those challenging

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T. FRALA

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C. LOKJAN

NONE

Deputy Sheriff Reporter

1:30 pm

BS115483  
In RE the Matter of:  
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Counsel for  
Petitioner NO APPEARANCES

NATURE OF PROCEEDINGS:

ministerial or informal administrative actions and those challenging quasi-legislative administrative decisions."

This case involves a combination or hybrid of the types of actions described above. The "record" in this case is unclear since no "official action" was taken. After much debate, an "administrative record" was produced even though the agencies insisted that no official determination or decision had been made. The Court ordered production of a broad category of documents to include "everything in the records pertaining to the City's program, if there is one, or former program, if there was one or its program to urge third parties to conduct trapping and bringing in for neutering cats." Request for judicial notice, Exhibit E at 17. "The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with non-reviewability at one end and independent judgment at the other. Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." *Western States Petroleum Ass'n v. Superior Court* (1995) 9 Cal. 4th 559, 575-576 (citations omitted).

A public agency must prepare an EIR whenever

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Deputy Sheriff Reporter

1:30 pm BS115483

In RE the Matter of:  
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Counsel for  
Petitioner NO APPEARANCES

VS

CITY OF LOS ANGELES, ET AL.  
"CEQA"

NATURE OF PROCEEDINGS:

substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment. Pub. Res. Code sections 21100, 21151; 14 CCR sections 15002(f)(1), (f)(2); No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75. The parties agree that environmental review is necessary in order to implement a Trap Neuter and Release Program. The question before the Court is whether the respondents have abused their discretion by not proceeding in a manner required by law by "secretly and unofficially" implementing the program before the environmental review was completed.

A project is subject to CEQA if it may cause either a direct physical change of the environment, or a reasonably foreseeable indirect physical change in the environment. Santa Monica Chamber of Commerce v. City of Santa Monica (2002) 101 Cal. App.4th 786, 788, n.2. (discussing parking restrictions). It is a reasonable inference that the removal of restrictions is also a project if there is a potential for adverse impact. Here, the evidence in the record establishes that respondents have removed restrictions, facilitated the impementation of TNR and even provided incentives to promote a policy of TNR without the benefit of environmental review.

While respondents claim that the program was adopted "in concept only," the record establishes that the respondents have done much more than that. Respondents also deny that they are distributing or have ever

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Counsel for

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NATURE OF PROCEEDINGS:

issued vouchers.

Petitioners have produce evidence of respondents' involvement with the FELIX program and other organizations advocating the maintenance of feral cat populations. Exhibit C, 2523, 2528, 2527, 2529, 2624, 2822, 2627. Petitioners have presented evidence of a LAAS voucher system providing discounts to TNR organizations. 1694, 2532-3, 2612, Exhibit E.

A Municipal Ordinance provides for a discretionary waiver of certain fees to TNR groups. 1669-70. Delegating that discretion, without a Program EIR review, would, in effect, define each decision to waive fees a "project" within the meaning of CEQA. FRC section 21065 (an activity supported through subsidies or other forms of assistance). While the ordinance itself cannot be challenged, because the time in which to do so has passed, the discretion it purports to delegate cannot be exercised without violating the law. In that respect, the ordinance is unenforceable.

This is not a case where a single employee has acted inconsistently with an agency's instructions. Petitioners have provided evidence that, despite official denial, the implementation of the program is pervasive, albeit "informal and unspoken." Exhibit A.

Therefore, the Court grants the petitioners' writ

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C. LOKUAN

NONE

Deputy Sheriff Reporter

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Counsel for  
 Petitioner NO APPEARANCES

**NATURE OF PROCEEDINGS:**

of mandate, declares that CITY has been implementing a TNR program without CEQA compliance and grants the petitioner's request of injunctive relief.

Evidentiary Objections  
 Exhibit J SUSTAINED

All other objections are OVERRULED.

A copy of this minute order is faxed this date to:

BABAK NAFIGY (805) 593-0946

MARY J. DECKER (213) 978-8090

MINUTES ENTERED 12/04/09 COUNTY CLERK
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injury or the impact of a new circumstance and surroundings;

Through a STAR Program, animal control can provide these animals the time and treatment they need to become adoptable pets. This is done with the help and support of volunteers, area veterinarians and foster families willing to accept temporary placement of an animal away from the shelter and in a loving home; local media loves to promote STAR animal stories;

**FELIX** (Feral Education and Love Instead of X-termination) is a feral cat TNR(Trap/Neuter/Return) program. TNR is practiced in many communities across the United States and around the world with amazing results. All the feral cats in a neighborhood are trapped, sterilized and returned under the care of a Colony Manager (a trained volunteer in the neighborhood willing to feed, water, and care for the colony). TNR is the only program demonstrated to reduce the number of feral cats and it also serves as a viable rat abatement program. All other methodologies only exacerbate the vexing problems associated with feral cats. TNR solves the problem;

**Safety Net** helps pets and their families stay

LISA McCURDY  
PRESIDENT

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VICE PRESIDENT

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TARIQ A. KHERO

ALANA YANEZ



ANTONIO R. VILLARAIGOSA  
MAYOR

BRENDA F. BARNETTE  
General Manager

JOHN CHAVEZ  
Assistant General Manager

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**Report to the Board of Animal Services Commissioners**  
**Brenda Barnette, General Manager**

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**COMMISSION MEETING DATE:** August 14, 2012    **PREPARED BY:** Brenda Barnette

**REPORT DATE:** August 9, 2012

**TITLE:** General Manager

**SUBJECT:    AUTHORIZATION TO USE \$52,000 FROM THE ANIMAL WELFARE TRUST FUND TO PAY FOR THE PREPARATION OF AN ENVIRONMENTAL CLEARANCE REGARDING LA ANIMAL SERVICES' PROPOSED "CAT PROGRAM"**

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**BOARD ACTION RECOMMENDED:**

That the Board approve a request from the General Manager to authorize the use of \$52,000 from the Animal Welfare Trust Fund to pay for preparation, circulation and finalization of California Environmental Quality Act documentation in support of a proposed "Cat Program" allowing the resumption of the Department's involvement in funding the spay/neuter of feral and stray cats, allowing cats to be maintained in outdoor colonies within the City limits under certain limitations, a set of Code amendments supporting these actions, and other actions relating to the overall welfare of cats in Los Angeles.

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**1. SUMMARY:**

**a. History**

As far back as 1971, with the support of the Los Angeles City Council ("City Council"), the Los Angeles Department of Animal Services undertook the direct subsidy of sterilization for dogs and cats in Los Angeles. At that time the program focused on spay/neuter clinics operated at its animal shelters. These clinics provided surgeries to

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adopted shelter animals and animals brought in by the public. In 1991, to make the program more cost-effective and geographically flexible, the City Council authorized the Department to instead distribute discount coupons to residents to sterilize privately-owned cats and dogs. These coupons were worth \$20 per cat and \$30 per dog.

In 1999, the City adjusted the spay/neuter discount voucher program for residents to make it more manageable and effective. The discount coupons and free certificates provided a \$30 discount to be used by any resident of the City as a subsidy for spay/neuter services for either cats or dogs, and a \$70 voucher which was for low-income City residents to be accepted by a veterinarian in full payment for a spay/neuter surgery for either cats or dogs. The City Council also authorized LAAS to begin operating or contracting with mobile spay/neuter clinics to which dog and cat owners could bring their animals for sterilization.

On June 27, 2005, the Los Angeles Board of Animal Services Commissioners ("Commission") approved a resolution adopting Trap-Neuter-Release ("TNR," a technique involving the maintenance of colonies of sterilized stray or feral cats in outdoor areas that by then had gained support in various locales around the United States and in other countries) as the official policy of the Department, directing the Department to take such steps necessary to implement the policy, including the initiation of several Municipal Code amendments.

Subsequently, several meetings were held between LAAS staff and members of the humane community to discuss program concepts and details. Members of local environmental organizations also contributed their thoughts on the subject. On June 12, 2006, the Board voted to instruct LAAS to conduct a CEQA review of any substantive proposal prior to moving forward with final approval.

While contemplating how to proceed on TNR, Department management sought to reduce the cat euthanasia rate by various means. Reimbursements were provided to individual veterinarians and cat sterilization programs to conduct surgeries on cats brought in by individuals and rescue groups. The Municipal Code was amended by the City Council at the Department's request in 2007 to allow the Department to waive trap rental fees to nonprofit groups involved in TNR.

LAAS also sought to reduce the number of animals brought in to the animal shelters in other ways. Several methods were used to achieve this purpose from 2006 to 2009. One of these was a short-lived attempt to reduce the hours that the shelters would accept animal "owner turn-ins." Another was to reduce the number of stray or feral cats being brought in to the shelters by discouraging the intake of feral cats from members of the public.

In 2006 the Department determined that reinstating on-site spay/neuter clinics at City animal shelters that would be open to the public could make an important contribution to the effort. A Request For Proposals (RFP) was released to identify prospective

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veterinary service providers for the South Los Angeles shelter, and Dr. Eric Jones opened the clinic there in May 2007. In subsequent years, additional RFPs were circulated leading to the opening of spay/neuter clinics at the Harbor, West Los Angeles and East Valley shelters as well.

Most significant was the 2008 passage of an ordinance mandating sterilization of all dogs and cats living within the City limits, with several specified exceptions. A key element of this ordinance is its prohibition of any cat over the age of four months being allowed to be in a public place unsupervised unless the cat is spayed or neutered. The overall intention of the ordinance was to reduce dog and cat overpopulation that contributes to animals entering the City's shelters.

After environmental and bird enthusiast groups objected to the implementation of any aspects of TNR without a California Environmental Quality Act ("CEQA") clearance, the Department ended the espousal of TNR as a policy in 2007. Nonetheless, a lawsuit was filed over this issue on June 26, 2008. The court subsequently agreed with the plaintiffs that the City had been conducting a TNR program without an environmental clearance. With the issuance of a modified court injunction in March 2009, subsidy of feral cat sterilization and the support of any TNR and TNR-related activities on the part of the City were prohibited, including any previously-initiated TNR-facilitating activities or adopted Codes.

Through the City's Bureau of Engineering, the Department subsequently engaged Envi-Craft, an environmental consulting firm, to advise it on how best to proceed with a CEQA clearance process. A survey of stakeholders was conducted, preliminary environmental analysis undertaken, and report delivered in November 2011.

Subsequently, a "project description" for a Cat Program (see below for an outline) intended to address the issues raised in the 2008 litigation has been developed. This project description is intended to be the focal point of the CEQA study required by the court in deciding the litigation.

#### **b. CEQA and the Cat Program Approval Process**

The CEQA process involves notifying the public, interested parties and agencies of the City's intention to create an environmental document authorizing implementation of the Cat Program, taking public and agency comments on the potential environmental impacts of the proposed program, and finalizing an environmental clearance. This clearance document – a Categorical Exemption, a Negative Declaration, a Mitigated Negative Declaration or an Environmental Impact Report – then must accompany any proposed discretionary actions regarding the Cat Program through the City's approval process.

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Since the Cat Program involves policies, implementation measures and proposed Code amendments, it is anticipated that its approval process will include both the Board of Animal Services Commissioners and the City Council.

## **2. PROPOSED CAT PROGRAM DRAFT PROJECT DESCRIPTION:**

In order to proceed with a CEQA study, it has been necessary for the Department to prepare a "project description" encompassing the "proposed project" to be studied for the environmental clearance document. The following draft project description is intended to include all the elements deemed necessary to allow the Department to participate in funding, administrative and educational activities pertinent to the well being and outdoor maintenance of cats – including feral and stray cats – within the City limits. To put it another way, the Cat Program is intended to legalize TNR and the Department's measured support for it without the Department embarking on a major TNR program of its own.

Working in conjunction with the City Attorney, the Mayor's office, the office of Councilmember Paul Koretz, the Bureau of Engineering's Environmental Management Group and outside experts on issues relating to cats, trap-neuter-release and related topics, the Department has prepared the following draft project description. This draft is subject to change as the CEQA and approval processes go forward, but it is fully indicative of the Department's intention to meet the court's requirements for conducting the Cat Program in a manner that addresses environmental concerns and promotes the welfare of cats in general.

The Cat Program and CEQA documentation will be brought to the Board for formal approval and transmittal to the City Council at a later date following completion of the latter.

### **Draft Project Description:**

The proposed project is the establishment of a "Cat Program" involving the citywide coordination of actions and activities that will accomplish increased spay/neuter of cats, generally reduce the euthanasia of cats in City of Los Angeles ("City") animal shelters, accommodate the maintenance and improved management of cats in outdoor locations in a manner that minimizes their impacts on environmentally sensitive habitats, support members of the public with an interest in addressing nuisance issues relating to cats, and facilitate public and community education on cat-related issues.

In addition, the proposed program includes a minor amendment to Section 5.201 of the Los Angeles Administrative Code regarding the scope of use of the Animal Spay and Neuter Trust Fund and amendments to Section 53.00 of the Los Angeles Municipal Code regarding the definition of a "cat kennel" involving how many cats may be kept in a given location without having to obtain a permit for a cat kennel, regarding the

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definition of a "colony," regarding the feeding of sterilized outdoor stray or feral cats, and regarding the exemption of colonies from requirements for obtaining a cat kennel permit.

The component parts of the Cat Program are as follows:

- (a) Use Animal Spay and Neuter Trust Fund monies to subsidize spay/neuter of cats, including shelter cats, adopted cats, owned cats, and stray or feral cats living in outdoor colonies or settings. This will be accomplished by making discount spay/neuter coupons available to cat owners or guardians, directly subsidizing veterinarians to perform spay/neuter surgeries, contributing to the funding of approved and/or geographically and/or income targeted operations of stationary or mobile spay/neuter clinics within the city, and other means to be determined, all in a manner compliant with standard City procedures. To the extent feasible, maintain records on the origin and destination of outdoor cats affected by such surgeries;
- (b) Establish and promote departmental relationships – including referral and contractual arrangements compliant with standard City procedures - with veterinarians or organizations who will offer free or discount spay/neuter services for shelter cats, adopted cats, owned cats, and stray or feral cats living in outdoor colonies or settings;
- (c) Rent or lend traps to any member of the public who complies with trapping permit requirements and seeks to remove cats, including stray or feral cats, for nuisance abatement purposes, to facilitate their sterilization, or for other purposes that may prove necessary;
- (d) Release cats to U.S. Internal Revenue Code ("IRC") section 501(c)(3) animal rescue and adoption organizations that request those cats prior to the cats' euthanasia (per state law);
- (e) Return cats whose owners claim them (per state law);
  
- (f) Make Los Angeles Animal Services ("Department" or "LAAS") facility community rooms available for use by community groups, animal welfare organizations, wildlife organizations and the Department itself to discuss cat-related issues, regardless of the issues or their viewpoint on those issues;
- (g) Provide links on the LAAS website to various animal protection organizations, including cat advocates, Trap-Neuter-Release ("TNR") groups, bird protection groups, other wildlife protection groups and any other community or issues-based organization discussing issues and problems relating to cats. Also provide links to sources of information on the control or repelling of nuisance cats, including such technologies that may be applicable to the topic;

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- (h) Allow various animal protection organizations, including cat advocates, TNR groups, bird protection groups, other wildlife protection groups and any other community or issues-based organization discussing issues and problems relating to cats, to distribute printed literature at City animal shelters and events;
- (i) Amend Section 5.201 of the Los Angeles Administrative Code ("Administrative Code") pertaining to the establishment of the "Animal Spay and Neuter Trust Fund" as follows:

*"The Fund must be used to provide ~~pet~~ animal sterilization services to City residents who meet eligibility requirements established by the GM for DAS and approved by the City Council;*

*"The Fund must be administered and expenditures from the Fund must be authorized by the City Council in accordance with established City practices; and*

*"The Fund must be limited to providing ~~pet~~ animal sterilization services to residents of the City of Los Angeles."*

- (i) Per Los Angeles City Council ("City Council") File 10-0982, amend Section 53.00 (Definitions) of the Los Angeles Municipal Code ("Municipal Code") pertaining to "Cat Kennels" as follows:

*"Cat Kennel" shall mean any lot, building, structure, enclosure, or premises, where ~~four~~ six or more cats are kept or maintained for any purpose. (Previously amended by Ord. No. 162,538, Eff. 8/27/87.)*

- (k) Amend Section 53.00 (Definitions) of the Los Angeles Municipal Code as follows:

*For the purposes of this section, "Colony" shall mean a geographic location not in or adjacent to a public park or Significant Ecological Area where stray or feral cats typically live and/or where they forage or hunt for food, or are fed and generally cared for by individuals volunteering as "Caregivers," also commonly referred to as "Caretakers."*

- (l) Amend Section 53.06.5 (b) (Feeding of Non-Domesticated Mammalian Predators Prohibited) as follows:

*Add: "This section shall not apply to any person who provides food or water to any stray or feral cat living in a colony provided the cat is sterilized."*

- (m) Amend Section 53.50 (a) (Permit Required) of the Los Angeles Municipal Code by adding language as follows:

*"For these purposes, 'cat kennel' shall not include any outdoor location*

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*Where feral or stray cats are living in, and are maintained as, a colony. Additionally, no cat kennel shall be permitted in or adjacent to a public park or Significant Ecological Area."*

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**FISCAL IMPACT:**

The use of the Animal Welfare Trust Fund for this purpose has no impact on the Department's General Fund budget.

**Approved:**

\_\_\_\_\_  
**Brenda Barnette, General Manager**

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**BOARD ACTION:**

_____ Passed	Disapproved _____
_____ Passed with noted modifications	Continued _____
_____ Tabled	New Date _____



## Feral Cats Cause Rabies Outbreak in New Mexico



By [Denise A Justin](#), Tue, April 17, 2012

**ALBUQUERQUE, NM** -- A rabies outbreak in Carlsbad, New Mexico, has caused the suspension of the Noah's Ark Animal Shelter's TNR program (trap/neuter/return) in which feral cats are trapped, sterilized, vaccinated and released. The origin of the outbreak was traced to a rabid skunk that had been in a "tangle" with a group of feral cats returned to the wild under the animal shelter's TNR program, according to USA [Today](#) on April 15, 2012.

In addition, at least a dozen residents of Eddy County have been forced to get rabies shots, as a precaution that the deadly virus may spread to humans and other animals. Sadly, more than 30 pet dogs have been euthanized because of exposure, according to officials.

Noah's Ark Director Angela Cary told the Carlsbad Current-Argus, "Unfortunately, more stray/feral cats will be euthanized in the next few months than ever, but we are doing so in an attempt to protect the people and pets in the community," Cary said. "The only thing that will keep us from having to euthanize more pets is if every owner in Carlsbad does the right thing and keeps their animals up-to-date on rabies vaccinations."

The Compendium of Animal Rabies Prevention and Control (rev. 2011) states that for effective rabies control, *local* governments should initiate and maintain effective programs to ensure vaccination of all [owned] dogs, cats...and to remove strays and unwanted animals.

Each year, about 50 to 70 New Mexicans receive post-exposure treatment for rabies, health officials report, but they were alarmed by the concentration of 12 treatments in a single county in just a couple of months this year.

Carlsbad Police Department Lt. Jennifer Moyers said all but three of the feral cats that tangled with the rabid skunk have been trapped and animal control officers are still attempting to trap the others. Another rabid skunk was observed with a group of more than 10 feral cats on Canal Street. Moyers said. Most of those cats have also been trapped but animal control efforts are continuing, according to the report.

One of the main dangers to humans, Noah's Ark Director Cary said is that although residents are conditioned to "run the other way" if they encounter a skunk, if a friendly cat approaches a natural instinct is to pet it. This is especially true with children. "If rabies gets a foothold in the huge feral cat population, it would be extremely dangerous for pets and people, especially children."

### CALIFORNIA CHILD CONTRACTED RABIES IN 2011 FROM FERAL CAT SCRATCH

On May 6, 2011, the Centers for Disease Control and Prevention confirmed the first-ever case of human rabies in Humboldt County, California, when an eight-year-old girl, named Precious Reynolds, developed encephalitis—brain inflammation--and tests revealed she had rabies which she got from a "feral or wild cat near her school when it scratched her on the arm during recess." Precious said, "The cat looked like a regular cat."

<http://www.opposingviews.com/i/feral-cats-may-have-caused-human-rabies-in-california>

Precious came into the hospital with only a 2% chance of survival and was discharged from UC Davis Medical Center on June 22, 2011, to go home, according to ABCNews. She is only the third survivor in the U.S. without the rabies vaccine shots.

<http://www.opposingviews.com/i/given-2-chance-live-8-year-old-survives-rabies>

## **Given 2% Chance to Live, 8-Year-Old Survives Rabies, Contracted from Feral Cat Scratch**



By [Denise A Justin](#), Thu, June 30, 2011

Precious Reynolds, the eight-year-old rabies victim who came into the hospital with only a 2% chance of survival, was discharged from UC Davis Medical Center on June 22, 2011, to go back to her Humboldt County, CA, home, according to ABCNews. She is only the third survivor in the U.S. without the rabies vaccine shots.

The Centers for Disease Control and Prevention confirmed the case was a rabies infection on May 6. It is thought to be the first-ever confirmed case of human rabies in Humboldt County, according to health officials.

<http://www.opposingviews.com/i/feral-cats-may-have-caused-human-rabies-i...>

The eight-year-old girl developed encephalitis—brain inflammation—and tests revealed she had rabies, which she got from a "feral or wild cat near her school when it scratched her on the arm during recess," according to an ABCNews video report. "The cat looked like a regular cat," Precious said. <http://abcnews.go.com/Health/california-girl-us-survive-rabies/story?id=13830407>

But Precious' symptoms were not identified as the deadly rabies virus when she was first taken to a local clinic complaining of a stomachache. She then developed difficulty swallowing. This was followed by a loss of muscle control, which made her unable to stand or walk. According to the earlier News10 report, "Authorities think the girl may have been in contact with a rabid cat near her elementary school in the town of Willow Creek in Humboldt County."

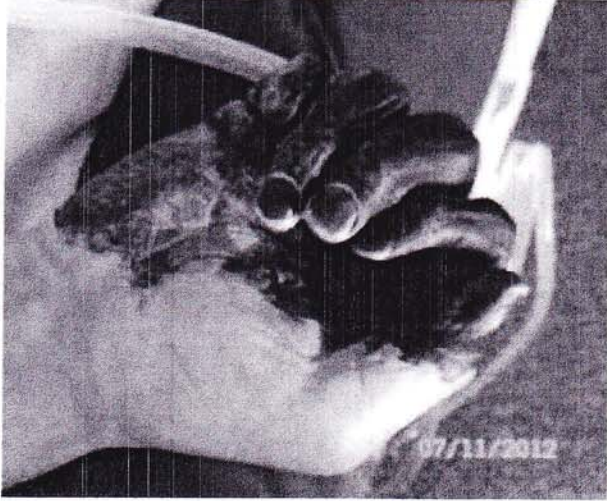
Tests by doctors at UC Davis Childrens' Hospital verified it was rabies infection, a virus which affects the central nervous system, ultimately causing brain inflammation, and is usually fatal. Early symptoms of rabies in humans include fever, headache, and weakness or discomfort, and more severe symptoms appear as the disease progresses.

By the time she was correctly diagnosed, it was too late to administer the vaccine, so Precious was put in a drug-induced coma and given anti-viral medication.

Precious still wears an ankle brace and walks with a limp; however, eventually she should be able to walk normally, according to a nurse who cared for her. A robust immune system and excellent medical care are credited with saving Precious' life.

<http://www.news10.net/news/article/141735/2/8-year-old-survives-rabies-i...> Watch an adorable video of the miracle girl here.

## Oregon Woman Contracts "Black Plague" from Cat



By Denise A Justin, Mon, September 17, 2012

A woman who tried to help her friend save a cat that was choking on a mouse contracted Bubonic plague from the diseased feline, Portland health officials announced on Friday, September 14.

"Black Plague," or Bubonic plague, is a bacterial illness spread through the bite of infected fleas or through direct contact with an infected animal or person. Although the disease is now rare, Bubonic Plague killed an estimated 25 million Europeans in the Middle Ages and was once called the "Black Death." There have been about seven cases a year in the U.S., according to public health statistics.

The woman, who wished to remain unidentified, was bitten at the same time as Paul Gaylord, who received national attention this summer when he almost died after contracting the infection. The 59-year-old Prineville man was hospitalized in critical condition with Black Plague on June 9 and spent nearly a month in intensive care on life support. "His heart stopped," said his mother, Almeda Gaylord. "His lung collapsed. They told us he wasn't going to make it." On July 11, doctors announced that they would have to sever the top half of Gaylord's fingers. They'll also cut off the tips of his toes.

Charlie, Gaylord's cat, most likely was infected by a flea carrying the plague, officials concluded. The Oregon woman who was a "family friend" tried to help Gaylord when Charlie came home one day choking, with a mouse stuck in the back of his mouth.

Gaylord tried to pull the mouse out and in the process, Charlie bit him and the woman. When they realized they couldn't help the cat, Gaylord reportedly borrowed a gun from a neighbor and shot Charlie to stop his suffering, according to oregonlive.com.

Public health officials sent the cat's body to the federal Centers for Disease Control and Prevention. It confirmed that Charlie had the plague, said Emilio DeBess, state public health veterinarian.

Gaylord thought he had the flu when he developed a high fever two days after the bite. Several days later, when the lymph nodes under his arms swelled to the size of lemons, doctors rushed him to the hospital and put him on life support in the ICU. "I was delirious," he said. "Things didn't seem real. The clock ran backwards." He said his days became a haze of hallucinations.

His progress has been bumpy but steady. In early July Gaylord was moved out of ICU into a private room. He's learning how to use a spoon that is attached to his wrist, according to reports.

Doctors announced it would be necessary to sever the withered, blackened ends of his fingers and tips of his toes because the plague causes an infection that kills cells. Fingers and toes can become gangrenous. Gaylord will have to learn how to walk again and use his hands, Oregon.live.com reports.

He will not be able to return to his job as a welder.

# Dog in Wyoming Dies of Flesh-Eating Bacteria

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By Denise A Justin, Fri, September 28, 2012

A dog in Gillette, Wyoming, has died of necrotizing fasciitis—flesh-eating bacteria, according to a Sept. 26 report by SFGate.com. A bite by a feral cat may have allowed the bacteria to get into the dog's bloodstream, according to the veterinarian who treated the 6-year-old Great Dane, named Nikita.

Dr. Darren Lynde, a veterinarian at the Animal Medical Center in Gillette told the Gillette News Record that animal cases of the infection are extremely rare and not related to three human cases of flesh-eating bacteria recently reported by Campbell County Memorial Hospital.

Dr. Lynde said it is not known exactly how the dog was infected, but it is possible the potentially deadly, invasive Group A Streptococcus was on the dog's body or in dirt when a feral cat bit the Great Dane. He said the bite may have allowed the bacteria to get into the dog's bloodstream, according to SFGate.com.

Nikita's owner, Christine Williams, said she found her five dogs playing with the cat in her yard on September 10, according to the report. Nikita began to limp the next day. "By that night, she could hardly walk on that foot," Williams said. Williams took the dog to the Animal Medical Center, but veterinarians were unable to save her.

Dr. Lynde told reporters that animal cases of the infection known as necrotizing fasciitis are extremely rare. "Most cats and dogs just clear the infection on their own," he said.

"Based on the preliminary information we have, we don't perceive there is a threat to the public health," said Dr. Tracy Murphy, Wyoming state epidemiologist. However, health officials have not made any information public on where the three people may have contracted the Group A Streptococcal infection, the Star Tribune reports..

A strep infection typically causes mild symptoms such as strep throat or the common skin infection impetigo. But strep bacteria can be life-threatening if an infection enters the bloodstream.

According to health officials, the most common way of getting necrotizing fasciitis is when the bacteria enter the body through a break in the skin, like a cut, scrape, burn, insect/animal bite, or puncture wound

<http://www.opposingviews.com/i/society/animal-rights/dog-wyoming-dies-flesh-eating-bacteria>