

W. 15.a.



AGENDA COVER MEMO

DATE: July 12, 2006

TO: BOARD OF COUNTY COMMISSIONERS

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

RE: 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 (PA 06-5154, Nichols)

I. MOTION

Move to approve the Measure 37 Claim and adopt the order attached to this memo.

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 regulations to the subject property to allow Daryl Nichols to use the property as allowed at the time he acquired the property?

III. DISCUSSION

A. Background

Applicant: Daryl Nichols

Current Owner: Daryl and Rosemary Nichols

Agent: Norm Waterbury

Map and Tax lot: 18-04-06 #101; 87730 Greenhill Road

Acreage: approximately 118 acres

Current Zoning: E40 (Exclusive Farm Use) and F2 (Impacted Forest)

Date Property Acquired: May 6, 1981.

Date claim submitted: January 27, 2006. The 180-day deadline is July 26, 2006.

Land Use Regulations in Effect at Date of Acquisition: AGT (Agriculture, Grazing and Timber)

Restrictive County land use regulation: Minimum parcel size and restrictions on new dwellings in the E40 (Exclusive Farm Use) zone and F2 (Impacted Forest) zone.

B. Specific Relief Sought:

The applicant has requested compensation, or a waiver of the minimum lot size of the E40 and F2 zone regulations that prohibit the division of the property into lots as small as five acres and construction of a dwelling on each lot.

C. Lane Code Submittal Requirements

The applicant has submitted information addressing all of the Lane Code submittal requirements, including the processing fee, a title report, an appraisal and a land sale contract.

The entire submittal is contained in a notebook labeled "Nichols Measure 37 Claim", available in the County Commissioners Office. This cover memo prepared for the Board hearing does not contain the entire submittal. The relevant portions of the submittal included with this memo are identified in the "Attachments " section.

D. Analysis

The property is undeveloped and contains approximately 118 acres. The property is zoned E40 (Exclusive Farm Use) which requires a minimum of forty acres for new lots, and F2 (Impacted Forest) which requires a minimum of eighty acres for new lots. Both zones require a special use permit for a new dwelling. The current owner wishes to subdivide the property into lots as small as five acres and place a dwelling on each lot.

The property was zoned AGT (Agriculture, Grazing and Timber) on May 6, 1981, when Daryl and Rosemary Nichols acquired an interest. On that date, the minimum lot size was either five acres or twenty acres, depending on soil type.

All references to Lane Code Chapter 10 are to the version applicable in 1981.

LC 10.110-42(2)(a) and (b) states:

"The minimum area for the division of land for any property zoned AGT prior to May 15, 1971, shall be based upon the Land Capability Classification System of the Soil Conservation Service, US Department of Agriculture.

- (a) Twenty acres for management units of Class I, IIs, IIw, IIe, IIIe, IIIs, IIIw and IVw.
- (b) Five acres for all other management units."

LC 10.110-42(2)(d) states:

"Where any proposed lot has management units described in both LC 10.110-42(2)(a) and (b) above, the subsection to be applied shall be the one which includes more than 50 percent of the total area of the proposed lot."

Table 1 lists the soil types and the amount of each type on the parcel. The soil types were obtained from the Land Capability Classification System of the Soil Conservation Service, US Department of Agriculture. The percentage of each soil type contained on the parcel was obtained from the regional database (RLID).

Table 1

Soil type	% on parcel	Acres on parcel	Minimum parcel size
43E	37	40	5
52D	6	7	5
11E	1	5	5
<i>total</i>	<i>44%</i>	<i>52</i>	
11D	17	20	20
41C	17	20	20
85	14	17	20
52B	8	9	20
<i>total</i>	<i>56%</i>	<i>66</i>	

According to subsection 2(d), each proposed five-acre lot must contain at least 50% of a soil type that requires a five-acre minimum lot size. It does not appear the applicant has performed that analysis for this Measure 37 claim or for the proposed lot configuration. Based on the soil types, it appears some five-acre lots could be created. If the Board determines this is a valid claim, the land owners will be required to demonstrate compliance with this lot size criteria for any division of this property.

To have a valid claim against Lane County under Measure 37 and LC 2.700 through 2.770, the applicant must prove:

1. Lane County has enacted or enforced a restrictive land use regulation since the owner acquired the property, and
2. The restrictive land use regulation has the effect of reducing the fair market value of the property, and
3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

Restrictive Regulations

As evidenced by the title report, the current owners are Daryl and Rosemary Nichols. They acquired an interest in the property on May 6, 1981, as evidenced by an unrecorded Memorandum of Contract. On that date, the property was zoned AGT (Agriculture, Grazing, Timber Raising) and the minimum lot size was either five acres or twenty acres, depending on the soil type of the proposed lot.

Approximately 52 acres (44% of the property) contains soil types that require a minimum lot size of five acres. Approximately 66 acres (56% of the property) contains soil types that require a minimum lot size of twenty acres. Each proposed five-acre lot must contain at least 50% of a soil type that requires a five-acre minimum lot size. It does not appear the applicant has performed that analysis for this Measure 37 claim or for the proposed lot configuration. If the Board determines this is a valid claim, the land owners will be required to demonstrate compliance with this lot size criteria for any division of this property.

Currently, the property is zoned E40 (Exclusive Farm Use) which requires a minimum of forty acres for new lots, and F2 (Impacted Forest) which requires a minimum of eighty acres for new lots. Both zones require a special use permit for a new dwelling. Because of these limitations, the current owners are prevented from developing the property as might have been allowed in 1981.

Reduction in Fair Market Value

The applicant has submitted an appraisal by a certified real estate appraiser which alleges a reduction in value is \$3,700,000. According to the Memorandum of Contract, the Nichols purchased the property for \$540,000 in 1981. The appraisal states the current fair market value of the 118 acre property with the existing dwelling is \$500,000. No evidence has been submitted that indicates this apparent loss of value is the result of a land use regulation.

The Board will need to determine if this evidence demonstrates a reduction in fair market value from enforcement of a restrictive land use regulation.

Exempt Regulations

The limitation on new dwellings and the minimum parcel size of the E40 and F2 zones do not appear to be exempt regulations described in Measure 37 or LC 2.710.

E. Conclusion/County Administrator Recommendation

It appears this is a valid claim if the Board determines the submitted evidence demonstrates a reduction in fair market value resulting from enforcement of a restrictive land use regulation.

IV. ALTERNATIVES/OPTIONS

The Board has these options:

1. Determine the application appears valid and adopt the order attached to this report.
2. Require more information regarding the reduction in value.
3. Conclude the application is not a valid claim and direct the issuance of a final written decision by the County Administrator denying the Claim.

V. RECOMMENDATION

If the Board determines the submitted evidence demonstrates a reduction in fair market value from enforcement of a restrictive land use regulation, the County Administrator recommends alternative #1.

VI. ATTACHMENTS

Only the relevant portions of the submittal are attached to this memo.

- Order to approve the Measure 37 claim of Daryl and Rosemary Nichols.
- Vicinity map.
- Soils map.
- Written claim submitted January 27, 2006.
- Appraisal dated January 20, 2006.
- LC 10.110. AGT zone from 1981.

**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 (Daryl and Rosemary Nichols/
) PA06-5154).

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

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

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by Norm Waterbury on behalf of Daryl and Rosemary Nichols (PA06-5154), the owners of real property described in the records of the Lane County Assessor as map 18-04-06, tax lot 101, consisting of approximately 118 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 County Administrator has determined under LC 2.740(4) that modification, removal or not applying the restrictive land use regulation is necessary to avoid owners entitlement to just compensation under Ballot Measure 37 and made that recommendation to the Board; and

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

WHEREAS, on July 12, 2006, the Board conducted a public hearing on the Measure 37 claim (PA06-5154) of Daryl and Rosemary Nichols and has now determined that the restrictive E40 (Exclusive Farm Use) zone and F2 (Impacted Forest) zone limitations dwellings and land divisions contained in LC 16.211 and LC16.212 were enforced and made applicable to prevent Daryl and Rosemary Nichols from developing the property as might have been allowed at the time it was acquired on May 6, 1981, and that the public benefit from application of the current

E40 and F2 restrictions on dwellings and land divisions to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Daryl and Rosemary Nichols requests either \$3,700,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would prevent the division of the land into lots as small as five acres and placement of a single family dwelling on each lot, uses that could have otherwise been allowed at the time they acquired the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E40 and F2 zones 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 except as explicitly revised here to reflect Board deliberation and action to allow Daryl and Rosemary Nichols to make application for development of the subject property in a manner similar to what they could have been able to do under the regulations in effect when they acquired the property; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Daryl and Rosemary Nichols made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that they acquired the property before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment, the request of Daryl and Rosemary Nichols shall be granted and the restrictive provisions of LC 16.211 and LC 16.212 that prevent the creation of lots as small as five acres and placement of a single family dwelling in each lot in the E40 (Exclusive Farm Use) and F2 (Impacted Forest) Zones shall not apply to Daryl and Rosemary Nichols, so that they can make application for approval to develop the property described in the records of the Lane County Assessor as map 18-04-06, tax lot 101, in a manner consistent with the land use regulations in effect when they acquired the property on May 6, 1981.

IT IS HEREBY FURTHER ORDERED that Daryl and Rosemary Nichols still need to make application and receive approval for placement of a dwelling under the other land use regulations applicable to placing a dwelling that were not specifically identified or established by Daryl and Rosemary Nichols as restricting the placement of a dwelling, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of a new dwelling to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that have the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal to preclude entitlement to just compensation under Measure 37. 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 this action making certain Lane Code provisions inapplicable to use of the property by Daryl and Rosemary Nichols does not constitute a waiver or modification of state land use regulations and does not authorize immediate construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the applicants should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: <http://www.oregon.gov/DAS/Risk/M37.shtml>) and have the State of Oregon evaluate a Measure 37 claim and provide evidence of final state action before seeking county land use approval.

IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. This order shall be effective and in effect as described in LC 2.770 and Ballot Measure 37 to the extent permitted by law. This order does not resolve several questions about the effect and application of Measure 37, including the question of whether the right of applicants to divide or build dwellings can be transferred to another owners. If the ruling of the Marion County Circuit Court in *MacPherson v. Dept. of Administrative Services*, (Marion County Circ. Ct. Case No. 00C15769, October 14, 2005) or any other court decision involving Ballot Measure 37 becomes final and that decision or any subsequent court decision has application to Lane County in a manner that affects the authority of this Board to grant relief under Ballot Measure 37 and LC 2.700 through 2.770 then the validity and effectiveness of this Order shall be governed by LC 2.770 and the ruling of the court.

DATED this _____ day of _____, 2006.

Bill Dwyer, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 7-5-2006 Lane County


OFFICE OF LEGAL COUNSEL

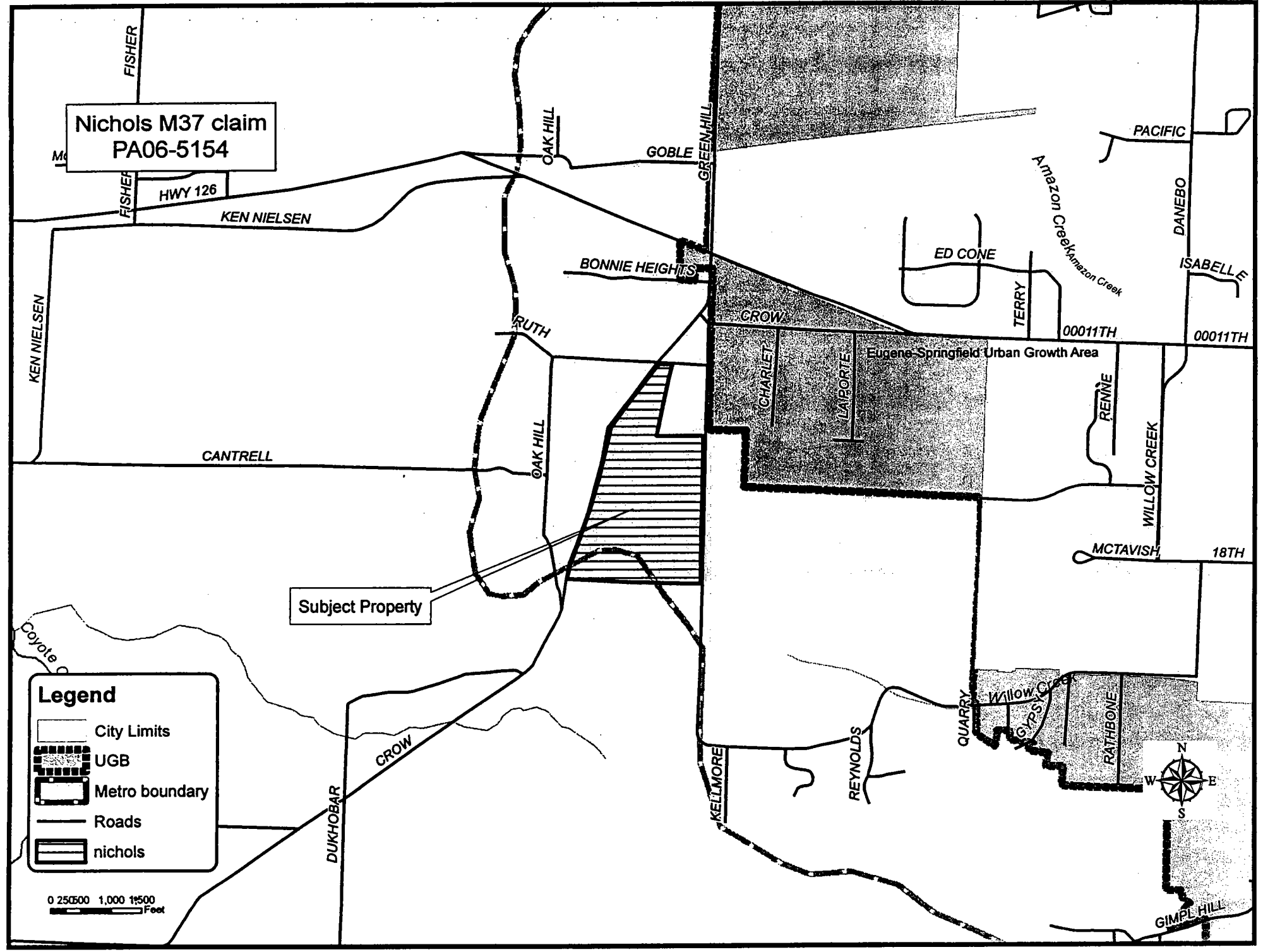
Nichols M37 claim
PA06-5154

Subject Property

Legend

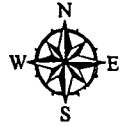
- City Limits
- UGB
- Metro boundary
- Roads
- nichols

0 250 500 1,000 1,500
Feet



52D

Nichols M37 claim
PA06-5154
Soils Map



85
20 acres

52B
20 acres

41C
20 acres

11D
20 acres

41C

52B
20 acres

52D
5 acres

43E
5 acres

52D
5 acres

41C

11E
5 acres



PA065154

Measure 37 Claim Number: M37-

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

Daryl Nichols
Applicant Name (Please Print) Mailing Address Eugene OR 97402 Phone

Norm Waterbury
Agent Name (Please Print) Mailing Address Eugene OR 97402 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.

Daryl Nichols
Property Owner Name (Please Print) Mailing Address Eugene OR 97402 Phone

Rosemary Nichols
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 18-04-06-00101

Street Address 87730 Greenhill Rd

Legal Description Attached X Exhibit

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).

Ordinance 856 See Exhibit A Page 3 of application

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.

See exhibit C

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.

Exhibit 1 A Metro Plan & Pgs 1, 3, 4 and 5
of application

7. Leases, Covenants, Conditions and Restrictions

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

None.

8. Identification of Relief Sought

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

See page 5 of application.

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).

<i>Rosemary Nichol</i>	<i>9/15/05</i>	
Signature	Date	
<i>Dary Nichol</i>	<i>9/15/05</i>	
Signature	Date	
<i>Norma Wabuter</i>	<i>9-15-05</i>	
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.

Measure 37 Application

Applicant: Daryl & Rosemary Nichols

Property Owner: Daryl & Rosemary Nichols

Property Location: 87730 Greenhill Rd.
Eugene, OR 97402

Assessors Map: Map 18-04-06-Tax Lot 101

Current Zoning: EFU and F-2

Agent: Norman Waterbury
28788 Gimpl Hill Rd.
Eugene, OR 97402
Phone: 485-8081 cell 510-3501

Measure 37 Application Index (Nichols)

Application Form

Property owner identification, (Deed), (Preliminary Title Report)

Legal Description (See Page 1A of Application)

Land use regulations (See Exhibit 1-A Metro Plan)

Appraisal (see Exhibit 5)

Leases, Covenants, Conditions and Restrictions (Pg. 2 of App.)

Relief Sought (See Page 5 of Application)

PROPERTY IDENTIFICATION

The subject property is 117.68 acres of rural timber and grazing land located West of Eugene approximately one mile South of Route F along Crow Road. It is legally described as follows:

Beginning 10 chains South of the 1/4 section corner on the line between Sections 31 and 32, Township 17 South, Range 4 West of the Willamette Meridian, run thence South along said line and between Sections 5 and 6, Township 18 South, Range 4 West of the Willamette Meridian to a point 25.515 chains South of the corner to said four sections, West 17.98 chains, North 55.63 chains, East 17.98 chains to the beginning.

ALSO: Beginning at a point in the center line of the County Road No. 988 which point is 475.6 feet South of a point 10 chains South and 17.98 chains West of the quarter section corner between Sections 31 and 32, of Township 17 South, Range 4 West of the Willamette Meridian and running thence South 3196 feet to the Southeast corner of a tract of land conveyed by deed given by Katura Fitzgerald to Wm. H. and Lueve M. Lueck, recorded in Volume 181, Page 156 of Lane County Deed Records, thence West 1095 feet to the center of the county road, according to the survey thereof, thence North 7° 47' West 248.2 feet, thence on a 6° curve to the left through a central angle of 11° 34' a distance of 192.4 feet to the end of the curve; thence North 19° 21' East 552.8 feet thence on a 1° curve to the left through a central angle of 8° 34' a distance of 856.66 feet to the end of the curve, thence North 10° 47' West 876.9 feet thence on a 16° curve to the right through a central angle of 23° 46' a distance of 148.5 feet to the end of the curve, thence North 34° 33' East 830 feet to the point of beginning, exclusive of the area of half of the adjoining County Road, all in Lane County, Oregon, EXCEPT that portion lying North and West of County Road No. 988, and EXCEPT portion in relocated Willow Creek Road, by Resolution dated January 10, 1969. ALSO EXCEPT: Beginning at a point on the East line of Section 31, Township 17 South, Range 4 West, Willamette Meridian, 660.00 feet South of the East 1/4 corner of said section; thence North 88° 43' 56" West 651.05 feet; thence South 9° 14' 30" West, 1,239.89 feet to a 5/8 inch rod and cap (passing through a 5/8 inch rod and cap at 30.29 feet); thence South 86° 56' 00" East 850.58 feet to the East line of said Section 31; thence North 1,250.95 feet to the point of beginning, EXCEPT that portion lying within county roads, in Lane County, Oregon.

PROPERTY TAXES

The property was valued as of January 1, 1983 by the Lane County Department of Assessment and Taxation for the purpose of assessing property taxes based on the True Cash Value of the property. This value was set at \$331,960 with an assessed value, based on a ratio of 90.9%, or \$301,750. Taxes will be computed based on the last figure.

100

MEMORANDUM OF CONTRACT

VENDOR'S ASMT TO JAMES CARLILE ~~OR NOT AS TIC~~ BUT WITH RIGHT OF SUR

This is to certify that the undersigned James L. Carlile, Seller, and Daryl and Rosemary Nichols, Buyers, have entered into an agreement of even date herewith, by the terms of which, among other things, said Seller has agreed to sell and convey unto said Buyers and said Buyers have agreed to purchase and acquire from said Seller all of the following described real property, to-wit:

See attached Exhibit "A"

The true and actual consideration paid for this transfer is \$540,000.00.

N 5 - 4:K7799 000000

Until further notice, mail all tax statements to the following address: 4277 W. 5th, Eugene, OR 97402.

DATED this 4th day of May, 1981.

SELLER

James L. Carlile
JAMES L. CARLILE

BUYERS

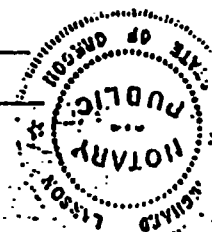
Daryl Nichols
DARYL NICHOLS

Rosemary Nichols
ROSEMARY NICHOLS

STATE OF OREGON)
County of Lane) ss

On this 6 day of May, 1981, personally appeared the above named James L. Carlile, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me: Richard Larson
Notary Public of Oregon
My Commission Expires: 5/25/82



STATE OF OREGON)
County of Lane) ss

On this 4th day of May, 1981, personally appeared the above named Daryl and Rosemary Nichols, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me: Richard Larson
Notary Public of Oregon
My Commission Expires: 5/25/82



MEMORANDUM OF CONTRACT

LUVAS. COB. ...
270 PINE AVENUE
EUGENE, OREGON 97401
454-2282

4/22/82
Reel NO. 1189
Receipts NO 82-11853

Beginning 10 chains South of the 1/4 section corner on the line between Sections 31 and 32, Township 17 South, Range 4 West of the Willamette Meridian, run thence South along said line and between Sections 5 and 6, Township 18 South, Range 4 West of the Willamette Meridian to a point 25.515 chains South of the corner to said four sections, West 17.98 chains, North 55.63 chains, East 17.98 chains to the beginning. ALSO: Beginning at a point in the center line of the County Road No. 988 which point is 475.6 feet South of a point 10 chains South and 17.98 chains West of the quarter section corner between Sections 31 and 32, of Township 17 South, Range 4 West of the Willamette Meridian and running thence South 3196 feet to the Southeast corner of a tract of land conveyed by deed given by Katura Fitzgerald to Wm. H. and Lueve M. Lueck, recorded in Volume 181, Page 156 of Lane County Deed Records, thence West 1095 feet to the center of the county road, according to the survey thereof, thence North 7° 47' West 248.2 feet; thence on a 6° curve to the left through a central angle of 11° 34' a distance of 192.4 feet to the end of the curve; thence North 19° 21' East 552.8 feet thence on a 1° curve to the left through a central angle of 8° 34' a distance of 856.66 feet to the end of the curve, thence North 10° 47' West 876.9 feet thence on a 16° curve to the right through a central angle of 23° 46' a distance of 148.5 feet to the end of the curve, thence North 34° 33' East 830 feet to the point of beginning, exclusive of the area of half of the adjoining County Road, all in Lane County, Oregon, EXCEPT that portion lying North and West of County Road No. 988, and EXCEPT portion in relocated Willow Creek Road, by Resolution dated January 10, 1969. ALSO EXCEPT: Beginning at a point on the East line of Section 31, Township 17 South, Range 4 West, Willamette Meridian, 660.00 feet South of the East 1/4 corner of said section; thence North 88° 43' 56" West 651.05 feet; thence South 9° 14' 30" West, 1,239.89 feet to a 5/8 inch rod and cap (passing through a 5/8 inch rod and cap at 30.29 feet); thence South 86° 56' 00" East 850.58 feet to the East line of said Section 31; thence North 1,250.95 feet to the point of beginning, EXCEPT that portion lying within county roads, in Lane County, Oregon.

EXHIBIT A

Norman L Waterbury
Land Use Planning Consultant
28788 Gimpl Hill Rd.
Eugene, OR 97402

12-8-05

Lane County Land Management Division
125 East 8th. St
Eugene, OR 97402

Subject: Report on the application of Measure 37 to property identified by Map 18-04-06 Tax lot 101, (Nichols).

This report identifies Lane county Land use Regulations that were applicable to the subject property in 1981 and Lane County land use regulations that are now applicable to the subject property. The property contains approximately 117 acres and is located SW of Eugene adjacent to Crow Road and Greenhill Road and is shown on the illustrations on the next page of this report.

Summary of Relevant Lane County Land Use Regulations.

In 1981, the subject property was included in the urban growth boundary of the Eugene-Springfield Metropolitan Area General Plan and was designated as "Low Density Residential". The subject property was designated AGT for which LC 10-110-42(2) would have allowed the property to be subdivided into five acre lots or twenty acre lots depending on the predominate agricultural class ratings of the soils in each proposed lot.

Now the subject property is designated by the Metro Plan as urban reserve-agricultural and "forest" land and zoned E40 and F2. In LC 16.211 and LC 16.212, land divisions are subject to special use permits and approval and would currently not be allowed with very few exceptions.

I. Chronology of Lane County Land Use Regulations

The information, below, is a chronology of the dates and relevant land use regulations applied to the subject property. Lane County historically went through three phases of its land use planning and/or zoning. The first phase generally occurred between 1948 and 1972, after Lane County established the authority to zone land and during which the county adopted numerous ordinances to zone geographically separate areas or individual properties and to revise the use restrictions in the zoning ordinance. The second phase generally occurred between 1972 and 1982 with the adoption of Lane Code and afterwards with the adoption of: the 1990 Eugene-Springfield Metropolitan Area General Plan, the Lane County General Plan Policies, 13 subarea plans and zoning or rezoning for the 13 subarea plans. The third phase generally occurred in 1982 and afterwards when Lane County began developing and adopting comprehensive plans, rezoning and code changes to comply with the Statewide Planning Goals, Administrative Rules and state regulations. The application of land use regulations to the subject property falls into all three phases of this land use planning and/or zoning.

1. On March 28, 1961, the Lane County Board of Commissioners approved Land Use Ordinance No. 140 that zoned an area including the subject property as AGT. See Attachment 1A that is a copy of the relevant portions of this ordinance. Attachment 1B is a copy of an unofficial zoning map on file with the Lane County Land Management Division showing that the zoning of the subject property was AGT. The AGT zoning of the subject property remained in effect until Lane County approved Ordinance No. PA 885 and 886 that rezoned the subject property to F2.
2. On March 29, 1972, the Lane County Board of Commissioners adopted the 1990 Plan (also known as the Eugene-Springfield Metropolitan Area General 1990 Plan) via Board approval of Order 62-3-29-9. On page 19 of that plan, the plan diagram designated the subject property as "RURAL" that was defined as, "General agriculture, open space, woodland, rural residential (average parcel size of five acres or greater based on development patterns, soil types and other natural conditions). Urban level of service not likely within the current planning period. Portions of these areas may also provide needed space for urban development after 1990 or sooner in the event that urban growth occurs at a faster rate than projected." See Attachment 2A that is a copy of the relevant portions of the March 29, 1972 1990 Plan. A 1990 Plan "Update with Amendments, April 1976" was adopted by the city of Eugene and the LCOG Board of Directors. This update of the 1990 Plan did not change the March 29, 1972 1990 Plan "RURAL" diagram designation of the subject property. See Attachment 2B that is a copy of the relevant portions of the 1990 Plan "Update with Amendments, April 1976". The 1990 Plan was not acknowledged by LCDC and remained in effect for the subject property until Lane County approved Ordinance 9-80 that replaced it with the adoption of the Eugene-Springfield Metropolitan Area General Plan.
3. On August 27, 1980, the Lane County Board of Commissioners approved Ordinance 9-80 that superceded the 1990 Plan and adopted the Eugene-Springfield Metropolitan Area General Plan which included the subject property in the urban growth boundary and designed it on the plan diagram as "Low Density Residential". See Attachment

3A that is a copy of the relevant portions of Ord. 9-80 and the August 1980, Eugene-Springfield Metropolitan Area General Plan. On February 3, 1982, the Lane County Board of Commissioners approved Ordinance 856 that amended the Eugene-Springfield Metropolitan Area General Plan. The amendments included changing the plan diagram to exclude the subject property from the urban growth boundary and to include it in the jurisdictional area of the plan with split plan diagram designations of "Urban Reserve-Agriculture" and "Urban Reserve-Forest". See Attachment 3B that is a copy of the relevant portions of Ord. 856. Attachment 3C is a copy of the relevant portions of the 1997 updated Eugene-Springfield Metropolitan Area General Plan showing the current "Agriculture" plan diagram designation of the subject property. According to page ii of the 1997 updated plan, "On August 18, 1982, the LCDC granted acknowledgment for the portion of the *Metropolitan Plan* within the urban growth boundary. LCDC's acknowledgment included the *1982 Amendments to the Metropolitan Plan* and the *Willow Creek Metropolitan Plan* amendments." and "on September 13, 1985, LCDC acknowledged the rural portion of the Metropolitan Plan."

4. A copy of the applicable land use requirements in LC 10.110 for the AGT zone, in effect in 1981, is include with this report as Attachment 4. LC 10.110-10.(3) permitted, "One single family dwelling or two family dwelling per lot or one mobile home per lot." LC 10.110-42 Area.(2) provided, "The minimum area for the division of land for any property zoned AGT prior to May 15, 1971, shall be based on the soil Land Capability Classification System of the Soil Conservation Service, U.S. Department of Agriculture: (a) Twenty acres for management units of Class I, IIs, IIw, IIe, IIIcl, IIIs, IIIw and IVw. (b) Five Acres for all other management units. (d) Where any proposed lot has management units described in both LC 10.110-42(2)(a) and (b) above, the subsection to be applied shall be the one which includes more than 50 percent of the total area of the proposed lot." As indicated in the comments under section 1 of this report, the subject parcel was zoned AGT on March 28, 1961. LC 10.110-42 Area.(2) was therefore applicable to any divisions of the subject property in 1981. The parcel size of 5 or 20 acres for the subject property depended on the agricultural class ratings of the soils of the subject property, the design or layout of any proposed lots or parcels and whether or not each parcel contained more that 50 percent of soils with agricultural class ratings that would make it five acres or twenty acres.
5. On February 29, 1984, the Lane County Board of Commissioners adopted Ordinance No. PA 886 that rezoned the subject property, in zoning map plot #269, to Exclusive Farm Use, E40, and Impacted Forestland, F2. See Attachment 5A that is a copy of the relevant portions of Ord. No. PA 886. Attachment 5B is a current copy of Lane County Official Zoning Map Plot 269 that is available at the Lane County Land Management Division.
6. The current land use requirements for the F2 and E40 zones are contained in LC 16.211. and LC 16.212. Copies of the current LC 16.211 and LC 16.212, from Ordinance 5-04, approved by the Lane County Board of Commissioners on June 2, 2004, are included with this report as Attachment 5. LC 16.211 conditionally allows new dwellings if the dwellings can comply with the Template Dwelling requirements in subsection 5, or with the Lot of Record requirements in subsection 6, or with the

Large tract Dwelling Requirements in Subsection 7. LC 16.211 (10) requires, with a few narrow exceptions, that the minimum area for the creation of new parcels must be 80 acres. LC 16.212(5)-(7) conditionally allows new dwellings subject to special use permit review and approval and subject to compliance with certain strict requirements for farm income and farm management, or for non farm dwellings. The minimum parcel size for the creation of new parcels in LC 16.212(9) is with very few exceptions, 40 acres.

Lot Size determination:

As noted on page 4 section 4 of this application, lot sizes that were allowed at this time were Dependant on the soil conditions as to whether 5 or 20 acre parcels would be allowed. During the time frame that the Nichols could have divided the subject property the preponderance of soils listed as type 1V and above were not considered to be "high value soils". See USDA soils and Land Capability Classes which were prepared for the subject property. This breakdown of percentages list high value soils as consisting of only 4.71 acres out of the 117.16 acres which were reviewed. The balance of the acreage consisted of class 1V soils and above. At that time, 1981 to 1983 Natroy #85 would not have been considered "high value soil" under the rating system that was in place. Soil types 11D and 11E also would have during this time frame, been listed as class 1V and consequently would have allowed for 5 acre lots during this time frame. We are proposing a 20 acre lot on the only farm able portion of the property which is located on the North Western edge of the property. This is reflected in the drawing of the proposed subdivision. The balance of the lots in the proposed subdivision would allow for 5 acre lot sizes as they are located upon soil types which contained under the rating system during this time frame a preponderance of low value soils. Soil types 41C, 43E, 52B and 52D are all still listed as low value soils in the Lane County Soil Ratings for Forestry and Agriculture manual. See Soils Map Attachment 6 for lot arrangement and soil values.

In conclusion, the proposed land division would consist of 1 - 20 acre parcel and 16-5 acre parcels and 1-10 acre parcel totaling 18 build able lots.

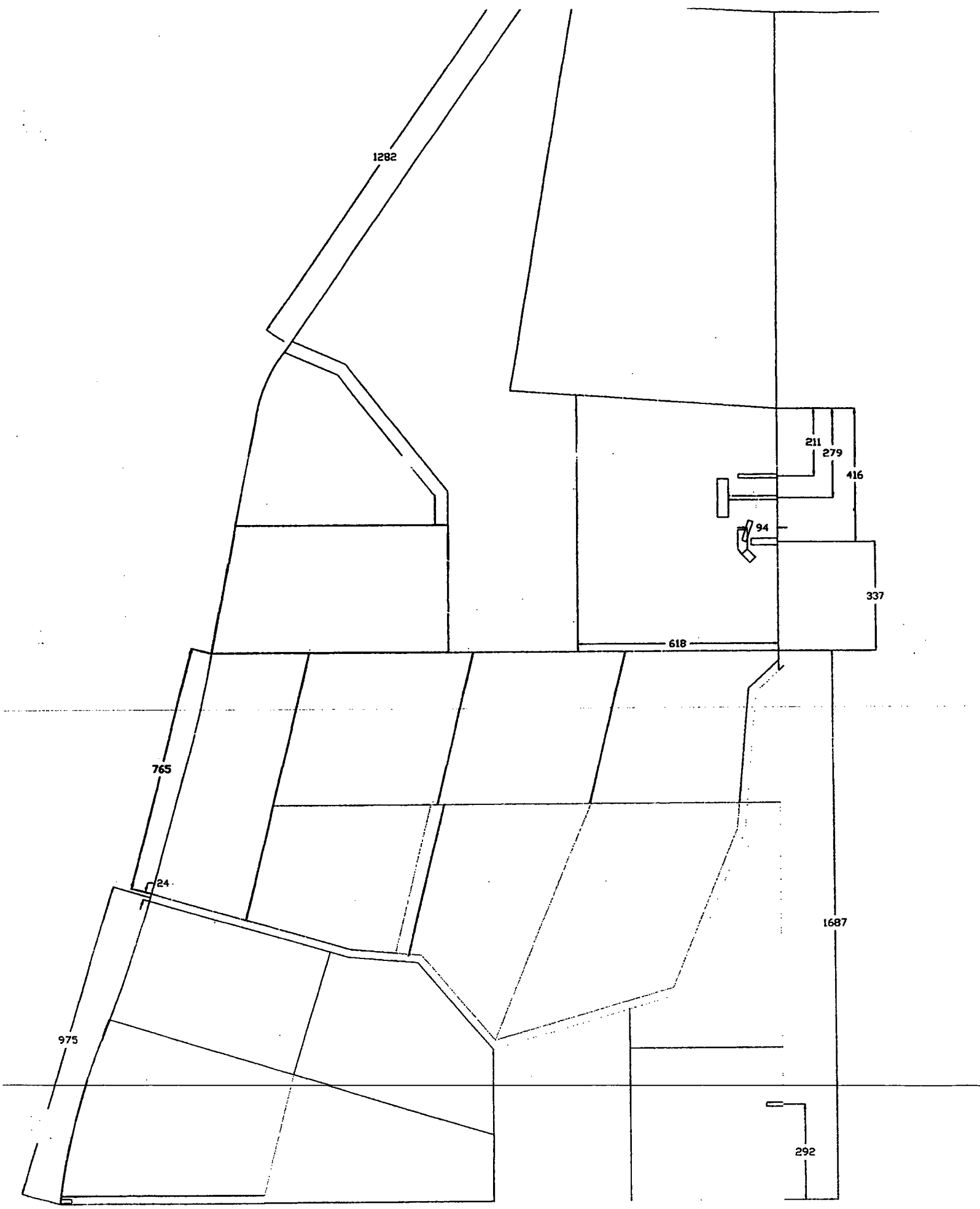
Relief Sought (7):

As noted in the Appraisal there is a \$ 3,700,000 discrepancy between the current appraised value of the subject property and the estimated value of the property if the requested land divisions were allowed. At this time we are requesting that Lane County waive the restrictions on the subject property and allow the land divisions to take place.

As shown on the enclosed map which divides the subject property into 18 parcels, 16 of the proposed parcels would consist of approximately 5 acres minimum, with 1-10 acre parcel and 1- 20 acre parcel. The only area with any farm able value whatsoever, which is Located in the Northwest corner of the subject property would be left as a 20 acre parcel.

Conformance With The Area Development:

Looking at the overall map of the area and considering the degree of fragmentation that has already taken place surrounding the subject property, this proposed land division is not out of place with the general land uses for this area. In all directions from the subject property lot sizes of 5 acres or less are common as indicated on the zoning map.



SOILS AND LAND CAPABILITY CLASSES

SUBJECT PROPERTY 117.68 ACRES

Suitable for Cultivation, Pasture, Hay and Woods

Class I Land - has few limitations in use and in choice of plants. The land is nearly level (0-2%) and does not erode easily. The soils in this class are well drained, moderately permeable, and hold moisture well. They are highly responsive to fertilizers and are easily tilled.

Class II Land - has moderate limitations in use and in choice of plants. It requires the application of easily applied conservation practices or measures. One or more of the following characteristics place soils in this land class: (1) gentle slopes (2 to 6%); (2) moderately eroded or susceptible to erosion; (3) imperfectly drained; (4) subject to occasional overflow; (5) somewhat unfavorable texture and consistency; (6) layers which restrict the movement of moisture and air. Should be in close growing crops one-half time.

Class III Land - has severe limitations in use and in choice of plants. It requires the application of intensive conservation treatment. Land is placed in this class when it has one or more of the following: (1) Severe erosion or subject to severe erosion; (2) moderately steep slopes (6 to 10%); (3) very unfavorable texture or consistency; (4) shallow soils; (5) poorly drained; (6) frequent overflows. Should be in close growing crops two-thirds time.

Class IV Land - has very severe limitations in use and in choice of plants. It requires the application of very intensive conservation treatment. Land is placed in Class IV when one or more of the following conditions exist: (1) Very severely eroded, or is susceptible to very severe erosion; (2) steep slopes (10 to 15%); (3) very unfavorable texture or consistency; (4) shallow soils; (5) poorly drained; (6) very frequent overflows. May be planted to row crops one year in four.

Suitable for Pasture, Hay and Woods

Class V Land - is most often nearly level, wet land. Best suited for pasture or trees.

22.92 Ac.

Class VI Land - has severe limitations that make it generally unsuited to cultivation and limit its use. It is characterized by one or more of the following conditions: (1) steep slopes (15 to 25%); (2) severely eroded or has severe erosion hazard; (3) shallow soils; (4) stony soils; (5) very unfavorable texture and consistency. Best suited for pasture or trees.

Class VII Land - is unsuited for cultivation and has very severe limitations that restrict its use. It is characterized by one or more of the following conditions: (1) very steep slopes (above 25%); (2) very severe erosion, or very severe erosion hazard; (3) shallow soils; (4) very unfavorable texture and consistency.

Class VIII Land - is usually rock outcrops, sand and gravel. Suited only for wildlife or recreation. Best suited for trees.

±117.68 Acres

- (29) Solid waste disposal facilities.
 (30) Stables, riding academies, and commercial riding.
 (31) Tourist parks.
 (32) Rental facilities for storing boats and recreational vehicles.
 (33) Sewage treatment facilities.
 (34) Other uses not specifically authorized anywhere in this Chapter.

-23. **Setback Requirements.** The minimum setback distances for any main or accessory building in a General Rural District shall be those specified in LC 15.065 through 15.095.

-42. **Area.** (Also see LC 10.300-20)

(1) The minimum area for the division of land shall be 10 acres; except that the division of agricultural land by lease or rental for any farm use purpose is permitted, provided however, that no structure or building may be erected appurtenant to such division of land except those permitted under LC 10.108-10(6) above; and except further, division of land for less than 10 acres is permissible for uses permitted under LC 10.108-10(8) above and permitted conditionally in the GR 10 District, except under LC 10.108-15(3) above.

(2) For each accessory dwelling or mobile home unit approved conditionally under LC 10.108-15(3) above, the lot shall contain an average area of five acres per such accessory unit.

(3) A special exception to the minimum area requirements of this section may be approved in accordance with LC 10.350, "Special Exceptions to Minimum Area Requirements".

10.110

Lane Code

AGRICULTURE, GRAZING, TIMBER RAISING DISTRICT (AGT)

-05. **Purpose.** The Agriculture, Grazing, Timber Raising District is intended to provide areas for rural density residential development and continuation of farm uses and timber production where compatible with each other. It is appropriate to be applied to areas which have, by nature of use and land division activity, already begun a transition from rural to urban use, primarily in the outer portions of the rural-urban fringe areas where public facilities and services will be necessary before intensive urbanization should occur, and in rural lands with marginal suitability for agricultural production.

-10. **Permitted Buildings and Uses.** In the AGT District, the following types of buildings and uses are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this Chapter:

(1) The following farm uses:

(a) General farming, including, but not limited to, the growing and raising of trees, vines, shrubs, berries, vegetables, nursery stock, hay grains, seed, and smaller food and fibre products.

(b) Pastures and grazing.

(c) The raising, tending or breeding of cattle, horses, sheep, goats, or bees for the primary purpose of selling animals or animal products for profit, or for the primary purpose of personal, domestic use; such animal husbandry shall not be a part of, nor be conducted in conjunction with, any livestock sales yard, slaughter house, or animal by-product business provided further that such uses on lots of less than five acres shall be subject to the area requirements of LC 10.110-42(6) below.

(d) The raising, tending, or breeding of swine, fowl, or fur-bearing animals for the primary purpose of personal domestic use. Such use shall include, but not be limited to the raising of animals for shows, competitions, or projects sponsored or directed by a school, club, or other social or educational organization, provided further that such uses on lots of less than five acres shall be subject to the area requirements of LC 10.110-42(6) below.

(2) The management, growing, and harvesting of forest products, including Christmas tree raising.

(3) One single-family dwelling or two-family dwelling per lot or one mobile home per lot.

(4) Normal accessories for a mobile home, such as, awning, cabana, ramada, patio, carport, garage or storage building, pursuant to an original mobile home use permit or subsequent permit for only accessories.

(5) Guest house.

(6) Lodges and grange halls.

(7) Public and semipublic buildings and structures essential to the physical and economic welfare of an area, such as, fire stations, substations, pump stations and wells, provided that inferior yards shall be a minimum of 25 feet, and no stockpiling or storage of materials shall be allowed.

(8) Sale of agricultural products grown or raised on the premises, provided the sales floor area does not exceed 300 square feet.

(9) Minor rural home occupations (see LC 10.342 for Rural Home Occupation provisions).

(10) Accessory buildings and uses customarily provided in conjunction with a use permitted in this district.

(11) Kennel, provided the following conditions are satisfied:

(a) The maximum number of dogs over four months of age shall be eight.

(b) For more than three dogs over four months of age, there shall be at least 5,000 square feet of lot area for each dog on the lot.

(c) All dogs shall be owned by the occupant of the premises, except those temporarily kept for purposes of breeding.

-15. **Conditional Uses.** The following conditional uses, subject to a conditional use permit granted pursuant to the general provisions of this Chapter providing for the granting of conditional use permits (LC 10.320):

(1) The following animal husbandry uses, where such uses are intended for the purpose of selling animals or animal products for profit:

(a) Raising, tending, or breeding of swine.

(b) Raising, tending or breeding of fowl for meat or egg production.

(c) Dairying.

(2) The following uses:

(a) Hop, nut and fruit driers.

(b) Feed mixing and storage facilities.

(c) Hullers.

(d) Mint distilleries.

(e) Seed processing, packing, shipping and storage.

(f) Plants for the storage or packing of agricultural products produced on the premises.

(g) Temporary and portable sawmills, barkers, and chippers.

(h) Any other similar processing and allied farm commercial activities.

(3) Sale of agricultural products raised on the premises where the sales floor area exceeds 300 square feet; the sale of live-stock grown and raised on the premises.

(4) Animal hospitals; kennels which do not satisfy the requirements for kennels allowed as a permitted use.

(5) Churches.

(6) Schools.

(7) Day nurseries.

(8) Group care homes.

(9) Hospitals, nursing homes, and sanitariums.

(10) Stables, riding academies, and commercial riding; provided such activities are contained on the property authorized for conditional use permit approval.

(11) Radio and TV transmission towers.

(12) Stadiums.

(13) Electric transmission facilities transmitting electric current in excess of 75,000 volts on any single cable or line or group of cables or lines.

(14) Flood control facilities and irrigation projects.

(15) Accessory dwellings for persons employed on the premises.

(16) Airports, heliports, or aircraft landing fields.

(17) Cemeteries.

(18) Correctional institutions.

(19) Sanitary landfills.

(20) Golf courses.

(21) Jails.

(22) Parks, playgrounds and community organizations.

(23) Penal farms.

(24) Radio and TV stations.

(25) Rock, sand, gravel, and loam excavations and extraction of mineral resources, with incidental processing.

(26) Sewage treatment plants.

(27) Mobile home parks.

(28) Tourist parks.

(29) Camping vehicle parks.

(30) Campgrounds.

(31) Major rural home occupations (see LC 10.342 for Rural Home Occupation provisions).

(32) Rental facilities for storing boats and recreational vehicles.

(33) Sewage treatment facilities.

(34) Other uses not specifically authorized any place in this Chapter.

-23. **Setback Requirements.** (Also see LC 10.300-15 and 15.065 - .095).

(1) Front yard setback shall be 20 feet.

(2) Side yard setback shall be as follows:

(a) Interior yard — 10 feet for a main building; five feet for an accessory building or structure.

-28. **Vision Clearance.** Vision clearance for corner lots shall be a minimum of 15 feet.

-35. **Off-Street Parking.** There shall be at least one permanently reserved parking space, or private garage, on the same lot, or attached to or made a part of the main building. Such parking space shall be not less than eight feet wide and 18 feet long. The parking space or garage shall be provided at the time of the erection of the main building, and it shall have adequate provisions for ingress and egress by standard-sized automobiles. For parking space requirements for buildings other than dwellings, see the general Off-Street Parking Section (LC 10.300-05).

-42. **Area.** (Also see LC 10.300-20).

(1) Any property zoned AGT after May 14, 1971, shall be designated AGT-5, and the minimum area for division of land for any property so designated shall be five acres; except:

(a) The division of agricultural land by lease or rental for any farm use purpose is permitted, provided however, that no structure or building may be erected appurtenant to such division of land except those permitted under LC 10.110-10(11) above. A special exception to the minimum area requirement for 20 acres may be approved in accordance with LC 10.350, "Special Exceptions to Minimum Area Requirements".

(b) Division of land for less than five acres is permissible for uses permitted under LC 10.110-10(7) and (8) above and permitted conditionally in the AGT District except under 10.110-15(15) above.

(2) The minimum area for the division of land for any property zoned AGT prior to May 15, 1971, shall be based upon the Land Capability Classification System of the Soil Conservation Service, U. S. Department of Agriculture:

(a) Twenty acres for management units of Class I, IIs, IIv, IIc, IIIc1, IIIs, IIIv and IVv.

(b) Five acres for all other management units.

(c) Notwithstanding (a) and (b) above:

(i) The division of agricultural land by lease or rental for any farm use purpose is permitted, provided, however, that no structure or building may be erected appurtenant to such division of land except those permitted under LC 10.110-10(11) above.

(ii) The division of land for less than the required minimum is permissible for uses permitted under LC 10.110-10(7) and (8) above and permitted conditionally in AGT District except under LC 10.110-15(15) above.

(d) Where any proposed lot has management units described in both LC 10.110-42(2)(a) and (b) above, the subsection to be applied shall be the one which includes more than 50 percent of the total area of the proposed lot.

(e) A special exception to the minimum area requirements of this section may be approved in accordance with LC 10.350, "Special Exceptions to Minimum Area Requirements".

the lot shall contain a minimum average of five acres per such accessory unit.

(4) A single-family dwelling or mobile home only may be established on any lot separately owned as of September 13, 1969, which does not conform to the area requirements provided in LC 10.110-42(1) and (2) above.

(5) The main building and accessory buildings located on any one building site or lot shall not cover in excess of 30 percent of the lot area.

(6) The following animal use area regulations shall apply on lots of less than five acres:

(a) Cows, horses, sheep, goats or swine cannot be kept on lots having an area of less than one acre. The minimum area for such animals (other than their young under the age of six months) on less than five acres shall be as follows:

Horses	One per acre, plus one additional for every 15,000 square feet.
Cow	One per acre, plus one additional for every 10,000 square feet.
Goat or sheep	Five per acre, plus one additional for every 2,000 square feet.
Swine	One per acre.

The area of a property may be utilized one time only for the computation of the above allowable animal usage.

(b) The number of chickens, fowl and/or rabbits (over the age of six months) shall not exceed one for each 500 square feet of property. The number of young chickens, fowl and/or rabbits (under the age of six months) allowed on the property at any time shall not exceed three times the allowable number of chickens, fowl, and/or rabbits over the age of six months.

(c) The number of colonies of bees allowed on a lot shall be limited to one colony for each 2,000 square feet of lot area.

(d) Animal runs, stables, barns, corrals of less than one-half acre, chicken or fowl pens, and colonies of bees shall be located on the rear half of the property, but not closer than 70 feet from the front property line and no closer than 40 feet from any residence or other property line.

Animals, chickens, and/or fowl shall be properly caged or housed, and proper sanitation shall be maintained at all times. All animal and poultry food shall be stored so as to be rodent-proof.

When an AGT District is reclassified to another district, all those animal uses in this paragraph (6) shall be required to comply with the requirements of said other district for such uses within a period of six (6) months from the date of reclassification. [10.110-42(6) to here added by 15-72:9.8.72.]

-90. Site Development Requirements for Subdivision Lots Recorded Prior to September 13, 1969.

Any lot in a major or minor subdivision plat that was recorded as of September 13, 1969, and which is less than one (1) acre in size shall have the Use regulations and the Signs, Height, Area, and Building Setback requirements of Section 10.135, Suburban Residential District (RA).

10.112 Lane Code

GENERAL RURAL I DISTRICT (GR-1)

-05 Purpose. The General Rural I District (GR-1) is intended to define and protect areas suitable for mixed grazing, agriculture, limited timber production, and low-intensity development compatible with the rural environment. It is appropriate for areas with the following characteristics:

- (1) The land is not well-suited for full-time commercial agriculture or timber production because of:
 - (a) Marginal or poor soil conditions, erosion potential, slope, lack of groundwater, or similar physical constraints, or
 - (b) The presence of potentially incompatible uses or inefficient lot sizes and configurations; and
- (2) The area lacks the services and facilities required to support more intensive development; or
- (3) Land that is built upon or committed to other use to the degree it is no longer available for resource purposes.

-10 Permitted Buildings and Uses. In the GR-1 District, the following types of buildings and uses are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this Chapter:

- (1) The following farm uses:
 - (a) General farming, including, but not limited to the growing and raising of trees, Christmas trees, vines, shrubs, berries, vegetables, nursery stock, hay grains, seed and similar food and fiber products.
 - (b) Pastures and grazing.
 - (c) The raising, tending or breeding of cattle, horses, sheep, goats or bees for the primary purpose of selling animals or animal products for profit or personal, domestic use; such animal husbandry shall not be a part of, nor be conducted in conjunction with, any livestock sales yard, slaughter house or animal by-product business, provided further that such uses on lots of less than five acres shall be subject to the area requirements of LC 10.112-40(4) below.
 - (d) The raising, tending or breeding of swine, fowl or fur-bearing animals for the primary purpose of personal domestic use. Such use shall include, but not be limited to, the raising of animals for shows, competitions or projects sponsored or directed by a school, club or other social or educational organization, provided further that such uses on lots of less than five acres shall be subject to the area requirements of LC 10.112-40(4) below.

(3) Sale of agricultural products grown or raised on the premises, provided that the sales floor area does not exceed 300 square feet.

(4) One single-family dwelling per lot or one mobile home per lot.

- (5) Guest houses.
- (6) Accessory buildings and uses customarily provided in conjunction with a use permitted in this District.
- (7) Minor Rural Home Occupation. (See LC 10.342)
- (8) Public and semipublic buildings and structures rendering direct service to the public in local areas, such as fire stations, utility substations, pump stations and wells.
- (9) Kennels, provided the following conditions are satisfied:
 - (a) For more than three dogs over four months of age, there shall be at least 5,000 square feet of lot area for each dog on the lot.
 - (b) Where the lot area is 20 acres or less, the maximum number of dogs over four months of age shall be eight.
 - (c) Where lot area exceeds 20 acres and when more than eight dogs over four months of age are accommodated, kennel structures and fenced runs shall be required for all such dogs in excess of eight and shall be located at least 100 feet from any adjoining property.
 - (d) All dogs shall be owned by the kennel owner, except those temporarily kept for purposes of breeding.

-15 Special Uses-Planning Director Approval

(1) The following uses subject to approval by the Planning Director as provided for in LC 10.316:

- (a) Commercial activities in conjunction with a farm or forest use, provided that such activities are conducted by the owner or operator of the farm or forest use and provided further that they do not constitute a separate business or enterprise.
 - (b) The following animal husbandry uses where such uses are intended for the primary purpose of selling animals or animal products for profit:
 - (i) Raising, tending or breeding of swine.
 - (ii) Raising, tending or breeding of furbearing animals.
 - (c) Raising, tending or breeding of fowl for meat or egg production.
 - (d) Accessory dwellings for persons employed on the premises.
- (2) Special uses shall be approved by the Planning Director unless there is a specific finding the use or activity will result in one of the following:

- (a) The use will be incompatible with existing uses in the area and with uses permitted in surrounding Zoning District(s).
- (b) The use is not consistent with the purpose of the GR-1 District.
- (c) The use will interfere with accepted farming or forestry practices on lands in the surrounding area that are devoted to such use.

-20 Special Uses-Hearings Official Approval

(1) The following uses subject to approval by the Hearings Official as provided for in LC 10.317:

- (a) Animal hospitals.
- (b) Campgrounds, camping vehicle parks, tourist parks.
- (c) Cemeteries.
- (d) Churches.
- (e) Dams, water storage facilities, power generation or transmission facilities, substations and similar facilities; electric transmission facilities transmitting electricity in excess of 150,000 volts in any single cable or line or group of cables or lines; canals, flumes and pipe lines; flood control facilities and irrigation projects.
- (f) Day Care nurseries.
- (g) Golf courses.
- (h) Group care homes.
- (i) Kennels which do not satisfy the requirements for kennels as a permitted use.
- (j) Lodges and grange halls.
- (k) Major Rural Home Occupations.
- (l) Nursing homes.
- (m) Parks, playgrounds and community centers.
- (n) Public and private schools.
- (o) Radio and television transmission facilities.
- (p) Rock, sand, gravel, loam, excavation, extraction of mineral resources with incidental processing.
- (q) Solid waste disposal facilities.
- (r) Stables, riding academies and commercial riding.
- (s) Storage facilities for boats and recreational vehicles.
- (t) Sewage treatment facilities.
- (u) Other uses similar to the above and not specifically authorized anywhere in this Chapter.

(2) Special uses shall be approved by the Hearings Official unless there is a specific finding that the proposed use or activity will result in one of the following:

- (a) Will adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, taking into consideration, among other things, the anticipated density, bulk and noise level of the use or activity.
- (b) Be adversely affected by existing or reasonably anticipated uses and the surrounding vicinity.
- (c) Be unduly potentially affected by natural hazards, such as floods, slides or faults.
- (d) Result in a substantial adverse effect on existing uses and on the natural resources or scenic character in the general vicinity.
- (e) Result in significant undue water or air pollution. In making this determination, at least the following may be considered:
 - (i) The relation of flood plains.
 - (ii) The nature of soil and subsoil and their ability to adequately support waste disposal.
 - (iii) The slope of the land and its effect on effluents.
 - (iv) The availability of streams approved or capable of being approved for the disposal of treated effluents.
 - (v) Applicable climatical conditions.
 - (vi) The applicable water and air regulations.
- (f) Not have water of sufficient quantity and quality available for the reasonably foreseeable needs of the subdivision or development.
- (g) Cause an unreasonable burden on existing or future community facility systems.