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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: Order , 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 (PA05-5162, Kenny and Marta Gee)

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 Gee claim.)

C. Application to Lane County for Measure 37 Claim

Applicant: Kenny M. Gee

Owner: Kenny M. and Marta B. Gee

Address: 81778 N. Pacific Hwy 99
Creswell, OR 97426

Legal Description of Property: Map 19-03-26, tax lot 6101

Acreage: 56.36 acres

Current Zoning: Exclusive Farm Use (E-30/RCP)

Date Property Acquired: July 31, 1973 (Kenny Gee/joint owner)

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 16.212 (currently)

Specific Relief Sought: Residential density at 2 acre density

On December 2, 2004, Kenny Gee submitted a M37 claim to Lane County for waiver of land use restrictions. On December 14, 2004, the County Administrator sent a response to Mr. Gee indicating that the claim was incomplete and identified the additional information required for Lane County to process a M37 claim. On January 4, 2005, the County Administrator and staff met with Mr. Gee to discuss his M37 claim.

On January 26, 2005, Mr. Gee submitted an application form and some additional information, including copies of deeds, nearby assessed property value data and paid the claim processing fee deposit.

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 not been provided. The deed records that have been submitted establish that the property has been in Mr. Gee's ownership since 1973.
 - The property was acquired by Royce, Allen, Craig and Kenny Gee, as a land sales contract (not as tenants in common, but with the right of survivorship) on July 31, 1973, for consideration of \$27,500. (Reel 649 R 7335399)
 - On March 15, 1974, Royce, Allen, Craig and Kenny Gee by Bargain and Sale Deed granted an undivided half interest in the property to Craig Gee and an undivided half interest in the property to Kenny and Delores Gee. (Reel 682 R 74 10888)
 - On September 16, 1977, Delores Gee by Bargain and Sale Deed conveyed a one-half interest in the property to Kenny Gee. (Reel 876 R 77 78059)
 - On November 13, 1995, Craig Gee by Quitclaim Deed granted his interest in the property to Kenny Gee for consideration of \$30,000. (Reel 2126 R 95 74154)
 - On November 23, 1999, Kenny Gee by Warranty Deed conveyed the property to Kenny Gee and Marta Gee. (Reel 2609 R 99 096659)
- 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 Exclusive Farm Use zone, the relevant portions of which seem to be limited to:
 - the 30 acre minimum area land division requirements, LC 16.212(9)
 - the dwelling requirements, primarily in LC 16.212(5), (6) and (7)Other regulations in the EFU 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 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 1973 for consideration of \$27,500.
 - In lieu of an appraisal, Mr. Gee has submitted assessed Market Value information from the County Department of Assessment and Taxation for nearby developed residential properties. According to the information submitted by the applicant, the reduction in the subject property's assessed Market Value ranges from \$79,986 to \$6,742,250.

- 7) A written statement addressing the criteria listed in LC 2.740(1)(a)-(d) has been provided. (Refer to analysis section, below, for specifics.)
- 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;*

Kenny Gee first acquired an interest in the property on July 31, 1973. 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 February 25, 1976 under Ordinance 587, before Marta Gee acquired an interest in the property.

Currently, the property is zoned Exclusive Farm Use (E-30/RCP) and the applicants' dwelling is located on the subject property. The E-30 zoning regulations (LC 16.212) authorize, for qualifying parcels, one dwelling if the tract (contiguous ownership) upon which the dwelling will be located has no other dwellings on it. Additional dwellings may be authorized on commercial farms for family farm help or seasonal farm worker housing. The E-30 zoning regulations also establish the minimum land division size at 30 acres. The subject property is 56 acres in size. Under the current 30 acre minimum land division requirement the property cannot be further divided. Kenny and Marta Gee do not have a commercial farm operation that requires farm help or seasonal farm worker housing. They desire to develop the property with approximately 10 residences at densities varying from two to ten acres. Other regulations in the EFU 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 Mr. Gee acquired the property, there were no zoning restrictions but LC Chapter 13 regulated subdivisions. Currently, the E-30 zone dwelling provisions (LC 16.212(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 30 acres (LC 16.212(9)), so the applicant would be unable to partition their property and comply with minimum area requirements. Other regulations in the EFU zone and other sections of Lane Code that do not restrict use of the property for a home site 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 E-30 regulations since M37 went into effect. The clear limitations of the E-30 zone seem to preclude additional dwellings or land divisions and may provide sufficient evidence those regulations have been enforced. In addition, the E-30 dwelling and minimum area requirements come from state statute (ORS 215.263) and administrative rules (OAR 660, Division 33). The Board will need to conclude the E-30 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 residential zones.

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 \$79,986 to \$6,742,250.

An independent review of what the applicant 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 30 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 EFU zone and other sections of Lane Code that do not restrict use of the property for a home site 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 E-30 regulations have the effect of reducing the fair market value of the applicants' property to conclude the Gees 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

Kenny Gee first acquired an interest in the property on July 31, 1973. The current land use regulation limiting the minimum land division size to 30 acres was adopted after Kenny Gee acquired the property, but before Marta Gee acquired an interest in the property. Previous limitations on additional dwellings and most land division regulations were also adopted after Kenny Gee acquired an interest the property.

Conclusion: At the time Kenny Gee acquired the property, there were no zoning restrictions but LC Chapter 13 regulated subdivisions. The challenged E-30 land use regulations were adopted after Kenny Gee became the current owner of the property. It is not clear that the current E-30 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 E-30 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 16.212(5), (6) and (7) establish the dwelling approval requirements in the E-30 zone. The dwelling authorization 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 EFU zone and other sections of Lane Code that do not restrict the use of the property for a home site and reduce the value of the property should remain applicable until shown otherwise.

LC 16.212(9) 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 EFU zone and other sections of Lane Code that do not restrict the use of the 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 additional dwellings 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 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 E-30 zone, or modify, remove, or discontinue application of the restrictive land use regulations to the subject property to allow Kenny Gee 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 E-30 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 approximately 10 residences at densities varying from two to ten acres. 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 Kenny Gee could subdivide 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 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 Kenny Gee to build a second dwelling on his 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 \$79,986 and \$6,742,250. 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 subdivide 56.36 acre ownership to develop approximately 10 residences at varying densities from two to ten acres.

Because under Measure 37 the “waiver” of regulations would be personal to Kenny Gee and might not be transferable, 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 16.212(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 EFU zone and authorize approval of an application from Kenny Gee to build a second dwelling on their property. Other land use regulations in the EFU 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 Gee’s property.

V. ALTERNATIVES/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 final disposition of the Gee’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 of County Commissioners final decision pursuant to LC 2.760.

VIII. ATTACHMENTS:

1. Draft Order
2. December 2, 2004, M37 Claim
3. January 26, 2005, Application for Claim under LC 2.700
4. February 24, 2005, Oregon Attorney General Opinion
5. 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
) (Kenny and Marta Gee/PA 05-5162)

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 by Kenny and Marta Gee (PA05-5162), owners of real property commonly known as 81778 North Pacific Highway 99, Creswell, Oregon 97426 and more specifically described in the records of the Lane County Assessor as map 19-03-26, tax lot 6101 and consisting of approximately 56.36 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 Kenny and Marta Gee's Measure 37 claim (PA05-5162) and determined that the restrictive dwelling requirements of Lane Code 16.212(5), (6) and (7) applicable to the property prevent Kenny Gee from building a second dwelling on his 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, Kenny and Marta Gee wish to be able to subdivide their property and develop with residences at a 2 acre density but the Board finds that the “waiver” of land division regulations may not be authorized by Ballot Measure 37, would be personal to Kenny Gee and might not be transferable; and

WHEREAS, the Board finds that the restrictive dwelling requirements of Lane Code 16.212(5), (6) and (7) applicable to the property prevent Kenny and Marta Gee from building a second dwelling on their property, a use permitted at the time Kenny Gee acquired the property, and under LC 2.760(3) the public interest would be better served by modifying, removing or not applying those challenged land use regulations of the EFU 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 Kenny and Marta Gee 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 Kenny Gee 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 request of Kenny Gee shall be granted and the restrictive dwelling provisions of Lane Code 16.212(5), (6) and (7) that limit the use of the property to one dwelling per tract or contiguous ownership shall not apply to Kenny Gee so that he can build a second dwelling on the property commonly known as 81778 North Pacific Highway 99, Creswell, Oregon 97426 and more specifically described as map 19-03-26, tax lot 6101.

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 Kenny Gee’s use of his 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 and a copy of this Order shall be recorded in the county deed records. This Order shall be effective and have 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

December 1, 2004

To: Lane County Planning Department

Under the provisions of ORS Chapter 197 as revised by passage of Ballot Measure 37, the County is hereby given written demand for compensation as expressed in Section 4 of the measure's text, on property designated Map # 19 03 26 00 06101. Review of County's records will confirm continuous ownership prior to any zoning.

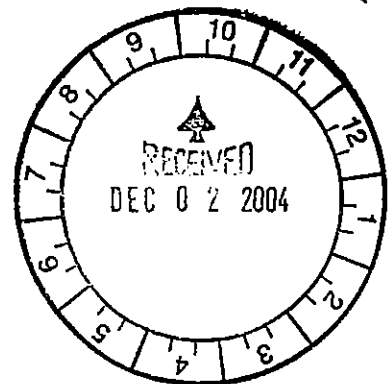


Kenney M. Gee
81778 N. Pacific Hwy. 99
Creswell, OR 97426
(541)895-8892

Received by: S SMITH

Date Received: 12-02-04

A/T. Acc # 0843118



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

KENNEY M. GEE 81778^{No.} Pac. Hwy. 99 (541) 895-8892
 Applicant Name (Please Print) Mailing Address CRESWELL, OR 97426 Phone

Agent Name (Please Print) Mailing Address 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.

KENNEY M. GEE 81778 Pac. Hwy. 99 (541) 895-8892
 Property Owner Name (Please Print) Mailing Address CRESWELL, OR 97426 Phone

MARTA B. GEE (AS ABOVE) (AS ABOVE)
 Property Owner Name (Please Print) Mailing Address 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 19-03-26-00-06101
 Street Address 81778 N. Pacific Hwy. 99 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).

FF-20 FEBRUARY 25, 1976 ORDINANCE # 571/587
EF-30 CURRENTLY

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.

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.

SEE ATTACHED AS PER CONCESSION MADE WITH
WILLIAM A. VAN VACTOR

7. Leases, Covenants, Conditions and Restrictions

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

N/A

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.

SEE ATTACHED

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).

Kenny M. Lee
Marta B. Lee
Owner(s) Signature

1-25-05
Date

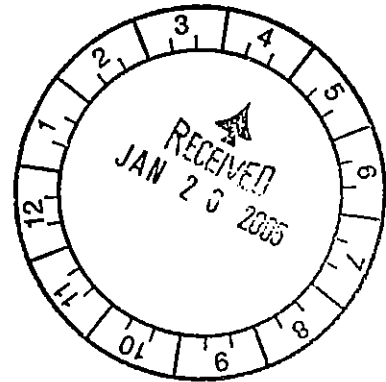
Applicant/Agent Signature

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.

January 24, 2005

William A. Van Vactor
Lane County Administrator



Re: M37 Claim #DE040830

Dear Mr. Van Vactor,

Due to the unprecedented nature of Measure 37 claims, the actual implementation of such a process has proven to be a challenge to all of us. I'm appreciative of all the time invested in meetings and conversations that the County Administrator and his staff have allotted to me thus generating the mutually agreed specifics of evidence deemed applicable to the evaluation of this claim.

The following information has been deemed sufficient in lieu of an appraisal. To arrive at these obvious conclusions, I've utilized Market Values for the land as assessed by the County Department of Assessment and Taxation of all appropriately sized parcels within the boundaries of my entire Tax Section and have averaged each to calculate a per acre value for each of the seventy-one (71) properties.

Map Lot Number	Acreage	Assessed Land Market Value	Averaged Per Acre Value	Residence
100	1.91	\$98,870.00	\$51,764.00	Yes
200	1.91	\$92,576.00	\$48,469.00	Yes
300	1.91	\$92,576.00	\$48,469.00	Yes
400	1.53	\$27,414.00	\$17,917.00	No
498	1.91	\$69,016.00	\$36,134.00	Yes
499	1.91	\$41,490.00	\$21,685.00	Yes
500	5.14	\$128,804.00	\$25,059.00	Yes
601	1.51	\$56,684.00	\$37,539.00	No
1100	1.95	\$94,783.00	\$48,606.00	Yes
1200	0.45	\$44,470.00	\$98,822.00	Yes
1201	0.51	\$68,485.00	\$128,402.00	Yes
1202	0.81	\$77,181.00	\$95,285.00	Yes

Map Lot Number	Acreage	Assessed Land Market Value	Average Per Acre Value	Residence
1300	1.46	\$89,370.00	\$61,212.00	Yes
1400	0.75	\$75,012.00	\$100,016.00	Yes
1401	0.64	\$70,782.00	\$110,596.00	Yes
1500	0.54	\$64,888.00	\$120,162.00	Yes
1600	1.89	\$66,925.00	\$35,410.00	Yes
*1601	0.49	\$64,914.00	\$132,478.00	Yes
1700	2.06	\$44,625.00	\$21,662.00	No
1800	2.06	\$66,571.00	\$32,316.00	Yes
1900	1.06	\$91,005.00	\$85,853.00	Yes
2000	2.28	\$77,012.00	\$33,777.00	Yes
2100	1.58	\$96,430.00	\$61,031.00	Yes
2300	2.30	\$90,665.00	\$39,420.00	Yes
*2400	4.98	\$65,628.00	\$13,178.00	Yes
2401	5.36	\$97,807.00	\$18,248.00	Yes
2500	3.44	\$96,287.00	\$27,990.00	Yes
2600	4.12	\$123,976.00	\$30,019.00	Yes
2700	1.23	\$88,032.00	\$71,570.00	Yes
2701	0.98	\$82,840.00	\$84,530.00	Yes
2800	1.56	\$82,113.00	\$52,636.00	Yes
2900	1.14	\$48,870.00	\$42,868.00	Yes
3000	1.22	\$72,184.00	\$59,167.00	Yes
3300	2.74	\$72,338.00	\$26,400.00	Yes
3301	2.31	\$69,638.00	\$30,146.00	Yes
3400	2.84	\$102,286.00	\$36,016.00	Yes
3500	3.30	\$104,842.00	\$31,770.00	Yes
3600	3.82	\$111,617.00	\$29,219.00	Yes
3700	2.88	\$100,844.00	\$35,015.00	Yes
3701	1.01	\$78,038.00	\$77,265.00	Yes
3800	3.83	\$74,909.00	\$19,060.00	Yes
3900	3.94	\$121,535.00	\$30,846.00	Yes
4001	3.30	\$112,760.00	\$34,170.00	Yes
4100	3.82	\$119,497.00	\$31,282.00	Yes
4200	3.89	\$120,329.00	\$30,933.00	Yes
4300	2.67	\$65,117.00	\$24,388.00	No
4301	1.22	\$67,624.00	\$55,430.00	Yes
4401	2.92	\$41,769.00	\$14,304.00	Yes
4500	3.82	\$119,497.00	\$31,282.00	Yes
4700	3.05	\$80,002.00	\$26,230.00	Yes
4900	4.85	\$21,230.00	\$4,377.00	No
5100	4.18	\$99,027.00	\$23,690.00	Yes
5201	0.97	\$76,921.00	\$79,300.00	Yes
*5202	1.38	\$89,113.00	\$60,226.00	Yes
5300	0.86	\$46,728.00	\$54,334.00	Yes
5301	1.05	\$77,012.00	\$73,344.00	Yes

Map Lot Number	Acreage	Assessed Land Market Value	Average Per Acre Value	Residence
5302	1.82	\$86,954.00	\$47,777.00	Yes
5304	1.55	\$45,184.00	\$29,151.00	No
5600	2.15	\$46,599.00	\$21,674.00	Yes
5700	0.94	\$81,632.00	\$86,842.00	Yes
5800	1.27	\$88,539.00	\$69,716.00	Yes
5801	0.60	\$69,016.00	\$115,027.00	Yes
5900	0.94	\$36,304.00	\$38,621.00	No
5901	0.94	\$57,982.00	\$61,683.00	Yes
6000	1.22	\$82,008.00	\$67,220.00	Yes
6001	0.96	\$82,205.00	\$85,630.00	Yes
6002	0.96	\$82,205.00	\$85,630.00	Yes
6003	1.14	\$68,107.00	\$59,743.00	Yes
6004	0.97	\$47,456.00	\$48,923.00	Yes
6301	2.94	\$95,872.00	\$32,609.00	Yes
6302	5.12	\$137,891.00	\$26,932.00	Yes
6303	5.00	\$105,744.00	\$21,149.00	Yes

\$3,534,617.00

The Market Value of my 56.34 acres is currently assessed at \$328,991.00 averaging \$5,844.00 per acre. To illustrate the reduction of my property's Market Value, a simple comparative view of the Average Per Acre Price projected upon my property reduced by its current Market Value is shown below:

Total Averages	#Properties	Property Type	Per Acre Price
\$3,534,617.00	71	All Parcels	\$49,783.00

Projected on my property: $\$49,783 \times 56 = \$2,787,848 - \$328,991 = \$2,458,857.00$

\$2,103,621.00	54	1-5 Acres	\$38,955.94
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Projected on my property: $\$38,956 \times 56 = \$2,181,536 - \$328,991 = \$1,852,545.00$

\$3,360,962.00	64	W/Residences	\$52,515.03
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Projected on my property: $\$52,515 \times 56 = \$2,940,840 - \$328,991 = \$2,611,849.00$

Tax Lot #2400 (Lowest Per Acre Average Parcel) \$13,178.00

Projected on my property: $\$13,178 \times 56 = \$737,968 - \$328,991 = \$408,977.00$

Tax Lot #1601 (Highest Per Acre Average Parcel) \$132,147.00

Projected on my property: $\$132,147 \times 56 = \$7,400,232 - \$328,991 = \$7,071,241.00$

I believe the above comparative analysis of the evidence boldly shows the reduction in Market Value of my property as a result of the regulatory restraints currently imposed. The criteria needed as specified in L.C. 2.740 to qualify for compensation consideration having been so easily met, leaves you to determine the best course of compensation.

In our previous conversations, it's been made perfectly clear that taking into consideration the financial resources of the County, that financial compensation isn't really a viable option. Even if funds were available, I'd be very disappointed in our County's leadership, for the public benefit would be better served elsewhere.

The specific relief being sought is primarily a zone change to enable a rural development to proceed. I believe the most appropriate zone change would be to match that of my closest neighbor (Tax Lot #5202), who is currently zoned RR-2. I feel this agreement supercedes the planning for the property's development. Thusly, fees associated with planning i.e. Zone Change and future Partitions are not applicable towards the property's development.

Respectfully,



Ken M. Gee
81778 N. Pacific Highway 99
Creswell, OR 97426
(541)895-8892

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That Craig W. Gee hereinafter called grantor, for the consideration hereinafter stated, does hereby remise, release and quitclaim unto Kennedy M. Gee

hereinafter called grantee, and unto grantee's heirs, successors and assigns all of the grantor's right, title and interest in that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, situated in the County of Lane, State of Oregon, described as follows, to-wit: Beginning at the Northwest Corner of the Clause Arp and Wife Donation Land Claim No. 63, Notification No. 6567, Township 19 South, Range 3 West of the Willamette Meridian; and running thence South 25 chains, thence East to the West line of the Pacific Highway 99; thence Northerly along said West line to the North line of said Donation Land Claim No. 63, thence West to the place of beginning. EXCEPTING therefrom that portion thereof included within the public roads or highways.

2940DEC.28'95H08REC 5.00
2940DEC.28'95H08PFUND 10.00
2940DEC.28'95H08A&T FUND 20.00

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

To Have and to Hold the same unto the grantee and grantee's heirs, successors and assigns forever. The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 30,000.00

However, the actual consideration consists of or includes other property or value given or promised which is the whole consideration (indicate which). (The sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030.)

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

In Witness Whereof, the grantor has executed this instrument this 13th day of November, 1995; if a corporate grantor, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized thereto by order of its board of directors.

Craig W. Gee

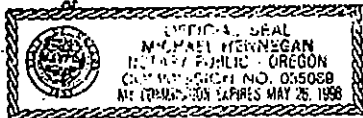
THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.830.

STATE OF OREGON, County of Lane) ss. This instrument was acknowledged before me on 13 November 1995

by Craig W. Gee

This instrument was acknowledged before me on 13 November 1995

by Michael Kernigan



Michael Kernigan
Notary Public for Oregon
My commission expires 5/26/98

Craig W. Gee
2340 SW Pickford St.
Corvallis, OR 97333
Grantor's Name and Address

Kennedy M. Gee
1937 Laura St.
Springfield, OR 97177
Grantee's Name and Address

After recording return to (Name, Address, Zip):
Kennedy M. Gee
1937 Laura St.
Springfield, OR 97177

With requesting parties send all tax statements to (Name, Address, Zip):
D. Cheng

SPACE RESERVED FOR RECORDER'S USE

State of Oregon } ss.
County of Lane -- ss. ument
I, the County Clerk, in and for the said ...day
County, do hereby certify that the within ...at
instrument was received for record at led in
page
instru-
.....

28 DEC 95 12:29

Recd **2126R** tal of

Lane County OFFICIAL Records
Lane County Clerk

By: *Donald S. Sisk*
County Clerk
TITLE
copy

19-03-26 6101

7335399

Pt 3062's

MEMORANDUM OF LAND SALE CONTRACT

KNOW ALL MEN BY THESE PRESENTS. That on the 31 day of July, 1973.

CLIFTON A. LABART and DOROTHY M. LABART, husband and wife

as VENDORS, and ROYCE L. GEE, ALLEN D. GEE, CRAIG W. GEE and KENNEY M. GEE, not as tenants in common, but with the right of survivorship, that is that the fee shall vest in the survivor.

as VENDEES, made and entered into a certain Land Sale Contract:

WHEREAS, VENDOR agreed to sell and VENDEES agreed to purchase the following described real property, to-wit:

Beginning at the Northwest corner of the Claus Arp and wife Donation Land Claim No. 63, Notification No. 6567, Township 19 South, Range 3 West of the Willamette Meridian; and running thence South 25 chains, thence East to the West line of Pacific Highway No. 99, thence Northerly along said West line to the North line of said Donation Land Claim No. 63, thence West to the place of beginning. EXCEPTING therefrom that portion thereof included within the public roads or highways.

Subject to the rights of the public in and to public roads and highways. CONSIDERATION: \$27,500.00

The terms and conditions of said transfer being fully set forth in said Land Sale Contract.

IN WITNESS WHEREOF the parties have hereunto set their hands this 31 day of July 1973.

Handwritten signatures of Royce L. Gee, Allen D. Gee, Craig W. Gee, and Kenney M. Gee.

Handwritten signature of Betty J. Watkins, Notary Public for Oregon.

STATE OF OREGON, County of Lane, ss.

Personally appeared the within named Royce L. Gee, Allen D. Gee, Craig W. Gee and Kenney M. Gee and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

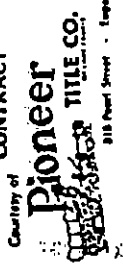


Notary Public for Oregon My Commission Expires: 9-10-74

Deeds Address 1937 Laura St. Springfield Ore.

7335399

MEMORANDUM OF LAND SALE CONTRACT



TO

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

1973 JUL 2 11 10 45

Reel 649 R

Lane County OFFICIAL RECORDS.

D. M. PENFOLD Director of the Department of Records & Elections.

By: [Signature] Deputy

C-29-081-05

Return to:

Maynard Wilson 11 So. 6th Street Coquille Grove, Oregon

PIONEER TITLE CO.

FOR VALUE RECEIVED, ROY C. GEE, ALLEN D. GEE, DONALD H. GEE, and KENNETH M. GEE

have referred to as grantors, have jointly, bargain, sell and convey unto DONALD H. GEE, an undivided one-half interest, and KENNETH M. GEE and DONALD H. GEE, husband and wife, an undivided one-half interest

herein referred to as grantees, the following described real property, with tenements, hereditaments and appurtenances to w/h:

beginning at the Northwest corner of the Claus G. and wife Donald Land Claim No. 63, Section 20, No. 1070, Township 19, South, Range 15 West of the Willamette Meridian, and running thence South 25 degrees thence East to the West line of Pacific Highway No. 99, thence Northerly along said West line to the North line of said Donald Land Claim No. 63, thence West to the place of beginning, EXCEPT therefrom that portion thereof included within the public roads or highways.

The true and actual consideration for this transfer is \$10,000

Date: March 15, 1974
By: Roy C. GEE (GEE)
Kenneth M. GEE (GEE)

Allen D. GEE
Donald H. GEE

STATE OF OREGON, County of Lane, ss.
ROBERT L. GEE, ALLEN D. GEE, DONALD H. GEE, and KENNETH M. GEE

and acknowledge that the foregoing instrument is their voluntary act and deed.

Date: March 15, 1974 A.D. 1974

Allen D. GEE
Notary Public for Oregon

Buyers: address 10711 N. Pacific Hwy, Medford, Or 97504

74-10888
BARGAIN & SALE DEED
PIONEER
SEEKERS
MILICA

1974 MAR 20 PM 4:18
682 R
COUNTY OF LANE, OREGON
D. R. FENTON, District Clerk
FILED IN REGISTER & INDEXED
BY CHRISTINA S. STUBBS
CLERK OF COURT

1974 MAR 20 PM 4:18
682 R
COUNTY OF LANE, OREGON
D. R. FENTON, District Clerk
FILED IN REGISTER & INDEXED
BY CHRISTINA S. STUBBS
CLERK OF COURT

1974 MAR 20 PM 4:18
682 R
COUNTY OF LANE, OREGON
D. R. FENTON, District Clerk
FILED IN REGISTER & INDEXED
BY CHRISTINA S. STUBBS
CLERK OF COURT

99096659

After Recording Return to:

Janice E. Hatton, Esq.
1011 Harlow Road, Suite 300
Springfield, OR 97477

Until a change is requested,
mail tax statements to:

Kenney M. Gee and Marta B. Gee
81778 Pacific Highway 99
Creswell, OR 97426

Tax Account No. 1315132
and No. 0843118

WARRANTY DEED

4260NOV.24'99#05REC 10.00
4260NOV.24'99#05FFUND 10.00
4260NOV.24'99#05A&T FUND 20.00

Kenney M. Gee, Grantor, conveys to Kenney M. Gee and Marta B. Gee, Trustees of the Gee Family Trust, dated November 23, 1999, Grantees, the following described real property, which has an address of 81778 Pacific Highway 99, Creswell, situated in Lane County, Oregon:

Beginning at the Northwest Corner of the Clause Arp and Wife Donation Land Claim No. 63, Notification No. 6567, Township 19 South, Range 3 West of the Willamette Meridian; and running thence South 25 chains, thence East to the West line of the Pacific Highway 99; thence Northerly along said West line to the North line of said Donation Land Claim No. 63, thence West to the place of beginning. EXCEPTING therefrom that portion thereof included within the public roads or highways.

The Liability and obligations of the Grantor to Grantees and Grantees' heirs and assigns under the warranties and covenants contained herein or provided by law shall be limited to the extent of coverage that would be available to Grantor under a standard policy of title insurance. The limitations contained herein expressly do not relieve Grantor of any liability or obligations under this instrument, but merely define the scope, nature, and amount of such liability or obligations.

The true consideration for this conveyance, for estate planning purposes, is: \$0.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

11-24-99

11-24-99

2609

99096659

DATED this 23 day of November, 1999.

K. Gee
Kenney M. Gee

STATE OF OREGON)
): ss.
County of Lane)

The foregoing instrument was acknowledged before me this 23 day of November, 1999, by Kenney M. Gee.



Janice E Hatton
Notary Public of Oregon
My Commission Expires: 11-29-2002

State of Oregon
County of Lane — ss.
I, the County Clerk, in and for the said
County, do hereby certify that the within
instrument was received for record at

'99 NOV 24 PM 2:29

Reel **2609R**
Lane County OFFICIAL Records
Lane County Clerk

By: Donal S. Surhart
County Clerk

BARGAIN AND SALE DEED—STATUTORY FORM
INDIVIDUAL GRANTOR

DELORES JOLEEN GEE
conveys to KENNEY MACK GEE
the following described real property situated in Lane County, Oregon, to-wit:

Grantor,
Grantee,

A one-half interest in the following described property in Lane County, Oregon:

Beginning at the Northwest corner of the Clara and wife Donation Land Claim No. 63, Notification No. 6567, Township 19 South, Range 3 West of the Willamette Meridian; and running thence South 25 chains, thence East to the West line of Pacific Highway No. 99, thence Northerly along said West line to the North line of said Donation Land Claim No. 63, thence West to the place of beginning. EXCEPTING therefrom that portion thereof included within the public roads or highways.

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE) E 3 •

10005.00

The true consideration for this conveyance is \$ per property settlement agreement. (Here comply with the requirements of ORS 93.030)

Dated this 10th day of September, 1977.

X Delores Joleen Gee
Delores Joleen Gee



STATE OF OREGON, County of Lane, ss. September 10th, 1977
Personally appeared the above named Delores Joleen Gee

and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me: *Monty Mack Grew*
Notary Public for Oregon—My commission expires: 10/29/80

7778059

BARGAIN AND SALE DEED	
DELORES JOLEEN GEE	GRANTOR
KENNEY MACK GEE	GRANTEE
1841 Centennial Springfield, OR 97477	
GRANTOR'S ADDRESS ZIP	
After recording return to:	
NAME ADDRESS ZIP	
If a change is requested, all fee statements to be sent to the following address:	
KENNEY MACK GEE 1841 Centennial Springfield, OR 97477	
NAME ADDRESS ZIP	

State of Oregon,
County of Lane—ss.
I, D.M. Pedfield, Director of the Department of General Services, in and for the said County, do hereby certify that the within instrument was received for record at

1977 DEC 7 AM 11 46

Reel 876 R

Lane County OFFICIAL RECORDS
D.M. Pedfield, Director of the Department of General Services

By *S. Stawicki*
Officer
deputy

ss. instru-
1 the
rded
or as
al of

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).

"apply" is to put something into effect or to impose or enforce it. Thus, it appears that the intended meaning of "not applying" a law in this context is to stop enforcing it in a way that does not involve repealing or amending the law. Instead, the relevant public entity is authorized simply to not give effect to an existing law, *i.e.*, to discontinue enforcing it. This construction also is consistent with the text of section (4), which entitles the present owner to compensation if a law "continues to be enforced against the property" 180 days after he submitted a claim. Therefore, if the third means were used, as long as the present owner continues to own the property, the public entity would stop enforcing or applying the law to the property. However, the law would otherwise continue unaltered, and if the present owner conveys the property to a new owner the public entity would have no lawful basis for not enforcing it if the conditions that created the right to relief under Measure 37 ceased to exist, *e.g.*, if the property were acquired by someone who was not entitled to an exemption in his own right. For that reason, to "not apply" a law would necessarily be personal to the owner submitting the claim.³

Although the text and context of the measure strongly suggest that the voters intended that non-monetary relief be personal to the present owner of the property, we also review the history of the measure to determine if it sheds any light on your question. We turn first to the Voters' Pamphlet, which is the primary source for Measure 37's history. The ballot title states that "Governments must pay owners, or forgo enforcement, when certain land use restrictions reduce property value." The explanatory statement declares that "government must pay owner reduction in fair market value of affected property interest, or forgo enforcement. Governments may repeal, change or not apply restrictions in lieu of payment; if compensation not timely paid, *owner* not subject to restrictions." (emphasis added.)

The arguments in favor include 40 submissions, although the last two are apparently ironic and intended to discourage "yes" votes. Slightly more than half of the arguments discuss the perceived adverse effects of land use laws in the abstract. Except as discussed below, none sheds any light on the question at hand. Slightly fewer than half are statements about how land use laws are preventing a specific owner from putting his or her property to some particular current use. All of those specific concerns could be remedied either by a decision that is personal to that owner or one that ran with the land, with the possible exception of several owners who expressed dissatisfaction with not being able to subdivide their property and give parcels to descendents, sell them to third parties, or both. Allowing an owner to subdivide property by not applying a prohibition would do him no good, of course, unless the subdivision remained lawful after its transfer to one or more new owners. Existing laws generally allow new owners to perpetuate non-conforming uses that were lawful when instituted, but it is not certain whether all would apply to a decision under Measure 37. *See, e.g.*, ORS 215.130.⁴ None of the

³ Measure 37's context includes related statutes that were already on the books at the time of its approval by the voters. *See Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 62 n15, 11 P3d 228 (2000). The breadth of Measure 37 results in a very large number of existing statutes that are related to Measure 37. We have not found anything in those statutes bearing directly on whether a Measure 37 exemption was intended by the voters to be personal or to run with the land.

⁴ ORS 215.130 provides in relevant part:

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 I - 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.

In conclusion, the phrases "to allow the owner to use the property for a use permitted at the time the owner acquired the property" and "the owner shall be allowed to use the property as permitted at the time the owner acquired the property," together with the definition of "owner" as "the present owner of the property, or any interest therein" are the only text that directly addresses whether a decision to grant non-monetary relief by "not applying" or modifying or removing a law applies to the present owner or to the property. Those phrases specify the minimum that a public body *must* do to avoid paying compensation, i.e. modify, remove or not apply the law to allow *present owner* to use the property as permitted at the time the *present owner* acquired it. Absent independent authority to amend, repeal or otherwise disregard the law at issue, *see note 1 supra*, we believe that those phrases also specify the maximum that a public body *may* do to avoid paying compensation. This interpretation is reinforced by other text, namely, the three means by which government may stop the law from applying, as the third means could never be used if all decisions to grant non-monetary relief were intended to run with the land. The measure's history is generally consistent with this interpretation as well and provides no justification for an interpretation at odds with the plain meaning of the measure's text.

Where a local government has discretion concerning whether or not to adopt the ordinance, local government may have authority to modify or repeal that ordinance with regard to both present and future property owners. However, where local government has adopted an ordinance to implement a requirement of state or federal law, Measure 37 authorizes that local government to waive the ordinance only as to the present owner of the property.⁶ We therefore conclude that Measure 37 only authorizes government bodies to "modify, remove or not to [*sic*] apply" a law (as an alternative to compensation) that the government is otherwise required to apply where that decision is personal to the current owner of the property.

2. "Blanket Waivers"

Some local governments have expressed an intention to repeal laws in response to Ballot Measure 37, either on a wholesale basis (as applied to all persons and property) or on a more limited basis (for example, as applied to all owners of real property acquired before the effective date of the law in question). If a locally adopted law is required by state law, then subsections (8) and (10) permit a local body to *modify, remove or not apply* the law only with respect to a valid Measure 37 claim. That is, Measure 37 authorizes a public entity to modify, remove or not apply a local law that is required by state law only as to owners who have established valid claims under the measure. Cities or counties that repeal or amend local ordinances that are required by state law on a broader basis are, we believe, acting in violation of state law.

An owner establishes a valid Measure 37 claim only if the authorized public entity determines that a series of conditions are met, including:

⁶ ORS 197.646 generally requires a local government to amend its comprehensive plan and land use regulations to implement new land use statutes and land use goal and rules of the Land Conservation and Development Commission (LCDC).

- 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

DN11: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, OR FORFEIT ENFORCEMENT, WHEN CERTAIN LAND USE RESTRICTIONS REDUCE PROPERTY VALUES

RESULT OF YES VOTE: Yes vote requires that governments pay owners, or forfeit enforcement by repealing, changing, not enforcing, or adding restrictions, when certain land use restrictions reduce owners' property values.

RESULT OF NO VOTE: No vote allows existing that governments pay owners, or forfeit enforcement by repealing, changing, not enforcing, or adding restrictions, when certain land use restrictions reduce owners' property values.

SUMMARY: Oregon Constitution requires governments to pay owners just compensation when certain land use restrictions or taking any other action, including laws, regulations, or substantial, essential or required public use. Measure 37 amends existing laws that govern state, county, metropolitan service district, or city or county land use regulations that restrict real property or interests thereon. Government must pay owner just compensation in full the fair market value of affected property interest, or forfeit enforcement. Governments may repeal, change, or not apply restrictions in law or ordinance. If compensation is not timely paid, owner not subject to restrictions. Applies to restrictions enacted after January 1, 2004. Creates civil right of action including attorney fees. Provides to pay revenue source payments for claimants. Other provisions.

ESTIMATE OF FINANCIAL IMPACT: The measure would require state administration expenditures to respond to claims for compensation of between \$5 million and \$45 million per year.

The measure may require compensation to landowners, the amount of state expenditures is subject to pay claims for compensation cannot be determined.

There is no individual state or state revenue.

The measure would require local government administrative expenditures to respond to claims for compensation of between \$10 million and \$90 million per year.

The measure may require compensation to landowners, the amount of local government expenditures needed to pay claims for compensation cannot be determined.

The effect of the measure on local government revenue cannot be determined.

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

37

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 (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.

(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

at LC 2.760(3), 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.

(3) After consideration of the information included in the application and any other evidence obtained or received, the County Administrator shall determine whether modifying, removing, or discontinuing application of a land use regulation is necessary to avoid owner entitlement to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if so the extent needed to avoid the entitlement to such compensation and the amount of compensation to which the owner would be entitled without modifying, removing, or discontinuing application of a land use regulation. The County Administrator shall compare the public benefits from application of the land use regulation to the private real property with the public burden of paying the required compensation to the owner if a modification or waiver of the land use regulation is not granted, taking into consideration the financial resources of the County for the payment of such claims. Based on this comparison, the County Administrator shall prepare a written report to the Board stating these determinations and the evidence on which they are based.

(4) 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.

(5) Notice of the denial or recommendation to Board shall be mailed to the applicant.

(6) The County Administrator shall issue a decision denying the claim or making a referral recommendation to the Board by the 45th day after the application was accepted. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.750 Application Notice.

(1) Within 5 days of the referral to the Board, but no less than 20 days before the Board holds a public hearing, written notice of the application referral shall be mailed to all of the following:

(a) The applicant;

(b) Other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, or lessees, as listed on the application;

(c) Owners of record on the most recent property tax assessment roll of properties located within 500 feet of the perimeter of the subject property located entirely within an urban growth boundary or Rural Community and within 1500 feet of the perimeter of all other subject properties;

(d) Neighborhood groups or community organizations officially recognized by the Board and whose boundaries include the subject property; and

(e) Other agencies or interested parties as determined by the County Administrator.

(2) The failure of any person to receive notice shall not affect or invalidate any proceedings under LC 2.700 through 2.770.

(3) The notice shall include all of the following:

- (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.

From Ken Gee

April 19, 2005

Lane County Commissioners:

To begin with a quote from Governor Kulongoski's press release of November 16th, 2004 "The passage of Measure 37 is a defining moment for Oregon's nationally-recognized land use system." However, the question arises – why did it have to be a referendum from the people? – our legislature has had ample opportunity since Measure 7 back in 2000 to consider modifying their stand. Did they really think the problem went away? That's on a State level although it definitely shows the will of the people statewide, except those tightly associated with the current over-regulated system, of which I'm sorry to say our Lane County Planning Department seems to have been totally indoctrinated into just such a philosophy.

Within the numerous meetings and conversations with staff, it's obvious they're making a mountain out of a molehill. They're making it much harder than it has to be. Other counties across the State are up and functioning. Yamhill County has completed 26 waivers and Jackson County has 12. Statewide there are a total of 60+ completed waivers. Whereas, Lane County has yet to release even a report and recommendation that Mr. Van Vactor originally estimated to be ready for our review by February 7th. Response to numerous inquiries as to the progress have either been to pass the buck or shrug it off and declared that it's the system that takes time to figure out. Our request for any information to date (i.e. outline) continues to go ignored.

At a meeting held March 16th, I attempted to direct County Council and Land Management toward a process that would allow processing of waivers working with the existing Rural Comprehensive Plan. I might as well have been talking to the wall. I am sure my viewpoint, observations and/or recommendations have little or no chance of reaching you if left to staff to present as options.

Within the text of Measure 37 (now a part of ORS.197) Section (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).” The pertinent point of this had escaped me until, within my review of ORS, it came to me the significance of the section. Section 9 is in essence its authoritative powers section. It establishes the governing body (i.e. Lane County) with an avenue for waiver that is irrevocable since any decisions are then exempt from the scrutiny normally applied towards a land use decision (i.e. LCDC, LUBA...etc.). The authors of the text were striving for local home rule and thusly accountability. Credit should be given where credit is due for it was Steve Vorhes’ idea as expressed within Section III-B of 18-04’s original agenda memo “decisions may be regarded as an amendment to land use regulation.” I believe his analysis comes directly to the point. What is needed is an “amendment to the land use regulations”. Within the scope of the existing Rural Comprehensive Plan we have the Special Purpose Plan L.C. 16.4(3)(b). To facilitate the establishment of these plans, exceptions to State Goals were required, not unlike the waiver options available for this Board’s consideration.

I would recommend a Special Purpose Plan be adopted as the primary apparatus for the implementation of legitimate 37 waivers. Exceptions to any State Goals become a mute subject with the impunity Measure 37 claims possess as earlier expressed. Please review attached Lane Code 16.4 with its pertinent points being highlighted to more easily illustrate its applicability.

Respectfully,

Ken Gee

81778 Pacific Hwy 99

Creswell, OR 97426

541-895-8892

Attachments: 1) Lane Code 16.4 2) ORS 197.015(10)

Chapter 16

LANE COUNTY LAND USE AND DEVELOPMENT CODE**INTRODUCTORY AND GENERAL PROVISIONS****16.001 Authority.**

This chapter is enacted pursuant to the provisions of ORS Chapters 92, 197, 203, 215 and the Lane County Home Rule Charter. *(Revised by Ordinance No. 7-87, Effective 6.17.87)*

16.002 Title and Legislative History.

(1) This chapter shall be known as the Lane County Land Use and Development Code.

(2) Legislative History Ordinance #7-87. On June 17, 1987, by and through Ordinance #7-87, the Board of County Commissioners adopted omnibus changes to LC Chapter 16. Because of the magnitude of the changes, it was not feasible to recreate changes on each page of the chapter. A copy of said changes remain on permanent file in the office of the Board of County Commissioners, County Counsel and Land Management Division of the Department of Public Works. *(Revised by Ordinance No. 7-87, Effective 6.17.87)*

16.003 Purpose.

This chapter is designed to provide and coordinate regulations in Lane County governing the development and use of lands to implement the Lane County Rural Comprehensive Plan. To these ends, it is the purpose of this chapter to:

(1) Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.

(2) Protect and diversify the economy of the County.

(3) Conserve the limited supply of prime industrial lands to provide sufficient space for existing industrial enterprises and future industrial growth.

(4) Conserve farm and forest lands for the production of crops, livestock and timber products.

(5) Encourage the provision of affordable housing in quantities sufficient to allow all citizens some reasonable choice in the selection of a place to live.

(6) Conserve all forms of energy through sound economical use of land and land uses developed on the land.

NOT IN THE LAST 30 YRS! (7) Provide for the orderly and efficient transition from rural to urban land use.

(8) Provide for the ultimate development and arrangement of efficient public services and facilities within the County.

(9) Provide for and encourage a safe, convenient and economic transportation system within the County.

(10) Protect the quality of the air, water and land resources of the County.

(11) Protect life and property in areas subject to floods, landslides and other natural disasters and hazards.

(12) Provide for the recreational needs of residents of Lane County and visitors to the County.

(13) Conserve open space and protect historic, cultural, natural and scenic resources.

(14) Protect, maintain, and where appropriate, develop and restore the estuaries, coastal shorelands, coastal beach and dune area and to conserve the nearshore ocean and continental shelf of Lane County. *(Revised by Ordinance No. 7-87, Effective 6.17.87)*

**RURAL COMPREHENSIVE PLAN AMENDMENTS
RURAL COMPREHENSIVE PLAN**

16.400 Rural Comprehensive Plan Amendments.

(1) Purpose. The Board shall adopt a Rural Comprehensive Plan. The general purpose of the Rural Comprehensive Plan is the guiding of social, economic and physical development of the County to best promote public health, safety, order, convenience, prosperity and general welfare. The Rural Comprehensive Plan shall be considered to be a dynamic policy instrument that can be modified to reflect changing circumstances and conditions as well as to correct errors and oversights. It is recognized that the Rural Comprehensive Plan affects the people of Lane County, and it is, therefore, important that the ability by individuals to propose amendments be free of restraint.

(2) Scope and Organization. The Rural Comprehensive Plan shall conform to the requirements of Statewide Planning Goals. The Rural Comprehensive Plan shall consist of components which shall be organized into categories by Plan type or geographic area as described in LC 16.400(3) below.

— (3) Plan Categories.

(a) Rural Comprehensive Plan. This category includes all plans relating to lands beyond the Eugene-Springfield Metropolitan Area General Plan boundary and the urban growth boundaries of the cities within Lane County.

(b) Special Purpose Plan. This category includes Plans addressing a single or special need. The Plans may apply Countywide or to a limited area.

(4) Rural Comprehensive Plan Described. The Rural Comprehensive Plan of Lane County shall consist of the following components:

(a) Rural Comprehensive Plan.

(i) General Plan Policies and Plan Designations applying throughout Lane County outside of the Metropolitan Area General Plan and outside of all urban growth boundaries (Adopted by Ordinance No. 883).

— (b) Special Purpose Plans—

—(i) Transportation System Plan (Adopted by Ordinance No. 3-80 and Amended by Ordinance No. 10-04).

—(ii) Willamette Greenway Plan Ordinance No. 783).

(iii) Parks and Open Space Plan (Adopted by Ordinance No. 850).

(iv) Solid Waste Management Plan (Adopted by Ordinance No. 771) (Amended by Ordinance Nos. 79-80, PA 918 and PA 1179).

(v) Coastal Resources Management Plan (Adopted by Ordinance No. 803) (Amended by Ordinance Nos. 862 and 876).

(vi) Siuslaw River Dredged Material Disposal Plan (Adopted by Ordinance No. 749) (Amended by Ordinance Nos. 861 and 877).

(vii) Housing Plan (Adopted by Ordinance No. 1-78).

(5) Interrelationship of Plan Components. New Comprehensive Plan components shall include a description of relationship to other Plan components within the respective Plan category and to the overall Rural Comprehensive Plan. Existing Plan components not containing such a description of relationship shall, at the next update of that Plan, be amended to include such a description.

(6) Plan Adoption or Amendment - General Procedures. The Rural Comprehensive Plan, or any component of such Plan, shall be adopted or amended in accordance with the following procedures:

(a) Referral to Planning Commission. Before the Board takes any action on a Rural Comprehensive Plan component, or an amendment to such Plan component, a report and recommendation thereon shall be requested from the County Planning Commission and a reasonable time allowed for the submission of such report and recommendation. In the event the Rural Comprehensive Plan component, or amendment

applies to a limited geographic area, only the Planning Commission having jurisdiction of that area need receive such referral.

(b) Planning Commission - Hearing and Notice.

(i) The Planning Commission shall hold at least one public hearing before making a recommendation to the Board on a Rural Comprehensive Plan component, or an amendment to such Plan component, and the hearing shall be conducted pursuant to LC 14.300.

(ii) Notice of the time and place of hearing shall be given, pursuant to LC 14.300.

(iii) If an exception to State Planning Goals is to be considered during the hearing, such exception shall be specifically noted in the notices of such hearing.

(iv) The proposed Rural Comprehensive Plan component, or an amendment to such Plan component, shall be on file with the Director and available for public examination for at least 10 days prior to the time set for hearing thereon.

(c) Planning Commission - Consideration With Other Agencies.

(i) In considering a Rural Comprehensive Plan component, or an amendment to such Plan component, the Planning Commission shall take account of and seek to harmonize, within the framework of the needs of the County, the Comprehensive Plans of cities, and the Plans and planning activities of local, state, federal and other public agencies, organizations and bodies within the County and adjacent to it.

(ii) The Planning Commission, during consideration of a Rural Comprehensive Plan component or an amendment to such Plan component, shall consult and advise with public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens generally to the end that maximum coordination of Plans may be secured.

(iii) Whenever the Planning Commission is considering a Rural Comprehensive Plan component, or an amendment to such Plan component, it shall be referred to the planning agency of every city and county affected to inform them and solicit their comments.

(iv) The provisions of this subsection are directory, not mandatory, and the failure to refer such Plan, or an amendment to such Plan, shall not in any manner affect its validity.

(d) Planning Commission - Recommendation and Record.

(i) Recommendation of the Planning Commission on a Rural Comprehensive Plan component, or an amendment to a Plan component, shall be by resolution of the Commission and carried by the affirmative vote of not less than a majority of its total voting members.

(ii) The record made at the Planning Commission hearings on a Rural Comprehensive Plan component, or an amendment to such Plan component and all materials submitted to or gathered by the Planning Commission for its consideration, shall be forwarded to the Board along with the recommendation.

(e) Board Action - Hearing and Notice.

(i) After a recommendation has been submitted to the Board by the Planning Commission on the Rural Comprehensive Plan component, or an amendment to such Plan component, all interested persons shall have an opportunity to be heard thereon at a public hearing before the Board conducted pursuant to LC 14.300.

(ii) Notice of the time and place of the hearing shall be given pursuant to LC 14.300.

(iii) If an exception to Statewide Planning Goals is to be considered during the hearing, such exception shall be specifically noted in the notice of such hearing.

(iv) Hearings to consider amendments of the Plan Diagram that affect a single property, small group of properties or have other characteristics of a quasi-judicial proceeding shall be noticed pursuant to LC 14.300.

(f) Concurrent Consideration. The Board and Planning Commission may hold a single joint meeting to consider the proposed Plan amendment consistent with the requirements of LC 16.400(6)(e)(ii),(iii) and (iv) above.

(g) Board Referral. Before the Board makes any change or addition to a Plan component, or Plan component amendment recommended by the Planning Commission, it may first refer the proposed change or addition to the Planning Commission for an additional recommendation. Failure of the Planning Commission to report within 21 days after the referral, or such longer period as may be designated by the Board, shall be deemed to be approval of the proposed change or addition. It shall not be necessary for the Planning Commission to hold a public hearing on such change or addition.

(h) Method of Adoption and Amendment.

(i) The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.

(ii) The adoption or amendment shall be concurrent with an amendment to LC 16.400(4) above. In the case of a Rural Comprehensive Plan adoption, the Code amendment shall place such Plan in the appropriate category. In the case of a Rural Comprehensive Plan amendment, the Code amendment shall insert the number of the amending Ordinance.

(iii) The Board may amend or supplement the Rural Comprehensive Plan upon making the following findings:

(aa) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan component or amendment meets all applicable requirements of local and state law, including Statewide Planning Goals and Oregon Administrative Rules.

(bb) For Major and Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is:

(i-i) necessary to correct an identified error in the application of the Plan; or

(ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or

(iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or

(iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; or

(v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.

(cc) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component does not conflict with adopted Policies of the Rural Comprehensive Plan, and if possible, achieves policy support.

(dd) For Minor Amendments as defined in LC 16.400(8)(a) below, the Plan amendment or component is compatible with the existing structure of the Rural Comprehensive Plan, and is consistent with the unamended portions or elements of the Plan.

(i) A change of zoning to implement a proposed Plan amendment may be considered concurrently with such amendment. In such case, the Board shall also make the final zone change decision, and the Hearings Official's consideration need not occur.

(7) Validation of Prior Action. The adoption of a Rural Comprehensive Plan component, or an amendment to such Plan component under the authority of prior acts, is

hereby validated and shall continue in effect until changed or amended under the authority of these provisions.

(8) Additional Amendment Provisions. In addition to the general procedures set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components.

(a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:

(i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.

(ii) Major Amendment. Any amendment that is not classified as a minor amendment.

(b) Amendment proposals, either minor or major, may be initiated by the County or by individual application. Individual applications shall be subject to a fee established by the Board and submitted pursuant to LC 14.050.

(c) Minor amendment proposals initiated by an applicant shall provide adequate documentation to allow complete evaluation of the proposal to determine if the findings required by LC 16.400(6)(h)(iii) above can be affirmatively made. Unless waived in writing by the Planning Director, the applicant shall supply documentation concerning the following:

(i) A complete description of the proposal and its relationship to the Plan.

(ii) An analysis responding to each of the required findings of LC 16.400(6)(h)(ii) above.

(iii) An assessment of the probable impacts of implementing the proposed amendment, including the following:

(aa) Evaluation of land use and ownership patterns of the area of the amendment;

(bb) Availability of public and/or private facilities and services to the area of the amendment, including transportation, water supply and sewage disposal;

(cc) Impact of the amendment on proximate natural resources, resource lands or resource sites, including a Statewide Planning Goal 5 "ESEE" conflict analysis where applicable;

(dd) Natural hazards affecting or affected by the proposal;

(ee) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an assessment of employment gain or loss, tax revenue impacts and public service/facility costs, as compared to equivalent factors for the existing uses to be replaced by the proposal;

(ff) For a proposed amendment to a nonresidential, nonagricultural or nonforest designation, an inventory of reasonable alternative sites now appropriately designated by the Rural Comprehensive Plan, within the jurisdictional area of the Plan and located in the general vicinity of the proposed amendment;

(gg) For a proposed amendment to a Nonresource designation or a Marginal Land designation, an analysis responding to the criteria for the respective request as cited in the Plan document entitled, "Working Paper: Marginal Lands" (Lane County, 1983).

(9) Addition Amendment Provisions - Special Purpose Plans. In addition to the general provisions set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components classified in LC 16.400(4) above as Special Purpose Plans. Amendments to Special Purpose Plans may only be initiated by the County. Any individual, however, may request the Board to

initiate such amendment. Requests must set forth compelling reasons as to why the amendment should be considered at this time, rather than in conjunction with a periodic Plan update. An offer to participate in costs incurred by the County shall accompany the request.

(10) Designation of Abandoned or Diminished Mill Sites. A minor plan amendment pursuant to LC 16.400(8)(a)(i), to the Rural Comprehensive Plan for an abandoned or diminished mill site on a lot or parcel zoned Nonimpacted Forest Lands Zone (F-1, RCP), Impacted Forest Lands Zone (F2, RCP) or Exclusive Farm Use Zone (E-RCP) to Rural Industrial Zone (RI, RCP) without taking an exception to Statewide Goal 3 (Agricultural Lands), Goal 4 (Forest Land), Goal 11 (Public Facilities and Services), or Goal 14 (Urbanization) may be allowed after submittal of an application pursuant to LC 14.050 and after review and approval of the application pursuant to LC 16.400(6) and (10).

(a) As used in this subsection, "abandoned or diminished mill site" means a mill, plant of other facility engaged in the processing or manufacturing of wood products, including sawmills and facilities for the production of plywood, veneer, hardboard, panel products, pulp and paper, that:

- (i) Is located outside of urban growth boundaries;
- (ii) Was closed after January 1, 1980, or has been operating at less than 25 percent of capacity since January 1, 2003; and
- (iii) Contains or contained permanent buildings used in the production or manufacturing of wood products.

(b) An abandoned or diminished mill site designated as Rural Industrial zone (RI, RCP) pursuant to LC 16.400(10), may be developed for any level of industrial use pursuant to LC 16.292(3)(o), is exempt from the standards of LC 16.292(3)(b), and may occur outside a building or in one or more buildings of any size.

(c) Concurrently with approval of a plan amendment, the Board may approve, without taking an exception to Statewide Goal 11:

(i) The extension of sewer facilities to lands that on June 10, 2003, were zoned Rural Industrial Zone (RI, RCP), Light Industrial Zone (M-1, RCP), Limited Industrial Zone (M-2, RCP), or Heavy Industrial Zone (M-3, RCP), and that contain an abandoned or diminished mill site. The sewer facilities may serve only industrial uses authorized for the mill site and contiguous lands zoned for industrial use.

(ii) The extension of sewer facilities to an abandoned or diminished mill site that is rezoned for Rural Industrial (RI, RCP) use under LC 16.400(10) only as necessary to serve industrial uses authorized for the mill site.

(iii) The establishment of on-site sewer facilities to serve an area that on June 10, 2003, was zoned Rural Industrial Zone (RI, RCP), Light Industrial Zone (M-1, RCP), Limited Industrial Zone (M-2, RCP), or Heavy Industrial Zone (M-3, RCP), and that contains an abandoned or diminished mill site or to serve an abandoned or diminished mill site that is rezoned for Rural Industrial Zone (RI, RCP) pursuant to LC 16.400(10).

(d) A local government, as defined in ORS 174.116, may not authorize a connection to any portion of a sewer facility located between an urban growth boundary or the boundary of an unincorporated community and the boundary of the mill site or the industrial zone containing the mill site, except as provided under ORS 197.732 and any goals adopted under ORS 197.225 relating to public facilities and services.

(e) Sewer facilities approved pursuant to LC 16.400(10)(c) shall be limited in size to meet the needs of authorized industrial uses and may not provide service to retail, commercial or residential development, except as provided under any goals adopted under ORS 197.225 relating to public facilities and services, unless all appropriate exceptions are approved under ORS 197.732. The presence of the sewer

(b) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;

(c) Shall be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans;

(d) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and

(e) Shall be regularly reviewed and, if necessary, amended to keep them consistent with the changing needs and desires of the public they are designed to serve.

(2) The equitable balance between state and local government interests can best be achieved by resolution of conflicts using alternative dispute resolution techniques such as mediation, collaborative planning and arbitration. Such dispute resolution techniques are particularly suitable for conflicts arising over periodic review, comprehensive plan and land use regulations, amendments, enforcement issues and local interpretation of state land use policy. [1973 c.80 §2; 1981 c.748 §21a; 1993 c.792 §48]

197.013 Implementation and enforcement are of statewide concern. Implementation and enforcement of acknowledged comprehensive plans and land use regulations are matters of statewide concern. [1981 c.884 §7]

197.015 Definitions for ORS chapters 195, 196 and 197. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the statewide planning goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Commission" means the Land Conservation and Development Commission.

(4) "Committee" means the Joint Legislative Committee on Land Use.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" means the mandatory statewide planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

(9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

(10) "Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns

the adoption, amendment or application of:

- (i) The goals;
 - (ii) A comprehensive plan provision;
 - (iii) A land use regulation; or
 - (iv) A new land use regulation;
- (B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or
- (C) A decision of a county planning commission made under ORS 433.763;
- (b) Does not include a decision of a local government:
- (A) Which is made under land use standards which do not require interpretation or the exercise of policy or legal judgment;
 - (B) Which approves or denies a building permit issued under clear and objective land use standards;
 - (C) Which is a limited land use decision;
 - (D) Which determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or
 - (E) Which is an expedited land division as described in ORS 197.360;
- (c) Does not include a decision by a school district to close a school;
- (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and
- (e) Does not include:
- (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179; or
 - (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.
- (11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.
- (12) "Limited land use decision" is a final decision or determination made by a local government pertaining to a site within an urban growth boundary which concerns:
- (a) The approval or denial of a subdivision or partition, as described in ORS chapter 92.
 - (b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.
- (13) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.
- (14) "Metro" means a metropolitan service district organized under ORS chapter 268.
- (15) "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.
- (16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.
- (17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.
- (18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

April 24, 2005

Lane County Commissioners:

This is my observation of inaccuracies and questions pertaining to Lane Co. Agenda Cover Memo Report/Recommendation dated 4/21/05 #PA05-5162.

Question #1: #PA05-5162 is what? Where did M37-DE 04-0830 go?

Question #2: Copies of the above document I've received, one electronically and one via mail, both are missing Section IV. Is there a Section IV?

My Observations are arranged in sequence and I've included a highlighted copy of the above-mentioned Agenda Report corresponding to each: [REDACTED] as inaccuracies and Yellow reflecting the pertinent points.

Starting at the top with [REDACTED] Per Lane code 2.740(6) The County Administrator shall issue a decision denying the claim or making a referral recommendation to the Board by the 45th day after the application was accepted. Recommendation should have been submitted prior to March 12th, 2005. We are all aware it was not completed until April 21st - 40 days overdue - 85 days total averaging 7 days per page!

[REDACTED] The specific relief demanded in our application is specific to a RR-2 zone change. The dates listed of 12/02/04, 12/14/04 and 1/04/05 were prior to our claim application. These contacts were initiated pursuant of my Demand Notice.

January 26th, 2005 claim begins...can't start until you pay the application fee. Nothing within 18-04 refers to it as a [REDACTED].

[REDACTED] Dollar amounts of consideration are irrelevant. The conveyance of D. Gee on Sept. 16th, 1977 was actually ½ of ½ interest, not ½ of the whole. All the follow-up request info on the property was redundant in nature being all were deeds between 37 qualified family members.

[REDACTED] Value reduction figures are all wrong. Their origin is unknown to me since they're not from my submitted figures. Should have been ranges from \$408,977.00 to \$7,071,241.00.

[REDACTED] Qualifying parcels - one dwelling per tract? I already have two on this property, can't these guys read? They desire? This is not what is on my application statement regarding question 8 of the application.

Their reference to no previous application is inaccurate since there were four unsuccessful attempts made per partition application #M-177-81 spanning from Sept. 24th, 1981 thru Aug. 2nd, 1982.

[REDACTED] Values stated here are still wrong.

Section III-F: Use allowance is to revert back to the time of owner's acquisition which in this case was a no-zone restriction.

Section III-G: The best way to resolve the risk inherent in the claim, as I perceive it, is to not pursue a lengthy court action. Your staff didn't even try to make this work, only tried to confuse the subject with their personal views. For this process to be successful it must be agreed to by the parties involved, not just the dictorial position land planning is accustomed to.

[REDACTED] An appraisal is not specifically required or for that matter referred to whatsoever in the text of M37. An appraisal is required only in Lane code 2.720(6). The issue of an appraisal was broached on 11/22/04 before 18-04 was implemented; i.e. Not available. Due to my persistence, a meeting on 1/04/05 at 10 am, was attended by Van Vactor, Vorhes, Howe and myself to establish the parameters of information needed to proceed with a claim. Monetary compensation, of which all parties in attendance agreed, was not a viable option, a point that Mr. Van Vactor made very plain at the onset of the meeting. Lane code 2.720 grants authority to Lane Co. Administrator, Mr. Van Vactor, to waive the submission of any materials if not deemed applicable to the evaluation of the specific claim. He exercised that authority when it was plainly put to him "How can you demand something that isn't even available – That's a catch 22." At that point, I considered it a Dead Issue. As far as I am aware, an appraisal encompassing the parameters of M37 is still not available. I can only perceive that the resurfacing of this issue is a tactic by staff to further cloud and potentially delay the process further. The staff has expressed their anticipation of an overturning of M37 as occurred with Measure 7 and thusly, I believe, their delay is motivated toward that end.

[REDACTED] If staff is going to state my request then state my request and not their own variation. I tried to make it plain and simple – zone change to RR-2. Not once in the report/recommendation is it referred to that way.

- 1) Land division not a use? This does not appear in M37 text or even in 18-04 text, the only place I've seen it before is Multnomah Co. Ord.#1055 but Steve Vorhes quotes this as gospel (meeting with staff 3/16/05).

Although in the same sentence, he seems to reverse that position in that land division ordinances are included in the definition of "land use regulation" contained in M37 text as a waivable restriction.

Section III- Another quote of Steve Vorhes' gospel, as above, with ,as before, a reversal within the same sentence.

Section III- A repeat of E(A) above, one dwelling per tract does not apply, we already have two. Transferability of any dwelling is dependent upon a legal lot status be it conforming or nonconforming, thusly a partition to establish a legal lot would be a prerequisite to any potential transfer of ownership.

Section III- Value reduction figures, same as before, at least they are consistent, although wrong.

In conclusion, it is obvious that a waiver is not being offered, only a mild modification of the existing EFU-30 zone, of which I already have. If a true waiver were granted, the EFU-30 limitations would become non-applicable and thusly all reference to such within the staff report/recommendation is irrelevant. They might as well be referring to the previous FF-20 zoning for it is also within the scope of the claim. A universal quote from M37, 18-04 and agenda memo "allow the owners to use the property for a use permitted at the time the owners acquired the property". As conceded by staff's report, I acquired the property before any zone was applied. The Staff seems to have totally misinterpreted my demands. As previously stated, I tried to make it simple and straightforward. Not once within the entire article did they properly express the specific relief demanded. I submit that excerpt from my original application dated 1/24/05.

"The specific relief being sought is primarily a zone change to enable development to proceed. I believe the most appropriate zone change would be to match that of my closest neighbor (Tax Lot #5202), who is currently zoned RR-2. I feel this agreement supersedes the planning for the property's development. Thusly, fees associated with planning i.e. Zone Change and future Partitions are not applicable towards the property's development."

The staff seems petrified of repercussions from the normal State agencies that usually scrutinize their operation i.e. LCDC, LUBA, etc. They have truly become indoctrinated and totally committed to State regulative procedures. However, they can't face the realization that our new State law was implemented to repeal those very regulations. I, for one, believe a law, an Oregon statewide law, to surely take precedence over a regulation developed by a non-elected bureaucratic State agency. M37 is now the law of the land. I'm sorry it is so contrary to Lane Co.'s land planning department's normal process and have wondered many times, since a decision by the Board is not a land use decision why is the planning department heading up the claims process. They should have been excluded from this process as was the Planning Commission. These people have absolutely no skills at negotiating and I still don't believe they are aware that it is exactly this type of unwavering attitude that has brought about the passage of M37 to its overwhelming victory. I

believe this report/recommendation to be completely out of reason and a total waste of time.

Any comments I might have regarding your preordained, preprinted draft order would be no more than a rehash of Section VI and thusly is not worthy of a response.

I have had a recommendation ready to submit to the Board for some time, but to avoid a potential ex parte conflict I have held it until staff's report was finally ready. I submit it at this time for your review.

I also expect my application fee to be refunded to me at this time pursuant to Lane code 2.730(9). Whatever the outcome, it has been determined by the County that this applicant is entitled to compensation under the provisions added to ORS.197 by Ballot Measure 37.

Respectfully,

**Kenney Gee
81778 Pacific Hwy 99
Creswell, OR 97426
541-895-8892**

Attached:

- 1) Highlighted Copy of Agenda/Report/Recommendation**
- 2) Gee Recommendation dated April 19th, 2005 with accompanying attachments**

Agenda Cover Memo

AGENDA DATE: May 11, 2005

TO: Board of County Commissioners

FROM: Rob Rockstroh, Director
Department of Health & Human Services

DEPARTMENT: Health & Human Services

DESCRIPTION: SEMI-ANNUAL BOARD OF HEALTH REPORT



The following report to the Board of Health is a summary of recent or current health and human service highlights or possible future directions. It is designed to keep the Board advised of the status of health and human services in Lane County.

The report deals with each program area separately, although as a health & human service system, services are integrated to the greatest degree possible to ensure our support of Lane County citizens' health in an effective and efficient manner.

I. SPECIAL SERVICES / ADMINISTRATION

Family Mediation Program: (Donna Austin, Program Manager)

For the six months between November 1, 2004 and March 31, 2005, the Family Mediation Program completed a total of 175 court-referred mediation cases. These cases involved open legal actions concerning child custody and/or parenting time disputes. The parents in these cases were parties to a Lane County dissolution, legal separation, modification, or (if unmarried) legal action to establish or modify child custody or parenting time.

A total of 431 parents attended the Family Mediation Program's "Focus on Children" class during the six-month period. The court requires that parents attend this, or a similar class, if they are involved in a current Lane County dissolution, legal separation, or legal action to establish child custody or parenting time. "Focus on Children" addresses the needs of children and parenting issues during, and following, parental divorce or separation. A Spanish language version of the class is provided for Spanish speaking parents.

Prevention Program (Karen Gaffney, Assistant Department Director)

The purpose of the prevention program is to promote and coordinate effective community-based prevention strategies aimed at creating healthier communities, particularly in the areas of substance abuse and problem gambling. Activities supported through the prevention program can be categorized within the six Center for Substance Abuse Prevention (CSAP) strategies for effective prevention efforts: information dissemination, prevention education, environmental strategies, alternative activities, community-based processes, and identification and referral.

The prevention program provides system support through planning and coordination of prevention services, and by working with community partners on implementation of the 2003-2005 Biennial Alcohol and Drug Prevention Plan. Lane County Health & Human Services was successful in receiving a substance abuse prevention grant from the state specifically designed to target high school youth with multiple risk factors. Reconnecting Youth is a model prevention program, effective for youth at-risk of suicide and substance abuse, which will be implemented in three sites over the next two years. Siuslaw High School, Elmira High School and Martin Luther King Jr. Education Center, through the Dept. of Youth Services will work with the Lane ESD to implement the program with fidelity beginning September of 2005.

Support for the ongoing development and sustainability of local community coalitions continues in the form of staff support and some project funding. The Lane County Coalition to Prevent Substance Abuse, which is primarily funded through a federal Drug-Free Communities Grant, continues to meet regularly. Three overarching goals for the coalition were identified and have had significant progress.

- The first is to build the prevention capacity of leaders in the coalition and the community. Since October 2004, ten Lane County citizens representing countywide and local prevention coalitions have attended conferences focused on state-of-the-art and evidence-based prevention strategies, planning, concepts and issues that they can adopt in their local coalitions. Many members have utilized information from these conferences and trainings to strategically organize, plan, and conduct systems-oriented prevention goals and objectives.
- The second is to inform and engage community leaders in substance abuse prevention. The Lane County Coalition to Prevent Substance Abuse along with the Lane County Mental Health Advisory Committee/Local Alcohol and Drug Planning Committee hosted a legislative breakfast of Lane County state legislators on January 22, 2005. Also invited were members of the Board of County Commissioners along with the mayors of Lane County municipalities. Coalition leaders addressed the need for, and the realities of Lane County's substance abuse prevention and treatment systems. All of the strategies discussed at this forum were geared toward policy making including: cost

recovery fee, tax incentives for parents to take evidence based parenting programs, and tax incentives for businesses to adopt evidence based drug free workplace policies. Approximately half of Lane County's legislative delegation participated.

- The third was information dissemination through Media United Against Drugs. This year's hour long, commercial free televised Prevention Special aired on January 30, 2005. The show was road blocked on the local ABC, CBS, FOX and NBC stations. It featured 150 middle and high school youth from across Lane County telling viewers in five Oregon Counties they wanted more enforcement, stronger consequences and more positive alternative activities. The Register Guard highlighted this effort on its weekly TV guide cover. During the 5 o'clock news broadcasts for the five weekdays leading up to this rebroadcast of last year's town hall, all of the television stations concurrently aired stories highlighting tips and ideas to help parents make a difference in the lives of their children.

The prevention program also continues to provide staff support to local coalitions. Oakridge-Westfir Together, Cottage Grove Community Partnership, Eugene Community Partnership and the Siuslaw Area Partnership to Prevent Substance Abuse all have either developed or are in process of developing plans for their community, based on data and sound prevention principles.

The Prevention Team has responded to the growing community interest in methamphetamine. Prevention team members have been invited to discuss methamphetamine prevention strategies at a number of partner agencies and organizations, including the Dept. of Human Services, KLCC, and the Commission on Children and Families. The Prevention team also took the lead in crafting the county's paper on methamphetamine that is included in the United Front document.

The problem gambling prevention program aims to heighten community awareness about problem and pathological gambling and reduce the negative effects of gambling by implementing a gambling prevention strategy targeting youth and families. The program addresses risk factors for problem gambling through school-based prevention workshops, community presentations, educational materials, website content, media efforts, and collaboration with other prevention and treatment partners.

In the last six months, the program has reached 1,018 middle school youth through school-based prevention workshops and 252 college students through presentations and student interviews for research projects. The gambling prevention website, www.lanecounty.org/prevention/gambling, draws over 500 visits each month to its pages that include information on problem gambling and helpful tools for parents, educators, and community members. To highlight community awareness of problem gambling, Lane County celebrated Oregon Problem Gambling Awareness Week during second week of March.

Evaluations from youth exposed to school-based gambling prevention presentations demonstrate that the average onset of gambling behaviors is nine years old. The posttest evaluations also show marked increases in awareness among middle and high school students exposed to youth presentations, in addition to youth reporting that they plan to reduce gambling behavior. Educators report that the class presentations are very appropriate for their students' grade level(s) and that their own awareness of youth problem gambling has increased as result of our interventions. Professionals report that presentations have helped increase their knowledge "a lot" about problem gambling issues on average, and that learning about the efforts to address problem gambling is "very useful" to their work/volunteer efforts.

As a commitment to planning and providing effective prevention practices, the program has partnered with local researchers to begin studying youth gambling attitudes and behaviors, begun working to streamline and integrate efforts with other evidence-based alcohol and drug prevention efforts, and have been key in helping shape statewide gambling prevention services strategic planning. The program is also partnering with other regional gambling prevention providers in aiming to implement a legal age for social gaming (e.g., card tournaments, social sports pools) within the state of Oregon. The program will continue to build upon these efforts in the next six months, and will work toward developing new evaluation measures to capture increasingly specific information about the efficacy of program efforts.

II. DEVELOPMENTAL DISABILITIES SERVICES (Lynn Greenwood, Program Manager)

Program Overview

Program Overview: Lane County Developmental Disabilities Services (DDS) provides an array of community-based services and supports for individuals with developmental disabilities and their families. The program's professional staff directly provides lifespan case management for over 1400 Lane County residents who meet eligibility criteria. Other direct services offered by DDS include crisis resolution and family support. In addition, the program subcontracts with seventeen local agencies to provide residential and employment services for adults. DDS authorizes funding and collects licensing information for 95 foster providers for adults and 29 foster providers for children. DDS also serves as the lead agency in Lane County for providing protective services for adults with developmental disabilities.

Services provided by Lane County DDS are grouped into 3 areas: services for children, services for adults living in group homes or foster homes and services for adults who live independently or with families. DDS staff are organized in 3 teams to meet these specialized needs: **the children's services team, the comprehensive team and the support services team.** In addition to these 3 teams, DDS has a quality assurance program, a family support program and a crisis program. The following narrative

highlights significant activities and issues in each of these areas during the past 6 months.

Services for Children: Service coordination (case management) is provided for 400 children by Lane County DDS. The Children's Case Management Team is pleased to welcome two new members. Dyan Campbell has been hired as a half-time case manager to work with teenagers approaching the age of 18 who are in the Family Support program and will be transferring to the Full Access Brokerage. Dyan has particular knowledge of the Brokerage since she was employed by them before being hired by Lane County. Dyan will also work with young adults in their late teens up to the age of 21 as they "age out" of school programs and transition into employment or other adult activities. Denise Bolton is working with us as a temporary, part-time employee doing projects that will assist us in bringing our files up to date and enable us to meet quality assurance guidelines. We are happy to welcome both these talented women to our staff.

We have also been busy for the past few months trading cases in an attempt to "streamline" our caseloads by function. It was becoming too difficult to have every case manager learn and perform every job function. Instead, we have created family support specialists and foster and residential specialists. We will also maintain our intake specialist. It is our hope that by increasing our expertise in specific areas we will make fewer errors and improve our quality of service provision.

Family Support: Lane County DDS received \$217,000 dollars for fiscal year 2004 – 2005 for Family Support services. This funding provided necessary support for 105 children under the age of 18 living in their family home to reduce the incident of out of home placement. Family Support Services provide supports such as family training, behavior consultation, respite care, environmental accessibility adaptations, community inclusion, and other supports as needed for the individual with developmental disabilities and their family.

Due to the lack of adequate funding, Family Support services are not available to all children who are enrolled in case management services with Lane Co. DDS. There are 325 children and their families who are on a wait list for Family Support services. These children and their families would benefit greatly from such services if increased funding were made available. Funding for this program was reduced by 50% in the last biennium and it is not likely to be restored in the next fiscal year.

Family Support services are built on the principles of family support and self-determination. The principles of family support are based on the belief that all people, regardless of disability, chronic illness, or special need have the right to a permanent and stable family and that supporting families in caring for children at home is in the best interest of the children, families, and communities. The principles of self-determination are based on the belief that the surest, most cost-effective ways to promote and preserve family and community membership can be constructed and managed by the people receiving services. Family Support services encourage and

strengthen flexible networks of community-based, private, public, formal and informal, family-centered and family directed supports. These supports are designed to increase families' abilities to care for children with developmental disabilities and to support the integration and inclusion of children with developmental disabilities into all aspects of community life.

Comprehensive Services: Lane County Developmental Disabilities continues to provide Comprehensive Services to 430 adults who live in group home, foster care, supported and independent living programs and take part in vocational and community inclusion programs. These programs have not received COLAs in the past three years and are feeling the budgetary crunch of this. A COLA has been built into the Governor's recent budget and our hope is that this survives the legislative process.

These same providers will soon be learning new billing procedures via the eXPRS system. The state Department of Human Services is implementing real time payments for providers. They will be billing for actual services provided in the previous month. Training for providers will take place during the months of April and May. Lane County has been working with the state to test the billing process which 'goes live' in July.

Lane County DDS has prided itself on the good working relationship the case management office has with our 17 subcontracted providers. Recently, two subgroups of the Residential and Vocational/Community Inclusion Provider Groups were formed to discuss and make recommendations regarding two major issues. The Services and Funding group tackled the thorny issues of service payments, hours of service and the interface between residential and day program providers. Agreements were made regarding Individual Services Planning (ISP) team decision making and the effect that has on facility budgets. Other issues will be discussed further as the new payment system comes on board. The second group examined forms and processes for the new 24 Hour ISP process. Agreements were made and forms revised to accommodate new requirements and streamline ISP meetings.

Support Services: Services for adults who either live independently or with family members and are not part of the comprehensive system are offered to 585 people in Lane County. Over 250 of these adults also receive some type of support from the Full Access Brokerage (FAB). These supports range from respite services for family members to employment support such as job development and job coaching. For individuals not receiving FAB support, DDS case management is the primary source of support for a range of services including benefits management, housing issues, interfacing with the mental health and criminal justice system and protective services. A new schedule of referrals to FAB has been developed by the state. Lane County will enroll from 3 to 5 people each month during the next fiscal year.

Quality Assurance: The DDS quality assurance program has been actively involved implementing its 2005 Annual Work Plan. Our QA Coordinator has been working on new data systems to improve how we collect and summarize information for the hundreds of clients who live in our 157 licensed residential sites. Our QA Committee

continues to meet every other month to recommend opportunities for improvement in systems related to the health, safety and quality of life of individuals with developmental disabilities in Lane County.

In our very first customer satisfaction survey, which was sent to 250 clients receiving case management services, 90% of the individuals, and significant people in their lives, reported that case management services were good or excellent. Another accomplishment during this reporting period was successfully launching our first e-mailed customer satisfaction survey which went out to 75 residential and vocational providers. Results were positive, with 100% of the agencies who responded reporting overall satisfaction with their working relationship with DDS staff.

Crisis Services: DDS participates in a regional crisis program (the Cascade region) with Deschutes, Lake, Crook, and Jefferson counties. Deschutes County is the fiduciary lead for the Cascade region; however, the coordinator is a Lane County employee. During this reporting period the region struggled with a rebalance in state funds for these services and worked hard to manage the budget according to new guidelines. Crisis service budgets are expected to remain flat in the next fiscal year. The regional oversight committee will be meeting with staff to develop strategies to meet crisis needs with limited resources.

III. HUMAN SERVICES COMMISSION (Steve Manela, Program Manager)

This past quarter was extremely busy for the Human Services Commission. Program plans and budgets for anti-poverty activities funded through the State of Oregon were prepared and submitted for next biennium. Those plans will be reviewed at the May HSC meeting as a part of the budget recommendation process.

Grant packets for federal fiscal year 2004 funding were submitted to Housing and Urban Development (HUD) for the HSC successful \$1.9 million dollar Continuum of Care application for supportive housing for homeless persons that were announced in January 2005. Staff began the development of the new 2005 HUD application that will be reviewed at the May HSC meeting.

Staff developed a calendar for completion of the Lane County Plan to End Chronic Homelessness that began this past year. An update will be presented to the HSC in June.

The Community Action Advisory Committee met to hear budget presentations from the Veterans Service Office and the Lane County Law and Advocacy Center. Committee members signed up for participation on one of two sub-committees, early intervention/prevention of violence and emergency and transitional services. These two subcommittees will work on the development of strategic plans for services in their service areas. Committee members made on-site agency visits during the month of April.

The energy bill paying assistance season ended. From this point on energy bill paying assistance will be winding down. However, the proactive energy education, conservation training, and installation of measures through the Energy Share Plus program will become more active until payment assistance begins again in October. Weatherization of homes for persons identified this winter will also happen this spring and summer. A new staff person was hired to carryout the new federal REACH grant that will provide energy conservation education and weatherization to homes in manufactured home parks and apartment buildings.

Staff successfully completed the federal review of our first annual Universal Data System report for our CHCLC. The reviewer complemented staff on the work we have accomplished to date as a new start site. As of December 31, 2004 Community Health Centers of Lane County had provided 5,357 low-income people with 15,461 service encounters in the past year. Of these patients, 873 were homeless. Preventive dental services were provided for approximately 1,200 preschool and elementary children. Approximately twenty five percent of patients were Hispanic/Latino. During calendar year 2005 CHCLC will provide primary care, behavioral health, and oral healthcare services for more than 6,500 people (19,308 visits).

ENCOUNTERS	FY 04-05	FY 05-06
<i>Medical</i>	<i>13,161</i>	<i>16,011</i>
<i>Mental Health</i>	<i>250</i>	<i>1,196</i>
<i>Dental</i>	<i>2,050</i>	<i>2,101</i>
Total	15,461	19,308

A technical assistance grant was submitted to Northwest Health Foundation in the amount of \$5,000 for grant planning for the CHCLC new start expansion. A grant was submitted to the Oregon Community Foundation for \$45,000 for a special initiative to sign up kids for the Oregon Health Plan. A letter of intent was submitted to Northwest Health Foundation in the amount of \$250,000 for support in the development over three-years of a low-cost pharmacy program for patients of CHCLC. The Springfield Community Development Advisory Committee approved a recommendation for \$25,000 for medical equipment and records shelving for the Riverstone Clinic.

The Program Manager attended the first meeting with the State of Oregon officials regarding Senate Bill 540 that is intended to come up with a process for prompt reimbursement of the FQHC wraparound funds by the State OMAP office. The result of that meeting was the development of beta sites to include Community Health Centers of Lane County in cooperation with managed care (LIPA) and another handful of new start sites that are under CareOregon as a managed care provider. The goal of these pilot sites would be to pay the wrap around for clean claims within no more than 90 days of submission to managed care. Another meeting is scheduled in Salem on April 27 to continue to forward this work.

The CHC management team met with Peace Health Medical Group to explore future collaborative efforts. Specifically, discussion occurred regarding placement of one of our providers and a medical assistant to work out of the Healthy Tomorrow's clinic for Latino children that is located in Peace Health's Willamette Street Building in Eugene. The management team also met with LIPA to continue to work on approaches to additional assignment of patients. The program manager met with Peter Davidson the CEO of the Oregon Medical Group on coordination of referral of Medicaid and Medicare patients and with Mark Knudson CEO of Cascade Health Solutions on coordination of the Medication Assistance Programs.

The federal new start grant that we is being developing would include 4J health centers and a health center at Cottage Grove High School as well as migrant outreach services. As part of the discussion of the financing of School Based Health Centers' staff reviewed with the HSC the City of Eugene Youth/school based service levy's funding for School Based Health Centers. Funding from the four year levy will end in 2006-2007. Currently, the School Based Health Centers in School District 4J are supported with nearly \$650,000 from this levy.

The Program Manager and the Clinical Services Coordinator attended the Oregon Primary Care Association day at the legislature and met with legislatures about the state of the safety net for health care in Oregon.

The HSC heard a presentation in April from Food For Lane County on the formation of a Lane County Food Policy Council. A Food Policy Council is a joint citizen and government advisory body that reviews and recommends policies to strengthen local food economy and improve access to health and nutritious food. Council members are to represent a diversity of stakeholders involved in the food system, including farmers, processors, retailers, anti-hunger organizations, nutritionists, governments and citizens.

The Veterans Service Office began work with the almost 500 returning veterans that have finished their tour of duty in Iraq. A meeting to coordinate efforts for returning veterans was held at Lane County Mental Health. In the Oregon legislature, the chairs of both the house and senate budget committees supported a new appropriation for \$5 million for County Veterans Services Offices.

IV. MENTAL HEALTH SERVICES (Al Levine, Program Manager)

Outpatient Mental Health Clinic:

The last fiscal year was characterized by a "hold-the-line" approach in which we continued to serve a large number of clients without adding back many new staff, due to concerns about the ongoing availability of restored funds and unclarity over what size budget hole were we going to have to cover for LCPH. Happily, the Legislature did end up restoring much of the previously reduced funding and the LCPH budget hole proved to be far smaller than feared (likely a result of the decision to close the facility when we

did), and since we hadn't budgeted for that, we are able to carry forward some funds that has allowed us to increase staffing to meet demand.

We are currently serving over 1200 adults and 350 children and families at any given time. We have already added a Child Mental Health Specialist, as caseload size was increasing to unmanageable levels and demand remained high (children did not lose their OHP mental health benefit), and will look to add 2 additional positions (recruitments well under way). We have also added 8 additional hours per week of contracted child nurse practitioner time. We have added 2 additional adult clinicians as well, as we are unable to keep pace with demand for services with some of the new and restored funding from OMHAS. These funds now provide financial support for the services we had been providing "pro bono" to the clients we continued to serve even though they lost their mental health benefit. We will also use some of these funds to develop individual case by case treatment plans to allow other provider agencies who would be most appropriate to serve a given client to serve that client who lacks OHP reimbursement. There is also lack of clarity as to whether the currently restored level of funding will continue in the next biennium, making decisions to add more permanent staff particularly difficult. We intend to proceed slowly and carefully, with a clear desire to meet the demand for services but also maintaining a reasonable prudent person reserve to cushion us against potential fiscal hard times ahead.

We have successfully recruited for an Administrative Services Supervisor to assist us in managing our business support staff and to provide a higher level of business and financial expertise to our management team. Mr. Ron Hjelm has agreed to join us, and he comes to us with a wealth of experience and formal training in healthcare financing and business management. We expect he will be able to assist us in identifying workflow process improvements and potential for revenue enhancements.

In the last year we have co-located both family support services and consumer operated services in our location. The Lane County chapter of the National Alliance for the Mentally Ill has leased office and library space from us, and provides a wide array of complimentary family support services, education, and system advocacy to our clients and their families. Oregon Family Support Network (a similar family support program aimed at families of younger children) has also moved into 2411 MLK, housing both their Lane and Statewide chapter offices in our building. On April 1, 2004, we also leased space off our lobby to SAFE, Inc., a consumer owned and operated entity that provides a wide range of activities, advocacy, support and other services to mental health consumers. SAFE intends to use this space as a Consumer Community Access Center for clients in the mental health system. They have it staffed daily since on November 1, 2004. Our Clinic site is becoming a true community resource for our clients.

Residential Programs

Lane County Mental Health continues to provide mental health services at two residential programs.

The Paul Wilson Home (PWH) located at 25 S. 57th Place, Springfield is operated in conjunction with Good Neighbor Care. Good Neighbor Care (GNC) provides the residential care services and LCMH staff provide mental health services to the residents. This 10-bed facility is a secure, residential treatment center for individuals with severe and persistent mental illness who are in need of placement from state psychiatric hospitals. The PWH tends to run at capacity throughout the year. The mental health services that are provided are billed to the state on a fee-for-services basis.

State-wide there is a continuing need for the types of "secure" beds that are provided by PWH. In response to the need more beds for Lane County residents there are plans to add 4 beds to the Paul Wilson program with a separate stand-alone unit on the GNC campus. The residents of this expanded program will be Lane County residents who are returning to the county after a period of hospitalization at a state hospital.

The Enhanced Care Facility located at 2360 Chambers St., Eugene is operated in conjunction with Eugene Rehabilitation & Specialty Care (ERSC). This is a secure, 16-bed, co-ed unit for individuals who have a severe and persistent mental illness as well as a significant medical condition. Eugene Rehabilitation and Specialty Care provide the residential and medical care services and LCMH staff provides mental health services. Most placements come from state psychiatric hospitals or other ECF programs around the state. Considerations are underway to relocate the facility from a nursing home based operation to a more home-like facility operated by a different care provider.

The EC F program has recently added an after-care component to assist the residents to transition into more integrated community placements. This Enhanced Care Outreach Services program is operated by LCMH staff and currently serves a census that varies between 7-9 individuals.

Acute Care Services:

As reported in the October, 2004 Board of Health Report, with the closure of the Lane County Psychiatric Hospital, the County, in cooperation with PeaceHealth, OMHAS and other system stakeholders did create the Transition Team. This Team is modeled after a number of very successful such programs in other states and is considered an evidence based practice, and will provide for a better overall level of service to individuals either coming out of the hospital or being diverted from an admission. The Team works with these individuals for 8-12 weeks until they can be transitioned into whatever their ongoing care would need to be (back to primary care, less intensive services through another provider agency, or to Lane County Mental Health's outpatient clinic) and consists of three QMHP level (Master's or above) clinicians (contributed by

PeaceHealth as in kind support to this program), a psychiatrist (Dr. Paul Helms, former Medical Director of LCPH) and a business support staff and clinical supervision provided by the County, and contracts with 3 or 4 community providers to provide mobile crisis support, in home services, linkage to peer supports, etc.. These providers have had funding added to their existing contracts so they can have adequate capacity to serve Transition Team clients, who will, for the most part, be indigent. The Team is housed at the LCMH clinic and will operate 7 days per week.

We are in the midst of a planned annual review of how the Transition Team has done in meeting its mission, and preliminary analysis seems to indicate that they are providing a high quality and effective service to the target population, that the average time of Transition Team involvement is 10 weeks, and that they have successfully prevented most of the clients served from needing to be readmitted to the hospital. At the present rate, Transition Team will serve around 130 clients in the current fiscal year. Of the 95 already served this year, 71 have completed treatment or been transitioned to ongoing care, 24 are currently engaged in treatment with the team, and only 10 clients, or less than 8%, required a readmission within 30 days of discharge. This would be compared to a typical readmission rate of over 20% statewide.

With the closure of LCPH, the County again became financially responsible for the costs of indigent County residents placed on emergency psychiatric holds (this has always been the case, but Lane County had a gentleman's agreement with PeaceHealth that the County would not be charged for such patients on the Johnson Unit as long as LCPH remained operational). We have negotiated what we believe to be a reasonable "cap" on such reimbursements with PeaceHealth (\$600,000 annually) that will allow Lane County to be able to budget funding for the Transition Team and other alternatives in the next fiscal year. Obviously Lane County would continue to be financially responsible for any such costs incurred in out of area hospitals when the local beds are full, as well as transport costs. Clearly it is critical that this Team be successful in keeping local beds available and out of area admits to a minimum. Since the closure of LCPH (3/31/04), we have already seen a dramatic increase in out of area admissions. This creates not only potential financial concerns, but also adds to the already heavy burden of civil commitment investigations, which must occur within required timeframes with patients now in out of area hospitals and limited ability to bring them back. We have had to increase our FTE devoted to commitment to stay compliant with the statutory requirements and to bring that service back up to historical staffing levels.

A final area of significant planning and development is for crisis system enhancements to help create alternatives to expensive inpatient care and to allow earlier intervention where possible. Two separate planning efforts (one for Adults, one for children and families) resulted in the release of a number of requests for letters of interest, and negotiations are now underway to bring a number of new or enhanced services on line shortly (by June 30, 2005). On the Adult side, we are looking at an expansion of a CAHOOTS-like mobile crisis outreach service that can extend to the entire Eugene-Springfield metro area. In addition we are adding additional crisis respite beds and transitional beds (up to 30 day stays) with ShelterCare, as well as a dual diagnosis bed

at Buckley House, with daily mental health supports and access to psychiatric consultation. On the child side, a comprehensive, county-wide crisis response system will be developed, provided by a partnership of three child-serving agencies (SCAR-Jasper Mountain, Looking Glass, and Child Center) which will have mobile crisis outreach and support 24/7, in home crisis respite, foster care based crisis respite and facility based crisis respite for children and adolescents. This will serve the entire County from Florence to Oakridge and McKenzie Bridge, and from South Lane to Coburg. Funding for these enhanced services is from increased State crisis funds provided by OMHAS and LaneCare reinvestment funds.

Mental Health Court

Lane County was awarded a two-year, \$150,000 Federal Grant to establish a Mental Health Court for individuals charged with misdemeanor offenses or some non-person felony crimes whose criminal activity was largely a function of them having a mental disorder. Individuals can enter this "diversion" program voluntarily, participate in mental health treatment for a year, and then get diverted from the criminal justice system. This new "court" is similar in many ways to Co-occurring Disorder Court (COD) and Drug Court, and will utilize Judge Carlson, as do the other courts mentioned previously. At present, referrals are limited to criminal cases filed in Circuit Court, not Municipal Courts. While getting this grant is certainly a feather in Lane County's cap, the timing of the grant happens to coincide with unfortunate budget realities in which most misdemeanor defendants are aware, or are informed that it is unlikely, they will spend any jail time if they simply plead guilty due to reductions in jail beds. We are also hearing that in high likelihood, the District Attorney's Office may stop prosecuting most misdemeanors. At this point, some nine months into the grant, we have only enrolled three clients, and we are expected to serve 35 per year.

We have discussed expanding the client base to include Municipal Court filings, and have discussed this with both Municipal Courts. They were quite enthusiastic about having access to the Mental Health Court as they probably have many more appropriate cases filed there than in Circuit Court. Municipal Court lacks the ability to maintain ongoing court supervision of such cases, which is a hallmark of the Mental Health Court model. They would therefore need to have the case transferred to Circuit Court and filed by the District Attorney's Office before they can close the Municipal Court case.

At this time, the District Attorney has indicated he will not accept any such transfers, due to pending budgetary concerns. A final attempt to make this Mental Health Court viable will be to see whether we can expand the base to include individuals on community supervision, who are at risk of being returned to jail due to their inability to follow their conditions of parole or probation because of mental health issues. We would need permission from the granting agency to go down this path. It is not clear whether the District Attorney would be willing to consider this expansion, particularly if the original crime was a felony or a more serious misdemeanor. We will be meeting with the key participants in early May to see what we can work out. It is entirely possible that we may elect to return the grant funds as circumstances locally will not

allow for us to meet the requirements of this grant. That would be an additional unfortunate fallout of the local fiscal realities.

V. LANE CARE (Bruce Abel, Program Manager)

LaneCare represents the County's effort at managing a capitated component of the Oregon Health Plan (OHP), the mental health "carve-out," while integrating community mental health responsibilities in partnership with provider agencies. LaneCare continues to contract with a range of non-profit providers to offer a full continuum of services, to ensure access to services, and to maintain consumer choice.

LaneCare is in the middle of its eighth year of operations. Change and instability continue to challenge the mental health system and LaneCare. The past couple of years have been fraught with budget reductions and other destabilizing situations. Despite the unpredictability, the reduction packages, and the increasing service demands, LaneCare has managed to maintain the highest utilization and penetration rate in the state, preserving a vibrant continuum of services, and remaining fiscally sound. LaneCare continues to operate in the black and has worked with Lane County Mental Health to institute creative system enhancements such as crisis system supports, indigent care support and increased flexible funds.

The State has announced that all MHOs will have a 10% reduction in capitation next year. LaneCare has a budget of approximately \$14,500,000. This means that LaneCare and the local mental health system will have a \$1,400,000 reduction in funds available for services. This will have a significant impact on the mental health system.

LaneCare is continuing our efforts to move the system toward evidence-based practices and is sponsoring several trainings to help providers develop new skills. We have initiated a series of trainings being provided by consumers from a consumer perspective. Oregon veterans of the war in Iraq have returned and LaneCare is sponsoring a free training for mental health providers in May.

LaneCare has been actively involved with state stakeholders in discussing intensive treatment services and funds for youth. In October 2005, these funds will be contracted by the state to LaneCare. LaneCare will then be responsible for managing these resources and subcontracting for services. This is a positive change and is in-line with the pilot project proposals that we have presented to the state over the years. LaneCare must be assured that the funds received are sufficient to cover the service obligations defined in the contract. The funding allocation changes will be spread out over four years so local management and flexibility of funds will increase over time.

LaneCare has organized several meetings each month to plan for the local changes associated with the system change initiative. These meetings have included schools, parents, child welfare, juvenile justice, local mental health providers, state mental health

providers, and other interested parties. Planning is ongoing. LaneCare will need to contract with providers by October of 2005 to assure appropriate services are available.

The quality-assurance process continues to help review policies, procedures, and practices of the LaneCare-funded mental health service system. As part of LaneCare's on-going quality improvement efforts, we:

- Have continued to provide trainings
- Are identifying and funding quality improvement efforts
- Are identifying and funding prevention, education and outreach projects
- Have collected data with the LaneCare clinical evaluation instrument

LaneCare had a site visit by OMPRO in January. This was an intensive week long review of LaneCare policies and practices to assure that we are meeting federal and state requirements as well as contractual obligations. LaneCare passed in all areas. There were some findings and LaneCare will need to revise our Policy and Procedure manual to fully comply with different regulations.

LaneCare has used resources in the past year to:

- Provided additional community funds for indigent citizens with a mental health disorder.
- Provided start up funds for a child mental health crisis system
- Provided enhancement funds for the adult crisis mental health system

VI. PUBLIC HEALTH SERVICES (Karen Gillette, Program Manager)

Bioterrorism / Preparedness

The staff working in the CDC bioterrorism/preparedness grant continues to work toward improvement of the performance of Public Health in the area of emergency response which is a new and developing competency. Public Health Services is currently in the third year of funding for bioterrorism/emergency preparedness funding. Funding for year 3 was cut by 20% do to the Center for Disease Control's (CDC) decision to fund the Cities Readiness Initiative (CRI), a shift of \$55 million from state bioterrorism programs to fund a program to prepare U.S. Postal workers in 21 major cities to deliver antibiotics or antidotes within 48 hours of a bioterrorist attack. The CRI program uses the funds to train mail carriers, install disease surveillance equipment, purchase vaccines and construct new quarantine stations at U.S. airports. Year 4 funding will also be cut by at least 15%. Funding will be diverted from the state bioterrorism programs to purchase chemical antidote stockpiles to be placed throughout the country.

To date, BT program staff have revised the Health Services and Shelter and Mass Care Annexes to the Lane County Emergency plan. In addition, 11 appendices to the Health

Services Annex have been completed, management and line staff have completed basic training in Incident Command System (ICS), Strategic National Stockpile request and receipt plans, mass vaccination/prophylaxis plans and regional public health emergency response plans are developing.

This year staff has been able to shift their focus solely from writing emergency response plans and procedures, to testing some of the written plans. In the past year we have conducted orientations, drills, and tabletop exercises as well as participating in exercises with other agencies/jurisdictions. A strong relationship has been forged between Public Health emergency preparedness and the Eugene/Springfield Metro area hospitals. At this time a representative from Public Health attends the disaster response committees at both McKenzie Willamette Hospital and Sacred Heart General Hospital.

Exercises and Training Completed

Pandemic Influenza table top with Amateur Radio communications, PeaceHealth, United Way, Food for Lane County, US Department of Agriculture, Food for Lane County – March 16, 2004

ICS training, Pandemic Flu scenario, command positions – H&HS Administrators, Managers - June 18, 2004

Appendix T - Airport Response for Illness of Potential Public Health Significance
Type of exercise: Table top Date Occurred: January 27, 2005

ICS Action Plan
Type of exercise: Drill Date Occurred: February 22, 2005

PH Management and Supervisor Emergency Notification for White powder incident
Type of exercise: Drill Date Occurred: March 02, 2005

ICS, communication annex and regional planning
Type of exercise: Table top Date Occurred: March 16, 2005

Appendix O – Outbreak Investigation for Medical Reserve Corp
Type of exercise: Orientation Date Occurred: April 07, 2005

For 24/7 emergency call up, Public Health Services consistently responds in 10 minutes or less in tests conducted by the local coordinator and State Health services.

Disaster response planning has also taken a Regional focus. With the formation of the Health Resources and Services Administration Regions in the State, local public health agencies within these regions have begun the development of regional public health emergency response coordination and planning. On March 16, 2005 a regional table top exercise was held simultaneously in Coos, Curry, Douglas, and Lane counties.

Participants included local public health staff and administrators, State epidemiologists, area hospital representatives, emergency management, emergency services, medical clinic representatives and tribes.

Future work in public health emergency preparedness will concentrate on testing and revision of emergency response plans, regional response coordination, development of essential memorandums of understanding for acquiring resources during public health emergencies, improved communication with local health care providers and tribes, and the development of a trained volunteer base.

Communicable Disease Service Unit

Tuberculosis and reportable Communicable Diseases: Lane County (LCPH) has had five new active cases of TB in 2005. In 2004 we had 12 new cases of active tuberculosis and 61 new cases of tuberculosis infection that were followed by LCPH. While none of our new cases are directly affiliated with the Eugene Mission, the Mission continues to have TB test conversions, indicating recent infection. Thus our daily TB testing and bi-weekly delivery of TB medication by DOT remains an important part of continuing outbreak control efforts. The UV lights provided by Oregon DHS and the CDC are functioning and will further reduce opportunities for TB transmission. LCPH is doing an on site evaluation of the UV system every six months. In addition, one of the new cases in November of 2004 was associated with a local business. One hundred and twelve co-workers who were considered to be in the case's 1st circle of contact had tuberculin skin tests (TSTs) placed. Of these, 73 people returned for follow-up TSTs in April. Six converters were found at the follow-up testing, indicating transmission of infection. These individuals have been referred for chest X-rays and will be offered chemoprophylaxis as indicated. LCPH is continuing to work with the business, the individuals, and the state on this investigation.

LCPH nurses have investigated 356 reportable communicable diseases in 2004, including 44 cases of hepatitis B, nine cases of meningococcal disease, 34 cases of salmonella, and 64 cases of pertussis. This represents a decrease in the number of reported cases of Pertussis in Lane County compared to 2003, but this remains an area of increased concern in the state and nationally. In the first 3 months of 2005 we have had 55 reportable communicable diseases to investigate.

Immunizations

With the largest number of delegate immunization clinics in the state, LCPH continues to have a countywide influence on immunization access and vaccine responsibility. In the first 4 months of starting a delegate immunization clinic with Florence providers, the delegate provided 597 state supplied vaccines. In the year 2003, the LCPH Branch office was able to provide just 294 immunizations in the full year. LCPH now has eleven delegate clinics county wide including rural clinics in Dexter, Oakridge, and Florence as well as 5 school based clinics in Eugene and Bethel, the Community Health Center, and a fledgling clinic at Lane County Corrections. The delegate is proving to be a good

model for a geographically large county with a large population. Management and training aspect absorb significant LCPH resources but increase the area and population served beyond our own direct service capacity.

We continue to work with the health care providers and the school nurse in Cottage Grove to assure the provision of immunizations there. We anticipate continued discussions, including possible Community Health Center expansion to the area. In the meantime we have held two school immunization based clinics in conjunction with the Cottage Grove High School and community providers.

Flu Clinics

Lane County Public Health held 12 Flu Clinics in October and November of 2004 and provided 5,219 flu shots. This compares to 17 Flu Clinics given and 2,936 flu shots provided in 2003. The Flu Team, with the extraordinary responsiveness and support of employees from all Public Health programs and community volunteers, was able to adjust our efforts to meet the considerable challenges of this particular flu season. We have debriefed the season and are already working on preparations for the 2005 Flu Clinic season. Vaccine orders were completed in April based on the best information available.

HIV Program

In the past six months, public health staff in the HIV prevention program have developed a new program to help pharmacists give HIV testing/safe disposal referrals to injection drug users (IDU); have increased the number of IDU and partners of IDU testing for HIV and getting Hepatitis A&B vaccinations; and have integrated Hepatitis A & B vaccinations and syphilis screening into a gay-bi men's clinic.

LCPH is a core partner in the Harm Reduction Coalition with community stakeholders including HIV Alliance and the Needle Exchange, LIPA, and Sacred Heart and McKenzie Willamette hospitals.

During the past six months, the LCPH HIV team has continued outreach, testing, and referral to services at the Community Corrections Center. In 2004, one hundred and fifty four individuals from the CCC received HIV counseling and testing. Of this number, 80% were from populations at high risk for HIV.

Outreach activities to MSM individuals and groups have yielded a steady increase in testing among this group where the highest number of HIV positive cases is found. The opportunity to provide "rapid tests" to those individuals at highest risk has increased the number of individuals who both test and receive their results. With conventional two week turnaround test results, many individuals at highest risk do not return for their results. With the rapid testing option, LCPH staff has been able to provide those individuals with positive results immediate support and referral for ongoing care, risk

reduction information for contacts, and testing for partners of positives on a next day turnaround.

HIV nurse case management has been provided by LCPH with Ryan White funds at HIV Alliance. Among the most significant accomplishments of this function has been significant improvement in the scope, quality, and organization of this service.

LCPH is now involved with Oregon DHS in developing the new CDC required, evidence based model of intervention in the MSM community to reduce the spread of HIV.

Environmental Health Service Unit

The purpose of the Environmental Health Program is to give quality inspection services to facility owners and to protect the health of residents and visitors in Lane County as they use any of our 2974 restaurants, hotels, public swimming pools, schools, and other public facilities. Environmental Health (EH) employs 5.25 FTE sanitarians that are responsible for 4696 total inspections throughout the county. The following are the types and numbers of facilities licensed and regularly inspected by the EH staff: full service and limited service food facilities (944), mobile units (131), commissaries (16), temporary restaurants (1006), pools/spas (285), traveler's accommodations (108), RV parks (66), schools, day cares, organizational camps and others (434). EH continues to work closely with the Communicable Disease (CD) teams and Bio-terrorism/Emergency Response teams as needed to ensure safe food and tourist accommodations for everyone in Lane County.

Environmental Health continues to receive grant moneys to fund an additional sanitarian to work directly with the CD team to establish general preparedness procedures with a primary focus on bio-terrorism issues. This position continues to conduct training sessions and presentations on preparedness and bio-terrorism for area health providers and agencies, and others.

The program is planning to conduct its second annual nationally certified Food Safety Seminar at LCC for restaurant managers and supervisors. The event was very well attended last year and Lane County Sanitarians made presentations. All participants received national certification upon successful completion of testing.

Testing and certification of food handlers in Lane County continues to be a priority, as a preventative measure against food-borne illnesses. EH issues approximately 7,000 Food Handler Cards annually. The department is currently working with Chemeketa Community College to offer Food Handler Card testing through an on-line "e-commerce" function in the near future. In addition to in-office food handlers testing, the department offers worksite and on-line food handlers testing. Since January of 2005, 799 food handlers' cards have been issued through our on-line testing service. The on-line testing site is accessed from the www.LaneCounty.org website and Environmental Health is the first program in Lane County to offer safe and secure payment for services through our website.

This summer the program will again conduct West Nile Virus public education and will be involved with the collection of dead birds to be sent to the state laboratory for testing. The presence of WNV was confirmed in Lane County in August of last year.

We are expecting another increase in seasonal licensing and inspections for temporary facilities, festival events, bake sales and other outdoor food service activities. Licensing fees for this sector have not been adjusted for seven years and a fee adjustment request is forthcoming. Maintaining the routine restaurant and facility inspections with the additional seasonal duties results in a particularly busy time of the year for the EH staff.

Good progress is being made on the Environmental Health Tracking System "mini-grant" that will computerize additional data collection tasks. Application for a second grant has been made to offer a conference for local physicians on food borne outbreak diagnosis and investigation.

The EH team continues to work closely with the CD nurses to better coordinate investigations on food borne illness. EH and CD recognize the importance of having the two disciplines working together in the on-going effort to curb the number of food-borne illness outbreaks.

Teen Pregnancy Prevention / Family Planning Unit

The purpose of the Family Planning Program is to improve the well-being of children and families by reducing unintended pregnancies and providing assistance in accessing primary health care services and comprehensive health care coverage. The FP program works to reduce the percentage of pregnancies that are unintended and the proportion of births that are spaced less than two years apart for women in general, and among women eligible for Medicaid paid deliveries. FP also strives to reduce the rate of teen pregnancy and second birth among teens. Prevention of unintended pregnancies and mistimed pregnancies for adult and teen women is achieved through the provision of affordable, comprehensive contraceptive/family planning service—particularly for those who do not have other FP services available and accessible. In addition, the program assists women and their families' access primary health care services by providing counseling, education, referral, and information about resources that are available.

During the past six months, 41.2% of the FP clients in the Eugene office were primarily Spanish speaking. Of the two nurse practitioners, one nurse, two community service workers, and one office assistance who staff FP, all but one is fluent in Spanish. Thus FP is able to provide services for the large number of Spanish monolingual clients who seek family planning services at LCPH.

Also during the last six months, 1,527 FP visits were provided for 1,010 unduplicated clients. Of these clients, 69.3% were at or below 100% of Federal Poverty Level.

Source of payment for client visits was as follows: 33.0% no charge, 7.9% partial fee, and 0.7% full fee, 41.0% FPEP, 10.3% insurance, 7.0% Oregon Health Plan.

The Family Planning team actively participated in the LCPH Long Term Strategic Planning Process. During that process, the team identified a number of system-wide, health-related contributions that the Teen Pregnancy Prevention/Family Planning Program continues to provide for Lane County residents:

- The LCPH Family Planning Program serves a clientele that no other program or provider in the county serves.
- Family Planning services are often the first interaction with the healthcare system for many families. Hence, LCPH-FP is often the gateway to healthcare services. Once families are connected with FP, they receive help in gaining access to such county and community services as prenatal care, immunizations, WIC, and medical care for their children and families.
- The Intergovernmental Agreement (IGA) Oregon DHS and Lane County includes Women's Health and Family Planning as a Program Element. Terms and conditions of the IGA include compliance with Federal Title X requirements.
- LCPH Family Planning Program is the only Title X Agency in Lane County.

Breast & Cervical Cancer Screening Unit

The purpose of the Breast and Cervical Cancer Screening Program (BCCP) is to decrease disability and death from breast and cervical cancer through early detection for the medically underserved population of women ages 40 to 64. Early detection and treatment of breast and cervical cancers increases the rate of survival. In 1994, the Oregon Department of Human Services (DHS) received a grant from the National Centers for Disease Control and Prevention (CDC) to establish a Breast and Cervical Prevention Program in Oregon. The Lane County BCCP was established in 1997, and since that time has provided access to clinical breast exams, mammograms, Pap tests, pelvic exams and other diagnostic services for approximately 5,875 uninsured or underinsured women. Between July 1 and December 31, 2004, BCCP provided access to screening for 525 clients, 7 of who were diagnosed with breast cancer, and 2 with cervical cancer. Clients who received a diagnosis of cancer were assisted in accessing treatment.

Breast cancer is the most commonly occurring cancer and second leading cause of cancer death among Oregon women, as reported by the Oregon State Cancer Registry. Of the known breast cancer risk factors for women, age is the most important. Approximately 80% of women with breast cancer have no known risk factors other than growing older. For that reason, BCCP targets women aged 50 through 64.

Cervical cancer is a truly preventable disease. With early detection, precancerous cells can be detected and removed before they develop into cancer. The Papanicolaou

(Pap) test has the potential to virtually eliminate invasive cervical cancer, and its use has significantly reduced the number of deaths from cervical cancer. However, deaths continue to occur most often in women who are rarely or never screened.

Routine screening remains less common among women who are uninsured, have less than a high school education, or live in poverty. BCCP provides access to mammograms and Pap tests for Oregon women who would not otherwise be able to afford these important screening procedures.

Prenatal Unit

The purpose of the Prenatal Program is to optimize birth outcomes by helping low-income pregnant women access prenatal care as early as possible. Early and comprehensive prenatal care is vital to the health and well being of both mother and infant. Early prenatal care helps prevent low birth weight in newborns, a predictor of newborn health. Prenatal care identifies risk factors such as the use of alcohol, tobacco, or other drugs, domestic violence, diabetes, or heart conditions. Studies indicate that for every \$1 spent on first trimester care, up to \$3 is saved in preventable infant and child health problems.

The statewide benchmark goal for early prenatal care is 90 percent. Both state and county rates have remained well below that goal, and Lane County's rate has remained below that of the state as a whole. Preliminary data for year 2004 indicates that Lane County is closer to, but still remains behind the state in first trimester prenatal care. Data indicates that 79.9 percent of Lane County's pregnant women had first trimester prenatal care as compared to 80.5 percent for the state.

Improving access to care is the most effective means of increasing the percentage of women who receive first trimester prenatal care. Women who do not obtain early prenatal care often have no health insurance, do not know that low cost services are available, and find the system for accessing care both overwhelming and confusing. In the past six months, Lane County Public Health's Prenatal Program has assisted 365 low-income women access health coverage through Medicaid, and has helped assure the establishment of prenatal care for those women.

Maternal Child Health Unit

The purpose of the Maternal Child Health (MCH) program is to optimize pregnancy, birth, and childhood outcomes for at-risk families through education, support, and referral to appropriate medical and developmental services. During the past six months, the MCH team has received 360 new referrals for nurse home visiting services, 305 referrals for Maternity Case Management, 21 referrals for Babies First!, 24 referrals for CaCoon, and 10 other referrals. The CaCoon program is partially funded through grant funds from Oregon Health and Science University (OHSU), Child Development and Rehabilitation Center (CDRC). In addition, Willamette Family Treatment Center

contracts with LCPH Health to provide MCH services at their facility. The referrals listed above do not include program services at Willamette Family Treatment.

The Maternity Case Management component of MCH provides ongoing nurse home visiting services for high-risk pregnant women and helps assure access to, and effective utilization of, appropriate health, social, nutritional, and other services during the perinatal period. Prenatal nurse home visiting has been shown to: increase the use of prenatal care, increase infant birth weight, decrease preterm labor and extend the length of gestation, increase use of health and other community resources, improve nutrition during pregnancy, and decrease maternal smoking — all of which increase positive birth and childhood outcomes.

The Babies First! component of MCH provides assessment and early identification of infants and young children at risk of developmental delays or other health related conditions. Screening for health or developmental problems helps identify children at risk of later problems. Early detection of special needs leads to successful interventions and the most positive outcomes. Nurse home visiting for high-risk families with young children allows early detection of potential delays; and provides parental education regarding ways of overcoming early delays, ongoing assessment of development, and referral to early and appropriate interventions.

Other benefits of nurse home visiting are: improved growth in low birth weight infants, higher developmental quotient in infants visited, increased use of appropriate play materials at home, improved maternal-child interaction, improved maternal satisfaction with parenting, decreased physical punishment and restrictions of infants, increased use of appropriate discipline for toddlers, decreased abuse and neglect, fewer accidental injuries and poisoning, fewer emergency room visits, and fewer subsequent and increased spacing of pregnancies.

The CaCoon component of MCH provides services for infants and children who are medically fragile or who have special health or developmental needs by helping their families become as independent as possible in caring for their child, and by helping families access appropriate resources and services. CaCoon stands for Care Coordination and is an essential component of services for children with special needs. CaCoon provides the link between the family and multiple service systems and helps overcome barriers to integrated, comprehensive care. In addition to linkage to resources, nurse home visiting for young children with special needs provides the benefits listed above for Babies First!, family and child assessment, advocacy, and parental education and training.

Healthy Start Unit

Healthy Start offers support and education services for first-time parented families in Lane County through voluntary home visiting services. The program screens and assesses the needs and strengths of families, and determines eligibility for participation.

Healthy Start provides ongoing home visiting for families at risk of poor childhood outcomes and one-time home visiting for those at lower risk.

The central administrative core of the program is part of Lane County Public Health, and the home visiting portion of the program is provided through contracting agencies. Healthy Start is funded through state general funds dedicated to Oregon's Healthy Start program and through support of the local Commission on Children and Families.

Healthy Start is a research-based primary prevention program that has been proven to effect positive changes in the lives of families and children. Positive outcomes tracked in the yearly Oregon Healthy Start Status Report demonstrates a lower rate of child abuse and neglect, a higher rate of utilizing well-baby care by a primary care provider, decreased emergency room use, and an increased rate of childhood immunizations. Additionally, data indicates that families who participate in Healthy Start read to their children more than the general population and that they report that the program was helpful to them in their parenting.

Healthy Start actively promotes car seat safety by holding car seat classes and clinics, staffing the car seat information line, and playing a pivotal role in coordinating car seat services through the Lane County Car Seat Consortium. Oregon Department of Transportation and ACTS of Oregon, Eugene Fire Department, Lane County Sheriff's Office and other community organizations provide support for these activities.

Women, Infants and Children Unit

The WIC Program serves pregnant and postpartum women, infants and children under age 5 who have medical or nutritional risk conditions. Clients receive specific supplemental foods and nutrition education to address their individual risk conditions. In March 2005, the WIC Program was serving 8,036 clients. The number of vouchered participants (actual number of participants redeeming WIC vouchers for that month) was 7,820. The assigned target vouchered caseload level is 8,228 vouchered participants per month for this program year. The program is currently maintaining at 95% percent of this assigned caseload due to previous vacant positions and new staff in training. Caseload was also affected by the LTD strike; since a large number of clients depend on bus transportation to attend WIC appointments, high no show rates were experienced during and after the strike. The reduction of clinic days in the rural communities of Cottage Grove, Florence, and Oakridge continues to have an effect on the program's ability to meet the assigned caseload as well. Many rural clients have no transportation and continue to wait for appointments for the limited WIC clinics in Cottage Grove, Florence and Oakridge.

WIC clinics at the Cottage Grove Family Center are continuing twice each month. A waiting list is maintained for clients needing Cottage Grove appointments; these clients generally experience a two to four week wait for WIC appointments in the Cottage Grove clinic. Clinics held at the Florence Nazarene Church are continuing once per month. WIC clients who need Florence appointments consistently experience a wait

period of four to eight weeks for services. The average show rate for Florence clinics was maintained at 90%, which is the highest show rate of all WIC clinics. Feedback from other Florence community agencies indicates that Florence families have a high need for basic services.

A significant percentage of children enrolled in Oakridge HeadStart Program had fallen off the WIC Program. Many HeadStart parents were unaware that WIC services continue to be offered in Oakridge once every other month. WIC staff notified parents through HeadStart that WIC appointments were available in the Oakridge clinic and many children have now resumed WIC participation. However, confusion still exists in the community about the availability of Oakridge WIC services and, generally, requests for services in Oakridge have decreased. WIC Program participation is encouraged for HeadStart children because nutritious WIC foods and education are shown to decrease anemia in young children.

WIC nutrition education class offerings in Springfield have expanded to include classes in the Spanish language. Topics include fast meals for families, food budgeting, infant and toddler nutrition and prenatal nutrition.

Tobacco Prevention

The Lane County Tobacco Prevention and Education Program (TPEP) is up and running again. In April 2003, the Oregon Legislature shutdown the statewide TPEP and redirected the cigarette tax revenue allocated to it into the state general fund. This led to the closure of our local program and the layoff of program staff. Towards the end of what became the longest legislative session in history, the Department of Human Services (DHS) learned that they would be receiving one-third of their original TPEP funding for the next biennium. In January of 2004, DHS/Health Services TPEP was able to send out an RFP to county health departments who wanted to restart their TPEP. Lane County wrote a successful proposal and is one of only ten counties in the state with a TPEP in place. In May of 2004, our primary tobacco prevention staff person was recalled to her former position.

Over this past year, TPEP staff have:

- ◆ Reconvened the Tobacco Free Lane County Coalition. Most recently, the coalition organized around the need to update the City of Eugene Clean Indoor Air Law. Coalition efforts prompted the City Council to improve the original ordinance by banning smoking with 25 feet of publicly owned entrances, operable windows and air intakes. The coalition is continuing to work with the Council and city staff to alleviate problems with ordinance language that has allowed the building of partially enclosed smoking rooms in certain businesses. The coalition has also recently formed a partnership with the Lane County Medical Society for the purpose of advocating for tobacco-free hospital campuses.

- ◆ Worked with the U of O Student Health Center to build the capacity of their campus tobacco coalition so that they may become better prepared to advocate for tobacco policy changes on campus.
- ◆ Provided education on, and enforcement of, the Eugene Clean Indoor Air Law and Oregon Smokefree Workplaces Law.
- ◆ Worked with public health staff to ensure that they are asking clients about their smoking status and referring them to the Oregon Tobacco Quitline or other cessation services.
- ◆ Partnered with the Oregon State Police to conduct tobacco retailer compliance checks within the City of Eugene limits. TPEP staff and the OSP officer inspected 14 locations. Four locations sold tobacco products to the underage youth. The OSP officer cited the offending clerk while TPEP staff gathered information for the City of Eugene licensing department who issued a civil penalty to the license holder of the offending business.

VII. SUPERVISION AND TREATMENT SERVICES (Linda Eaton, Program Manager)

Methadone Treatment Program

As of April 1, 2005, the Lane County Methadone program had 114 active patients in treatment. There are currently 15 people on the waiting list, which has averaged 9 people over the last several months.

The methadone program along with other methadone programs in the state of Oregon recently participated in a data outcome study sponsored by Oregon Mental Health and Addiction Services (OMHAS). The goal of the study was to improve outcome reporting on clients specifically involved in methadone maintenance programs. A few of the focus areas included; reduction in criminal activity during treatment; improved employment or income during treatment; stable housing; and fewer positive UAs during treatment. Although this test study only covered a short period of time in the overall length of the client's treatment, the preliminary data was promising. It clearly supports the need for more systematic reporting to capture the effectiveness of methadone treatment in key life areas. The Lane County Methadone Program is working with OMHAS to develop a mechanism for collect this type of data for the two individual programs in Lane County.

DUII /Offender Evaluation Unit

The DUII/Offender Evaluation Unit served 996 new DUII cases and 90 other corrections cases between October 1, 2004 and March 31, 2005. This represents a slight decrease in DUII cases over the previous 6-month reporting period (4/04 – 9/04) but a slight increase from the same reporting period as last year. There was also a slight reduction (7) of other corrections cases over the previous 6-month reporting period (4/04 – 9/04).

The Evaluation Unit's Occupational Driver's License program (ODL) has doubled in size from the last reporting period, with the addition of 8 new cases. The program has not seen this large an increase since 1996. At the same time, the Evaluation Unit continues to experience the difficulty of managing the workload while experiencing a decrease of a .5 Office Assistant position at the beginning of the fiscal year, due to budget constraints. This reduction has had an impact on the program's ability to respond in a timely manner to court requests on the status of client cases. The program recently developed a survey tool, which will be sent to the courts, in an effort to receive feedback about our services and how we might improve them.

The Evaluation Unit continues a collaboration on DUII Diversion cases with the DA's office, the Public Defenders' Office, and Lane County Circuit Court. The goal of this collaboration has been to increase the number of Diversion clients who report for their evaluation, by making initial contact with the client in court when the diversion petition is filed and approved. Although this has added to the office workload by having two program staff attending court once a week to meet with clients, it has proven effective in increasing in the number of clients who comply with the court referral in a timely manner.

Sex Offender Treatment Program

The Sex Offender Treatment Program (SOTP) has increased capacity and admitted additional clients, due to restored community corrections funding. This has resulted in fewer indigent clients waiting to be served. As of April 1, the program has reduced the number of offenders in the intake process from 13 to 5. This is a critical accomplishment, since offenders without the resources for private treatment had been waiting for a subsidized treatment slot for several months, which puts them at risk for not completing treatment before the end of their supervision.

In addition to serving indigent clients who can't afford private treatment, the SOTP has created a priority system for admission based on the level of client risk. This effort is designed to prioritize treatment for offenders who pose a higher risk to the community. There are two specialized risk assessment tools, the Static 99 and the Oregon Sex Offender Risk Assessment, which are used by POs throughout Oregon to categorize sex offenders by risk level. The SOTP has implemented the use of scores from these two instruments (among other factors) to prioritize offenders for admission to treatment. This is consistent with evidence-based correctional practice. Research has shown that cognitive-based treatment is effective at reducing recidivism among high-risk offenders, and that mixing low risk offenders into correctional programs can actually increase their recidivism.

Parole and Probation

As of April 2005, Parole and Probation (P&P) was supervising approximately 3,550 individuals (felons and misdemeanants), and 50 pretrial domestic violence defendants).

information about their offenders' release points and Risk Assessment Tool (RAT) scores.

We plan to assign PO time to the Sherman Center (for Phases II and III) as well, although with caseload sizes still averaging 100, it will be difficult to determine how to free up additional staff time. However, P&P management has started discussions with Circuit Court on how to use the RAT scores to determine the highest priority offenders to place on supervised probation. If we can reduce the number of lower risk offenders assigned to supervised probation, more time could be available for other duties, such as staffing the Sherman Center. Of course, to the extent that fewer supervised felons are on supervision, community corrections funding will be reduced in future years.

Our newly funded alcohol and drug treatment program, operated by Emergence (formerly ACES), received a higher than average score on a program review conducted by the state Department of Corrections (DOC). The DOC has been reviewing programs statewide to assess the extent to which they use evidence-based practices, as required by SB 267. The instrument the DOC uses, the Correctional Programs Assessment Inventory (CPAI), was developed by Ed Latessa to correlate with his research. The higher a program scores on the CPAI, the more likely its program participants will reduce recidivism rates. The Emergence program received a score of 61%, compared with a national average of 52%. This is considered a score in the "Satisfactory" range. Program strengths include the content of the program, staff characteristics, and evaluation/quality assurance. Recommendations for improvement included greater attention to assessment in order to refer the most appropriate offenders to this limited resource.

Management staff have been working with the new H&HS Management Analyst on performance measures, evaluation, and better access to data on our offenders. Some progress has been made on downloading Lane County data from the state Department of Corrections database.

Management staff are also reviewing applications from local sex offender treatment providers who wish to be designated as approved providers for P&P clients. The criteria for provider qualifications and program standards were developed with a great deal of input from POs, treatment providers, and allied agencies. The requirements are also consistent with professional standards developed by the Association for the Treatment of Sexual Abusers (ATSA), an international professional association. In the future, sex offender treatment providers in Lane County must be approved in order to receive referrals, regardless of whether they receive public funding. Other jurisdictions around the country are taking similar steps; in some cases, states are considering legislation to develop state standards for sex offender treatment providers.

Parole and Probation is involved in many community partnerships which promote public education and coordination with other criminal justice agencies. As an example, several POs have taken Eugene Police officer trainees into the field with them as part of EPDs "Community Partner Wednesdays". This program is a part of EPDs training

curriculum, which exposes new police officers to the work of other agencies. We have received positive feedback about the value of new police officers observing the work of Parole/Probation officers.

Other community partnerships include two public presentations on child sex abuse. One was organized by the PO based in Florence, in conjunction with a deputy DA and a member of the Florence Police Department. Over 50 people attended the presentation, which covered several topics about protecting one's children from sexual abuse. The presentation included information parents and other adults need to know, such as the fact that most child sex abuse victims are abused by someone who is known and trusted by the child's family. The second child abuse presentation was done by the supervisor of the P&P sex offender unit to a group of public school teachers and members of the faith community.