

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 18-02-06-07 IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR AN APPEAL OF A HEARINGS OFFICIAL DECISION APPROVING A LEGAL LOT VERIFICATION AND NOTICE FOR FOUR (4) PARCELS WITHIN PROPERTIES IDENTIFIED AS ASSESSOR'S MAP AND TAX LOTS 18-03-15-00-00201, 00202, 00205, 00303, 00300 (PART), AND 304; (FILE NO. 509-PA17-05220/MCDOUGAL).

WHEREAS, the Lane County Hearings Official has made a determination approving a Legal Lot Verification and Notice for four parcels identified as Assessor's Map and Tax Lots 18-03-15-00-00201, 00202, 00205, 00303, 00300 (part), and 304, pursuant to Lane Code 13.010 and 13.020, in Department File No. 509-PA17-05220; and

WHEREAS, the Lane County Planning Director has received an appeal of the Hearings Official's decision to the Board of County Commissioners pursuant to LC 14.515(3)(f)(ii); and

WHEREAS, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal in File No. 509-PA17-05220; and


WHEREAS, Lane Code 14.600 provides the procedure and criteria that the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board.

NOW, THEREFORE, the Board of County Commissioners of Lane County ORDERS as follows:

1. That the appeal does not comply with the criteria of Lane Code 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A."
2. That the Lane County Hearings Official decision dated December 13, 2017, and the letter affirming the decision dated December 29, 2017, attached as Exhibit "B," which found relevant approval criteria are met, are affirmed and adopted by the Board of County Commissioners as the County's final decision. The Board of County Commissioners has reviewed the appeal and the Hearings Official decision and is silent regarding any interpretations of Lane Code 13.010, 13.020, 14.010, 14.050, 15.010, and 15.710 made by the Hearings Official in the decision.

ADOPTED this 6th day of February, 2018.



Jay Bozievich, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 2/1/18



LANE COUNTY OFFICE OF LEGAL COUNSEL

ORDER EXHIBIT "A"

FINDINGS IN SUPPORT OF THE ORDER

1. The property subject to this application, hereinafter referred to as the "subject property," can be identified as tax lots 201, 202, 205, 303, 300 (part) and 304, assessor's map 18-03-15. The subject property is owned by McDougal Brothers Investments and is zoned F-2 Impacted Forest Lands.
2. The subject properties first became subject to land division regulations on May 2, 1962. They were first zoned on August 25, 1966 as AGT.
3. Lane County's Revised Subdivision Ordinance, adopted April 2, 1962, controlled land divisions in Lane County until amended in July of 1970. The ordinance required the approval of a minor subdivision within an urbanizing area. Township 18, Range 3 West, Willamette Meridian, Section 15 lay within an urbanizing area. However, Section III.G.4.a of that ordinance provided that a division of land was not a "subdivision" if (1) no street was created; (2) the division resulted in lots that were 5 acres or larger in size; (3) the lots had a width of not less than 300 feet for the entire length of the lot; and (4) had frontage of not less than 300 feet on a street. The 1967 deed meets these standards. The language of Section III.G.4.a was replicated in the 1970 revision of the Lane County Subdivision Ordinance.
4. In 1978, Ponderosa Investment Co. & A.M Bartlat, received approval for the partition of tax lot 1201, assessor's map 18-03-10. (Partition M541-78) This partition did not encompass any of the Legal Lots associated with this application.
5. The findings of fact regarding the land transfer history of the six alleged legal lots have been incorporated in the Hearings Official's narrative justification of the decision.
6. On March 7, 2017, a request for a Director review of a Legal Lot Verification and Notice was submitted to the Land Management Division. The application was reviewed and accepted as complete on April 3, 2017. On August 18, 2017, the application was approved, finding that two legal lots exist. Notice of the determination was mailed to surrounding property owners. On August 30, 2017, timely appeals were submitted by Lauri Segel, on behalf of LandWatch Lane County, Richard Farmer, Janice Howard, and Kasey Westphal, and by Liam Sherlock, on behalf of Tim Stokes.
7. On October 5, 2017, the Lane County Hearings Official conducted a public hearing, which was continued to October 26, 2017, at the request of the Applicant. The record was held open until November 16, 2017. On December 13, 2017, the Lane County Hearings Official issued a decision reversing in part, and approving in part, the Planning Director's decision. Notice of the Hearings Official's decision was mailed to the applicant and all parties of record on December 13, 2017.
8. On December 26, 2017, Lauri Segel, represented by Andrew Mulkey, filed a timely appeal on behalf of LandWatch Lane County, Richard Farmer, Janice Howard, and Kasey Westphal, and requested that the Board of County Commissioners not conduct a hearing on the appeal and deem the Hearings Officer's decision the final decision of the County, pursuant to LC 14.515(3)(f)(ii).
9. On December 29, 2017, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1).

10. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - *The issue is of Countywide significance.*
 - *The issue will reoccur with frequency and there is a need for policy guidance.*
 - *The issue involves a unique environmental resource.*
 - *The Planning Director or Hearings Official recommends review.*
11. The Board finds that the issues raised in this appeal are not of countywide significance. This appeal involves a complex history of deed conveyances, unrecorded and recorded partitions, and the applicability of Lane County's Revised Subdivision Ordinances in effect at the time of certain conveyances. While legal lot verification applications are common, the fact pattern in this appeal does not present specific issues of Countywide significance. Additionally, the Hearings Official's decision presents reasonable interpretations of Lane Code Chapters 13, 14, 15, and 16.
12. The Board does not believe that the issue will reoccur with frequency. This appeal involves a complex history of deed conveyances, unrecorded and recorded partitions, and the applicability of Lane County's Revised Subdivision Ordinances in effect at the time of certain conveyances. While legal lot verification applications are common, applications with similar fact patterns and levels of complexity are rare. The Hearings Official's decision presents reasonable interpretations of Lane Code Chapters 13, 14, 15, and 16. In the event that a comparable proposal and fact pattern comes before the Land Management Division, the Hearings Official's decision provides sufficient guidance.
13. The Board finds that the subject property does not constitute a unique environmental resource. The issues raised in this appeal do not relate to, or involve, a unique environmental resource. The property does not contain any unique or notable environmental resources, nor does it contain any regulated water bodies, rivers, creeks, or wetlands.
14. The Planning Director does not recommend review of the appeal on the record for the reasons cited above.
15. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.
16. The Board has reviewed this matter at its meeting on January 30, 2017, finds that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3), declines further review, and elects not to hold an on the record hearing for the appeal.
17. The Board affirms and adopts the Lane County Hearings Official decision dated December 13, 2018, the letter affirming the decision dated December 29, 2017, as the County's final decision in this matter, and is silent regarding any the interpretations of Lane Code 13.010, 13.020, 14.010, 14.050, 15.010, and 15.710 made by the Hearings Official in the decision.

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF AN ADMINISTRATIVE APPROVAL OF THE VERIFICATION
AND NOTICE FOR SIX LEGAL LOTS**

Application Summary

On March 7, 2017, the Lane County Land Management Division received a request from McDougal Brothers Investments for a final legal lot verification and notice (PA 17-05220) for six legal lots identified as tax lots 201, 202, 205, 303, 300 (part) and 304, assessor's map 18-03-15. The request was accepted as complete by the Planning Director on April 3, 2017 and on August 18, 2017 the application was approved. A timely appeal was filed by LandWatch Lane County and Tim Stokes on August 30, 2017. Mr. Stokes subsequently withdrew his appeal leaving LandWatch Lane County as the only official appellant in this case.

Parties of Record

McDougal Bro. Investments	LandWatch Lane County	Kim O'Dea
Robert Emmons	Tim Stokes	Andrew Mulkey
William Sherlock	Richard Farmer	Wendy Tsien
Janice Howard	Janet Bertucci	Jane & Sig Ohlemann
Dan Stinson	Erin Cunning	Tom Collet
Brian Kelly	Jennifer Ketner	Raelynn Torres
Ke Westphal	Paisley Fidemiller	Rose Strange
Arlen Swearingen	Cindy Land	Brian Kelly
Brent Rowlett		

Application History

Hearing Dates: October 5, 2017 & October 26, 2017
(Record Held Open Until November 16, 2017)

Decision Date: December 13, 2017

Appeal Deadline

An appeal must be filed within 12 days of the issuance this decision and final order, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 13.020

Findings of Fact

1. The property subject to this application, hereinafter referred to as the “subject property,” can be identified as tax lots 201, 202, 205, 303, 300 (part) and 304, assessor's map 18-03-15. The subject property is owned by McDougal Brothers Investments and is zoned F-2 Impacted Forest Lands.
2. The subject properties first became subject to land division regulations on May 2, 1962. They were first zoned on August 25, 1966 as AGT.
3. Lane County’s Revised Subdivision Ordinance, adopted April 2, 1962, controlled land divisions in Lane County until amended in July of 1970. The ordinance required the approval of a minor subdivision within an urbanizing area. Township 18, Range 3 West, Willamette Meridian, Section 15 lay within an urbanizing area. However, Section III.G.4.a of that ordinance provided that a division of land was not a “subdivision” if (1) no street was created; (2) the division resulted in lots that were 5 acres or larger in size; (3) the lots had a width of not less than 300 feet for the entire length of the lot; and (4) had frontage of not less than 300 feet on a street. The 1967 deed meet these standards. The language of Section III.G.4.a was replicated in the 1970 revision of the Lane County Subdivision Ordinance.
4. In 1978, Ponderosa Investment Co. & A.M Bartlat, received approval for the partition of tax lot 1201, assessor’s map 18-03-10. (Partition M541-78) This partition did not encompass any of the Legal Lots associated with this application.
5. The findings of fact regarding the land transfer history of the six alleged legal lots have been incorporated in the narrative justification of the decision.

Decision

THE PLANNING DIRECTOR'S APPROVAL OF THE MAYER/HANWRIGHT REQUEST (PA 17-05220) FOR THE LEGAL LOT VERIFICATION AND NOTICE OF SIX LEGAL LOTS COMPRISED OF TAX LOTS 201, 202, 205, 303, 300 (PART), AND 304, ASSESSOR’S MAP 18-03-15 IS REVERSED, IN PART, AND AFFIRMED, IN PART. SPECIFICALLY, THE DIRECTOR’S VERIFICATION OF LEGAL LOTS 1 (with reconfiguration), 2, 3 AND 4 HAS BEEN AFFIRMED. THE DIRECTOR’S VERIFICATION OF LEGAL LOTS 5 AND 6 HAS BEEN REVERSED.

Justification for the Decision

In Lane County, a “legal lot” is defined as a lot or parcel that has been lawfully created.¹ It can be a lot or parcel created pursuant to ORS 92.010 to 92.190 or a unit of land that is created in compliance with applicable planning, zoning and land division requirements or created by deed or land sales contract if there were no applicable planning, zoning and

¹ Lane Code 16.090.

land division requirements. It can also be a unit of land that has received legal lot verification from the County and was noticed as a land use decision pursuant to Lane Code 13.020.² In the present case, the Applicant has requested that the Planning Director recognize six legal lots that are comprised of tax lots 201, 202, 205, 303, 300 (part) and 304, assessor's map 18-03-15. (See attached **Vicinity Map**.)

The Appellant appeals the Planning Director's verification of the legal lots and raises the following allegations of error in regard to that decision:

1. Proposed Legal Lot 1 (Tax Lot 201/209/304 tract portion) was not lawfully created.

The Appellant Landwatch Lane County makes several arguments that Legal Lot 1 was not lawfully created. First, it argues that it was unlawfully divided by deed in November of 1977. (Reel 876, Instrument No. 77726, Lane County Deeds and Records) Second, it argues that the current configuration of Legal Lot 1 is incorrect because it was illegally bisected by the donation of tax lot 209 to Lane County, creating tax lot 304 (Legal Lot 6). Tax lot 304 was subsequently deeded away in 1995. Third, the Appellant argues that tax lot 201 was subject to illegal deed conveyances in 1966 and 1967. Finally, the Appellant argues that minor partition M 541-78 had the effect of vacating underlying lot lines. (See attached **Figure 1** for a graphic display of the deeds and partitions that affected the legal lot status of the parcels alleged to be legal lots by the Applicant.)

Originally, Legal Lot 1 was a portion of Donation Land Claim (DLC) 43. DLC was then divided in 1948 in a transfer that created five parcels. Legal Lot 1 was encompassed within Parcel 2 of that transfer. (See warranty deed (Kirk to Gonyea) recorded on Reel 28, Instrument 17907, Lane County Deeds and Records, signed September 2, 1948.) Parcel 2 consisted of parcels that can now be identified as tax lots 201, 202, 204, 205, 207, 208, 209, 204 and 1400.

In 1965, Parcel 2 of the 1948 deed transfer was included within a portion of Parcel 2 of Minor Subdivision M-65-172. However, there is no evidence in the record that the partition was ever recorded and therefore there was no constructive notice to later property transfers or divisions.³ For this reason, I do not believe that this land use action eliminated or vacated the underlying legal lots per the *Weyerhaeuser* case⁴ as was originally suggested by the Appellant.

Subsequently, Parcel 2 of the 1948 deed transfer, hereinafter referred to as "the parent parcel," was reduced by the following actions:

² Lane Code 13.010.

³ Lane County did not require the recordation of minor subdivisions at this time.

⁴ *Weyerhaeuser Real Estate Development Co. v. Polk County*, 246 Or App 548 (2011).

- The portion of the parent parcel east of Gonyea Road was conveyed in 1967. (Reel 350, Instrument 87571, Lane County Deeds and Records). This property can now be identified as tax lot 1400. The Appellant has argued that this transfer required land division approval.

Lane County's Revised Subdivision Ordinance, adopted April 2, 1962, controlled land divisions in Lane County at this time. The ordinance required the approval of a minor subdivision within an urbanizing area. Township 18, Range 3 West, Willamette Meridian, Section 15 lay within an urbanizing area. However, Section III.G.4.a of that ordinance provided that a division of land was not a "subdivision" if (1) no street was created; (2) the division resulted in lots that were 5 acres or larger in size; (3) the lots had a width of not less than 300 feet for the entire length of the lot; (4) the lots had frontage of not less than 300 feet on a street; and (5) the abutting street had a right of way width of not less than 50 feet and not less than such width as may be called for in the Master Road Plan.

The 1967 instrument transferred one parcel of land. 30th Avenue, a four-lane road accepted by the County in 1961⁵ that has a right of way width of at least 220 feet, abutted this parcel for more than 300 feet. The land transfer did not create a road, was larger than 5 acres in size, had a width in excess of 300 feet. While the Applicant has not referenced the requirements of the then-existing Master Road Plan, it is my understanding that the County has integrated the Master Road Plan into the Lane County Transportation System Plan and Chapter 15 of the Lane Code. 30th Avenue is classified as an Urban Minor Arterial⁶ and Diagram 3 of Lane Code 15.710 indicates that the minimum right of way width for a four-lane Urban Arterial is 104 feet. Therefore, no minor subdivision approval was required from Lane County for this transfer.

- In 1972, what are now tax lots 202, 204, 205, 206 and 208 were conveyed by deed (Reel 569, Instrument 82423, Lane County Deeds and Records). This conveyance included a portion of the parent parcel and the property north of the parent parcel up to 30th Avenue. The result was the creation of Legal Lot 2, minus the Warren Park Subdivision and what is now tax lots 201, 207, 209 and 304.

Because the 1972 transfer further divided the parent parcel the Appellant argues that a minor subdivision was required and therefore the transfer was not valid. Again, Lane County's Revised Subdivision Ordinance, adopted April 2, 1962, controlled land divisions in Lane County at this time and the transfer had to meet the requirements of Section III.G.4.a of

⁵ See Lane County Resolution/Order 2406, January 18, 1961, December 14, 1960, December 15, 1960 and Resolution/Order 2463, June 26, 1963.

⁶ Appendix B (County Roads Inventory) of the Lane County Transportation System Plan (2004)

that ordinance to avoid requirements regarding minor subdivision approval.

The 1972 deed transfer created one lot but no new street. The lot was larger than 5 acres in size, it had a width in excess of 300 feet (measured north to south), and it had more than 300 feet of frontage on Gonyea Road. The Applicant has submitted evidence regarding the establishment and acceptance of Gonyea Road⁷ by Lane County and associated surveys indicate that it has a right of way width of 100'. Again, there are no references to the requirements of the then-existing Master Road Plan but Chapter 15 of the Lane Code classifies Gonyea Road as a Rural Major Collector⁸. Diagrams 8 and 9 of Lane Code 15.710 indicate that the minimum right of way width for a Rural Collector is 80 feet. Therefore, no minor subdivision approval was required from Lane County for this transfer.

- In 1974, Minor Partition M 60-74 created tax lot 207, which reduced the parent parcel further.
- In late December of 1978, Lane County approved minor partition M541-78. Parcel 2 of this land division incorporated the northern portion of Legal Lot 1 and a portion of Legal Lot 2. It was a re-division of Parcel 2 of M511-77. The north boundary of Parcel 2 of M541-78 is approximately parallel with the intersection of 40th Street on the west. The southern boundary of Parcel 1 of M541-78 was parallel with 40th Avenue, which is also the parallel with the northern boundary of Legal Lot 4. Therefore, the partition had the effect of isolating Legal Lot 4 from surrounding properties and it represents an isolated portion of what once was DC 43 in this area.
- Finally, the Applicant argues that the transfer of Tax lot 209 to Lane County for road purposes created an intervening ownership that segregated tax lot 304 (Legal Lot 6), from the parent parcel. Tax lot 209 was created by deed in June of 1976 (Recorded November 18, 1977 on Reel 873, Instrument 7773905, Lane County Deeds and Records.) Case law suggests⁹ that the law in 1977 did not prohibit the creation of a parcel through the deeding of a road to a governmental agency and the Oregon Court of Appeals said the current statute was not retroactive.

However, while the record supports a conclusion that tax lot 209 is “owned” by Lane County, I do not believe that is the same as “accepting” that property for road purposes. Thus, the County’s process for accepting

⁷ Lane County Board of Commissioner Orders 70-12-2-3, 70-10-7-21, 70-9-23-19, 70-9-23-18, etc.

⁸ Appendix B (County Roads Inventory) of the Lane County Transportation System Plan (2004)

⁹ *Lovinger v. Lane County*, 206 Or App 557 (2006).

and establishing a road is through the process of a Board of Commissioner order.¹⁰ ORS 92.014(10), as amended by Section 4, Chapter 696, Oregon Laws 1973, states:

“No person shall create a street or road for the purpose of partitioning or area or tract of land without the approval of the city or county having jurisdiction over the area or tract of land to be partitioned.”

There is no evidence in the record of Lane County ever formally accepting tax lot 209 for road purposes. As demonstrated by the Applicant in regard to 30th Avenue and Gonyea Road, Lane County had a formal process for accepting roads. Tax lot 208 has not been developed as a road, was never accepted by Lane County for road purposes, and it is not mentioned in the Lane County Road Inventory.

I conclude that the Planning Director was incorrect in verifying Legal Lot 1 as configured by the Applicant but Legal Lots 1 and 6, and tax lot 209, can be verified as a single legal lot.

2. *Proposed Legal Lot 2 (Tax Lot 202) was unlawfully created.*

The Appellant Landwatch argues that Tax Lot 202 is not a legal lot because the 1972 deed transfer was illegal since it operated to divide Parcel 2 of the 1948 deed transfer.

Originally, this parcel was a portion of DLC 43. In 1972 tax lots 202, 204, 205, 206 and 208 were conveyed by deed (Reel 569, Instrument 82423, Lane County Deeds and Records). As explained above, this transfer was excepted from the definition of “subdivision” that was operative at the time. This conveyance included a portion of the parent parcel and the property north of the parent parcel up to 30th Avenue. This transfer included what are now tax lots 202, 204, 205, 206 and 208.

In 1972, Warren Park Partition was platted (Book 62, Page 11, Lane County Deeds and Records). This partition created tax lots 204, 205, 206 and 208. Legal Lot 2 is the result of the Warren Park Subdivision reducing the 1972 deed transfer to its present configuration. The result was the creation of Legal Lot 2 (minus the Warren Park Subdivision) and Legal Lot 1 (the remaining portion of the parent parcel.)

I conclude that the Planning Director was correct in verifying Legal Lot 2 as being lawfully created.

¹⁰ See the Applicant’s submissions regarding Lane County’s formal acceptance of 30th Avenue and Gonyea Road.

3. *Proposed Legal Lot 3 (Tax Lot 205) was not lawfully created.*

The Appellant Landwatch argues that a 1977 deed operated as an illegal partition concerning Lots 2 and 3 of the Warren Subdivision. (See **Figure 2** for a graphic display of this transaction.)

John and Frances Warren created the Minor Subdivision of Warren Park in 1972. This land division, which was recorded, created three lots. In August of 1977, the Warrens sold a portion of Lot 2 of Warren Park to the Oregon Research Institute, Inc., essentially creating tax lot 205. The deed (Reel 864, Instrument 58421, Lane County Deeds and Records) excepted out a majority of Lot 2, the remainder of which effectively merged with Lot 3 which was still owned by the Warrens. (Lot 1 had been previously sold by the Warrens.) No new lot was created. There were three lots in the subdivision prior to the 1977 transfer and three lots afterwards.

At the time of the 1977 sale, there were no regulations at the State or Lane County level requiring replat approval to change the internal structure of a platted subdivision or partition nor were there any regulations defining a property line adjustment. The Oregon Revised Statutes were changed in 1985 to first define a “replat”¹¹ and to exempt property line adjustments from the definition of “partition land.”¹²

Lane County essentially viewed the 1977 transaction as a property line adjustment as the Warrens owned both Lot 2 and Lot 3 at the time of the transaction and no new lot was created. This policy of recognizing that a deed transferring land to an adjoining property owner was an effective vehicle for adjusting property lines was one of the central legal issues upheld by LUBA in *Landwatch Lane County v. Lane County*, ___ Or LUBA ___ (LUBA No. 2016-124, 6/29/2017)

The Appellant Landwatch also argues that Legal Lot 3’s (tax lot 205) legal status cannot be verified because under Lane Code 14.050 McDougal Brothers Investments does not have a legal interest in that property as the property is owned by Wiley Mt., Inc. Lane Code 14.015 defines “Legal Interest” as follows:

“An interest in property not confined solely to ownership or possessory interest, but including all interests in property which, in the discretion of the Director, are not inconsistent with the intent and purposes of this chapter. Such interests may include, but are not limited to, the following: owner, contract purchaser, lessee,

¹¹ Section 5, Chapter 369, Oregon Laws 1985.

¹² Section 1, Chapter 717, Oregon Laws 1985.

renter, easement, resolution or ordinance of necessity to acquire or condemn adopted by a public or private condemnor.”

Landwatch then argues that the application, at least in regard to Legal Lot 3, is inconsistent with Lane Code 14.050(1)(a), which requires that an application be signed by a person with a legal interest in the property.

The Applicant points out, however, that Norm McDougal is the president and secretary of Wiley Mt., Inc. and that McDougal Brothers Investments or its registrants have an ownership interest in Legal Lot 3. The Lane Code’s definition of “legal interest” states that the term applies to “all interests in property” and leaves it up to the Director’s discretion to determine how that term is to be applied. The only caveat is that the determination of the Director not be inconsistent with the intent and purposes of Lane Code Chapter 14. The “purpose” of Chapter 14, as stated in Lane Code 14.010, provides no guidance on this issue.

The term “legal interest” is a broader term than “ownership interest.” As president of Wiley Mt., Inc., Norm McDougal obviously has a proprietary and fiduciary interest in land use actions that directly affect Legal Lot 3. The Director has determined that this relationship connotes a sufficient legal interest in the property to support a land use application. I fail to see how this determination is inconsistent with the intent and purposes of Lane Code 14.010 and the Appellant has not pointed to evidence to support such a conclusion.

I conclude that the Planning Director was correct in verifying Legal Lot 3 as being lawfully created.

4. *Proposed Legal Lot 4 (Tax Lot 201) was not lawfully created*

The Applicant has argued that Legal Lot 4 (Tax Lot 201) was created as part of Parcel 1 of Partition M541-78. Legal Lot was not a part of Partition M541-78 but its legal lot status was a function of this partition. The northern boundary of Legal Lot 1 was the northwest corner of the 1948 deed (Deed 17907), which is the southern boundary of Legal Lot 4. The western boundary of the 1972 deed (Deed 82453) serves as the eastern boundary of Legal Lot 4. The western boundary of Parcel 1 of Partition M541-78 is the eastern boundary of Legal Lot 4 and the southern boundary of Parcel 2 of Partition M541-78 is the northern boundary of Legal Lot 4. In essence, the above-described actions carved Legal Lot 4 out of the portion of DC 43 in this area.

The Appellant has argued that proposed Legal Lot 4 was a remainder of Partition M541-78 and must be considered as a parcel. The Appellant then argues that the unnumbered “parcel” vacated the underlying boundary lines per *Weyerhaeuser Real Estate Development Co. v. Polk County*, 63 Or LUBA 393 (2011). However, unlike Parcels 1 and 2 of Partition M541-78, this unnumbered parcel was not

platted and therefore could not serve as an official vacation of underlying lot or parcel boundaries. I conclude that the Planning Director was correct in verifying Legal Lot 4 as being lawfully created.

5. *Proposed Legal Lot 5 (Tax Lot 303) was not lawfully created.*

The Appellant argues that Legal Lot 5 was unlawfully partitioned by a warranty deed from Atwood, Brownhill and Gonyea, as trustees, to Northwest Christian College on November 22, 1977 (Recorded December 6, 1977 on Reel 876, Instrument 77726, Lane County Deeds and Records.) This deed transferred what is now tax lots 207, 209, 304, and a portion of tax lot 303¹³ (Government Lot 3) as well as Government Lots 1 and 2.

The Appellant also faults the Planning Director for not determining how Government Lot 3 was conveyed, pointing out that government lots are not created as discrete units of land but rather are creatures of government surveys.

I believe that the Appellant is correct in concluding that the December 1977 deed did not conform to Lane County land division regulations at that time. The property lay within an urbanizing area and therefore had to meet the standards of Section III.G.4.a of Lane County's 1962 Subdivision Ordinance, as it was amended in July of 1970. The property was larger than 5 acres, it had a width in excess of 300 feet (measured north to south), and it had more than 300 feet of frontage on tax lot 209, which was dedicated as a road. Tax lot 209 is 60 feet wide and could best be described as a rural access road¹⁴ if it was developed and listed in the County Roads Inventory, Appendix B of the Lane County Transportation System Plan (2004).¹⁵ I believe that the November 22, 1977 deed transfer was not exempt from the County's subdivision regulations, as defined by Lane County land division standards at the time, because it did not have frontage on a road. That is, there is no evidence that Lane County accepted tax lot 209 for road purposes and it has never been developed as a road.

The Appellant is correct in its assertion that a government lot is not, by its mere existence, an indication of legal lot status. Historically, the Bureau of Land Management (BLM) cadastral surveyors were charged with the subdivision of Township Sections into quarter sections and quarter-quarter sections. Where topography or other factors did not allow the division into an equal division by quarters, or aliquot parts, the survey created government lots. The surveyor monumented the survey and returned an official record in the form of detailed field notes and a plat. Thus, a government lot is a survey artifice like township or section boundaries and they may overlay land that has not been granted by the

¹³ This deed split the northeast panhandle of Government Lot 3 along a power line easement right-of-way.

¹⁴ Lane Code 15.010(18)(e) defines "Local Road or Street" as "[A] road intended solely for the purpose of access to adjacent properties."

¹⁵ Diagram 12 of Lane Code 15.710 requires rural access roads to have a right of way width of 50 feet.

state or federal government to a private entity. If not already under private ownership, the title to an aliquot part or government lot, or portion thereof, must be conveyed by United States patent.

The record is silent as to how and when Government Lot 3 came into private ownership, especially that portion of the lot that was not owned and transferred by the trust represented by Atwood, Brownhill and Gonyea. The fact that its plat was recorded in 1861 is not an indication that it is more than a survey artifice. The Applicant is required to show how all of this property was transferred from the government to a private entity and demonstrate that it was created in accordance with the land division standards applicable at the time it passed into private ownership and that subsequent transfers, if any, also met applicable land division regulations.

I conclude that the Planning Director was incorrect in verifying Legal Lot 5 as being lawfully created.

6. *Proposed Legal Lot 6 (Tax Lot 304) was not lawfully created*

The Applicant has argued that Legal Lot 6 is the remainder of the 1948 deed (Kirk to Gonyea) after the following:

- The conveyance of tax lot 1400 in 1967 (Property east of Gonyea Rd.).
- The creation of tax lot 207 by Partition M 60-74 (1974).
- The segregation from Legal Lot 1 in 1977 by the dedication of tax lot 209 to Lane County for road purposes.

As noted above, while there is evidence in the record that Lane County owns tax lot 209¹⁶, that does not constitute acceptance of that property for road purposes. Thus, I must conclude that the operation of ORS 92.014(10), as it existed in 1977, required that the County formally accept tax lot 209 for road purposes in order to divide the property that constitutes Legal Lot 1 and Legal Lot 6. There is no evidence in the record of the County's acceptance of this property for road purposes.

I must conclude that the transfer of tax lot 209 to Lane County did not operate to bifurcate Legal Lot 6 from Legal 1 and therefore the property that comprises proposed Legal Lot 6 is not a lawfully created, standalone lot.

Conclusion

Based upon the land use and deed history of the property encompassed by the application, I conclude that the Applicant has demonstrated the lawful creation of four

¹⁶ See Lane County Assessor's "Real Property Tax Lot Record" for Tax Lot 209.

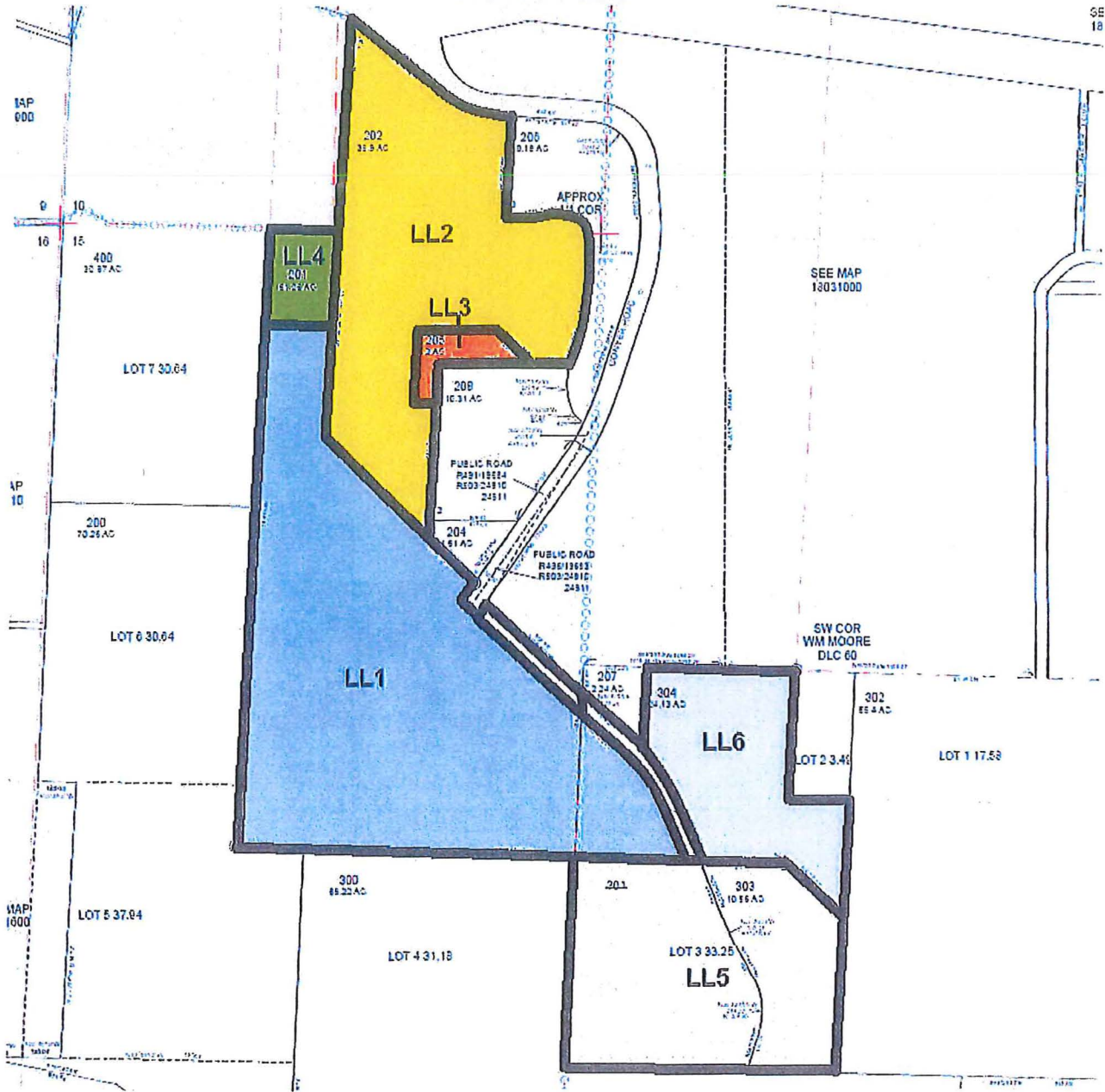
legal lots: Legal Lot 1, as reconfigured to include proposed Legal Lot 6 and tax lot 209;
and Legal Lots 2 through 4. Attached **Figure 3** depicts this determination.

Respectfully Submitted,


Gary Darnielle
Lane County Hearings Official

VICINITY MAP

SE 18

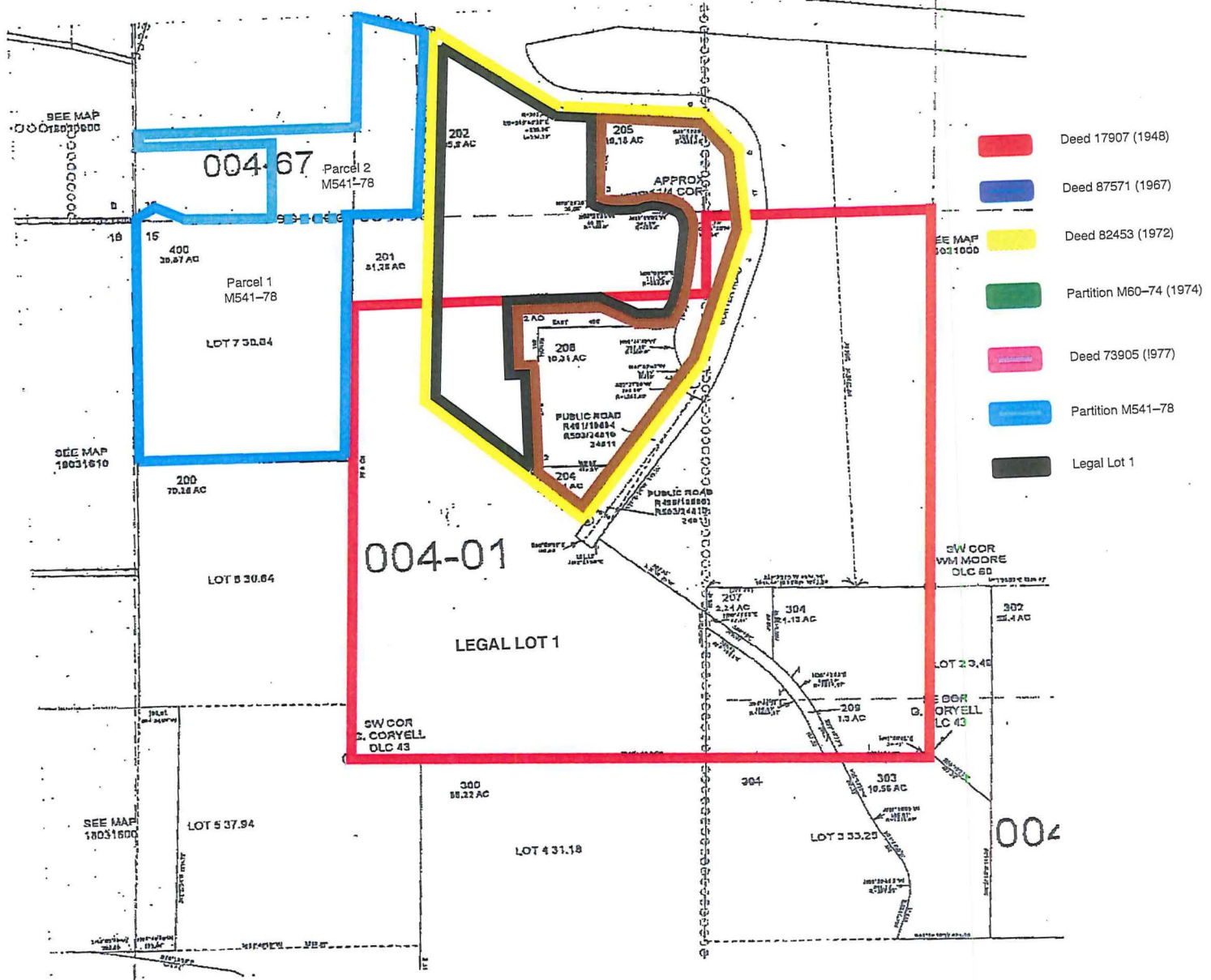


Map 18-03-15

Note: This is a graphical representation to aid in locating the approximate location of the subject property. It is not intended to depict the actual location of the boundary nor is it the result of a survey. Information shown is based upon information provided by the applicant.

FIGURE 1

1" = 400'



- Deed 17907 (1948)
- Deed 87571 (1967)
- Deed 82453 (1972)
- Partition M60-74 (1974)
- Deed 73905 (1977)
- Partition M541-78
- Legal Lot 1

FIGURE 2

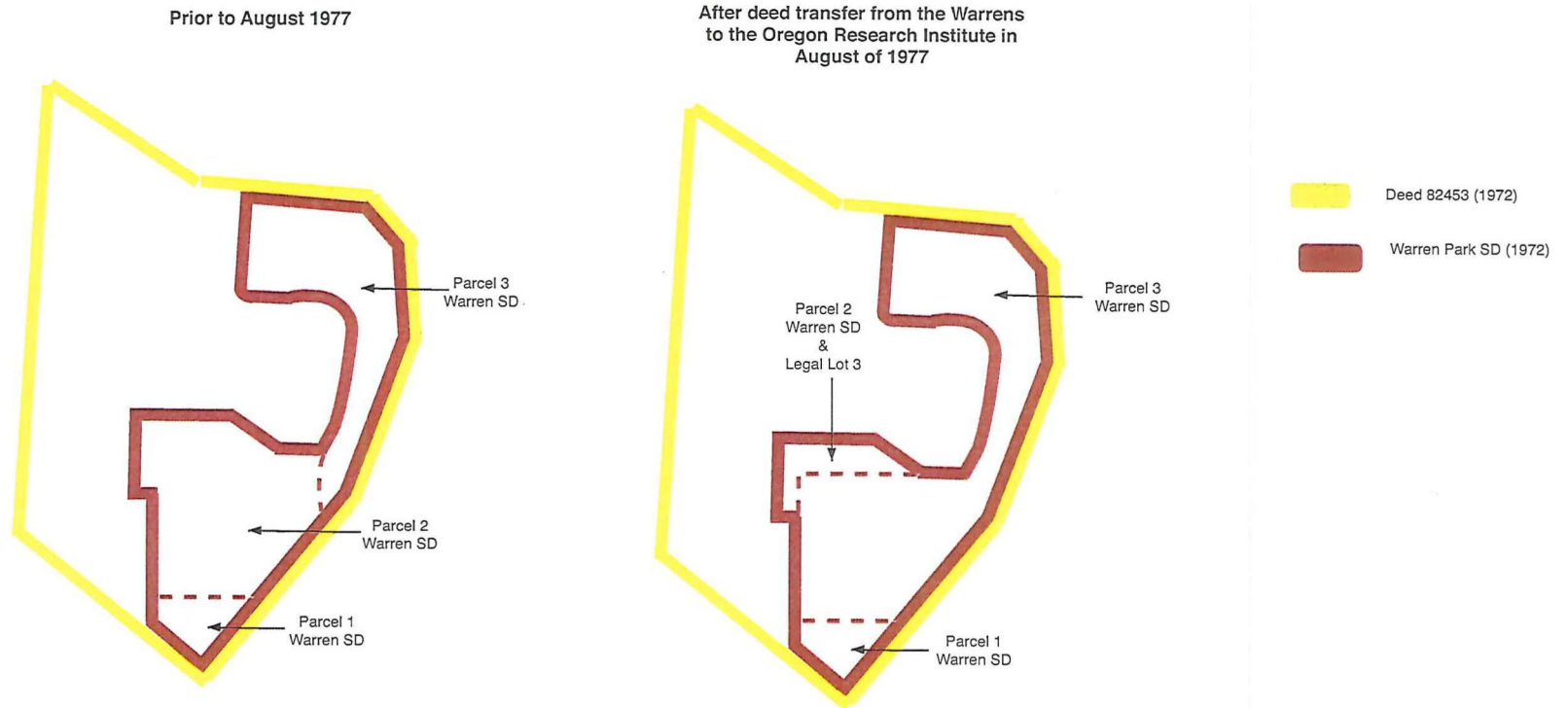
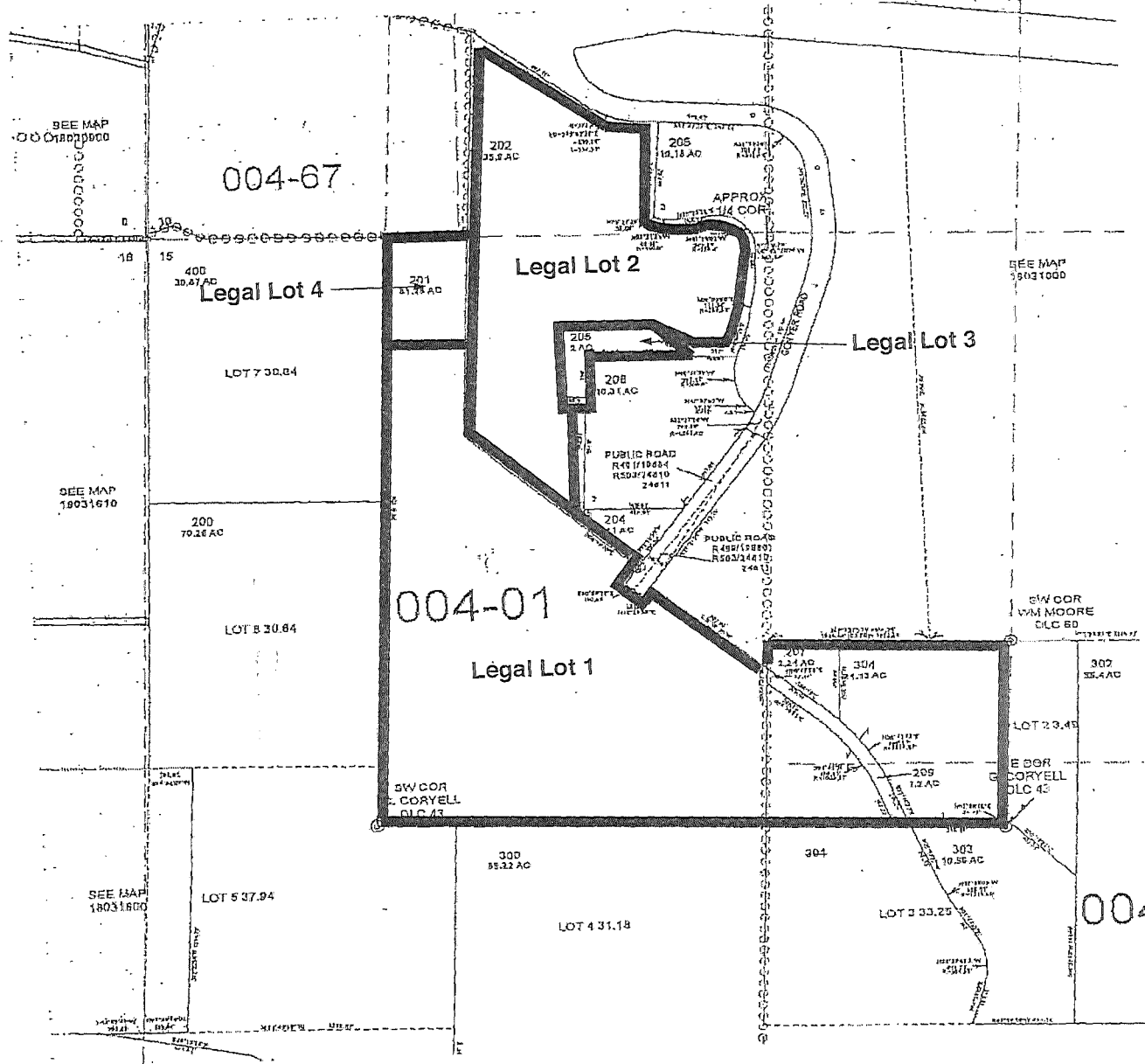


FIGURE 3

1" = 400'





December 29, 2017

Ms. Lydia Kaye, Manager
Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: Appeal of Hearings Official decision affirming, in part, and reversing, in part, the Planning Director's decision regarding the McDougal Brothers Investments request (PA 17-05220) for the verification and notice of six legal lots.

Dear Ms. Kaye:

On December 13, 2017, I affirmed, in part, and reversed, in part, the Planning Director's decision regarding the McDougal Brothers Investments request (PA 17-05220) for the verification and notice of six legal lots. On December 26, 2017 LandWatch Lane County appealed my decision. Upon a review of this appeal, I find that the allegations of error have been adequately addressed in that decision and that a reconsideration is not warranted.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my December 13, 2017 decision without further consideration. Please advise interested parties of this decision.

Sincerely,


Gary L. Darnielle
Lane County Hearings Official

cc: Rafael Sebba (file)