

**BOARD OF COUNTY COMMISSIONERS**  
**SARPY COUNTY, NEBRASKA**

**RESOLUTION: SPECIAL USE PERMIT FOR RAY HEIMES**

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County Board of Commissioners has the authority to adopt a Zoning Regulation, which shall have the force and effect of law pursuant to Neb. Rev. Stat. § 23-114 (Reissue 2007); and,

WHEREAS, said Zoning Regulations require the County Board of Commissioners to approve Special Use Permits; and

WHEREAS, Rebecca Horner, Planning Director has reviewed the Ray Heimes Special Use Permit application, to install a 50 Foot wind generator for residential use for compliance with the Sarpy County Comprehensive Plan and the Sarpy County Zoning Regulations on the property located at 21174 Riha Road and legally described as follows:

Lot 7 & 8B, Meadow Oaks South in Sec 10, Twp 12N, Range 11E of the 6<sup>th</sup>  
P.M., Sarpy County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that this Board makes the following findings of fact:

- I. A public hearing regarding the Special Use Permit Application was held before the Sarpy County Planning Commission on July 15, 2009 and further, the Planning Commission gave their recommendation.
- II. A public hearing regarding the Special Use Permit Application was held by this Board.
- III. Notice of each of the Public Hearings described above was published at least once in the ten (10) day period immediately prior to each respective public hearing as required by Neb. Rev. Stat. §23-164 (Reissue 1997), and the proof of publication has been filed in the Office of the Sarpy County Clerk.
- IV. The Planning Director has made a recommendation as noted in the attached Exhibit "A", which Exhibit "A" includes the Planning Director report with an attached Nebraska Game and Parks Commission map and the site plan.
- V. The U.S. Fish and Wildlife Service opposes the application for a wind generation system due to the negative effect such a system may have on federally protected migratory birds.
- VI. The Special Use Permit Application is in compliance with the Comprehensive Development Plan.

FURTHER BE IT RESOLVED THAT this Board in light of the above recited findings of fact, after due deliberation and consideration, approves the issuance of the Special Use Permit to install a 50 Foot wind generator for residential use, on the above described property with the following conditions:

1. That the applicant comply with the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act and the Endangered Species Act, as applicable,
2. That the Applicant enters into an interconnection agreement with the Omaha Public Power District,
3. That the Applicant enter into a development agreement with Sarpy County addressing issues of decommissioning of the structure, design standards as recommended by the Planning Director, and adequate liability insurance.

Dated this 16<sup>th</sup> day of October, 2009.

Moved by Rich Jansen seconded by Pat Thomas, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

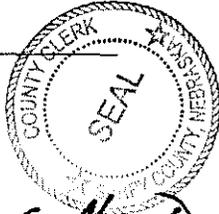
Rich Jansen  
Pat Thomas  
Tom Richard  
Patricia Thomas

None

Joni Jones

ABSTAIN:

None



Fred J. Chen  
 Deputy  
 County Clerk

Approved as to form:

Pat Thomas  
 County Attorney

# Exhibit A

Sarpy County  
County Board of Commissioners Report  
Meeting Date: September 15, 2009  
Staff Report Prepared: September 4, 2009

Subject	Type	By
Special Permit for a wind energy systems at the property owner's residence at 21174 Riha Road, legally described as Lot 7 & 8B, Meadow Oaks South in Sec 10, Twp 12N, Rng 11E of the 6 <sup>th</sup> P.M., Sarpy County, Nebraska	Resolution and public hearing	Rebecca Homer, Planning Director.

This is a request for approval of a special use permit for a wind energy system

- Comprehensive Development Plan
  - The Comprehensive Plan shows the area as Conservation Residential. (Figure 5.1)
  - The Comprehensive Plan indicates this is an area with high levels of environmental features. (Figure
- Zoning
  - The existing zoning is AGD, Agricultural Development District.
  - The proposed wind energy system is to be 50' in height and proposed to be setback from the north property line 100' and the west property line 80'. A site plan is attached.
    - The lot is approximately 11.75 acres.
    - The proposed system is to be setback from adjacent property lines a minimum of 80' as shown in the attached site plan.
    - There are existing tree masses on all sides of the property.
    - The applicant indicated they request the permit for residential electrical use.
    - OPPD indicated that there are existing underground power lines in the area. An interconnection agreement is required if the systems will connect to the power grid and a development agreement should be required addressing decommissioning, liability insurance and design standards.
- History
  - Planning Department received the application prior to adoption of the wind energy system design standards.
  - The application was originally heard on June 17, 2009 and delayed by the Planning Commission to allow for further research regarding the wind energy regulations.
  - The Planning Department received a letter of opposition from the U.S. Fish and Wildlife Service indicating sensitive endangered species habitat is located in the area, and the area is a bird migration zone (see attached Nebraska Game and Parks Commission map). The U.S. Fish and Wildlife Service indicated that the intentional or accidental taking as well as displacement of habitat is a violation of the Endangered Species Act. The U.S. Fish and Wildlife Service believes the proposed wind energy system could cause a taking and opposes the request.
- Summary of Request
  - Generally the application conforms to the newly adopted wind energy system design guidelines.
  - There is endangered species habitat in the area of the request and the request is adjacent to the Scham Park area.

- Planning Commission Action

June 17, 2009

- *Bliss moved, seconded by Marquardt to table the special use permit to July 15, 2009, when further research has been completed concerning the wind energy regulations. **Ayes-** Bliss, Fenster, Stuart, Marquardt, Torczon, and Wees. **Nays** – Wear and Whitfield. **Abstain** – None. **Absent** Courtney Dunbar, Greg Gonzalez, and Stacen Gross –. **Motion carried.** (6-2)*

July 15, 2009

- *Whitfield moved, seconded by Bliss to deny the special use permit based on the environmental concerns expressed by the US Fish and Wildlife. **Ayes:** Bliss, Fenster, Marquardt, Torczon, and Whitfield. **Nays:** Stuart, Wear and Wees. **Abstain:** None. **Absent:** Courtney Dunbar, Greg Gonzalez, and Stacen Gross –. **Motion carried.** (5-3)*

- Recommendation

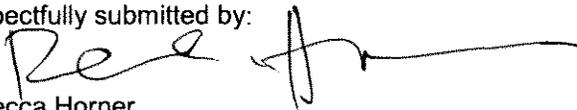
Due to the existing endangered species habitat and the expressed concern by the U.S. Fish and Wildlife Service staff recommends denial of the request.

If the County Board wishes to approve the request, staff recommends the following conditions:

- Prior to final approval, the applicant sign a development agreement (to address design standards, decommissioning and liability insurance) as well as signs a interconnection agreement if interconnection to the power grid is desired.

Respectfully submitted by:

Rebecca Horner  
Planning Director



# DRAFT: Wind power and Nebraska's wildlife: An index of the sensitivity of wildlife habitats to wind power development, based on selected at-risk species



### Relative Sensitivity

Low



High

### Biologically Unique Landscapes

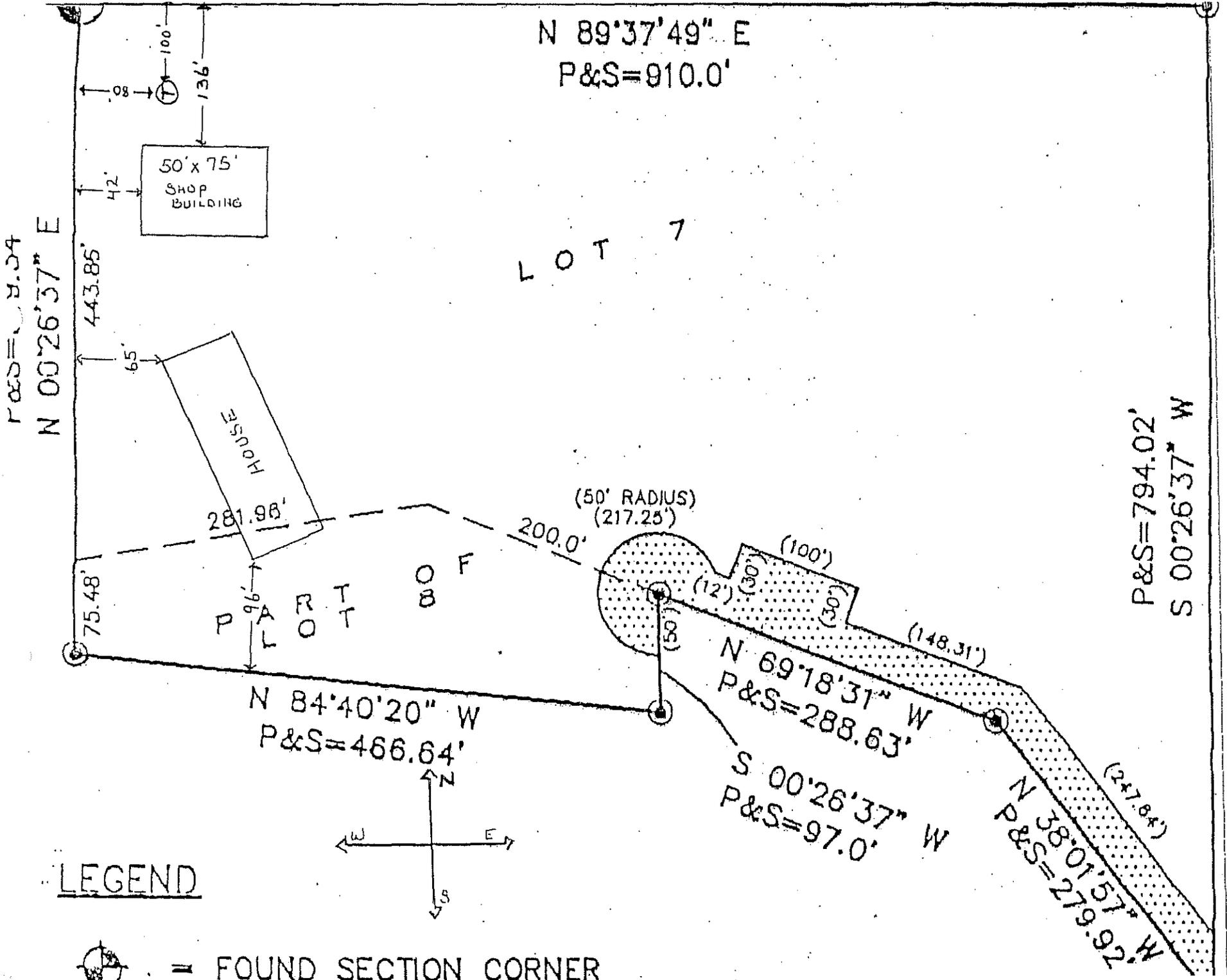


This map was designed to aid in planning for wind power development by identifying areas that are considered relatively more sensitive or less sensitive to such development, with respect to species of concern. This map is not designed to evaluate wind farm siting at specific locations. Even in "low sensitivity" areas shown, there will be specific locations where siting of wind power infrastructure can negatively impact significant biological resources (e.g. remnant tallgrass prairie, listed plant species, etc.). Contact the Nebraska Game and Parks Commission and the U.S. Fish and Wildlife Service for potential site-specific impacts and potential conservation measures to avoid "take" under the state Nongame and Endangered Species Conservation Act and the federal Endangered Species Act.

See attached document for a description of the information used to develop this map.

Map version date: April 30, 2009





# LAND SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT, MAP, SURVEY OR REPORT WAS MADE BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEBRASKA.

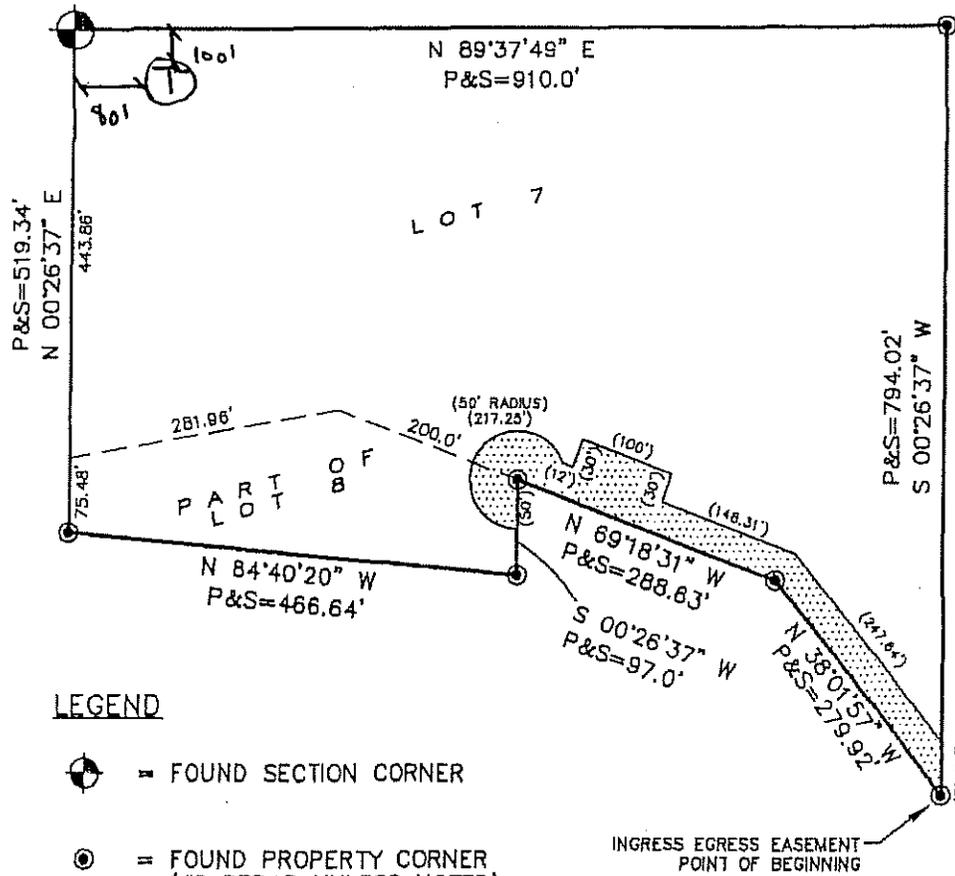
## LEGAL DESCRIPTION:

LOT 7 AND PART OF LOT 8, MEADOW OAKS SOUTH, AS PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA.

### #5 REBAR

- NE - 13.8' TO THE SOUTH FACE OF 36" OAK
- S - 6.5' TO BARB WIRE FENCE
- W - 10.5' TO BARB WIRE FENCE
- SW - 12.2' TO CORNER FENCE POST

**NORTHWEST CORNER OF THE SE 1/4 OF THE SW 1/4 SEC. 10-T12N-R11E**



PERMANENT INGRESS-EGRESS EASEMENT ON LOT 7 AND LOT 8, MEADOW OAKS SOUTH, BEING A PLATTING OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER AND PART OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER LYING NORTH OF RIHA ROAD IN SECTION 10, TOWNSHIP 12 NORTH, RANGE 11 EAST OF THE 6th. P.M., SARPY COUNTY, NEBRASKA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 7, MEADOW OAKS SOUTH, THENCE THE FOLLOWING TWO (2) COURSES ALONG THE SOUTH LINE OF SAID LOT 7, (1) N 38°01'57" W (ASSUMED BEARING) FOR 279.92 FEET, (2) N 69°18'31" W FOR 288.63 FEET; THENCE S 00°26'37" W FOR 50.0 FEET ALONG THE EAST LINE OF SAID LOT 8; THENCE ALONG A 50 FOOT RADIUS CURVE TO THE RIGHT FOR 217.25 FEET (CHORD BEARING = N 34°55'03" E, CHORD DIST. = 82.44 FEET); THENCE S 69°18'31" E FOR 12.0 FEET ALONG A LINE 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 7; THENCE N 20°41'29" E FOR 30.0 FEET; THENCE S 69°18'31" E FOR 100.0 FEET ALONG A LINE 63 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 7; THENCE S 20°41'29" W FOR 30.0 FEET; THENCE THE FOLLOWING TWO (2) COURSES ALONG A LINE 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 7, (1) S 69°18'31" E FOR 148.31 FEET (2) S 38°01'57" E FOR 247.64 FEET; THENCE S 00°26'37" W FOR 53.04 FEET TO THE POINT OF BEGINNING.

## LEGEND

- = FOUND SECTION CORNER
- = FOUND PROPERTY CORNER (#5 REBAR UNLESS NOTED)

PERMANENT INGRESS EGRESS EASEMENT



# Deb Houghtaling

Sarpy County Clerk

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1210 Golden Gate Drive, Suite 1118  
Papillion, Nebraska 68046-2895

Phone: (402) 593-2105  
Fax: (402) 593-4360

Fred Uhe  
Chief Deputy

October 13, 2009

Ray Heimes  
21174 Riha Road  
Springfield, NE 68059

Dear Mr. Heimes,

Action by the Sarpy County Board of Commissioners on October 6, 2009 is as follows:

(Tabled from 8/18/2009, 9/15/2009 and 9/29/2009) Resolution (2009-230): Special Use Permit, Ray Heimes for wind energy system at 21174 Riha Road, Lot 7 & 8B Meadow Oaks South.

MOTION: Public hearing having been held on September 29, 2009, resolved, seconded by, to approve the resolution with the following conditions; the applicant comply with the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act and the Endangered Species act as applicable, the applicant enter into an interconnection agreement with the Omaha Public Power District, and the applicant enter into a development agreement with Sarpy County addressing issues of decommissioning of the structure, design standards as recommended by the Planning Director, and adequate liability insurance. Ayes: Hike, Richards, Thomas, & Jansen. Nays: None. Absent: Jones.

Please find attached a copy of the approved resolution for your files.

Sincerely,



Debra J. Houghtaling  
Sarpy County Clerk

Enclosure  
DJH/tj