

GOAL ONE COALITION

106 and 100. Therefore it is the applicant's burden in this proceeding to clearly explain and document exactly how TL 106 was legally created as a lot or parcel.

Similarly, it is the applicant's burden to establish the legal boundaries of TL 100, both today, unless it can be established that TL 106 was legally created as a parcel of land independent of TL 100.

A property line adjustment was recorded on October 5th, 1994. This appears to be subsequent to the June 8, 1994 filing of a property line adjustment application. Although no decision document seems to be in the record, this may constitute a legal property line adjustment and a final land use decision. This adjustment appears to have relocated the eastern property line of TL 100 to a line extending north from the eastern boundary of TL 104.

For purposes of the "income" and "parcelization" tests, it is the common ownership that must be considered. The common ownership as of both January 1 and July 1, 1983 appears to have included Tls 100, 102, 104, 106, 107 and 600.

The applicant's material does not include potential agricultural and forest productivity or income data for the area within common ownership. In the absence of the necessary information, compliance with the criteria of ORS 197.247(1) cannot be determined and the application should be denied.

III. Productivity for Ponderosa pine.

Mr. Cornacchia has disparaged the productivity data for Ponderosa pine utilized by Goal One in its table showing potential productivity of the subject property, stating that it was "pulled off the internet."

Even if it were true that the data was "pulled off the internet," that would not mean that it's bad data that should not be used or relied upon. After all, NRCS productivity data is now "pulled off the internet."

The data used by Goal One is in fact found in an Oregon State University Extension Service publication, *Establishing and Managing Ponderosa Pine in the Willamette Valley*, Fletcher et al., EM 8805, May 2003.

At p. 3 *Managing Ponderosa Pine* explains where ponderosa pine is found in the Willamette Valley:

"In the foothills, ponderosas occupy the harshest of forest sites, where Douglas-fir and other species cannot dominate. * * *

"Native ponderosas are commonly found on three general soil types:

"1. Poorly drained, heavy clay soils on the Valley bottom or in the low foothills.

"2. Shallow, rocky clay soils in the Valley foothills.

"3. Well-drained, sandy soils in the flood plain of the Willamette River and its tributaries.

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“These soil types represent the low end of growth potential for ponderosa pine. It grows better on soils with good drainage and depth.”

Ponderosa pine thus can grow and even thrive where Douglas-fir cannot, precisely *because* Douglas-fir cannot.

Concerning the productivity data, *Managing Ponderosa Pine* at p. 11 states:

“Max Bennett’s recently completed study of 16 native Willamette Valley ponderosa stand on 12 different soil types found a wide variety of growth rates, depending on soil type.

“* * *

“No studies of volume growth per acre have been done. Currently, large stands of ponderosa are few, but they appear to have volumes similar to local Douglas-fir stands of similar ages.”

Managing Ponderosa Pine nowhere says the data should not be used. The data is admittedly limited and, for all but two soils, from only one site. Nevertheless, the data is indicative of what the studied soils’ potential productivity may be. *Managing Ponderosa Pine* provides the best and perhaps the only published productivity available for Willamette Valley ponderosa pine.

The applicant’s representatives do not offer any alternative productivity data for ponderosa pine. It is the applicant’s burden to establish that the approval criterion is met: that the subject property is not capable of producing 85 cf/ac/yr of merchantable timber, including ponderosa pine. Unless and until the applicant can produce better data, the Planning Commission must base its decision on the substantial evidence that Goal One has entered into the record.

IV. *Carver* and soil complexes

Mr. Cornacchia asserts that LUBA’s decision in *Carver* controls issues pertaining to the treatment of soil complexes, and allows or even requires that the productivity of the complex as a whole be considered rather than the productivity of the individual soil components of the complex.

The issue before LUBA in *Carver* involved the agricultural capability portion of the capability test of ORS 197.247(1)(b)(C), which requires that the “Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983” be used. LUBA’s holding does not extend to the forest portion of the capability test. LUBA in its decision noted that the statute does not impose this requirement on the forest productivity portion of the capability test. *Just v. Lane County*, __ Or LUBA __ (LUBA No. 2005-029, 06/08/2005), slip op 13 n. 11.

The 1987 Soil Survey of Lane County Area, Oregon does not identify or list any complexes as “soils.” See Soil Survey p. 368-369.

GOAL ONE COALITION

Further, SCS data then and NRCS data today both report forest capabilities by the individual components of soil complexes. The “green sheets” look at the individual soils comprising the complex, assign capabilities to those sub-units, and do not give a productivity rating for the complex as a whole. Similarly, NRCS data lists soils within complexes separately, and gives site indexes and cf/ac/yr ratings for the individual components and not the complex as a whole. See the “green sheets” for the soil complex found on the subject property, and NRCS forest productivity data, which has been introduced into the record.

V. Office of State Forester Memorandum

A memorandum dated February 8, 1990 from the Office of State Forester has been offered as one of the sources for information found in the *Lane County Ratings for Forestry and Agriculture*. That memorandum offers data pertaining only to Douglas-fir; it does not purport to offer productivity data for ponderosa pine.

The “Source and Description of the Data” section of the *Lane County Ratings* discusses the sources of soil and forest productivity data found in the *Lane County Ratings*. All such data is stated to be from SCS or NRCS sources. The Office of State Forester memorandum is not identified as a source.

In the Office of State Forester memorandum, no site index data is provided for the 43 Dixonville/Philomath/Hazelair soil units. Ratings are given using different levels of precision: a specific site index number (i.e. 144) is more reliable than the more general “high” “medium,” or “low.” Cf/ac/yr productivity is recorded as “estimated.” The memorandum indicates that data was compiled not from site information gained by actual measurement, but by “vegetational comparisons.”

OAR 660-006-0010 provides, in relevant part:

“Governing bodies shall include an inventory of ‘forest lands’ as defined by Goal 4 in the comprehensive plan. * * * [T]his inventory shall include a mapping of forest site class. If site information is not available then an equivalent method of determining forest land suitability must be used.”

Unlike OAR 660-006-0005(2), OAR 660-006-0010 requires “forest site class” data, requires that existing site class data be used where available, and does not allow for an “alternative method” of determining forest productivity. OAR 660-006-0010 requires “an equivalent method,” which would appear to mean equivalent to that used by the SCS or NRCS.

Date from the 1990 Office of State Forester memorandum cannot be used for the purpose of inventorying forest land unless it is first established that the data was produced using an “equivalent method” as required by OAR 660-006-0010.

VI. Lane County Ratings for Forestry and Agriculture methodology

In its letter of November 29, 2005 Goal One described a presumed methodology used in the *Lane County Ratings* to calculate productivity for soil complexes. However, the methodology purportedly used is explained at p. 8 of the *Lane County Ratings* as follows:

GOAL ONE COALITION

“The methodology used in this table to calculate forest productivity volume ratings for soil complexes involves applying a weighted average to each component of the complex and then normalizing to base it on 100% excluding the inclusions. The following example illustrates this calculation for a soil complex which has a site index for only one of the two components.”

The example given is for the 43C Dixonville/Philomath/Hazelair complex. The text has erroneously described this complex as having only two components. The table computes a “normalized” cf/ac/yr capability of 46. This differs from the capability given in the ratings themselves, in which this unit is listed as having a cf/ac/yr capability of 54.

The discrepancy between the computation of cf/ac/yr in the example and the capability as reported in the ratings is nowhere explained. What is clear is that the methodology assumes zero cf/ac/yr capability for soil components that do not have NRCS productivity ratings for forest productivity.

VII. CONCLUSION

The boundaries of the agricultural or forest operation as it existed on January 1, 1983 have not been determined or considered in addressing the income test of ORS 197.247(1). Therefore it cannot be determined whether that test is met.

Productivity for ponderosa pine has not been considered by the applicant. Goal One has provided calculations based on the assumption that the forestry operation would be managed for ponderosa pine production on appropriate soils. The applicant has not provided any alternative productivity data which considers ponderosa pine.

Available SCS and NRCS data provides forest productivity information only for the component soils of a complex, not the complex itself which only exists as a unit because it is impracticable to map the soils separately at the selected scale of mapping. See *Soil Survey* p. 233. It is that productivity data for the component soil which must be considered.

It does not appear that the applicant’s computations rely on data in the Office of State Forester memorandum. That document does not purport to provide productivity information for species other than Douglas-fir. Regardless, that memorandum does not appear to provide data produced by an “equivalent method.”

The Lane County Ratings for Forestry and Agriculture, which was relied upon by the applicant in his computations of forest productivity, assumes zero productivity for soils that are not rated by the NRCS for forest productivity. Assuming zero productivity is not an “equivalent method” as required by OAR 660-006-0010.

Because the boundaries of the operation as it existed in 1983 have not been accurately identified or considered, and because the applicant’s calculations of potential forest income are based on data that was not produced using an “equivalent method” and fail to consider ponderosa pine, it cannot be determined that the income test of ORS 197.247(1)(a) is met

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Goal One, Mr. Just, LandWatch Lane County, and Mr. Emmons and Ms. Lovinger request notice of and a copy of any decision and findings regarding this matter.

Respectfully submitted,

Jim Just
Executive Director

TABLE 15.--CLASSIFICATION OF THE SOILS

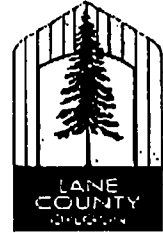
[An asterisk in the first column indicates that the soil is a taxadjunct to the series. See text for a description of those characteristics of the soil that are outside the range of the series]

| Soil name | Family or higher taxonomic class |
|-----------------------|--|
| Abiqua----- | Fine, mixed, mesic Cumulic Ultic Haploxerolls |
| Astoria----- | Medial, mesic Andic Haplumbrepts |
| Astoria Variant----- | Medial, mesic Andic Haplumbrepts |
| Atring----- | Loamy-skeletal, mixed, mesic Dystric Xerochrepts |
| Awbrig----- | Fine, montmorillonitic, mesic Vertic Albaqualfs |
| Bandon**----- | Coarse-loamy, mixed, mesic, ortstein Typic Haplorthods |
| Bashaw----- | Very-fine, montmorillonitic, mesic Typic Pelloxererts |
| Bellpine----- | Clayey, mixed, mesic Xeric Haplohumults |
| Blachly----- | Fine, mixed, mesic Umbric Dystrochrepts |
| Bohannon----- | Fine-loamy, mixed, mesic Typic Haplumbrepts |
| Brallier----- | Dysic, isomesic Typic Tropohemists |
| Brallier Variant----- | Euic Isomesic Terric Tropohemist |
| *Brenner----- | Fine, mixed, acid, isomesic Aeric Tropaquepts |
| Briedwell----- | Loamy-skeletal, mixed, mesic Ultic Haploxerolls |
| Bullards**----- | Coarse-loamy, mixed, mesic Typic Haplorthods |
| Camas----- | Sandy-skeletal, mixed, mesic Fluventic Haploxerolls |
| Chapman----- | Fine-loamy, mixed, mesic Cumulic Ultic Haploxerolls |
| Chehalis----- | Fine-silty, mixed, mesic Cumulic Ultic Haploxerolls |
| Chehulpum----- | Loamy, mixed, mesic, shallow Ultic Haploxerolls |
| Cloquato----- | Coarse-silty, mixed, mesic Cumulic Ultic Haploxerolls |
| Coburg----- | Fine, mixed, mesic Pachic Ultic Argixerolls |
| Conser----- | Fine, mixed, mesic Typic Argiaquolls |
| Courtney----- | Fine, montmorillonitic, mesic Abruptic Argiaquolls |
| Cruiser----- | Medial Andic Cryochrepts |
| Cumley----- | Clayey, mixed, mesic Typic Haplohumults |
| Cupola----- | Medial-skeletal, mesic Entic Dystrandeps |
| Dayton----- | Fine, montmorillonitic, mesic Typic Albaqualfs |
| Digger----- | Loamy-skeletal, mixed, mesic Dystric Eutrochrepts |
| Dixonville----- | Fine, mixed, mesic Pachic Ultic Argixerolls |
| Dupee----- | Fine, mixed, mesic Aquultic Haploxeralfs |
| Eilertsen----- | Fine-silty, mixed, mesic Ultic Hapludalfs |
| Fendall----- | Fine, mixed, isomesic Typic Humitropepts |
| Ferrelo----- | Coarse-loamy, mixed, isomesic Typic Dystropepts |
| Formader----- | Medial, mesic Andic Haplumbrepts |
| Haflinger----- | Sandy-skeletal, mixed, mesic Entic Haplumbrepts |
| Hazelair----- | Very-fine, mixed, mesic Aquultic Haploxerolls |
| Heceta----- | Mixed, mesic Typic Psammaquents |
| Hembre----- | Fine-loamy, mixed, mesic Typic Haplumbrepts |
| Holcomb----- | Fine, montmorillonitic, mesic Mollic Albaqualfs |
| Holderman----- | Medial-skeletal Andic Cryochrepts |
| Honeygrove----- | Clayey, mixed, mesic Typic Haplohumults |
| Hullt----- | Fine-loamy, mixed, mesic Typic Xerumbrepts |
| Hummington----- | Medial-skeletal Dystric Cryandeps |
| Jimbo----- | Medial, mesic Andic Haplumbrepts |
| Jory----- | Clayey, mixed, mesic Xeric Haplohumults |
| Keel----- | Medial Dystric Cryandeps |
| Kilchis----- | Loamy-skeletal, mixed, mesic Lithic Haplumbrepts |
| Kinney----- | Medial, mesic Andic Haplumbrepts |
| Klickitat----- | Loamy-skeletal, mixed, mesic Typic Haplumbrepts |
| Linslaw----- | Fine, mixed, mesic Aquultic Haploxeralfs |
| Lint----- | Medial, isomesic Typic Dystrandeps |
| Malabon----- | Fine, mixed, mesic Pachic Ultic Argixerolls |
| Marcola----- | Clayey-skeletal, mixed, mesic Pachic Ultic Argixerolls |
| McAlpin----- | Fine, mixed, mesic Cumulic Ultic Haploxerolls |
| McBee----- | Fine-silty, mixed, mesic Cumulic Ultic Haploxerolls |
| McCully----- | Fine, mixed, mesic Typic Haplumbrepts |
| McDuff----- | Clayey, mixed, mesic Typic Haplohumults |
| Meda----- | Fine-loamy, mixed, mesic Typic Haplumbrepts |
| Minniece----- | Fine, mixed, mesic Typic Umbraqualfs |
| Mulkey----- | Medial Dystric Cryandeps |
| Natroy----- | Very-fine, montmorillonitic, mesic Aquic Chromoxererts |
| *Nehalem----- | Fine-silty, mixed, isomesic Fluventic Humitropepts |
| Nekia----- | Clayey, mixed, mesic Xeric Haplohumults |
| Nekoma----- | Coarse-loamy, mixed, mesic Fluventic Haplumbrepts |
| Neskowin----- | Medial, isomesic Typic Dystrandeps |
| *Nestucca----- | Fine-silty, mixed, acid, isomesic Aeric Tropaquepts |
| Netarts**----- | Sandy, mixed, mesic Entic Haplorthods |
| Newberg----- | Coarse-loamy, mixed, mesic Fluventic Haploxerolls |

TABLE 15.--CLASSIFICATION OF THE SOILS--Continued

| Soil name | Family or higher taxonomic class |
|---------------------|--|
| Noti----- | Coarse-loamy over sandy or sandy-skeletal, mixed, acid, mesic Typic Humaquepts |
| Oxley----- | Loamy-skeletal, mixed, mesic Typic Argiaquolls |
| Panther----- | Very-fine, montmorillonitic, mesic Typic Haplaquolls |
| Peavine----- | Clayey, mixed, mesic Typic Haplohumults |
| Pengra----- | Fine-silty over clayey, mixed, mesic Typic Haplaquolls |
| Philomath----- | Clayey, montmorillonitic, mesic, shallow Vertic Haploxerolls |
| Preacher----- | Fine-loamy, mixed, mesic Typic Haplumbrepts |
| Ritner----- | Clayey-skeletal, mixed, mesic Dystric Xerochrepts |
| Salander----- | Medial, isomesic Typic Dystrandeps |
| Salem----- | Fine-loamy over sandy or sandy-skeletal, mixed, mesic Pachic Ultic Argixerolls |
| Salkum----- | Clayey, kaolinitic, mesic Xeric Haplohumults |
| Saturn----- | Fine-loamy over fragmental, mixed, mesic Fluventic Haplumbrepts |
| Sifton----- | Medial over sandy or sandy-skeletal, mixed, mesic Andic Xerumbrepts |
| Slickrock----- | Fine-loamy, mixed, mesic Pachic Haplumbrepts |
| Steier----- | Fine-loamy, mixed, mesic Ultic Haploxerolls |
| Tahkenitch----- | Coarse-loamy, mixed, mesic Typic Haplumbrepts |
| Veneta----- | Fine, mixed, mesic Ultic Haploxeralfs |
| Veneta Variant----- | Fine silty, mixed, mesic Ultic Haploxeralfs |
| Waldo----- | Fine, mixed, mesic Fluvaquentic Haplaquolls |
| Waldport----- | Mixed, isomesic Typic Tropopsamments |
| Wapato----- | Fine-silty, mixed, mesic Fluvaquentic Haplaquolls |
| Willakenzie----- | Fine-silty, mixed, mesic Ultic Haploxeralfs |
| Willanch----- | Coarse-loamy, mixed, nonacid, isomesic Aeric Tropaquepts |
| Winberry----- | Loamy-skeletal, mixed Lithic Cryochrepts |
| Witzel----- | Loamy-skeletal, mixed, mesic Lithic Ultic Haploxerolls |
| *Woodburn----- | Fine-silty, mixed, mesic Aquultic Argixerolls |
| Yaquina**----- | Sandy, mixed, mesic Aquic Haplorthods |
| Yellowstone----- | Loamy-skeletal, mixed Lithic Cryumbrepts |

** These series have isomesic soil temperature regimes. The proposed amendments to Soil Taxonomy will change the series classification.



LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Land Management Division
Public Service Building
125 East 8th Avenue
Eugene, OR 97401
FAX 541-682-3947

December 8, 2005

FAX

Thom Lanfear

FAX Message To: *A Jim Just*

Work Location: _____

Telephone Number: 541-258-6810

Number of Pages: 15 (including this page)

Message: _____

From: **Thom Lanfear**
Associate Planner
(541) 682-4054
Thom.Lanfear@co.lane.or.us

Oregon

DEPARTMENT OF
LAND
CONSERVATION
AND
DEVELOPMENT

March 22, 1993

Al Cooper
Lane County Planning Department
125 E. 8th Street
Eugene, Oregon 97401

Dear Mr. Cooper:

We have reviewed the request of Arvil and Wilma Jackson to change the plan and zone designations on their 13.13 acre parcel from Agriculture/E-30 to Marginal Land/ML (Lane County File No. PA 1609-92). Based on a review of the application, staff report, and our understanding of the statutory requirements for the designation of marginal lands under ORS 197.247, we recommend that the review of this application be suspended and reevaluated. According to the attached statement of legislative intent and our understanding of ORS 197.247(1)(b)(A), this application, as proposed, should not be approved.

The key issue regarding this application is over the intent, interpretation and application of ORS 197.247(1)(b)(A). This provision states:

"(b) The proposed marginal land also meets at least one of the following:

(A) At least 50 percent of the proposed marginal land plus the lots or parcels at least partially located within one-quarter mile of the perimeter of the proposed marginal land consists of lots or parcels 20 acres or less in size on July 1, 1983;"
(emphasis added)

The County's staff report finds that the request satisfies this test based on a different interpretation than suggested by the applicant. Your interpretation correctly determines that this test is not a parcel counting test but rather is an area test. Thus, if 50% of the area is contained within parcels that are 20 acres or smaller, the test is satisfied. This interpretation is supported by the plain meaning of the statute. The test refers to 50% of the "proposed

Barbara Roberts
Governor



1175 Court Street NE
Salem, OR 97310-0590
(503) 373-0050
FAX (503) 362-6705

Al Cooper

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March 22, 1993

marginal land" not 50% of the lots or parcels. The applicant believes they satisfy this test because 65% of the parcels (15 of the 23) within one-quarter mile of their parcel are 20 acres or smaller. The applicant's interpretation is clearly inconsistent with the statute.

However, we do not believe that the County is using the correct area when applying this test. Although this statute is not a model of clarity as noted in your staff report, the Department believes that the correct area that must be contained within the parcels 20 acres or less must include the entire acreage of the parcels that are only partially located within the one-quarter mile area. Thus, the boundary of the area to be used is not a strict 1/4 mile radius but rather should follow the property lines of the parcels that extend beyond the 1/4 mile radius.

This interpretation is consistent with an explanation of the Marginal Lands Act that was prepared immediately after its passage based on testimony presented to the Legislature. (See enclosure). This explanation (p. 3) explains how this test should be applied.

"The first test is for clusters of ownerships primarily 20 acres and smaller. To apply the test, a County would choose a lot or parcel in the middle of a cluster of small tracts. The County would then draw a line around the center lot or parcel one-quarter mile from the boundaries of the lot or parcel. If the line passes through a nearby lot or parcel, then that lot or parcel is included in the 'small ownerships' area. Once the line is drawn, the County checks to see whether 50 percent of the area included within the line was in lots or parcels 20 acres or less in size on July 1, 1983. For example, if the area within the line is 260 acres, it would meet the test if all the lots or parcels 20 acres or smaller added up to at least 130 acres."

We recommend that Lane County reanalyze this application based on the Department's interpretation of ORS 197.247(1)(b)(A) explained in this letter.

If you have any questions about this matter, please call Ronald Eber at 373-0090.

Sincerely,



Michael J. Rupp,
Plan Review Manager

enclosure

cc: Greg Wolf, Assistant Director
Bob Rindy, Field Representative
Ronald Eber, Plan Analyst

ITEM 4.1



Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310 PHONE (503) 378-4926

M E M O R A N D U M

September 16, 1983

TO: Land Conservation and Development Commission
FROM: James F. Ross, Director
SUBJECT: ITEM 4.1: EXPLANATION OF SB 237: THE MARGINAL LANDS BILL

Since passage of SB 237 (Chapter 826, Oregon Laws 1983) there have been numerous detailed questions about the meaning and intent of this Act. Attached is a DRAFT memo which the Department is considering distributing statewide to all interested parties about SB 237.

Prior to its distribution, I wanted to provide it to the Commission and other people knowledgeable about the Act in order to receive any comments on its usefulness and readability.

Any suggestions and/or questions are welcome.

This will be discussed further at the Commission's September 23-24, 1983 meeting.

JFR:RE:ad
5747B/4B

M E M O R A N D U M**PRELIMINARY DRAFT
SUBJECT TO REVISION**

September 15, 1983

TO: Boards of Commissioners, County Courts, County Planners and
Other Interested Parties

FROM: James F. Ross, Director, DLCD

SUBJECT: SB 237: THE MARGINAL LANDS BILL

As you know, the 1983 Legislature made important changes to Oregon's land use laws. The two most significant land use bills became law when Governor Atiyeh signed them on August 9: HB 2295--the Governor's land use reform bill; and SB 237--the "marginal lands" bill. The two bills contain provisions that will aid counties in bringing their plans into compliance with the Statewide Planning Goals. Because the "marginal land" bill has received much less attention than HB 2295, I would like to describe briefly how it works.

Both HB 2295 and SB 237 represent efforts by the Governor's Office and the Legislature to respond to recommendations made by the Governor's Task Force on Land Use last fall. SB 237 addresses two particular recommendations concerning agricultural land and forest land. The Task Force recommended that "marginal land" now covered by Goal 3 or Goal 4 be made available for rural residential development. The Task Force also recommended the 1981 Lots-of-Record law be amended to make eligible those lots created prior to January 1, 1965.

SB 237 defines "marginal land," sets forth uses that may be allowed on such land, expands the number of qualified lots-of-record under the 1981 law and changes EFU criteria for the review of farm and nonfarm dwellings.

A. Marginal Land

SB 237 (Section 2) defines land as "marginal" for farm or forest uses in two ways: (1) soils of low productivity for farm or forest uses, and (2) land divided into small ownerships, regardless of soil capability. The new law defines these two types of marginal land very precisely. This will no doubt leave out land that individual Counties consider "marginal." However, the precision has the advantage of leaving less room for disagreement whether land is "marginal" or not, eliminating the need for long findings, reducing the likelihood of appeals and easing the LCDC review burden.

Working along with the "low productivity" and "small ownerships" tests is the "income test." Land which meets either the "low

**PRELIMINARY DRAFT
SUBJECT TO REVISION**

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productivity" or the "small ownerships" test must also meet the "income test." The "income test" is designed to ensure that land which is being managed as part of a commercial farm or forest operation does not qualify as being marginal. That includes commercial ranches operating on Class VI soil (as many do), intensive commercial farms (such as nurseries) on small tracts, and successful woodlots.

SB 237 does not prescribe any particular approach to identifying "marginal land" in a County. Washington County is using a workable approach: it determines which County lands satisfy the "low productivity" or "small ownerships" tests first, and then which of those lands satisfy the "income test."

It should be noted that both agricultural land and forest land are eligible to be designated "marginal land."

1. "Low Productivity" Test: Section 2 (1)(b)(C)

Land is eligible to be designated "marginal" if it is of low productivity for both farm and forest uses. SB 237 relies on the SCS Capability Classification System and the Site Index rating system as the measures of productivity because counties are already using this information in the preparation of their comprehensive plans.

West of the Cascades, land is eligible if it is predominantly Class V, VI, VII or VIII soil on the SCS scale and is only capable of producing less than 85 cubic feet of merchantable timber per acre per year. East of the Cascades, land is eligible if it is predominantly Class V, VI, VII or VIII soil on the SCS scale and is only capable of producing less than 50 cubic feet of merchantable timber per acre per year.

The Legislature intends "predominantly" to mean more than 50 percent. So, a 100-acre ownership that has 55 acres of Class VI soil and 45 acres of Class IV soil is still eligible to be "marginal land."

Soil capability and site index information are readily available for almost all private land in Oregon from either the U.S. Soil Conservation Service or the Oregon Forestry Department.

Land that meets the "low productivity" test can be designated "marginal" if it meets the "income test" described below.

2. "Small Ownerships" Test: Section 2(1)(b)(A) and (B)

There are two "small ownerships" tests, one for general application and one tailored specifically to apply in narrow valleys where small ownerships occur along a river or road rather than in a large cluster. However, a County can use either "small ownerships" tests anywhere in the County.

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Test A

The first test is for clusters of ownerships primarily 20 acres and smaller. To apply the test, a County would choose a lot or parcel in the middle of a cluster of small tracts. The County would then draw a line around the center lot or parcel one-quarter mile from the boundaries of the lot or parcel. If the line passes through a nearby lot or parcel, then that lot or parcel is included in the "small ownerships" area. Once the line is drawn, the County checks to see whether 50 percent of the area included within the line was in lots or parcels 20 acres or less in size on July 1, 1983. For example, if the area within the line is 260 acres, it would meet the test if all the lots and parcels 20 acres or smaller added up to at least 130 acres (Section 2(1)(b)(A)).

A County can choose to draw the one-quarter mile perimeter around more than one lot or parcel, if the cluster of small ownerships is large. See the examples in Figures 1 and 2 (to be provided later).

SB 237 treats adjacent lots or parcels owned by the same person or a spouse, parent, child or sibling of the person, as one lot for the "small ownership" test. For example, assume two adjacent 15-acre tracts fall within the area described by the one-quarter mile line. If one is owned by Smith and the other by Jones, they count as two separate lots, adding 30 acres toward the 50 percent acreage total. If one is owned by Smith and the other by Smith's spouse, the tracts are treated as one 30-acre lot and cannot be counted toward the 50 percent total (Section 2(2) and (3)).

Land in exception areas can be included in the test area under this first test (Section 2 (4)). Also, any ownership that falls within the one-quarter mile perimeter, regardless of size, qualifies as "marginal" so long as 50 percent of the area within the test area is in ownerships smaller than 20 acres and meets the income test (Section 2 (6)).

For example, suppose there is an area of 25-acre to 30-acre tracts currently designated Agriculture or Forestry near an exception area adopted by the County. The County believes the tracts are "marginal" but cannot find any way to draw a perimeter including adjacent farm or forest land that meets the test. Under this test, the County can draw the line to take in the usually smaller five- and ten-acre ownerships in the exception area. If 50 percent of the test area is in ownerships 20 acres or less, the 25-acre and 30-acre tracts can be designated as "marginal" if they also meet the income test (see Figure 2).

-4-

Test B

The second "small ownerships" test works differently. A test area must include at least 240 acres. At least 60 percent of the area, not 50 percent as in the first test, must be in ownerships 20 acres or smaller. However, the area can take any shape the County wishes. The County can "gerrymander" the boundaries of the test area to take in small ownerships and exclude large ownerships (Section 2(1)(b)(B)).

For example, in some valleys there are narrow strips of five-acre and ten-acre lots along a road. Behind the small lots are large tracts of pasture or woodlots. An area like this would not qualify under the first test because the quarter-mile perimeter would take in the larger tracts. Under the second test, instead of drawing a quarter-mile line around a central lot, the line could be drawn as far down the road as necessary to make up the minimum 240-acre area.

It should be noted that, under this second "small ownerships" test, adopted exception areas may not be counted toward the 60 percent total of ownerships 20 acres or smaller (Section 2 (4)) (see Figure 3). However, just as for the first test, adjacent lots or parcels owned by the same person or a spouse, parent, child or sibling are treated as one lot.

3. "Income" Test: Section 2 (1)(a)

Land that satisfies either the "low productivity" or the "small ownership" tests qualifies as "marginal land" if it meets the "income" test. Land meets this test if it was not managed as part of a farm operation that produced at least \$20,000 in annual gross income in three of the five years prior to January 1, 1983, and was not part of a forest operation that is capable of producing an average of \$10,000 in annual gross income over the growing cycle.

Counties are not required to ask landowners to submit income information which landowners usually prefer to keep confidential. SB 237 authorizes counties to rely instead upon countywide statistics about average yield per acre and price per unit of farm products or livestock, compiled annually by OSU Extension Services, or any other objective data. Counties may also rely on average production by site index and average stumpage value to determine timber income (Section 2 (5)).

For example, suppose a County proposes to designate as "marginal" an 18-acre parcel in a "small ownership" area. For the past several years the parcel has been in wheat. The average yield in the County for those years was 60 bushels per acre. The average price was \$3.75 per bushel. It has been leased to a farmer who has another 30 acres of wheat. Sixty bushels at \$3.75 per bushel

-5-

times 48 acres equals \$10,800. The land qualifies as "marginal" because it was not part of a farm operation grossing at least \$20,000 per year.

Land which satisfied either the "low productivity" test or the "small ownerships" test and the "income" test can be designated "marginal" and used as authorized by SB 237. All goals other than Goals 3 and 4, however, still apply to the marginal land (Section 2(7)).

4. Uses Allowed on "Marginal Land": Section 3

SB 237 establishes for land designated as "marginal", a new zone very similar to a rural residential zone. As recommended by the Governor's Task Force, the new law allows much greater residential use than would otherwise be permitted by Goals 3 or 4.

First, there is a "lot-of-record" provision. A residence may be approved on all existing lots and parcels created before July 1, 1983, regardless of size or ownership. The only limitation is that if the lots occur in the Willamette Greenway or a designated floodplain or hazard area, they remain subject to those special local requirements (Section 3(2)).

Second, there is a generally applicable ten-acre minimum lot size for creation of new residential lots (Section 4 (1)). The lot size is 20 acres for those new tracts that border an EFU or forest zone. However, if land that remains zoned for EFU or forest uses would qualify as "marginal," even if they are not to be designated, the lot size on adjacent "marginal land" may also be ten acres. Existing lots smaller than the minimum lot size are still buildable under the "lot of record" provision.

The new law also authorizes temporary hardship dwellings and the same nonfarm uses outlined in ORS 215.213(1) and (2) of the exclusive farm use statute (for example, churches, schools, golf courses, utility facilities, etc.) (Section 6).

5. Implementation

SB 237 authorizes Counties to designate lands as "marginal" now, prior to acknowledgment, as a means to avoid controversy over rural residential exception areas. Counties need not wait to apply this Act until after acknowledgment.

SB 237 contemplates that counties will designate "marginal lands" by adopting plan policies that reflect the provisions of the Act, and adopting a new "marginal lands" zone allowing uses authorized by the Act, and applying the new zone to land which meets the tests. There is nothing in SB 237, however, that requires this single implementation technique. The only express requirement is that plan and ordinance provisions designed to implement

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"marginal lands" be acknowledged by LCDC before they become "effective" (applicable to the issuance of permits, land divisions, etc.).

Another technique is under way in Washington County. The County will adopt plan policies and a new "marginal lands" zone. One plan policy will designate which lands are potentially eligible for "marginal lands" zoning (some 40,000 acres currently designated Agriculture-Forestry-20). The County will submit the policies and ordinance to LCDC for acknowledgment. But the actual change of zone from AF-20 to "marginal lands" will come later, on a case-by-case basis, as owners of eligible land make applications and prove their land is "marginal." In this way, Washington County will be able to use "marginal land," resolve a long-standing "exception" controversy, and still not interfere with its acknowledgment schedule.

B. Lots-of-Record

As mentioned above, SB 237 makes virtually all existing lots and parcels that fall within "marginal lands" eligible for residences. SB 237 also relaxes some of the limitations in the 1981 Lots-of-Record Law and establishes new opportunities for building on small lots and parcels in EFU, forest and other rural areas.

1. Changes to Existing Lots-of-Record Law: Sections 14 and 15

SB 237 makes a number of changes to the 1981 Lots-of-Record Law. First, as recommended by of the Governor's Task Force on Land Use, SB 237 makes lots created by or transferred to the present owner after January 1, 1948, eligible for lot-of-record status. Before amendment, lots created by, or transferred before, January 1, 1965, were not eligible.

Second, under the 1981 law, lots were considered "contiguous" unless separated by a four-lane highway. Contiguous lots owned by the same person or a relative were ineligible for lot-of-record status. Under the new law, lots are now not considered contiguous if they are separated by any public road.

Third, under the 1981 law, contiguous lots otherwise qualifying but owned by the same person, or a spouse, parent, child, brother or sister of the person, were entitled to only one building permit. SB 237 removed the term "relative" so that contiguous lots owned by a parent, child, brother or sister are eligible for a building permit.

These changes will make more existing lots buildable under the Lots-of-Record Law. However, some other new provisions in the EFU statute regarding existing small lots amended the 1981 Lot-of-Record Law so it no longer applies to lots or parcels in an EFU zone (Section 15).

-7-

2. Small Lots in EFU Zones: Section 6

SB 237 amends the EFU statute to exempt small lots from most existing EFU review criteria. The owner of any existing lot or parcel in an EFU zone created between January 1, 1948, and July 1, 1983, that is three acres or smaller in size may obtain a permit for a dwelling unless the dwelling will interfere with nearby farm operations. To obtain a permit, the landowner applies, and the County notifies owners of property within 250 feet of the parcel. If no objection is received, the County is under no obligation to hold a hearing. If an objection is received, a hearing must be set. The only issue at the hearing is whether the dwelling will "force a significant change in or significantly increase the cost of farming practices on nearby lands..." (Section 6, new ORS 215.213 (4)).

It should be noted that these lots remain subject to one of the limitations in the 1981 Lots-of-Record Law: contiguous lots owned by the same person or a spouse are eligible for only one residence.

The lot-of-record provisions are optional and need not be adopted. However, if a County chooses to use them, the County must also implement the new EFU provisions of this Act.

C. New EFU Provisions

SB 237 made major changes to the EFU statutes (ORS 215.213), principally to the review criteria for farm and nonfarm dwellings. Those revised statutes will apply to all counties that choose to take advantage of the optional marginal-land or expanded lot-of-record provisions offered by SB 237. Counties that do not choose to utilize the options offered by SB 237 will remain subject to the EFU statutes that existed prior to the adoption of SB 237. Those older EFU statutes, once familiar to many as ORS 215.213, now have been recodified as ORS 215.283 (Section 17). In other words, the newer, more stringent EFU statutes that apply to counties that embrace SB 237 are found in ORS 215.213; the older EFU statutes, which still apply to counties that do not embrace SB 237 are found in Section 17 (see Section 16).

The amendments in SB 237 to ORS 215.213(1), (2) and (3) are optional (see Section 16). Amendments to ORS 215.263 and 215.253 and several new sections are not optional. The amendments will be described briefly in the order in which they appear in SB 237. All are from Section 6 of that bill.

1. School Buildings

The new statute expressly authorizes "buildings essential to the operation of a school," such as gymnasiums and dormitories.

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2. Farm Dwellings Where Minimum Lot Size Acknowledged

Under the new statute, if a dwelling is proposed on a parcel that is managed as part of a farm operation not smaller than a minimum lot size acknowledged by LCOG, the dwelling may be permitted outright.

3. Temporary Hardship Dwellings

The current EFU statute does not authorize temporary hardship dwellings unless they can be approved as farm dwellings or nonfarm dwellings. SB 237 adds a new provision that permits a mobile home in conjunction with a dwelling on a temporary basis for the term of a hardship exempt from other EFU criteria.

4. Forest Dwellings

The current EFU statute does not authorize "woodlot" dwellings. The new EFU standards do provide for dwellings "in conjunction with the propagation or harvesting of a forest product" if the standards in the statute are met. There are two ways for a lot or parcel to qualify for a "woodlot" dwelling. First, if the lot or parcel is part of a forest operation that is larger than 20 acres and also is as large as the average woodlot in the County producing at least \$2,500 annually in gross income, the tract qualifies. If a lot or parcel is smaller than the first standard requires, it can still qualify if it is capable of producing at least \$10,000 annually averaged over the growing cycle.

For example, the 1978 Census of Agriculture shows that the average size of woodlands in Yamhill County with at least \$2,500 in sales is 55 acres. A Yamhill County landowner with 55 acres or more would be entitled to a "woodlot" dwelling permit. If the landowner had only 32 acres, he would qualify for a "woodlot" dwelling only after showing the 32-acre woodlot was capable of producing at least \$10,000 in annual sales averaged over the growing cycle.

5. Farm Dwelling Where No Acknowledged Minimum Lot Size

For counties with no acknowledged lot sizes in their EFU zones, SB 237 establishes two standards for farm dwellings on existing parcels, similar to the standards for "woodlot" dwellings (Section 6).

First, if the parcel is managed as part of a farm larger than 20 acres in size and as large as the average farm of that type in the county producing at least \$2,500 in sales, the parcel qualifies. Second, if a parcel is smaller than the first standard requires, it can still qualify if the owner or operator can show that the parcel produced at least \$10,000 in sales in two consecutive years of the three years preceding the dwelling application or the parcel is planted in perennials (for example, grapes or fruit trees) capable of producing an average of at least \$10,000 annually upon harvest.

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The legislative history behind SB 237 makes clear that the Legislature did not want counties to have to collect the data needed to implement these standards themselves. The Legislature intended to allow counties to rely on existing information from the Oregon State University Extension Service but to remain free to develop their own data if they chose.

Oregon State University has obtained from the U.S. Bureau of the Census more detailed information about farm income and size, by county, than is otherwise available to counties from the Bureau in the 1978 Census. The new information, available to counties from OSU, gives the average size of eleven types of farms and ranches, by County, producing at least \$2,500. The data show the average fruit or nut orchard in Yamhill County is 69 acres. In Washington County, the average is 76 acres. In Josephine County, the average "intensive animal" operation is 58 acres; the average "horticultural specialities" operation is 15 acres. In Jackson County, the average "vegetable or melon" farm is 38 acres.

For example, an applicant in Yamhill County with a 70-acre farm whose principal crop is filberts would be entitled to a farm dwelling. An applicant whose principal crop is filberts but who has only 22 acres could not qualify under the first standard. The applicant has two chances to qualify under the second test. If he or she has produced \$10,000 in sales of filberts in two consecutive years of the past three on that parcel it qualifies for a dwelling. Or, if he or she is just getting started with filberts and has planted trees that will produce an average of at least \$10,000 in sales annually at harvest, the parcel qualifies. In Benton County, using average yield and price data, it would take 13.5 acres of filberts to produce \$10,000 in annual sales. Information about average county yields per acre and average prices are available county-by-county from the OSU Extension Service.

6. Limits on New Nonfarm Dwellings

SB 237 continues the current statute's authorization for nonfarm dwellings on Class IV, V, VI, VII and VIII soils but prohibits new nonfarm dwellings on Class I, II and III soils except on lots or parcels three acres and smaller, described in number eight below.

7. New Criteria for Nonfarm Dwellings

SB 237 revises the criteria for nonfarm dwellings in EFU zones found at ORS 215.213(3). Formerly that statute listed five criteria outlined here, and authorized counties to add their own independent "conditions": (1) compatibility with farm use; (2) consistency with ORS 215.243; (3) interference with farm practices; (4) stability of area's land use pattern; and (5) generally unsuitable soil. The new statute condenses these five criteria into two: a new interference test and a slightly modified unsuitability test. It should be noted, however, that the five older criteria still apply to counties

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that do not choose to take the SB 237 options. Those criteria have been recodified to appear in ORS 215.283.

The unsuitability test has new language intended to put the court holding in Rutherford v. Armstrong (Yamhill County), 31 Or App 1319 (1977), into the statute. It says: "A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land." For example, a nine-acre tract of Class II soil may be too small to produce farm crops or livestock by itself. But it is not "generally unsuitable" solely because of its small size if it can reasonably be farmed by the operator of an adjoining field.

The new interference test focuses upon cost of accepted farm practices:

"The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

For example, if the siting of a nonfarm dwelling would force a farmer to abandon a practice such as aerial spraying, or force an expensive new practice, either of which the County finds to be "significant," the dwelling could not be approved. The statute does not define "significant" so counties will have to determine its meaning as they apply it in particular cases.

8. Nonfarm Dwellings on Small Lots

As mentioned in the Lot-of-Record section earlier, SB 237 allows a "lot-of-record" dwelling on any lot or parcel three acres or less created between January 1, 1948, and July 1, 1983, regardless of soil quality, so long as a dwelling on the parcel meets the new interference test described above and complies with local ordinances pertaining to other matters (e.g., flooding, geological hazards). A parcel is disqualified if it is part of a contiguous ownership (same person or spouse) larger than three acres.

9. Farm Divisions

SB 237 amends ORS 215.263 to allow divisions of land creating parcels for farm use if the proposed parcel is either larger than the minimum lot size acknowledged by LCDC or is shown to be "appropriate for the continuation of the existing commercial agricultural enterprise within the area." This is the existing criterion from Goal 3.

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10. Divisions for Nonfarm Dwellings

Although most counties authorize creation of new parcels for nonfarm dwellings, the old law did not expressly provide for it. SB 237 expressly authorizes nonfarm dwelling parcels if the criteria for nonfarm dwellings (at ORS 215.213(3)) are met (ORS 215.263(4), Section 7).

D. Other Changes

1. Farm-Practices Awareness Statements

SB 237 (Section 11) authorizes counties to require as a condition of approval of a dwelling in an EFU zone the signing of a statement declaring the applicant will not complain about accepted farming or forest practices in the area.

2. Protection of Farm Practices on Marginal Lands

SB 237 (Section 12) extends to accepted farming practices on "marginal lands" the same protection against unreasonable restrictions as current law provides for EFU zones under ORS 215.253.

3. Minor Partitions

Oregon's subdivision law did not previously require counties to review and approve or disapprove minor partitions (divisions creating two or three lots with no new road). SB 237 (Section 9) amends the state subdivision law to require counties to regulate minor partitions in EFU zones.

4. Reporting EFU Decisions

SB 237 (Section 13) continues the requirement imposed by the 1981 Legislature that the Joint Legislative Committee review land divisions and dwelling permits approved by counties in EFU zones. Unlike the 1981 law; however, SB 237 directs counties to send EFU decisions to LCDC rather than the Committee. LCDC then must review the decisions and make recommendations to the Joint Committee on any proposed changes to EFU criteria.

This new section also requires counties to report on the amount of land designated as "marginal" the number of dwellings and land divisions approved on such land and the approval of any dwellings on lots-of-record.

EH:ad
5600B/5C

**PRELIMINARY DRAFT
SUBJECT TO REVISION**

Martin Dreisbach
39005 Jasper Lowell Road
Fall Creek, Oregon 997438-9724
December 7, 2005

Mr. Thom Lanfear:

I am writing this letter in the hopes that it will be submitted into the record of the application hearing for case PA 04-6308. This is the rezoning request by Carol Dennis for the property at 39191 Jasper Lowell Road. I attended the hearing of the planning commission, held on Dec. 6th in Harris Hall, and base my thoughts and comments on information presented at that hearing. I was initially somewhat ambivalent about this proposal when I planned on attending the meeting. I hoped that I would learn enough to form a more forceful opinion. By the time the meeting ended I had certainly done that, and I am thankful for the motion to allow extra time for me to put my feelings on record.

It quickly became apparent to me that this case is precisely why zoning laws were enacted in the first place. On the one side we had the absentee owner, represented by a high-powered lawyer, intent on exploiting every loophole in the law to achieve an outcome beneficial to her. On the other we had immediate property owners who suffered serious harm because of her irresponsible management of this property. It seems obvious that this property was initially zoned as "forest land" for a reason. There must have been extensive forest on it. The owner earned \$90,000 in the space of only several months by logging this land. We don't know how many board-feet of timber were logged because this information was not provided, but it should certainly be considered pertinent to the case in light of the requested rezoning. How do we know that the timber wasn't sold at below market value simply to get it removed from the property to build a case for future rezoning? It is obvious that the owner never made a serious attempt to make the land productive from logging because nothing was ever replanted. In fact, the brush was not even cleaned out, but was left to rot and become a fire hazard. Instead of attempting to create a sustaining forest on the land, as logically would be the intent in a "forest zoned" environment, the land was used as a dumping ground for trash and hazardous waste. It is logical to assume that this constitutes an illegal activity, though I am not versed enough in the law to be able to say that with certainty. If it doesn't violate the letter of the law I am certain it does violate the spirit of the law, and that should certainly be considered. The water runoff from the land caused serious difficulties for adjacent property owners but there was never any attempt made to rectify this situation. From what I understand it continues to exist to this very day.

There is sustainable forest land in the immediate area. That there is plenty of that is evidenced by the many logging trucks that traverse Jasper Lowell Road on a daily basis. That, coupled by the fact that the owner did log a considerable quantity of timber from this land initially, seems ample reason to question the assertion that harvesting could not be a sustainable activity on this property. It is logical to assume that it was simply one that the owner did not desire to undertake. But this defeats the purpose of the "forest" zoning classification, and the owner should be held accountable for that. It would be highly irresponsible to allow for a zoning reclassification on this basis. No one should be allowed to simply ignore the law if it does not

suit their immediate needs, and they should certainly not be allowed to benefit by their actions in this regard.

By not attempting to generate a sustainable foresting operation on land zoned as such the owner will have benefited immediately. The trees were harvested and the owner earned the proceeds of the sale. But no expense was incurred in any attempt to renew the land. Instead the land was neglected, and allowed to waste. Now, after a suitable period of time has passed, the owner makes the argument that harvesting is not sustainable. This becomes the basis for an application for rezoning to a classification which will allow vastly greater income through the sale of housing lots. If this application is approved the owner will have benefited to a far greater extent than ever possible had she adhered to the intent of the original "forest" classification. Again, this may be "legal"; but I believe it certainly does violate the spirit of the law.

If this application is allowed to proceed then it will open a loophole for any other speculator to follow in the same footsteps. The "forest" zoning classification will have little or no relevance if it can be ignored so easily. I feel the citizens of Lane County deserve more consideration than this. I thank you for allowing me the time to place my comments on record.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark DeBenedictis". The signature is fluid and cursive, with a long horizontal stroke at the end.

LANFEAR Thom

From: Jim Just [goal1@pacifier.com]
Sent: Thursday, December 08, 2005 5:13 PM
To: LANFEAR Thom
Subject: Re: Record Materials

Thom,

Could you please fax me the following documents? Mail would be better, but that wouldn't give me enough time to prepare a submittal within the 7-day open record period.

Thanks for your help.

-Jim

- County Survey 32294
- Deed of Reconveyance 2001-006565
- Trust Deed 1999102069
- Ordinance PA 1076 w/2 pages of findings
- Property Line Adjustment Deed 9471274
- Property Line Adjustment Deed 9471275
- Legal Lot Verification PA 2639-94
- Legal Lot Verification PA 1923-94

----- Original Message -----

From: LANFEAR Thom
To: Jim Just ; Steve Cornacchia ; MHDVM@aol.com
Sent: Thursday, December 08, 2005 4:35 PM
Subject: Record Materials

I am placing the following materials into the record for Planning Action PA 04-6308 (Dennis). These materials can be reviewed at the LMD office or copies can be faxed or mailed to you upon request.

- County Survey 32294
- Deed of Reconveyance 2001-006565
- Trust Deed 1999102069
- Ordinance PA 1076 w/2 pages of findings
- Property Line Adjustment Deed 9471274
- Property Line Adjustment Deed 9471275
- Legal Lot Verification PA 2639-94
- Legal Lot Verification PA 1923-94
- Letter from Harvey Hogle June 22, 1994
- Wetherell v. Douglas County, LUBA No. 2005-045
- Just v. Lane County, LUBA No. 2005-029
- Memorandum from the Office of State Forester February 8, 1990
- Lane County Soil Ratings for Forestry and Agriculture August 1997
- Lane County 1975 Assessment and Taxation Map 18-01-33
- PA 00-6304 Exhibit "P" Water Information (per Steve Cornacchia Request)
- "green sheets" for the 41 Dixonville, 52 Hazelair, and 108 Philomath soil units: 41C, E, & F;

52B & D, 108C & F (per Jim Just request)

These materials can be reviewed at the LMD office or copies can be faxed or mailed to you upon request. If you have a question, give me a call at (541) 682-4054.

LANFEAR Thom

From: LANFEAR Thom
Sent: Thursday, December 08, 2005 4:36 PM
To: 'Jim Just'; 'Steve Cornacchia'; 'MHDVM@aol.com'
Subject: Record Materials

I am placing the following materials into the record for Planning Action PA 04-6308 (Dennis). These materials can be reviewed at the LMD office or copies can be faxed or mailed to you upon request.

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LANFEAR Thom

From: Steve Cornacchia [scornacchia@hershnerhunter.com]
Sent: Thursday, December 08, 2005 4:45 PM
To: LANFEAR Thom; Jim Just; MHDVM@aol.com
Subject: RE: Record Materials

Nice job Thom. For context (Just v. LC) please also add soil map units 43C and 43E. Thanks. Please place a full set in my folder and let me know when so I can come pick it up. Thanks. Steve

Steve Cornacchia
 Hershner Hunter, LLP
 180 East 11th Avenue
 Eugene OR 97401
 Phone: (541) 686-8511
 fax: (541) 344-2025
 www.hershnerhunter.com

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From: LANFEAR Thom [mailto:Thom.LANFEAR@co.lane.or.us]
Sent: Thursday, December 08, 2005 4:36 PM
To: Jim Just; Steve Cornacchia; MHDVM@aol.com
Subject: Record Materials

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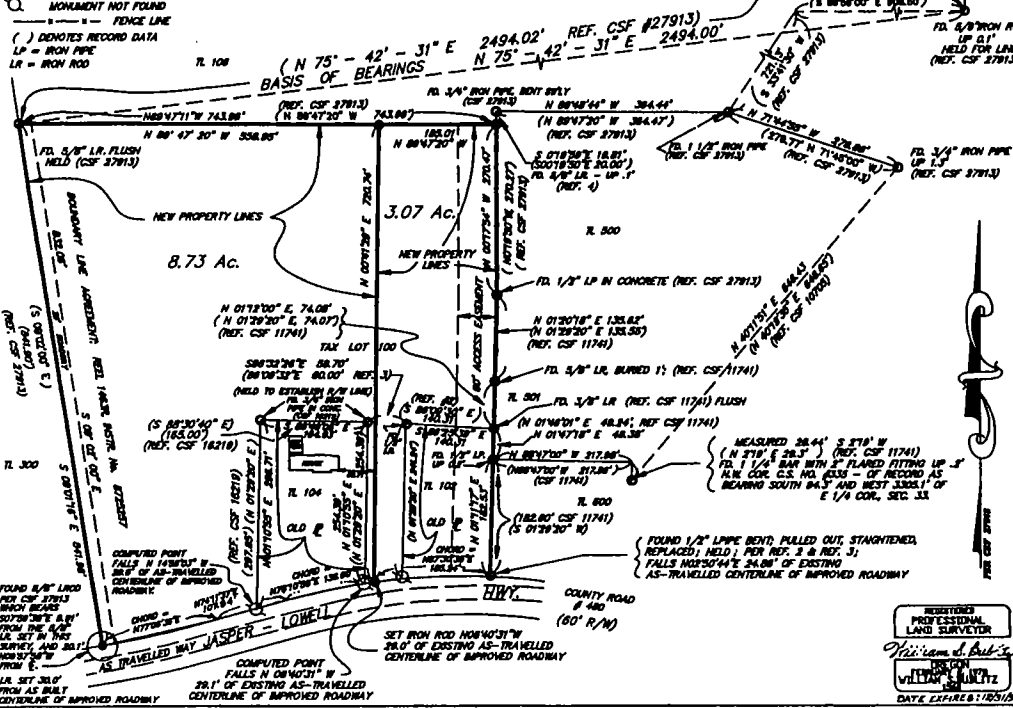
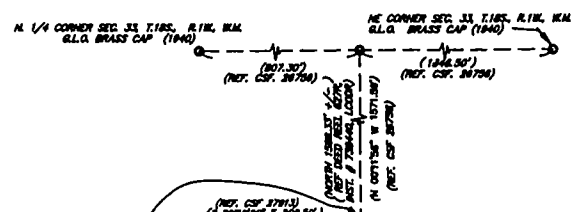
NARRATIVE:

THIS SURVEY WAS PERFORMED AT THE REQUEST OF THE OWNERS. THE PURPOSE IS TO PERFORM A LOT LINE ADJUSTMENT AMONG TAX LOTS 100, 101, 104 & 106. NO ADDITIONAL LOTS ARE CREATED. THE BASIS OF BEARINGS NORTH 75° 42' 31" EAST, IS THAT COMPUTED INVERSE BEARINGS FROM THE NORTHEAST CORNER OF THE SOUTHERN PORTION R. 100 TO THE SOUTHWEST CORNER OF THE NORTHERN PORTION R. 100, AS PER CSF #27913. BOTH CORNERS ARE MONUMENTED BY 3/4" IRON RODS PER SAID SURVEY. ALL FIELD BEARS WERE PERFORMED FROM A RANDOM, CLOSED TRAVERSE IN AUGUST 1974.

THE NORTHEAST AND NORTHWEST CORNERS ARE ESTABLISHED HOLDING MONUMENTS FOUND PER CSF #27913. THE EAST BOUNDARY LINE IS ESTABLISHED HOLDING RECOVERED MONUMENTS OF RECORD PER CSF 11741, 18718, AND 10708, AS THESE MONUMENTS FIT WITHIN REASON TO PLAN DATA. THE SOUTHWEST CORNER IS ESTABLISHED BY 1. HOLDING RECOVERED MONUMENTS FOR BEARING AND 2. INTERSECTION OF THE WEST PROPERTY LINE WITH THE R/W BOUNDARY LINE BEING HELD 30' FEET NORTHERLY AND PARALLEL TO THE EXISTING CENTERLINE OF THE IMPROVED AS-TRAVELLED ROADWAY. THE SOUTHWEST CORNER IS HELD AS BEING AT A FOUND 1/2" IRON PIPE WHICH FIT VERY CLOSELY TO THE 3/4" IRON PIPE OF RECORD PER CSF #27913. THE SOUTHERLY PROPERTY LINE, WHICH IS THE NORTHERLY R/W LINE, IS ESTABLISHED BY APPLYING RECORD PLAT CSF #27913 ANGLES AND DISTANCES TO THOSE RECOVERED MONUMENTS OF RECORD. THE WEST PORTION OF THE R/W LINE IS ESTABLISHED HOLDING SAID MONUMENTS PER REF. 3. APPLYING RECORD ANGLES AND DISTANCES WITH THEIR INTERSECTION OF AN ARC 30.0' NORTHERLY AND PARALLEL TO CENTERLINE OF THE AS-TRAVELLED ROAD.

LEGEND:

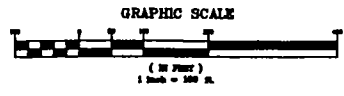
- FOUND MONUMENT AS NOTED
- SET MONUMENT: 3/8" x 30" IRON ROD WITH YELLOW PLASTIC CAP STAMPED: "MORRISSEY 1977"
- MONUMENT NOT FOUND
- FENCE LINE
- (.) DENOTES RECORD DATA
- LP = IRON PIPE
- LR = IRON ROD



REFERENCES:

1. CSF # 28758
2. CSF # 11741
3. CSF # 18718
4. CSF # 27913
5. CSF # 10708
6. DEED REEL 478 / 2473
7. DEED RECORDED ON REEL 14636, INSTR. NO. 8725857
8. DEED RECORDED ON REEL 18906, INSTR. NO. 8411371
9. DEED REEL 8376, INSTR. No. 738439

NOTE: THERE EXISTS A 60' WIDE ACCESS EASEMENT ON THE EAST 60' FEET OF PARCEL 2 IN FAVOR OF TAX LOT 104. REFER TO REEL 12806, INSTR. NO. 8411371.



**PROPERTY LINE ADJUSTMENT FOR
MICHAEL MORRISSEY &
BETTY JANE MORRISSEY**
SW 1/4, SEC. 33, T. 18 S., R. 1 W., W.M.
LANE COUNTY, OREGON

REGISTERED PROFESSIONAL LAND SURVEYOR
William J. Buttz
VILLAGE OF ASTORIA
DATE EXP. 11/25/1994

| | |
|--|--------------------------|
| WEC WESTERN ENGINEERING CONSULTANTS & CONSTRUCTION 8 COBBING ROAD, SUITE 200 EUGENE, OREGON 97401 (503)444-9511 | |
| TITLE: LOT LINE ADJUSTMENT | JOB NO: 10220 |
| DATE: SEPTEMBER 22, 1974 | DRAWN: JEV |
| DATE: 10-31-77 | THE L.P.N.: 101002104106 |

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DEED OF RECONVEYANCE

KNOW ALL MEN BY THESE PRESENTS, That Amvesco, Inc., dba Western Pioneer Title Co. of Lane County, under that certain trust deed dated October 21, 1999, executed and delivered by Carol Ann (Sutton) Dennis as grantor and recorded October 22, 1999, as Instrument No. 99-088918 Reel No. 2601 and rerecorded October 27, 1999, as Instrument No. 99-089870 Reel No. 2602, of the official records of Lane County, Oregon

having received from the beneficiary under said trust deed a written request to reconvey, reciting that the obligation secured by said trust deed has been fully paid and performed, hereby does grant, bargain, sell and convey, but without any covenant or warranty, express or implied, to the person or persons legally entitled thereto, all of the estate held by the undersigned in and to said described premises by virtue of said trust deed.

In construing this instrument whenever the context hereof so requires, the masculine gender includes the feminine and neuter and the singular includes the plural.

IN WITNESS WHEREOF, Amvesco, Inc., dba Western Pioneer Title Co. of Lane County, Trustee has caused its corporate name to be signed by its agent duly authorized thereunto by order of its Board of Directors.

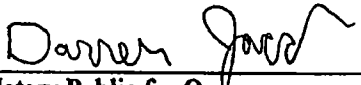
DATED February 6, 2001


Amvesco, Inc., dba Western Pioneer Title Co. of Lane County, TRUSTEE

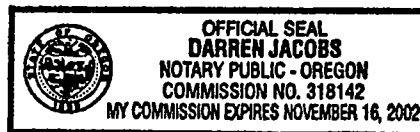
STATE OF OREGON, County of Lane ss. February 6, 2001

Personally appeared Jeff Lansdon who being duly sworn that he/she is the Authorized agent of Amvesco, Inc., dba Western Pioneer Title Co. of Lane County, a corporation, that said instrument was signed in behalf of said corporation by authority of its Board of Directors; and acknowledged said instrument to be its voluntary act and deed.

Before me:



Notary Public for Oregon
My Commission expires:



Western Pioneer Title Co.

EXCELLENT SERVICE ♦ FIVE LOCATIONS

| | |
|--------------------------------------|----------|
| 600 Country Club Road • Eugene | 484.2900 |
| 96 East Broadway • Eugene | 345.5787 |
| 1717 Centennial Blvd. • Springfield | 726.0172 |
| 715 Hwy. 101 North • Florence | 997.8488 |
| 435 East Main Street • Cottage Grove | 942.2310 |

AFTER RECORDING RETURN TO:
WESTERN PIONEER TITLE CO.

P.O. BOX 10146
EUGENE, OR 97440

Division of Chief Deputy Clerk
Lane County Deeds and Records

2001-006565



\$26.00

00148209200100065650010011

02/07/2001 10:15:21 AM

RPR-SAT Cnt=1 Stn=3 CASHIER 06

\$5.00 \$11.00 \$10.00

NS WPT#157266; 157265; 156734

18 01 33 00 00106/1430436; 1430428
17 03 35 23 09501/310951
17 04 36 31 03000/482081



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TRUST DEED

STATE OF OREGON,
County of _____ } ss.

I certify that the within instrument
was received for record on the _____ day
of _____, 19____, at
_____ o'clock _____ M. and recorded in

Carol Ann (Sutton) Dennis

DIVISION OF CHIEF DEPUTY CLERK
LANE COUNTY DEEDS AND RECORDS



35.00

00003554188902089805

1999102069

1:22:27 PM 12/17/1999

RPR DTR 1 - 3 CASHIER 07
25.00 10.00

Grantor's Name and Address

Bay Area Capital, LLC
1050 Willagillespie, #4
Eugene, OR 97401

Beneficiary's Name and Address

After recording, return to (Name, Address, Zip):
Western Pioneer Title
P.O. Box 10146
Eugene, OR 97440
10-54889

THIS TRUST DEED, made this 3rd day of December, 19 99, between
CAROL ANN (SUTTON) DENNIS (aka Carol A. Sutton and Carol A. Dennis)
FIRST AMERICAN TITLE INSURANCE COMPANY, as Grantor,
as Trustee, and
BAY AREA CAPITAL, LLC, as Beneficiary,

WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in
Lane County, Oregon, described as:
**and Douglas

As described on attached Exhibit "A"

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now
or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with
the property.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of
FOUR HUNDRED THOUSAND AND 00/100 (\$400,000.00) Dollars, with interest thereon according to the terms of a promissory
note of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereof, if
not sooner paid, to be due and payable December 3, 2004.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of the note
becomes due and payable. Should the grantor either agree to, attempt to, or actually sell, convey, or assign all (or any part) of the prop-
erty or all (or any part) of grantor's interest in it without first obtaining the written consent or approval of the beneficiary, then, at the
beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall be-
come immediately due and payable. The execution by grantor of an earnest money agreement** does not constitute a sale, conveyance or
assignment.

To protect the security of this trust deed, grantor agrees:

1. To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building or im-
provement thereon; not to commit or permit any waste of the property.
2. To complete or restore promptly and in good and habitable condition any building or improvement which may be constructed,
damaged or destroyed thereon, and pay when due all costs incurred therefor.
3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property; if the beneficiary
so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the beneficiary may require and
to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching
agencies as may be deemed desirable by the beneficiary.
4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the property against loss or
damage by fire and such other hazards as the beneficiary may from time to time require, in an amount not less than \$max. insurable amount
written in companies acceptable to the beneficiary, with loss payable to the latter; all policies of insurance shall be delivered to the ben-
eficiary as soon as insured; if the grantor shall fail for any reason to procure any such insurance and to deliver the policies to the beneficiary
at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on the buildings, the beneficiary may pro-
cure the same at grantor's expense. The amount collected under any fire or other insurance policy may be applied by beneficiary upon
any indebtedness secured hereby and in such order as beneficiary may determine, or at option of beneficiary the entire amount so collected,
or any part thereof, may be released to grantor. Such application or release shall not cure or waive any default or notice of default here-
under or invalidate any act done pursuant to such notice.
5. To keep the property free from construction liens and to pay all taxes, assessments and other charges that may be levied or
assessed upon or against the property before any part of such taxes, assessments and other charges become past due or delinquent and
promptly deliver receipts therefor to beneficiary; should the grantor fail to make payment of any taxes, assessments, insurance premiums,
liens or other charges payable by grantor, either by direct payment or by providing beneficiary with funds with which to make such pay-
ment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note
secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part
of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments,
with interest as aforesaid, the property hereinbefore described, as well as the grantor, shall be bound to the same extent that they are
bound for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice,
and the nonpayment thereof shall, at the option of the beneficiary, render all sums secured by this trust deed immediately due and pay-
able and constitute a breach of this trust deed.
6. To pay all costs, fees and expenses of this trust including the cost of title search as well as the other costs and expenses of the
trustee incurred in connection with or in enforcing this obligation and trustee's and attorney's fees actually incurred.
7. To appear in and defend any action or proceeding purporting to affect the security rights or powers of beneficiary or trustee;
and in any suit, action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed
or any suit or action related to this instrument, including but not limited to its validity and/or enforceability, to pay all costs and expen-
ses, including evidence of title and the beneficiary's or trustee's attorney fees; the amount of attorney fees mentioned in this para-
graph 7 in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, grantor
further agrees to pay such sum at the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney fees on such appeal.

It is mutually agreed that:

8. In the event that any portion or all of the property shall be taken under the right of eminent domain or condemnation, ben-
eficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking,

NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney, who is an active member of the Oregon State Bar, a bank, trust company
or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to insure title to real
property of this state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 696.505 to 696.585.

*WARNING: 12 USC 1701j-3 regulates and may prohibit exercise of this option.

**The publisher suggests that such an agreement address the issue of obtaining beneficiary's consent in complete detail.

which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary and applied by it first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance applied upon the indebtedness secured hereby; and grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon beneficiary's request.

9. At any time and from time to time upon written request of beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, trustee may (a) consent to the making of any map or plat of the property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereon; (d) reconvey, without warranty, all or any part of the property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$5.

10. Upon any default by grantor hereunder, beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in its own name and otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as beneficiary may determine.

11. The entering upon and taking possession of the property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

12. Upon default by grantor in payment of any indebtedness secured hereby or in grantor's performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the beneficiary may declare all sums secured hereby immediately due and payable. In such an event the beneficiary may elect to proceed to foreclose this trust deed in equity as a mortgage or direct the trustee to foreclose this trust deed by advertisement and sale, or may direct the trustee to pursue any other right or remedy, either at law or in equity, which the beneficiary may have. In the event the beneficiary elects to foreclose by advertisement and sale, the beneficiary or the trustee shall execute and cause to be recorded a written notice of default and election to sell the property to satisfy the obligation secured hereby whereupon the trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

13. After the trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the trustee conducts the sale, the grantor or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed together with trustee's and attorney's fees not exceeding the amounts provided by law.

14. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which the sale may be postponed as provided by law. The trustee may sell the property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.

15. When trustee sells pursuant to the powers provided herein, trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the grantor or to any successor in interest entitled to such surplus.

16. Beneficiary may from time to time appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by beneficiary, which, when recorded in the mortgage records of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

17. Trustee accepts this trust when this deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

The grantor covenants and agrees to and with the beneficiary and the beneficiary's successor in interest that the grantor is lawfully seized in fee simple of the real property and has a valid, marketable title thereto, except as may be set forth in an addendum or exhibit attached hereto, and that the grantor will warrant and forever defend the same against all persons whomsoever.

WARNING: Unless grantor provides beneficiary with evidence of insurance coverage as required by the contract or loan agreement between them, beneficiary may purchase insurance at grantor's expense to protect beneficiary's interest. This insurance may, but need not, also protect grantor's interest. If the collateral becomes damaged, the coverage purchased by beneficiary may not pay any claim made by or against grantor. Grantor may later cancel the coverage by providing evidence that grantor has obtained property coverage elsewhere. Grantor is responsible for the cost of any insurance coverage purchased by beneficiary, which cost may be added to grantor's contract or loan balance. If it is so added, the interest rate on the underlying contract or loan will apply to it. The effective date of coverage may be the date grantor's prior coverage lapsed or the date grantor failed to provide proof of coverage. The coverage beneficiary purchases may be considerably more expensive than insurance grantor might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are:

- (a) primarily for grantor's personal, family or household purposes (see Important Notice below),
- (b) for an organization, or (even if grantor is a natural person) are for business or commercial purposes.

This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a beneficiary herein.

In construing this trust deed, it is understood that the grantor, trustee and/or beneficiary may each be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, the grantor has executed this instrument the day and year first above written.

* IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; if warranty (a) is applicable and the beneficiary is a creditor as such word is defined in the Truth-in-Lending Act and Regulation Z, the beneficiary MUST comply with the Act and Regulation by making required disclosures; for this purpose use Stevens-Ness Form No. 1319, or equivalent. If compliance with the Act is not required, disregard this notice.

Carol Ann (Sutton) Dennis
Carol Ann (Sutton) Dennis

STATE OF OREGON, County of Lane) ss.
This instrument was acknowledged before me on December 3, 1999,
by Caro Ann (Sutton) Dennis
This instrument was acknowledged before me on _____, 19____,
by _____



Joyce Surface
Notary Public for Oregon My commission expires _____

REQUEST FOR FULL RECONVEYANCE (To be used only when obligations have been paid.)

TO: _____, Trustee
The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of the trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed the estate now held by you under the same. Mail reconveyance and documents to _____

DATED: _____, 19____
Do not lose or destroy this Trust Deed OR THE NOTE which it secures.
Both must be delivered to the trustee for cancellation before reconveyance will be made.

Beneficiary

PARCEL I:

PARCEL A: The W 1/2 of the SW 1/4 of the NW 1/4; the W 1/2 of the SW 1/4; the NE 1/4 of the SW 1/4 and that portion of the SE 1/4 of the SW 1/4 and of the W 1/2 of the SE 1/4 lying North and West of the East Fork of the Coquille River of Section 10, Township 28 South, Range 10 West of the Willamette Meridian, Coos County, Oregon.

ALSO: Beginning at a point which is 3.16 chains East of the 1/16th corner on the East and West line through the center of Section 10, Township 28 South, Range 10 West of the Willamette Meridian, Coos County, Oregon, which said 1/16th corner is a stone approximately 20 chains East of the West quarter corner of said Section 10; thence North 20 chains to the 1/16th line; thence East along the 1/16th line 7.84 chains; thence South 20 chains to the quarter line; thence West along the quarter line 7.84 chains to the point of beginning.

ALSO: Beginning in the center of Section 10, Township 28 South, Range 10 West of the Willamette Meridian, Coos County, Oregon; thence North 89° 12' East along the quarter section line 6 chains; thence North 12 chains; thence West 15 chains; thence South 12 chains to the quarter section line; thence East 9 chains along the quarter section line to the point of beginning.

EXCEPTING THEREFROM the East 504.9 feet of that portion of the above described property lying in the W 1/2 of the SE 1/4 of Section 10, Township 28 South, Range 10 West of the Willamette Meridian, Coos County, Oregon.

ALSO EXCEPTING THEREFROM a parcel in the NW 1/4 of the SW 1/4 of Section 10, Township 28 South, Range 10 West of the Willamette Meridian, Coos County, Oregon, described as follows: Beginning at a 3/4 inch pipe post on the West boundary of said Section 10, which post is South 1° West 9.66 chains from the Northwest corner of the SW 1/4 of said Section 10; thence South 72° 45' East 6.72 chains to a 1/2 inch pipe post on the North boundary of the County Road; thence along said North boundary South 73° 12' West 3.10 chains; thence along said North boundary North 72° 25' West 3.20 chains to a 3/4 inch pipe post; thence North 1° East 1.79 chains to the point of beginning.

ALSO EXCEPTING THEREFROM a tract of about 1 acre of land in the Northeast corner of the NE 1/4 of the NW 1/4 of the SW 1/4 of Section 10, Township 28 South, Range 10 West of the Willamette Meridian, Coos County, Oregon, said parcel being bounded on the East by the East boundary of said subdivision, on the North by the North boundary of said subdivision, on the West by the center line of the sawmill road and on the South by the center line of the County Road.

ALSO EXCEPTING THEREFROM that portion of said property embraced in the County Road right of way.

PARCEL B: The N 1/2 of the NW 1/4 of Section 15, Township 28 South, Range 10 West of the Willamette Meridian, Coos County, Oregon.

PARCEL II:

The South 1/2 of Lot 9, Block 8 of CHAMBERS ADDITION to Eugene, as platted and recorded in Book 3, Page 41, Lane County Oregon Plat Records, in Lane County, Oregon.

PARCEL III:

Lot 7, Block 50, EXTENDED MAP OF SPRINGFIELD, as platted and recorded in Book I, Page 1, Lane County Oregon Deed Records, in Lane County, Oregon.

ALSO: That part of Lot 8 lying East and adjacent to said Lot 7, which portion is described as follows: Beginning at the Southeast corner of Lot 7 of said Block 50, EXTENDED MAP OF SPRINGFIELD, as platted and recorded in Book I, Page 1, Lane County Oregon Deed Records; and run thence North along the East side of said Lot, 120 feet; thence East 6.5 feet; thence Southerly to North line of C Street at a point 18 feet East of the place of beginning; thence West along the North line of C Street, 18 feet to the place of beginning, all in Springfield, Lane County, Oregon.

ALSO: Beginning at the Southeast corner of Lot 7 of Block 50, EXTENDED MAP OF SPRINGFIELD, as platted and recorded in Book I, Page 1, Lane County Oregon Deed Records; and run thence North along the East side of said Lot, 120 feet to the true point of beginning; thence North 7 feet; thence West 66 feet; thence South 7 feet; thence East 66 feet to the true point of beginning, all in Springfield, Lane County, Oregon.

PARCEL IV:

A parcel of land situated in Section 33, Township 18 South, Range 1 West of the Willamette Meridian, being a portion of that certain tract of land described in Deed, Reel 627R, Instrument No. 738439, and being more particularly described as follows:

Beginning at the 3/4 inch iron pipe marking the Northwest corner of the land formerly owned and occupied by School District No. 67, as originally described in Deed Book 215, Page 486, and referred to in said deed recorded in Reel 627R, Instrument No. 738439, Lane County Oregon Deed Records; from said 3/4 inch iron pipe run thence South 0° 19' 50" East, 20.00 feet to a 5/8 inch iron rod; thence North 89° 47' 20" West, 743.96 feet to a 5/8 inch iron rod as described in that certain Boundary Line Agreement and Quitclaim Deed recorded in Reel 1463R, Instrument No. 87-25257, Lane County Oregon Deed Records; thence North 9° 02' West along the line described in said Boundary Line Agreement & Quitclaim Deed, 146.6 feet, more or less, to the South line of that certain tract of land conveyed by Leninger to Lawrence and recorded in Deed Book 263, Page 335, Lane County Oregon Deed Records; thence East along said South line, 148.0 feet to the Southeast corner of said Lawrence tract; thence North along the East line of said Lawrence tract, 2048 feet to the North line of Section 33 in said Township and Range; thence South 89° 45' East, along said North Section line, 1489 feet to the North one-quarter corner of said Section 33; thence North 89° 54' 15" East, along said North Section line, 807.30 feet to a 5/8 inch iron rod set in County Survey File No. 26756; thence South 0° 11' 56" East, 1571.59 feet to a 5/8 inch iron rod also set in said County Survey File No. 26756; thence North 89° 59' West, 908.50 feet to a 5/8 inch iron rod set in a mound of stones; thence South 33° 41' 30" West, 721.13 feet to a 1 1/2 inch iron pipe on the North line of said property formerly owned and occupied by School District No. 67; thence North 89° 47' 20" West along said North line, 364.47 feet to the Point of Beginning, all in Lane County, Oregon.

EXCEPTING THEREFROM a road as set forth in deed from Mary S. Neet, a widow, recorded November 14, 1945, in Book 302, Page 415, Lane County Oregon Deed Records, described as follows, to-wit:

A roadway 20.0 feet wide along the Westerly line of the above described tract beginning at the cemetery entrance 1029.0 feet South and 1489.0 feet North 89° 45' West of the 1/4 section corner between Sections 28 and 33; thence South and following the West boundary of said tract to the Springfield-Lowell County Road.

PARCEL V:

BEGINNING at a point on the North line of Lot 46, Plat 1, Tract 1, Roseburg Orchards Company, Douglas County, Oregon, which point bears West 900 feet from the Northeast corner of said Lot 46; thence South 17° 36' 45" West 485.51 feet to a point on the South line of said Lot 46; thence North 89° 30' 10" West along said lot line 635.27 feet to a point on the Easterly right of way line of a dedicated road; thence North 29° 49' 30" East along said road right of way line 527.02 feet to the North line of said Lot 46; thence East 520 feet to the point of beginning.

EXCEPTING THEREFROM the following described parcel:

BEGINNING at a 5/8" iron rod from which the Northeast corner of DLC No. 49, Township 27 South, Range 5 West, W.M., bears South 8° 17' 30" East 159.36 feet; thence South 76° 25' 30" East 269.77 feet to a 5/8" iron rod; thence South 17° 31' 30" West along the West line of that tract of land described in Instrument No. 69-6971 (Markillie to Miller), Douglas County Records, 160.15 feet to a 1/4" iron rod; thence North 89° 31' West along the South line of Lot 46, Roseburg Orchard Co. Plat 1, Tract 1, 635.27 feet to a 1" iron rod; thence North 29° 49' 30" East along the East line of a 40 foot roadway 285.01 feet to a 5/8" iron rod; thence South 62° 49' East 112.86 feet to a 5/8" iron rod; thence North 85° 13' 30" East 180.11 feet to the place of beginning.

PARCEL VI :

Situated in the County of Curry and State of Oregon, bounded and described as follows, to-wit:

TRACT A:

Beginning at a point 20 chains North 2° West, and 494.1 feet West of the quarter corner to Sections 11 and 14, Township 32 South, Range 15 West of Willamette Meridian; thence running South 941.1 feet, thence South 77° 2' West, 57.8 feet, thence North 87° 25' West 405.5 feet, thence North 927.7 feet, thence East 460.9 feet to the place of beginning, excepting that part lying North of the present County right-of-way.

TRACT B:

Beginning at the Southeast corner of the above described Tract A, running thence South along the Easterly line of said Tract A, extended Southerly, to the middle of the Sixes River; running thence Westerly along the middle of the Sixes River to a point South of the Southwest corner of said Tract A; thence North along the Westerly line of said Tract A, extended Southerly, to the said Southwest corner of said Tract A; thence Easterly along the South line of Tract A to the point of beginning.

TRACT C:

Beginning at a point 10 chains West of the quarter corner of Sections 11 and 14, Township 32 South, Range 15 West of Willamette Meridian; thence running South 10 chains, thence West 10 chains, thence North 10 chains, thence East 10 chains, to the place of beginning.

TRACT D:

Beginning at the Northeast corner of the above described Tract C; running thence North along the Easterly line of said Tract C, extended Northerly to the middle of the Sixes River; running thence Westerly along the middle of the Sixes River to a point North of the Northwest corner of said Tract C; thence South along the Westerly line of said Tract C, extended Northerly, to the said Northwest corner of Tract C; thence Easterly along the North line of Tract C to the point of beginning

TRACT E:

Beginning at a point 10 chains South of corner to Sections 10, 11 14 and 15, Township 32 South, Range 15 West of Willamette Meridian; thence running South 18 chains, thence East 19 chains, and 75 links, thence North 18 chains, thence West 19 chains and 75 links to the place of beginning

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE PA 1076, (IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE
(PLAN TO REDESIGNATE LAND FROM "FOREST" TO "RURAL",
(REZONING THAT LAND FROM "F-2/IMPACTED FOREST LAND"
(TO "RR-10/RURAL RESIDENTIAL 10", AND TAKING
(EXCEPTIONS TO STATEWIDE PLANNING GOALS 3 AND 4; AND
(ADOPTING SAVINGS AND SEVERABILITY CLAUSES (file PA
(0658-95; Morrissey)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 884, has adopted Land Use Designations and Zoning for lands within the planning jurisdiction of the Lane County Rural Comprehensive Plan; and

WHEREAS, Lane Code 16.400 sets forth procedures for amendment of the Rural Comprehensive Plan, and Lane Code 16.252 sets forth procedures for rezoning lands within the jurisdiction of the Rural Comprehensive Plan; and

WHEREAS, in February, 1995, application no. PA 0658-95 was made for a minor amendment to redesignate a 9.99-acre portion of tax lot 100, map 18-01-33, from "Forest" to "Rural" with a concurrent request to rezone the property from "F-2/Impacted Forest Land" to "Rural Residential 5," and adopt exceptions to statewide planning goal 3 (Agricultural Land) and goal 4 (Forest Lands) for the property; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearing of May 2, 1995, and recommended approval of the proposed amendment and taking of an exception, and recommended a RR-10 zone be placed on the subject property; and

WHEREAS, at the Lane County Planning Commission hearing of May 2, 1995, the applicant agreed with the Commission's recommended RR-10 zone and revised his rezoning request to RR-10; and

WHEREAS, evidence exists within the record indicating that the proposal meets the requirements of Lane Code Chapter 16, and the requirements of applicable state and local law; and

WHEREAS, the Board of County Commissioners has conducted public hearings and is now ready to take action;

NOW, THEREFORE, the Board of County Commissioners of Lane County ordains:

Section 1. The Lane County Rural Comprehensive Plan is amended by the redesignation of a 9.99-acre portion of tax lot 100, map 18-01-33, from "Forest" to "Rural," such territory depicted on Plan Plot 527 and further identified as Exhibit "A" attached and incorporated herein.

Section 2. A 9.99-acre portion of tax lot 100, map 18-01-33, is rezoned from "F-2/Impacted Forest Land" (Lane Code 16.211) to "Rural Residential 10" (Lane Code 16.231), such territory depicted on Rural Zoning Plot 527 and further identified as Exhibit "B" attached and incorporated herein.

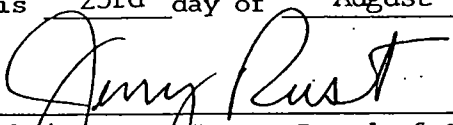
Section 3. Committed lands exceptions to statewide planning goals 3 and 4 are adopted for tax lot 400, map 18-01-33. The findings of fact and conclusions of law supporting the exceptions are adopted as part of the Rural Comprehensive Plan and are set forth in Exhibit "C", attached to this Ordinance.

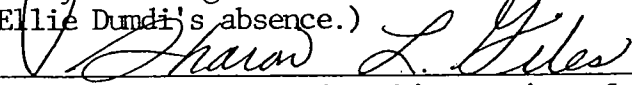
FURTHER, although not a part of this Ordinance, except as described in Section 3 above, the Board of County Commissioners adopts Findings as set forth in Exhibit "C" attached, in support of this action.

The prior designation and zone repealed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not effect the validity to the remaining portions hereof.

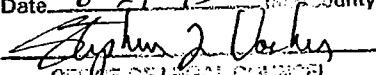
ENACTED this 23rd day of August, 1995.



Chair, Lane County Board of County Commissioners
(Jerry Rust signed as Senior Commissioner in Chair
Ellie Dundi's absence.)


Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 8-29-95 In Lane county


OFFICE OF LEGAL COUNSEL

FINDINGS OF FACT AND CONCLUSIONS OF LAW

REGARDING: ORDINANCE NO. PA 1076

The following information represents the findings of fact and conclusions of law supporting the Lane County Board of County Commissioner's decision regarding the plan amendment and zone change for Michael and Betty Morrissey. These findings are divided into the following four sections:

I. Specific Findings Relating to the Subject Property.

- A. Description of Subject Property and Summary of Action,
- B. Natural Site Features,
- C. Existing Surrounding Development Pattern,
- D. Existing Public Facilities and Services,

II. Findings and Conclusions Relating to Plan Amendment Criteria of Lane Code 16.400.

III. Findings and Conclusions Relating to State Law Criteria OAR 660-04-000.

IV. Findings and Conclusions Relating to Rezoning Criteria of Lane Code 16.252.

I. SPECIFIC FINDINGS RELATING TO THE SUBJECT PROPERTY

A. The Board of Commissioners Finds the Following Facts Regarding Descriptions of the Subject Property and Summary of Action.

1. This action entails a plan amendment redesignating 9.99 acres of land from Forest to Rural Residential and rezoning that area from Impacted Forest Land (F-2) to Rural Residential (RR-10). A developed and committed exception to Statewide Planning Goals 3 and 4 is provided herein and includes the subject property with adjacent developed and committed exception area 527-1 to the east - the "Fall Creek Rural Community".

2. The subject property is identified as tax lot number 100 on assessors map number 18-01-33. It includes 9.99 acres located on Lane County Zoning and Plan Plot Map number 527.

3. The subject property, tax lot #100, exists wholly within two adjacent legal lots - tax lots #104 and #102. This contiguous acreage is zoned RR-5. Zoning and land area characteristics by lot are comprised as follows:

- a) T.L. #100 9.99 acres, F-2
- b) T.L. #104 1.05 acres, RR-5
- c) T.L. #102 0.76 acres, RR-5

Total Legal Lot Acreage: 11.80 acres
Total RR-5 Acreage: 1.81
Total F-2 Acreage: 9.99

Refer to Attachment 1 - "Site Physiography Map".

The encompassing legal lots conform to metes and bounds descriptions verified by the Lane County Land Management Division legal lot verifications PA 1923-94 and PA 1924-94.

4. The subject property is currently undeveloped. Approval of the plan amendment/zone change conforms subject property zoning to that of each contiguous legal lot permitting the siting and construction of accessory structures as permitted within the Rural Residential, RR-10 zone. Additionally, the action permits the re-construction of a dwelling, replacing one damaged and demolished, anywhere within the confines of the 3.07 acre tax lot #100/102 legal lot area. Refer to Attachment 2 - "Lot Line Survey".

5. Approval of the plan amendment/zone change does not permit an increase in the number of residential dwelling units within these legal lots beyond the above referenced replacement dwelling.

6. The Lane County Planning Commission ruled in favor of the application of Board Order 89-10-25-4, adopted as an addendum to the Developed and Committed Lands Working Paper, which establishes guidelines applicable to determining whether or not land is suitable for resource production. In the subject case, it was established that the F-2 zoned portions of two contiguous legal lots, at 7.68 and 2.31 acres respectively, were not considered to be viable for timber or agricultural resource production due to parcel size, configuration, geographic separation due to a topographic escarpment, soil limitations associated with rock content, and potential impacts upon established adjacent residential dwellings.

B. The Board Finds the Following Facts Regarding Natural Site Features.

1. The subject property is generally level in terrain sloping southward toward

PROPERTY LINE ADJUSTMENT DEED

9471274

Michael Morrissey and Betty Jane Morrissey, GRANTORS, convey the real property described below to MICHAEL MORRISSEY, GRANTEE, for the purpose of adjusting the property line along their shared boundary. This property line adjustment deed transfers the real property described below from that parcel described in Deed 627R, Reception No. 738439, (BETTY JANE MORRISSEY property), conveyed to Grantor herein by deed recorded February 27, 1973, Lane County Official Records, to the parcel described in Deed R476 / 2873, (MICHAEL MORRISSEY property), conveyed to the Grantee herein by deed recorded on April 16, 1970, Lane County Official Records.

5064OCT.05'94#01REC 10.00
5064OCT.05'94#01PFUND 10.00
5064OCT.05'94#01A&T FUND 20.00

Description of real property:

The following piece of land is situated in Section 33, Township 18 South, Range 1 West, of the Willamette Meridian, and is a portion of that certain tract of land described in Deed 627R, Instrument No. 738439, and is more particularly described as follows:

Beginning at the 1 1/4" iron bar marking the northwest corner of C.S. #335, said bar of record bearing South 94.3 feet and West 3305.1 feet of the East 1/4 Corner, Section 33, Township 18 South, Range 1 West, Willamette Meridian, as referenced in C.S. # 335, and Deed R 627R, Instrument No. 738439, thence North 2°19' East 28.44 feet; thence North 88°47' West 217.98 feet to a found 1/2" iron pipe, reference CSF 11741; thence North 01°47'18" East 49.38 feet to a found 3/8" iron rod marking the northeast corner of that certain tract of land described in Parcel 2, Deed Reel 725, Instrument No. 01792, as shown per CSF 11741; thence North 86°25'39" West 140.31 feet to found iron rod marking the northwest corner of the next previous aforementioned tract of land; thence North 86°32'26" West 59.70 feet to a found 3/4" iron pipe monumenting the northeast corner of that certain tract of land described in Warranty Deed R476, Instrument No. 2873, said iron pipe representing the True Point of Beginning; thence South 01°10'55" West 254.39 feet to the southeast corner of that certain tract of land described in Deed R476 / 2873, at the northerly right-of-way boundary of Jasper-Lowell Highway, County Road 480; thence along said right-of-way boundary 14.63 feet along an arc of a curve to the right whose chord bears North 81°45'09" East 14.63 feet to a set 5/8" iron rod; thence leaving said road North 00°41'29" East 720.74 feet to a set 5/8" iron rod marking the northeast corner; thence North 89°47' West 558.95 feet to a found 5/8" iron rod, reference Boundary Line Agreement Reel 1463R, Instrument No. 8725257, marking the northwest corner; thence South 09°02' East 832.06 feet to a set 5/8" iron rod marking the southwest corner, at the northerly right-of-way boundary of Jasper-Lowell Highway, said iron rod being 30.0 feet northerly and parallel to the apparent centerline of the improved, as-travelled roadway; thence along said right-of-way boundary 184.92 feet along an arc of a curve to the left, the chord of which bears North 77°06'36" East 184.84 feet; thence along said right-of-way boundary North 74°11'37" East 61.51 feet to the southwest corner of that certain tract of land described in WD R476 / 2873; thence leaving said right-of-way boundary North 01°10'55" East 296.71 feet to a found 3/4" iron pipe marking the northwest corner of that tract of land described in WD R476 / 2873; thence South 88°49'05" East to the True Point of Beginning, containing 7.69 acres all in Lane County, Oregon.

Subject to easements, reservations, and restrictions of record.

The true consideration for this conveyance is other than money. Until a change is requested, all tax statements are to be sent to :

Michael Morrissey P.O. Box 1021
38965 Jasper - Lowell Road
Fall Creek, OR 97438

Tax Account Number: _____

9471274

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

Dated and effective this 5th day of Oct., 1994.

GRANTOR(S)

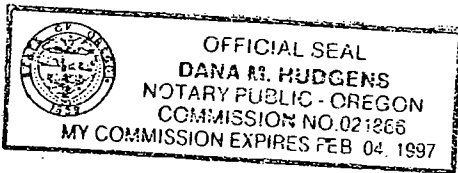
GRANTEE(S)

Michael Morrissey Betty Jane Morrissey Michael Morrissey
Michael Morrissey, Betty Jane Morrissey Michael Morrissey

ACKNOWLEDGEMENTS

STATE OF OREGON)
)
COUNTY OF LANE) ss.

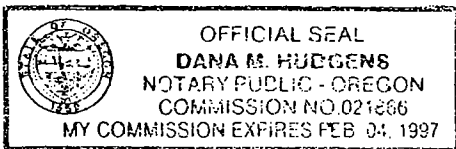
The foregoing instrument was acknowledged before me this 05th day of Oct, 1994, by Michael Morrissey.



Dana M. Huggens
Notary Public for Oregon
My Commission Expires: 2/4/97

STATE OF OREGON)
)
COUNTY OF LANE) ss.

The foregoing instrument was acknowledged before me this 05th day of Oct, 1994, by Betty Jane Morrissey.



Dana M. Huggens
Notary Public for Oregon
My Commission Expires: 2/4/97

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

5 OCT 94 10: 55

Reel **2000R**

Lane County OFFICIAL Records.
Lane County Clerk

By: [Signature]
County Clerk

10-20

PROPERTY LINE ADJUSTMENT DEED

9471275

Michael Morrissey and Betty Jane Morrissey, GRANTORS, convey the real property described below to BETTY JANE MORRISSEY, GRANTEE, for the purpose of adjusting the property line along their shared boundary. This property line adjustment deed transfers the real property described below from that parcel described in Deed 627R, Instrument No. 738439, Lane County Official Records, (MICHAEL MORRISSEY and BETTY JANE MORRISSEY property), conveyed to Grantors herein by said deed recorded February 27, 1973, to that parcel described in Deed Reel 725, Instrument No. 01792, (BETTY JANE MORRISSEY property), conveyed to the Grantee herein by deed recorded on January 15, 1975, Lane County Official Records.

5064OCT.05'94#01REC 10.00
5064OCT.05'94#01PFUND 10.00
5064OCT.05'94#01A&T FUND 20.00

Description of real property:

The following piece of land is situated in Section 33, Township 18 South, Range 1 West, of the Willamette Meridian, and is a portion of that certain tract of land described in Deed 627R, Instrument No. 738439, and is more particularly described as follows:

Beginning at the 1 1/4" iron bar marking the northwest corner of C.S. #335, said bar of record bearing South 94.3 feet and West 3305.1 feet of the East 1/4 Corner, Section 33, Township 18 South, Range 1 West, Willamette Meridian, as referenced in C.S. # 335, and Deed R 627R, Instrument No. 738439, thence North 2°19' East 28.44 feet; thence North 88°47' West 217.98 feet to a found 1/2" iron pipe, as shown per CSF 11741; thence North 01°47'18" East 49.38 feet to the northeast corner of that certain tract of land described in Parcel 2, Deed Reel 725, Instrument No. 01792, said point monumented by a found 3/8" iron rod, reference CSF 11741, and representing the True Point of Beginning; thence North 01°12'00" East 74.08 feet to a found 5/8" iron rod reference CSF 11741; thence North 01°20'18" East 135.62 feet to a found 1/2" iron pipe reference Deed Book 627, Instrument 738439; thence North 00°17'54" East 270.47 feet to a 5/8" iron rod marking the northeast corner of the southern portion of Tax Lot 100 per CSF 27913; said point being the northeast corner of Tax Lot 100 per said survey; thence North 89°47' West 185.01 feet to a set 5/8" iron rod marking the northwest corner; thence South 00°41'29" West 720.74 feet to a set 5/8" iron rod marking the southwest corner, at the northerly right-of-way boundary line of Jasper-Lowell Highway, County Road 480; thence 35.35 feet along an arc of a curve to the right, whose chord bears North 83°11'26" East 35.34 feet, along said boundary to the southwest corner of that certain tract of land described in Deed R725, Instrument No. 01792; thence North 03°34'21" East 244.92 feet to a found 1/2" iron rod monumenting the northwest corner of that tract of land described in Deed Reel 725, Instrument No. 01792; thence South 86°25'39" East 140.31 feet to the True Point of Beginning, containing 2.28 acres, all in Lane County, Oregon

Subject to a 60 foot wide access easement over the East 60 feet of said described property as referenced in Reel 1290R, Instrument No. 84 - 11371.

Subject to easements, reservations, and restrictions of record.

The true consideration for this conveyance is other than money. Until a change is requested, all tax statements are to be sent to :

Betty Morrissey P.O. Box 1021
38965 Jasper - Lowell Road
Fall Creek, OR 97438

Tax Account Number: _____

9471275

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

Dated and effective this 5TH day of Oct, 1994.

GRANTOR(S)

GRANTEE(S)

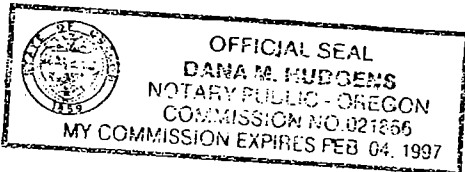
Michael Morrissey Betty Jane Morrissey
Michael Morrissey, Betty Jane Morrissey

Betty Jane Morrissey
Betty Jane Morrissey

ACKNOWLEDGEMENTS

STATE OF OREGON)
COUNTY OF LANE) ss.

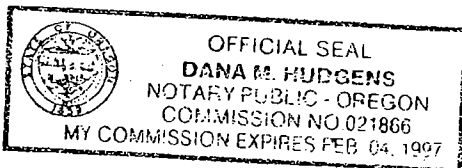
The foregoing instrument was acknowledged before me this 05 day of Oct, 1994, by Betty Jane Morrissey.



Dana M. Hudgens
Notary Public for Oregon
My Commission Expires: 2/4/97

STATE OF OREGON)
COUNTY OF LANE) ss.

The foregoing instrument was acknowledged before me this _____ day of Oct, 1994, by Michael Morrissey.



Dana M. Hudgens
Notary Public for Oregon
My Commission Expires: 2/4/97

Date: 8/29/94

APPLICANT: _____

OWNER: MIKE REINHART
40014 ZUEBEN LEIGH ROAD
LOWELL OR 97452

PA: 2039-94

RE: Report and Verification of a Legal Lot
Tax Map: 18-01-33-00 Taxlot: 105

A more exact description by reference to Deed or Land Sales Contract
is REEL 622-R/738440

Based upon the Findings provided in this report, the above referenced property
constitutes a legal lot, which means:

1. Ownership to this property may be conveyed with the assurance that such a conveyance would not require approval by Lane County land division regulations; and
2. Lane County recognizes this property as a legally separate unit of land for the purposes of development. Development would still be subject to applicable zoning, sanitation, access and building regulations.

Findings

1. The subject property was created as a separate parcel on DEC. 1968
See attached instruments REEL 622-R/738440
2. The creation of the subject property as a separate parcel complied with all effective land division, zoning and comprehensive plan regulations, and it therefore constitutes a legal lot:

a. Land division regulations:

When the subject parcel was created, there were not land division regulations in affect to govern its creation. Lane County did not adopt applicable regulations for this kind of division until MARCH 1975.

There were land division regulations in effect governing the creation of this parcel, and the creation of this parcel was specifically exempted by these regulations from compliance because _____

b. Zoning regulations:

When the subject parcel was created, there were no zoning regulations in affect at this time. The zoning for this property was adopted on NOV. 1975

When the subject parcel was created, there were the following zoning regulations in affect which the parcel complied with because _____

c. Additional Comments:

THIS PARCEL HAS A 60 FOOT ROAD EASEMENT WITHIN THE DEED

"This legal lot verification is valid for the legal lots identified in this report. If property line adjustments are done to the legal lots identified in this report, verification of the legality of the adjusted lines will require an application for evaluation of a property line adjustment or a new legal lot verification application."

Sincerely,



D. G. NICKELL
Engineering Associate

ATTACHMENTS

CC: TRS File

FOR VALUE RECEIVED, MICHAEL MORRISSEY and BETTY JANE MORRISSEY, husband and wife, herein referred to as Grantors, hereby grant, bargain, sell, and convey unto THOMAS EARL HUGHES and ELSIE LENORE HUGHES, husband and wife, herein referred to as Grantees, the following described real property, with tenements, hereditaments, and appurtenances, to-wit:

Beginning at the Section corner common to Sections 27, 28, 33 and 34, Township 18 South, Range 1 West, Willamette Meridian, run thence South along the East line of Section 33, 1,407.00 feet, thence West 1,374.00 feet, thence South 1,425.70 feet, thence West 111.80 feet, thence North $57^{\circ} 43'$ West 68.30 feet, thence South $83^{\circ} 17'$ West 270.00 feet, thence South 13.40 feet, thence North $89^{\circ} 16'$ West 214.80 feet, thence West 104.30 feet, thence North 10.20 feet, thence West 104.30 feet, thence North $0^{\circ} 33'$ East 92.80 feet, thence North $89^{\circ} 46'$ West 208.60 feet, thence South $87^{\circ} 38' 30''$ West 449.27 feet, thence North $0^{\circ} 10'$ East 475.80 feet, thence North $71^{\circ} 45'$ West 278.70 feet, thence North $35^{\circ} 41' 30''$ East 721.13 feet, thence East 908.50 feet, thence North 1,589.33 feet, more or less, to the North line of Section 33, thence along said North line, East 1,846.50 feet to the place of beginning, containing 104.5 acres, more or less.

Also granting unto the Grantee the right of ingress and egress over, across and upon a strip of land 60.00 feet in width, the East and South lines of said 60.00 foot strip be as follows:

Beginning at the Northwest corner of C. S. No. 335, said corner being 94.3 feet South and 3,305.1 feet West of the East one-quarter corner of Section 33, Township 18 South, Range 1 West, Willamette Meridian, run thence North $2^{\circ} 19'$ East 29.3 feet, thence North $88^{\circ} 47'$ West 217.56 feet, thence South $1^{\circ} 29' 20''$ West 182.60 feet to the Northerly right-of-way line of County Road No. 499, thence along said right-of-way line on a curve left (the chord of which bears West 140.00 feet) to the TRUE POINT OF BEGINNING, thence North $1^{\circ} 29' 20''$ East 241.24 feet, thence South $86^{\circ} 09' 30''$ East 140.31 feet, thence North $1^{\circ} 29' 20''$ East 209.62 feet, thence North $0^{\circ} 07'$ West 290.50 feet, thence South $89^{\circ} 35'$ East 364.20 feet.

Subject to easements, reservations and restrictions of record and to a certain Land Sale by Norman W. Neaderhiser and Thyllis D. Neaderhiser were the Vendors and Ines E. Mortensen and Charles E. Mortensen were the Vendors, which contract was assigned by Mortensens to the within Grantors, which contract was dated November 13, 1962.

TO HAVE AND TO HOLD the said premises unto said Grantees, their heirs and assigns forever. And the said Grantors hereby covenant that they are lawfully seized in fee simple of said premises; that they are free from all encumbrances except as hereinabove stated, and that they will warrant and defend the above granted premises against all lawful claims whatsoever, except as above stated.

The True and actual consideration for this transfer is \$33,385.17.

Dated December 1, 1968.

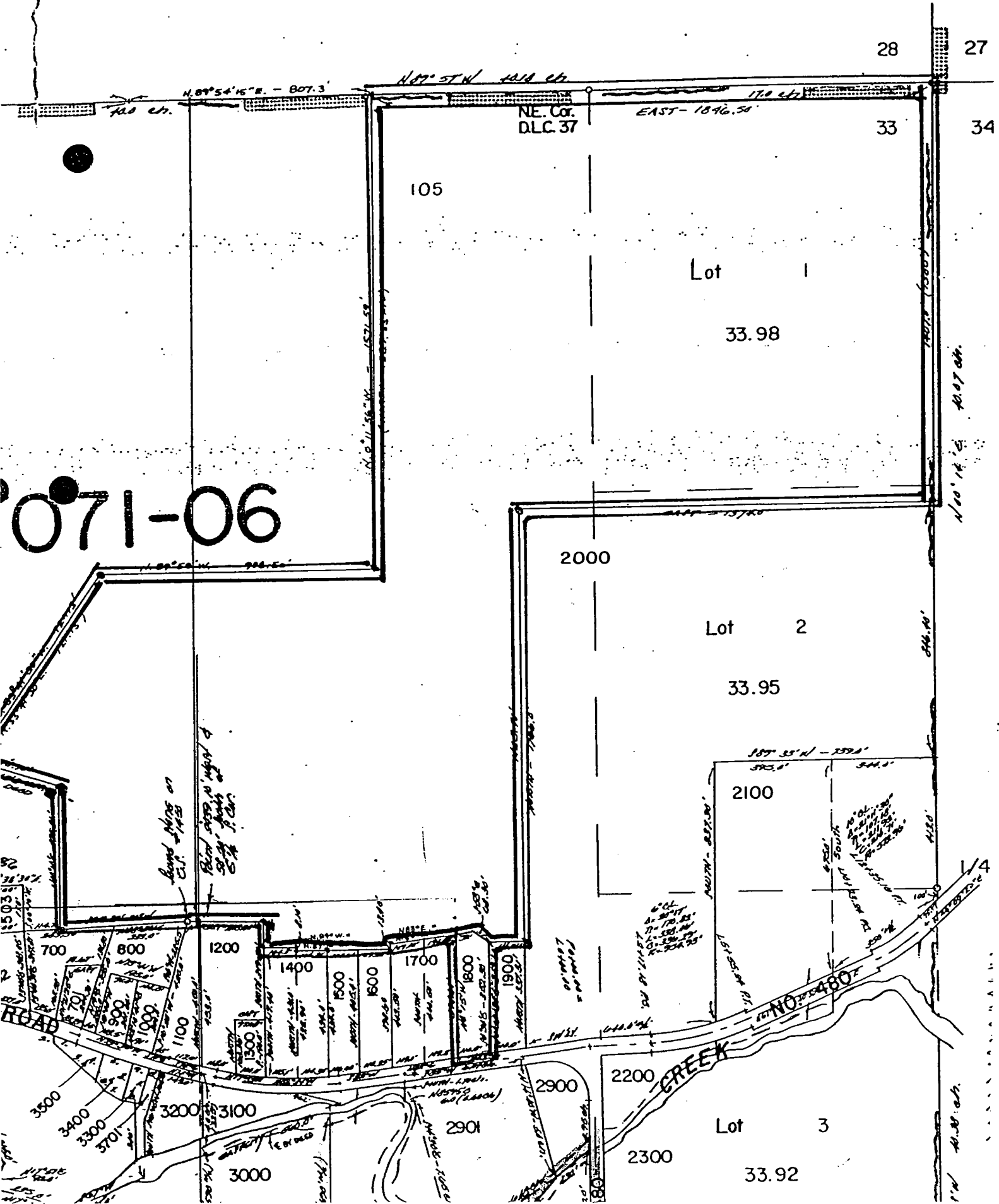
Michael Morrissey

Betty Jane Morrissey

1"=400'

See Map 18 01 28

8-
-20.





Land Use Application



REQUEST / PROPOSAL FOR:

Lot Line Adjustment

FILE NO. 1923-94
 ACTION PALP #150-25-
 \$1250

LOCATION

TOWNSHIP RANGE SECTION 1/4 SECTION TAX LOT SUBDIVISION/PARTITION LOT/PARCEL BLOCK
 18 01 33 100, 106, 104 102

ZONED TAX CODE PLOT # 527 PLOT MAP # ACREAGE
 38965 JASPER-LOWELL RD FALL CREEK, ORE.

LOCATION ADDRESS
 1 4 BDRM Residential Home, 2 story

STRUCTURES NOW ON PROPERTY

APPLICANT / AGENT (PLEASE PRINT) Michael AND Betty JANE MORRISSEY DATE 6/8/94
 ADDRESS 38965 JASPER LOWELL RD P.O. Box 1021 (503) 746-1703
 CITY FALL CREEK, OREGON 97438

OWNER (PLEASE PRINT) Michael AND Betty JANE MORRISSEY DATE 6/8/94
 ADDRESS 38965 JASPER LOWELL RD P.O. Box 1021 (503) 746-1703
 CITY FALL CREEK, OREGON 97438

OWN ADJACENT PROPERTY? YES NO

MAP, PARCEL NUMBER

| | | | | |
|----------|-------|---------|-------------|---------|
| Township | Range | Section | 1/4 Section | Tax Lot |
| | | | | |
| Township | Range | Section | 1/4 Section | Tax Lot |
| | | | | |
| Township | Range | Section | 1/4 Section | Tax Lot |
| | | | | |

WATER PUBLIC ON-SITE WELL COMMUNITY SYSTEM _____

SEWAGE PUBLIC ON-SITE SEPTIC COMMUNITY SYSTEM _____

ROAD STATE COUNTY PUBLIC EASEMENT

FIRE DISTRICT Lowell SCHOOL DISTRICT Lowell

POWER COMPANY E.P.U.D TELEPHONE CO. U.S. West

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

Michael Morrissey 6/8/94 Michael Morrissey 6/8/94
 Betty Jane Morrissey _____ DATE _____

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

SPECIFIC SECTION OF LANE CODE REQUIRING THIS APPLICATION

STAFF COMMENTS: See legal lot verification

PA 1924-94 - legal lot verification (re 102)

RELATED PERMIT # _____

PA 1923-94
Michael & Betty Jane Morrissey
18-01-33

LANE COUNTY LAND MANAGEMENT DIVISION
PROPERTY LINE ADJUSTMENT REVIEW & REQUIREMENTS

AN ASSESSMENT AND TAXATION MAP DEPICTING THE PROPOSED PROPERTY BOUNDARY ADJUSTMENT MUST BE ATTACHED.

Identity and Zoning of parcels to have property boundaries adjusted:

Parcel 1: Map 01 33 00 Taxlot 102 Zoning: RRS

Parcel 2: Map 18 01 33 00 Taxlot 100 Zoning: F2

A PLANNER MUST COMPLETE THE FOLLOWING FACTUAL EVALUATION.

1. Is this adjustment the relocation of one "common property line between two abutting properties? Yes No
2. Does the adjustment result in the creation of "an additional unit of land?" Yes No

3. Based on the information contained below, does the adjustment comply with the minimum lot size requirements of the zone? Yes No *parcels substandard to zoning*

| | Parcel 1 | Parcel 2 |
|---------------------------|-------------|----------------------|
| Minimum Lot Size: | <u>5.0</u> | <u>20.0</u> |
| Area prior to adjustment: | <u>0.76</u> | <u>10.27</u> / 11.03 |
| Area after adjustment: | <u>2.94</u> | <u>8.75</u> / 11.69 |

4. Based on the information contained below, does the adjustment comply with applicable setback requirements of the zone for all structures?

Yes No Don't know - no structures shown on map submitted

| | Parcel 1 | Parcel 2 |
|------------------------------|-------------------|-------------------|
| Minimum Structural Setback: | <u>10'</u> | <u>10'</u> |
| Setback prior to adjustment: | <u> </u> | <u> </u> |
| Setback after adjustment: | <u> </u> | <u> </u> |

} no structures shown on map

5. Access to properties:

Parcel 1 Jasper-Lowell Road

Parcel 2 Jasper-Lowell Road

| | | |
|------------------------|------------|----------|
| 6. Legal Lot Status: | Parcel 1 | Parcel 2 |
| undetermined | _____ | _____ |
| Subdivision lot | _____ | _____ |
| Partition lot | _____ | _____ |
| Legal Lot verification | PA 1923-94 | _____ |

7. Comments:

Both parcels are substandard to the zoning and will remain substandard.

New property lines needs to be surveyed by an Oregon registered professional surveyor, with a survey filed with Lane County Surveyor's Office.

Based upon the above factual analysis in relationship to the standards in Lane Code and ORS 92 for a property boundary adjustment, this proposal:

Is a property line adjustment. This evaluation does not certify facts about anything else than those expressed.

Is not a property line adjustment. One or more land use applications would be required for this proposal.

John S. Petsoch

 SR. ENG. ASSOC. Signature

July 18, 1994

 Date

ANY LANE COUNTY REQUIREMENTS FOR A SURVEY OF THE PROPERTY LINE ADJUSTMENT ARE SPECIFIED BELOW.

Property Line Adjustments require the recording of new deeds with new metes and bounds description for each parcel with Deeds and Records. Property Line Adjustment deeds must be between different ownerships.

All future development shall comply with Lane County zoning, sanitation and building requirements.

 Authorized Signature for Lane County Surveyor

 Date

(Ref. Items #, #3)

TL 300

(Ref. Item #1)
East 148.0
N89°07'30"E
148.1

Fd. 5/8" x 16" iron pipe
(very similar to pipe @ C)
lying flat on the ground,
1 1/2' West of fnc. cor.

Boundary Line Agreement

Reel 1463R Inst No. 8725257

(N 8° W 989.0 ~ Ref. Item #1)

(N 9° 02' W 841.90

988.5

N 89° 47' 20" W
559'

Set 5/8" iron rod
in fence line

TL 100'
(Southern portion)-
Morrissey retains

8.75 Ac

TL 104
Morrissey

TL 102
Morrissey

TL 600

Jasper - Lowell Hwy. (Co. Rd. No. 1040)

Set 5/8" iron rod S9°02'E, 2.0'
from fence corner-post, § 20'
from as-built § of road.
(Rod bears S35°46'45"W, 1046.16' from 3/4" pipe C)

TL 4000

no
1500 ft
verification

720

298.4
60' access easement

680' TOTAL

TL 501

SE

D

C

Date: 7/1/94

APPLICANT: _____

OWNER: MICHAEL MORRISSEY
P.O. BOX 1021
FALL CREEK OR 97438

PA: 1924-94

RE: Report and Verification of a Legal Lot
Tax Map: 18-01-32-00 Taxlot: 102

A more exact description by reference to Deed or Land Sales Contract
is DEED 725-2/7501792.

Based upon the Findings provided in this report, the above referenced property
constitutes a legal lot, which means:

1. Ownership to this property may be conveyed with the assurance that such a conveyance would not require approval by Lane County land division regulations; and
2. Lane County recognizes this property as a legally separate unit of land for the purposes of development. Development would still be subject to applicable zoning, sanitation, access and building regulations.

Findings

1. The subject property was created as a separate parcel on JAN. 1964
See attached instruments DEED 725-2/7501792
2. The creation of the subject property as a separate parcel complied with all effective land division, zoning and comprehensive plan regulations, and it therefore constitutes a legal lot:

a. Land division regulations:

When the subject parcel was created, there were not land division regulations in affect to govern its creation. Lane County did not adopt applicable regulations for this kind of division until MARCH 1975.

There were land division regulations in effect governing the creation of this parcel, and the creation of this parcel was specifically exempted by these regulations from compliance because _____

3407
P-36227

7501792

WARRANTY DEED

FOR VALUE RECEIVED, JAMES F. MORTENSEN and CHARLENE L. MORTENSEN, husband and wife, herein referred to as Grantors, hereby grant, bargain, sell and convey unto MICHAEL MORRISSEY and BETTY JANE MORRISSEY, his wife, herein referred to as Grantees, the following described real property, with tenements, hereditaments and appurtenances, to-wit:

PARCEL 1:

Beginning at a point North 88°47' West 75.0 feet from a point North 2°19' East 29.3 feet from the northwest corner of County Survey #335, said Northwest corner of C.S. 335 being 94.3 feet South and 3305.1 feet West of the one-quarter section corner on the east line of Section 33 in Township 18 South, Range 1 West of the Willamette Meridian, and from said point of beginning run thence South 9°34'40" West 184.67 feet to the northerly right-of-way of County Road No. 480 (Springfield-Lowell); thence along the northerly right-of-way of said County Road which curves to the left, the long chord bears North 88°45' West 117.51 feet to an iron pipe; thence North 1°29'20" East 182.60 feet to an iron pipe; thence South 88°47' East 142.56 feet to the point of beginning in said section, township and range, Lane County, Oregon.

PARCEL 2:

Beginning at a point North 2°19' East 29.3 feet and North 88°47' West 217.56 feet from a point which is 94.3 feet South and 3305.1 feet West of the one-quarter section corner on the East line of Section 33 in Township 18 South, Range 1 West of the Willamette Meridian, and running thence South 1°29'20" West 182.60 feet to the northerly line of County Road No. 480; thence along the right of way of said road on a curve left, (the long chord bears West 140.00 feet); thence North 1°29'20" East 241.24 feet; thence South 86°09'30" East 140.31 feet; thence South 1°29'20" West 49.38 feet to the point of beginning,

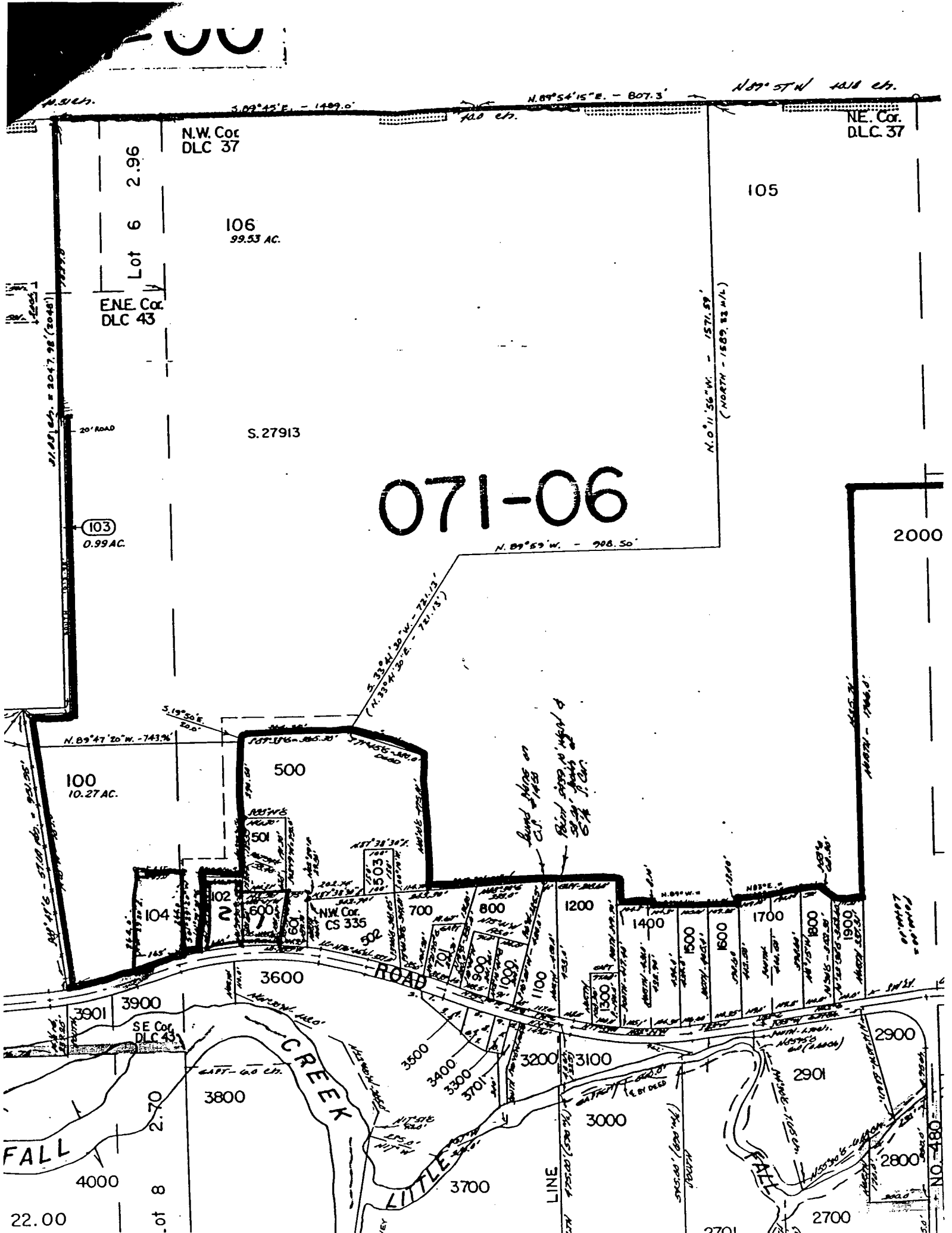
Subject to easements, reservations and restrictions of record.

The Grantors reserve unto themselves, their heirs and assigns, an easement for a roadway over the Easterly 30 feet of the above described property in Parcel 2.

TO HAVE AND TO HOLD the said premises unto said Grantees, their heirs and assigns forever. And the said Grantors hereby covenant that they are lawfully seized in fee simple of said premises; that they are free from all encumbrances, and that they will warrant and defend the above granted premises against all lawful claims whatsoever, except as above stated.

Dated: Jan 31 1964

James F. Mortensen (SEAL)
James F. Mortensen
Charlene L. Mortensen (SEAL)
Charlene L. Mortensen



N. 51° 45' E. - 1409.0'

S. 09° 45' E. - 1409.0'

N. 09° 54' 15" E. - 807.3'

N. 09° 57' W. 1018 CH.

N.W. Cor. DLC 37

NE. Cor. DLC 37

Lot 6 2.96

106
99.53 AC.

105

E.N.E. Cor. DLC 43

S. 27913

071-06

20' ROAD

N. 0° 11' 56" W. - 1571.59'
(NORTH - 1589.83 N/4)

103
0.99 AC.

N. 09° 59' W. - 908.50'

2000

S. 19° 50' E. 30.0'

N. 09° 47' 20" W. - 743.76'

S. 33° 41' 30" W. - 721.13'
(N. 33° 41' 30" E. - 721.13')

100
10.27 AC.

500

Bound lines on
C.P. of 1955
Bound lines on
C.P. of 1955
5% J. Cor.

104

102

501

503

N.W. Cor. CS 335

700

800

1200

1400

1500

1600

1700

1800

1900

3901

3900

S.E. Cor. DLC 43

3600

3500

3400

3300

3200

3100

3000

2900

2800

2700

FALL

2.70

3800

3700

3600

3500

3400

3300

3200

3100

3000

2900

2800

2700

22.00

Lot 8

3800

3700

3600

3500

3400

3300

3200

3100

3000

2900

2800

2700

NO. 480

b. Zoning regulations:

- When the subject parcel was created, there were no zoning regulations in affect at this time. The zoning for this property was adopted on NOV. 1975.
- When the subject parcel was created, there were the following zoning regulations in affect which the parcel complied with because _____

c. Additional Comments:

THE DEED CONTAINS TWO PARCELS
AND TL 102 IS PARCEL #2 WHICH IS
A LEGAL LOT

"This legal lot verification is valid for the legal lots identified in this report. If property line adjustments are done to the legal lots identified in this report, verification of the legality of the adjusted lines will require an application for evaluation of a property line adjustment or a new legal lot verification application."

Sincerely,



D. G. NICKELL
Engineering Associate

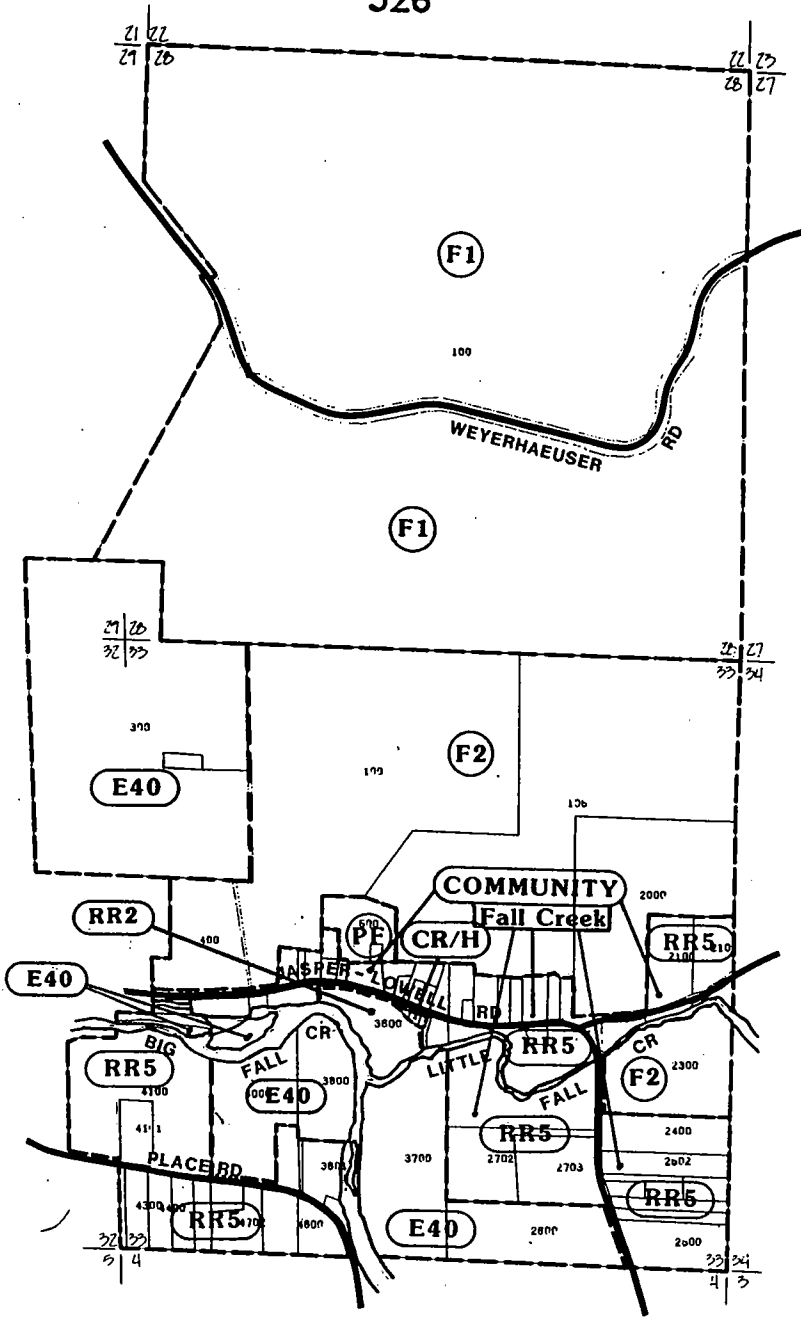
ATTACHMENTS

CC: TRS File

526

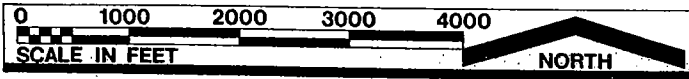
516

536



FLOODPLAIN

528



ie county

OFFICIAL ZONING MAP

PLOT# 527

Township Range Section

18 01 28

18 01 33

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE #

VISION # 2 ORD. # DATE 7/ 5 /93 FILE # PA4240-92



22 June 1994

Deloy Dennis
P.O. Box 1066
Fall Creek OR 97438

Dear Mr. Dennis:

You have asked me to explain the problem we have detected regarding tax lots 100 and 106, map 18-01-33. Quite simply, neither tax lot qualifies as a legal lot as defined by Section 16.090 Lane Code: "A lawfully created lot or parcel".

Lane Code defines a parcel as a unit of land that has been partitioned in compliance with all applicable planning, zoning and land division regulations. The definition also recognizes units of land that were created by deed or land sales contract prior to the enactment of these regulations.

The Board of County Commissioners adopted land division regulations on 26 March 1975 (Chapter 13 Lane Code). Lane County records indicate that tax lot 100 was divided in 1987 - twelve years later - to form tax lot 106. I find no evidence that Lane County approved a partition at the time, therefore neither tax lot qualifies as a legal lot today. If tax lots 100 and 106 do not meet the test as legal lots neither is eligible for a building permit.

Normally, the remedy for this sort of problem is to apply for the land partition that should have been obtained earlier. However, both tax lots are located in the F2 zone where the minimum acreage for the creation of new parcels is 80 acres. Since tax lot 106 cannot be separated from tax lot 100, Lane County regards them as a single legal lot.

You also asked whether it would be possible to inspect the property file for this property. All of our files are part of the public record, so of course you may. If you have further questions you may call me at 687-4103.

Sincerely,

Harvey Hoglund
Associate Planner

cc: A. Keith Martin
Michael Morrissey
TRS files (tax lots 100 and 106)

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

SHELLEY WETHERELL, JANELL STRADTNER,
and FRIENDS OF DOUGLAS COUNTY,
Petitioners,

vs.

DOUGLAS COUNTY,
Respondent,

and

GREAT AMERICAN PROPERTIES
LIMITED PARTNERSHIP,
Intervenor-Respondent.

LUBA No. 2005-045

FINAL OPINION
AND ORDER

Appeal from Douglas County.

Ann V. Wolf, Portland, filed the petition for review and argued on behalf of petitioners.

Paul E. Meyer, Douglas County Counsel, Roseburg, filed a response brief and argued on behalf of respondent.

Stephen Mountainspring, Roseburg, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was Dole, Coalwell, Clark, Mountainspring, Monarich and Aitken PC.

BASSHAM, Board Member; DAVIES, Board Chair; HOLSTUN, Board Member, participated in the decision.

REMANDED 09/08/2005

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal a county decision determining that a 162-acre parcel is not agricultural or forest lands subject to the statewide planning goals, and amending the comprehensive plan and zoning designations to allow five-acre rural residential lots.

FACTS

The subject property is a 160-acre irregularly-shaped parcel south of the Melrose Rural Community, near the City of Roseburg. The property carries a comprehensive plan designation of Farm Forest Transitional and a zoning designation of Exclusive Farm Use—Grazing (FG). Melrose Road borders the property on the west, and Colonial Road on the south. Across Melrose Road is a 195-acre parcel also zoned FG that is used to grow hay. As explained below, that parcel was until recently part of a single ranch that included the subject property. Resource-zoned lands generally lie to the south and east, with a few rural residential-zoned properties directly south. North and north-east lie lands zoned for rural residential use.

Topographically, the subject property slopes up from Melrose Road to a north-south ridge. The ridge slopes down to Champagne Creek, which cuts across the north-eastern portion of the parcel. The subject property consists mainly of unimproved pasture, interspersed with brush, rocky areas, and scattered trees. The property is fenced and cross-fenced, and includes two small spring-fed ponds. A small stand of conifers is located in the southern portion, and trees cover approximately 30 percent of the property. Soils on the subject property consist of 79 acres of Dickerson soils, Class VII, 48 acres of Nonpareil soils, Class VI, 19 acres of Speaker soils, Class III-IV, and 16 acres of Josephine soils, Class II-IV. Approximately 78 percent of the property consists of Class VI and worse soils, and 22 percent Class II-IV soils.

For seventy years, from 1930 to 2000, the subject property was the eastern half of a 387-acre ranch owned by John B. Richards and family. Until 1982, Richards grew hay on the west half of the ranch, and grazed livestock on both halves, including the subject parcel. The west half, which included the 195-acre parcel west of the subject property, consisted of Class I-IV agricultural soils. In 1982, Richards rented the entire ranch to a series of tenants who continued to grow hay on the west half and

graze cattle on both halves. However, the productivity of the subject property declined over this period, due to overgrazing and lack of proper maintenance, such as brush control. In 1996, Richards logged a portion of the subject property. In 2000, Richards sold the west half of the ranch to Napier, who continued to grow hay on that half. In 2002, Richards sold the remainder of the ranch, the subject property, to DeCoite. DeCoite grazed 21 heifers on the subject property in 2002. In November 2003, intervenor-respondent (intervenor) acquired the subject property. In December 2003, intervenor advised the county that the property was no longer in farm use and requested that the county remove the preferential tax assessment.

In 2004, intervenor applied to the county for plan map and zone changes, on the basis that the subject property is not agricultural land subject to Statewide Planning Goal 3 (Agricultural Lands) or forest land subject to Goal 4 (Forest Lands). After conducting several public hearings, the county planning commission voted to approve the requested plan and zoning amendments. Petitioners appealed to the board of commissioners, which held a hearing and voted to deny the appeal, approving the application. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioners argue that the county erred in concluding that the subject property is not “agricultural land” as that term is defined in OAR 660-033-0020(1).^[1] Petitioners concede that the subject property does not possess the soils necessary to qualify as agricultural land under OAR 660-033-0020(1)(a)(A), but argues that the subject property qualifies under OAR 660-033-0020(1)(a)(B-C) and (b).

A. OAR 660-033-0020(1)(b): Lands within a Farm Unit

As noted, from 1930 to 2000, the subject property was part of a larger farm under single ownership and single farm management as a combined hay growing and cattle grazing operation. After the east half of the farm unit, the Napier parcel, was sold in 2000, the two halves were managed separately, the east as a stand-alone hay operation and the west, briefly, as a stand-alone grazing operation. The county found that the subject property and the Napier property are no longer a farm unit, because they are now managed independently, Napier is uninterested in grazing his property, it is unlikely that joint operations will resume, and in any case the intensive management needed to restore the productivity of the subject property makes grazing the property no longer an accepted farming

practice.^[2]

Petitioners argue that the county erred in so concluding, citing *Riggs v. Douglas County*, 167 Or App 1, 8, 1 P3d 1042 (2000), for the proposition that division of a farm unit and cessation of joint operations is not sufficient to destroy a “farm unit” for purposes of OAR 660-033-0020(1)(b).

Riggs involved a 101-acre parcel that from 1950 to 1974 was part of a 337.5-acre sheep ranch in common ownership. In 1974, the ranch was divided into three parcels and conveyed into separate ownership; however, the entire tract continued to be managed as a single sheep operation until 1996. In that year, the manager discontinued ranching operations and sold the 101-acre parcel to a developer, who applied to the county for plan and zoning amendments to allow rural residential development, based on a showing that the parcel was not agricultural land under Goal 3. As in the present case, the 101-acre parcel consisted predominantly of non-agricultural soils, while the remainder of the farm unit possessed more productive soils. As in the present case, the subject parcel was used primarily for seasonal grazing, which required supplemental feeding throughout the year. The county found that the 101-acre parcel was not part of a “farm unit,” because it was no longer in common ownership. We rejected that basis, holding that lands in diverse ownership that are nevertheless jointly managed as a single farm operation may constitute a “farm unit.” 37 Or LUBA 432, 438 (1999). In a footnote, we observed that the county had made no finding that the property was no longer part of a farm unit by virtue of the cessation of joint farm operations in 1996, expressing no opinion regarding whether such cessation might suffice to show that the property was not part of a farm unit. *Id.* n 3.

The Court of Appeals affirmed our holding that single ownership is not necessary to constitute a farm use, and went further to address the question of cessation of joint farm operation. The court rejected the applicant’s argument that because the subject parcel was no longer being used as part of a single farm operation, it was not part of a “farm unit”:

“For example, a parcel would not be part of a ‘farm unit’ simply because concurrent farm operations occurred on it and nearby land 50 years ago. Conversely, as respondents point out, in *Dept. of Land Conservation* [132 Or App 393, 888 P2d 592 (1995)], we identified the purpose of the rule ‘to be the preservation of the unit’; it would be squarely contrary to that purpose to interpret the rule as contemplating that a parcel could cease being part of the unit simultaneously with and simply because of the discontinuation of farm operations on it or its ostensible sale for nonfarm purposes. This case is closer to the latter extreme than the former. LUBA was correct in holding that further proceedings are necessary at the county level to identify the relevant facts.” 167 Or App at 8.

Intervenor argues that *Riggs* is distinguishable, because the period of time in *Riggs* between the cessation of the joint farm operation and the filing of the application was less than one year, whereas, here, the joint farm operation ceased at least four years prior to filing of the application. Intervenor also contends that the sheep ranch in *Riggs* was a single operation, conducted over lands with similar soils and conditions. In the present case, intervenor argues, the two halves of the Richards farm feature different soils, conditions and management regimes, with the eastern half being used primarily for growing hay and the western half usable only for seasonal grazing.

Although it is a close question, we agree with intervenors that *Riggs* is distinguishable, and that the county did not err in concluding that the subject property in the present case is not part of a “farm unit.” As the Court of Appeals indicated in *Riggs*, the recent cessation of joint farm operations is not sufficient to break up a “farm unit,” for purposes of OAR 660-033-0020(1)(b), but the court suggested that there would be no “farm unit” if the last “concurrent farm operations” were “50 years ago.” The court did not identify at what point between those two extremes a cessation of joint farm operations eliminates a “farm unit.” We need not decide, in the present case, if the three to four year lapse between cessation of joint farm operations and sale for nonfarm purposes would be sufficient, in itself, to break up the “farm unit,” because we believe other salient considerations, taken together, provide an answer.

It is significant, in our view, that in *Riggs* there was a unitary farm operation—sheep grazing—and that the subject property in that case was used in essentially the same manner as the other components of the farm unit. Here, the long-standing farm operation had multiple components—growing hay and grazing cattle—which could be but need not be combined. During the joint operation in the present case, we understand that at least some of the hay grown on the western half of the Richards ranch was used to supplement the forage on the subject property, and the two halves were both used for seasonal grazing. Following the end of joint operations, grazing ceased on the Napier parcel, and that parcel became devoted entirely to growing hay for sale. The subject property was grazed in 2002, but apparently at levels and for a duration that did not require supplemental feeding.

We also think it significant that in *Riggs* no attempt was made to use the subject property for a farm use independent from the other parcels in the farm unit, whereas here the immediate purchaser attempted to run a grazing operation independent from the Napier parcel, following the partition and

operational break up of the Richards ranch.

Finally, it also seems important that when the subject property was created by partition in 2000, that partition required county approval and a determination that the parcels are for farm use and either that the parcels are “appropriate for the continuation of the existing agricultural enterprise within the area,” or that they satisfy the minimum size established under ORS 215.780, *i.e.*, that the parcels exceeded 160 acres if rangeland. ORS 215.263(2), 215.780(1).^[3] In other words, in approving the partition that accompanied the cessation of joint farm operations, the county was required to determine, and presumably did so, that the 160-acre subject property was the appropriate size for an agricultural operation or that it met the statutory minimum size for an agricultural operation. It is doubtful that any such determination was made in creating the subject parcel in *Riggs*.

These considerations, combined with the lapse of three to four years between the cessation of joint farm operations and sale of the subject property for nonfarm purposes, together lead us to the conclusion that *Riggs* does not compel a finding that the subject property is part of a “farm unit” within the meaning of OAR 660-033-0020(1)(b). The county did not err in so finding.

B. OAR 660-033-0020(1)(a)(B): Other Suitable Land

Petitioners challenge the county’s finding that the subject property does not qualify as “other suitable land” under OAR 660-033-0020(1)(a)(B). *See* n 1. According to petitioners, the county erred in finding that the subject parcel is not “suitable for grazing” either alone or in combination with adjoining or nearby parcels, including the Napier parcel. Further, petitioners argue that the county erroneously applied a stringent “net profit” standard in determining that the subject property is not “suitable for farm use as defined in ORS 215.203(2)(a),” for purposes of OAR 660-033-0020(1)(a)(B). Petitioners also fault the county for failing to consider certain forage improvement practices, such as planting subterranean clover, that might increase forage production and hence the property’s suitability for grazing. Finally, petitioners argue that the county erred in rejecting the possibility of other resource uses, such as operating a vineyard on the Class II-IV soils on the property.

OAR 660-033-0030 prescribes how local governments determine whether land is “agricultural land” under OAR 660-033-0020(1)(a)(B) and (C).^[4] Petitioners point out that Goal 3 “attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land” and

that “[n]earby or adjacent land, regardless of ownership, shall be examined * * *.” OAR 660-033-0030 (3). Thus, in addition to assessing the suitability of the subject property in isolation, the county must ascertain the nature of other agricultural uses occurring in the area and determine whether the subject property can reasonably be combined with nearby or adjacent uses and used as part of those operations. *Kaye/DLCD v. Marion County*, 23 Or LUBA 452, 461 (1992). Finally, although petitioners do not cite it, we note that OAR 660-033-0030(5) provides that “profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3, ‘Agricultural Land,’ is applicable.” OAR 660-033-0030(5).

1. Suitability for Grazing

Petitioners contend that the 70-year history of cattle grazing on the subject property demonstrates that the property is “suitable for grazing,” and that the county misconstrued the law in concluding the contrary. *See DLCD v. Crook County*, 26 Or LUBA 478, 493 (1994) (past use of property for grazing is a substantial obstacle to finding the property unsuitable for grazing); *Clark v. Jackson County*, 17 Or LUBA 594, 606 (1989) (same). According to petitioners, the county dismisses the historical grazing use of the property by finding that the land had been mismanaged over the past 20 years, which allegedly reduced its limited forage potential below the point where it is not “suitable for grazing,” either alone or with nearby or adjacent parcels.^[5] Petitioners argue first that it is error to rely on the present degraded state of the property resulting from past substandard management practices, and that doing so merely encourages mismanagement. The correct standard, petitioners contend, is whether the subject parcel is suitable for farm use using reasonable management practices. *See DLCD v. Lane County*, 23 Or LUBA 33, 36 (1992) (in determining capability for producing revenue from forest uses under ORS 197.247(1) (a), the county must assume reasonable management practices). With respect to what would constitute reasonable management practices, petitioners argue that seasonal grazing with supplemental feeding is very common in the county. Petitioners also cite to evidence that relatively simple measures, such as sowing subterranean clover, could be used successfully on the subject property to increase forage capacity. Record 765, 848-50.

With respect to use of the subject property with nearby or adjoining properties, petitioners cite to evidence that neighboring ranchers, the Mellors, are interested in running cattle on the subject property