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AGENDA COVER MEMO

DATE: May 11, 2005

TO: BOARD OF COUNTY COMMISSIONERS

FROM : BILL VANVACTOR, COUNTY ADMINISTRATOR &
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA05-5161, Ronald and Patricia Tendick)

I. MOTION: Move to Adopt Order

II. ISSUE OR PROBLEM

Shall the Board of County Commissioners compensate an applicant under Ballot Measure 37 and LC 2.700 through 2.770 for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of restrictive land use regulations or modify, remove, or discontinue application of those land use regulation to the subject property to allow the owners to use the property for a use permitted at the time the owners acquired the property?

III. DISCUSSION

A. Background

On November 2004 the voters in the State of Oregon passed Ballot Measure 37 (M37) which in brief summary requires payment to landowners if certain land use regulations enacted or enforced by a public entity restrict the use and have the effect of reducing the fair market value of private real property.

As a general matter, when processing a claim under Measure 37, an agency must confirm that:

- the individual making the claim is the owner of the private real property for which the claim is made;
- the land use regulation has been enforced and has restricted the lawful use of the property in a manner that has the effect of reducing its fair market value; and
- the restrictive land use regulation does not fall within one or more of the exceptions provided by the measure.

When a claim is made, the property owner shall be paid just compensation unless the land use regulation is no longer applied to the property within 180 days of the date the property owner makes a written claim for compensation. Just compensation shall be equal to the reduction in fair market value of the property resulting from enforcement of the restrictive land use regulation as of the date the owner makes a written demand

for compensation. The measure allows local governments to choose to pay just compensation or to “modify, remove or not ... apply” the restrictive land use regulation in lieu of providing just compensation.

B. Lane County Measure 37 Claim Process

On December 1, 2004, the Lane County Board of Commissioners adopted a Real Property Compensation Claim Application Process codified in LC 2.700 through 2.770(Ordinance No.18-04) with requisite fees in LM 60.842 (Order No. 04-12-1-12). The ordinance enacted provisions require applicants to provide certain information necessary for the County to evaluate the Measure 37 claim. A specific list of required information is found in LC 2.720. Upon receipt of a claim providing the necessary information, LC 2.740 states that the County Administrator shall make a determination as to whether the application qualifies for Board compensation consideration. An application qualifies for compensation consideration if the applicant has shown that all of the criteria of LC 2.740(1) are met. (Refer to Analysis Section, below, for an assessment of the Tendick claim.)

C. Application to Lane County for Measure 37 Claim

Applicant: Ronald L. and Patricia E. Tendick

Owner: Ronald L. and Patricia E. Tendick

Address: 35918 E. Enterprise Rd.
Creswell, OR 97426

Legal Description of Property: Map 19-02-09, tax lot 900

Acreage: 53.88 acres

Current Zoning: Impacted Forest Land (F-2/RCP)

Date Property Acquired: January 23, 1963

Land Use Regulations in Effect at Date of Acquisition: Unzoned; LC Chapter 13 regulated subdivisions

County land use regulation which restricts the use and reduces the fair market value of claimant’s property: Lane Code Chapter 16.211 (currently)

Specific Relief Sought: Waiver of 80 acre minimum land division and allow additional dwelling for son.

On December 9, 2004, Ronald and Patricia Tendick submitted a M37 claim to Lane County for waiver of land use restrictions and paid the claim processing fee deposit. On December 21, 2004, the County Administrator sent a response to Ronald and Patricia Tendick indicating that the claim was incomplete and identifying the additional information required for Lane County to process a M37 claim. On January 5, 2005, the Tendicks indicated they intended to submit additional missing information. On February 11, 2005, the County Administrator and staff met with Mr. Tendick and his son to discuss the M37 claim.

On February 18, 2005, Mr. and Mrs. Tendick submitted an application form and some additional information, including a Preliminary Title Report, copies of deeds, nearby assessed property value data and nearby property sales data.

D. Lane Code Submittal Requirements

The following section highlights the documentation that the applicant has provided to address the LC 2.720 submittal requirements. (Refer to application for details)

- 1) A completed application form and payment of the initial deposit for fees and costs has been provided by the applicant.
- 2) Contact information of the property owner filing the application has been provided along with identification of all owners of the subject property.
- 3) Legal description of the property has been provided.
- 4) A current title report for the property has been provided. The report establishes that the property has been in family ownership since 1936 and that the applicants acquired an interest in the property in 1963.
 - The property was acquired by J. William Tendick on January 30, 1936 from Alfred Glenn by Bargain and Sale Deed for a consideration of \$1,600. (Book 209 Page 142)
 - The property was acquired by Ronald and Patricia Tendick by Warranty Deed from J. William Tendick on January 23, 1963 with the Grantor retaining a life estate on said premises. (Reel 210 D 97399)
 - On July 10, 1978, J. William Tendick conveyed his interest in the property by Warranty Deed to Ronald and Patricia Tendick. (Reel 926 R 7849091)
- 5) Identification of the land use regulations restricting the use of the property and allegedly causing a reduction in the fair market value has been provided. The applicants identified the F-2 zone, the relevant portions of which seem to be limited to:
 - the 80 acre minimum area land division requirements, LC 16.211(10)
 - the dwelling requirements, primarily in LC 16.211(5), (6) and (7)Other regulations in the F-2 zone will remain applicable unless they restrict the approval of a dwelling in a manner that reduces the value of the property and are not otherwise exempted by Measure 37.
- 6) An appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, addressing the M37 and LC 2.720 requirements has not been provided. However, the applicant has provided an analysis of the assessed market values of nearby properties along with recent comparable sales data that indicate the applicants' opinion on the amount of the reduction in the fair market value of the property resulting from the challenged land use regulations.
 - The entire property was acquired in 1963 for consideration of \$1, 600.
 - In lieu of an appraisal, Mr. Tendick has submitted assessed Market Value information from the County Department of Assessment and Taxation for seven nearby properties. According to the information submitted by the applicant, the reduction in the subject property's assessed Market Value ranges from \$432,212 to \$682,212.
 - Comparable sales data for nearby 10 acre properties range from \$119,000 to \$169,000.
- 7) A written statement addressing the criteria listed in LC 2.740(1)(a)-(d) has been provided. (Refer to analysis section, below.)

- 8) A statement by the applicant specifying the amount of the claim and the value of the property before and after application of the challenged land use regulation has been provided.
- 9) There are no leases or covenants, conditions and restrictions applicable to the subject property identified by the applicants that impose restrictions on the use of the property.

E. Analysis

Application Review and Referral Determination

An application qualifies for compensation consideration if the applicant has shown that all of the following LC 2.740(1) criteria are met:

- a) *The County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein;*

Ronald and Patricia Tendick first acquired an interest in the property on January 23, 1963. At that time the property was unzoned but was subject to Lane Code Chapter 13 subdivision regulations. The first zoning regulations adopted and made applicable to the subject property were the Farm-Forestry 20 District (F-F20) enacted on June 9, 1976 under Ordinance 587.

Currently, the property is zoned Impacted Forest Land (F-2/RCP) and the applicants' dwelling is located on the subject property. The F-2 zoning regulations (LC 16.211) authorize, for qualifying parcels, one dwelling if the tract (contiguous ownership) upon which the dwelling will be located has no other dwellings on it. The F-2 zoning regulations also establish the minimum land division size at 80 acres. The subject property is 53 acres in size. Under the current 80 acre minimum land division requirement the property cannot be further divided. Ronald and Patricia Tendick desire to divide a 30 acre parcel out of the 53 acre property for a home site for their son. Other regulations in the F-2 zone and other sections of Lane Code do not seem to restrict the use of property for home sites and should remain applicable until shown otherwise.

Conclusion: At the time the Tendicks acquired the property, there were no zoning restrictions but LC Chapter 13 regulated subdivisions. Currently, the F-2 zone dwelling provisions (LC 16.211(5), (6) and (7)) would restrict the allowance of a dwelling on a tract (contiguous ownership) if the tract upon which the dwelling would be located has other dwellings on it. Because the applicants' dwelling is located on the subject property, the property would be restricted from having another dwelling. Further, the minimum area land division requirements are restricted to 80 acres (LC 16.211(10)), so the applicant would be unable to partition their property and comply with minimum area requirements. Other regulations in the F-2 zone and other sections of Lane Code do not seem to restrict the use of property for home sites and should remain applicable until shown otherwise. Prior to the written demand under M37, the applicants had not made any formal application for partition approval, another dwelling or received written notification of Lane County enforcement of those restrictive F-2 regulations since M37 went into effect. The clear limitations of the F-2 zone seem to preclude additional dwellings or land divisions and may provide

sufficient evidence those regulations have been enforced. In addition, the F-2 dwelling and minimum area requirements come from state statute (ORS 215.705 and 215.720 through 215.780) and administrative rules (OAR 660, Division 6). The Board will need to conclude the F-2 dwelling and minimum area land division regulations have been enforced against the applicants in order to give rise to a claim under M37 against Lane County.

b) The restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed;

The applicant has provided an analysis of the decreased property value by making comparisons with other nearby properties in the F-2 zone.

According to the information submitted by the applicant, the reduction in the subject property's assessed Market Value as a result of the land use regulations ranges from \$432,212 to \$682,212. Even if the property is worth only half of what the assumptions in this comparison represent, it demonstrates the restrictive land use regulations may result in a significant reduction in the property value.

In addition, the applicant has provided recent sales data of similar nearby properties that are zoned Marginal Lands (ML10/RCP) in the Green Bluff Estates. Five of the 10 acre lots have sold since 1998 with a range in sales price from \$119,000 to \$169,000. The applicants' property is 53 acres in size with an assessed market value of \$317,788. Extrapolating from the 10 acre property sale prices, the reduction in the market value of the applicants' property in this example could range from \$277,212 to \$527,212. There is no indication of the value of the property with only one additional dwelling and no partition. An independent review of what the applicants provided has not been requested. Assumptions inherent in the applicants' analysis may not result in the same valuation conclusions. Given the uncertainty of the M37 impact on the market for dwelling sites, it is difficult to determine what the exact nature of the fair market value reduction, if any, would be for this property.

Conclusion: It seems reasonable to conclude that the restriction of the 80 acre minimum land division size and the dwelling limitation allowing only one dwelling per tract of contiguous ownership has the effect of reducing the fair market value of the subject property. Other regulations in the F-2 zone and other sections of Lane Code do not seem to restrict the use of property for home sites and should remain applicable until shown otherwise. Given the uncertainty of the impacts M37 will have on fair market value, it is difficult to determine the amount of that reduction. The Board will need to conclude the restrictive F-2 regulations have the effect of reducing the fair market value of the applicants' property to conclude the Tendicks comply with this criteria and are entitled to just compensation under M37.

c) The challenged land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner; and

Ronald and Patricia Tendick first acquired an interest in the property on January 23, 1963. The current land use regulation limiting the minimum land division size to 80 acres was adopted on August 28, 2002 (Ordinance 5-02) after Ronald and Patricia Tendick acquired the property.

Conclusion: At the time the Tendicks acquired the property, there were no zoning restrictions but LC Chapter 13 regulated subdivisions. The challenged F-2 land use regulations were adopted after Ronald and Patricia Tendick became the current owners of the property. It is not clear that the current F-2 requirements restricting dwelling or partition approvals were actually enforced or applied directly to the applicants since the effective date of M37. As stated previously, however, those limitations may provide enough evidence to conclude the regulations have been enforced. As a practical matter, the Board will need to conclude the F-2 regulations have been enforced against the applicants in order to give rise to a claim under M37 and find compliance with this criteria.

d) The challenged regulation is not an exempt regulation as defined in LC 2.710.

The provisions of LC 16.211(5), (6) and (7) establish the dwelling approval requirements in the F-2 zone. The dwelling authorization requirements are not part of the exempt regulations addressing public nuisances, public health and safety (except the fire safety standards), federal law, or restrictions to prohibit use of the property for pornography or nude dancing. The parts of the F-2 zone and other sections of Lane Code do not restrict the use of property for a home site and reduce the value of the property should remain applicable until shown otherwise.

LC 16.211(10) establishes the minimum area requirements for land divisions. Those minimum area requirements are not part of the exempt regulations addressing public nuisances, public health and safety, federal law, or restrictions to prohibit use of the property for pornography or nude dancing. The parts of the F-2 zone and other sections of Lane Code do not restrict the use of property for a home site and reduce the value of the property should remain applicable until shown otherwise.

Conclusion: This criterion appears to be met because the specific challenged land use regulations limiting approval of an additional dwelling or land divisions are not part of the exempt regulations defined in LC 2.710.

Final Referral Conclusion: This application appears to qualify for compensation consideration because all of the criteria of LC 2.740(1)(a)-(d) are met, particularly if the Board reaches the conclusion the restrictive land use regulations have been enforced against applicants and the County Administrator and Board accepts the applicants' reduction in value analysis.

F. Ultimate Referral Determination

If an application meets all of the criteria in LC 2.740(1)(a)-(d), the County Administrator shall refer the application to the Board and recommend, based on consideration of the criterion at LC 2.760(3)(whether the public interest would be better served by

compensating the applicant, or by modifying, removing, or choosing not to apply the challenged land use regulations to the subject property), that the Board either compensate the applicant for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation or modify, remove, or discontinue application of the land use regulation to the subject property to allow the owners to use the property for a use permitted at the time the owners acquired the property. The following referral determination is provided for Board consideration: **The application appears to meet all of the criteria in LC 2.740(1)(a)-(d) particularly if the existence of the zoning and apparent clear limitation on approval of a dwelling or land division is sufficient evidence those regulations were enforced and the value reduction analysis meets the requirements of Measure 37. Based on that evidence and affirmative answers to those issues, the County Administrator recommends referral to the Board for the Board to confirm the application qualifies under Measure 37 and determine whether to compensate the applicant for the reduction in fair market value of the subject property resulting from the enactment of the dwelling requirements and minimum land division requirements in the F-2 zone, or modify, remove, or discontinue application of the restrictive land use regulations to the subject property to allow the owners to use the property as authorized by Measure 37.**

G. Policy Considerations for the Board of Commissioners

There are a number of issues raised and left unanswered by the text of Measure 37. Some of those issues were discussed when the Board enacted Ordinance No. 18-04 to establish the provisions of LC 2.700 through 2.770 (reasonableness of fees; creating a private cause of action for neighbors; and “waiver” transferability). The county regulations provide for some County Administrator and Board discretion to reach most of those issues and resolve them in the context of an individual M37 claim. Of course, those resolutions and interpretations of Measure 37 could be challenged and the reviewing courts may disagree with the Board. In any event, any Board Order acting on a specific M37 claim can resolve all the issues as necessary to reflect the Board consensus on the best way to resolve the risks inherent in the claim. In this particular case, the issues described above and the following additional policy considerations are presented to the Board:

- A) A written appraisal has not been provided by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon. The market value analysis provided by the applicant does not meet the Measure 37 required analysis of the reduction of Fair Market Value as provided in LC 2.720(6). Does the comparative assessed market value analysis provided by the applicant adequately address the code requirements or Measure 37 in lieu of an appraisal?
- B) Does the Board want an independent review of comparable property value information?
- C) There are two challenged regulations (dwelling provisions and minimum land division) that restrict the applicants’ property if the Board concludes the F-2 zone has been enforced against the applicants. The applicants request that the county “waive” the minimum land division area and dwelling limitation regulations to allow approval of a dwelling for one of their sons. There are two concerns with this request: 1) land

divisions may not be considered a “use” that can be “waived” under M37 although land division ordinances are included in the definition of “land use regulations” contained in the measure, and 2) there is significant question in the language of M37 as to the status of any use authorized pursuant to a M37 “waiver” after the property owner entitled to the “waiver” sells the property.

- 1) The recent Attorney General’s Opinion states that when a claim is deemed valid for compensation under M37, but relief is provided by “not applying” the law, then that relief is personal to the current owner of the property. So, the waiver belongs to the current owner and is not transferable to subsequent purchasers. If the land division regulations were “waived” and Ronald and Patricia Tendick could partition the property, the relief would be personal to them and the parcels created as a result of the “waived” land division requirements might not be transferable to their son and if transferred, might not be developable. Division and sale of the property may not be a “use” included in the waiver section of M37 but “land division ordinances” are included in the “land use regulation” definition in M37 and LC 2.710. If the current owner “use” includes division, the sale may result in a lot or parcel that is not developable or may be subject to existing regulations that make its use or development difficult for the buyer. The new owner use would be subject to land use regulations in place at the time of acquisition.
- 2) The dwelling provisions limit the applicant’s use to one dwelling per tract or contiguous ownership. The Board could “waive” the restriction of one dwelling per tract and authorize Ronald and Patricia Tendick to build a second dwelling on their property. Transferability of that dwelling may become an issue since the regulations in effect at the time of acquisition by a new owner could make the additional dwelling a nonconforming use, at best. It is unclear whether nonconforming use regulations currently enacted by Lane County or in ORS 215.130 would apply to a use established based on a M37 claim “waiver” in lieu of compensation.

H. Conclusion/County Administrator Recommendation

After careful consideration of the application and other evidence in the record, the County Administrator is to determine the amount of compensation due the applicant for the reduction of the property’s fair market value resulting from the affect of the land use regulation on the property. The County Administrator is to compare the public benefits from application of the land use regulation to the applicants’ property with the public burden of paying the required compensation to the owner if the “waiver” of the land use regulation is not granted.

The amount of just compensation resulting from the restrictive land use regulations applied to the subject property is not specifically determined in this analysis, but would seem to range between \$277,212 and \$682,212. Lane County has not appropriated funds for compensation for M37 claims and has no funds available for this purpose. The public benefit from application of the land use regulation to the applicants’ property seems to be outweighed by the public burden of paying the required compensation.

If “waiver” or modification of a land use regulation is necessary to avoid owner entitlement to compensation, the County Administrator shall make a recommendation either to grant a “waiver” or modification of the land use regulation that will avoid owner entitlement to compensation, grant a “waiver” or modification of the land use regulation that will not avoid but will reduce the compensation to which the owner is entitled and pay the reduced compensation, or deny a “waiver” or modification of the land use regulation and pay the compensation to which the owner is entitled.

The applicants do not request compensation, but request that the current land use regulations not apply to the property. Measure 37 gives the option to Lane County to “waive” certain land use regulations rather than pay compensation. The applicants request that the current land use regulations not apply to the property, but that different land use regulations apply. The applicants want to divide off 30 acres from the 53.88 acre ownership to provide their son with a dwelling on the new parcel.

Because under Measure 37 the “waiver” of regulations would be personal to Ronald and Patricia Tendick and might not be transferable to their son, as they desire, the County Administrator would not recommend waiving the minimum land division regulations, but does recommend “waiver” of the dwelling provisions of LC 16.211(5), (6) and (7) that limit the applicants’ use to one dwelling per tract or contiguous ownership. The County Administrator recommends the Board could “waive” the restriction of one dwelling per tract in the F-2 zone and authorize approval of an application from Ronald and Patricia Tendick to build a second dwelling on their property. Other land use regulations in the F-2 zone and other sections of Lane Code do not seem to restrict the use of the property for a home site and should remain applicable unless it can be shown they restrict the use and have the effect of reducing the fair market value of the Tendick’s property.

V. ALTERNATIVE/OPTIONS

1. Recommend the County Administrator conclude the application is not a valid claim and issue a final written decision denying the Claim
2. Recommend an independent review of comparable property value information and/or the applicant to provide additional information
3. Recommend the application appears valid and adopt an order reflecting the Board of County Commissioners agreement with the County Administrator referral recommendation and determining the final disposition of the Tendick’s Measure 37 claim.

VI. RECOMMENDATION

Alternative 3.

VII. IMPLEMENTATION / FOLLOW-UP

Upon adoption of the final Board determination that “waiver” or modification of a land use regulation is necessary to avoid owner entitlement to compensation, the County Administrator will provide notice of the Board Board of County Commissioners final decision pursuant to LC 2.760.

VIII. ATTACHMENTS:

Order

1. December 8, 2004, M37 Claim
2. February 18, 2005, Application for Claim under LC 2.700
3. February 24, 2005, Oregon Attorney General Opinion
4. Measure 37/LC 2.700 through 2.770

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No.) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (Ronald and Patricia Tendick/PA
) 05-5161)

WHEREAS, the voters of the State of Oregon passed Ballot Measure 37 on November 2, 2004, which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowners if a government land use regulation restricts the use of private real property and has the effect of reducing the property value; and

WHEREAS, the Board of County Commissioners of Lane County enacted Ordinance No. 18-04 on December 1, 2004, to establish a real property compensation claim application process in LC 2.700 through 2.770 for Ballot Measure 37 claims; and

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by Ronald and Patricia Tendick (PA05-5161), owners of real property commonly known as 35918 East Enterprise Road, Creswell, Oregon 97426 and more specifically described in the records of the Lane County Assessor as map 19-02-09, tax lot 900 and consisting of approximately 53.88 acres in Lane County, Oregon; and

WHEREAS, the County Administrator has determined that the application appears to meet all of the criteria of LC 2.740(1)(a)-(d), appears to be eligible for just compensation and appears to require modification, removal or not applying the restrictive land use regulations in lieu of payment of just compensation and has referred the application to the Board for public hearing and confirmation that the application qualifies for further action under Measure 37 and LC 2.700 through 2.770; and

WHEREAS, the Board has confirmed the application appears to qualify for compensation under Measure 37 but Lane County has not appropriated funds for compensation for M37 claims and has no funds available for this purpose; and

WHEREAS, the County Administrator has determined under LC 2.740(4) that modification, removal or not applying the restrictive land use regulation is necessary to avoid owner entitlement to just compensation under Ballot Measure 37 and made that recommendation to the Board; and

WHEREAS, on May 11, 2005, the Board conducted a public hearing on Ronald and Patricia Tendicks' Measure 37 claim (PA05-5161) and determined that the restrictive dwelling requirements of Lane Code 16.211(5), (6) and (7) applicable to the property prevent Ronald and Patricia Tendick from building a second dwelling on their property and the public benefit from

application of the land use regulation to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Ronald and Patricia Tendick do not request compensation, but request that the current land use regulations not apply to the property so that they can build a second dwelling on their property for their son and the Board finds that to be a use permitted at the time the Tendicks acquired the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the F-2 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference; and

WHEREAS, this matter having been fully considered by the Lane County Board of Commissioners.

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants Ronald and Patricia Tendick made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the regulations prohibiting that use, submitting evidence that the land use regulations have the effect of reducing the value of the property, showing evidence that they acquired the property before the restrictive regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment the Tendicks' request shall be granted and the restrictive dwelling provisions of Lane Code 16.211(5), (6) and (7) that limit the use of the property to one dwelling per tract or contiguous ownership shall not apply to Ronald and Patricia Tendick, so that they can build a second dwelling for their son on the property commonly known as 35918 East Enterprise Road, Creswell, Oregon 97426 and more specifically described as map 19-02-09, tax lot 900.

IT IS HEREBY FURTHER ORDERED that the other land use regulations applicable to placing a dwelling on property were not specifically identified or established as restricting the use of the property for a home site and it would be premature to not apply those regulations given the available evidence. Applicants may resubmit to the Board any land use regulation for reconsideration under Ballot Measure 37 and LC 2.700 through 2.770 if enforcement of those regulations during development will result in a restriction in use that has the effect of reducing the fair market value of the property. All other Lane Code land use and development regulations shall remain applicable to the subject property until such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

IT IS HEREBY FURTHER ORDERED that the action making certain Lane Code provisions inapplicable to the Tendicks use of their property does not constitute a waiver or modification of any corresponding state law or administrative rules and does not authorize immediate construction of an additional dwelling. The rules that still apply to the property require that land use and building permits be approved by Lane County before development can proceed. Notice of this decision shall be recorded in the county deed records. This order shall be effective and in effect as described in LC 2.770 and Ballot Measure 37 to the extent permitted by law.

DATED this _____ day of _____, 2005.

Anna Morrison, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 5-3-2005 Lane County



OFFICE OF LEGAL COUNSEL

REQUEST FOR WAIVER OF LAND USE RESTRICTIONS

Date: December 8, 2004

To: Lane County Land Management
125 E. 8th Ave.
Eugene, Or 97401

From: Ronald and Patricia Tendick
35918 Enterprise Rd.
Creswell, Or 97426

As a result of the passage of Ballot Measure 37, we wish to request a waiver of the current land use restrictions for our property at the above address. Our Map number is 19 02 09 Tax Lot 900 (53 acres).

The adjoining Tax Lot 901 (33 acres) and 1000 (52 acres) are owned by our two oldest sons. All of the previous mentioned properties have been in family ownership since the 1930's. The purpose of this request is to allow us to provide an approximately 30 acre home-site for our youngest son from Tax Lot 900.

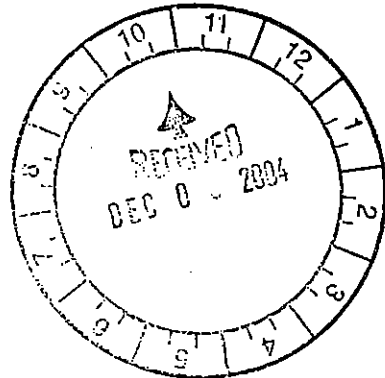
Thank you for your early consideration of this request.

Sincerely,

Owners of record: Ronald L. Tendick
Ronald L. Tendick

Patricia E. Tendick
Patricia E. Tendick

TEL. 895-3991





Land Use Application



REQUEST / PROPOSAL FOR:

BM 37 APPLICATION

FILE NO.	<i>DE 04-0849</i>
ACTION	<i>BM 37</i> <i>250</i>

LOCATION (PLEASE PRINT)

19 02 09 900

TOWNSHIP RANGE SECTION 1/4 SECTION TAX LOT SUBDIVISION / PARTITION LOT / PARCEL BLOCK

F2 *53.28*

ZONED TAX CODE PLOT # ACERAGE

LOCATION ADDRESS

STRUCTURES NOW ON PROPERTY

APPLICANT / AGENT

RONALD L. PATRICIA E. TENDICK

NAME (PLEASE PRINT) DATE

35918 ENTERPRISE ROAD

ADDRESS PHONE

OROSWELL, OR *97426*

CITY ZIP

RECEIVED AT FRONT COUNTER 12-8-09

541-095-3991

OWNER

- SAUER -

NAME (PLEASE PRINT) DATE

ADDRESS PHONE

CITY ZIP

DO YOU OWN ADJACENT PROPERTY? Yes No

MAP, PARCEL NUMBER

<i>19</i>	<i>02</i>	<i>09</i>	<i>900</i>
Township	Range	Section	Tax Lot
<i>19</i>	<i>02</i>	<i>09</i>	<i>1000</i>
Township	Range	Section	Tax Lot
Township	Range	Section	Tax Lot

(OLDER SUD) *(GLOR SUD)*

WATER PUBLIC ON-SITE WELL COMMUNITY SYSTEM _____

SEWAGE PUBLIC ON-SITE SEPTIC COMMUNITY SYSTEM _____

ROAD STATE COUNTY PUBLIC EASEMENT

FIRE DISTRICT _____ SCHOOL DISTRICT _____

POWER COMPANY _____ PHONE COMPANY _____

I (We) have completed all the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) so authorized to submit this application as evidenced by the signature of the owner below.

REQUEST SIGNED - (ATTACHED)

OWNER Signature Date APPLICANT Signature Date

An accurate Plot Plan must be attached. Ask for a sample Plot Plan

SPECIFIC SECTION OF LANE CODE REQUIRING THIS APPLICATION

RELATED PERMIT #

STAFF COMMENTS:

Application for Claims Under LC 2.700 through 2.770

Due to Regulatory Reduction of Property Value Under Provisions Added to ORS Chapter 197 by BM37

Note: This completed form together with the referenced supporting documentation and application fee must be submitted to the Lane County Land Management Division, 125 East 8th Avenue, Eugene, Or., 97401 for all claims subject to the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), to be considered for compensation under LC 2.700 through 2.770. In all cases, the applicant has the burden of demonstrating, with competent evidence, that all applicable criteria are met and the applicant would be entitled to compensation if the land use regulation continues to apply. Use additional paper, if necessary.

1. Applicant/ Agent

<u>RONALD L. TENDICK</u> Applicant Name (Please Print)	<u>35918 E. ENTERPRISE RD.</u> Mailing Address <u>CRESWELL, OR 97426</u>	<u>895-3751</u> Phone
<u>PATRICIA E. TENDICK</u> Agent Name (Please Print)	<u>SAME</u> Mailing Address	<u>SAME</u> Phone

2. Property Owner

Please provide the Name, Mailing Address and telephone number of all property owners of record holding interest in the property that is the subject of this application. Include a complete listing of all lien holders, trustees, renters, lessees or anyone with an interest in the property and describe the ownership interest.

<u>SAME AS APPLICANTS</u> Property Owner Name (Please Print)	<u></u> Mailing Address	<u></u> Phone
<u></u> Property Owner Name (Please Print)	<u></u> Mailing Address	<u></u> Phone

3. Legal Description

Please provide an accurate legal description, tax account number(s), map, street address and location of all private real properties that are the subject of this application.

Assessor Map & Tax Lot 19-02-09 72900

Street Address 35918 ENTERPRISE RD. CRESWELL, OR 97426 Legal Description Attached X

4. Identification of Imposed Land Use Regulation

Please identify the Lane Code section or other land use regulation imposed on the private real property that is alleged to restrict the use of the subject property in a manner that reduces the fair market value. Include the date the regulation was first adopted, enforced or applied to the subject property and a written statement addressing all the criteria in LC 2.740(1).

F2

5. Title Report

Please attach a Preliminary Title Report showing title history and continuous ownership traced to the earliest family member ownership, the date of current owner(s) acquisition and all current interests of record for the subject property, issued within 30 days of the application submittal. Provide copies of relevant deeds. (ATTACHED)

6. Appraisal/Regulatory Effect

Please provide one original, signed appraisal prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon addressing the requirements of provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and indicating the amount of the alleged reduction in fair market value by showing the difference in the fair market value of the property before and after the application of the challenged regulations as of the date the owner makes written demand for compensation. Include all of the supporting methodology, assumptions and calculations affecting the appraisal.

ANALYSIS
ATTACHED

7. Leases, Covenants, Conditions and Restrictions

Please provide copies of any leases or covenants, conditions and restrictions applicable to the subject property.

NONE

8. Identification of Relief Sought

Please specifically indicate what relief is being sought, either a monetary value of the claim describing the reduction in fair market value of the property or the specific use authorization sought in any waiver of the land use regulation.

NOT SEEKING MONETARY COMPENSATION.

REQUEST AUTHORIZATION TO SPLIT THE PROPERTY FOR THE PURPOSE OF ESTABLISHING A HOMESITE FOR OUR YOUNGEST SON.

I (we) have completed all of the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) authorized to submit this application on behalf of all those with an interest in the property and all the owner(s) agree to this claim as evidenced by the signature of those owner(s) below. Include additional signatures, as necessary.

Entry by County or its designee upon the subject property is authorized by the owner(s) and the owner(s) consent to the application for claims under provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

Ronald L. Tandick
Ronald L. Tandick
Owner(s) Signature

PREVIOUS LETTERS DATED
12/8/04 & 1/5/05

2/11/05
Date

SAME
Applicant/Agent Signature

Date

The following contacts are provided to assist you in finding the necessary information for this application.
For zoning and land use information, please contact the Land Management Division at 682-3577.
This phone contact is a message line. Please leave a message and a Planner will return your call.
For deeds and records information, please contact Lane County Deeds and Records at 682-3654.

ATTACHMENTS:

- TITLE REPORT
- WARRANTY DEEDS
- PROPERTY ANALYSIS OF VALUE

7-17-78

8825

000

19-2-9

78-19091

WARRANTY DEED (Individual or Corporate)

6

J. William Tendick, hereinafter called the grantor, for the consideration hereinafter stated, to grantor paid by Ronald I. Tendick and Patricia F. Tendick, husband and wife, hereinafter called

the grantor, does hereby grant, bargain, sell and convey unto the said grantor and grantor's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Lane and State of Oregon, described as follows, to-wit:

Beginning at a point which is the intersection of the centerline of County Road No. 651 with the northerly line of the James M. Hendricks Donation Land Claim No. 61, in Township 19 South, Range 2 West, Willamette Meridian, and running thence along the center of said Road No. 651 South 41°35' West 340.04 feet; South 14°08' West 396.0 feet; South 35°15' West 137.94 feet; South 27°00' West 153.45 feet; South 34°15' West 169.95 feet; South 53°00' West 138.60 feet; South 88°55' West 115.50 feet; South 87°00' West 354.75 feet to the established line; run South 56°15' East from a point 10.63 chains South 40°30' West from the intersection of County Road No. 397 with the northerly line of said Claim No. 61; thence South 56°15' East along said established line 3378.144 feet to the Southwest corner of 20.0 acre tract of land which was conveyed by that certain deed to Chester and Helen Walton, recorded in Book 205, Page 327, Lane County Oregon Record of Deeds; thence North along the West Line of said Walton Tract 2698.26 feet to the North line of Lot 7 of Section 9 in

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever. And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances

grantor will warrant and forever defend the said premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances.

The true and actual consideration paid for this transfer, stated in terms of dollars, is Love & Affection. However, the actual consideration consists of or includes other property or value given or promised which is part of the consideration (indicate which) (The manner in which the number, if applicable, should be stated. See DRS 333.010.)

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the grantor has executed this instrument this 10th day of July 1978; if a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

If executed by a corporation, this signature must

STATE OF OREGON,

County of Lane, 1978

Personally appeared the above named J. William Tendick

and acknowledged the foregoing instrument as his voluntary act and deed.

Notary Public for Oregon My commission expires 9-6-78

STATE OF OREGON, County of Lane, 1978

Personally appeared who, being duly sworn, each for himself and not one for the other, did say that the latter is the president and that the latter is the secretary of

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged and instrument to be its voluntary act and deed.

Notary Public for Oregon My commission expires

(OFFICIAL SEAL)

WESTERN PIONEER TITLE CO., of Lane County



First American

Western Pioneer Title Company of Lane County
a division of First American Title Insurance Co.
600 Country Club Road
Eugene, OR 97401
Phn - (541) 484-2900
Fax - (541) 484-7321

RONALD DENTON
TITLE OFFICER
radenton@firstam.com

Ron & Pat Tendick
35918 Enterprise Road
Creswell, OR 97426

Order No.: 7199-515734
January 25, 2005

Attn:
Phone No.: - Fax No.:
Email:

Re:

Preliminary Title Report

ALTA Owners Standard Coverage	Liability \$	Premium \$	
ALTA Owners Extended Coverage	Liability \$	Premium \$	
ALTA Lenders Standard Coverage	Liability \$	Premium \$	
ALTA Lenders Extended Coverage	Liability \$	Premium \$	
Endorsement		Premium \$	
Govt Service Charge		Cost \$	
Other Preliminary Title Report		Cost \$	175.00

We are prepared to issue Title Insurance Policy or Policies in the form and amount shown above, insuring title to the following described land:

The land referred to in this report is described in Exhibit A attached hereto.

and as of December 29, 2004 at 8:00 a.m., title vested in:

Ronald L. Tendick and Patricia F. Tendick, husband and wife as tenants by the entirety

Subject to the exceptions, exclusions, and stipulations which are ordinarily part of such Policy form and the following:

1. The assessment roll and the tax roll disclose that the premises herein described were specially assessed as Forest Land pursuant to O.R.S. 321.358 to 321.372. If the land becomes disqualified for the special assessment under the statute, an addition tax may be levied for the last five (5) or lesser number of years in which the land was subject to the special land assessment.

- 2. This years taxes and possible prior years taxes have included relief by reason of "Small Woodland Optional Tax" pursuant to O.R.S. 321.705 to 321.726. If the land becomes disqualified for the special assessments, an additional tax may be levied.
- 3. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
- 4. Easement, including terms and provisions contained therein:
 - Recording Information: February 20, 1979, Reception No. 79-09900
 - In Favor of: Lane Electric Cooperative, Inc.
 - For: electric transmission and/or distribution line or system
- 5. Deed of Trust and the terms and conditions thereof.
 - Loan No.: MIN#100026300002832956
 - Grantor/Trustor: Ronald L. Tendick and Patricia F. Tendick
 - Grantee/Beneficiary: Mortgage Electronic Registration Systems Inc., as nominee for GN Mortgage, LLC
 - Trustee: Regional Trustee Services Corp.
 - Amount: \$140,000.00
 - Dated: June 24, 2003
 - Recorded: July 01, 2003
 - Recording Information: 2003-060161

- END OF EXCEPTIONS -

NOTE: We find no judgments or United States Internal Revenue liens against Ronald L. Tendick or Patricia F. Tendick

NOTE: Taxes for the year 2004-2005 PAID IN FULL

Tax Amount: \$1,630.29
 Map No.: 1902090000900
 Property ID: 0825958
 Tax Code No.: 1-02

NOTE: Taxes for the year 2004-2005 PAID IN FULL

Tax Amount: \$104.42
 Map No.: 1902090000900
 Property ID: 1705142
 Tax Code No.: 1-00

Situs Address as disclosed on Lane County Tax Roll:

35918 Enterprise Rd, Creswell, OR 97426

**THANK YOU FOR CHOOSING FIRST AMERICAN TITLE!
WE KNOW YOU HAVE A CHOICE!**

cc: Ronald L. Tendick and Patricia F. Tendick



First American Title Insurance Company of Oregon

SCHEDULE OF EXCLUSIONS FROM COVERAGE

ALTA LOAN POLICY (10/17/92)

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the Insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the Insured claimant and not disclosed in writing to the Company by the Insured claimant prior to the date the Insured claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the Insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
 - (e) resulting in loss or damage which would not have been sustained if the Insured claimant had paid value for the Insured mortgage.
4. Unenforceability of the lien of the Insured mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the Insured mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the Insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the Insured mortgage which at Date of Policy the Insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the Insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the Insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the Insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

ALTA OWNER'S POLICY (10/17/92)

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the Insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the Insured claimant and not disclosed in writing to the Company by the Insured claimant prior to the date the Insured claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the Insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

SCHEDULE OF STANDARD EXCEPTIONS

The ALTA standard policy form will contain in Schedule B the following standard exceptions to coverage:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceeding by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records, unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose.

NOTE: A SPECIMEN COPY OF THE POLICY FORM (OR FORMS) WILL BE FURNISHED UPON REQUEST

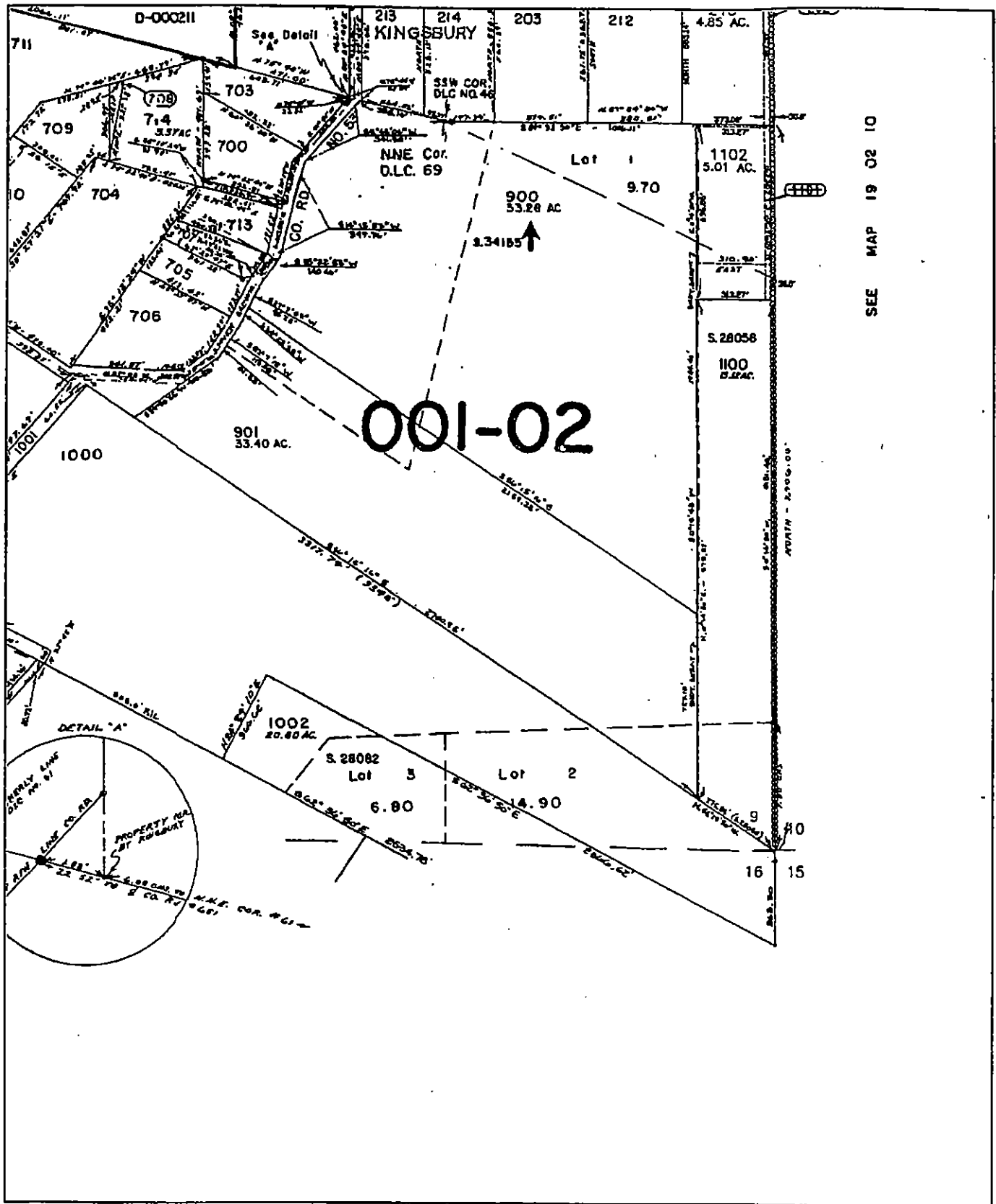
TI 149 Rev. 5-99

Exhibit "A"

Real property in the County of Lane, State of Oregon, described as follows:

Beginning at a point which is the intersection of the Easterly right-of-way of County Road No. 651 with the Northerly line of the James M. Hendricks Donation Land Claim No. 61, Township 19 South, Range 2 West, Willamette Meridian; thence South $75^{\circ} 35' 56''$ East along the North line of said Donation Land Claim No. 61, a distance of 358.14 feet to the angle corner of the Northerly line of said Donation Land Claim No. 61; thence South $89^{\circ} 55' 50''$ East along the North line of Government Lot 1 of Section 9 of said Township 19 South, Range 2 West, a distance of 1006.11 feet to the Northwest corner of that parcel described on Reel 930, Reception No. 78-54273, Lane County Oregon Official Records; thence South $00^{\circ} 14' 42''$ West along the West line of said parcel, a distance of 1949.40 feet to a 5/8 inch iron rod; thence North $56^{\circ} 15' 16''$ West, a distance of 2159 feet, more or less, to the Easterly right-of-way of said County Road No. 651; thence Northeasterly along said Easterly right-of-way, a distance of 976 feet, more or less, to the point of beginning, all in Lane County, Oregon.

Tax Parcel Number: 0825958 and 1705142



THIS MAP IS PROVIDED AS A COURTESY OF WESTERN PIONEER TITLE COMPANY

THIS COPY OF ASSESSOR'S MAP IS PROVIDED SOLELY TO ASSIST IN LOCATING SUBJECT PROPERTY. NO LIABILITY IS ASSUMED FOR DISCREPANCIES IN THIS MAP AS OUTLINED AND THE ACCOMPANYING LEGAL DESCRIPTION.

MAP # 19 02 09 00 00900 000

STATE OF OREGON, COUNTY OF LANE, ss:

On this 23rd day of January 19 63 personally came before me, a Notary Public in and for said county, the within named

J. William Tendick, a single person

to me personally known to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein named.

Witness my hand and seal this day and year last above written.

Calvin C. Taylor
Notary Public for Oregon.

My Commission expires *9-4-68* JAN-25-63

State of Oregon,
County of Lane—ss.

State of Oregon,
County of Lane—ss.

I, Olga Freeman, County Clerk and ex-officio Recorder of Conveyance, in and for said County, do hereby certify that the within instrument was received for record at

1963 JAN 25 AM 11 13

REEL 210D

Lane County Official Records.

OLGA FREEMAN, County Clerk.

By *Olga Freeman*
C30-033-04 Deputy

LANE COUNTY TITLE COMPANY, EUGENE, OREGON

Warranty Deed

FROM

J. William Tendick

TO

Ronald L. Tendick
Patricia E. Tendick

DRAWN BY

"Under All the Land - The Title"

COMPLIMENTS OF

Lane County Title Company

Eugene, Oregon

Member of

AMERICAN TITLE ASSOCIATION

Dependable Title Service

Since 1888

Title Insurance - Abstracts
Escrows

COMPLETE TITLE SERVICE

WARRANTY DEED

For Value Received

J. William Tendick, a single person

the grantor , do es hereby grant, bargain, sell and convey unto

Ronald L. Tendick and Patricia E. Tendick, husband and wife

the grantees, the following described premises, to wit:

Beginning at a point which is the intersection of the center-line of County Road No. 651 with the northerly line of the James M. Hendricks Donation Land Claim No. 61, in Township 19 South, Range 2 West, Willamette Meridian, and running thence along the center of said Road No. 651 South 41°35' West 340.04 feet; South 14°08' West 396.0 feet; South 35°15' West 137.94 feet; South 27°00' West 153.45 feet; South 34°15' West 169.95 feet; South 53°00' West 138.60 feet; South 88°55' West 115.50 feet; South 87°00' West 354.75 feet to the established line; run South 56°15' East from a point 10.63' chains South 40°30' West from the intersection of County Road No. 397 with the northerly line of said Claim No. 61; thence South 56°15' East along said established line 3378.144 feet to the Southwest corner of 20.0 acre tract of land which was conveyed by that certain deed to Chester and Helen Walton, recorded in Book 205, Page 327, Lane County Oregon Record of Deeds; thence North along the West line of said Walton Tract 2698.26 feet to the North line of Lot 1 of Section 9 in said Township and Range; thence West 1016.57 feet to the angle corner on the northerly line of said Claim No. 61; thence North 75°40' West 401.28 feet more or less to the place of beginning, in Lane County, Oregon.

REVENUE STAMPS

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees , their heirs and assigns forever. And the said Grantor do es hereby covenant to and with the said Grantees; that he is the owner in fee simple of said premises; that they are free from all incumbrances. except Grantor to retain life estate in said premises and revenue therefrom.

and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: January 23, 1963

_____ (SEAL)

J. William Tendick (SEAL)

_____ (SEAL)

_____ (SEAL)

7-17-78

R 928

781909L

(cont.)

said Township and Range; thence West 1016.57 feet to the angle corner on the northerly line of said Claim No. 61; thence North 75°40' West 401.28 feet more or less to the place of beginning, in Lane County, Oregon.

This is a correction deed to correct Instrument No. 97399, Reel 210, recorded January 25, 1963.

20 289 00 1518 314

10:30:11

WARRANTY DEED
(Individual or Corporate)



OF LANE COUNTY
66 W. 7th, Eugene 484-7000
1600 Valley River Dr., Eugene 484-8332
600 Commercial - Florence 807-8488
Fremont Eugene 343-1060

State of Oregon,
County of Lane - ss.

I, D.M. Penfold, Director of the Department of General Services, in and for the said County, do hereby certify that the within instrument was received for record as

17 JUL 78 131 01

Reel 928 R

Lane County OFFICIAL RECORDS.

D.M. Penfold, Director of the Department of General Services.

By *[Signature]*
Deputy

CS-11

After recording return to:

Blank lines for recording information.

700
900
1100

BOOK 209 PAGE 141

This Indenture Witnesseth, That I Alfred Glenn, a bachelor, now a resident of the City and County of Walla Walla, State of Washington,

part Y of the first part, for and in consideration of the sum of Sixteen hundred and 70/100 DOLLARS in lawful money of the United States of America no in hand paid by J. William Tendick

part Y of the second part, have GRANTED, BARGAINED AND SOLD, and by these presents do Grant, Bargain Sell and Convey unto the said part Y of the second part and to his heirs and assigns, the following described premises, situated, lying and being in the County of Walla Walla, State of Washington, to-wit;

Beginning at the intersection of the County Road Number 397, with the Northerly line of Claim Numbered 61, in Township Nineteen (19) South of Range Two (2) West of the Willamette Meridian, and running thence South 40° 30' West along said road a distance of 10.63 chains; thence South 56° 17' East 23.14 chains to the southeast corner of Section Nine (9) in the aforesaid Township, Range and Meridian; thence North 43 chains, more or less to the northeast corner of Lot Number One, of Section Nine (9), of the aforesaid Township, Range and Meridian; thence East 20.10 chains to the westerly corner of said Lot No. 1; thence North 72° 40' West 44.78 chains to the place of beginning; Excepting County road easements a same effect said lands.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said part Y of the second part, his heirs and assigns forever. And the said part Y of the first part does hereby covenant to and with the said part Y of the second part, his heirs and assigns that I do the owner in fee simple of said premises; that they are free from all incumbrances,

and that I will WARRANT AND DEFEND the same from all lawful claims whatsoever.

WITNESS my hand and seal this 30th day of January A. D., One Thousand nine Hundred and thirty-six.

Signed and executed in the presence of

John Henderson
John King

Alfred Glenn SEAL

(SEAL)
(SEAL)

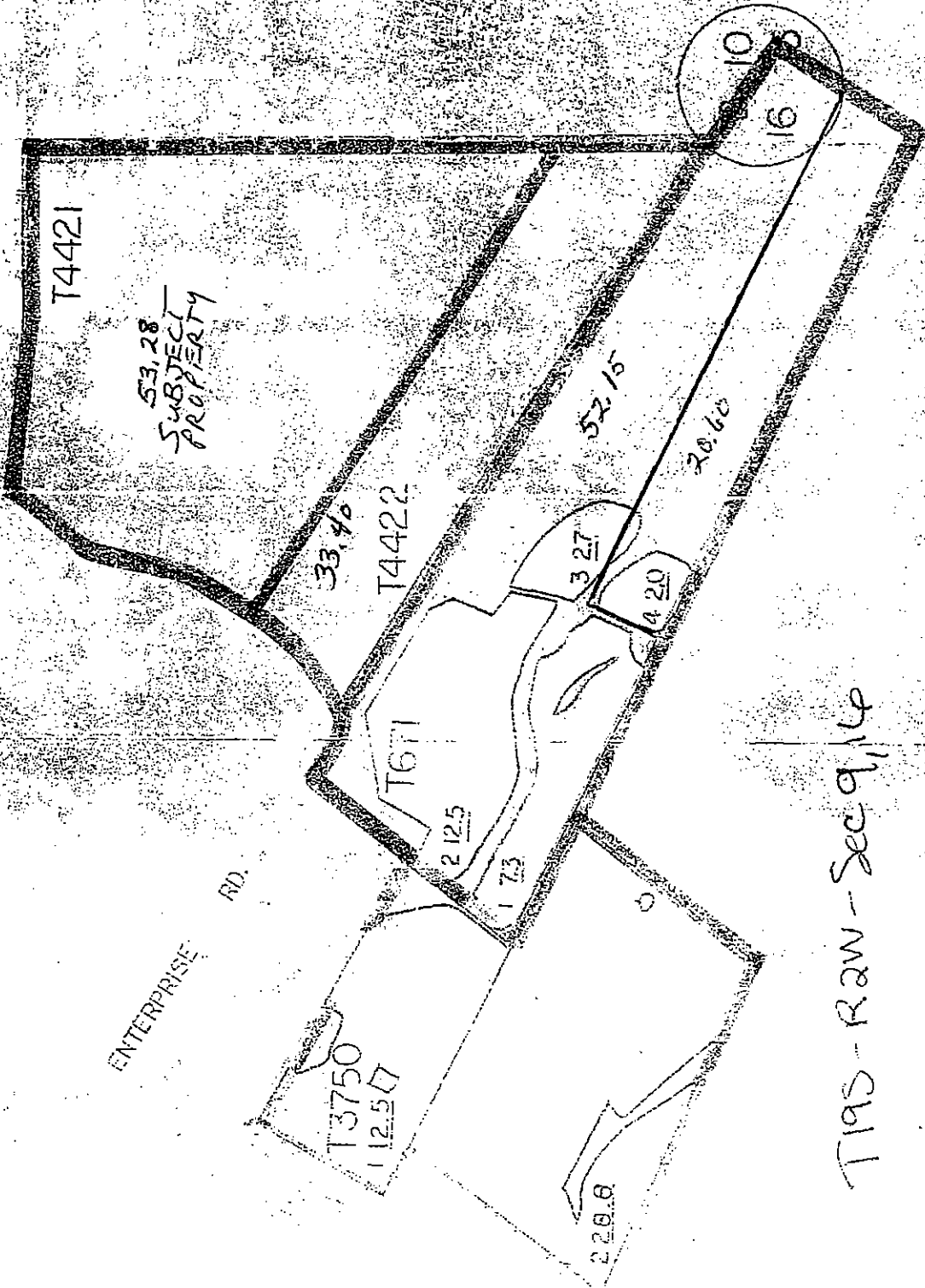
ANALYSIS OF DECREASED PROPERTY VALUE

FOR MAP NO. 19-02-09 TL900
WITH F2 ZONING DESIGNATION

Tax Lot of adjacent or nearby assessed property (same map no.)	Acres	Current Assessor Market Value \$	Green Bluff Estates		
			Lot-Sales Date	Acres	Sales Price \$
1100	15.12	156,565	1- 2/26/99	10	157,500
1102	5.01	85,025	2- 2/2/00	10	158,500
218	4.85	86,948	4- 9/25/98	10	119,500
212	4.93	89,889	5- 2/26/99	10	169,500
203	4.83	103,861	7- 8/29/00	10	148,500
214	3.51	99,921			
213	2.85	85,877			
Subject property	5.00	105,825			
	<u>48.28</u>	<u>210,963</u>			
TOTAL A&T Market Value	53.28	317,788			
Dividable assumptions		Potential Value			
10 parcels	5.00 \$100k each	1,000,000			
5 parcels	10.00 \$150k each	750,000			
Difference between current & potential value					
10 parcels		682,212			
5 parcels		432,212			

MNP 19-02-10

GREEN BLUFF
ESTATES



T195 - Raw - Sec 9, 14

7-1-04 TO 6-30-05 REAL PROPERTY TAX STATEMENT
 LANE COUNTY · 125 E. EIGHTH AVE. · EUGENE, OR 97401 · (541) 682-4321

ACCOUNT NUMBER 0825958
 SITUS ADDRESS: ADDRESS UNKNOWN

PROP: 681
 TCA: 00102 ACRES: 5.00
 MAP: 19 02 09 00 00900

TENDICK RONALD L & P E
 35918 E ENTERPRISE RD
 CRESWELL OR 97426

LAST YEAR'S TAX 1,496.78
 See back for explanation of taxes marked with (*)

CURRENT TAX BY DISTRICT

VALUES:	LAST YEAR	THIS YEAR
MARKET VALUES		
LAND:	89,863	105,825
IMPROVEMENT:	131,770	137,040
TOTAL:	221,633	242,865
5 SPECIALLY ASSESSED VALUE:	20,967	24,139
5 REAL MKT VALUE:	152,737	161,179
ASSESSED VALUE:	148,341	154,057
EXEMPTIONS:	0	0
NET TAXABLE:	148,341	154,057

PLEASANT HILL SCHOOL DISTRICT	682.10
U LANE COMMUNITY COLLEGE	90.99
U LANE EDUCATION SERVICE DIST	32.81
EDUCATION TOTALS:	805.90
U LANE COUNTY	196.64
U SOUTH LANE CO FIRE & RESCUE,	159.22
GENERAL GOVERNMENT TOTALS:	355.86
PLEASANT HILL SD BOND	407.45
U LANE COMMUNITY COLLEGE BOND	40.96
U LANE COUNTY BOND	20.12
BONDS - OTHER TOTALS:	468.53

SMALL TRACT AND FOREST DEFERRAL

Potential Additional Tax - Small Tract Forestland

MORTGAGE CO:
 LOAN #:

If a mortgage company pays your taxes, CONTROL NO.
 This statement is for your records only. 92.933

Full Payment with 3% Discount	2/3 Payment with 2% Discount	1/3 Payment No Discount	2004-2005 TAXES BEFORE DISCOUNT	1,630.29
1,581.38	1,065.12	543.43	TOTAL TAX (After Discount)	1,581.38

7-1-04 TO 6-30-05 REAL PROPERTY TAX STATEMENT
 LANE COUNTY · 125 E. EIGHTH AVE. · EUGENE, OR 97401 · (541) 682-4321

ACCOUNT NUMBER 1705142
 SITUS ADDRESS: 10 UNKNOWN
 ANYTOWNE
 PROP: 681
 TCA: 00100 ACRES: 48.28
 MAP: 19 02 09 00 00900

TENDICK RONALD L & P E
 35918 E ENTERPRISE RD
 CRESWELL OR 97426

LAST YEAR'S TAX 104.41
 See back for explanation of taxes marked with (*)

VALUES:	LAST YEAR	THIS YEAR
MARKET VALUES		
LAND:	176,647	210,963
IMPROVEMENT:	0	0
TOTAL:	176,647	210,963
5 SPECIALLY ASSESSED VALUE:	3,219	3,169
5 REAL MKT VALUE:	3,219	3,169
SSESSED VALUE:	2,942	2,785
XEMPTIONS:	0	0
NET TAXABLE:	2,942	2,785

CURRENT TAX BY DISTRICT

PLEASANT HILL SCHOOL DISTRICT	12.93
U LANE COMMUNITY COLLEGE	1.72
U LANE EDUCATION SERVICE DIST	0.62
EDUCATION TOTALS:	15.27
U LANE COUNTY	3.55
GENERAL GOVERNMENT TOTALS:	3.55
FIRE PATROL - EAST	39.12
FIRE PATROL EMERGENCY	38.00
PLEASANT HILL SD BOND	7.38
U LANE COMMUNITY COLLEGE BOND	0.74
U LANE COUNTY BOND	0.36
BONDS - OTHER TOTALS:	85.60

FARM, FOREST, AND STFO
 Potential Additional Tax - Small Tract Forestland

MORTGAGE CO:
 LOAN #:

If a mortgage company pays your taxes, CONTROL NO.
 This statement is for your records only. 96.262

Full Payment with 3% Discount	2/3 Payment with 2% Discount	1/3 Payment No Discount	2004-2005 TAXES BEFORE DISCOUNT	104.42
101.29	68.22	34.80	TOTAL TAX (After Discount)	101.29



No Photo Available

Presented by: Linda O'Bryant
RE/MAX Integrity

LOTS AND LAND Status: SLD 2/17/2005
ML#: 98001939 Area: 234 List Price:
Address: 1 GREEN BLUFF ESTATES
City: Pleasant Hill Zip:
Additional Parcels: /
Map Coord: 0/C/9 Zoning: ML10
County: Lane Tax ID: 1553823
Subdivision:
Manufhs Okay: CC&Rs: #Image: 0
Elem: TRENT Middle: PLEASANT HL
High: PLEASANT HL Prop Type: RESID
Legal: 1902103100200

GENERAL INFORMATION

Lot Size: 10-19.99AC	Acres: 10	Lot Dimensions: 0X0
Waterfront: /	River/Lake:	Availability: #/
Perc Test: /	RdFmtg:	Rd Surf: /
Seller Disc:	Other Disc:	View: OTHER
Lot Desc:		Soil Type/Class:
Topography:		Present Use:
Soil Cond:		

IMPROVEMENTS

Utilities: PHONE, POW-AVL, SPT-APP
Existing Structure: /

REMARKS

XSt/Dir: HWY 58 TO ENTERPRISE RD(S) RIGHT ON GREEN BLUFF (APPROX 1.5 MILES FROM
Remarks: FABULOUS! THIS ROUGHLY RECTANGULAR LOT OFFERES SEVERAL EXCEPTION BUILDING SITES. ST/ SEPTIC APPROVED - ELECTRIC UTILITIES INSTALLED. CHAIN GATE COMBO: 2869 - CLEARLY MAPPED. AT S

FINANCIAL

PTax/Yr: 878 HOA Dues: /
HOA Incl:

COMPARABLE INFORMATION

Pend: 2/8/1999 DOM: 376 Sold: 2/26/1999 Terms: Cash /Cash O/Price: \$157,500 Sold:

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SQUARE FOOTAGE IS APPROXIMATE & MAY INCLUDE BOTH FINISHED & UNFINISHED AREAS - CONSULT BROKER FOR INFC
SCHOOL AVAILABILITY SUBJECT TO CHANGE.



No Photo Available

Presented by: Linda O'Bryant
 RE/MAX Integrity
 LOTS AND LAND Status: SLD 2/17/2005
 ML#: 99004634 Area: 234 List Price:
 Address: 2 GREEN BLUFF ESTATES
 City: Pleasant Hill Zip:
 Additional Parcels: /
 Map Coord: 0/C/9 Zoning: ML10
 County: Lane Tax ID: 1553849
 Subdivision:
 Manufhs Okay: CC&Rs: #Image: 0
 Elem: TRENT Middle: PLEASANT HL
 High: PLEASANT HL Prop Type: RESID
 Legal: 1902103100300

GENERAL INFORMATION

Lot Size: 10-19.99AC	Acres: 10	Lot Dimensions: 0X0
Waterfront: /	River/Lake:	Availability: #L
Perc Test: /	RdFrtg:	Rd Surf: OTHER
Seller Disc:	Other Disc:	View: OTHER
Lot Desc:		Soil Type/Class:
Topography: LEVEL, ROLLING		Present Use:
Soil Cond:		

IMPROVEMENTS

Utilities: PHONE, POW-AVL, SPT-APP, WELL
 Existing Structure: /

REMARKS

XSt/Dir: HWY 58 TO ENTERPRISE RD THEN 1.5 MI TO GREEN B
 Remarks: THIS IS THE PRIZE IN A RARE & WONDERFUL RURAL SUBDIVISION. TOP Q LAND W/SEVERAL BLDG SIT SEPTIC APPROVAL & WELL-CALL LA FULL PACKET. MATURE TREES, 360' VIEWS, QUIET & PRIVATE IN (EUGENE'S FINEST RURAL AREAS. PLEASANT HILL SCHOOLS!

FINANCIAL

PTax/Yr: 915 HOA Dues: /
 HOA Incl:

COMPARABLE INFORMATION

Pend: 11/17/1999 DOM: 151 Sold: 2/2/2000 Terms: CONV /CONV O/Price: \$158,500 Sold:

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 SQUARE FOOTAGE IS APPROXIMATE & MAY INCLUDE BOTH FINISHED & UNFINISHED AREAS - CONSULT BROKER FOR INFC
 SCHOOL AVAILABILITY SUBJECT TO CHANGE.



No Photo Available

Presented by: Linda O'Bryant
 RE/MAX Integrity

LOTS AND LAND Status: SLD 2/17/2005
 ML#: 98001942 Area: 234 List Price:
 Address: 4 GREEN BLUFF ESTATES
 City: Pleasant Hill Zip:
 Additional Parcels: /
 Map Coord: 0/C/9 Zoning: ML10
 County: Lane Tax ID: 1553856
 Subdivision:
 Manufns Okay: CC&Rs: #image: 0
 Elem: TRENT Middle: PLEASANT HL
 High: PLEASANT HL Prop Type: RESID
 Legal: 1902103100500

GENERAL INFORMATION

Lot Size: 10-19.99AC	Acres: 10	Lot Dimensions: 0X0
Waterfront: /	River/Lake:	Availability: #
Perc Test: /	RdFrntg:	Rd Surf: OTHER
Seller Disc:	Other Disc:	View: OTHER
Lot Desc:		Soil Type/Class:
Topography:		Present Use:
Soil Cond:		

IMPROVEMENTS

Utilities: PHONE, POW-AVL, SPT-APP
 Existing Structure: /

REMARKS

XS/Dir: HWY 58 TO ENTERPRISE RD(S)RIGHT ON GREEN BLUFF FROM HWY 58)
 Remarks: THIS IS AN UNBELIEVABLE VALUE - REDUCED TO SELL NOW - IN AN AREA EXCEPTIONAL 10 ACRE LOT
 OWNER WILL CONSIDER THIS PRICED TO FACILITATE AN EXCHANGE) SEPTIC APPROVED, ELECT UTII
 WOODED & WITH SEVERAL PLEASANT HOMESITES.

FINANCIAL

PTax/Yr: 803 HOA Dues: /
 HOA Incl:

COMPARABLE INFORMATION

Pend: 7/14/1998 DOM: 167 Sold: 9/25/1998 Terms: OTHER /OTHERO/Price: \$119,500 Sold:

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 SQUARE FOOTAGE IS APPROXIMATE & MAY INCLUDE BOTH FINISHED & UNFINISHED AREAS - CONSULT BROKER FOR INFC
 SCHOOL AVAILABILITY SUBJECT TO CHANGE.



**No Photo
Available**

Presented by: Linda O'Bryant
RE/MAX Integrity
LOTS AND LAND Status: SLD 2/17/2005
ML#: 98001943 Area: 234 List Price:
Address: 5 GREEN BLUFF ESTATES
City: Pleasant Hill Zip:
Additional Parcels: /
Map Coord: 0/C/9 Zoning: ML10
County: Lane Tax ID: 1553864
Subdivision:
Manufhs Okay: CC&Rs: #Image: 0
Elem: TRENT Middle: PLEASANT HL
High: PLEASANT HL Prop Type: RESID
Legal: 190210000723

GENERAL INFORMATION

Lot Size: 10-19.99AC	Acres: 10	Lot Dimensions: 0X0
Waterfront: /	River/Lake:	Availability: #1
Perc Test: /	RdFmtg:	Rd Surf: OTHER
Seller Disc:	Other Disc:	View: OTHER
Lot Desc:		Soil Type/Class:
Topography:		Present Use:
Soil Cond:		

IMPROVEMENTS

Utilities: PHONE, POW-AVL, SPT-APP
Existing Structure: /

REMARKS

XSt/Dir: HWY 58 TO ENTERPRISE RD(S) RIGHT TO GREEN BLUFF (APPROX 1.5 MILES FROM
Remarks: PREMIUM LOT OFFERS EXCEPTIONAL PRIVACY & A LOVELY VARIED CANOPY-MATURE EVERGREENS,
ETC. UTIL IN & SEPTIC APPROVA

FINANCIAL

PTax/Yr: 877 HOA Dues: /
HOA Incl:

COMPARABLE INFORMATION

Pend: 2/8/1999 DOM: 345 Sold: 2/26/1999 Terms: Cash /Cash O/Price: \$169,500 Sold:

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SQUARE FOOTAGE IS APPROXIMATE & MAY INCLUDE BOTH FINISHED & UNFINISHED AREAS - CONSULT BROKER FOR INFC
SCHOOL AVAILABILITY SUBJECT TO CHANGE.



No Photo Available

Presented by: Linda O'Bryant
 RE/MAX Integrity

LOTS AND LAND Status: SLD 2/17/2005
 ML#: 5 Area: 234 List Price:
 Address: 7 GREEN BLUFF ESTATES
 City: Pleasant Hill Zip:
 Additional Parcels: /
 Map Coord: 0/C/9 Zoning: ML10
 County: Lane Tax ID: 1553849
 Subdivision:
 Manufhs Okay: CC&Rs: #Image: 0
 Elem: TRENT Middle: PLEASANT HL
 High: PLEASANT HL Prop Type: RESID
 Legal: 1902103100300

GENERAL INFORMATION

Lot Size: 10-19.99AC	Acres: 10	Lot Dimensions: 0X0
Waterfront: /	River/Lake:	Availability: #1
Perc Test: /	RdFrntg:	Rd Surf:
Seller Disc:	Other Disc:	View: OTHER
Lot Desc:		Soil Type/Class:
Topography: LEVEL, ROLLING		Present Use:
Soil Cond:		

IMPROVEMENTS

Utilities: PHONE, POW-AVL, SH-WELL, SPT-APP, WELL
 Existing Structure: /

REMARKS

XS/Dir: HWY 58 TO ENTERPRISE RD THEN 1.5 MI TO GREEN B
 Remarks: SURROUNDED BY UPSCALE NEW CONSTRUCTION THE RARE AND OWNDERFUL AC IS QUIET & PRIVA
 HORSE PROPERTY W/GOOD POTENTIAL PASTUR SEVERAL OPEN OR WOODED HOMESITES. SEPTIC A
 W/ELECTRIC-POT

FINANCIAL

PTax/Yr: 1160 HOA Dues: /
 HOA Incl:

COMPARABLE INFORMATION

Pend: 7/12/2000 DOM: 194 Sold: 8/29/2000 Terms: Cash /Cash O/Price: \$148,500 Sold:

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 SQUARE FOOTAGE IS APPROXIMATE & MAY INCLUDE BOTH FINISHED & UNFINISHED AREAS - CONSULT BROKER FOR INFC
 SCHOOL AVAILABILITY SUBJECT TO CHANGE.

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

February 24, 2005

Mr. Lane Shetterly, Director
Oregon Department of Land Conservation and Development
635 Capitol Street NE Suite 150
Salem, Oregon 97301-2540

Re: Oregon Ballot Measure 37

Dear Mr. Shetterly:

You have asked that we address two questions concerning 2004 Oregon Ballot Measure 37. Your first question concerns sections 8 and 10 of the measure, which provide that certain entities may elect to waive ("modify, remove, or not apply") a law as an alternative to paying compensation to a property owner. Generally, you want to know if a waiver under Measure 37 is personal to the current owner of the property or runs with the land. That is, does the waiver remain if the current owner conveys the property to a new owner?

The short answer to your first question is that when a public entity finds that there is a valid claim for compensation under Measure 37, but elects to provide relief by "not applying" the law, that relief is personal to the current owner of the real property. If the current owner conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost. We also consider the result where the public entity elects to "modify or remove" the law that was the basis for a valid claim. In general, where the law being modified or removed is a law that the public entity would otherwise be required to have in place (as a result of some other law or legal requirement), we believe that Measure 37 authorizes the public entity to modify or remove the law only to the extent required to provide relief to a current owner with a valid claim under the measure. This means that even where a public entity provides relief by modifying or repealing a law, in cases where the public entity is otherwise legally required to have that law in place, it may do so only so as to provide relief to the current owner.

Your second question is whether a public entity's decision to "modify, remove, or not apply" a law under section 8 of Ballot Measure 37 may be made on a "blanket" basis, that is whether a public entity may decide in advance that all claims that involve a particular law, or that involve owners who acquired their property after a particular date, or some other subset of the potential universe of claimants, will be granted relief. The short answer to this question is that Measure 37 authorizes public entities to "modify, remove, or not apply" the law only after the

affected owner has established his entitlement to relief. In other words, before deciding to grant relief to a Measure 37 claimant, a public entity must determine at least that:

- the claimant acquired the affected property before the law in question was adopted;
- the law restricts the use of the property in question;
- the law reduces the fair market value of the property in question;
- the law is not one that regulates activities that are commonly and historically recognized as a public nuisance;
- the law is not one that protects public health and safety; and
- the law is not required to comply with federal law.

To determine if Measure 37 applies, the public entity will have to consider facts specific to the particular property at issue and its present owner. As a result, the short answer is that we do not believe public entities may adopt rules or ordinances or other laws that provide “blanket waivers” of laws under Ballot Measure 37.

Analysis

When interpreting a statutory provision adopted through the initiative process, the Oregon Supreme Court applies the same methodology that it applies to the construction of a statute. *Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 61, 11 P3d 228 (2000); *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 612 n 4, 859 P2d 1143 (1993). The objective is to determine the intent of the voters who pass the measure. “The best evidence of the voters’ intent is the text of the provision itself.” *Roseburg School Dist. V. City of Roseburg*, 316 Or 374, 378, 851 P2d 595 (1993). In interpreting the text, we consider statutory and judicially developed rules of construction “that bear directly on how to read the text,” such as “not to insert what has been omitted, or to omit what has been inserted,” and to give words of common usage their plain, natural and ordinary meaning. *PGE*, 317 Or at 611; ORS 174.010. However, the meaning of the terms in a measure cannot be assessed in isolation from the context in which the measure’s drafters used those words. *See PGE*, 317 Or at 610-11. The Oregon Supreme Court, however, is unlikely to conclude analysis of an initiated measure at the first level of review. *Stranahan*, 331 Or at 64.

The second level of review is an examination of the history of the provision. The history of an initiated provision includes information available to the voters at the time the measure was adopted that discloses the public’s understanding of the measure. *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551, 560 n 8, 871 P2d 106 (1994). Sources of such information include the ballot title, explanatory statement and arguments for and against the measure included in the Voters’ Pamphlet as well as contemporaneous news reports and editorials on the measure. *Id.* The extent to which these sources of information will be considered depends on their objectivity, as well as their disclosure of public understanding of the measure. *Stranahan*, 331 Or at 65 (citing *LaGrande/Astoria v. PERB*, 284 Or 173, 184 n 8, 586 P2d 765 (1978)).

If, after considering the text, context and history of the measure, the intent of the voters remains unclear, we may resort to judicial rules of construction to resolve any remaining uncertainty. *PGE, 317 Or at 612 n 4.*

1. Transferability of Measure 37 Relief

Your first question concerns whether a public entity's decision to modify, remove or not apply a law is personal to the owner making the claim or whether the grant of non-monetary relief runs with the land. In other words, when a public entity provides non-monetary relief to the present owner of property by waiving a law to allow a use of the property, what happens if the owner conveys the property to a new owner? We conclude that the relief is personal to the owner making the claim. In reaching that conclusion, we consider three potential answers: (1) Measure 37 only authorizes waiver for the present owner making the claim; (2) Measure 37 only authorizes waiver that runs with the land; or (3) Measure 37 grants the public entity making the decision on waiver the discretion to determine its duration. Nothing in Measure 37 expressly answers these questions, so we must discern the voters' intent, beginning our analysis with the measure's text.

Sections (8) and (10) of the measure authorize certain public entities to grant a waiver from a law that would otherwise require the payment of compensation.¹ Subsection (8) provides that:

"Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply [*sic*] the land use regulation or land use regulations *to allow the owner to use the property for a use permitted at the time the owner acquired the property.*" (emphasis added).

Section (10) provides that:

"* * * Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, *the owner shall be allowed to use the property as permitted at the time the owner acquired the property.*" (emphasis added.)

Subsection (11)(C) defines "[o]wner" as "the *present* owner of the property, or any interest therein." (emphasis added.)

¹ For every law, there is of course a public body that already has authority independent of Measure 37 to amend or repeal it, e.g., the Legislative Assembly for statutes.

The highlighted language is the only text concerned with the nature of the non-monetary relief authorized by the measure. Standing alone, it only provides authority for a public entity to waive a law to the extent necessary to allow an otherwise prohibited use by the "present" owner, i.e., the owner at the time the exemption is granted. In other words, this language only authorizes a public entity to make exemptions personal to the owner making the claim.

We also consider the immediate context of this text. Sections (8) and (10) of the measure provide three means for a public entity to waive a law. An authorized public entity may (1) "modify," (2) "remove," or (3) "not apply" the law. The plain, natural and ordinary meaning of "modify" best suited to the circumstances is "lessen the severity of : MODERATE . . . <traffic rules were *modified* to let him pass - Van Wyck Brooks>." WEBSTER'S THIRD NEW INT'L DICTIONARY 982 (unabridged ed 1993)1452. None of the definitions of "remove" is ideally suited to the circumstances, but "eliminate" comes the closest. *Id.* at 1921. To "apply" a rule of law is "to put [it] in effect : IMPOSE." *Id.* at 105.

The first two means of providing non-monetary relief - modifying or removing the law - appear to entail making a change in the law itself. That is, the ordinary meaning of how a public entity would "modify" a law would be for the public entity to amend the law. Similarly, the ordinary meaning of how a public entity would "remove" a law would be for the public entity to repeal it. How the law was amended or repealed would seemingly determine whether that action was personal to the current owner or permanent. For example, one way to grant John Doe non-monetary relief for his property on Maple Drive would be to modify the law to provide that "this law shall not affect the real property at 111 Maple Drive, Anytown, Oregon." On its face, a modification taking that form would have the effect of making the law not apply to the property irrespective of its ownership.² Moreover, to make the law begin applying again once it was acquired by a new owner, the public entity would need to repeal or amend the decision to remove or modify the law, which would seemingly entitle the new owner to relief in his own right. And if that owner were then granted the same type of modification, the owner that followed him would likewise be entitled to relief, and so on.

By contrast, if a law were modified to provide that "this law shall not affect any real property at 111 Maple Drive, Anytown, Oregon *that is owned by John Doe*," the exemption would be limited to the owner making the request for compensation and the property would again be subject to the original law upon its acquisition by a new owner, absent independent grounds for an exemption. In sum, the first two means of modifying or removing the law so that it does not apply to a property could be accomplished either by actions that are personal to the current owner or by actions that run with the land. The fact that either is technically possible means that this context does not shed any light one way or the other on whether the voters intended non-monetary relief to be personal to the present owner or to run with the land.

The third means of non-monetary relief - to "not apply" the law - presumably has a different meaning than the first two. ORS 174.010. As noted above, the ordinary meaning of

² Similarly, the law could be repealed in whole or in part (as to particular property or as to a particular person). As discussed below, we do not believe Measure 37 authorizes a public entity to repeal a law that it is required by other law to have in place (except, perhaps, with regard to a specific, valid, Measure 37 claim).

arguments in favor addresses whether subsequent purchasers would acquire the rights, or step into the shoes, of owners covered by the measure. Likewise, no argument directly mentions the effect of laws on a property's resale value, although one argument states that they restrict the use of home equity to fund owners' retirements. The latter implies an adverse effect on resale value, which might be recognized by discerning voters as a problem that would only be remedied if the exemptions ran with the land. On the other hand, an argument in favor of the measure by the chief petitioners expressly states that if an owner entitled to Measure 37 compensation conveys her property, that will establish a new "date of acquisition" for purposes of determining what laws may give rise to a claim. This is a clear statement that the chief petitioners expected that the relief available under the measure depends on when the current owner acquired the property -- that the relief is personal to the current owner. If the current owner is eligible for relief, but sells the property, then only laws adopted after the new owner acquired the property create a right to relief.⁵ The arguments in opposition include nothing that bears on this issue.

Measure 37 received considerable attention in the state's newspapers, but none of the articles or editorials we have seen discuss whether a decision to grant non-monetary relief would be personal or run with the land. Like the Voters' Pamphlet, the newspaper commentary we have reviewed does not address whether subsequent purchasers would acquire the rights, or step into the shoes, of owners covered by the measure. The same appears to be true of the television advertising on this measure.

"(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted." (emphasis added.)

This statute allows the continuation of uses that have been made unlawful by a subsequent change in the law. But if a decision to grant non-monetary relief under Measure 37 is personal to the owner, uses covered by an decision would be made unlawful not by a change in the law but by a change in ownership, which does not come under ORS 215.130. Therefore, voters whose decision to support the measure was motivated by the arguments about subdivision restrictions presumably expected either that a decision to grant non-monetary relief would run with the land or that existing law would not require that a subdivision be undone upon the property's sale. Additional legislation may be needed to implement that intent.

⁵ The argument in the Voters Pamphlet states:

"If the current owner sells an interest in her property, so long as the current owner still has a current possessory interest, or a reversionary interest in the property, the provisions of Ballot Measure 37 apply using the date the current owner acquired the property. Only if a current owner sells all of her interest in a piece of property does the date of acquisition change for purposes of determining what regulations are subject to Ballot Measure 37 protections."

Voters' Pamphlet, Volume 1 - State Measures, Oregon Vote by Mail General Election, November 2, 2004, at page 113. Argument in Favor furnished by Dorothy English, Barbara Prete and Eugene Prete.

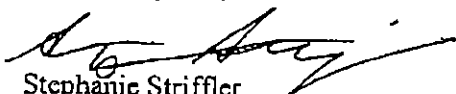
- The public entity has enforced the law;
- The law restricts the use of private real property or any interest therein
- The law has the effect of reducing the fair market value of the claimant's property or any interest therein
- The owner of the property has made a written demand to the public entity
- The law was enacted after the date the claimant acquired the property
- The law does not restrict or prohibit activities commonly and historically recognized as public nuisances under common law;
- The law does not restrict or prohibit activities to protect public health and safety
- The law is not required to comply with federal law.

If any of those conditions is not satisfied, relief is not authorized by Ballot Measure 37. If the law or laws in question are ones that a city or county was required to adopt by state law, the city or county may not repeal or amend those laws except to the extent authorized by the measure. As a result, any ordinance that purports to waive otherwise applicable laws that are required by state law, without providing for the determinations set forth above to be made, is beyond the authority provided by Ballot Measure 37 and likely violates the state law that would otherwise require the local government to have the local law in question in place.

In the arena of land use, ORS 197.646 generally requires local governments to amend their comprehensive plans and land use regulations to implement new or amended statewide planning goals and rules, and land use statutes (such as ORS ch. 215). As a result, if a county were to "modify, remove or not apply" its own ordinance adopted to implement state law in response to a valid written demand made under Ballot Measure 37, it could do so only if it first determined that all of the conditions required for a claim to be valid and entitled to relief have been met.⁷

If you have any questions about this advice, please do not hesitate to contact me. The nature of this advice is necessarily general, and there may be aspects of existing state or local laws that require additional analysis as we work through questions arising from the implementation of this measure.

Very truly yours,



Stephanie Striffler
Special Counsel to the Attorney General

DNII:RMW:SLS:gyk:AGS15162

⁷ We expressly do not address whether such an action by a city or county would entitle a property owner to carry out a use. That question is beyond the scope of this advice.

Measure 37

Proposed by initiative petition to be voted on at the General Election, November 2, 2004.

Ballot Title

37

GOVERNMENTS MUST PAY OWNERS OF PRIVATE PROPERTY WHEN CERTAIN LAND USE RESTRICTIONS REDUCE PROPERTY VALUE

RESULT OF YES VOTE: Yes vote requires that governments pay owners of private property when certain land use regulations, such as zoning, fire codes, health codes, and other restrictions, reduce the fair market value of the property.

RESULT OF NO VOTE: No vote allows existing laws that require governments to pay owners of private property when certain land use regulations, such as zoning, fire codes, health codes, and other restrictions, reduce the fair market value of the property.

SUMMARY: Oregon's Constitution requires that governments pay owners of private property when certain land use regulations, such as zoning, fire codes, health codes, and other restrictions, reduce the fair market value of the property. Measure 37 would require that governments pay owners of private property when certain land use regulations, such as zoning, fire codes, health codes, and other restrictions, reduce the fair market value of the property. Measure 37 would require that governments pay owners of private property when certain land use regulations, such as zoning, fire codes, health codes, and other restrictions, reduce the fair market value of the property. Measure 37 would require that governments pay owners of private property when certain land use regulations, such as zoning, fire codes, health codes, and other restrictions, reduce the fair market value of the property.

ESTIMATE OF FINANCIAL IMPACT: The measure would require governments to pay owners of private property when certain land use regulations, such as zoning, fire codes, health codes, and other restrictions, reduce the fair market value of the property. The measure would require that governments pay owners of private property when certain land use regulations, such as zoning, fire codes, health codes, and other restrictions, reduce the fair market value of the property.

The measure may require compensation to landowners. The amount of state expenditures needed to pay claims for compensation under this act is estimated to be \$15 million to \$25 million per year.

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The effect of the measure on local government revenues is estimated to be \$15 million to \$25 million per year.

Text of Measure

The following provisions are added to and made a part of ORS chapter 197:

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

(3) Subsection (1) of this act shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

(6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.

(7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015(10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this

Measure 37

act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (8) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions – for purposes of this section:

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission;

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

Explanatory Statement

Ballot Measure 37 adds a new statute to ORS chapter 197. As specified in the measure, the owner of private real property is entitled to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces its fair market value.

If a property owner proves that a land use regulation restricts the use of the owner's property, and reduces its value then the government responsible for the regulation will have a choice: pay the owner of the property an amount equal to the reduction in value or modify, change or not apply the regulation to the owner's property.

The measure allows the state, county, city or metropolitan service district to adopt procedures for processing claims for compensation, but prohibits those procedures from being treated as a prerequisite to the filing of a claim in circuit court.

The measure does not apply to commonly and historically recognized public nuisances, public health and safety regulations, regulations required to comply with federal law, and regulations restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

The measure specifies that compensation is due if the regulation remains in force 180 days after the owner makes written demand for compensation. After that time, the present owner may file an action in the circuit court in the county in which the property is located. The measure also specifies that the present owner is entitled to reasonable attorney fees, expenses, costs and other disbursements reasonably incurred to collect compensation.

The measure provides no new revenue source for payments, if any, required under this measure.

The measure defines several terms that are used in the statute including "family member" which is defined as wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

Committee Members:

David Hunnicutt
Dale Riddle
Bernie Bottomly
Patricia McCalg
Jack Roberts

Appointed by:

Chief Petitioners
Chief Petitioners
Secretary of State
Secretary of State
Members of the Committee

(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 251.215.)

(2) The ballot title shall be referred by the Board in the form that it shall appear on the ballot. The title shall consist of a caption of not more than 10 words, a question of not more than 20 words in length, and an explanatory statement of not more than 150 words. The explanatory statement shall contain a concise and impartial statement of the issue presented to the voter.

(3) The general procedure for conducting advisory question elections shall be consistent with ORS Chapter 255. The County Clerk responsible for election matters shall have the authority to take appropriate action to guarantee the submission of the advisory question to the appropriate voter group.

(a) After receipt of the Board referral, the County Clerk shall provide notice of the advisory question in the same manner specified in ORS 255.095.

(b) Advisory questions may be conducted Countywide or within only a portion of the County, however, the areas designated by the Board shall follow precinct boundaries established pursuant to ORS 246.410.

(c) No election contests or recounts, as specified in ORS Chapter 258 shall be permitted.

(d) No challenge to the ballot title, consisting of the caption, the question and explanatory statement, shall be permitted after Board referral to the people under this ordinance.

(e) Advisory questions referred pursuant to this ordinance shall be preceded on the ballot by the following statement:

"Referred to the people by the Board of County Commissioners.
The questions are advisory only and shall have no binding legal effect whatsoever."
(Revised by Ordinance No. 15-78, Effective 8.29.78; 19-81, 1.8.82)

SERVICE DISTRICTS

2.660 Establishment of Local Service District.

Pursuant to Section 7 of the Charter, the method for establishing a local service district and for enlarging such a district already established, shall be as prescribed by the general laws of the State. *(Revised by Ordinance No. 17-72, Effective 9.8.72)*

2.665 Referendum in Local Service District.

Pursuant to Section 7 of the Charter, method for exercising the power of referendum in a local service district shall be as prescribed by the general laws of the State. *(Revised by Ordinance No. 17-72, Effective 9.8.72)*

REAL PROPERTY COMPENSATION/REGULATION APPLICATION PROCESS

2.700 Findings and Purpose.

(1) Findings. On November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37 which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowners if a government land use regulation reduces property value. Ballot Measure 37 permits owners of private real property to apply for compensation for the reduction of property value resulting from imposition of a land use regulation that restricts the use of private real property and the government has 180 days from such application to deny or pay the claim or take action to modify, remove, or not apply the regulation on the property. Since Ballot Measure 37 does not set forth a specific process for review of applications

for compensation, it is in the best interests of Lane County to establish such a process in order to be able to assess such claims in a timely manner.

(2) Purpose. The provisions of LC 2.700 through 2.770 implement the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The provisions of LC 2.700 through 2.770 establish a prompt, open, thorough and consistent process that enables property owners to present their legitimate claims consistent with the Oregon and U.S. Constitutions; enable persons with claims to have an adequate and fair opportunity to present them to the County; preserve and protect limited public funds; and establish a record of decision capable of appellate review. The provisions of LC 2.700 through 2.770 shall become operative only when the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) become effective. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.710 Definitions.

For the purpose of LC 2.700 through 2.770 the following terms, phrases, words and their derivations shall have the meaning given in LC 2.710. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. Words not defined in LC 2.700 through 2.770 shall be given the meaning intended in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), or as those words may be subsequently defined by statute. Words used in LC 2.700 through 2.770 that are the same as words used in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) shall have the same meaning as the words used in those provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), notwithstanding any different definition in any other regulation. If not defined there, the words shall be given their common and ordinary meaning.

Claim. A claim filed under Ballot Measure 37.

County Administrator. The County Administrator or the Administrator's designee.

Exempt Land Use Regulation. A land use regulation that:

- (1) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
- (2) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
- (3) Is required to comply with federal law;
- (4) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
- (5) Was enacted prior to the date of acquisition of the property by the owner or a family member

Family Member. Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

Land Use Regulation. Includes:

- (a) Any statute regulating the use of land or any interest therein;
- (b) Administrative rules and goals of the Land Conservation and Development Commission; and

(c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances.

Owner. The present owner of the property, or any interest therein.

Valid Claim. A claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by Lane County that restricts the use of the private real property in a manner that reduces the fair market value of the real property.
(Revised by Ordinance No. 9-00, Effective 12.6.00)

2.720 Application for Claim.

An applicant seeking to file a claim under LC 2.700 through 2.770 shall be the present owner of the property that is the subject of the claim at the time the claim is submitted. An applicant shall submit an application to the County Administrator consisting of all of the items set out in LC 2.720(1) through (9). The County Administrator may waive the submission of any materials if not deemed applicable to the evaluation of the specific claim. Within 10 working days of when the application is first submitted, the County Administrator may require additional information beyond that listed in LC 2.720(1) through (9) where useful to address approval criteria. The applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. The County will not deem the application complete until all information required by the County Administrator has been submitted. Unless specifically waived by the County Administrator, the following must be submitted:

- (1) A completed application form;
- (2) The name, mailing address, and phone number of the property owner filing the application, and of each of the other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each, if any, along with the signature of each of the other owners indicating consent to the application claim;
- (3) A legal description and tax lot number of the subject property as well as a street address for the property (if any);
- (4) A title report issued within 30 days of the application's submittal, including title history and including a statement of the date the applicant acquired ownership of the subject property and showing the ownership interests of all owners of the property or, as an alternative to the title report, a copy of the deed(s) granting all existing ownership interests to the owner(s) of the subject property signing the application;
- (5) A statement specifically identifying the section of Lane Code or other land use regulation that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property, including the date the regulation was adopted, first enforced or applied to the subject property;
- (6) A copy of a written appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, addressing the requirements of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and indicating the amount of the alleged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after application of each of the challenged regulations, individually, and after the application of all of the challenged regulations, cumulatively;
- (7) A written statement addressing the criteria listed in LC 2.740(1)(a) through (d);
- (8) A statement by the applicant specifying the amount of the claim, and the fair market value of the property before and after application of the challenged land use regulation(s); and

(9) Copies of any leases or covenants, conditions and restrictions applicable to the subject property if any exist that impose restrictions on the use of the property. Unless waived by the County Administrator, an application also shall include an application fee, in the amount established by Order of the Board, to at least partially cover the County costs of processing the application, to the extent an application fee may be required as a condition of acceptance of filing of an application for a claim under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The County shall refund the application fee if it is determined by the County or by a court that the applicant is entitled to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.730 Completeness Review.

The County Administrator shall review a claim application and, within 10 working days of its receipt, notify the applicant as to whether the application is complete. If the County Administrator determines that the application is complete, the County Administrator shall begin the application review process. If the County Administrator determines that the application is incomplete, the county shall advise the applicant in writing of the necessary missing information. Within 10 days of the mailing of a notice of missing information, the applicant shall submit to the county a written statement indicating either an intent to submit the missing information or a refusal to submit the missing information. A statement indicating an intention to submit missing information shall constitute a waiver of the 180-day deadline contained in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) for a period of time equal to the time it takes to supply the missing information. The County shall accept the application and begin review either:

- (1) Upon receipt of all of the missing information requested by the County;
- (2) Upon receipt of a written statement from the applicant indicating that the missing information will not be provided; or
- (3) Upon the 20th day after mailing the notice of missing information referred to above, if the applicant has not responded. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.740 Application Review and Recommendation.

(1) The County Administrator shall make a determination as to whether the application qualifies for Board compensation consideration. An application qualifies for compensation consideration if the applicant has shown that all of the following criteria are met:

- (a) The County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein;
- (b) The restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed;
- (c) The challenged land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner; and
- (d) The challenged regulation is not an exempt regulation as defined in LC 2.710.

(2) If an application fails to meet one or more of the criteria listed above, the County Administrator shall issue a written final decision denying the claim and explaining the reason(s) for determining that the application does not qualify for compensation consideration and will not be referred to the Board. If the application meets all of the criteria in LC 2.740(1)(a) through (d), the County Administrator shall refer the application to the Board and recommend, based on consideration of the criterion

- (a) The street address or other easily understood geographical reference to the subject property;
 - (b) The criterion for the decision;
 - (c) The place, date, and location of the hearing;
 - (d) The nature of the application and the proposed use or uses which could be authorized if the identified land use regulation is waived or modified with respect to the subject property;
 - (e) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
 - (f) The name and telephone number of a county contact person;
- and
- (g) A brief summary of the local decision making process for the decision being made. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.760 Board Consideration and Decision.

(1) Upon conclusion of any hearing on a claim application, and prior to the expiration of 180 days from the date a claim was filed, the Board shall either declare:

- (a) The claim is a valid claim and the amount of compensation, if any, due to the owner(s) of the subject property; or
- (b) The claim is a valid claim and the County will, as of the date of the final Board decision, modify, remove, or choose not to apply the challenged land use regulation(s) in a manner which reduces the value of the subject property and allows the owner to use the property for a use permitted at the time the owner acquired the property.

(2) Where more than one regulation is being challenged, the Board may provide for a combination of the two remedies listed above.

(3) The Board decision shall be based upon consideration of whether the public interest would be better served by compensating the applicant, or by modifying, removing, or choosing not to apply the challenged land use regulation(s) to the subject property. The Board decision shall be accompanied by a written decision that states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria set forth in LC 2.760(3).

(4) Within 5 days after the Board renders a decision, the County shall mail notice of the decision to all parties to the proceeding. The notice shall include a summary of the decision.

(5) The County shall record notice of the Board decision in the county deed records. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.770 Board Decision Effect.

(1) Pursuant to Ballot Measure 37 (November 2, 2004), and notwithstanding any other law, rule, ordinance, resolution, goal or other enforceable enactment of the County, and notwithstanding any other procedure for release, exception, or otherwise in the Lane Code, the Board is authorized to modify, remove, or discontinue application of a challenged land use regulation by Order pursuant to LC 2.700 through 2.770 when the Board, in its discretion, elects to do so rather than paying compensation to the property owner.

(2) Any modification, removal, or discontinued application of a regulation shall be in effect during such time as the owner owns the subject property and shall automatically cease when the property is owned by a new owner. Following termination of ownership of the property by the owner, the discontinued regulation or any subsequent amendments shall be reinstated and apply to the property, and the new property owner

shall, to the maximum extent permitted by law, bring the property immediately into compliance with the reinstated regulation.

(3) If the Board grants an Order modifying, removing, or discontinuing application of a challenged land use regulation as a means to avoid having to compensate, or as a means to limit compensation to, an owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if, based on an appellate court interpretation or invalidation of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), in the same or any other case, the applying owner was not entitled to compensation in relation to the modified, removed, or discontinued challenged land use regulation, then the Order shall be deemed to have been invalid and ineffective as of and after the date of the Board's Order. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the County being required to compensate the owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

(4) Any modification, removal, or discontinued application of a challenged land use regulation Order granted under LC 2.700 through 2.770 shall terminate automatically on the occurrence of any event which determines the owner or future owner of the private real property that is the subject of the modified, removed, or discontinued application of a challenged land use regulation Order would not be entitled to just compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) in relation to the land use regulation made inapplicable by the Board Order. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

COUNTY LANDS AND BUILDINGS

2.800 Parking.

(1) The Board may designate by separate order certain locations on County-owned or controlled lands for parking purposes and may further order such regulation of parking considered reasonable and appropriate, including establishing user's fees and administrative charges in connection with such parking.

(2) For purposes of administration of any parking regulations ordered in accordance with LC 2.800(1) above, it shall be presumed:

(a) That a motor vehicle or other transportation vehicle was used with the owner's consent.

(b) That the owner of record was operating the vehicle whenever the actual operator is unknown.

(c) That a vehicle was parked for one-half the chargeable period whenever the actual time period is unknown. *(Revised by Ordinance No. 17-72, Effective 9.8.72; 18-77, 11.23.77)*

FEES AND ASSESSMENTS

2.900 Fees to be Charged by the County Clerk for Recording and Other Services.

(1) The County Clerk shall charge no fees to Lane County or any of its Departments for recording.

(2) The fee for approval of a plat or a vacation order or ordinance by the county court is \$5.

(3) For recording and indexing any plat, the County Clerk, in whose office the deed records of the County are kept, shall charge \$20 plus \$10 per lot.

(4) The fee charged for the services of the County Surveyor for marking the record of a vacation order or ordinance upon the original plat shall be \$6.