

W.14.d.



AGENDA COVER MEMO

DATE: June 14, 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 05-5537, Silke).

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 Jim and Carol Silke to use the property as allowed at the time they acquired the property?

III. DISCUSSION

A. Background

Applicant: Jim and Carol Silke

Current Owner: Jim and Carol Silke

Agent: Bill Kloos

Map and Tax parcel: 19-12-25-22 #1800

Acreage: approximately 14 acres

Current Zoning: RR1 (Rural Residential)

Date Property Acquired: November 4, 1977

Date claim submitted: April 27, 2005. The first hearing for this claim was held on September 14, 2005. On October 25, 2005, the applicant placed this item on hold.

Land Use Regulations in Effect at Date of Acquisition: Unzoned.

Restrictive County land use regulation: Minimum parcel size of the RR1 zone.

B. Specific Relief Sought:

On April 27, 2005, Bill Kloos submitted a Measure 37 Claim on behalf of James and Carol Silke. The applicants have requested compensation of \$380,000 or a waiver of the two-acre minimum parcel size of the RR1 (Rural Residential) zone.

C. Lane Code Submittal Requirements

The applicant has paid the processing fee and submitted evidence in support of this claim. The entire submittal is contained in a notebook labeled "Silke 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.

The applicant has submitted information addressing all of the Lane Code submittal requirements, including an appraisal, a title report, and a deed.

D. Analysis

The property is undeveloped, contains approximately 14 acres, and is zoned RR1 (Rural Residential). The minimum parcel size in this zone is two acres. The current owners wish to divide the property into 11 parcels and place a dwelling on each parcel. The current owners acquired an interest in the property in 1977 when the property was unzoned.

This claim was originally heard on September 14, 2005. At that hearing, there was an issue regarding LC 13.070 and the applicable minimum parcel size in 1977. It was not clear whether there was a specific minimum parcel size or whether the parcel size was related to septic capacity. On October 25, 2005, the applicant placed this claim on hold.

On May 9, 2006, the applicant submitted information regarding this issue and requested the county resume processing this claim. Based on the information submitted on May 9, it appears there was no numerical parcel size for unzoned property in 1977. Instead, Lane County relied on a performance standard relating to septic capacity and water supply to determine the minimum parcel size. As evidence in support of this interpretation, the applicant has submitted copies of approved partition plats from 1978. This standard resulted in a practical minimum parcel size of one acre, due to the septic technology of that time.

If the Board determines this is a valid claim, the two-acre minimum parcel size of the RR1 zone can be waived. The applicants have not identified any other restrictive land use regulation that has reduced the value of the property. Although the applicants have stated Lane Code Chapter 16 was enacted after they acquired an interest in the property, they have not submitted any evidence that demonstrates how any regulation other than the minimum parcel size has lowered the fair market value of the property. Because of this, it is not appropriate to waive any county regulation except the minimum parcel size of the RR1 zone.

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

The current owner acquired an interest in the property on November 4, 1977. On that date, the property was unzoned. Based on the evidence submitted on May 9, 2006, it appears, Lane County relied on a performance standard relating to septic capacity and water supply to determine the minimum parcel size for unzoned areas. Currently, the property is zoned RR1 (Rural Residential) and the minimum parcel size is 2 acres.

In 1978, Lane County approved one-acre parcels in the unzoned areas, unless the property was subject to a sub-area plan that specified a minimum parcel size. It appears that the County interpreted LC 13.070 as allowing any size parcel that could accommodate a septic and well. Due to the technology available at that time, this allowed a parcel as small as one-acre. Current technology does not require a minimum parcel size of one-acre and could allow a parcel that is much smaller than what could have been created in 1977. The limiting factors of current technology are the depth to ground water, the distance from the well (100 feet) and the size of the dwelling. Generally, any parcel that is large enough for a dwelling could contain a septic system that meets current standards. Because of this, the applicant should be limited to parcels that are not less than one-acre. This will reflect the size of parcels that Lane County approved when the current owners acquired an interest in the property. The order attached to this memo will allow James and Carol Silke to divide the subject property into parcels as small as one acre.

If the Board determines this is a valid claim, the minimum parcel size of the RR1 zone can be waived. The applicants have not identified any other restrictive land use regulation that has reduced the value of the property. Although the applicants have stated Lane Code Chapter 16 was enacted after they acquired an interest in the property, they have not submitted any evidence to demonstrate how any regulation other than the minimum parcel size has lowered the fair market value of the property. Because of this, it is not appropriate to waive any county regulation except the minimum parcel size of the RR1 zone.

Reduction in Fair Market Value

As evidence of a reduction in fair market value from enforcement of a restrictive land use regulation, the applicants have submitted a letter of opinion from a real estate broker. This letter states that six two-acre parcels can be sold for a total of \$625,000 while ten one-acre parcels could be sold for a total of \$1,005,000. The letter does not contain any evidence to support these values. The current value of the property is not identified and the applicants have not submitted any other evidence of a reduction in value. The Board will need to determine if the letter of opinion demonstrates a reduction in fair market value from enforcement of a restrictive land use regulation.

Exempt Regulations

The RR1 (Rural Residential) minimum parcel size do not appear to be an exempt regulation 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

The entire submittal is not included in these attachments. The entire submittal is located in the County Commissioner's office in a binder labeled "Silke Measure 37 Claim: PA05-5537".

- Order to approve the Measure 37 claim of James and Carol Silke.
- Vicinity map.
- Warranty Deed 8800937 dated November 4, 1977, and recorded January 8, 1988.
- Memorandum of Land Sale Contract dated November 4, 1977.
- Letter of opinion regarding value, dated February 16, 2005.
- Written claim submitted on April 27, 2005.
- Supplemental information submitted on May 9, 2006.

**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 (James and Carol Silke/
) PA05-5537)

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 James and Carol Silke (PA05-5537), the owners of real property described in the records of the Lane County Assessor as map 19-12-25-22, tax lot 1800, consisting of approximately 14 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 owner 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 September 14, 2005 and June 14, 2006, the Board conducted public hearings on the Measure 37 claim (PA05-5537) of James and Carol Silke and has now determined that the restrictive RR1 (Rural Residential) zone land division requirements of LC 16.290 were enforced and made applicable to prevent James and Carol Silke from developing the property as might have been allowed at the time they acquired an interest on November 4, 1977, and that the public benefit from application of the current RR1 (Rural Residential) zone minimum parcel size

regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, James and Carol Silke request either \$380,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the division of land into one-acre lots, a use that could have otherwise been allowed at the time they acquired an interest in 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 RR1 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow James and Carol Silke 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 an interest in 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 James and Carol Silke 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 James and Carol Silke shall be granted and the restrictive provisions of LC 16.290 that prohibit the creation of one-acre lots in the RR1 (Rural Residential) Zone shall not apply to James and Carol Silke, so that they can make application for approval to develop the property described in the records of the Lane County Assessor as map 19-12-25-22, tax lot 1800, in a manner consistent with the land use regulations in effect when they acquired an interest in the property on November 4, 1977.

IT IS HEREBY FURTHER ORDERED that James and Carol Silke still need to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by James and Carol Silke as restricting the division of the property or 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 land divisions and any new dwellings 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.

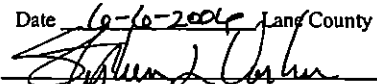
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by James and Carol Silke does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 owner. 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 6-6-2006 Lane County

OFFICE OF LEGAL COUNSEL

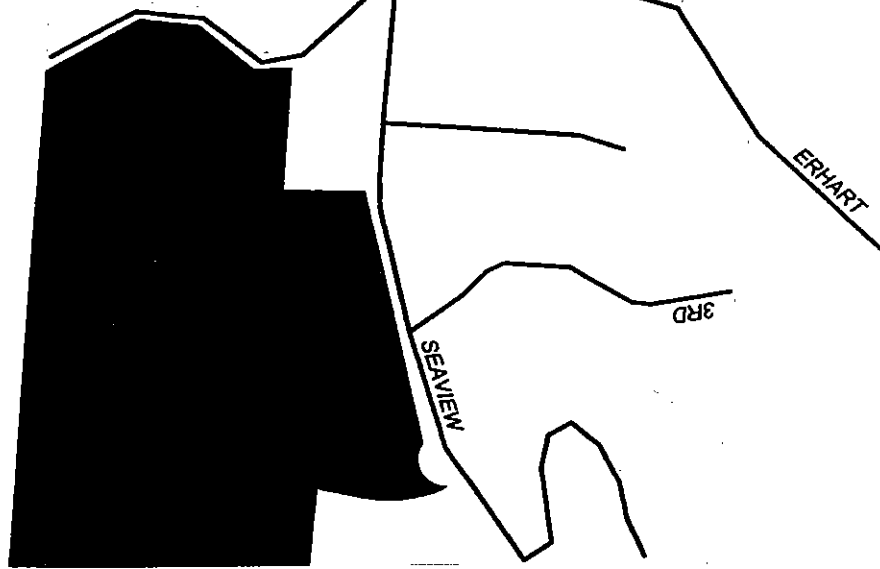
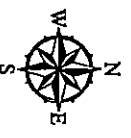
Legend

-  UGB
-  City Limits
-  Roads
-  silke

Siltcoos Lake

Dunes City

**Silke M37 claim
PA05-5537**



8800937

WARRANTY DEED

46544

2017-3

WPT 77150-C

MILDRED E. MILTONBERGER, as to an undivided one-half interest, E J Petersen & Zelpha Petersen, as tenants by the entirety as to an undivided one-half interest Grantor,

conveys and warrants to

JAMES SILKE AND CAROL L. SILKE, husband and wife

the following described real property free of encumbrances except as specifically set forth herein situated in Lane County, Oregon, to-wit:

Lot 1, Block 2, Lots 1, 2, 3, 4, and 5, Block 3; Lots 1, 2, and 4, Block 4; all of Blocks 5 and 6; Lots 2 and 7, Block 7; Lots 71, 72, 77, 78, 101, 102, 103, 104, 105, 106, 107, 108, 109, and 110, Block 9; and all of Block 10, ERHART ACRES, as platted and recorded in Book 7, Page 24, Lane County Oregon Plat Records, in Lane County, Oregon.

WESTERN PIONEER TITLE CO., of Lane County

8800937

State of Oregon, County of Lane--ss.

I, the County Clerk, in and for the said County, do hereby certify that the within instrument was received for record at

8 JAN 88 10:32 Reel 1495R

Lane County OFFICIAL Records. Lane County Clerk

By: John E. Four County Clerk

5627A001 01/08/88WP10 5 00 **0003**

5627A001 01/08/88PFND 10 00 **0003**

The said property is free from encumbrances except covenants, conditions, restrictions and easements of record

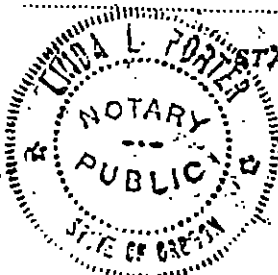
The true consideration for this conveyance is \$ 67,000.00 (Here comply with the requirements of ORS)

Dated this 4th day of November, 1977

Mildred E. Miltonberger

E. J. Petersen

Zelpha Petersen



STATE OF OREGON, County of Lane Personally appeared the above named Mildred E. Miltonberger, E J Petersen and Zelpha Petersen and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me: Linda L. Porter Notary Public for Oregon—My commission expires: 4/24/81

Grantees Address 680 Tyler, Eugene, Oregon 97402

PO BOX 2869 Eugene OR 97402

77-1131

DPT 11574

302

MEMORANDUM OF LAND SALE CONTRACT

KNOW ALL MEN BY THESE PRESENTS, That on the 4th day of November, 1977, MILDRED E. MILTONBERGER, as to an undivided one-half interest, E. J. PETERSEN, ZELPHA PETERSEN, as tenants by the entirety as to an undivided one-half interest, as VENDORS, and JAMES SILKE AND CAROL L. SILKE, husband and wife, as VENDEES, made and entered into a certain Land Sale Contract;

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

Lot 1, Block 2 together with the following: Lots 1, 2, 3, 4 and 5, Block 3; Lots 1, 2, and 4, Block 4; all of Blocks 5, and 6; Lots 2 and 7, Block 7; Lots 71, 72, 77, 78, 101, 102, 103, 104, 105, 106, 107, 108, 109, and 110, Block 9; and all of Block 10, ERHART ACRES, as platted and recorded in Book 7, Page 24, Lane County Oregon Plat Records, in Lane County, Oregon.

The true and actual consideration of this transaction is \$67,000.00

The terms and conditions of said transfer being fully set forth in said Land Sale Contract IN WITNESS WHEREOF the parties have hereunto set their hands this 4th day of November, 1977.

James Silke
James Silke

Mildred E. Miltonberger
Mildred E. Miltonberger

Carol L. Silke
Carol L. Silke

E. J. Petersen
E. J. Petersen

STATE OF OREGON, County of _____ Personally appeared the within named

Zelpha Petersen
Zelpha Petersen

JAMES SILKE, CAROL L. SILKE, MILDRED E. MILTONBERGER, E. J. PETERSEN and ZELPHA PETERSEN

and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

Bonnie L. Porter
Bonnie L. Porter

Notary Public for Oregon

680 Tyler
Eugene, Oregon 97402

My Commission Expires: 4/2/81

PIONEER TITLE CO. of Lane and Deschutes Counties



EXHIBIT C

MEMORANDUM OF LAND SALE CONTRACT

PIONEER INVESTCO
OF CLATSOP COUNTY

1201 Main St., Clatsop, OR 97114
222 N. A. St., Astoria, OR 97103
121 Oregon Ave., Seaside, OR 97138

777A1131

State of Oregon
County of Lane

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

977 NOV 7 PM 1 25

Book **872 R**

Lane County OFFICIAL RECORDS

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

By *[Signature]*

MEMORANDUM OF LAND SALE CONTRACT

VENUE

WITNESS

After reading where in

INDEX ADDRESS, ZIP

MAIL ADDRESS, ZIP

Full or change (if requested, all correspondence must be sent to the following address)

NAME ADDRESS ZIP

543
4702

February 16, 2005

RECEIVED FEB 17 2005

James Silke
680 Tyler Street
Eugene, OR 97402

Re: Erhart Acres, Florence OR 97439

Dear Mr. Silke:

Thank you for considering our firm as Marketing Broker for your Erhart Acres project.

If you recall, you provided me with a copy of a partition map (attached) proposing a Planned Unit Development showing 10 buildable lots in the 14 acre parcel. It is my understanding that you could have developed your land to the density proposed in the attached plat in 1977.

After you and I walked the property in January, you asked how much I could reasonably sell the lots for (assuming the proposed plat), with septic approvals, paved road, water to each lot line, together with power and phone. After much consideration, I have concluded that we could achieve approximately, 10 sales, totaling, \$1,005,000.00.

You also asked me what the lot sales would total if the development had to adhere to a 2 acre minimum lot size given the topographical constraints. It is my opinion that you would have a hard time obtaining more than 6 buildable lots with total sales of \$625,000.00.

Thank you for this opportunity to serve you, please do not hesitate to call or write if you have any further questions.

Respectfully yours;

A handwritten signature in black ink that reads "Dale A. Saari".

Dale A. Saari, Broker
Office: 541.997.5926

enc

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

375 W. 4TH STREET, SUITE 204
EUGENE, OR 97401
TEL (541) 343-8596
FAX (541) 343-8702
E-MAIL BILLKLOOS@LANDUSEOREGON.COM

May 9, 2006

William Van Vactor
Lane County Administrator
Courthouse and Public Service Building
125 E. 8th Ave.
Eugene, OR 97401

Re: Ballot Measure 37 Claim by Jim and Carol Silke
Assessor's map 19-12-25-22, TL 1800

Dear Mr. Van Vactor:

I have confirmed with Kent Howe that the applicant would like to move forward again with this application, which was put on hold on October 25, following the circuit court decision on BM 37. The application requests partitioning of a 14.29-acre tract into 11 lots.

At our public hearing on this matter before the Board in September, the Board continued the matter at my request, so that we could attempt to work out some wrinkles on code interpretation issues. I present that information here, along with other relevant information.

I make three points here, in summary:

1. The LCDC has approved the Silke's BM37 request and approved partitioning to parcels as small as one acre in size.
2. The county's track record of partition approvals in 1978 reflects the 1977 code language as allowing parcels in the neighborhood of one-acre in size.
3. The county's track record of partition approvals in 1978 reflects no minimum dimension standards for parcels.

1. LCDC Order on BM 37 claim, waiving LCDC regulations.

For the record, I am enclosing DAGS/LCDC Final Order, Claim No. M118367, approving the Silke claim for relief from LCDC regulations. Specifically, the order waives the LCDC's 2-acre minimum parcel size and allows the Silkes to develop the property down to a minimum parcel size of one acre. See Exhibit A. The Order concludes that a one-acre parcel size would be consistent with the Statewide Planning Goals.

2. What area regulations apply under the 1977 county code.

05-09-06P04:17 RCVD

We left the last county board hearing on this with some questions about what county regulations applied to partitioning of the property in 1977, when the property was purchased. We have used the time since the hearing to inquire further into the question.

Summary: Based on the language of LC 13.070(1977), at the time Silkes acquired title on November 4, 1977, the subject property: (1) was not subject to any comprehensive (subarea) plan; (2) was not zoned by the county; (3) could be partitioned into parcels, consistent with the LC Chapter 13 (Aug. 1977); (4) the "the minimum parcel or lot area shall be determined by water supply and sewerage facility requirements," and (5) the parcel "width and depth requirements shall be based on the closest applicable requirements of the table" in LC 13.070.

The applicants request a county waiver for a series of partitions to result in 11 parcels on the existing 14.29-acre tract in the existing TL 1800. The minimum parcel size would be one-acre per parcel, consistent with the LCDC Order. Each parcel would have on-site septic. Each parcel would be served with water from a water system that serves up to three parcels with water from Siltcoos Lake. The on-site septic and shared water systems is the existing method for serving other lots and parcels in the immediate vicinity.

Discussion: The Unzoned Area Development Permit regulations of LC 9.700 et seq (1977) do not apply to partitions or series partitions because partitions are not listed in LC 9.710 (1977). The regulations in LC Chapter 13 (August 1977), Land Divisions, would apply to the partitioning of the property. Attached as Exhibit B is copy of LC 13.070(1977). The first sentence of LC 13.070 (1977) says that the area and dimension requirements for parcels are set by this section. Subsection (1) then addresses the numbers and references the Table in the section. The first sentence of subsection (1) says to apply the Table. It is clear from looking at the Table that one needs to know the zoning of the property in order to know which numerical standards in the Table to apply. For example, under the Residential, Rural category in the Table, one must know whether the applicable zoning sets a 5, 10 or 20-acre parcel minimum size, in order to know what the lot dimension standards are. Note that the acreage figures that are in the Table range from 1, 2, 5, 10 to 20 acres. These parcel sizes reflect the area requirements of the zones in place at that time. See, for example, LC Chapter 10, Zoning: LC 105-42 (FF-20), 20-acre; LC 10.108-42 (GR), 10-acre; LC 10.110-42 (AGT), 5-acre; LC 10.130-42 (RR), 1, 2 or 5 acre.

The Silke property was unzoned. If the subject property is unzoned, then you do not know where to go in this Table for dimensions. In that situation, the second sentence of subsection (1) comes in to play. It says:

"When area requirements have not been established or specified for an area either by the Comprehensive Plan for Lane County or Lane Code Chapter 10, "Zoning", the minimum parcel or lot area shall be determined by water supply and sewerage facility requirements in which case width and depth requirements shall be based on the closest applicable requirements of the table."

With no plan or zoning applicable to the Silke property on the acquisition date, the language above means there is no numerical minimum lot size. The allowable size is based on a performance standard relating to sewage and water supply. Factually, the existing development in the immediate area includes many lots of one acre and smaller. The lots are served by on-site septic and by water systems drawing from the lake.

I have had discussions with the county attorney the minimum parcel size under the code. He raised a question about whether the code should be read as: (1) using the performance language quoted above to determine the minimum lot size (which would allow the Silkes to partition to a one-acre minimum consistent with the LCDC order), or (2) whether 5-acre minimum parcel size shown in the Table in LC 13.070(1977) applies. The Silkes had a partition of their property finalized in 1978; it created two one-acre parcels and the 14.29-acre parcel that is at issue here. The County Attorney suggested that the final configuration of the partition into one-acre parcels might have been a mistake or an aberration, and the correct minimum parcel size for partitions in unzoned areas in 1977 might be five acres. To resolve this question, I have sampled the county's files of partitions finalized in 1978, looking for the actual parcel sizes that the county was approving under the 1977 code. What I have found is that the county was routinely applying the 1977 code to approve parcels in the neighborhood of one acre. Thus, the County should not now interpret the 1977 code as requiring a 5-acre minimum lot for partitioning under unzoned area permits, when it did not so interpret the code in 1977.

The documentation of the county 1978 approvals we examined is appended as Exhibit C hereto. The data in Exhibit C is summarized in the table below:

Selected Lane County Partition Decisions from 1978				
File No.	Date	Recording #	Parcel Sizes (acres)	Smallest Parcel Width (feet)
M84-78	4/25/78	782877	1.25, 1.30	166.45
M79-78	5/22/78	7835287	1.05, not stated	192.18
M70-78	6/16/78	7811879	1.128, 1.330, 1.119	126.76
M83-78	7/12/78	7848128	1.73, 2.20	107.90
M456-78	8/3/78	8036653	1.0, 1.0, 14.29	186.90
M85-78	8/29/78	7864175	1.11, 1.15, 1.07	153.05
M74-78	12/19/78	7882800	Small, not stated.	<166

As the data show, the County in 1978 was routinely applying the code to partition land to one-acre parcels. This supports the language quoted above from LC 13.070(1) (1977) as being the language that governs parcel sizes under the 1977 code. It was a performance standard, which allowed sizes as small as an acre.

3. What parcel dimension standards apply under the 1977 county code.

The next question is whether the 1977 county code imposed and dimensional requirements on

William Van Vactor

May 9, 2006

Page 4

partition parcels created in an unzoned area? It is plausible to read the language quoted above from LC 13.070(1)(1977) ("width and depth requirements shall be based on the closest applicable requirements of the table") as requiring dimensional standards to be found somewhere in the Table in LC 13.070(1)(1977). For an unzoned area, it is not clear at all what part of the Table might be considered applicable. The only part of the Table that is potentially applicable would be the standards set for 5, 10 and 20 acre lots in "Rural" areas. For example, in Rural parts of the county with 5-acre minimum lot size, the Table requires lots to have a 300-foot minimum width and no minimum depth. There is no smaller minimum standards shown in the Table for Rural lands.

The answer to this question is again found in the county's actual track record of approving partitions in 1978 in unzoned areas. The summary table above shows that the county was routinely approving parcels having widths much smaller than 300 feet. This indicates that the county read the language of LC 13.070(1)(1977) as not imposing a minimum width based on the Table in that code section because none of the dimensional standards in the Table were considered "applicable requirements of the table." The rationale of the county seems to have been that for unzoned areas the standards summarized in the Table were not applicable. This makes common sense, in that if parcels could be created as small as one acre or so, then it made no sense to apply the minimum width standards for 5-acre parcels.

Sincerely,



Bill Kloos

Enclosed:

Exhibit A: DAGS/LCDC Final Order, Claim No. M118367 (March 13, 2006)

Exhibit B: LC 13.070(1977)

Exhibit C: Selected Lane County Partitions in unzoned areas (1978)

C: Client
Kent Howe
Steve Vorhes



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Costal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

March 13, 2006

James and Carol Silke
PO Box 21505
Eugene, OR 97402



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M118367
Amended Final Staff Report and Recommendation and
Amended Final Order*

Claimants: James and Carol Silke

Dear Mr. and Ms. Silke:

Enclosed is an Amended Final Staff Report and Recommendation and an Amended Final Order that the department has issued in connection with the above-referenced Ballot Measure 37 claim. This Amended Final Staff Report and Recommendation and Amended Final Order replace the Final Staff Report and Final Order that were previously issued on the above referenced Ballot Measure 37 (ORS 197.352) claim.

The Amended Final Staff Report and Recommendation and Amended Final Order have been issued to clarify the potential uses of the property when it was acquired in 1977. The effects of these amendments change the original denial of the claim to a waiver pending subsequent decisions by the county.

No response regarding this Amended Final Staff Report and Recommendation and Amended Final Order is required.

Thank you for your courtesies.

Yours very truly,

LANE SHETTERLY
Director

Enclosure

lps:/sw/ m118367silke.031306

EXHIBIT A

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES, THE DEPARTMENT
OF LAND CONSERVATION AND DEVELOPMENT OF THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR)
COMPENSATION UNDER ORS 197.352)
(BALLOT MEASURE 37) OF)
James and Carol Silke, CLAIMANTS)
AMENDED
FINAL ORDER
CLAIM NO. M118367

Claimants: James and Carol Silke (the Claimants)

Property: Tax Lot 1800, T.19S, R.12W, Section 25, W.M., Lane County (also known as
83315 Erhart Road, Oregon) (the Property)

Claim: The demand for compensation and any supporting information received from the
Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, subject to Lane County's interpretation of and subject to the provisions of its 1977 "Unzoned Area Development Permit" code to have allowed the 14.29-acres to be divided into parcels less than two acres when the claimants acquired it in 1977 as explained in Section V. (2) of the DLCD Report, and subject to the following terms:

1. In lieu of just compensation, the State of Oregon will not apply the requirements of the following law enforced by the Commission or the department to the James and Carol Silkes' division of the 14.29-acre property into parcels less than two acres for residential use: the applicable provisions of OAR 660-004-0040. This rule will not apply to the Silkes' division of the subject property for residential use only to the extent necessary to allow them to use the property as described in this report, and only to the extent that the use was permitted when they acquired the property on November 4, 1977.
2. The action by the State of Oregon provides the state's authorization to James and Carol Silke to use the property subject to the standards in effect on November 4, 1977. On that date, the property was subject to applicable provisions of Statewide Planning Goal 14, which required a minimum parcel size of at least one acre.


3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 13th day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 13th day of March, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

1. **Judicial review under ORS 293.316:** Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. **Judicial review under ORS 183.484:** Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County and the Circuit Court in the county in which you reside.
3. **A cause of action under ORS 197.352:** A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

**BALLOT MEASURE 37 (ORS 197.352)
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Amended Final Staff Report and Recommendation**

March 13, 2006

STATE CLAIM NUMBER: M118367

NAMES OF CLAIMANTS: James and Carol Silke

MAILING ADDRESS: P.O. Box 21505
Eugene, Oregon 97402

IDENTIFICATION OF PROPERTY: 83315 Erhart Road, Florence
Township 19S, Range 12W, Section 25
Tax lot 1800
Lane County

DATE RECEIVED BY DAS: April 28, 2005

180-DAY DEADLINE: March 13, 2006¹

I. CLAIM

The claimants, James and Carol Silke, seek compensation in the amount of \$380,000 for a reduction in fair market value of property as a result of certain land use regulations that are alleged to restrict their use of the property. The claimants desire compensation or the right to divide their 14.29-acre property into one-acre lots for residential use. The property is located at 83315 Erhart Road, Florence in Lane County, Oregon. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that this claim is valid. Department staff recommends, in lieu of just compensation, that the requirements of the following laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimants to allow them to divide the subject property into parcels less than 2 acres for residential use: the applicable provisions of OAR 660-004-0040. This rule will not apply to the claimants' division of the subject property only to the extent necessary to allow them to use the property as described in this report, and only to the extent that use was permitted at the time they acquired the property on November 4, 1977. (See the complete recommendation in Section VI. of this report.)

¹ This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Measure 37 was suspended during the pendency of the appeal of Macpherson v. Dep't of Admin. Servs., 340 Or ____, 2006 Ore. LEXIS 104 (February 21, 2006).

III. COMMENTS RECEIVED

On May 27, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to owners of surrounding properties. According to DAS, one comment was received, evidence or information was received in response to the 10-day notice.²

The comment is relevant to whether a state law restricts the claimant's use of the property; whether the restriction of the claimant's use of the property reduces the fair market value of the property and whether a state agency has the authority to waive state statutes. The comments have been considered by the department in preparing this report (See comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of the Measure (December 2, 2004), within two years of that effective date or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of the Measure (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on April 28, 2005, for processing under OAR 125, division 145. The claim identifies the two acre density limitation in OAR 660-004-0040 as the state law that restricts the use of the property as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See citations of administrative rule history of the Oregon Administrative Rules.)

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulation adopted prior to December 2, 2004, and is therefore timely filed.

² The 10-day notice period was suspended for 139 days during the pendency of the *Macpherson v. Dep't of Admin. Servs.*, 340 Or ___, 2006 Ore. LEXIS 104 (February 21, 2006), which suspended all Measure 37 deadlines.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation of relief from specific laws for “owners” as that term is defined in the ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

According to the record, James and Carol Silke, acquired the subject property by a Land Sales Contract on November 4, 1977 (see copy in the department’s file). A current tax statement has been provided which demonstrates that James and Carol Silke remain current owners of the property.

Conclusions

The claimants, James and Carol Silke, are “owners” of the subject property as that term is defined in ORS 197.352(11)(C) as of November 4, 1977.

2. The Laws that are the Basis for the Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants’ use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim states that the claimants seek “compensation/relief from all regulations of the Land Conservation and Development Commission (LCDC) in OAR 660 Chapter 660 that post-date their date of acquisition. In particular, they seek compensation/relief from the rules adopted on June 9, 2000 (effective date October 4, 2000) setting a 2-acre minimum size for land divisions on rural lands. Those rules are found at OAR 660-004-0040.”

OAR 660-004-0040 became effective on October 4, 2000 and is an interpretive rule under Statewide Planning Goal 14 (Urbanization). Goal 14 became effective on January 25, 1975. Statewide Planning Goal 14 generally requires that land outside urban growth boundaries be used for rural uses.

As interpreted by the courts and the Commission, Goal 14 generally prohibits residential development outside of an urban growth boundary where lot or parcel sizes are less than two-acres. (See, e.g. *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986); *DLCD v. Klamath County*, 38 Or LUBA 769 (2000). As a result of a 1986 *Curry County Oregon* Supreme Court decision, the Commission amended Statewide Planning Goal 14 (Urbanization) and adopted OAR 660-004-0040, establishing rules for rural residential development outside

urban growth boundaries, which became effective on October 4, 2000.³ The rule provides among other things that if, on October 4, 2000, a County Rural Residential (RR) zone specifies a minimum lot size smaller than two-acres, the area of any new lot or parcel shall equal or exceed two-acres. OAR 660-004-0040(5)(b) and (7)(d). A lot or parcel smaller than two acres may be created only if an exception to Goal 14 is taken. OAR 660-004-0040(7)(a).

The claimant's property is currently zoned Rural Residential (RR-1) with a one-acre minimum lot size. As a result of OAR 660-004-0040, the subject property cannot be divided into lots or parcels less than two acres in size.

When the claimants acquired the subject property in 1977, it was not zoned by Lane County but was subject to the applicable provisions of the County's "Unzoned Area Development Permit." These provisions are in question and have not yet been conclusively interpreted by Lane County. They either allow for the creation of new five-acre parcels or parcels "determined by water supply and sewage facility requirements in which case width and depth requirements shall be based on the closest applicable requirements of the table." (See Lane County Code Section 9.700(29) and Sections 13.015 and 13.070 effective in 1977 in the department's claim file).⁴

Further, when the claimants acquired the subject property in 1977, the "Unzoned Area Development Permit" provisions were not acknowledged by the Commission under the standards for state approval of local comprehensive plans and land use regulations pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged Lane County's plan and land use regulations when the claimants acquired the property in 1977⁵, the Statewide Planning Goals applied directly to the property.⁶

As explained above, Statewide Planning Goal 14 (Urbanization) required that local comprehensive plans identify and separate urbanizable land from rural land. For properties

³ Before that time, Goal 14 had been held to prohibit residential development in areas outside of urban growth boundaries at densities between one and five-acres per lot. See *DLCD v. Klamath County*, 38 Or LUBA 769 (2000).

⁴ Section 13.015(1)(d) appears to classify the claimant's property as a "Rural Area" and thus subject to the 5 acre minimum specified in the table under Section 13.070

⁵ Commission Denial Order dated February 26, 1981 for rural and coastal areas; Acknowledgement Order dated October 3, 1984 (84-ACK-201), affirmed in part and remanded by Oregon Supreme Court, including exception areas under Goal 2, (see *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384 (1988)). Also see Continuance Order 88-CONT-380, dated June 2, 1988, for clarification of the Commission review of exception areas.

⁶ The Statewide Planning Goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of the County's plan and implementing regulations. (*Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), *Alexanderson v. Polk County*, 289 Or 427, rev. denied, 290 Or 137 (1980) and *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985)). After the County's plan and land use regulations were acknowledged by Commission, the Statewide Planning Goals and implementing rules no longer directly applied to such local land use decisions, (*Byrd v. Stringer* 295 Or 311, (1983)). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same in substance, the applicable rules must be interpreted and applied by the county in making its decision. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

within close proximity of an urban growth boundary Goal 14 requires a minimum lot size of at least one-acre for the creation of new lots or parcels. (See *Doob v. Josephine*, 32 Or LUBA 364 (1977).⁷ Further, LCDC acknowledged the County's RR-1 zoning to be in compliance with Goal 14.⁸

Accordingly, the claimants' 14.29-acre parcel may have been divided into one-acre parcels when the claimants acquired it in 1977 under one interpretation of Lane County's "Unzoned" code provisions (water and sewer requirements) and the provisions of Goal 14.

Conclusions

The provisions of Lane County's 1977 "Unzoned Area Development Permit" code may have allowed for new parcels based on "water supply and sewage facility requirements," and the general requirement of Goal 14 (Urbanization) as applied to the property. The zoning requirements, minimum lot size and dwelling standards for rural residential lots or parcels established by OAR 660-004-0040 were enacted after the claimants acquired the subject property in 1977, and do not allow the division of the property, thereby currently restricting the use of the property. However, Goal 14, as applied to the subject property under the RR-1 zoning acknowledged by the Commission may have allowed the property to be divided into parcels less than two acres in size. Thus, the current land use regulations applicable to the subject property restrict its use relative to the uses allowed when the claimants acquired the property in 1977.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that any laws described in Section V.(2) of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

⁷ The subject property is within one-mile of the City of Dunes City's Urban Growth Boundary.

⁸ See footnote # 2 of this Report.

Findings of Fact

The claim includes an estimate of \$380,000 for the reduction in the property's fair market value due to current regulations. This estimate is based on a marketing analysis conducted by local realtors.⁹ No other information or documentation has been submitted with the claim.

Conclusions

As explained in section V.(2) of this report, depending on how Lane County interprets the provisions of its 1977 "Unzoned Area Development Permit" code, current land use regulations may restrict the use of the subject property relative to the uses allowed when the claimants acquired the property in 1977. If the claimants can not divide the subject property into more parcels under the current two-acre minimum lot size for residential development than they could have when they acquired the property in 1977 (based on "water supply and sewage facility requirements" and Goal 14), the current land use regulations restrict the use of the property and under ORS 197.352, James and Carol Silke are entitled to compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Thus, based on the findings and conclusions in Section V.(2), state laws restrict the division of the subject property and residential development. The claimants estimate the reduction in value due to land use restrictions to be \$21,127,000.

Without an appraisal or other documentation it is not possible to determine the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information and depending on how Lane County interprets the provisions of its 1977 "Unzoned Area Development Permit," the department determines that it is more likely than not that some additional development than currently permitted would have been possible in 1977, and that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

4. Exemptions under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from the ORS 197.352.

Findings of Fact

The land use regulations that are the subject of this claim are Goal 14 and OAR 660-004-0040, which set forth the requirements for the creation of new lots or parcels in rural residential areas. Goal 14 was in effect when the claimants acquired the property in 1977. As a result, it is exempt under ORS 197.352(3)(E). The provisions of OAR 660-004-0040 took effect in 2000, after the claimants acquired the property. As a result, that rule is not exempt under ORS 197.352(3)(E).

⁹ The basis for this estimate is the determination that ten buildable lots (assuming a proposed plat with septic approvals, paved road, water to each lot line, together with power and telephone), would have a fair market value of about \$1,005,000. Under current law requiring a two-acre minimum lot size, six buildable lots could be created, given topographical constraints, with a fair market value of about \$625,000 ($\$1,005,000 - \$625,000 = \$380,000$).

Conclusions

Laws in effect when the claimants acquired the property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. Goal 14 was enacted before the claimants acquired an interest in the property, and as a result is exempt from ORS 197.352(3)(E). However, because there are no state laws that restrict the claimants' use of the subject property relative to uses permitted when the claimants acquired the property, the exemption provisions of ORS 197.352(3)(E) are not applicable to this claim.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or department has enforced a law that restricts the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law to allow the present owner to carry out a use of the property allowed at the time the present owner acquired the property. The Commission has by rule directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the current record and depending on how Lane County interprets the provisions of its 1977 "Unzoned Area Development Permit" code, current land use regulations may restrict the use of the subject property relative to the uses allowed when the claimants acquired the property in 1977.

As explained in Section V.(2) of this report, if the claimants cannot divide the subject property into more parcels under the current two-acre minimum lot size for residential development than they could have when they acquired the property in 1977 (based on "water supply and sewage facility requirements" and Goal 14), laws enforced by the Commission or the department restrict the division of the 14.29-acre property into one-acre lots for residential use. The claim asserts that laws enforced by the Commission or department reduce the fair market value of the property by \$21,127,000. Because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow James and Carol Silke to use the 14.29 acres of for a use permitted at the time they acquired the property on November 4, 1977.

Conclusion

Based on the record before the department and depending on how Lane County interprets the provisions of its 1977 "Unzoned Area Development Permit," the 14.29-acres may have been able

to be divided into parcels less than two acres when the claimants acquired it in 1977 as explained in Section V. (2) of this report, the claimants have established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department.

1. In lieu of just compensation, the State of Oregon will not apply the requirements of the following law enforced by the Commission or the department to the James and Carol Silkes' division of the 14.29-acre property into parcels less than two acres for residential use: the applicable provisions of OAR 660-004-0040. This rule will not apply to the Silkes' division of the subject property for residential use only to the extent necessary to allow them to use the property as described in this report, and only to the extent that the use was permitted when they acquired the property on November 4, 1977.
2. The action by the State of Oregon provides the state's authorization to James and Carol Silke to use the property subject to the standards in effect on November 4, 1977. On that date, the property was subject to applicable provisions of Statewide Planning Goal 14, which required a minimum parcel size of at least one acre.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
4. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 16, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

- (a) To prevent access to abutting land at the end of a road in order to assure the proper extension of the road pattern and the orderly division of land lying beyond the road.
- (b) To prevent access to the side of a road where additional width or improvement is required or future partition or subdivision action is needed.
- (c) To prevent access to the side of a road from abutting property that is not part of the division until proportional road construction costs are conveyed to the appropriate developer.
- (d) To prevent access to land unsuitable for development.
- (e) To prevent or limit access to roads classified as arterials and collectors.

13.060

Utility and Watercourse Easements.

(1) Utility Easements. The dedication of easements for the placement of overhead or underground utilities, including but not limited to electric power, communication facilities, sewer lines, water lines, and gas lines shall be required where necessary. Such easements shall be clearly labeled for their intended purpose on all maps and plats and may be located along or centered on parcel or lot lines or elsewhere as determined necessary by the County to provide needed facilities for the present or future development of the area.

(2) Watercourses. When a partition or subdivision is traversed by a watercourse such as a drainage way, channel, or stream, there shall be provided a storm water or drainage easement conforming substantially with the lines of the watercourse, and of such design and development as may be deemed necessary to accommodate reasonable anticipated future development within the drainage area.

13.065

Pedestrian and Bicycle Ways.

When necessary for public convenience, safety, or as may be designated on an adopted master bike plan, the County may require that pedestrian or bicycle ways be improved and dedicated to the public. Such pedestrian and bicycle ways may be in addition to any standard sidewalk requirements of Lane Code, Chapter 15, Roads. Pedestrian and bicycle ways shall be not less than six feet in width and be paved with asphaltic concrete or portland cement concrete.

13.070

Parcels and Lots.

The area, width, dept and layout of all parcels and lots shall meet or exceed the minimum requirements of this section. Such requirements represent minimum design standards for conditions of average natural conditions and development and may be increased or otherwise modified by the County when such standards are found to be inappropriate to a particular division or situation.

(1) Dimensional Standards. The minimum average width and minimum/maximum depth for parcels and lots shall be determined by the

LC 13.070 (1977)

appropriate classification and minimum established area requirements of the associated division as shown on the following table of "Minimum Dimensional Standards". When area requirements have not been established or specified for an area either by the Comprehensive Plan for Lane County or Lane Code Chapter 10, "Zoning", the minimum parcel or lot area shall be determined by water supply and sewerage facility requirements in which case width and depth requirements shall be based on the closest applicable requirements of the table. These standards shall be in addition to, and consistent with, the minimum area requirements of Lane Code, Chapter 10, "Zoning".

MINIMUM DIMENSIONAL STANDARDS FOR PARCELS AND LOTS

CLASSIFICATION		ESTABLISHED MINIMUM AREA	MIN. AVE. WIDTH	MIN/MAX DEPTH
RESIDENTIAL	URBAN	6000 Sq. Ft. -- with community water system and sewage facility.	60'	Min. of 80' & not more than 2-1/2 times ave. width.
		10,000 Sq. Ft. -- with community water system and individual sewage facility.	70'	Min. of 100' & not more than 2-1/2 times ave. width.
		1 acre -- with individual sewage and water facilities.	150'	Min. 200' & not more than 3 times ave. width.
	MAJOR & MINOR DEVELOPMENT CENTERS & RURAL SERVICE CENTERS	6000 sq. ft. -- with community water system and sewage facility.	60'	Min. of 80' & not more than 2-1/2 times ave. width.
		1 acre -- with community water system and individual sewage facility.	150'	Min. of 200' & not more than 3 times ave. width.
		2-5 acres -- with individual sewage & water facilities.	200'	Min. of 250' & not more than 3 times ave. width.
	RURAL	5 Acres --	300'	Not Applicable
		10 Acres --	450'	Not Applicable
		20 Acres --	600'	Not Applicable

Minimum Dimensional Standards for Parcels and Lots

CLASSIFICATION	ESTABLISHED MINIMUM AREA	MIN. AVE. WIDTH	MIN/MAX DEPTH
PLANNED UNIT DEVELOPMENTS (PUD)	The Standards of design of Lane Code, Chapter 10, Zoning, Section 10.700 shall apply to lots or parcels created as part of a Planned Unit Development application; however, the design requirements for lots or parcels of this section shall serve as a general guideline for a PUD.		
COMMERCIAL	The minimum dimensional standards for commercial divisions shall be determined by the county on the basis of the location and type of commercial activity proposed or anticipated. In determining minimum area requirements special emphasis shall be placed on access, circulation, and parking.		
INDUSTRIAL	The minimum dimensional standards for industrial divisions shall be determined by the County on the basis of the type of industrial activity proposed or anticipated. Safe, efficient access, and off street loading, parking and storage shall be required. Large basic lots may be created by the original plat to be partitioned into smaller parcels as specific needs arise.		

(2) Panhandle Divisions. Panhandle parcels or lots shall have excluded from any area or dimensional calculations any portion of the parcel or lot which is used for, or designed to provide access. In addition, minimum parcel or lot design standards may have to be increased for panhandle divisions to assure adequate space between buildings and additional parking spaces.

(3) Special Requirements. In addition to the minimum dimensional requirements of the above table, the County shall also evaluate proposed parcels or lots in terms of efficiency in the use of land and space, protection of natural environmental features, and whether they form a pleasing, convenient, and functional design, and may prescribe additional requirements in accordance with the standards of established professional subdivision planning and design.

(4) Redivisible Parcels and Lots: When parcels and lots are created which are substantially larger in area than required by this Chapter, Lane Code, Chapter 10, "Zoning", or the Comprehensive Plan, and it is determined that the lots or parcels may be divided into smaller lots or parcels in the future, the County may require that boundary lines and other design details be such that redivision may readily take place without violation of the requirements of this Code. The County may require that special development recommendations and/or restrictions on the location of buildings be made a matter of public record when it is deemed necessary to ensure that redivision may take place in conformity with the purpose of this chapter. If the restrictions are considered permanent, they shall be recorded by separate document.

13.075 Sewerage Facilities. All lots and parcels in any division shall be served by either an approved public or community sewerage facility or be suitable for an approved individual sewage disposal facility. Methods of sewage disposal shall be in accordance with and subject to applicable provisions of Oregon Revised Statutes Chapter 199.410 to 199.514; Oregon Revised Statutes Chapter 454.010 to 454.785 as well as all appropriate rules, regulations and policies promulgated under authority of these Oregon Revised Statutes and all appropriate County ordinances and policies.

(1) Public or Community Sewerage Facilities.

(a) In accordance with the subsurface sewage disposal regulations contained in ORS Chapter 340, 71-015(5), when a division is located within a reasonable distance of an existing satisfactorily operating and available sewerage system, and it is practical and feasible to connect with and be sewered by said system, the division shall connect to that system. Should the existing facilities be unable to service the division or development, individual sewage disposal systems may be considered if soil and other conditions are suitable for their use.

780 PARTITIONER: 782877

NAME: BILL HILTON

ADDRESS: 1400 HIGH ST.
EUGENE, OR.

PHONE: 686-1442

INTEREST IN PROPERTY: OWNER
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: SAME AS ABOVE

ADDRESS: _____

PHONE: _____

TAX LOT: 1301 MAP #: 17-09-29

lane county



WATER SUPPLY: WELL

PERMIT #: _____

SEWAGE DISPOSAL: SEPTIC TANK

S.I. #: 77-240 77-243

ELECTRIC SERVICE: LINCOLN PUD

ZONING: UNZONED

DATE SUBMITTED: 1-3-78

RECEIVED BY: taj

FEE PAID: \$ 10.⁰⁰

HEARING DATE: 3-2-78
for office use only

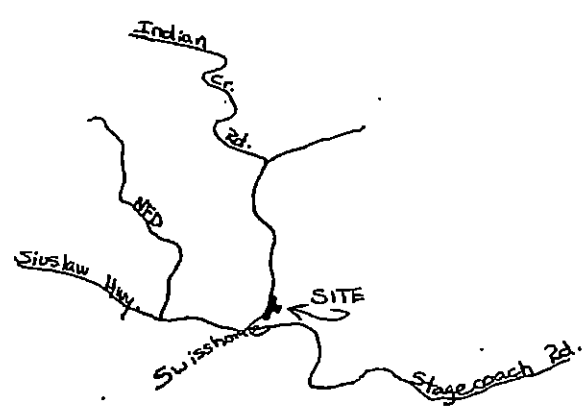
approval

BY: Joseph Hedzylowski
Acting Chairman, Land Development Review Committee

April 25, 1978
Date

B 3 • 27278 1804 00007.0

vicinity map

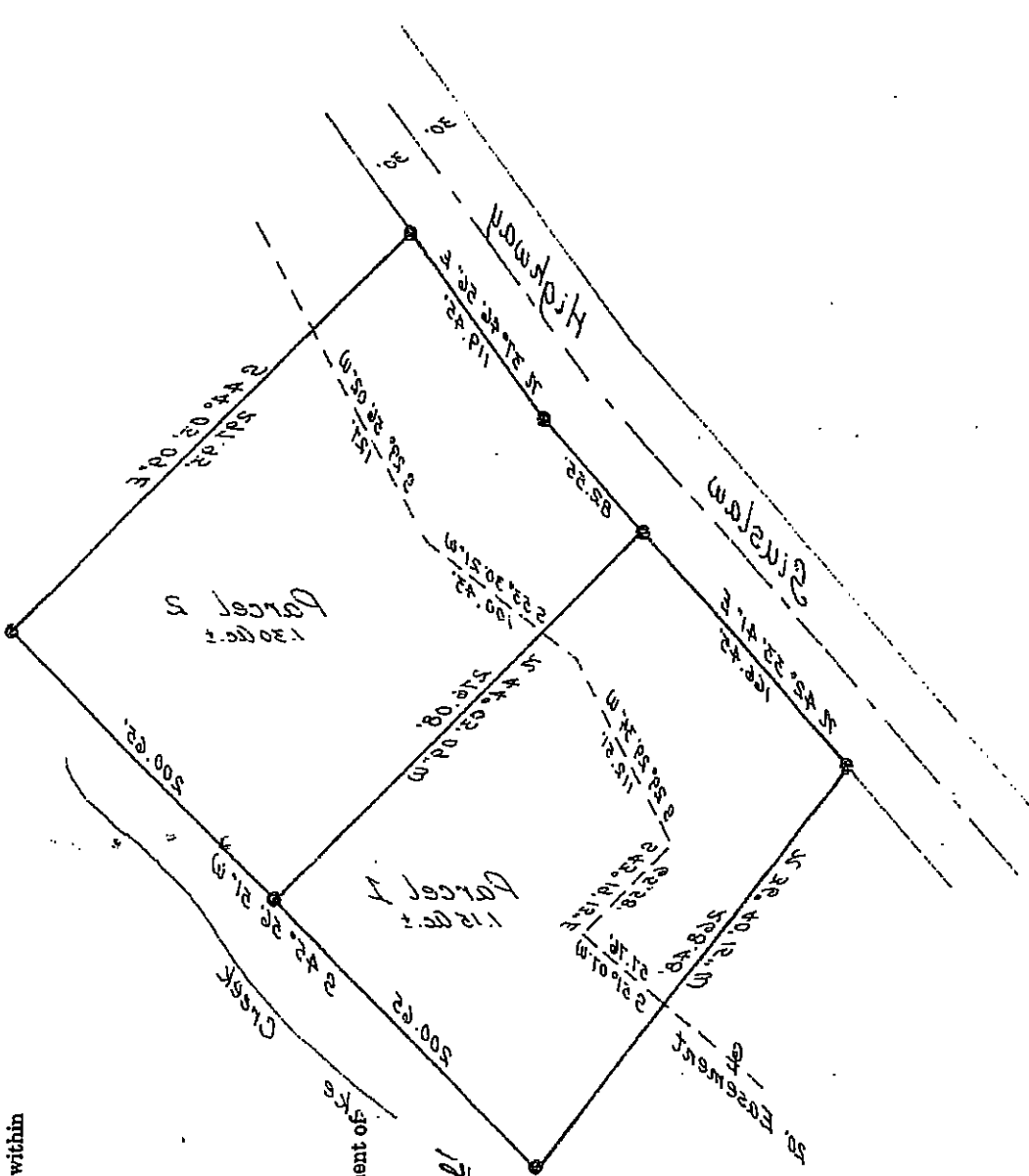


FILE NO: m 84-78

MAP PREPARED BY: _____

7884 39

EXHIBIT C



7828778

State of Oregon,
County of Lane—ss.

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

27 APR 78 16: 43

Reel **906 R**

Lane County OFFICIAL RECORDS.

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

By *Jerry A. McFall*
Deputy

C80-63

NOTE:
A MINIMUM
FLOOD LEVEL
SHOULD BE
MAINTAINED
BY THE
OWNER

RECORDED
INDEXED
APR 27 1978
LANE COUNTY CLERK
[Signature]

7884 41



May 15, 1978

Bill Hilton
1400 High Street
Eugene, OR 97401

RE: Final Approval -- Partition Application # 17-09-29/1301

Final approval is hereby granted to the above-referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours

Joe Hudzikiewicz
Acting Chairman
Land Development Review Committee

cc: Jack Thomas, Public Works
Jim Shrum, Surveyors

Enclosure: Copy of recorded map

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER APPROVING A LAND PARTITION) IN THE MATTER OF AN APPLICATION
AND ADOPTING FINDINGS OF FACT) BY BELL HILTON
)
ORDER NO. 78-4-5-1) FOR A LAND PARTITION
) (m 84-78)

THIS MATTER coming before the Board upon an application by Bill Hilton for a Land Partition (m 84-78), and

Whereas, the Lane County Land Development Review Committee duly considered the above-referenced application on March 2, 1978, and acting through its Chairman, denied the application, and

WHEREAS, a timely appeal was filed by Bill Hilton, thus necessitating a de novo hearing in accordance with Lane Code 13.155, and

WHEREAS, the Board is of the opinion that approving the requested Land Partition is in the public interest, now, therefore it is hereby

ORDERED:

1. The action of the Land Development Review Committee is reversed and the partition remanded to the Review Committee for the purpose of assuring compliance with developmental standards.

2. In support of this action, the Board hereby adopts the Findings of Fact set forth in Exhibit "A", attached hereto.

Adopted this 5th day of April, 1978.

Gerald H. Rust, Jr.

Chairman, Lane County Board of Commissioners

3/28/8
M. Henderson

In the Matter of an Application by Bill Hilton for a Land Partition (m 84-78)

FINDINGS OF FACT

1. The criteria applicable to this decision are those provided in Lane Code Chapters 13 and 15.
2. The proposal is to divide a parcel into parcels of 1.15 and 1.30 acres. The property is located immediately east of the community of Swisshome. The location of the parcel is unique. It is located immediately between Lake Creek and the Siuslaw Highway. The proposed division is of a parcel which is in the middle of a series of divisions between the highway and Lake Creek. It would appear that there would not be continuing divisions due to the physical characteristics of the area should this partition be approved.
3. The partition was not approved by the Land Development Review Committee based on two factors. First, the property is governed by the Siuslaw-Lake Creek Subarea Plan. The Plan generally recommends that there be a two-acre minimum lot size in areas where a community water system and sewage collection system are not available. In addition, the road access to the parcel is by a private easement, which serves several other residences before it reaches the parcel in question. The Lane Code generally provides that a private access easement should not be used with regard to more than four parcels or where the parcels are less than 20 acres.
4. The proposal presents unique physical characteristics and barriers which should be taken into consideration in considering this request. These include the relative locations of the road and the river, and the fact that there appears to be no possibility of further extension or division. The facts indicate that there are adequate setbacks from the creek to permit sewage disposal without danger to the creek. The approval of this partition would appear not to exceed the carrying capacity of the property.
5. The Board is of the belief that the proposal, under the circumstances, does not present a conflict with the Subarea Plan. The Board is concerned with regard to the access. The disposition of this matter shall be a remand to the Land Development Review Committee for reconsideration in light of the Board's expressed intent with regard to compliance with the Comprehensive Plan, the imposition of technical requirements, and a review of the road situation to take such steps as are necessary to prevent the creation of dangerous situations. It is further intended that the Land Development Review Committee impose such conditions as will avoid flood hazards to the property or to improvements on the property.

ORDER NO. 78-4-5-2
(William B. Hilton, M 84-78)
WP 6463-51

EXHIBIT "A"
Page 1 of 1

PLANNING PART.

MINOR PARTITION

NO. M 79-78

APPLICANT LAVON K. MURPHY

T 19 R 02 S 18 SS _____ TXLT 500

DOCUMENT CONTROL # 7879

PARTITIONER:

NAME: LAVON K. (DON) and DIXIE LEE MURPHY

ADDRESS: 34932 E. DANSTROM RD.
CRESWELL, OREGON 97426

PHONE: 895-2356

INTEREST IN PROPERTY: OWNER
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: SAME AS ABOVE

ADDRESS: _____

PHONE: _____

TAX LOT: 500 MAP #: 19-02-18

lane county



WATER SUPPLY:	<u>WELL</u>
PERMIT #:	<u>967-75</u>
SEWAGE DISPOSAL:	<u>SEPTIC</u>
S.I. #:	<u>2477-74</u>
ELECTRIC SERVICE:	<u>75348</u>
ZONING:	<u>AGT-5</u>
	<u>SEE ZV-78039</u>

DATE SUBMITTED: 1-30-78

RECEIVED BY: tgj

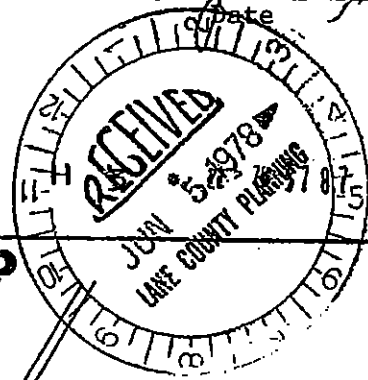
FEE PAID: \$10⁰⁰

HEARING DATE: 3-2-78
for office use only

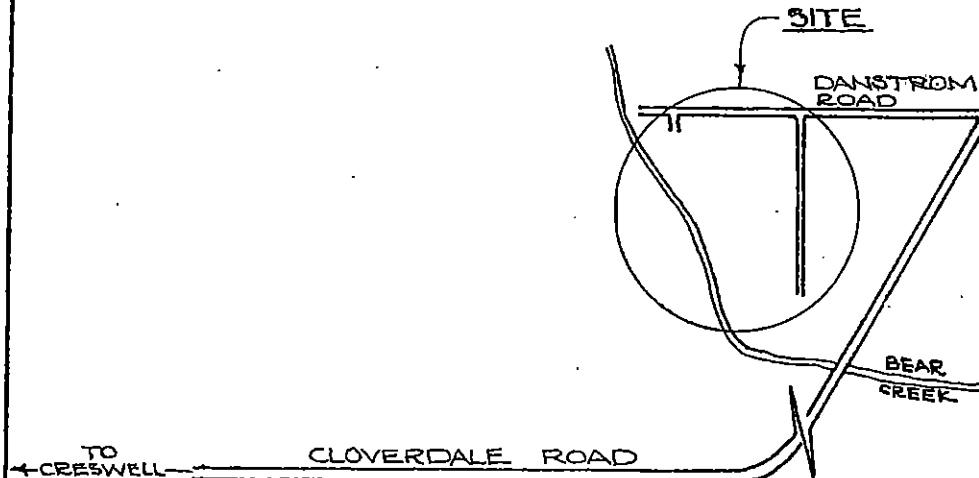
approval

BY: Joseph D. Phillips
Acting Chairman, Land Development Review Committee

May 22, 1978



vicinity map



7879 13

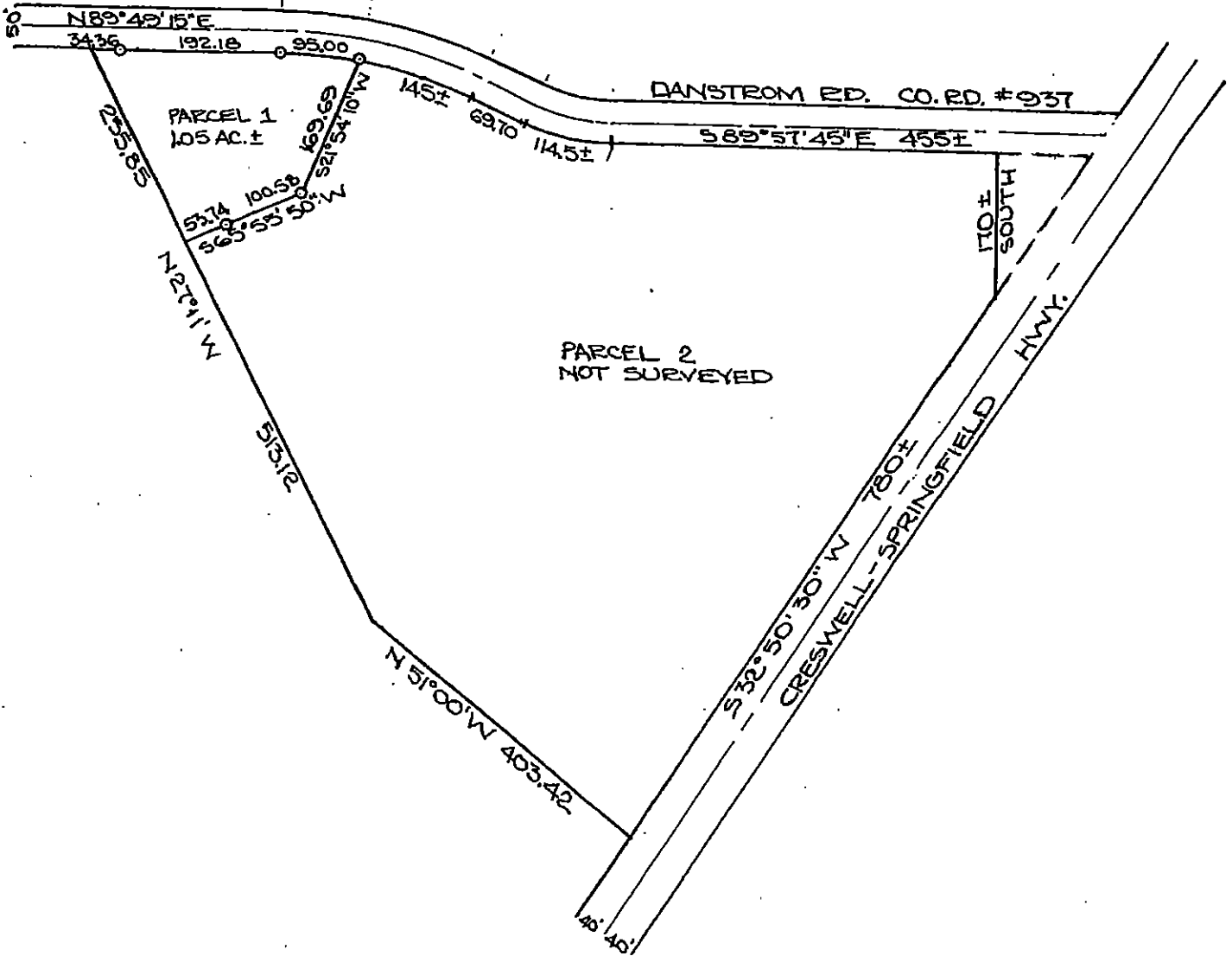
FILE NO: MT9-76

MAP PREPARED BY: ANSON SURVEYING

☒ MINOR
☐ MAJOR

partition

lane county



7879 14

SCALE: 1" = 200'

FILE NO: M79-78

7835287

State of Oregon,
County of Lane—ss.

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

22 MAY 78 16:44

WLR

Reel

Lane County OFFICIAL Records.

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

By: *[Signature]*
Deputy

C30-53

7879

15



June 7, 1978

Lavon K. & Dixie Lee Murphy
34932 E. Danstrom Road
Creswell, Oregon 97426

RE: Final Approval -- Partition Application m 79-78

Final approval is hereby granted to the above-referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours

Acting Chairman
Land Development Review Committee

cc: Jack Thomas, Public Works
Jim Shrum, Surveyors

Enclosure: Copy of recorded map

7879 16

PARTITIONER: 78-1897

NAME: Glen A Westfall

ADDRESS: 300 Bennett Creek Rd
Cottage Grove, Ore.

PHONE: 942-5668

INTEREST IN PROPERTY: OWNER
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:


NAME: Glen A & Reta M. Westfall

ADDRESS: 300 Bennetta Creek Rd.
Cottage Grove, Oregon

PHONE: 942-5668

TAX LOT: 822 MAP 1: 20-0878-2

lane county



WATER SUPPLY: Private wells

PERMIT #:

SEWAGE DISPOSAL: SEPTIC

S.I. #: 78-314, 78-315

ELECTRIC SERVICE: PPL

ZONING:

DATE SUBMITTED: 1-25-78

RECEIVED BY: EVANS

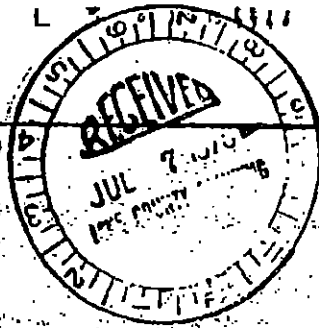
FEE PAID: \$25.00

HEARING DATE: 2-23-78
for office use only

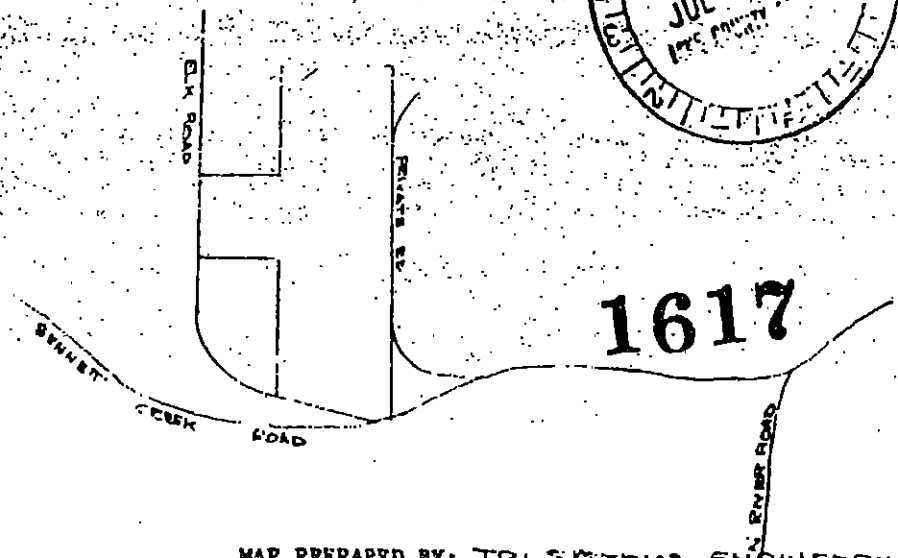
approval

BY: Josiah Hardy
Acting Chairman, Land Development Review Committee

June 16, 1978
Date



vicinity map



FILE NO: M 70-18

MAP PREPARED BY: TRI SYSTEMS ENGINEERING

1970 area shown

78-1887

MINOR
 MAJOR

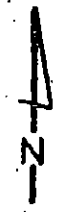
partition

lane county



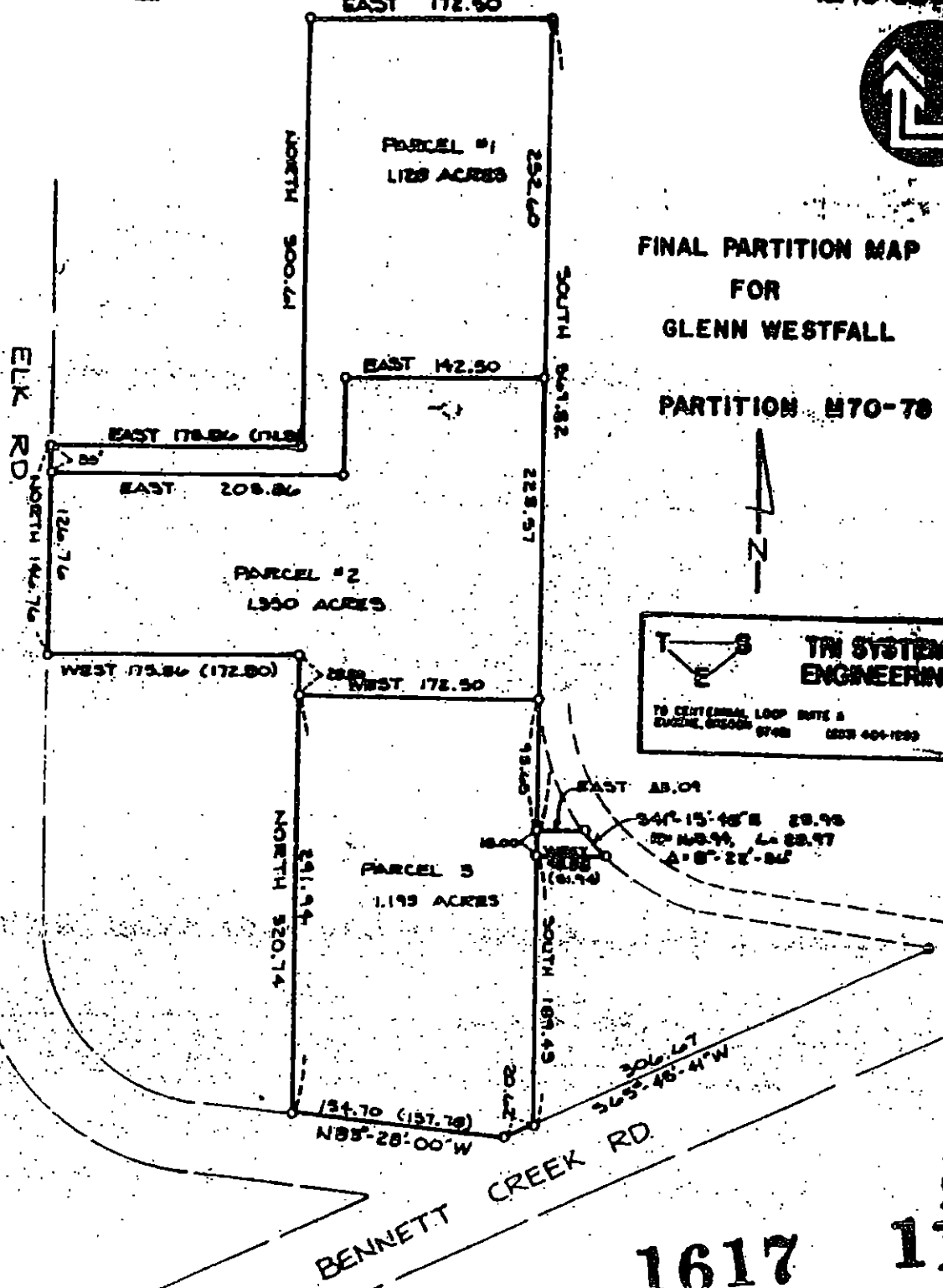
FINAL PARTITION MAP FOR GLENN WESTFALL

PARTITION M70-78



**TRI SYSTEMS
ENGINEERING**

70 CENTRAL LOOP SUITE 2
EUGENE, OREGON 97408 (503) 404-1888



BENNETT CREEK RD

1617

78-1887-11

SCALE:

FILE NO: M 70-78

lane county



July 14, 1978

Glen A. Westfall
300 Bennett Creek Rd.
Cottage Grove, OR 97424

RE: Final Approval -- Partition Application H 70-78

Final approval is hereby granted to the above-referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours

Joe Hudzikiewicz

Acting Chairman
Land Development Review Committee

cc: Jack Thomas, Public Works ✓
Jim Shrum, Surveyors

Enclosure: Copy of recorded map

1617 9

PLANNING PART.

MINOR PARTITION

NO. M83-78

APPLICANT NINA GUY

T 21 R 04 S 12 SS TXLT 1400

DOCUMENT CONTROL # 7883

7848128

Lane County



PARTITIONER: 700

NAME: Nina Guy

ADDRESS: 31123 Kenady Lane
Cottage Grove, Ore.

PHONE: 942-2012

INTEREST IN PROPERTY: Owner
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: Same as above

ADDRESS: _____

PHONE: _____

TAX LOT: 1400 MAP #: 21-04-12

WATER SUPPLY: Well

PERMIT #: _____

SEWAGE DISPOSAL: Septic tank

S.I. #: _____

ELECTRIC SERVICE: P.P & L

ZONING: FF-20 ✓
ZV-73-061

DATE SUBMITTED: 1/31/78

RECEIVED BY: tay

FEE PAID: \$10.00

HEARING DATE: 3/2/78
for office use only

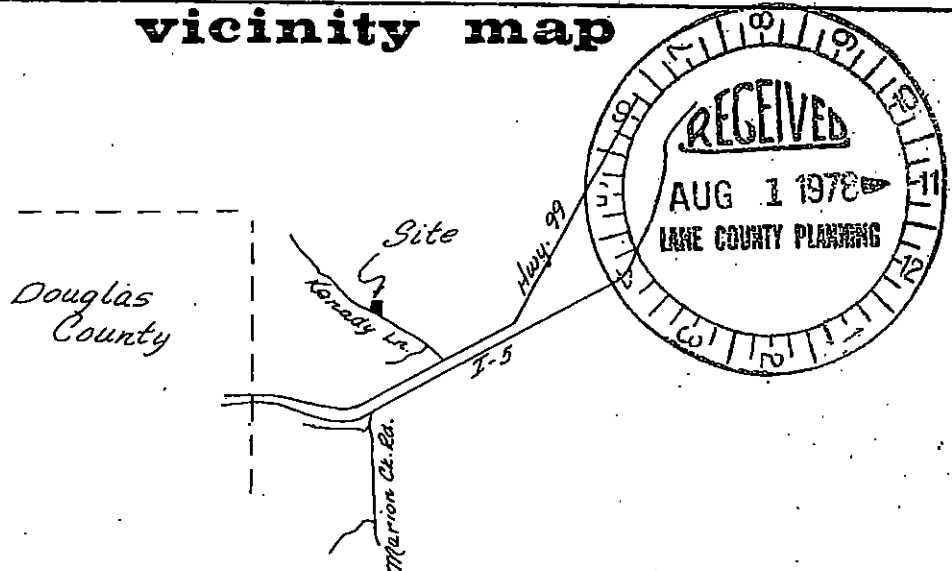
approval

BY: Joseph Hudyniewicz
Acting Chairman, Land Development Review Committee

July 12, 1978
Date

B 3 • 12578 7861 0007.0

vicinity map



7883 9

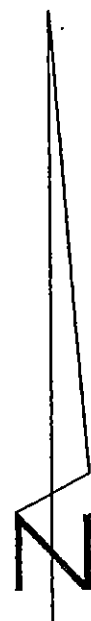
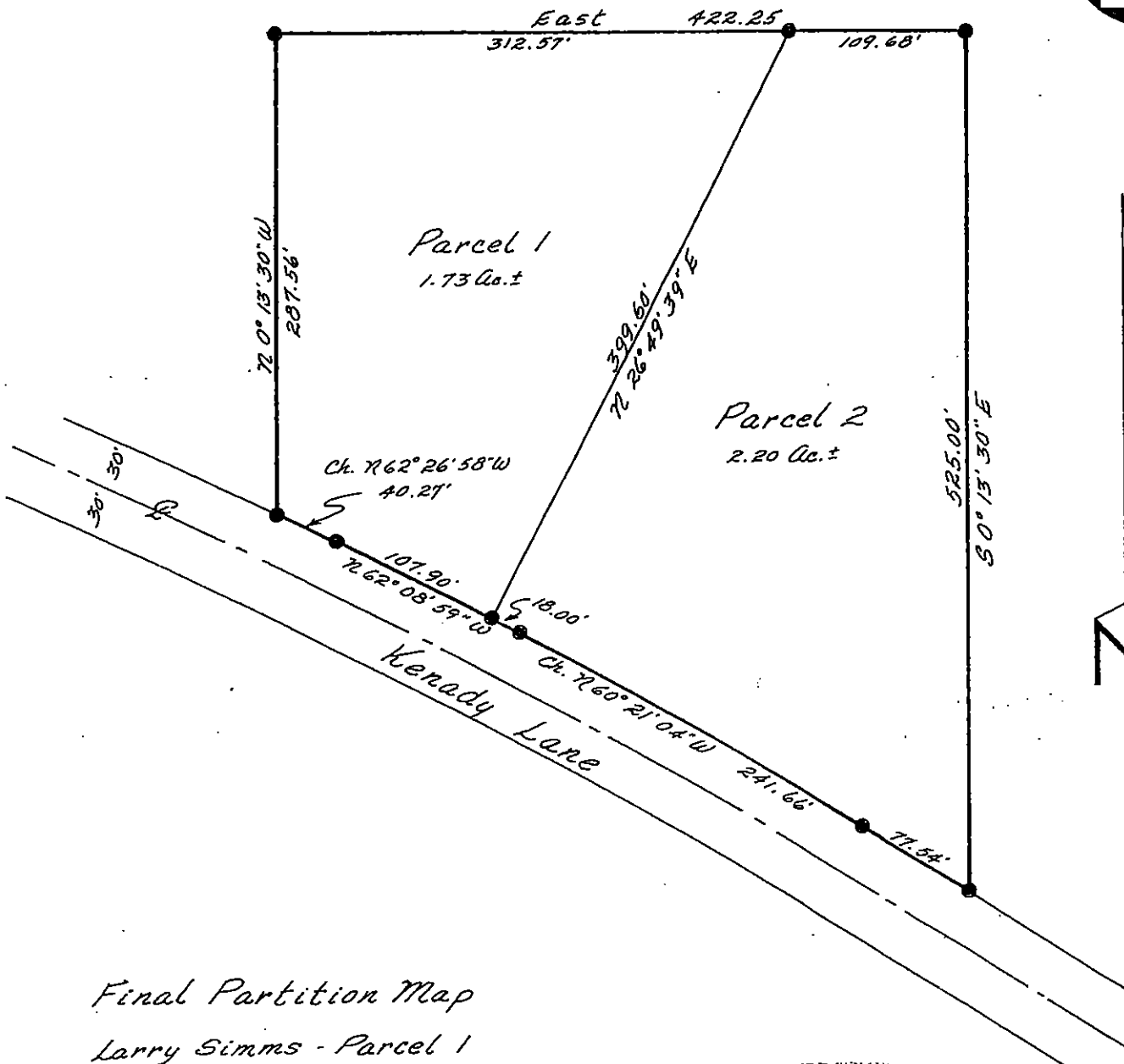
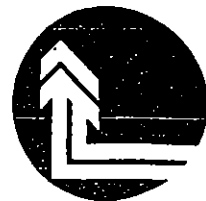
FILE NO: M83-78

MAP PREPARED BY: Attig & Assoc. Inc.

MINOR
 MAJOR

partition

lane county



Final Partition Map

Larry Simms - Parcel 1

Nina Guy - Parcel 2

NE 1/4, Sec. 12, T21S, R4W, W.M.

Lane County, Oregon

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
SEPTEMBER 23, 1977
GERALD K. ATTIG
1121

8887

7883 10

SCALE: 1" = 100'

1-18-78

FILE NO: *m 83-78*

348128

State of Oregon,
County of Lane--ss.

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

12 JUL 78 16: 14

Reel **924 R**

Lane County OFFICIAL Records.

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

By *[Signature]*
Deputy

C30-53

Lane County, Oregon
70 1/4 Sec 15, T21S, R4W, W1/4
Nina Guy - Parcel 2
Larry Simms - Parcel 1
Final Partition Map

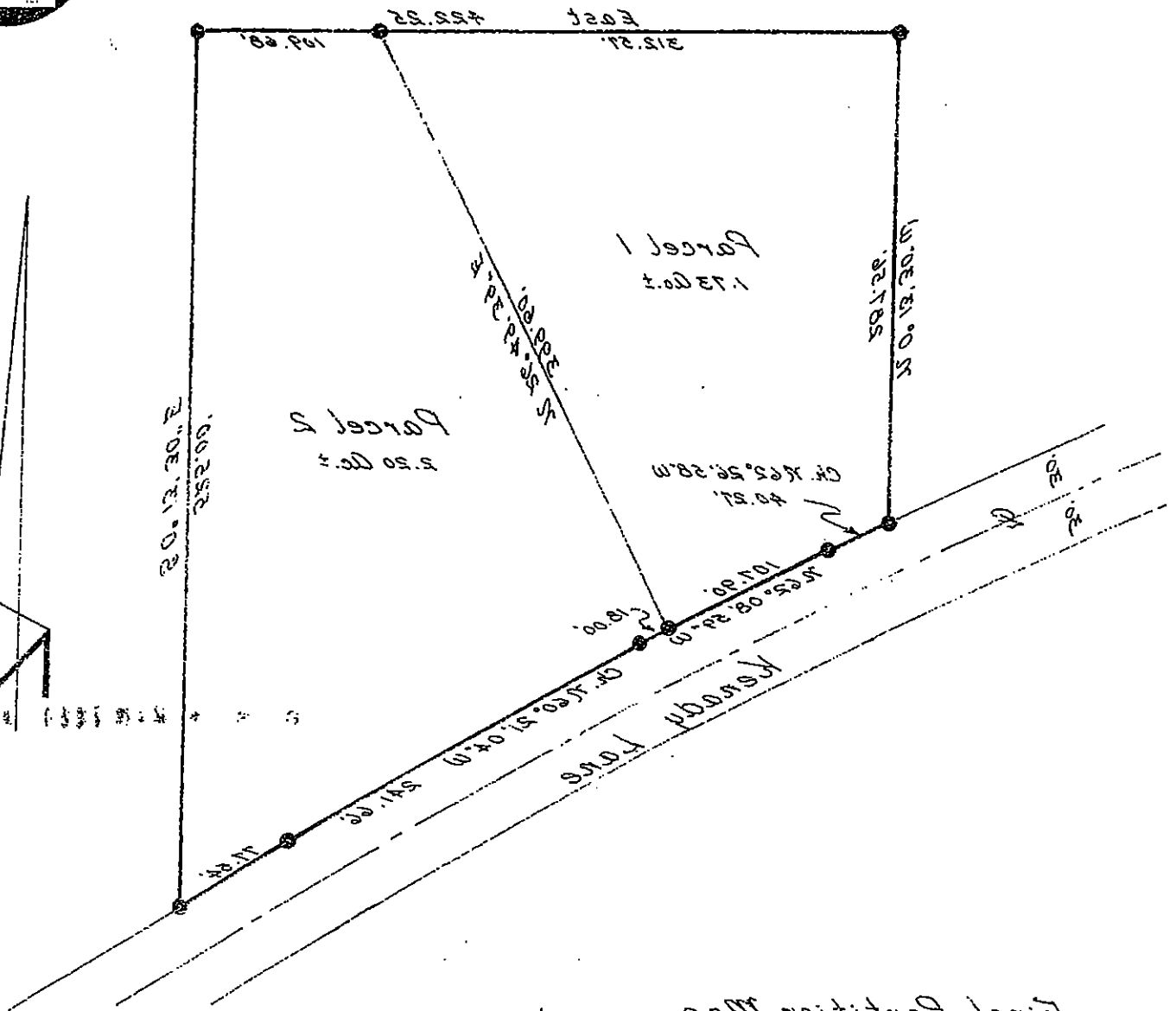
7883 11

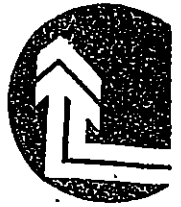
Lane County



Partition

MINOR
MAJOR





August 10, 1978

Nina Guy
31123 Kenady Lane
Cottage Grove, Oregon 97424

RE: Final Approval -- Partition Application m 83-78

Final approval is hereby granted to the above-referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours

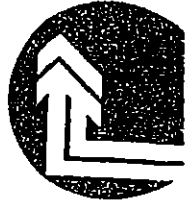
Joe Hudzikiewicz

Acting Chairman
Land Development Review Committee

cc: Jack Thomas, Public Works
Jim Shrum, Surveyors

Enclosure: Copy of recorded map

7883 12



March 6, 1979

Mr. Maynard Wilson
11 So. 6th Street
Cottage Grove, OR 97424

RE: Nina Guy property, Map 21-04-12 Tax Lot 1400
Ref: m 83-78, ZV 78-061

Mr. Wilson:

I am writing at the request of Mrs. Coomler who resides on a parcel of property north of the Nina Guy property.

As you are aware, the Coomlers are in the process of trying to acquire property for dedication of a public road. To acquire enough property for the dedication, a 15 foot strip the length of Mrs. Guy's property is necessary.

Normally, the reduction of a parcel of land to less than the size stipulated in the zoning would require the approval of a variance.

In this case, the existing 2.20 acre parcel would be reduced to 2.02 acres and except for rendering the parcel slightly more substandard the home and facilities would not be affected. Lane County will not require a variance for the Guy property if the reduction of size is for public road dedication as required through the land division process.

The Coomler's are presently involved in a land division. Lane Code chapter 10.330(25) allows the reduction of lot size if it is incorporated with the land division.

In summary, the dedication of a 15 foot strip on the east boundary of Mrs. Guy's property will not affect it's status as a legal usable building site.

Please contact me if I may be of further assistance.

Sincerely,

Mike Evans, Planner
Zoning & Subdivision Section

ME/jb

7883 13

PARTITIONER:

NAME: JAMES D SILKE

ADDRESS: 680 TULE
EUGENE 97402

PHONE: 1087-1611

INTEREST IN PROPERTY:
(Indicate one: owner, contract purchaser,
option holder, other)

OWNER OF RECORD:
NAME: PETerson / MILTON

ADDRESS: P.O. Box 96
WEST LAKE ORE
97493

PHONE: _____

TAX LOT: BLOCK 10 MAP #: 10-12-15-12
1800

NOTIFY: CITY/DUNES CITY lane county
PAT BARBER
P.O. Box 97
WESTLAKE, OR
97493



WATER SUPPLY: CLASS III system
PERMIT #: _____
SEWAGE DISPOSAL: SEPTIC
S.I. #: _____
ELECTRIC SERVICE: CENTRAL UNION
ZONING: _____

DATE SUBMITTED: 7-19-78
RECEIVED BY: Sherill
FEE PAID: \$10⁰⁰
HEARING DATE: 8-3-78
for office use only

approval

BY: _____
Acting Chairman, Land Development Review Committee
Date _____

vicinity map



FILE NO: m 456-78

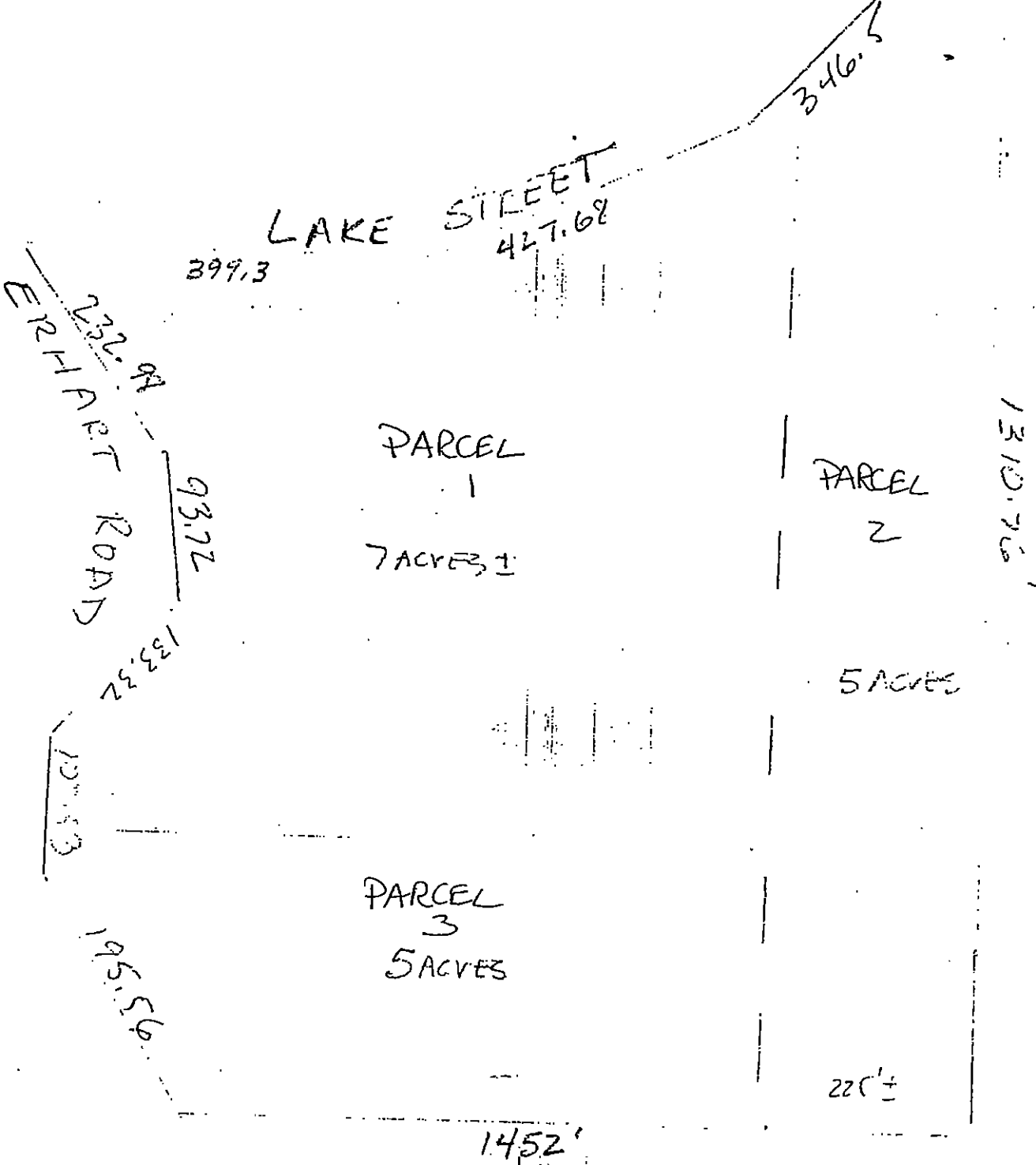
MAP PREPARED BY: _____

MINOR
 MAJOR

partition

lane county

NORTH



Block 10 ERHART ACRES 19-12-20-22 1800

SCALE: NONE

FILE NO: m456-78

LAND DEVELOPMENT REVIEW COMMITTEE

RECORD OF ACTION, MEETING OF: 8-3-78 LAND PARTITION NO. M 456-78

Applicant JAMES D. SILKE Map & Tax Lot 19-12-25.22 1800

Committee members present: Hudzikiewicz Rubini
 Miller, M Baird
 Thomas Evans

Applicant (s) or Agent (s) present James D. Silke

XX

ACTION ON THIS PARTITION

DENIED. Reason for denial: _____

CONTINUED OR POSTPONED UNTIL _____

APPROVED WITH THE FOLLOWING CONDITIONS:

NOTE: THIS APPROVAL IS VALID FOR 1 YEAR. ALL CONDITIONS CHECKED BELOW MUST BE SATISFIED AND A FINAL PARTITION MAP RECORDED WITHIN THIS TIME FOR THE APPROVAL TO BE FINAL.

OK A final partition map (prepared by a licensed surveyor) shall be submitted in a form suitable for recording along with the appropriate recording fee. \$7.00

OK Parcels 1, 2, 3 shall be approved for subsurface sewage disposal.

OK Parcels 1, 2, 3 shall be surveyed and all corners monumented by a licensed surveyor; survey shall be filed with the surveyors office prior to filing of the final map.

OK Dedication of road right-of-way 50 feet width
along Lake Street

OK Description for dedication shall be prepared by the applicant's surveyor and submitted to the Planning Division along with deed of ownership.

OK Road improvements shall be provided as described on the attached typical section and inspected for approval by the Department of Public Works. see M 455-78

OK Plans for street and drainage improvements shall be prepared by a registered engineer or surveyor and submitted for approval by the Department of Public Works prior to construction.

- A private road as shown on the approved partition map shall be created. The instrument creating such road shall be submitted to and approved by the Review Committee Chairman. The instrument shall describe the right-of-way, state the intent and purpose of the roadway, specify maintenance responsibilities of all parties and provide for installation, construction and maintenance of public utilities and facilities.
- A road easement shall be established as shown on the approved partition map. Such easement shall be an affirmative easement appurtenant to and contain at a minimum the names of the grantor and grantee, description of the dominant and servient tenements, description of the land covered by the easement, statement of the intent and purpose of the easement, and specify the maintenance responsibilities of all parties. Upon approval of the easement by the Planning Division it shall be recorded.
- A road name shall be requested from the Lane County Department of Public Lands, Surveyor's Department.
- Final approval of Variance # _____ to _____
- A development plan shall be submitted showing anticipated future divisions.
- _____
- _____
- _____
- _____

ADDITIONAL COMMENTS: _____

The action of the Land Development Review Committee on this partition may be appealed to the Board of County Commissioners by any interested party. Appeals are to be submitted to the Lane County Planning Division within 15 days of the date of the chairman's action. Appeals shall be in writing and accompanied by the appropriate fee.

A copy of this report was:

- hand delivered to (applicant or agent): James D. Silke
- mailed to (applicant or agent): _____

Date 8-3-78
 014-192

Joe Hudgins
 Acting Chairman, Land Development Review Committee
 Page 2

PLANNING PART.

MAJOR PARTITION

NO. M 85-78

APPLICANT DAVID HEMENWAY

T 21 R 03 S 04 SS _____ TXLT 1603

DOCUMENT CONTROL # 7885

PARTITIONER:

7864175

lane county



NAME: David Hemenway /

ADDRESS: 215 N. 9th

Cottage Grove, Oregon 97424

PHONE: 942-2478

INTEREST IN PROPERTY: Owner
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: James Hemenway, Inc.

ADDRESS: 215 N. 9th

Cottage Grove, Oregon 97424

PHONE: 942-2478

TAX LOT: 1603 MAP #: 21-03-04

WATER SUPPLY: Well
PERMIT #:
SEWAGE DISPOSAL: Septic
S.I. #: 78-837, 78-846, 78-847
ELECTRIC SERVICE: PP & L
ZONING: RR-1
SEE M 466-77

DATE SUBMITTED: 1-31-78

RECEIVED BY: tj

FEE PAID: \$2500

HEARING DATE: 3-2-78
for office use only

approval

James Hemenway
Acting Chairman, Land Development Review Committee

August 25, 1978
Date

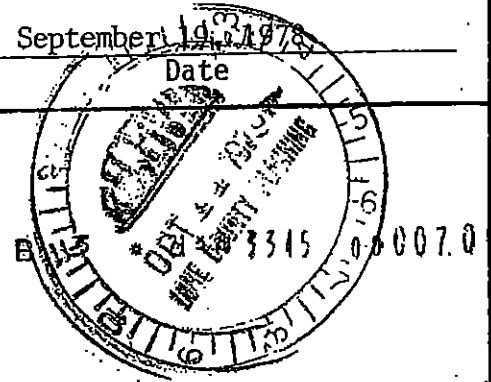
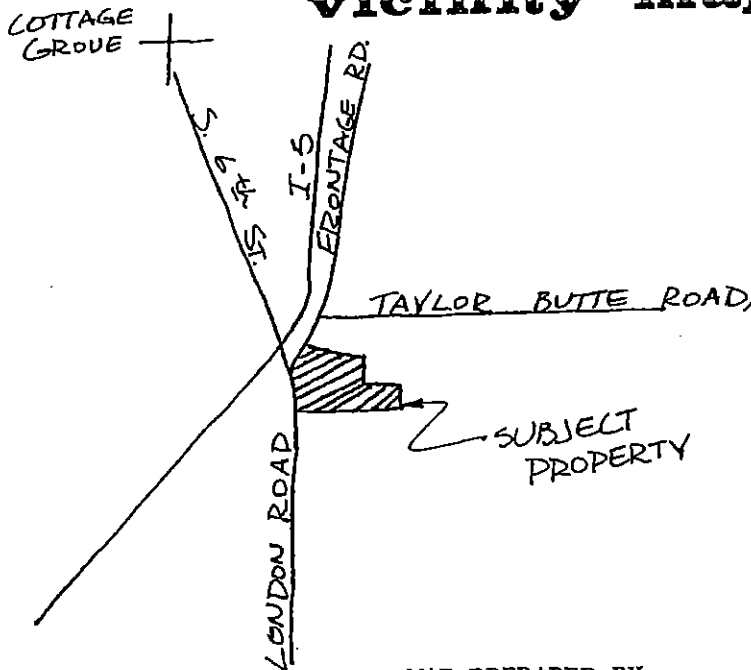
K. Robert Ezell
Lane County Surveyor

August 29, 1978
Date

Gerald H. Rust, Jr.
Chairman, Board of Lane County Commissioners

September 19, 1978
Date

vicinity map



FILE NO: M 85-78

MAP PREPARED BY:

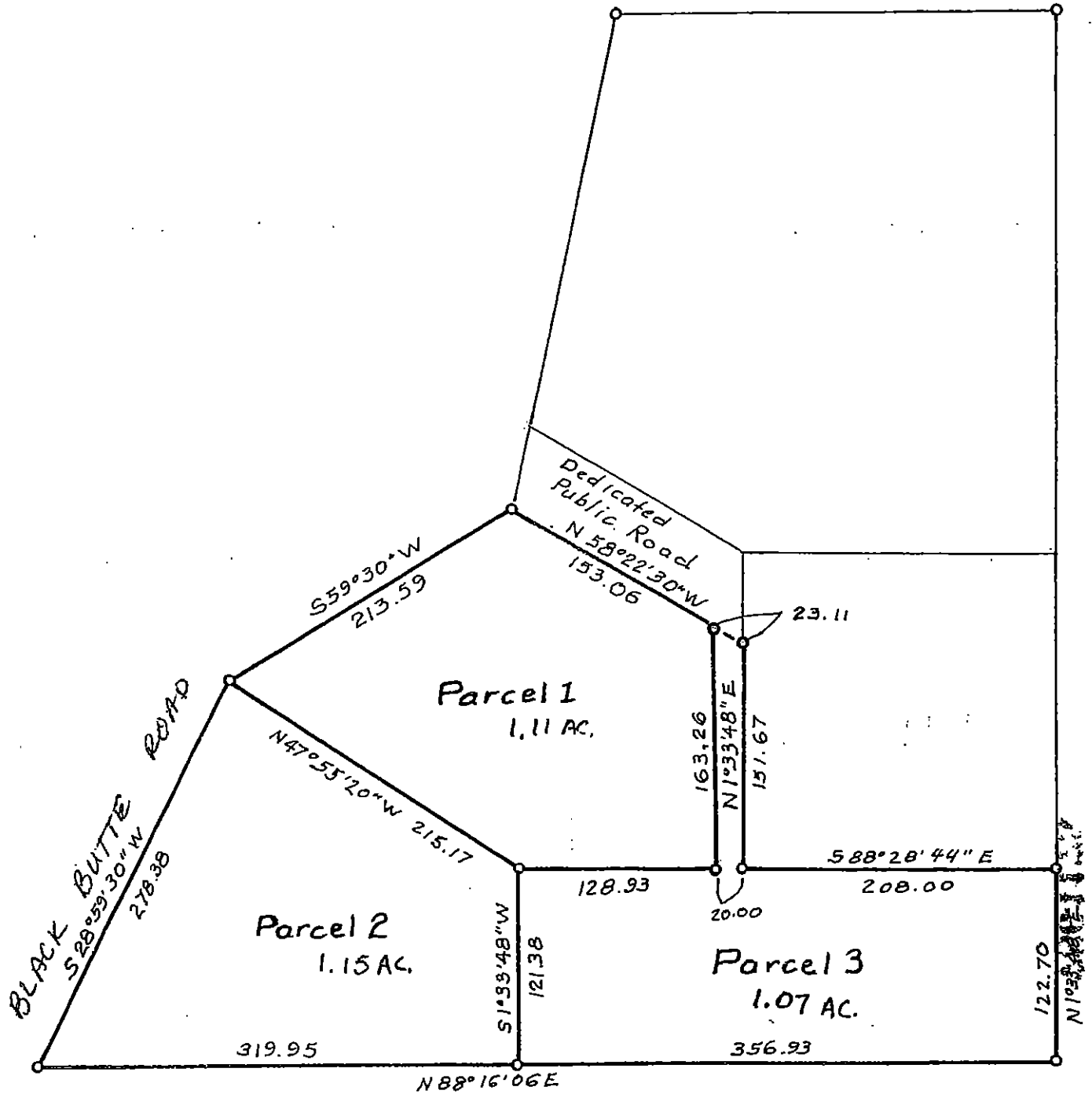
7885 18

- MINOR
- MAJOR

partition

lane county

7861175



05 6885

7885 19

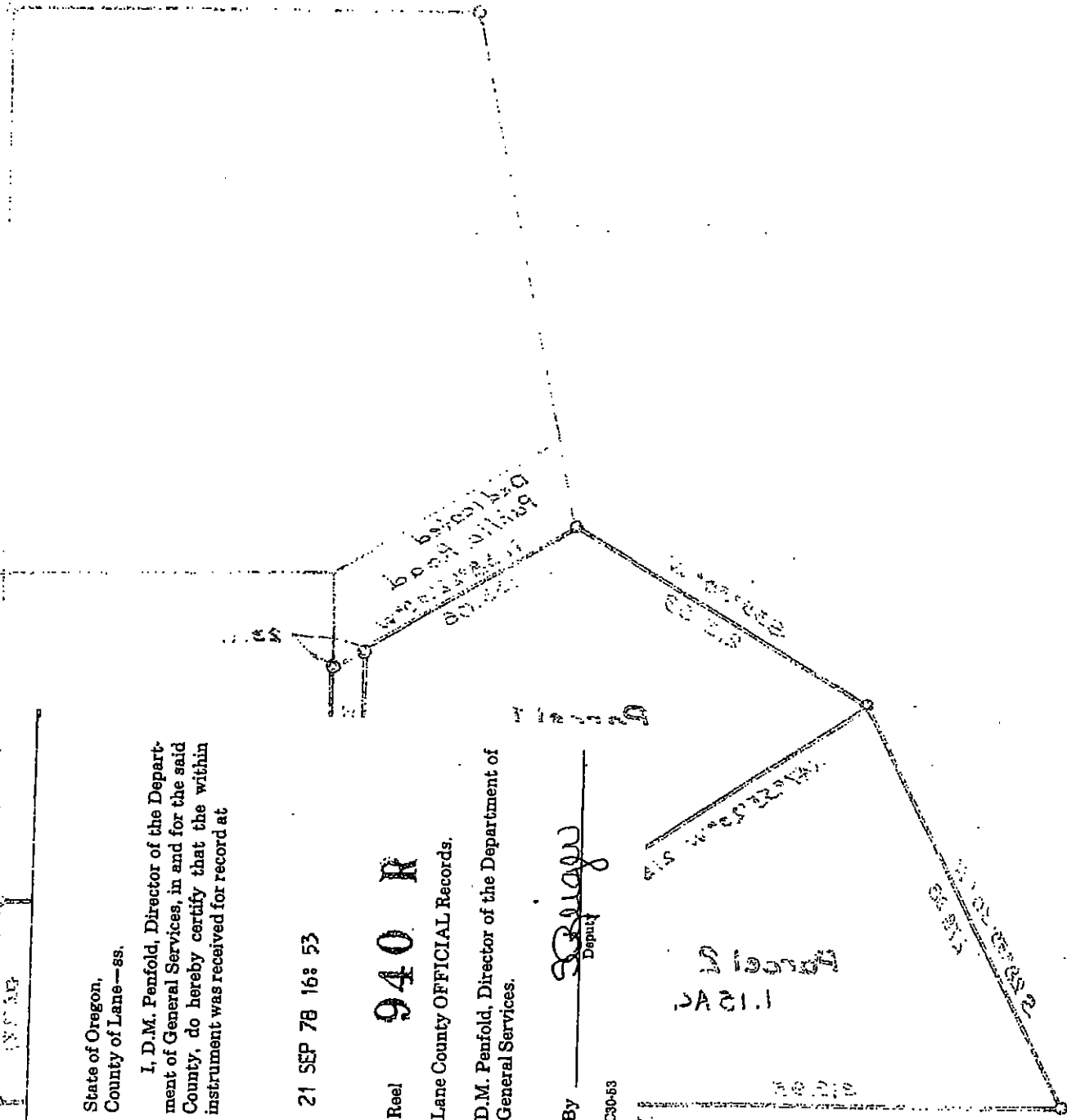
SCALE: 1"=100'

FILE NO: M 85-78



7885

1978
SEP 21



7885-175

State of Oregon,
County of Lane--ss.

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

21 SEP 78 16: 53

Reel 940 R

Lane County OFFICIAL Records.

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

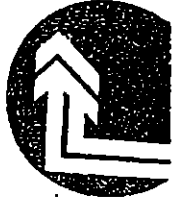
By [Signature]
Deputy

C30-63

21 SEP 78
16:53

18 7885

7885 20



October 17, 1978

David Hemenway
215 N. 9th
Cottage Grove, Oregon 97424

RE: Final Approval -- Partition Application M 85-78

Final approval is hereby granted to the above-referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours

Acting Chairman
Land Development Review Committee

cc: Jack Thomas, Public Works
Jim Shrum, Surveyors

Enclosure: Copy of recorded map

7885 21

PLANNING PART.

MINOR PARTITION

NO. M 74-78

APPLICANT LAURENCE & THORP

T 17 R 01 S 23 SS _____ TXLT 1100

DOCUMENT CONTROL # 7874

PARTITIONER:

NAME: Lawrence Thorp

ADDRESS: 694 North "A" St

Springfield OR 97477

PHONE: 747-3354

INTEREST IN PROPERTY: attorney for owner
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: Kenneth & Mildred Parnell

ADDRESS: 88748 Potter Lane

Springfield OR 97477

PHONE: 747-8067

TAX LOT: 1100 MAP #: 17-01-23

lane county



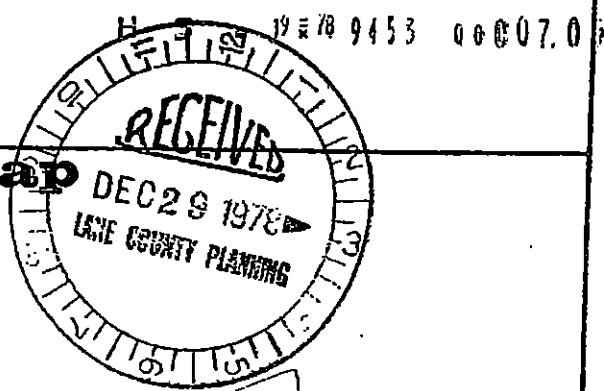
WATER SUPPLY: Well
PERMIT #: _____
SEWAGE DISPOSAL: Septic
S.I. #: _____
ELECTRIC SERVICE: _____
ZONING: AGT-5
ZV78-037 Approval

DATE SUBMITTED: 1-26-78
RECEIVED BY: Sherill
FEE PAID: \$20.00
HEARING DATE: 2-23-78
for office use only

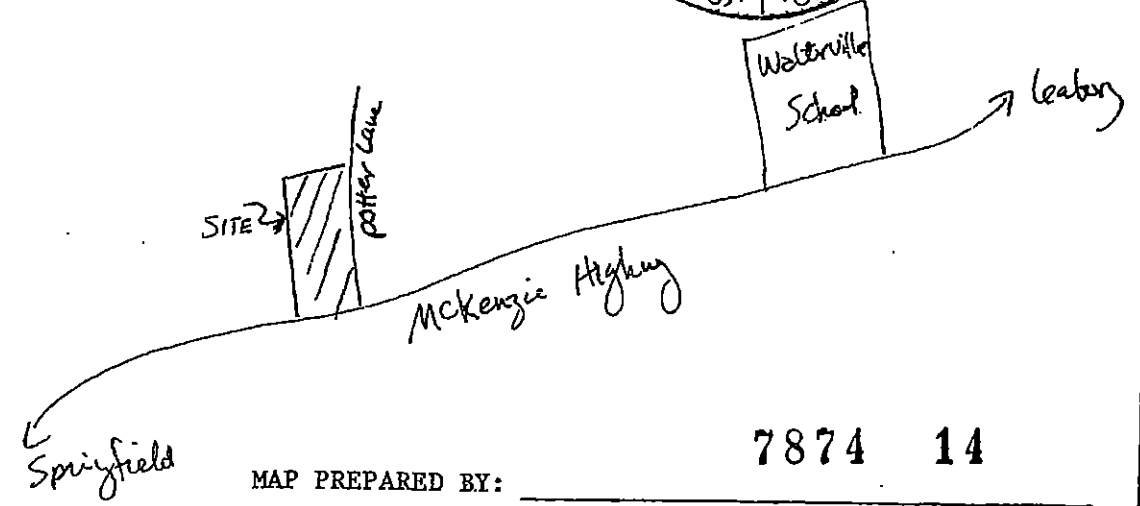
approval

BY: Joseph Hudymowicz
Acting Chairman, Land Development Review Committee

December 19, 1978
Date



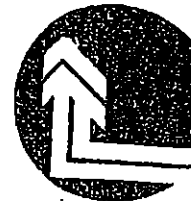
vicinity map



FILE NO: W74-70

MAP PREPARED BY: _____

7874 14



December 29, 1978

Laurence Thorp
644 North "A" St.
Spfld, OR 97477

RE: Final Approval -- Partition Application m 74-78

Final approval is hereby granted to the above-referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours

Acting Chairman
Land Development Review Committee

cc: Jack Thomas, Public Works
Jim Shrum, Surveyors

Enclosure: Copy of recorded map

7874 17

KENNETH, PARNELL

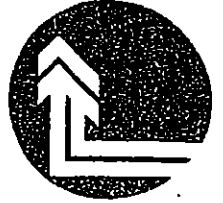
ie county

NE & SE 1/4 Sec. 23, T. 17 S., R. 1 W., W. M.

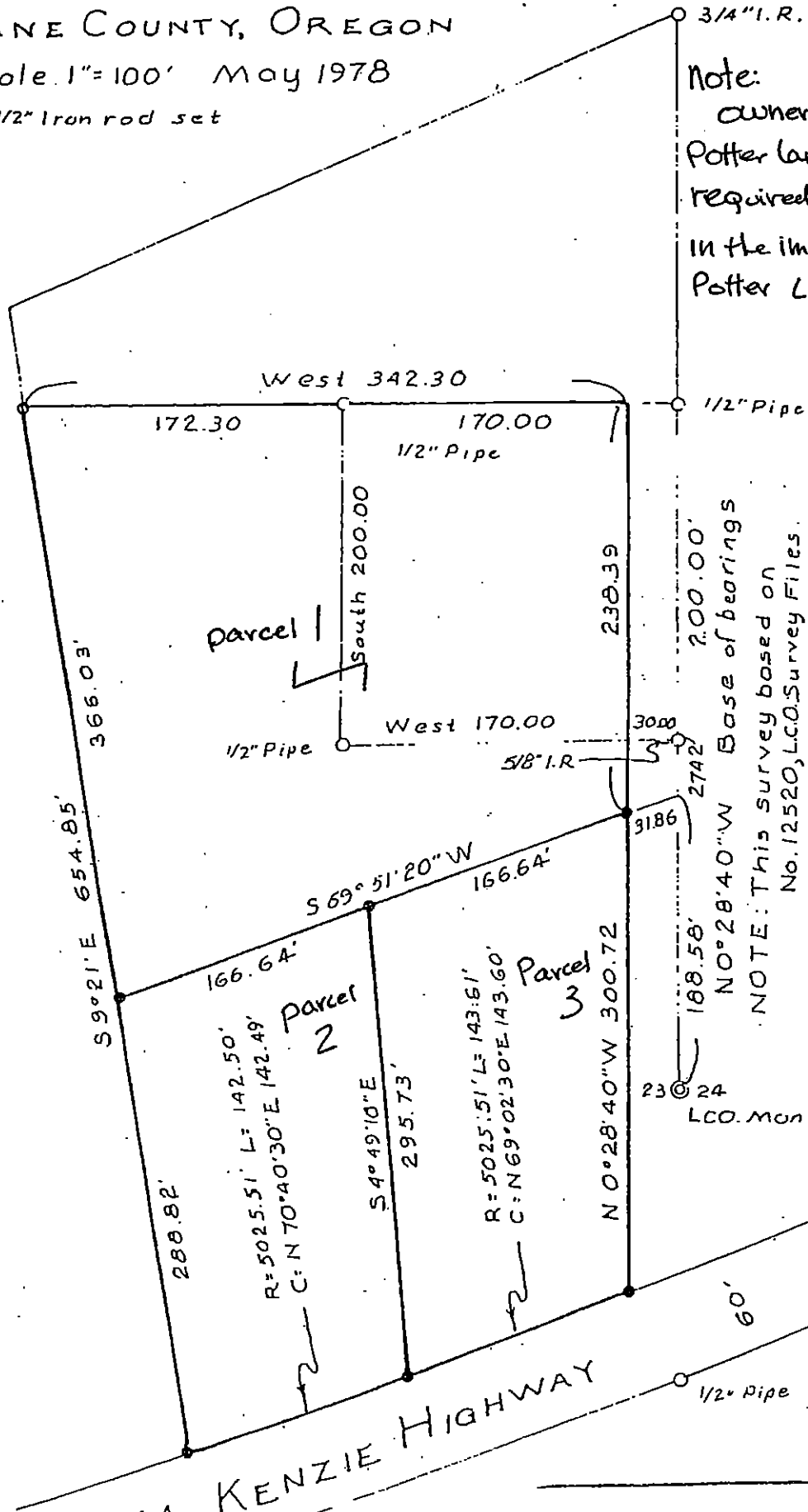
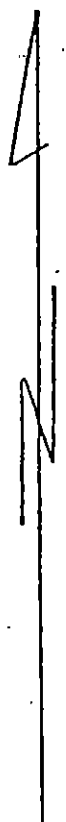
LANE COUNTY, OREGON

Scale 1" = 100' May 1978

• 1/2" Iron rod set



Note:
owners along
Potter lane may be
required to participate
in the improvement of
Potter Lane.



McKENZIE HIGHWAY

7874 15

FILE NO: M74-78

SCALE
PLANNI

7882800

State of Oregon,
County of Lane—ss.


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

19 DEC 78 11: 43

Reel **960 R**

Lane County OFFICIAL Records.

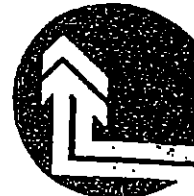
D.M. Penfold, Director of the Department of General Services.

By  Deputy

C30-53

7874

16



November 30, 1978

Laurence E. Thorp
644 North "A" St.
Spfld, OR 97477

Re: Partition Number m 74-78

Our records reveal the above-referenced partition was granted conditional approval on February 23, 1978. Such approval is valid for a period of one year and all conditions of approval must be completed within that period, otherwise the approval expires.

To date, we have not verified the completion of the various conditions of approval. If you intend to complete the partition, you must do so prior to the expiration date, otherwise a new partition application will have to be submitted and reviewed under current zoning and subdivision regulations.

If you have any questions pertaining to this matter, feel free to contact this office.

Very truly yours,

Joe Hudzikiewicz, Planner
Land Use Controls Section

/jk

7874 13

Phone 746-1095

M. L. "MIKE" WALDRON

Registered Professional Land Surveyor

Star Route, Box 7

FALL CREEK, OREGON 97438

Date May 18, 1978, 19__

Kenneth Parnell
88748 Potter Lane
Springfield, Or. 97477
c/o
Larry Thorp
664 North A
Springfield, Or. 97477

Survey of Minor Partition No. M74-78 in Section 23, Township 17 South, Range 1 West
of the Willamette Meridian, Lane County, Oregon

Including recording fee prepaid \$552.00

Mr Larry Thorp:

This statement is a bit ambiguous.

*The final partition map has been delivered
to the planning commission and the \$7.00
recording fee paid.*

*The accompanying drawing is a copy
of the survey drawing which will be on
file with the County Surveyor.*

*Respectfully M L Waldron, Surveyor -
RLS # 527*

7874 11

A private road sign or private easement sign shall be requested from the Lane County Department of Transportation.

Final approval of Variance # 2070-37 to _____

A copy of the well log for the existing well(s) on parcel(s) _____ shall be submitted to the Lane County Environmental Health Division.

Note placed on final partition map stating owners along Patten Lane will may be required to participate in the improvement of Patten Lane.

NOTE: This approval is valid for 1 year. All conditions checked above must be satisfied and a final partition map recorded within this time for the approval to be final.

ADDITIONAL COMMENTS: _____

The action of the Land Development Review Committee on this partition may be appealed to the Board of County Commissioners by any interested party. Appeals are to be submitted to the Lane County Planning Division within 10 days of the date of the chairman's action. Appeals shall be in writing and accompanied by the appropriate fee.

A copy of this report was:

hand delivered to (applicant or agent): Larry Thorp
 mailed to (applicant or agent): _____

2-23-78
DATE

acty Joe Studzinsky
Chairman, Land Development Review Committee

County Planning Division, 125 E. 8th Avenue, Eugene, Oregon 97401; phone 687-4186