

W.9.e.

AGENDA COVER MEMO

DATE OF MEMO: April 20, 2004

FIRST READING: April 28, 2004

HEARING DATE: May 12, 2004

TO: Board of County Commissioners

DEPT.: Public Works Department/Land Management Division

PRESENTED BY: Steve Hopkins, AICP

AGENDA ITEM TITLE:

IN THE MATTER OF AMENDING CHAPTER 13 OF LANE CODE TO ADD DEFINITIONS PERTAINING TO LEGAL LOTS AND PROPERTY LINE ADJUSTMENTS AND TO ADD A LEGAL LOT VERIFICATION PROVISION (LC 13.010 and 13.020).

I. MOTION

MOVE TO ADOPT ORDINANCE # 7-04.

II. ISSUE OR PROBLEM

The Lane Code does not contain a method for issuing a final determination of legal lot status prior to submittal of a development application.

III. DISCUSSION

A. Background

The following definitions are the subject of the proposed amendment:

Legal Lot Verification. A determination that a unit of land was created in conformance with the Lane Code and other applicable law.

Property Line Adjustment. The relocation of a common property line between two abutting properties.

What is the Issue?

The Lane Code requires a final legal lot determination prior to approval of most land uses. When a landowner wants to determine the legal status of a property, staff will review the deed history to determine if the property was created in conformance with the Lane Code. For properties that were created prior to the Lane Code, staff consults a list of policies and statutes that applied to land divisions. Based on this evidence, the Director issues a

preliminary verification of legal lot status. Currently, the Lane Code does not contain a process for the Director to issue a final determination until a development application is submitted. This causes frustration for landowners who want a final determination prior to selling their property, and for developers who need to resolve this issue prior to submitting a development application.

Recommendation from the Land Management Task Force

The Land Management Task Force was created by the Board on June 12, 2002. Its directive was to "review the structure and operation of the land management division". The Task Force first met on September 30, 2002 and discussed legal lot verifications, property line adjustments and other issues not related to the proposed amendment. After numerous meetings, the Task Force reached agreement that notification of legal lot verifications would address the greatest number of issues. On February 24, 2003, the task force made two motions regarding legal lots. The first was to require notification for legal lot verifications that were the result of property line adjustments. This was approved by a 9-1 vote. The second motion was to allow any legal lot verification not involving a property line adjustment to be noticed at the discretion of the applicant. This motion was approved unanimously. The taskforce did not reach agreement regarding the regulation of property line adjustments.

On April 8, 2003, the task force made its recommendation to the county commissioners. That recommendation is included in Exhibit 3. In part, the recommendation stated:

"In an effort to address the wide range of concerns identified, the Task Force recommends that a legal lot determination be considered a land use decision when resulting from complex property line adjustments and that notification of those decisions be sent to surrounding property owners with opportunity for appeal."

Direction from the Board

On July 30, 2003, the County Commissioners approved several projects for the long range-planning program. One of those projects was an amendment of the Lane Code to make legal lot verifications a land use decision. The Board did not authorize staff to include any other topics in this amendment. Specifically, the Board decided not to pursue regulation of property line adjustments or change the criteria for determining legal lot status.

Recommendation of the Planning Commission

At the public hearing on February 17, 2004, the Lane County Planning Commission voted 3-2 to recommend adoption of the proposed amendment. The planning commission also voted 5-0 to recommend the Board of Commissioners create code and policy provisions to regulate property line adjustments.

B. Analysis

The proposed amendment will allow the Director to issue a final legal lot verification prior to the submittal of a development application. This is only a determination that the lot was created in conformance with the applicable law. No development is approved. Development is defined in LC 16.090 as:

“The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation, landfill or grading, including the removal or destruction of vegetation within a protected riparian setback area designated by the Rural Comprehensive Plan.”

A final determination is a land use decision and can be appealed.

What will the Amendment Do?

The proposed amendment:

- Makes a final legal lot verification a land use decision.
- Requires notification if a legal lot has ever been altered by a property line adjustment.
- Does not change the standards used for determining a legal lot.
- Does not regulate property line adjustments.

As proposed, a final verification is required unless the lot is in the same configuration as when it was created (not adjusted). A final verification will be a land use decision issued by the Director. It will be noticed to nearby landowners, interested parties and neighborhood community organizations, and can be appealed to the Hearings Official. All legal lot verifications issued prior to adoption of this amendment will be considered preliminary.

Only One Notification Needed

A final legal lot verification will be processed in accordance with LC 14.050 but will not require referral prior to the decision. LC 14.050 requires referral to interested parties prior to and after the determination. Legal lot determinations are exempt from this for the following reasons:

- The determination is made upon evidence contained in recorded deeds, leases, and court decisions. No other information will influence the determination.
- There are no conditions that can be placed upon the determination.
- Since no development is proposed or approved, there are no comments from service providers that would be relevant to the determination.
- The referral will increase the application cost and staff time without any benefit.

Property Line Adjustments

Many people who provided public comment want to expand this amendment to regulate property line adjustments and to change the standards for determining a legal lot. In addition, after recommending approval of the amendment, the Planning Commission made a second motion to recommend the County Commissioners open a discussion to create code and policy provisions to regulate property line adjustments.

Due to the complexity of the issue, the amount of research, and the amount of public interest, a separate amendment is appropriate to address property line adjustments. The Board has the option of adopting the proposed amendment and then addressing the property line adjustments in a separate ordinance at a later date.

C. Alternatives/Options

1. Adopt the amendment.
2. Deny the amendment.
3. Provide direction to staff concerning the proposed language of the amendment.

D. Recommendations

Staff recommends alternative #1.

E. Timing

The amendment does not contain an emergency clause.

IV. IMPLEMENTATION/FOLLOW-UP

A notice of the County Commissioners action will be provided to DLCD.

V. ATTACHMENTS

Ordinance No. 7-04 with attachments, including Exhibit "A" Findings of Fact.

1. Proposed changes to Lane Code 13.010 and 13.020.
2. Minutes from Land Management Task Force meeting on February 24, 2003.
3. Excerpt from agenda cover memo for Board of County Commissioners work session on April 8, 2003.
4. Excerpt from minutes of Board of County Commissioners work session on April 8, 2003.
5. Excerpt from agenda cover memo and packet for Board of County Commissioners meeting on July 30, 2003.
6. Minutes from Planning Commission hearing on February 17, 2004.
7. Public comments received prior to February 28, 2004.

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 7-04

IN THE MATTER OF AMENDING CHAPTER 13 OF
LANE CODE TO ADD DEFINITIONS PERTAINING
TO LEGAL LOTS AND PROPERTY LINE
ADJUSTMENTS AND TO ADD A LEGAL LOT
VERIFICATION PROVISION (LC 13.010 and 13.020)

The Board of County Commissioners of Lane County ordains as follows:

Chapter 13 of Lane Code is hereby amended by removing, substituting and adding new sections as follows:

REMOVE THESE SECTIONS

13.010
located on pages 13-1 through 13-3
(a total of 3 pages)

NONE

INSERT THESE SECTIONS

13.010
located on pages 13-1 through 13-3
(a total of 3 pages)

13.020
located on page 13-3
(a total of 1 page)

Said section is attached hereto and incorporated herein by reference. The purpose of this substitution and addition is to add definitions pertaining to legal lots and property line adjustments and to add a legal lot verification provision (LC 13.010 and 13.020).

While not part of this Ordinance, findings attached as Exhibit "A" and incorporated herein by this reference are adopted in support of this decision.

ENACTED this _____ day of _____ 2004.

Chair, Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date April 20, 2004 Lane County

Stephen D. Carver
OFFICE OF LEGAL COUNSEL

LAND DIVISIONS

13.005 Purpose.

Pursuant to ORS Chapters 92, 197 and 215, any person desiring to partition or subdivide land within any part of Lane County outside of incorporated cities shall submit preliminary plans and final plats for such partitions or subdivisions to the Director for review. Such review of proposed partitions or subdivisions is necessary in order that Lane County provide for the proper width and arrangement of streets and thoroughfares and their relation to existing or planned streets and thoroughfares; provide for conformity with the comprehensive plan regarding patterns for the development and improvement of Lane County; provide for safety and health; and promote the public health, safety and general welfare, as defined in ORS Chapters 197 and 215. *(Revised by Ordinance No. 1-90; Effective 2.7.90)*

13.010 Definitions.

Amendment, Minor. A change to a preliminary plan or plat which:

- (1) Does not change the number of lots or parcels created by the subdivision or partition;
- (2) Does not "substantially enlarge or reduce" the boundaries of subdivided or partitioned area;
- (3) Does not change the general location or amount of land devoted to a specific land use; or
- (4) Includes only minor shifting of the proposed parcel or lot lines, location of buildings, proposed public or private streets, pedestrian ways, utility easements, parks or other public open spaces, septic tank drainfield locations and well locations.

Amendment, Major. A change to preliminary plan or plat which is not a minor amendment.

Area. The total horizontal area within the boundary lines of a parcel, lot or unpartitioned or unsubdivided tract of land, exclusive of County or local access i.e., public roads.

Building Site. That portion of the lot, parcel or unpartitioned or unsubdivided tract of land upon which the building and appurtenances are to be placed, or are already existing, including adequate areas for sewage disposal, light air clearances, proper drainage, appropriate easements and, if applicable, other items required by the Lane Code.

Cluster Subdivision. A subdivision for which the applicable zoning district allows relaxed lot area, coverage and setback requirements and alternative types of dwellings as specified in LC Chapters 10 and 16. Consistency with the cluster subdivision Policy #24 set forth under Goal 2, Land Use Planning of the Lane County General Plan Policies is also required by LC Chapter 16.

Contiguous. Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access-public, County, State or Federal street) shall not be considered contiguous.

Department. The Department of Public Works.

Depth. The horizontal distance between the front and rear boundary lines measured in the mean direction of the side boundary lines.

Director. "Within the Department of Public Works, the Director of the Planning Division or the Director's duly appointed representative."

Flood or Flooding. A general or temporary condition of partial or complete inundation of normally dry land areas from the inland or tidal waters from any source.

Floodplain. A physical geographic term describing any land area susceptible to being inundated by water from any source.

Floodway, Regulatory. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the waters of a base flood without cumulatively increasing the water surface elevation.

Improvement Agreement. An agreement that under prescribed circumstances may be used in lieu of required improvements of a performance agreement. It is a written agreement that is executed between the County and a developer, in a form improved by the Board of County Commissioners, in which the developer agrees to sign at a time any and all petitions, consents, etc., and all other documents necessary to improve an abutting road or other required improvements to County standards and to waive all rights or remonstrances against such improvements, in exchange for which the County agrees that the execution of the improvement agreement will be deemed to be in compliance with the improvement requirements of the Code.

Legal Lot. A lawfully created lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided as provided by law.

Legal Lot Verification. A determination that a unit of land was created in conformance with the Lane Code and other applicable law. A preliminary determination shall only become final when it is made and noticed pursuant to LC 13.020.

Lot. A unit of land that is created by a subdivision of land.

Panhandle. A narrow extension of a tract, 60 feet or less in width, which is used as access to the main portion of the tract.

Parcel.

- (1) Includes a unit of land created:
 - (a) By partitioning land as defined in LC 13.010.
 - (b) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or
 - (c) By deed or land sales contract if there are no applicable planning, zoning or partitioning ordinances or regulations.
- (2) It does not include a unit of land created solely to establish a separate tax account.

Partition. Either an act of partitioning land or an area or tract of land partitioned. Partitions shall be divided into the following two types:

- (1) Major Partitions. A partition which includes the creation of a road.
- (2) Minor Partition. A partition that does not include the creation of any road.

Partition Land. To divide land into two or three parcels of land within a calendar year but does not include:

- (1) A division of land resulting from a lien foreclosure, foreclosure or a recorded contract for the sale of real property or the creation of cemetery lots, or
- (2) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance, or
- (3) A sale or grant by a person to a public agency or public body for state highway, County road, city street or other right-of-way purposes, provided that such road or right-of-way complies with the applicable comprehensive plan and ORS 215.213(2)(q) to (s) and 215.283(2)(p) to (r).

Performance Agreement. A written agreement executed by a subdivider or partitioner in a form approved by the Board and accompanied by a security also approved by the Board. The security shall be of sufficient amount to ensure the faithful performance and completion of all required improvements in a specified period of time.

Plat. A final diagram and other documents relating to a subdivision, replat or partition.

Plat Partition. A final diagram and other documentation relating to a major or minor partition.

Property Line Adjustment. The relocation of a common property line between two abutting properties.

Replat. Includes a final map of the reconfiguration of lots and easements of a recorded subdivision or partition plat and other writings concerning a recorded subdivision or partition plat.

Road. The entire right-of-way of any public or private way that provides vehicular ingress and egress from property or provides travel between places by vehicles.

Sewerage Facility or Sewage Facility. The sewers, drains, treatment and disposal works and other facilities useful or necessary in the collection, treatment or disposal of sewage, industrial waste, garbage or other wastes.

(1) Sewerage Facility, Community. A sewerage facility, whether publicly or privately owned, which serves more than one parcel or lot.

(2) Sewerage Facility, Individual. A privately owned sewerage facility which serves a single parcel or lot for the purpose of disposal of domestic waste products.

(3) Sewerage Facility, Public. A sewerage facility, whether publicly or privately owned, which serves users for the purpose of disposal of sewage and which facility is provided, or is available, for public use.

Street. The term is synonymous with "road."

Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year.

Subdivision. Either an act of subdividing land or an area or a tract of land subdivided as defined in this section.

Tract. A lot or parcel as defined in LC 13.010.

Width. The horizontal distance between the side boundary lines measured in the mean direction of the front and rear boundary lines. *(Revised by Ordinance No. 16-83; Effective 9.14.83; 10-84, 9.8.84; 10-86; 9.10.86; 1-90, 2.7.90)*

13.020 Legal Lot Verification.

A legal lot verification by the Director is considered final when it is made and noticed pursuant to LC 14.100 and shall occur when:

(1) An application is submitted and reviewed pursuant to LC 14.050, excluding 14.050(3)(c), for a legal lot verification on a lot or parcel resulting from a property line adjustment; or

(2) If notice is requested by the property owner for any legal lot verification, upon submitting an application for review pursuant to LC 14.050, excluding 14.050(3)(c).

FINDINGS OF FACT

Finding 1. Lane Code 16.400(6)(h)(i): This subsection of Lane Code requires that the adoption of amendments to the Rural Comprehensive Plan, and components thereto, be by ordinances. The adoption of Ordinance No. 7-04 would amend the Lane Code 13.010 and 13.020 by ordinance and therefore complies with this code requirement.

Finding 2. Lane Code 16.400(6)(h)(iii)(aa) requires Ordinance No. 7-04 to comply with applicable state laws and the Statewide Planning Goals. Based on the findings below, Ordinance No. 7-04 complies with applicable state laws and Statewide Planning Goals.

- a. Statewide Planning Goal 2 requires, “Opportunities shall be provided for review and comment by citizens during the preparation, review and revision of plans and implementation ordinances.” Lane County provided the opportunities identified below for citizens to review and comment on the preparation, review and revision of Ordinance No. 7-04. These opportunities were adequate to comply with Goal 2.
 - Beginning January 23, 2004, copies of the proposed changes to LC 13.010 and 13.020 were available at the LMD for distribution to citizens.
 - A legal ad was published in the *The Register-Guard* on January 28, 2004, providing notice of the Lane County Planning Commission (LCPC) public hearing in Harris Hall of the Lane County Public Service Building on February 17, 2004.
 - Land Management Division (LMD) provided copies of the draft changes to the public in a citizen information meeting on February 11, 2004, to explain and discuss the proposed changes to Lane Code 13.010 and 13.020.
 - On February 17, 2004, LCPC held a public hearing in Harris Hall of the Lane County Public Service Building in Eugene to receive citizen comments on proposed amendments to Lane Code Chapter 13.010 and 13.020.
 - On February 17, 2004, the LCPC voted 3-2 to recommend approval of the amendment to the Board of County Commissioners. The LCPC also voted 5-0 to recommend the County Commissioners open discussion and create code and policy provisions to address the issues presented by the public testimony at the public hearing.
 - On January 30, 2004, a copy of the proposed ordinance was emailed to the Oregon Department of Land Conservation and Development (DLCD).

- On February 18, 2004, at least 30 days in advance of the Board of County Commissioners’ April 28, 2004 public hearing, LMD mailed a 30-day Periodic Review notice and two copies of the proposed changes to Lane Code 13.010 and 13.020 to DLCD.
 - At least 20 days in advance of the First Reading, a legal ad was published in the *The Register-Guard* (on April 7, 2004) providing notice of the Board of Commissioners’ First Reading on April 28, 2004, and the Second Reading and public hearing on May 12, 2004 in Harris Hall of the Lane County Public Service Building.
 - On May 12, 2004, a public hearing was held by the Board of Commissioners in Harris Hall of the Lane County Public Service Building of Eugene to receive citizen comments on the proposed amendments to Lane Code Chapters 13.010 and 13.020.
- b. Ordinance No. 7-04 acknowledges citizen comments received during citizen information meetings, written testimony submitted into the record, and testimony during the Lane County Planning Commission public hearings on February 17, 2004. Board action also considers the testimony and evidence received in the record and at the May 12, 2004 public hearing. These findings establish an adequate basis for a Board action taken to enact Ordinance No. 7-04

Finding 3. Lane Code 16.400(6)(h)(iii)(bb). This subsection of Lane Code requires the Board to find the amendment desirable, appropriate or proper, for reasons briefly set forth in its decision. Ordinance No. 7-04 is appropriate and proper as set forth in subsections III(A) and III(B) of the staff report, dated April 20, 2004, prepared for the April 28 and the May 12, 2004 Board meetings, and incorporated here by this reference. By requiring notification of final legal lot verifications, this amendment will promote public participation in the land development process.

LAND DIVISIONS

13.005 Purpose.

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PROPOSED CHANGES TO CHAPTER 13

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2. If notice is requested by the property owner for any legal lot verification, upon submitting an application pursuant to LC 14.050, excluding LC 14.050(3)(c).

LAND MANAGEMENT TASK FORCE

February 24, 2003

3:30 p.m.

Board of Commissioners Conference Room

MEMBERS PRESENT: Anna Morrison, Peter Sorenson, Bill VanVactor, Ollie Snowden, Chris Clemow, Cheryl Neu, Michael Evans, Terrie Monroe, Larry Olson, Allen DeGeneault, Laurie Segel, Greta Utecht, Norm Maxwell

STAFF PRESENT: Jeff Towery, Howard Schussler, Steve Vorhes, Kay Blackburn

GUESTS: Mona Lindstromberg, Robert Emmons

Utecht called the meeting to order.

1. **MINUTES**

Snowden clarified his comments "minority viewpoints" in the February 3, 2003 minutes under Future Meetings, 4th paragraph.

Segel referred to the February 10, 2003, minutes on page 3, paragraph 4, 7th sentence, and felt something was missing in the sentence regarding Clemow's comments. Clemow stated the sentence should read, "Clemow asked if there is a difference in the distinction from the long range **and other planning services** that the County provides."

Segel referred to page 5, paragraph 2 and interpreted Neu's comments to mean when the information is already available without cost. Neu stated that is probably what she said.

Segel referred to page 5, paragraph 8 and questioned the intent of the motion and thought Evans was referring to the previous motion and those specific Plan Amendments refer to Fuel Break Permits and others and didn't feel the motion is clearly stated. She indicated she abstained from voting on the motion because she didn't understand it. Clemow stated the motion didn't refer to Fuel Breaks and thought it pertained to the cost of processing Plan Amendments. Evans stated the motion pertained just to Plan Amendments. Towery clarified that two types of Plan Amendments are referenced – those that relate to Goal 5 and those relating to Metro Plan Amendments. Towery indicated that Evans motion was in support of the staff report. Evans stated his motion was to support a fee increase for the Goal 5 and Metro Plan Amendments. Utecht suggested deleting paragraph 7.

Evans referred to page 6, paragraph 5, and stated the send sentence should read, "He added that he feels there needs to be notification to the public and that the legal lot verification be **final** and not **preliminary**."

Motion: Clemow moved to approve the minutes of February 10, 2003 with the above corrections. Evans seconded. All voting members present voted in favor and motion carried.

2. **CONTINUED DISCUSSION**

Towery distributed a copy of an agenda cover memo dated June 14, 2000 on Lane Code Requirements for Legal Lot Verifications and Property Line Adjustments and the minutes of that discussion. He stated that the Board supported this staff recommendation that was to draft Lane Code language that would change and establish requirements for review of legal lot status and property line adjustments. The Board didn't make a policy decision on any detailed aspects but did give support and direction for staff to prepare changes.

Howe reviewed the Lane Code requirements for review of legal lot status. He stated that certain legal lot verifications would be required for certain land use actions. One would be if there is a Plan Amendment zone change, land divisions that would require a legal lot verification, and other uses in the Code that specify a legal lot status as a requirement for that type of use. He reviewed actions where a legal lot verification would not be required. He added that legal lot determinations would be required on properties that have been altered through a property line adjustment. He stated that the Board concurred with the concept and requested the issue come to be adopted, but the task has not been prioritized to pursue and bring back to the Board due to other priority issues.

Segel referred to the working group that prepared these recommendations and asked who comprised the working group. The representatives are identified on page 3, 2nd paragraph of June 14, 2000 cover memo.

Maxwell asked if this material is in line with the recent LUBA decision case Ward vs. Coos County. Vorhes stated he hasn't compared these draft policies on property line adjustments to that decision yet. He suggested that we will need to look at what has developed since 1999 and 2000 to make sure that the details of legal lot verifications and property line adjustments would be consistent with the case law that has developed since then.

DeGeneault referred to staff time that would be involved and asked what the financial implications would be. He asked how many of these type of applications occur per year. Segel stated that because so much has been done without any codified process, the prior statistics aren't able to be captured. DeGeneault asked how much time would be involved for staff to process one. Howe stated that it varies from site to site depending on how many deeds describe the property.

[Morrison and Sorenson present.]

Howe stated that there is a process in place now that deals with legal lot determinations and we have a fee associated with that. We know that workload and how it represents and equates to a full-time position. We could tabulate from that and determine what would be necessary to process fees, charge the fees necessary to cover that, and be in a position that fees would have to pay for it.

Evans reiterated that at the last meeting he had made a motion that was tabled until today's meeting that called for a legal lot determination to be a land use decision and send out notice for that on those that resulted from a property line adjustment. He asked if it could be implemented quickly and if it would have a long-term resolution of the matter. Howe stated that we have in place the procedures that would utilize and finalize to make the legal lot determination. If they don't change too much and basically all we're changing is to start providing notice of the decision, the work would involve a standardized process. We're doing legal lot determinations now, and the notice function would involve a mailing and is not too involved.

Segel feels the staff cover memo is too old and there wasn't a case law at that time, and suggested that it be readdressed. She also feels the working group is not well represented and not diverse.

Maxwell expressed concern with the lack of appeal and feels there needs to be an appealable mechanism and it needs to be easy to understand and readily apparent.

Neu stated she feels the cover memo looks good and asked if it includes a statement that it's a legal, buildable lot. She would like to see assurances that a legal lot is also a buildable lot. Howe stated that the question is whether it's a legal lot. Whether it's a buildable lot is a whole different gamut of questions, i.e. zone. It may be a legal lot, but it may not be buildable unless it meets all the zoning requirements.

Sorenson indicated that he met with a Cottage Grove resident last week who purchased a parcel near Cottage Grove and when they got ready to apply for a building permit, they were told that because it was not a legal lot, they couldn't build on it.

Neu stated that why would you apply for a septic permit if you couldn't build on the lot.

Clemow commented that there is a huge difference between legal lot and buildable lot. He requested untabling Evans motion and bring it forward. He asked staff if it addresses Maxwell's issue regarding noticing, and it makes it a land use decision, which makes it appealable. He asked staff if the motion takes care of the issues that are out there today. Howe stated the motion makes sense. It has to do with lots that have been altered since their creation that are problematic. The issue involves a property line adjustment that may have altered the legal status of that lot.

Morrison referred to a property line adjustment where one person deeded some acreage to someone else and it is recorded and asked if that would require them to go through the legal lot process. Howe stated that it would.

Segel expressed concern with the wording of the motion and asked what it leaves out and what could be excluded.

Olson commented that years ago minor partitions were not recorded. He suggested the need to certify that remaining parcels are a certain acreage or square footage and still complies with the zoning requirements for that certain area.

Morrison asked if this becomes a requirement, will previous adjustments be grandfathered or will they have to come through the new process.

Neu stated that is the problem and the problem surfaces when they go to sell their property.

Maxwell referred to Evans' motion and indicated he'd like to see some definition about lot lines such as one lot line per adjustment.

Segel feels the motion doesn't speak to the legal aspects; it addresses it as if it's a discretionary good idea and doesn't speak to in conformance with. She asked if the intent of the motion is for staff to develop a recommendation to the Board. Evans stated that the idea behind this motion is that Lane County implements State law and make the determination of the legal lot verification that this adjustment was done in accordance with State law. This motion would stay with that program. It would not ask the Board to interpret or set down new standards for what is a legal lot. It would simply provide notification for legal lot determinations that are done now and the County makes the determination that the adjustment was done in accordance with the State regulations.

Segel feels that Lane Code tells us how to do property line adjustments. Evans stated he feels Lane Code copies the State law.

VanVactor reiterated that the motion pertains to the process now for legal lot verification, but would make it a land use decision and require notice.

Snowden asked how the motion would deal with Neu's problem concerning lots that are not legal that are created when there's a property line adjustment. Basically, how does it solve this after-the-fact problem that exists. Clemow felt it wouldn't solve problems created already.

Evans indicated that when the sale of a lot is in process, many realtors will have their clients come to the County to verify it's a legal lot. This process will not be a cure all to see what's happened out there but it's going to head in that direction. It should cover most of the situations because it's an opportunity to get County sanction for a legal lot verification or property line adjustment.

Olson suggested that you may want to require a legal lot verification upon completion of the lot line adjustment.

Maxwell stated that he thought lot line adjustment and legal lot verification were one in the same. He stated he like to see clarification and definition on this issue. Olson explained lot line adjustments. He doesn't want to see lot line adjustments so difficult that it causes people to be hamstrung.

Segel asked if the Code language dealing with legal lot verification could be made available before voting on the motion. Howe stated that there really isn't Code language to do a legal lot determination; it's in the Statutes. Segel suggested that perhaps the motion needs to indicate per Statute because it doesn't speak to the legal issue.

Motion: [from February 10, 2003 meeting] Evans moved that the legal verification of a legal lot determination be a land use decision when they result from property line adjustments and that notification of those decisions be sent with opportunity for appeal. Neu seconded. VOTE: 9-1, Segel dissenting.

VanVactor asked when legal lot verifications result from property line adjustments, is that the only time you can do it or can it be any time anyone wants to verify a lot. Evans stated that the motion was intended to deal with the verification of legal lots that result from property line adjustments. VanVactor stated he wanted to know if this process will deal with Neu's concerns. Evans stated that perhaps another motion should be made because he sees that as a separate issue. He would expect the County be able to provide notification for other legal lots but wouldn't make it mandatory but at the discretion of the applicant. He doesn't feel all legal lot verifications are land use decisions.

Motion: Evans moved that any legal lot verification not involving a property line adjustment may be considered land use decisions and noticed at the discretion or option of the property owner or authorized agent. VanVactor seconded. All voting members present voted in favor and motion carried.

Segel asked how to differentiate between the two motions, would there be discretionary opportunity to apply one rather than the other.

3. RANGE OF FUNDING OPTIONS FOR LONG-RANGE PLANNING PROGRAM

Towery asked the Task Force to make a recommendation on funding options for long-range planning to take to the Budget Committee and Board this year with some opportunity for it to be funded. He feels existence of the Task Force will provide the opportunity for an affirmative decision by the Board and Budget Committee. He shares the concern of the Task Force about video lottery and other narrow funding sources used for Planning and supports the effort to broaden the revenue stream. He suggested short and long-term funding sources to support long-range planning.

Morrison referred to the 2-½% of video lottery we receive from the State and indicated that as of Friday that issue is on the table and we may not receive it.

Towery indicated that a combination of revenues generated by the Division this year and assuming video lottery funds are available, we could put together a funding strategy that would pay for the program for 1-2 years. The potential for more stable and long-term funding sources identified aren't on the table and ready to be implemented for the coming budget year. He feels that we need to present this option to the Board now for long-range planning on how to fund it.

VanVactor asked if there is an amount being recommended. Towery suggested \$120,000-\$150,000 in video lottery.

Segel felt we need to know how much money each recommendation is and what it would generate. She referred to the previous concern of creating a fee that looks like a real estate transfer tax and is there a way to not look like a real estate transfer tax. She feels without knowing where we are, but making a recommendation for an additional \$120,000-\$165,000 in video lottery funds, isn't very strong.

Motion: Neu moved to recommend additional video lottery funds and other sources of funding as an interim revenue source for long-range planning. Evans seconded. VOTE: 8-0, motion carried.

VanVector stated that video lottery is allocated 50% for economic development and 50% for existing programs. If the Board were to authorize additional video lottery funds, they will have to take away funds from existing County programs or scale back the economic development programs approved.

Towery stated that video lottery should not be a long-term funding source for long-range planning.

Evans stated that he doesn't have a problem supporting the recommendation to look at video lottery for funding long-range planning on an interim basis. He asked if it means participation in the metro plan process, it would mean updating the Code and being involved in the Legislative process, he feels that is long-range planning and it's important and fits into the scheme of economic development. He also feels that video lottery money could be used for some of the Task Force's recommendations, making materials more available, putting more information on the computer, and using funds to be sure the counter is staffed, and providing a service for the non-paying customer.

4. TASK FORCE RECOMMENDATIONS

Snowden reviewed the list of recommendations made up to today and will be updated based on today's recommendations. He indicated that the report that will go to the Board will include an executive summary, a motion, and an explanation of the recommendation along with supporting documentation. He stated he would like the Task Force to endorse the full package. He anticipates presenting the report to the Board the first week of April.

Morrison referred to Snowden's comments and Segel's concerns on the financial implications, and asked if the dollar amount for each recommendation could be included. She indicated that when the revenue stream is projected out, it would be predicated upon what the volume is that comes in and would be helpful to know the amount of revenue it would generate. She felt that the Task Force had agreed that things were to be revenue neutral or add on to and not decrease.

Maxwell asked if the Task Force could be present when the report is presented to the Board. Snowden anticipated preparing a draft packet with an executive summary by March 17th. He thought that he and Towery would make the presentation. The Board could then ask for comments from the Task Members present.

Morrison indicated that the minutes from all the meetings could be included in the packet, and tapes of the meetings are also available.

Segel expressed concern with Recommendation #16 that the revenue impact of the changes would be neutral, and feels it limits the division from being able to generate more revenue. Towery indicated that the services provided by the division and the permits granted and processed, the revenues generated from those actions ought to cover the cost of providing those services and that is what we're trying to accomplish through the fee schedule.

Neu feels we need to leave the fees where they are at now and look at increasing other fees.

Snowden stated that one of the goals we wanted to accomplish with the task force was to clearly identify the costs of providing the varied services we provide, and identify who is subsidizing whom. We wanted to rationalize the fee structure so we could eliminate the subsidies.

Morrison commented that what we're trying to do is that we have a service; they pay for the service and nothing more. If fees are increased, we need to be prepared on the ramifications that may occur.

Segel asked about expedited planning actions and doesn't see it codified and feels this is a potential for revenue and it should cost more. This is a service we're not capturing revenue for. Howe stated that staff is applying triage and it may appear that some things are being taken out of order. There is

an expedite process in either the Lane Manual or Administrative Procedures Manual that allows fees of about 2.0 x rate of Planner doing the work. Currently, the problem is that overtime can't be paid. The Planners are in an exempt category from paid overtime so there is no incentive for the Planners to work overtime to expedite applications.

Neu stated that she feels what we're doing is working.

Olson commented on recording fees stating that about 90,000 documents are recorded annually @ \$10 per document equates to \$900,000. He feels that the money from the Corners Fund would amount to about \$600,000. He feels there is a tremendous source of revenue here. He urged the County to sponsor legislation in increasing recording fees.

Evans indicated that Olson's comments are identified in Recommendation #12. He also suggested that the recommendations be clearer.

Snowden suggested sending a draft packet including an executive summary to the Task Force for comments by March 17 before submitting the final packet to the Board.

Neu stated that raising recording fees isn't identified in Recommendation #12 and feels it's an excellent idea and needs to be included in the recommendations.

Segel stated that she supports Olson's comments on recording fees. She asked if there is any way to implement a recording fee without going through a legislative process. Vorhes replied that it runs significant risk. He stated that it's not only the real estate transfer tax that creates potential. He indicated that there may be a way to get around it so it doesn't look like you're charging a fee for the transfer of real estate than if you were to flat out say it was for any recording of documents that transfers the title to real estate. In the current statutory scheme the Statutes that talk about the fees that the clerk collects for recording documents, it says to charge these fees and no more.

Utecht indicated this was the last meeting of the Task Force.

Snowden stated that if the Task Force views on the draft report are different, he will confer with the two Commissioners on the Task Force to see whether there should be another meeting of the task force or how to consider minority viewpoints.

Snowden thanked the Task Force members for their attendance and participation and feels some good recommendations resulted.

Segel feels staff reorganization wasn't discussed but feels we haven't looking at staffing significantly enough. She suggested a subcommittee to look at further funding options later.

Meeting adjourned at 5:25 p.m.

Vonnie Rainwater
Recording Secretary

Only the portion relevant to Ordinance No.7-04 has been extracted from the original cover memo.

AGENDA COVER MEMO

AGENDA DATE: April 8, 2003
TO: Lane County Board of Commissioners
Department: Public Works-Land Management Division
Presented by: Greta Utecht, Task Force Chair
Agenda Item Title: **IN THE MATTER OF RECEIVING A REPORT AND
RECOMMENDATIONS FROM THE LAND MANAGEMENT TASK
FORCE.**

ISSUE: Lot Line Adjustments

Problem statement: This issue was initiated by Task Force members and no formal problem statement was crafted. There was consensus that formal reviews of legal lot determination and lot line adjustments as land use decisions with appropriate notification, would address a wide range of concerns.

Discussion:

On June 14, 2000 the Board discussed lane code requirements for legal lot verifications and property line adjustments. The Board supported the staff recommendation to draft lane code language that would change and establish requirements for review of legal lot status and property line adjustments. The Board did not make a policy decision on any detailed aspect of the staff recommendation or prioritize the project as part of a work plan, but did give support and direction for staff to prepare changes.

As an alternative top a significant code revision, the Task Force discussed steps that would call for a legal lot determination to be a land use decision subject to notice requirements to those parties impacted by a property line adjustment. The goal was to put in place a process that could be implemented quickly and allow for a long-term resolution of the matter. There was concern voiced that some property line adjustments might not be consistent with recent case law. In an effort to address the wide range of concerns identified, **the Task Force recommends that a legal lot determination be considered a land use decision when resulting from complex property line adjustments and that notification of those decisions by sent to surrounding property owners with opportunity for appeal. To address additional concerns, the Task force recommends that any legal lot verification not involving a property line adjustment may be considered a land use decision and noticed at the discretion or option of the property owner or authorized agent.**

Only the portions relevant to Ordinance No.7-04 have been extracted from the original document.

MINUTES OF BOARD OF COMMISSIONERS' WORK SESSION

April 8, 2003

9:00 a.m.

Commissioners' Conference Room

APPROVED 7/30/03

Commissioner Peter Sorenson presided with Commissioners Bill Dwyer, Bobby Green, Sr., Tom Lininger and Anna Morrison present. County Administrator Bill Van Vactor, Assistant County Counsel Stephen Vorhes and Recording Secretary Melissa Zimmer were also present.

2. PUBLIC COMMENTS

Paul Biondi, 615 38th Place, Florence, thanked the Board for getting the word out for Blues for Hues. He said the event was a success. He noted they gave over \$20,000 to St. Vincent de Paul. He stated that radio station KRVM is closing. He said it is the true last voice in Eugene. He noted the Board were great for Blues for Hues and helped for other events. He asked the Board to save the radio station and keep it a voice in Eugene.

Dwyer thanked him for his efforts for Blues for Hues. He said KRVM does a wonderful service but the County is limited in what they do and he had no knowledge where there could be outreach to help KRVM. He said they should seek grants.

Mona Lindstromberg, 87140 Territorial Road, Veneta, stated she attended all of the Land Management Task Force sessions. She said in addition to possible reorganization and funding solutions missing from the Land Management Task Force Report are management logistic problems that were in the audit. She noted the task force agreed on long range planning to the health and well being of Lane County residents and their environment. She stated the task force needs to practice greater efficiency that would result in cost savings, generate additional revenue and assess the long-term benefits of spending money to make money. She suggested they look at staff reorganization. She thought it would be a better use of the County financial resources to consolidate top managerial positions, thereby providing more support for planners to do the work. She suggested forming a subcommittee of task force members to review the matters. She agreed about adding 3.3 FTE to Land Management. With regard to the funding options listed in the report, she recommended a systems development charge into the fee schedule where applicable. She asked legal counsel to review increasing recording fees. She hoped the County would develop a GIS program even though it might reassess the role of LCOG. She requested the Board support these changes.

Robert Emmons, 42093 Little Fall Creek Road, stated he attended almost all of the Land Management Task Force Meetings. He said they have to call attention to uninvestigated Lane Code compliance violations. He said the program has two compliance officers serving all of Lane County. He noted the program is complaint driven only. He stated the Land Management Task Force recommended that the program be administered in "an aggressive manner and self-initiate as well as complaint driven." He urged the Board to adopt the fee increases included in the report. He encouraged the Board to add two positions, as two

compliance officers are not large enough to cover Lane County. He noted while voluntary compliance is an admirable goal, it is unrealistic and there are chronic abusers. He thought an effective program would adopt language that would indicate violations of serious matters with unacceptable consequences. He also encouraged the Board to adopt a compliance surcharge on building permits and that waste management funds be used to cover compliance related garbage problems.

Norm Maxwell, 79550 Fire Road, Lorane, was supportive of the recommendations on the lot line adjustments.

Lauri Segel, 120 W. Broadway, commented that Land Management is severely understaffed and that long range planning is needed for the health and welfare of the general public. She added the task force members also agreed that this is the time to address the legal mechanism for the processing of lot line adjustments and fees for permits. She noted the County was doing a poor job in assessing fines and fees even though they are applicable.

Stuart Mulford, 350 Pearl St., Eugene, spoke on behalf of Buford Park. He said he has been a volunteer worker for over ten years. He said in the past year he had put in 150 volunteer hours. He was concerned about the proposed fee at Mt. Pisgah. He asked the Board to avoid fees at the park. He commented if they do impose a fee, the action should include a provision that they review the first summer's experience with the fee.

Roxy Cuellar, Home Builders, 2050 Laura St., Springfield, commented there are limited revenue sources. She encouraged the Board to find out what types of revenue sources were available. She noted that SDC's were not available and in terms of planning and permits, an SDC is not an option. She noted with fees for developers and builders that state law limits to actually charges for the cost of processing.

6. PUBLIC WORKS

a. REPORT/Receiving a Report and Recommendations from the Land Management Task Force.

Greta Utecht, Management Services, commented that the group worked together well, giving a variety of opinions and positions on the task force. She noted they had to work hard on the recommendations for consensus. She said what came out was the need for more resources.

Jeff Towery, Land Management, explained they discussed the long range planning in detail. He noted they wanted direction on the extension of the long range planning programming, specifically the staffing level. He said if the Board supported this they would bring back different funding scenarios. He added they wanted to identify a more stable long-term funding source. He noted recommendations 4 and 5 from the task force are the areas that would best identify some of the long-range opportunities. With regard to customer service issues, the E-government project funded by video lottery was important to the task force. He said it would be their intent to submit that project as a candidate for funds from video lottery dollars.

Ollie Snowden, Public Works, stated that one of the outcomes of the task force was the work that Kay Blackburn, Internal Auditor, did in analyzing the Land Management budget. He said she identified which expenses each program incurred and which revenue was available to fund each program. He said some of the budget stress in Land Management is caused by the service they provide to non-paying customers. He explained approximately 4.5 positions in Land Management are devoted (within the course of the year) to providing service to non-paying customers. He said it was being subsidized by other sources. He said the task force was trying to find ways to either reduce the amount of counter service provided to non-paying customers by making information on line available or identify a funding source to help pay for this. He said the task force looked into increasing the use of the research fee provided in Lane Manual. He said what the task force recommended not doing was adding a surcharge for non-paying customers or increasing recording fees. He stated they would look for ways to provide information to customers without having to increase the amount of staff time at the counter.

Sorenson asked what the source of the funds would be to hire additional staff for long range planning.

Snowden separated the long range planning staff from the short range planning. He said by and large the development planning was to be covered by permit fees. He added they have customers who are not permit customers but they are asking for service from the county and that is an unfunded need. He said they could possibly use video lottery funds as an interim revenue source for the additional 3.1 planners who would be devoted to long range planning. He commented that wouldn't work unless they could identify a long-term stable funding source. He said that goes back to recommendation 3 and 4 on page 3 that looked at increasing recording fees for plats and subdivisions and looking at legislative changes to either allow long range planning as a legitimate use of the existing recordings fees or an increase in the \$10 cap on the recording of documents.

Dwyer said there should be kiosks in Land Management devoted to land planning so people could help themselves. He thought a research fee should only apply if a question can't be answered by available information. He thought that type of program could qualify for some grants. He suggested organizing this in a more efficient manner.

Snowden hoped they could have a one-time grant from video lottery funds that would build kiosks to improve e-government presence.

Lininger concurred that Land Management needs more staff for long range planning. He said they have to make it happen. He explained the criteria for video lottery would be job creation and workforce readiness. He noted that long range planning didn't meet any of the criteria. He said if they don't have long range planning, they would have problems in the future. He asked if Lane County's commitment of money to other entities to do planning needs to be reviewed. He commented if they don't come up with a way to hire to 3 FTE, then they should direct budget to come with different scenarios. He wanted to make this a priority. He stated Lane County's failure to fund the processing of permits is costing them money in the long run. He concurred with the recommendations of the report. He wanted more money for staff.

Towery explained with the long range planning program, they will need \$200,000 in addition to what they have now to fund the three new positions. He noted the growth in their planning surcharge resulting from the rate increase would generate a portion of that. He said they were looking at \$150,000 to \$170,000 of additional revenue to fill out the program. He commented that without knowing if there is board support for the concept it would be hard expanding a long range-planning program. He wondered if it was wise to use their resources to come up with formal funding.

Morrison didn't think it was necessary that they hire the full 3 FTE's at this time until they figure out what Lane County would be required to do from the state's perspective. She wanted to see what the additional revenues would be with the recording of the plats and subdivisions and the Corners Fund. She said that could tell them how close they could be to adding one person. She was concerned about giving money to planning when there are tremendous mental and public health needs.

Sorenson asked Snowden if the Board could get information on the amount of money that could be used in the Land Management Division from Title III federal funds, Waste Management, Corners Fund, the surcharge to offset the non-paying customers, the research fee and the plat and subdivision recording. He noted the pressure on the general fund would be so severe that it is not a good planning exercise for them to use. He added Land Management doesn't generate enough infractions to be self-supporting. He didn't think Lane County was doing enough to ensure compliance with land use laws and thought there should be a way to get money into the compliance program.

Snowden commented that some of the funding sources have restrictions on their use. He said he could come back with more detail given the assumptions that they could put it into long-range planning. With regard to compliance, he said they have to start with a philosophy statement and the priorities that are attached to the packet. He noted those were crafted around their existing program. He added if the Board disagrees with how they are running the program, then it needs to be reflected in the philosophy statement.

Lininger stated because of limited code enforcement resources, there would be times when all code violations could not be given the same level of attention and some might receive no attention at all. He feared that lax enforcement doesn't give enough weight to the law-abiding citizens. He noted there had been past funding from economic development funding video lottery for LCOG and for in-house land use planning. He said the amount of money they were willing to spend last year in the strategic fund was \$900,000. He noted this year the fund is \$300,000. He commented in the coming year there is \$140,000 set aside for Land Management for the West Lane County Rural Comprehensive Plan. He suggested finding a way to fund long range planning.

Dwyer wanted to develop a program more in line with what they get paid to do. He stated people shouldn't spend time at the counter for things they could look up themselves. He said if they are going to take a more aggressive approach, they need to take the policy that if the law is not obeyed, they would be pursued by counsel. He suggested utilizing the waste management fund to clean up some of the sites.

Green commented that long range planning had been a long-term problem with Lane County. He said they have customers who have paid fees and others who have not. He said a substantial amount of Land Management customers are not paying money. He asked how they should subsidize for customers who do not pay. He asked if the Board was committed to long range planning and if that is true, they have to make sure the resources should be just as committed. He supported the kiosk and if more information is needed, it should be paid for. He suggested examining Title III funds. He said they should use a formula to determine fees.

With regard to Title III, Morrison thought it was a Catch 22 because of how they leveraged Title III money in order to get the Forest Work Camp up to where it is and the increased cost in benefits. She commented they had been as creative as they could with Title III dollars.

Sorenson commented the recommendation to fund long range planning is good. He said with regard to the Title II, Title III split, it is a discretionary decision of the County and they could increase the amount of money they put into Title III eligible projects. He suggested combining the administration of Land Management and Waste Management as a cost savings opportunity. He thought there was a relationship between land use compliance and people who are dumping garbage. He suggested increasing the use of people other than planners to provide information at the counter. He wanted to see staff work on whether there are efficiencies to save positions at the service delivery level by changing the organizational chart of the department.

Liningier commented there was money set aside for open space acquisitions. He thought that money could be freed up for long range planning. He requested that information be reported back within three weeks.

Towery reported the compliance and policy statement that the Board adopts would drive the rest of the decisions around compliance. He suggested a work session dedicated to compliance philosophies and policy. He noted a suggestion by the Land Management Task Force is that they have language in Lane Manual that allows sanitation fees in a compliance case. He said they could pursue that if that is what the Board wants. With regard to the revenue, he said the task force thought there should be more of a progressive fee schedule for planning to sign off for building permits and for complex plans amendments. He noted there was language in the fee increase that addresses those issues.

With regard to fuel break permits, Towery noted it is where the Land Management Division currently receives Title III funding and people who are paying for those permits are being subsidized by the Title III revenue that the County had allocated to that program. He said it would require a fee increase of 125%. He said if the Board wanted to eliminate the subsidy that exists, it would generate another \$50,000 to \$60,000, freeing up Title III revenue for allocation to another program. He said that is an option in the staff report for fee increases. **With regard to lot line adjustments, he noted a detailed proposal came before the board about dealing with legal lot verifications and property line adjustments. He said the potential of pursuing the action before the Board a few years ago would be a reworking to address the issues. He noted the task force tried to identify a system whereby lot line adjustments and legal lot determinations would be classified as**

land use decisions and would require notice in certain circumstances. He said there would be a requirement to change language to accommodate that direction.

Sorenson said they would schedule additional time in four weeks to get more Title III information.

Snowden commented the Board had a list of funding sources for long range planning. He added the Board also wanted to look at using Waste Management funds for clean up and clean up restoration and compliance. He said he would come back with a report on that.

Morrison suggested waiting until after the budget was approved to discuss this matter.

Dwyer stated they had to analyze making Waste Management part of compliance as an overall picture. He said there was a legitimate fund they could use for clean up to help recover costs. He suggested moving forward with the things they have the ability to settle.

Green suggested the agenda team work with staff, bringing this back in a series of work sessions.

Sorenson stated the first work session should be on revenue options.

There being no further business, Commissioner Sorenson adjourned the meeting at 11:45 a.m.

Melissa Zimmer
Recording Secretary

Only the portions relevant to Ordinance No.7-04 have been extracted from the original cover memo.

AGENDA COVER MEMO

DATE: JULY 30, 2003, Meeting Date

TO: BOARD OF COUNTY COMMISSIONERS

**FROM: KENT HOWE, PLANNING DIRECTOR &
JEFF TOWERY, MANAGER, LAND MANAGEMENT DIVISION**

AGENDA ITEM TITLE: In the Matter of Reviewing and Approving the Long Range Planning Work Program and Implementation Plan

I. MOTION:

Recommendation on prioritization of Long Range Planning Work Program pursuant to Matrix Checklist, attached.

II. ISSUE OR PROBLEM

Over the last several years the Long Range Planning Program has been reduced significantly. Currently the Long Range Planning program consists of 1 FTE devoted to the State mandated Periodic Review of the Rural Comprehensive Plan. As a result of recommendations of the Land Management Task Force, 3 positions are being added back (two Planners and a Land Management Technician) to address Lane County's long range planning needs and provide a reserve capacity for new items that the Board may have an interest in addressing. This memo provides the Board with a list of potential long range planning projects. Staff requests the Board to indicate the order in which the long range projects should be addressed.

III. DISCUSSION

A. BACKGROUND

Staff have kept track of the Board's interest in specific long range planning projects over the last several years. This list was presented to the Lane County Planning Commission at their meeting this month. With a more robust Long Range Planning Program of 4 FTE, we need to know to which projects the Board wishes to have the resources allocated.

At this time we have adequate funds from a variety of funding sources (long range planning surcharge, recording fees and Title III) to hire one of the Planner positions. The remaining positions will not be filled until the Legislature adjourns and video lottery dollars are confirmed.

The Planner positions have been posted. Upon the close of the Legislature and the known disposition of the Video Lottery proceeds to Lane County, we will fill the second Planner and Land Management Technician (LMT) position. The LMT position has not yet been posted and would take an additional 2-3 months to fill. After consultation with staff from County Administration and County Counsel, several projects identified in this recommendation were determined to be eligible for Title III funding.

As mentioned earlier, 1 FTE is currently addressing the mandated Periodic Review requirements.

The Board has expressed interest in having a staff presence in Metro planning efforts and to be able to provide assistance for small city planning efforts. In addition, the Board has indicated the importance of E-government access. Staff recommend that these projects (Metro, Small City and E-government) would consume an additional 1 FTE.

Of the remaining 2 FTE, .5 FTE would be held as a reserve capacity to address new projects, unknown at this time. The objective is for the Board to prioritize the remaining projects from the attached list on which the 1.5 FTE would concentrate their efforts.

B. ANALYSIS

The Lane County Planning Commission recommendations are shown on the attached list.

C. ALTERNATIVE/OPTIONS

1. Provide staff direction on priorities for long range planning work program
2. Take no position.

IV. ATTACHMENTS:

1. **Matrix Checklist**
2. **List of Rural Comp Plan Long Range Projects**
3. **Proposals Qualifying for Title III funding**

**MATRIX CHECKLIST OF
NON-MANDATED RURAL COMP PLAN
LONG RANGE PLANNING PROJECTS**

PROJECT	FUNDING SOURCE				DURATION	FTE	LCPC Rec.	Board Priority
	Video Lottery	LRPS	Recording Fees	Title III				
Legal lot a.		v	v		6 months	.3	v	
Legal lot b.		v	v		12 months	.3	v	
Revisions to Telecom. Tower Stands		v	v		6 months	.3	v	
Revisions Riparian Regulations				v	6 months	.75	v	

**LIST OF RURAL COMP PLAN LONG RANGE PROJECTS
JULY 30, 2003**

HIGHER PRIORITIES RECOMMENDED BY LCPC

Legal lot and Property Line Adjustment Policy Review:		
a. Land use decision by definition, <u>or</u>	.3	6 months
b. Address comprehensive policy issues	.3	12 months
LC 16 and LC 10 Revisions to Telecommunication Tower Standards	.3	6 months
LC 16 revisions to Class I Stream Riparian Regulations*	.75	6 months
LC 16 amendments for Community flood rating system	.2	6 months
LC 13 amendments for groundwater requirements to demonstrate long-term water availability	.2	6 months
Legislative and Rule Updates to Lane Code**	.25	6 months

* Title III qualifying.

** See updates for HB 2691 and LCDC March 21 Rule Amendment OAR 660-22-030(3), (11).

M I N U T E S

Lane County Planning Commission
Harris Hall - Lane County Courthouse

February 17, 2004
7 pm.

PRESENT: Juanita Kirkham, Chair; Chris Clemow, Vincent Martorello, Ed Becker, James Carmichael, members; Kent Howe, Steve Hopkins, Staff;

ABSENT: Mark Herbert, Marion Esty, Steve Dignam, Jacque Betz,

I. CONTINUATION FROM 1.20.04 - Deliberation only on: PA 02-5838 - Plan Amendment & Zone Change from E-40 Exclusive Farm Use to Marginal Lands/18-04-11, tax lots 300 and 304, 3101 Timberline Drive, Eugene. 113.7 acres. Owners; B. Ogle, and M. Childs

Ms. Kirkham convened the meeting at 7 pm. She noted that the first item was deliberation only. She noted that there was not a quorum and postponed the item until March 2, 2004.

Mr. Martorello raised concern that postponing the item for March 2 would overload that evenings agenda.

Mr. Howe suggested that the deliberations could be held during the 5:30 work session. He noted that the work session agenda was light for that evening. There was general consensus among the commission.

II. PA - 01-5649

The applicant withdrew the application.

III. AMENDING LANE CODE 13.010 by adding definitions of "Legal Lot", "Legal Lot Determination", and "Property Line Adjustment", and adding Lane Code 13.020 regarding notice of legal lot determination.

Mr. Hopkins stated for the record that it was Lane Code 13.010 and 13.020 that would be amended. He submitted an E-mail from Mike Evans into the record. He said the amendment would require a final verification unless the lot was in the same configuration as when it was created. He said the final verification would provide legal notice to neighbors and interested parties as well as an opportunity for an appeal. The amendment would also allow the Director to issue a final verification prior to submittal of a development application. Currently, only a preliminary verification is issued.

Ms. Kirkham opened the public hearing.

Jim Just, Goal One Coalition, said a legal lot determination could not be used to do a lot line adjustment. He said if it were used for that purpose then it would not be according to State land use law.

Mr. Just said because Lane County had no property line adjustment procedures it was required to use the procedure outlined in ORS 92.193 allowed a local government to use procedures other than the re-platting procedures outlined in ORS 92.180-185 if it adopted procedures that met minimum statutory requirements. He said the reason they would not comply was that there had never been an approved lot line adjustment recorded. He referred commissioners to the written testimony from 1000 Friends of Oregon.

Norm Maxwell, 79550 Fire Road, said he had several lot line adjustments and commented that it was not an orderly and well thought out plan. He stressed the importance of having a legal lot verification at the time of sale of property. He said citizens needed to be able to know that lots were legal.

Bob Ezell, 2852 Windgate Street, Eugene, questioned the minimum size of a legal lot. He surmised that the current practice of the County was contrary to the State process for identifying a legal lot. He added that old county roads that only existed on record were being used to divide properties into legal lots. He cited a ruling in Lincoln County that had stopped the county from doing the same thing that Lane County was currently doing. He raised concern that Lane Code was against Oregon Land Use laws.

Ann Davies, 433 West 10th Avenue, said the road dividing lots issue represented an important part of the County process. She said she had been the attorney for the Lincoln County case. She said it had been the practice in Lane County to have two legal lots divided by a road whether the road only existed on record or not. She said this issue had not been addressed in the proposed amendments.

Ms. Davies proposed wording that would provide that a final verification be done when a parcel had been divided by a road. She said this suggested policy was supported by the cover memo of the meeting packet. She also suggested using the term "unit of land" rather than parcel or lot so the language would be clearer.

Ron Eber, Department of Land Conservation and Development, said he had been in consultation with counties around the state on the same issue. He said a legal lot verification process would be a good thing to do. He stressed the importance of being able to verify a legal lot as soon as possible to avoid the complications of trying to get a final verification after the property had been sold through multiple owners.

Regarding the definition of legal lot, Mr. Eber said the language in ORS 92.017 be put somewhere in the language of Lane Code as a guideline for people to understand lots and parcels.

Mr. Eber said Ms. Davies' suggestion was a good one that would help verify lots or parcels. He said the language suggested by staff for approval was good up to a point but stressed that most counties went beyond just incorporating lot or parcel definitions and were more specific about

partition ordinances or minimum lot sizes. He said this would provide people with more information as to what kinds of lots or parcels would be recognized. He suggested looking at Lynn or Benton County's ordinances.

Mr. Eber said the road issue had been a continuing source of concern for the State. He said the better the language was clarified in the ordinance the better citizens would be protected.

In response to a question from Ms. Kirkham regarding the definition of partitioned land, Mr. Eber said the third item under the Lane Code definition that dealt with the issue of right-of-way did not have the latest statutory language. He suggested adding statutory language from ORS 192.010(7)(d).

Mr. Hopkins noted that definition was not part of the amendment before the Planning Commission that evening. He said only the definition of "legal lot," "legal lot verification," and "property line adjustment" was included in the suggested amendment.

Robert Emmons, Land Watch Lane County, seconded Mr. Eber's comments. He said he had attended most of the task force meetings. He said the main focus of the task force had been to see how the Land Management Division could better serve its customers.

Mr. Emmons cited Warf versus Coos County which sought to define a property line adjustment and make such an action a land use decision. He said the case law was compelling that the County should be doing the same thing. He said the present staff proposal did not deal with that issue.

Laurie Segel, 120 West Broadway, submitted comments that she felt should be included in the staff proposal. She said the proposed amendments did not go far enough to address the issues raised during the public hearing.

Ms. Kirkham closed the public hearing and called for commission deliberation.

Mr. Becker questioned why the County would not require final determination to protect the public.

Mr. Martorello suggested that there be an exception process for a final determination rather than doing preliminary determinations.

In response to a question from Mr. Clemow regarding whether lot line adjustments were not land use decisions, Mr. Hopkins said that was true because the County did not regulate lot line adjustments.

In response to a question from Mr. Clemow regarding whether there could be lot line adjustment prior to a legal lot determination which could result in a lot not being legal, Mr. Hopkins said there was nothing in the amendment to require an application for verification. He said there was nothing in the amendment that would prevent creating an illegal lot. He said nothing was being changed in the code excepting the provision of notice for a final verification.

In response to a question from Mr. Clemow regarding why there was not a process to avoid creating illegal lots, Planning Director Kent Howe said the specific direction from the Board of Commissioners that legal lot verification be a land use decision when they resulted from property line adjustments and the notification of those decisions be sent with opportunity for appeal. He said that vote had been passed by the Land Management Task Force by a vote of 9:1.

Mr. Howe reviewed the minutes of the Land Management Task Force showing where the decision had taken place.

In response to a question from Ms. Kirkham regarding whether the task force had decided not to make lot line adjustments a land use decision, Mr. Howe said the task force tried to get at the root issue which was notice of property line adjustments that were allowing development to occur on neighboring property. He noted that the task force could not agree on property line adjustments but could agree on providing notice to adjacent or affected properties.

Mr. Martorello noted that it was counter intuitive to do a lot line adjustment before a final legal lot verification. He said there could be a lot of damage done to a development if the lot were not found to be legal. He said he did not know how to rectify the situation in the context of the proposed amendments.

Ms. Kirkham said she was uncomfortable with approving the amendments for that reason.

Mr. Becker reiterated his earlier question about requiring a final determination instead of offering the option of a preliminary determination.

Mr. Clemow said the road issue and the question of making lot line adjustments a land use decision were not addressed by the proposed amendments. He said he would vote to approve the amendments with the strong recommendation that those two issues be addressed.

Mr. Carmichael, seconded by Mr. Clemow, moved to approve the recommended amendments as presented by staff.

Mr. Martorello said he would vote in favor with the caveat that the language did not go far enough and strongly suggested that there be further discussion on the matter of lots being verified by roads on record.

The motion passed 3:2 with Ms. Kirkham and Mr. Becker voting in opposition.

Mr. Martorello, seconded by Ms. Kirkham, moved to request the Board of County Commissioners look at a work program to address the issues identified during the public hearing and open the discussion with the intent of adopting significant policy and code revisions that addressed those problems. The motion passed unanimously.

The meeting adjourned at 8:15.
(Recorded by Joe Sams)

Written Comments Regarding Ordinance #7-04

All items were submitted between December 1, 2003 and February 28, 2004

<i>Name</i>	<i>Date of Document</i>	<i>Type</i>
Mike Evans	January 2, 2004	Email
Steve Cornacchia	January 5, 2004	Email
Laurie Segel, 1000 Friends of Oregon & Bob Emmons, LandWatch Lane County	January 16, 2004	Email
Eben Fodor	January 19, 2004	Email
Larry Olson	January 26, 2004	Email
Anne C. Davies	February 6, 2004	Email
K. Robert Ezell	February 6, 2004	Email
K. Robert Ezell	February 6, 2004	Email (revised and resubmitted)
Mike Evans	February 17, 2004	Email
Norm Maxwell	December 31, 2003	Email
	January 8, 2004	Email
	January 9, 2004	Email
	January 13, 2004	Email
	January 20, 2004	Email
	January 23, 2004	Email
	January 27, 2004	Email
	March 9, 2000	Submitted document
	March 20, 2000	Submitted document
	May 16, 2000	Submitted document
	December 2, 2002	Submitted document
	January 5, 2004	Submitted document
	January 25, 2003	Submitted document

From: Mike Evans [landplancon@comcast.net]
Sent: Friday, January 02, 2004 9:35 AM
To: HOPKINS Steve P
Subject: Re: legal lot notification

Steve, the amendment dealing with notification looks good to me - Thanks
Mike

From: Steve Cornacchia [scornacchia@hershnerhunter.com]
Sent: Monday, January 05, 2004 10:56 AM
To: Steve.HOPKINS@co.lane.or.us
Subject: Re: legal lot notification

Thanks Steve. Just a thought: Shouldn't the definition of "Legal Lot Determination" be "... in conformance with the Lane Code or other applicable law." I am thinking of the lots created prior to any Lane Code treatment of subdivisions, partitions, etc. Or maybe "and/or" ?
Steve

From: Lauri Segel [lauri@friends.org]
Sent: Friday, January 16, 2004 4:24 PM
To: HOPKINS Steve P
Cc: hopsbran@aol.com
Subject: RE: legal lot notification

Please include the attached comments on 'legal lot notification' into the record for review by the Planning Commissioners in preparation for the February 17 public hearing on this topic- Please confirm receipt of these comments.
Thank you for your help.

Lauri Segel
Lane County Planning Advocate
1000 Friends of Oregon
120 West Broadway
Eugene OR 97401

phone: 541 431 7059
fax: 541 431 7078
email: lauri@friends.org

The things you cherish today about a life lived in Oregon--
* vibrant communities
* productive farm and forest lands
* protected coastal and natural areas
– can be a part of the legacy you leave for future generations

Join 1000 Friends of Oregon online:
www.friends.org/support

January 16, 2004
Steve Hopkins, Planner
Lane County Land Management
125 East 8th Street
Eugene, OR 97401

RE: Draft for legal lot notification

Mr. Hopkins:

These comments are being submitted on behalf of 1000 Friends of Oregon and LandWatch Lane County.

Your memo of December 30 contains a draft proposal to require notification of legal lot determinations in certain circumstances. The proposal is comprised of three new definitions and one new section of code. 1000 Friends of Oregon and Landwatch Lane County are concerned that the

draft definitions and code section are unclear or inadequate, and that this proposal as drafted fails to meet requirements of statutes and of case law pertaining to lot-line adjustments.

1. Comments on draft language

a. 13.010 Definitions. Legal Lot.

The draft proposal defines "Legal Lot" as:

"A lawfully created lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided as provided by law."

This draft definition states that a lawfully created lot or parcel will cease to be a discrete lot or parcel if the property lines are changed or the lot or parcel is divided. This cannot be what is intended, that a lot or parcel ceases to be "discrete" if it is lawfully altered. The Coalition suggests:

"A lawfully created lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel unless the lot or parcel lines are vacated and the lot or parcel is combined with another lawfully created lot or parcel. A lot or parcel shall remain a legal lot if property lines are changed or the lot or parcel further divided as provided by law."

b. 13.020 Legal Lot Determinations.

The draft proposal defines "Legal Lot Determination" as:

"A legal lot determination by the Director is considered final when it is made and noticed pursuant to LC 14.100 and shall occur when:

"1. An application is submitted pursuant to LC 14.050 for a legal lot determination on a lot or parcel resulting from a property line adjustment; or

"2. If notice is requested by the property owner for any legal lot determination, upon submitting an application pursuant to LC 14.050."

The draft language "[a] legal lot determination . . . is considered final when it is made and noticed" does not comply with ORS 215.416(11)(a)(C), which requires that a decision not become final until the period for filing a local appeal has expired.

The meaning of subsection 2 is not clear. It may be that what is intended in subsections 1 and 2 is that a legal lot determination requires the filing of an application, whatever the reason for the legal lot determination. The Coalition suggests:

"A legal lot determination is a land use decision made by the Director pursuant to LC 14.100.

"1. A property owner may file an application for a legal lot determination pursuant to LC 14.050.

"2. A legal lot determination by the Director is considered final when the period for filing an appeal has expired."

2. The draft proposal fails to satisfactorily address legal requirements for lot-line adjustment procedures.

State law requires that local governments institute procedures for adjusting property lines. If a local government fails to adopt property line adjustment procedures that meet statutory requirements, the local government is required to use the replatting procedures of ORS 92.180 and 92.185.

ORS 92.190 provides, in relevant part:

“(3) The governing body of a city or county may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust property lines as described in ORS 92.010(11), as long as those procedures include the recording, with the county clerk, of conveyances conforming to the *approved property line adjustment* as surveyed in accordance with ORS 92.060(7).” (Emphasis added.)

Thus a local government’s procedures must include an approval process, which necessarily includes a review and decision-making process. Case law has established that a lot-line adjustment is a land use decision requiring a land-use decision-making process, including notice to nearby property owners. *Warf v. Coos County*, __ Or LUBA __ (LUBA No. 2002-087, January 7, 2002).

The process envisioned by the draft proposal is inadequate because it fails to establish a property line adjustment process that meets the statutory requirements. ORS 92.190 requires that procedures include 1) the recording of deeds reflecting 2) an *approved* property line adjustment. In the legal lot determination process, no “approved property line adjustment” is *ever* recorded; the property line adjustment is approved only after the recording of the adjustment. The legal lot determination process therefore does not meet the requirements of ORS 92.190 and cannot serve as a property line adjustment process or as a process to recognize and approve previously executed property line adjustments.

Lane County has no procedures for property line adjustments. Therefore Lane County is currently required to use the replatting procedures of ORS 92.180 and ORS 92.185 to accomplish and approve property line adjustments.

The draft proposal should be amended to specifically include property line adjustment procedures consistent with ORS 92.180 and 92.185 or, alternatively, with ORS 92.190.

Thank you for consideration of these comments.

Lauri Segel
Lane County Planning Advocate, 1000 Friends of Oregon

Bob Emmons
President, LandWatch Lane County

From: Eben Fodor [fodor@efn.org]
Sent: Monday, January 19, 2004 11:29 AM
To: Steve.HOPKINS@co.lane.or.us
Subject: Comments on Proposed Legal Lot Notification

Categories: NoHTML
To: Steve Hopkins

The proposed definitions for Legal Lot and Legal Lot Determination are both circular. As such, they are not helpful. They should either state criteria for a legal lot or should reference the applicable criteria in Lane Code.

Eben Fodor

Eben Fodor
Fodor & Associates
Community Planning Consulting
394 East 32nd Ave
Eugene, OR 97405
541-345-8246
www.FodorandAssociates.com

From: Larry Olson [larry@olsonandmorris.com]
Sent: Monday, January 26, 2004 8:22 AM
To: HOPKINS Steve P
Subject: Re: legal lot notification

Steve: Thanks for sending the information on Legal Lot Notification. I think this goes along with the earlier recommendation of the task force. I'm not sure, but I don't see anything in the proposal which makes it a Land Use Decision, subject to appeal. At present there is no method to appeal a decision made by staff. Is this something that we can expect in the future?

Thanks again for the information.

Larry Olson
February 6, 2004

From: Anne C. Davies [acdavies@qwest.net]
Sent: Friday, February 06, 2004 11:43 AM
To: steve.hopkins@co.lane.or.us
Subject: February 17 planning commission meeting

Dear Steve:

I am assisting Norm Maxwell in tracking the work the county is doing on the property line adjustment procedures. As you may be aware, he is also concerned with the county's policy regarding the division of properties by an intersecting road, and has requested that that issue be included in the county's considerations. Please include this e-mail as a written comment, and add my name to any notice list that you may have on this matter.

Can you please e-mail me a copy of the February 17th Agenda? Also, is this to be a public hearing where an opportunity for public testimony is provided? Thank you.

Sincerely,

Anne C. Davies

From: Lapinebsezell@aol.com
Sent: Friday, February 06, 2004 1:58 AM
To: steve.hopkins@co.lane.or.us
Cc: Lapinebsezell@aol.com
Subject: (no subject)

Categories: NoHTML
February 6, 2004

To Steve Hopkins
Lane County Planner

RE: Legal lot verifications

I understand that you are delegated to receive input from the public regarding legal lot verifications and set up policy meetings for future legal lot processing.

The first item on my list of concern regarding legal lot verification by Planning staff is the approval of legal lots of an area size that will not support a home. That is there is not enough area for a well, house and septic drain field.

I am familiar with a recent approval planning staff for Derek Jeros off of Fox Hollow Road that would not have a useable area of a garage after setbacks were applied!

The legal bases of a legal lot was that they would support a building permit prior to the time of the adopted county wide zoning plan. So there needs to be acceptable area for a legal lot. Otherwise any size of area of perhaps 10 square feet could be a legal lot if area large enough to support building a home is not the standard.

Next, planning staff have approved legal lot verifications for a property where a public road crosses the property. Where there was a tract of land with a county road easement established, for example in 1905, the Planning staff would approve that the road now created two legal lots. One legal lot was approved on each side of the road.

This action is in conflict with Oregon Subdivision control law as illustrated in part of a letter to the Board of Commissioners I recently wrote to them, as follows:

“(1) County Planning staff, without doubt, are aware of the recent land use actions surrounding Fire Road that contains information where Lincoln County, just like Lane County, had a codified process to recognize legal lots. The problem comes when Lincoln County applied that process to allow a public road to divide property and to create legal lots on each side of the road!

One has only to read the contents of a Commission Enforcement Order letter dated February 9, 1999 from the Oregon Department of Land Conservation and Development to the Director of Lincoln County Planning Division. The letter provides that “Lincoln

County routinely regards a parcel that is divided by a public road as two legal parcels and discrete parcels. ...The petitioner and the department asserted that this practice is unlawful since ORS 92.010(7) (d) clearly provides that "any property divided by sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land,," Please see Attachment "H" pages 1 -5 for the letter from DLCD. "

Also, I wrote in the same letter :

"(2) In the same Lane County Planning land use action file along Fire Road is a similar decision by Lane County Hearing Official like DLCD against Lincoln County. County Hearing Official Gary Darnielle provided a decision to Lane County Planning Department regarding the same issue of whether a county road divides a property into two legal lots dated March 9, 2000. His decision, regarding the legal lot issue, is within a comprehensive 2 ½ page letter dated March 9 that clearly concludes that the county road does not divide property and does not create legal lots. "

I urge you to review the letter as noted by the county's Land Use Hearings Official. It is in the Fire Road File.

I am also supportive of the two motions by Mike Evans as a member of the LMD Task Force for the LMD Division. Briefly, Mr. Evans motions elevate approved legal lot determinations similar to any land use action that requires public notice.

I urge you to set new standards for minimum size of legal lots and immediately stop approval of legal lots on each side of a public or county road created by an easement.

Thanks you. I wish I could provide you with a more detailed letter but I just found out today that Friday is the last day for input from the public.

K. Robert Ezell (retired County surveyor)
2852 Wingate St
Eugene , Or.

From: Lapinebsezell@aol.com
Sent: Friday, February 06, 2004 1:00 PM
To: Steve.HOPKINS@co.lane.or.us
Subject: Re: legal lots

Categories: NoHTML

Steve, thanks for your attention to my letter to you regarding legal lots and concern of some past actions by county planning staff as noted.

In reading my letter sent to you early this morning I left out that very small area size of so called "legal lots" approved by planning staff were then property line adjusted.

Please forward the amended letter I am sending to you to the agency set up to review legal lots.

Thanks Bob

February 6, 2004

To Steve Hopkins
 Lane County Planner

RE: Legal lot verifications (amended Feb 6 1:00 pm)

I understand that you are delegated to receive input from the public regarding legal lot verifications and set up policy meetings for future legal lot processing.

The first item on my list of concern regarding legal lot verification by Planning staff is the approval of legal lots of an area size that will not support a home. That is there is not enough area for a well, house and septic drain field.

I am familiar with a recent approval planning staff for Derek Jeros off of Fox Hollow Road that would not have a useable area of a garage after setbacks were applied! This very small triangle snippet of land was approved as a legal lot and was then "property line adjusted to a twenty acres parcel of land! So it demonstrates that county planning staff will approve any size area of land as a legal lot if it has a deed that shows it existed . I believe this is not by legal terms a legal lot. If it is then any size area of a land that can be shown it was created by some deed that did not violate land use at the time of creation would be a legal lot according to county planning staff past actions!

The legal bases of a legal lot was that they would support a building permit prior to the time of the adopted county wide zoning plan. So there needs to be acceptable area for a legal lot. Otherwise any size of area of perhaps 10 square feet could be a legal lot if area large enough to support building a home is not the standard.

Next, planning staff have approved legal lot verifications for a property where a public road crosses the property. Where there was a tract of land with a county road easement established, for example in 1905 , the Planning staff would approve that the road now created two legal lots. One legal lot was approved on each side of the road.

This action is in conflict with Oregon Subdivision control law as illustrated in part of a letter to the Board of Commissioners I recently wrote to them, as follows:

“(1) County Planning staff, without doubt, are aware of the recent land use actions surrounding Fire Road that contains information where Lincoln County, just like Lane County, had a codified process to recognize legal lots. The problem comes when Lincoln County applied that process to allow a public road to divide property and to create legal lots on each side of the road!

One has only to read the contents of a Commission Enforcement Order letter dated February 9, 1999 from the Oregon Department of Land Conservation and Development to the Director of Lincoln County Planning Division. The letter provides that “Lincoln County routinely regards a parcel that is divided by a public road as two legal parcels and discrete parcels. ... The petitioner and the department asserted that this practice is unlawful since ORS 92.010(7) (d) clearly provides that “any property divided by sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land,,,” Please see Attachment “H” pages 1 -5 for the letter from DLCD. “

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I urge you to review the letter as noted by the county’s Land Use Hearings Official. It is in the Fire Road File.

I am also supportive of the two motions by Mike Evans as a member of the LMD Task Force for the LMD Division. Briefly, Mr. Evans motions elevate approved legal lot determinations similar to any land use action that requires public notice.

I urge you to set new standards for minimum size of legal lots and immediately stop approval of legal lots on each side of a public or county road created by an easement.

Thanks you. I wish I could provide you with a more detailed letter but I just found out today that Friday is the last day for input from the public.

K. Robert Ezell (retired County surveyor)
2852 Wingate St
Eugene , Or.

LAND PLANNING CONSULTANTS
1071 HARLOW ROAD
SPRINGFIELD OR 97477

Phone 541-726-8523

Date: February 17, 2004

To Steve Hopkins

From: Mike Evans, Land Planning Consultants

RE: Consideration of proposed code revisions for property line adjustments

I will not be able to attend the meeting tonight but would like to forward some brief comments for the Planning Commission's consideration. I support the code amendments as proposed.

I was a member of the LMD Task Force that recommended that the Board adopt code amendments to make property line adjustments a land use decision.

This issue occupied a considerable amount of the task force time. Some members were reluctant to have the County adopt additional regulations which would require more time for approvals and cost landowners more money. Other members felt strongly that property line adjustments were land use decisions that should be noticed to adjacent neighbors.

Ultimately, the large majority if not all of the task force members agreed to forward a recommendation to the Board to provide notice for property line adjustments and to allow landowners to have notice provided for any legal lot determination at the option of the property owner.

Our recommendation was to keep the code revisions simple for the single purpose of providing notice to the neighbors of property line adjustments and providing opportunity for public input.

I have shared this issue with other consultants and attorneys who are generally agreeable to the code revisions so long as they are limited to those currently proposed. I plan to provide testimony at the Board of Commissioners hearing on this matter.

From: Norm_Maxwell@or.blm.gov
 Sent: Wednesday, December 31, 2003 12:14 PM
 To: steve.hopkins@co.lane.or.us
 Subject: Legal Lot/Lot Line adjustment

Steve, Thank you for sending me the draft on legal lot determination. I think we need to focus on the Lane County lot line adjustment as the problem. The legal lot determination is more like a symptom. The definition of a lot line adjustment printed in the draft is pretty straightforward and obvious but we have still had all sorts of creativity when it comes to a LC lot line adjustment. Please include this as input. More WILL follow. Thank you, N

As the new year begins, it is time for the five Lane County commissioners to implement the recommendations of the LC Land Management Division Task Force that were formulated in 02 & 03.

The LMD Task Force was composed of more than a dozen city & county agency officials, developers, realtors & their consultants, as well as private citizens who attended the 13 meetings of the TF.

The #1 recommendation of the task force was to make the Lane County lot line adjustment an official land use decision, subject to notice to, and challenge from impacted adjacent land owners.

The Lane County lot line adjustment has long been abused as a tool to create multiple buildable lots out of one in our rural lands. State law defines a lot line adjustment as "the movement of a (as in one) boundary line, common between two properties." County land use policy may not be less restrictive than Oregon land use law.

There have been two recent major legal opinions rendered concerning lot line adjustments that clearly indicate that Lane policy is in error as to lot line adjustments. One by the state Land Use Board of Appeals (*Warf v Coos County*) which makes it clear that a lot line adjustment process moves ONE line at a time and notifies adjacent land owners, and the second by Oregon's Court of Appeals (*Hammer v Clackamas County*) which amplifies the LUBA opinion and involves the county surveyor signing off on the lot line adjustment as well. I am no lawyer but you can look these cases up on the Oregon LUBA and Court of Appeals web pages and decide for yourself.

The Lane County lot line adjustment is currently an amorphous process that can secretly move a tax lot to where no part of its new position touches any part of its original location. The LLA can simultaneously shrink the lot below existing zoning and is often used to cut off an existing house from the original acreage so a developer can sell the house on a substandard lot and create more building sites on the remaining land.

Surrounding land owners are not currently informed of these lot line adjustments. If you should somehow discover one next door, our Land Management Division will inform you that the process is "preliminary" and can't be challenged. The next stage is "final" and that can't be challenged either. The LMD can and has provided a county staff lawyer to defend the developer's agenda at no charge to the developer.

I personally took on what I considered an illegal development next door to me that involved two Lane County lot line adjustments. Not only did the two "adjustments" clearly violate state law, they even violated Lane land use policy. At the Land Use Board of Appeals, the combined

lawyers of the developer and the county maintained that the fact that I hadn't discovered unnoticed (as in unannounced) land use moves in time as a valid argument. I was amazed that the LUBA panel of three unanimously bought this and other specious reasoning and found for the developer and county.

Oregon's Court of Appeals reversed LUBA's opinion on the first of seven highly questionable aspects in Maxwell v Lane County and remanded it to LUBA who promptly hot potatoed it back to the Lane County hearings official who originally denied and then blessed it. The developer, Lane County and myself all requested the three C of A judges to render opinions on the remaining half dozen issues in Maxwell v Lane County & Developer but they declined to do so.

If we had continued to take one element at a time of Maxwell through the legal system, it could have taken decades and cost me hundreds of thousands of dollars to prosecute. Since I was now in a position of strength, I was able to negotiate with the developer and he reverted the zoning of his holdings back to the original 10 acre minimum and eliminated the worst lot line adjustment so that the lot in question grew from two acres to its original 12 acre configuration.

This aforementioned lot line adjustment was so shaky that the developer tried to insert an intermediate lot line adjustment into the records after he no longer owned the property. Our LMD helped him do it.

The young couple who bought the place refused him permission to tinker with the lines and deed but he did it anyway without telling them. This is hard to believe but I can provide documentation of this if anybody wants to see it.

The point is that Lane County's Land Management Division needs to get in compliance with Oregon land use law. Lane County doesn't have different traffic or drug enforcement "policies" than Oregon. Why then are our land use policies so completely alien to state law? I call upon our Board of County Commissioners to do the right thing and implement a new lot line adjustment policy that defines a lot line adjustment as the movement of ONE common boundary line between two tax lots, subject to notice to, and challenge from adjacent land owners and requiring the signature of the county surveyor.

Norm Maxwell
79550 Fire Road 97451

From: Norm_Maxwell@or.blm.gov
Sent: Thursday, January 08, 2004 11:44 AM
To: kent.howe@co.lane.or.us; Steve.hopkins@co.lane.or.us;
don.hampton@co.lane.or.us
Subject: legal lot ver/lot line adjust

Kent, Upon studying the Draft for Legal Lot Notification, I think we can agree that it should work as long as we adhere strictly to the included definition to Property Line Adjustment: "The relocation of a common property line between two abutting properties."

Obviously, an average person of reasonable intelligence would assume that we are talking about a (one) straight line--the shortest distance between two points. Of course it is obvious that the recent Oregon LUBA and Court of Appeals opinions of Warf v Coos County & Hammer v Clackamas County need to be incorporated into the Lane County lot line adjustment process.

I am not a lawyer but from what I understand of the Warf opinion by LUBA it is clear to me that a property line adjustment moves ONE line at a time and makes it an official land use decision-- as such noticed to, and subject to challenge from, surrounding land owners. The very same three LUBA panelists who heard Maxwell v Lane County & Gorham and blessed the two extremely irregular LC "lot line adjustments" involved in the attempted rezone at the end of Fire Road, completely changed their perspective from Maxwell to Warf.

I remind you that the "property line adjustments" used at the end of Fire Road were so bad that the developer actually inserted an after the fact intermediate property line adjustment on one of the lots after he NO LONGER owned it and against the expressed wishes of the Bryants to whom he has sold the 2 acre remains of the 12 acre original lot. This in 10 acre zoning no less.

Hammer v Clackamas County, to me, amplifies Warf and includes the county surveyor signing off on the proposed "property line adjustment." I hope that we can include these elements into Lane County's interpretation of the property line adjustment. It is clear to my mind that we need to absolutely clarify the property line adjustment before we can successfully make the legal lot verification a land use decision, subject to notice to, and challenge from, citizens of Lane County.

Then, too, we need to ensure that noticing happens automatically to surrounding land owners and is not dependent on the surrounding lot owners applying for the information. The resulting legal lot verification/property line adjustments need to be able to withstand the hard light of day on their own and comply with Oregon land use law. Please respond and tell me if I grasp the LMD's intention on this correctly.

Steve, please file this under input for the Bof CCs et al to examine.

Norm Maxwell

From: Norm_Maxwell@or.blm.gov
Sent: Friday, January 09, 2004 7:40 AM
To: Steve.hopkins@co.lane.or.us
Subject: Fw: LMD TF recommendation re lot line adj

Hi Steve,

I think what we should be after is an official process for lot-line adjustments; recording a deed at the county recorder would no longer be sufficient. This would eliminate later questions concerning the propriety of any lot-line adjustment. I don't think the draft language is very clear. It seems to say that a lot or parcel will cease to be a discrete lot or parcel if a legal lot line adjustment is made, which is nonsensical. I think it would be a very good thing for a lot or parcel to not be recognized as a legal lot or parcel if an illegal lot line adjustment was made. But the language should clearly say so.

Legal Lot. A lawfully created lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided as provided by law.

Does this mean a lawfully created lot or parcel is no longer a lawfully created parcel if a lot line is adjusted as provided by law, but remain a discrete lot or parcel? Does it cease to remain a discrete lot or parcel if a lot line is adjusted as provided by law, legal or otherwise?

Please file this with the other input for the county commissioners et al,
Norm

From: Norm_Maxwell@or.blm.gov
Sent: Tuesday, January 20, 2004 9:53 AM
To: steve.hopkins@co.lane.or.us
Subject: lot line adjustment/legal lot verification

Steve, I have a wonderful idea! When it comes time for planning and the Board of CCs & Planning to hammer out a solution to the Lane Co lot line adjustment/legal lot verification problem, let's use the current WW Jackson Road mess as practical application! It contains lot line adjustment problems, legal lot verification problems & the tired old "road dividing tax lots into two" problem. It would cease to be hypothetical and the Jackson Road problem will have to be fixed anyway. Please submit this in the LMD TF implementation comments file.
Norm

From: Norm_Maxwell@or.blm.gov
Sent: Friday, January 23, 2004 8:01 AM
To: kent.howe@co.lane.or.us; steve.hopkins@co.lane.or.us
Cc: bobby.green@co.lane.or.us; bill.dwyer@co.lane.or.us;
peter.sorenson@co.lane.or.us; anna.morrison@co.lane.or.us;
don.hampton@co.lane.or.us
Subject: LMD TF notification.

Kent, Cheryl Neu was not the only member of the LMD TF who was left out of the loop as to notification of the draft lot line adjustment/legal lot ver draft. I haven't yet heard from Larry Olson yet but I didn't see his name at the head of the list either. Clearly we need to extend the input time after making sure everybody on the TF gets a chance to examine the draft. On a different note, regarding our chat yesterday, I examined Gary Darnielle's "reconsidered" decision on the Fire Road story and as near as I can tell (it is not written in plain English) he doesn't revoke his earlier decision against road dividing one lot into two—rather he insulates the FR instance from "collateral attack." Looking at the definition of collateral attack appended to Mr Ezell's impressive opus:

Collateral Attack. With respect to a judicial proceeding, an attempt to avoid, defeat or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it.....(more follows)

I plan to talk to Anne Davies about this. Anne was not only the original lawyer on the Fire Road case, but she participated in the 99 Lincoln County enforcement action thing cited by Mr Ezell. I think we need to include the road dividing tax lots system in the upcoming CC work session with legal lot verification & lot line adjustment. Norm

From: Norm_Maxwell@or.blm.gov
Sent: Tuesday, January 27, 2004 3:18 PM
To: steve.hopkins@co.lane.or.us
Cc: don.hampton@co.lane.or.us; anna.morrison@co.lane.or.us;
peter.sorenson@co.lane.or.us; bill.dwyer@co.lane.or.us;
bobby.green@co.lane.or.us
Subject: LC lot line adjustment

Steve, Please file this in the LMD TF input for the BofCC work session on 17 FEB 04.

Another aspect of the Lane County "lot line adjustment" that needs to be ironed out is the practice of "legal lots" shrinking to any size desired by the developer. At Fire Road, I had watched one shrink from 12 acres in RR-10 zoning to 2 acres. This was such a bad job that the developer attempted to reach back in history and insert an intermediate LLA to make it all better even though he no longer owned the land. This one is in the LMD TF rec file. The LMD had no business letting that one out of the basement. When a developer starts with a "substandard" lot (say a 7 acre lot in RR-10 zoning). In Lane County this is a license to shrink the lot to any size desired by the developer. There was one that was moved (out Fall Creek way) so that NO part of the lots new, improved position touched any part of its original location and the lot was shrunk to 20 feet by 20 feet. This was a temporary ploy until the developer weathered the opposition and then moved and expanded the lot to its desired specifications. I recommend that NO SUBSTANDARD LOT BE ALLOWED TO SHRINK ANY SMALLER THAN IT ALREADY IS.

Norm Maxwell

March 9, 2000

Mr. Kent Howe, Director
Lane County Land Management Division
Public Service Building
125 E. 8th Ave.
Eugene, OR 97401

Dear Mr. Howe:

Please find the attached Lane County Hearings Official's decision denying the Gorham request (PA 98-1633) for the rezoning of tax lot 905, assessor's map 20-05-22 from RR-10 to RR-5.

Sincerely,


Gary L. Darnielle
Lane County Hearings Official

Gary Darnielle finds AGAINST the Road
dividing one lot into two AND the Lane County
Property line adjustment

**LANE COUNTY HEARINGS OFFICIAL
REQUEST FOR THE REZONING OF TAX LOT 905,
ASSESSOR'S MAP 20-05-22, FROM RR-10 TO RR-5****Application Summary**

Darin Gorham, 4092 Hamshire Lane, Eugene, OR 97404. Tax Lot 905, Assessor's map 20-05-22. Request to rezone the property from Rural Residential 10 (RR-10) to Rural Residential 5 (RR-5).

Parties of Record

Kelly & Roger Booth
Norman Maxwell
Dale Riddle
Caroline Lapegre
Kevin & Lyn Kelley
Larry Reed
Doug Polzinske
Sandi Maxwell
Barbara Dare

Barbara & John Robinson
Darin Gorham
Ron & Marla Norton
Anne Davies
Brent Reed
Steve Cormachia
Dr. Curtin Mitchell
Craig & Cindy Roy

Application History

Hearing Date: January 27, 2000
(Record Held Open Until February 7, 2000)

Decision Date: March 9, 2000

Appeal Deadline

An appeal must be filed on or before **March 20, 2000**, using the appeal form that accompanies this decision. The appeal will be considered by the Lane County Board of Commissioners

Statement of Criteria

OAR 660-04-018(2)
Lane County Rural Comprehensive Plan
Lane Code 16.003
Lane Code 16.252

BEFORE THE HEARINGS OFFICIAL OF LANE COUNTY, OREGON

**Final Order in PA 98-1633
Denying a Rezoning From RR-10 to RR-5**

The Lane County Hearings Official finds as follows:

1. The following application for a change of zone was accepted by the Lane County Land Management Division on December 20, 1999:


Darin Gorham (PA 98-1633)
Tax lot 905, assessor's map 20-05-22 Plot 260B
Request for a change in zoning from RR-10 to RR-5
2. The application was initiated and submitted in accordance with Lane Code 14.050. Timely and sufficient notice of the zone change hearings under Chapter 14 of the Lane Code has been provided.
3. On January 27, 2000 a public hearing on the zone change request was held. The planning department staff notes and recommendation together with the testimony and submittals of persons testifying at the hearing have been considered and are a part of the record of this proceeding.
4. Further consideration has been given to and administrative notice taken of the provisions of the Lane County Rural Comprehensive Plan and all applicable special purpose/functional plans, planning related policies and refinement plans.
5. On the basis of this record, the requested zone change was found to be inconsistent with the applicable criteria set forth in the Lane County Rural Comprehensive Plan, Lane County Board of Commissioner Order 88-2-10-14 and sections 16.231 and 16.252 of the Lane Code. This general finding is supported by the specific findings of fact and the conclusions of law set out in Exhibit A, adopted March 9, 2000, to this order.

NOW, THEREFORE, based upon the above findings and the record in this proceeding, IT IS HEREBY ORDERED THAT:

The application for rezoning is DENIED.

Denial dated this 9th day of March, 2000.

This action will become final and effective on the 10th day following the approval date above.



Gary L. Darnielle
Lane County Hearings Official

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located about 20 miles south of Eugene and 3.5 miles west of the Community of Lorane. The subject property is composed of two lots; one located north of Fire Road that is 13.66 acres in size and one located south of Fire Road that is 18+ acres in size (31.68 total acres). These lots have received legal lot determinations by Lane County, respectively, through PA 99-6015, July 23, 1999; and through PA 99-6352, December 8, 1999. The subject property can also be referred to as tax lot 905(A&B), assessor's map 20-05-22. There are no dwellings on the subject property but it is occupied by a barn and a shop.

The subject property is designated Rural Residential in the Lane County Rural Comprehensive Plan and is currently zoned RR-10 (Rural Residential, 10 acre minimum parcel size) consistent with that designation. It is located within a "developed and committed" exception area (Exception Area 260B). This exception area is not contiguous to any other homogeneous residential exception area. Exception Area 260B is comprised of 103.5 acres within either 13 or 14 legal lots zoned RR-10. If the subject property is considered to be two legal lots, the average parcel size for the exception area would be 7.39 acres. The applicant proposes that the parcels comprising this exception area are as follows:

LOT #	TAX MAP / TAX LOT	ACREAGE	PROPERTY OWNER
1	20-05-22/601	2.00	MARK GORHAM 87900 HUSTON RD VENETA OR. 97487
2	20-05-22/700 ¹	2.49	NORMAN L MAXWELL P.O. BOX 99 LORANE OR. 97451
3	20-05-22/800	0.50	BARBARA A DARE 79604 FIRE RD LORANE OR. 97451
4	20-05-22/900 PA-98-1353	2.00	EUGENE HUMPHREYS P.O. BOX 69 LORANE OR. 97451
5	20-05-22/901A ² PA 98-5447	10.36	BRUCE J MALCOLM 79555 FIRE RD LORANE OR. 97451

¹ Only the 2.49 acres located south of the Chambers logging railroad are zoned RR-10 and are counted within this exception area.

6	20-05-22/901B ³ PA 98-5447	13.00	BRUCE J MALCOLM 79555 FIRE RD LORANE OR. 97451
7	20-05-22/903	5.01	RONALD C NORTON 79567 FIRE RD LORANE OR. 97451
8	20-05-22/904	9.99	JOHN J ROBINSON 79516 FIRE RD LORANE OR. 97451
9	20-05-22/905A ⁴ PA 98-1353 SUBJECT SITE (SOUTH)	18.02	DARIN GORHAM 4092 HAMSHIRE LN EUGENE OR. 97404
10	20-05-22/905B ⁵ PA 99-5417 SUBJECT SITE (NORTH)	13.66	DARIN GORHAM 4092 HAMSHIRE LN EUGENE OR. 97404
11	20-05-22/906	4.84	WYATT D. & A.M. LEDBETTER 79514 FIRE RD LORANE OR. 97451
12	20-05-22/907	7.34	MICHAEL DRESSER 79543 FIRE RD LORANE OR. 97451
13	20-05-22/908	4.29	DOUGLAS PALZINSKI 79541 FIRE RD LORANE OR. 97451
14	20-05-22/1100	10.00	EDWARD WHITE 79563 FIRE RD LORANE OR. 97451

² Partitioned subsequent to the establishment of the exception area through PA 98-5447.

³ Partitioned subsequent to the establishment of the exception area through PA 98-5447.

⁴ Tax lot 905 is considered by the applicant to be comprised to two separate legal lots due to its bifurcation by Fire Road.

⁵ Ibid.

2. The subject property is bordered on west and north by properties zoned Impacted Forest Lands (F-2). Properties to the south and southwest zoned F-1 (Non-Impacted Forest). Properties to the east are zoned RR-10.

More specifically, to the north of the subject parcel is Chambers Logging Rail Road (tax lot #1400) which follows the Siuslaw River. Further to the north is tax lot #600, which is a 19.65-acre site zoned F-2 and occupied with one single family dwelling. This tax lot is sandwiched between tax lot #1400 and Siuslaw River Road. To the east of the subject property are tax lots *#601, #900, #904 and #906. These lots are all developed Rural Residential sites, each having one single family dwelling, and are 2.00 acres, 2.00 acres, 9.99 acres and 4.84 acres in size, respectively.

Tax lot #1101, zoned F-1, is located to the south of the subject property. This parcel has no development on it's on its steep 270 acres. To the west of the subject property are tax lots #500 and #501 (assessor's map 20-05-21) These tax lots are zoned F-2 and border the Siuslaw River. Tax Lot #500 is 20 acres in size and has one single family dwelling. Tax Lot #501 is not developed and is 18.75 acres in size. Neither tax lot 501 nor tax lot 500 are managed for forestry purposes. The predominate major vegetation on tax lot 501 are deciduous trees.

3. The subject property receives fire protection from the Lorane Rural Fire Protection District and police protection from the Lane County Sheriff's Department and Oregon State Police. Electricity is available Lane Electric Coop and U.S. West Communications provides telephone service. The subject property is within Crow-Applegate School District #66. On-site wells and on-site sewage disposal systems are intended to serve the subject property.
4. As stated above, the subject property is divided by Fire Road (County Road No. 834). Fire Road was established as W.W. Hawley Road on April 8, 1918 and appears to have been created from a series of dedicated easements. In 1929, Lane County adopted a resolution to locate a county road along the Siuslaw River. This road, Siuslaw Road (County Road No. 1058) was established in 1930 and, because the two roads are separated by the Siuslaw River and the Chambers Logging Railroad, represents a significant deviation from the alignment of County Road No. 838 in respect to the location of the subject property. Fire Road is about 1.2 miles in length from its junction with Siuslaw Road and Tax Lot 905. Despite the fact the Lane County Assessor's maps show the portion of Fire Road that crosses the Siuslaw River to be vacated, the final Board order establishing Road 1058 did not expressly reserve or vacate any portions of County Road No. 834. Section 100-1222 O.C.L.A provided that when an order approving the establishment of a new road that follows the general alignment of an old road is final, the order will have the effect of vacating all portions of the old road not included within the limits of the new road.
5. The F.E.M.A. floodplain map that is applicable to this rezoning request shows that the northwestern portion of the subject property lies within the 100-year flood hazard area.

Neighbors who testified at the hearing on this matter have suggested that the flood mapping is inaccurate and that a much larger portion of the subject property lies within the flood hazard area. No expert testimony was received as to whether the anecdotal reports of flooding were associated with flood events that were greater or lesser than a 100-year occurrence.

6. Soils on the subject property have been classified by the USDA Natural Resources Conservation Service as follows:

Map Symbol	Soil Name	Agricultural Class	Area in Acres	Percent of Parcel
IA	Abiqua Silty Clay Loam	I	9.21	53.2
96	Newberg Loam	VIe	4.92	28.4
82C	Meda Loam	IIIw	2.85	16.5
104G	Peavine Silty Clay Loam	VI	0.34	2.0

The Abiqua and Meda soil types are characterized by moderate permeability and are suitable for properly designed on-site sanitary sewer disposal systems approved by the County Sanitarian. Three sewage disposal site evaluations have occurred on the subject property on these soils.

7. The subject property is not located within a designated water quality or quantity limited area. Well logs associated with eleven wells located within Section 22 of Township 20, Range 5 were available for review. The review established that the average depth of these wells was over 114 feet and the average yield was 14.6 gallons per minute. The records did not indicate that any well had been deepened due to declining water tables. In June of 1999, a single-well pump test was conducted for eight hours on a well located on tax lot 601. The well was pumped at a rate of 12.5 gallons per minute and resulted in a drawdown of 22.22 feet.⁶ It is estimated that the well could be pumped for .8 hours each day to supply the amount of water necessary for single-family development of the subject property.

Norm Maxwell, owner of tax lot 700, testified that his well was 110 feet deep and though it was tested for a yield of 10 gallons per minute in 1987, it's yield in 1998 was about 5 gallons per minute.

8. Seneca Sawmill Company owns tax lot 1101, assessor's map 20-05-22, adjacent to the subject property on the west. This property is actively managed for forestry purposes. About 400 feet of steep terrain separates the subject property from tax lot 1101. Seneca has no objections to the proposed rezoning provided the applicant signs and records a forest management easement prohibiting legal objections to forest practices and provided

⁶ See July 22, 1999 letter to Darin Gorham from Malia Rusner Kupillas, a hydrogeologist with Pacific-Hydro-Geology, Inc.

that a 100-foot development setback be placed upon that portion of the subject property which is contiguous to tax lot 1101.⁷

9. A 30-foot wide vehicle access easement off of Fire Road serves the subject property and properties to the southeast and west. (See easement documents in Exhibit "I" of the applicant's application.) A survey conducted in February of 2000 indicates that Fire Road has an average width of 20.5 feet and a median width of 20 feet. According to Oregon Department of Transportation guidelines, a width of 20 feet is adequate to serve a local road with an average daily traffic of under 250 vehicles. At its narrowest, it is about 17 feet in width. The survey consisted of 25 measurements, each segment being about 250 feet, beginning at the junction of Siuslaw Road and Fire Road and ending at the southern portion of tax lot 905. Fire Road is adequate for service by fire and medical equipment (vehicles) providing it is maintained to county requirements.⁸

If this rezoning is approved, about 16 parcels could take access off of Fire Road. (The subject property and tax lots 501, to the west, 900 and 904 to the southeast, 906, 907, 901A & B and 903 to the east, and 601 and 700 to the northeast. It can be estimated that about ten daily vehicle trips are associated with a single single-family residence. Thus, about 160 potential daily vehicle trips would use Fire Road if the subject property was rezoned to RR-5 and subdivided.

10. Originally, tax lot 601 was located along the southern perimeter of Chambers Logging Railroad. The portion of tax lot 905 located above Fire Road (905B) was, in turn, located along the southern perimeter of tax lot 601. Tax lot 905B was bounded on the south by Fire Road, on the west by tax lot 501 and on the east by Fire Road. The parcel that was designated tax lot 601 was 10.66 acres in size and the parcel that was designated tax lot 905(B) was 4.9 acres in size. The common lot line between these two parcels was represented by an east-west horizontal boundary. On June 15, 1999, the applicant recorded a lot line adjustment that changed the common boundary line from a horizontal to a vertical declination. Essentially, the common boundary line was pushed to the north, rotated to a north-south alignment and pushed east. Confusion was created when the tax assessor designated the redesignated tax lot 905B as tax lot 601. The result of the property line adjustment was that the parcel that was represented by tax lot 905B was pushed to the north east where it had common boundaries with tax lot 700, on the east, Chambers Logging Railroad, on the north, the parcel that was formerly tax lot 601, on the west, and Fire Road, on the south.
11. Prior to April 30, 1998, tax lot 900 was located south of what is now tax lot 905A. Tax lot 900 was also bordered on the east by tax lot 904, on the south by tax lot 1101 and on the west by tax lot 500. At this time, tax lot 900 was eight acres in size and tax lot 9095A was 17 acres in size. On April 30, 1998, the applicant recorded a lot line adjustment that reduced tax lot 900 to two acres, with the resulting benefit to tax lot 905A, and moved the

⁷ See January 26, 2000 letter from Mr. Dale Riddle, Vice President of Legal Affairs for Seneca Sawmill Company, to "Whom It May Concern."

⁸ See November 23, 1999 letter from Joe Brewer, Lane RFPD Chief, to Jim Griffith & Associates, Inc.

shrunk tax lot northward to where it was surrounded on all but the southeast corner by tax lot 905A. Tax lot 900 is now bordered on the southeast by tax lot 904.

DECISION

THE REQUEST (PA 98-1633) FOR THE REZONING OF TAX LOT 905, ASSESSOR'S MAP 20-05-22, IS DENIED.

Justification for the Decision (Conclusion)

I. STATEWIDE PLANNING GOALS

In implementing Part II of statewide planning Goal 2, Oregon Administrative Rule 660-04-018(2) establishes requirements for zone changes in developed and committed exception areas:

- (2) "For "physically developed" and "irrevocably committed" exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
 - (a) Which are the same as the existing land uses on the exception site; or
 - (b) Which meet the following requirements:
 - (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and
 - (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and
 - (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses."

The applicant argues that OAR 660-04-0018(2) only applies to legislative changes to comprehensive plans or zoning ordinances. The hearings official disagrees. OAR 660-04-0018(2) requires that zone designations authorize a single numeric minimum lot size and that uses, density and public facilities and services be consistent with certain standards. The subject property has a "single numeric" minimum lot size and the applicant is proposing to change that threshold. It follows that the numeric threshold cannot be changed without a supporting analysis of Subsections (2)(a) and (b).

The standards set forth in Subsections (2)(a) and (b) are largely replicated in Lane County Rural Comprehensive Plan Land Use Planning Policy #11. The applicant is proposing residential development, which is consistent with the development of most of the other parcels in Exception Area 260B. The analysis below of Subsections a.i, v. & vii of Land

Use Planning Policy #11 addresses the impact of the proposed zone change on density and public facilities and services.

II. PLAN CONFORMITY

A. **Land Use Planning (Goal 2) Policy #11.** Land use designation and densities appropriate for developed and committed areas shall be determined through compliance with other plan policies and the following criteria:

- a. A Rural Residential designation shall be applied to lands which are devoted to rural housing uses as evaluated by the following criteria:
 - i. existing development pattern and density;
 - ii. on-site sewage disposal suitability, or community sewerage;
 - iii. domestic water supply availability;
 - iv. access;
 - v. public services;
 - vi. lack of natural hazards;
 - vii. effect on resource lands.

I. **Existing Development Pattern and Density:** The subject property is located within "developed and committed" Exception Area 260B. This exception area is not contiguous to any other homogeneous residential exception area. The applicant argues that Exception Area 260B is comprised of 103.5 acres within 14 legal lots zoned RR-10. If the applicant's assumption regarding the number of legal lots is correct, the average parcel size for the exception area would be 7.39 acres.

The Lane County Board of Commissioners Board Order 88-2-10-14 concerning Policy 11 states that minimum parcel size should be determined by assigning the density classification which is closest numerically to the existing average parcel size. Opponents of the proposed rezoning have argued that the average parcel size computed by the applicant, which would otherwise be adequate to satisfy Board Order 88-2-10-14, is based upon inaccurate parcel or legal lot data. These arguments are addressed as follows:

- a. *The applicant erroneously concluded that tax lot 605 was two legal lots by virtue of being divided by Fire Road. Fire Road was vacated in 1930 and therefore any boundaries created by that right-of-way were also vacated.*

The opponents argue that that the establishment of Siuslaw Road creates a presumption that Fire Road was vacated. If the subject property must be considered one legal lot then the average parcel

size in Exception Area 260B would be 7.9 acres and the rezoning would not comply with Board Order 88-2-10-14.

This presumption does not appear to be appropriate as evidence indicates that the Siuslaw Road does not follow the same general alignment of Fire Road. The Board order establishing Siuslaw Road did not explicitly vacate Fire Road despite an indication to the contrary on the Lane County Tax Assessor's maps. Fire Road still appears to be the exclusive access to several properties and is located a significant distance to the south of Siuslaw Road. Indeed, the portion of Fire Road that divides the subject property is separated from Siuslaw Road by the Siuslaw River and the Chambers Logging Railroad. This assessment is shared by a representative of the Lane County Surveyor's Office. Because of the foregoing, it cannot be concluded that, as a matter of law, the establishment of the Siuslaw Road was intended to vacate Fire Road.

- b. *ORS 92.010(7) does not allow a parcel to be legally divided by the intersection of a right-of-way.*

The fact pattern regarding this issue is as follows: Fire Road was created from the dedication of easements to the County in 1918. Shortly thereafter, common law in Oregon was interpreted to hold that a dedicated road did not divide a piece of property into two legal lots. In 1987, the County defined the term "contiguous" in its Code and has since applied this interpretation to its treatment of legal lot status. There is no evidence that this definition appeared in the body of Lane County regulations at an earlier date. Presumably, the applicant purchased the subject property (as it was configured before the various lot line adjustments) as a single unit of land. On November 5, 1991, Section 1, Chapter 763 of Oregon Laws 1991, amended ORS 92.010(7)(d) to provide that the division of property by the sale or grant of property for road purposes did not serve to divide the property into separate legal lots.

The applicant's argument that Fire Road divides tax lot 905 into two legal lots is based upon the following two assumptions: (1) Fire Road has not been vacated; and (2) Lane County regulations, specifically the definition of "contiguous" that appears in Section 16.090 of the Lane Code, permit a road to divide a parcel into legal lots. For the reasons articulated above, the hearing official agrees with the applicant on his first assumption. It is the second assumption that the hearing official finds less convincing.

In a land use context, common law in Oregon holds that "a parcel of land does not lose its unitary character ... by the happenstance of an intersecting boundary line, street or dedicated road."⁹ The theory behind this position was first applied to homestead law in 1924¹⁰ but more recently has been associated with the administration of the Oregon Subdivision Control Law.¹¹

In the present case, the County hangs its interpretive hat on the definition of "contiguous" found in section 16.090 of the Lane Code. This definition, which was adopted in 1987, states that "Tracts of land under the same ownership and which are intervened by a street ... shall not be considered contiguous." It has been the consistent practice of the administrative land use branch of the County to interpret this definition to mean that a parcel under single ownership that is divided by a street or road becomes two legal lots.

A conclusion that a road bisecting a parcel results in the legal division of that parcel of land does not necessarily follow from the Lane Code's definition of "contiguous."¹² That is, there is no citation to legislative history of this code section that explains the reasons or circumstances that led to this definition. There is no guidance about whether there is a distinction between roads that are created through the dedication of easements, reflecting past practice, and roads that are dedicated in fee simple, which is a more prevalent practice today. Nor is there a citation to where the County Board of Commissioners have either expressly or impliedly embraced the current interpretation.

Even if it can be assumed that the LC 16.090 definition of "contiguous" is a clear expression of a legislative policy to allow the creation of legal lots through the bisection by a road easement, the hearings official believes that this policy conflicts with Oregon law regarding the division of parcels. First, it was suggested by the *Emmich* court that common law regarding the division of land by an intersecting road was consistent with the Oregon Subdivision

⁹ *State v. Emmich*, 34 Or App 945, 949 (1978) It should be noted that the *Emmich* court expressly differentiated between a situation where a parcel was separated by a parcel of land in separate ownership and the mere dedication of a road.

¹⁰ *Cabler v. Alexander, Sheriff, et al.*, 111 Or 257, 266-267 (1924). It is interesting to note that the Oregon Supreme Court specifically determined that parcels were "contiguous," for purposes of Oregon homestead law, if they were only separated by a street or alley. *Cabler* at 271.

¹¹ *State v. Emmich*, loc. cit.

¹² See, for instance, *City of Lake Oswego v. Grimm's Fuel Co.*, 34 Or App 67, 71 (1978), where an undeveloped road separating two portions of a quarry did not change the unitary nature of a nonconforming use.

Control Law. Second, it can be strongly argued that common law is embodied within ORS 92.014(1), a provision adopted in 1955¹³ that prohibits the creation of a road for the purposes of partitioning land without approval of applicable local government. Finally, even if ORS 92.010(7)(d) was a codification of existing case law, it operated to truncate any rights that the owner of tax lot 905 may have as those rights were not exercised prior to the 1991 adoption of the statute. That is, there is no evidence in the record that the applicant purchased tax lots 905A and B through separate deeds or that any actions have been taken in reliance upon LC 16.090's definition of "contiguous" until the first lot line adjustment in 1998. The applicant has argued that ORS 92.010(7)(d) is not applicable as the "sale or grant" of property creating Fire Road occurred prior to the operative effective date of ORS 92.010(7)(d). The hearings official believes that ORS 92.010(7)(d) represents a codification of common law and judicial interpretation of the Oregon Subdivision Control Act in regard to the definition of "partition land." In this respect, ORS 92.010(7)(d) can be distinguished from ORS 92.010(7)(a) where, for instance, the existing law was changed by statutory modification. ORS 92.010(7)(d) is similar to ORS 92.010(7)(b) in that both provisions clarify the prior intent of the statutory definition of "partition land."

~~In this respect, the conclusion of the hearings official that tax lots 905A and 905B consist of one legal lot and therefore Exception Area 260B is comprised of 103.5 acres within 13 legal lots with a resulting average parcel size for the exception area of 7.9 acres. This average parcel size does not meet the standard set by the Lane County Board of Commissioners in Board Order 88-2-10-14 which, when applied to this rezoning request, requires an average parcel size of 7.5 acres or smaller to justify a rezoning of the subject property to RR-5.~~

3. *It is possible that the separation of tax lot 600 was separated from tax lot 601 it was not done legally; affecting the legality of tax lot 601 as a parcel.*

Tax lots 600 and 601 are separated by the Chambers Logging Railroad, tax lot 1400, which must be considered to be a parcel because of the restrictions against its use by the public.

¹³ Section 3, Ch. 756 Oregon Laws 1955.

4. *The lot line adjustment between tax lots 900 and 905 was invalid as it created a substandard parcel.*

Tax lots 900 and 905 were created through partition M 163-79 at 8 and 17 acres in size, respectively. Through the lot line adjustment, tax lot 900 was reduced to two acres in size and tax lot 905 was increased in size to 23 acres. These parcels were and continue to be zoned RR-10.

ORS 92.010(11) defines a "property line adjustment" as "the relocation of a common property line between two abutting properties." The opponents, citing the *Goddard* case¹⁴, argue that the lot line adjustment of tax lots 900 and 905 constituted not a property line adjustment but an ~~impossible reconfiguration~~ of the parcels. For the following reason, the hearings official agrees.

In *Goddard*, LUBA focused upon the language of ORS 92.010(11) that refers to the relocation of common property lines between two abutting properties. The purported property line adjustment in *Goddard* was found deficient because the adjustment resulted in the relocation of property lines that were not common to the abutting properties. This is exactly the situation in the present case. Prior to the property line adjustment, tax lot 900 had common property lines with tax lots 905 (north); 904 (east); 1101 (south), and 501 (west). After the adjustment, tax lot 900 no longer shared common boundary lines with tax lots 501 or 1101. Additionally, tax lot 905 now shared common property lines with tax lots 501 and 1101. ~~The property line adjustment of tax lots 900 and 905A represents an illegal lot configuration upon which the requested rezoning is based. The rezoning must be denied upon this basis.~~

An additional issue associated with the challenged lot line adjustment is bothersome. It is County policy that a parcel of conforming lot size may not be reduced to a nonconforming status but there is no limitation on the reduction in the size of an existing nonconforming parcel. Not only does this interpretation present potentially significant problems regarding conformity with Statewide Planning Goal 14 but it also seems to be inconsistent with Section 16.231(6) of the Lane Code. This code section provides that land within rural residential zones shall be designated and adopted on the zoning map as RR-1, RR-2, RR-5 or RR-10. While tax lot 900 was originally substandard for its zoning at RR-10, it was still larger than the next dense zoning district;

¹⁴ *Goddard v. Jackson County*, 35 Or LUBA 1108, 1111 (1998)

RR-5. The lot line adjustment reduced the size of tax lot 900 below this threshold to the level equivalent to RR-2 zoning.

5. *The lot line adjustment between tax lots 601 and 905 is invalid because it created a substandard parcel (tax lot 601) in violation of ORS 92.010(7)(b).*

Originally, tax lot 601 was located along the southern perimeter of Chambers Logging Railroad and contained 12.13 acres. The portion of tax lot 905 located above Fire Road (905B) was, in turn, located along the southern perimeter of tax lot 601, and contained 4.9 acres. The common lot line between these two lots was represented by an east-west horizontal boundary.

On June 15, 1999, the applicant recorded a property line adjustment that changed the common boundary line from a horizontal to a vertical declination. Essentially, the common boundary line was pushed to the north, rotated to a north-south alignment and pushed east. Confusion was created when the tax assessor designated the reconfigured parcel, previously designated as tax lot 905B, as tax lot 601. This property line adjustment reduced the parcel that was 905(B) to two acres in size. The parcel that was tax lot 601 was increased to 13.66 acres in size.

For the reasons discussed in 4. above, the Hearings Official finds that the property line adjustment, as approved, constitutes an ~~illegal reconfiguration~~ of the lots that were originally represented by tax lots 601 and 905B. In this case, as it was with tax lots 900 and 905A, the adjustment resulted in the relocation of property lines that were not common to the abutting properties. The single property line adjustment resulted in shrinking the parcel represented by tax lot 905B and moving it wholesale about 300 feet to the northeast. In its new location, tax lot 905B had lost all contiguity to its previous geographical position.

The property line adjustment of tax lots 601 and 905B represents an ~~illegal tax configuration~~ upon which the requested rezoning is based. The rezoning must be denied upon this basis.

6. *The applicant erroneously counted the southern portion of tax lot 700 in the computation of the average parcel size in the exception area. In addition, the applicant has relied upon lots that were illegally created.*

Tax lot 700 is divided by the Chambers Logging Railroad, tax lot 1400. The northern portion of tax lot 700 is zoned F-2 and is located outside of Exception Area 260B. Board Order 88-2-10-14 requires that only residentially-zoned parcels within an exception area be factored into the average parcel size formula.

As concluded above, the proposed rezoning is not consistent with the density requirements of Board Order 88-2-10-14 nor does it reflect the actual configuration of its component legal lots. For these reasons, the rezoning request must be denied.

2. **On-Site Sewage Disposal Suitability or Community Sewerage:** Community sewerage is not available to the dwellings within the subject exception area. Over 81 percent of the soils on the subject property have been classified as either Abiqua Silty Clay Loam or Newberg Loam, which are characterized by moderate permeability and are suitable for properly designed on-site sanitary sewer disposal systems approved by the County Sanitarian.
3. **Domestic Water Supply Availability:** The subject property does not lie within a designated water quantity or quality limited area. The applicant submitted records from the Oregon State Water Resources Department regarding the wells within the vicinity of the subject property. An analysis of 11 logs of wells in the vicinity, which included the pump test conducted on tax lot 601, is a strong indication that the groundwater in the vicinity is adequate to support build-out of the subject property at RR-5 zoning. Specifically, this conclusion is based upon an average yield of 14.6 gallons per minute shown by the well logs and a pump test yield of 25 gallons per minute. The well logs did not indicate that any of the wells had to be deepened because of a significant deficiency in the capacity of the aquifer.

The yield of wells may be affected by the decline of a groundwater table due to increased usage. The yield may also be affected by normal or excessive use of a well which may limit the efficiency of a well. Neither circumstance, however, is an indication as to whether an aquifer has sufficient capacity to support a proposed rezoning. Well logs that indicate average yields substantially in excess of that minimally required to support residential usage (generally considered to be between three and five gallons per minute) are a better indication that the capacity of the aquifer will support an additional six dwellings allowed by the proposed zoning.¹⁵

¹⁵ The applicant has warranted that subject property will not be developed with duplexes if this rezoning request is approved.

4. **Access:** The subject property fronts Fire Road, a County road with an average improved width of 20 feet. The subject property, as well as properties to the southeast and west, are served by a 30-foot wide vehicle access easement off of Fire Road. According to Oregon Department of Transportation guidelines, this width is adequate to serve a local road with an average daily traffic of under 250 vehicles. Assuming Fire Road would be used as access for the subject property after rezoning (six parcels) and all other contiguous rural residentially-zoned parcels, there could be estimated about 160 vehicles per day on the road. It appears that Fire Road is generally wide enough to support existing development and the development implications of rezoning the subject property.
 5. **Public Services:** The subject property has a complete range of rural services appropriate for a rural residential area. The exception area will not change in a manner that would place an increased demand on public services, and no evidence was introduced showing a change in service availability in the area. The proposal meets this criterion.
 6. **Lack of Natural Hazards:** The flood plain of the Siuslaw River impacts the subject property. As a matter of practicality, the flood plain may restrict the location of future development on the subject property but development could be allowed through a special use permit process where structures are built one foot above the flood hazard elevation.
 7. **Effect on Resource Lands:** The subject property is bordered on the south by commercial timberland zoned F-1 and on the west and north, across the Chambers Logging Railroad, by property zoned F-2. Steep slopes provide a significant buffer between development on the subject property and the parcels to the south and west. In addition, the applicant has agreed to a 100-foot building setback along the southern perimeter of the subject property.
- B. **Water Resources Policies #3 and #5:** These policies state that the adequacy of groundwater supply is a major issue in planning actions before the Hearings Official and that land use designations shall be commensurate with groundwater aquifer capacities. The evidence submitted shows that the subject property is not located within an area designated as water quantity limited and that wells in the area have yields significantly above that which is considered minimal for residential development.
- C. **Public Facilities and Services Policy #6e:** The subject parcel will receive the appropriate service levels for schools, on-site sewage disposal, water supply, electrical service, telephone service, fire and police protection and access to a solid waste disposal facility for rural residentially-zoned properties located outside of a community designation.

III. ZONE CONFORMITY

Lane Code 16.252(2) establishes the basic requirements for the proposed rezoning. This code provision requires that rezoning be consistent with the general purposes of Chapter 16, not be contrary to public interest, and be consistent with the purposes of the proposed zoning classifications and the Lane County Rural Comprehensive Plan elements

(2) Lane Code 16.003 Lane Code 16.003 sets out the following purposes of Chapter 16 of the Lane Code that are relevant to this zone change request:

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

Land Use Policy 11 of the Rural Comprehensive Plan is intended to identify the appropriate criteria to be reviewed under this statement. The proposed rezone will have little additional impact on the surrounding area. Six homes would be permitted by the proposed rezoning. The proposed zoning conforms to the existing pattern of development and is consistent with the character and physical limitations of the land. The County has further determined that development in the rural areas can best be accommodated when in it occurs within the exception areas. Thus, the application is consistent with this criterion.

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

The subject property is presently zoned RR-10 and is contiguous on two sides with similarly zoned and developed parcels. The nearest resource-zoned parcels; tax lot 501 to the west, tax lot 500 to the southwest, and tax lot 1101, to the south, are buffered by the steep slopes of the subject property. Tax lot 1101 is the only adjacent parcel upon which commercial forestry practices occur and the subject property does not rely upon the same access road as this parcel. Deed restrictions that incorporate development setbacks can mitigate any negative residentially-related impacts to forestry practices on the adjacent parcels. It is on this basis that the hearings official concludes that the proposed rezoning will not convert existing farm or forest lands to non-resource use nor will it adversely affect existing farm or forest land in the vicinity.

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

Public services, including electric service, police and fire protection, and school services are already available to the site and will serve the rezoning. This level of service is consistent with that prescribed by Public Facilities and Services Policy 6.e. for rural residentially zoned property located outside of Rural Communities. Infill on the parcel, consistent with surrounding development, will promote the efficient use of the existing public services and facilities.

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

The property is adequately served Fire Road, a local County road. Fire Road appears to be wide enough to serve existing development and build out of the subject property if this rezoning is approved.

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

The flood plain for the Siuslaw River encroaches on the subject property. Development in this area must receive special use permit approval.

- (6) **Conserve open space and protect historic, cultural and scenic resources.**

Public access to the Siuslaw River will not be impacted by the proposed development. No historic, cultural or scenic resources are known to exist on the property.

- B. **Public Interest** The standard expressed by Lane Code 16.252(2) is that the rezoning not be contrary to the public interest. The public interest is not clearly defined but can be inferred from the zoning of the subject property and the impact of the proposed rezoning. The subject property is zoned rural residential and the proposed rezoning is consistent with this zoning. The standards imposed by Land Use Planning (Goal 2), Policy #11 measure the compatibility of the proposed rezoning with surrounding land uses but is not consistent with the existing residential parcel density within Exception Area 260B. The Hearings Official has concluded, after applying this policy, that the proposed rezoning will be compatible with surrounding land uses. One can also argue that there is a public interest in compliance with State law. In this respect, the Hearings Official finds that the rezoning, as proposed, is contrary to the public interest.

- C. **Lane Code 16.231(1)** Lane Code 16.231(1) states that the purpose of the RR District, which includes the proposed RR-2 zoning, is to provide opportunities for people to live in a rural area, to allow primary and secondary residential uses, to implement the policies of the Rural Comprehensive Plan, particularly in regards to residential development, and to provide protective measures for riparian vegetation along Class I streams. The proposed zoning does promote residential use within a rural area committed to non-resource use. Conformity with the Rural Comprehensive Plan has been discussed above. The subject property is adjacent to a Class I stream and the setback requirements of the Rural Residential District will control. As a result, the proposed rezoning is not consistent with the purposes of Lane Code section 16.231(1) due to failure to satisfy the standards of Land Use Planning Policy #11 of the Rural Comprehensive Plan.

Conclusion

The applicant has not demonstrated by a preponderance of evidence that the standards applicable to this rezoning request have been met.

Respectfully Submitted,



Gary Darnielle
Lane County Hearings Official



15 11 7241143 BUSINESS 10
Developers?

MAR 20 2000



APPLICATION FOR AN APPEAL OF A
DECISION BY THE HEARINGS OFFICIAL
(Thoroughly Complete by Typing or Printing)

Public Works
LAND MANAGEMENT DIVISION

1. Name of Appellant KENT HOWE/PLANNING DIRECTOR Phone 682-3734

Mailing Address PSB/LMD 125 E 8TH EUGENE OR 97401
(Street) (State) (Zip)

Appellant's Representative _____ Phone _____

Mailing Address _____
(Street) (State) (Zip)

2. Attach a copy of the decision being appealed. The Dept. File No. for the decision being appealed is: PA 98-1633

3. Attach check(s) for \$2,450 covering the appeal fees, payable to Lane County. (SEE REVERSE SIDE FOR IMPORTANT FEE INFORMATION)

4. The deadline date by which this appeal must be submitted to and received by the Lane County Land Management Division is: 3-20-00. (This deadline date stated in Hearings Official decision.)

5. Check one of the boxes below to identify your party status with the right to appeal the Hearings Official decision:

- a. I am the owner or contract purchaser of the subject property;
- b. I am the applicant for the subject application;
- c. I made an 'appearance' in the proceeding by submitting oral or written testimony into the record. (An appearance does not include a name or address on a petition.)

6. Attach to this form a written explanation that addresses each of the following, three standards:

- 1. An explanation of the reasons why you believe the decision of the Hearings Official was in error or why you believe the Hearings Official should reconsider the decision;
- 2. an identification of one or more of the following general reasons for the appeal or request for reconsideration:
 - (a) The Hearings Official exceeded his or her jurisdiction;
 - (b) The Hearings Official failed to follow the procedure applicable to the matter;
 - (c) The Hearings Official rendered a decision that is unconstitutional;
 - (d) The Hearings Official misinterpreted the Lane Code or Manual, State Law or other applicable criteria; or
 - (e) The Hearings Official should reconsider the decision in order to allow the submittal of additional evidence not available in the record and addressing compliance with the applicable standards or criteria; and
- 3. Detailed information in support of your explanations.

Your appeal shall be rejected by the Director if it does not include all required fees and the above mentioned formation.

Kent Howe

3-20-00

REQUEST FOR RECONSIDERATION

DATE: March 20, 2000
TO: Gary Darnielle, Lane County Hearings Official
FROM: Kent Howe, Planning Director
SUBJECT: Decision on PA98-1633

The Planning Director respectfully requests the Hearings Official reconsider the decision on the rezoning of tax lot 905, Assessor's Map 20-05-22, from RR-10 to RR-5 (PA98-1633).

The basis for the request for reconsideration pursuant to LC14.535 relates to 4 issues identified as follows:

Issue No. 1, Justification for the Decision, II. A.1.b. *ORS 92010(7) does not allow a parcel to be legally divided by the intersection of a right-of-way.*

Fire Lane Road (Co. Rd. #834) was established as County Road in 1918 (Commissioner's Journal, Reel 15, page 366) and is in Lane County ownership. Lane Code Ch. 16.090 defines "contiguous" as "tracts of land under the same ownership and which are intervened by a street... shall not be considered contiguous." It is administrative policy to interpret this to mean that a parcel under single ownership that is divided by intervening County or public ownership divides the property into two separate legal lots. Applying a different logic would be counter to long established County policy.

County policy states that any road dedicated after the effective date of ORS 92.010(7)(d) is not recognized as dividing parcels into separate legal lots.

Issue No. 2, Justification for the Decision, II. A.3. *It is possible that when the separation of tax lot 600 was separated from tax lot 601 it was not done legally; affecting the legality of a tax lot 601 as a parcel.*

Tax lots 600 and 601 are separated by an intervening ownership (taxlot 1400, aka Chambers Railroad) which is a fee simple ownership. Therefore, the intervening ownership of the railroad property divides tax lots 600 and 601 into two separate legal lots, (PA 1525-91).

Issue No. 3, Justification for the Decision, II. 4. *The lot line adjustment between tax lots 900 and 905 was invalid as it created a substandard parcel. Goddard case.*

A legal lot determination was conducted on the property line adjustment (PA1353-98) which was noticed to surrounding properties as a land use decision providing an opportunity for a public

hearing. Therefore, this application has met the requirements set out in the case law requiring notice of a land use decision.

Issue No. 4, Justification for the Decision, II. 4. *The lot line adjustment between tax lots 900 and 905 was invalid as it created a substandard parcel. Reduction of pre-existing substandard parcel size.*

It is County policy that there is no limitation on the reduction in the size of an existing nonconforming parcel. Most of the residential zones in Lane County are zoned RR-5. It is common for a property line to be adjusted along a substandard 3 acre property with a neighboring 1/2 acre substandard property to create two 1 3/4 acre properties, both of which are substandard. Lane Code Ch. 16.231(6) is relevant to the creation of new parcels as established in a partition or subdivision. This application deals only with a property line adjustment between two pre-existing substandard legal lots.

There may be direction provided in the proposed Rural Residential Rule as to how Goal 14 might be addressed in this circumstance. The Draft Rule currently proposes an "urban floor" for parcels less than 2 acres in size. This application does not adjust properties below 2 acres in size. Since there are no issues of carrying capacity (e.g., sewage disposal system, etc.) it appears the property line adjustment allows the adjustment of a property line of a parcel that is not urban.

We appreciate your reconsideration in advance. Please inform us of your process to supplement these arguments, if needed.

FAX

Darin Gorham
Darin Gorham Realty
4092 Hampshire Ln.
Eugene, OR 97404
541-688-2208
(FAX 688-2208)

TO: Jerry Rendall

OF PAGES: 1 (including cover sheet)

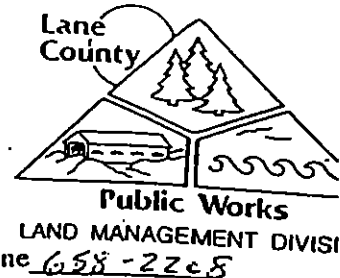
I hereby extend the statutory
timelines for PA 98-1633 as required
by law. The intent above is
to allow time as needed for
reconsideration of denied application
PA - 98-1633. Reconsideration was
requested on 3/20/00

Sincerely,

Darin Gorham

Today's Date Darin Gorham
3/20/00 TG

**APPLICATION FOR AN APPEAL OF A
DECISION BY THE HEARINGS OFFICIAL**
(Thoroughly Complete by Typing or Printing)



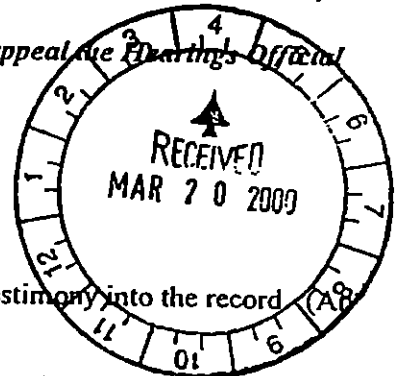
Phone 658-2208

1. Name of Appellant Darin Coorham
 Mailing Address 4092 Hampshire LN Eugene, OR 97404
 (Street) (State) (Zip)
 Appellant's Representative Darin Coorham & Steve Lornachia Phone 658-2208
 Mailing Address 4092 Hampshire LN Eugene, OR 97404
 (Street) (State) (Zip)

2. Attach a copy of the decision being appealed. The Dept. File No. for the decision being appealed is: PA 98-1633
 3. Attach check(s) for \$2,450 covering the appeal fees, payable to Lane County. (SEE REVERSE SIDE FOR IMPORTANT FEE INFORMATION)
 4. The deadline date by which this appeal must be submitted to and received by the Lane County Land Management Division is: March 20, 2000. (This deadline date stated in Hearings Official decision.)

5. Check one of the boxes below to identify your party status with the right to appeal the Hearings Official decision:

- a. I am the owner or contract purchaser of the subject property;
- b. I am the applicant for the subject application;
- c. I made an 'appearance' in the proceeding by submitting oral or written testimony into the record (appearance does not include a name or address on a petition.)



6. Attach to this form a written explanation that addresses each of the following, three standards:

1. An explanation of the reasons why you believe the decision of the Hearings Official was in error or why you believe the Hearings Official should reconsider the decision;
2. an identification of one or more of the following general reasons for the appeal or request for reconsideration:
 - (a) The Hearings Official exceeded his or her jurisdiction;
 - (b) The Hearings Official failed to follow the procedure applicable to the matter;
 - (c) The Hearings Official rendered a decision that is unconstitutional;
 - (d) The Hearings Official misinterpreted the Lane Code or Manual, State Law or other applicable criteria; or
 - (e) The Hearings Official should reconsider the decision in order to allow the submittal of additional evidence not available in the record and addressing compliance with the applicable standards or criteria; and
3. Detailed information in support of your explanations.

Your appeal shall be rejected by the Director if it does not include all required fees and the above mentioned information.

Darin Coorham
 Signature of Appellant or Appellant's Representative

March 20th, 2000
 Date

Reconsideration Request For PA 98-1633

Re: Gorham Zone Change from RR10 to RR5

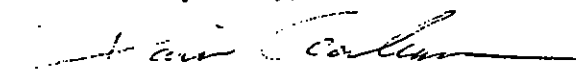
Mr. Gary Darnielle, Hearings Official
Lane County Land Management Division
Public Service Building
125 East 8th Avenue
Eugene, Oregon 97401

Dear Mr. Darnielle:

We ask for reconsideration for the following reasons.

1. We feel you've misinterpreted Lane County Policy and State Law regarding the division of land through bisection of a road.
2. We feel you've misinterpreted Lane County Policy and State Law in respect to Property Line Adjustments.
3. We feel we've adequately addressed Land Use Policy #11 of the Rural Comprehensive plan at the hearing and within the application.
4. The property Line Adjustment which resulted in the 2 acre parcel between tax lots 900 & 905 was part of an approved "land use decision" to partition the other adjusted parcel 23.18 acres and notice was given to surrounding property owners. Under these circumstances we feel the decision violates State law.
5. All prior actions relating to property line adjustments and roads dividing legal lots have been done in conformance with current and historical county policy. A reconsideration is necessary to further review the validity of these county practices and procedures.

Respectfully,



Darin Gorham

Facsimile Transmittal

**GLEAVES
SWEARINGEN
LARSEN
POTTER
SCOTT
& SMITH LLP**

975 Oak Street, Suite 800
Eugene, OR 97401
Phone: (541) 686-8833
Fax: (541) 345-2034

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	Harry Taylor	935-4918	Joe Leahy	746-4109
	Steve Comacchia	344-2025	Dave Pedersen	485-5624
	Boyd Steele	485-0307	Tom Miller	746-3936
	Al Johnson	687-1021	Dan Baker	345-9587
	Jim McLaughlin	682-4882	Doug DuPriest	
	Steve Vorhes	682-3803	Liam Sherlock	343-8693
	Don Nickell		Tim Fassbender	344-9923
	Kent Howe		Bill Kloos	343-8702
	Thom Lanfear	682-3947	Lary Reed	485-2550
	Robert Ezell		Dale Riddle	689-6509

From: Michael E. Farthing **Pages:** 8
Date: May 11, 2000 **C/M #:**

If you do not receive all pages, please call Susie Staats at 541-686-8833.

• Message:

This meeting demonstrates that the LC LMD & others have been aware that there are serious deviations between Lane Land Use Code & Oregon Law for at least 4 years

County, state laws should agree

The time will soon be here for our five Lane County commissioners to implement the Land Management Division task force's recommendation regarding the Lane County property line adjustment. While Lane County has no policies differing greatly from Oregon law regarding traffic, illegal drugs or child abuse, for some reason, when it comes to land use issues, county policy deviates widely from state law and county officials fight to keep it that way.

Oregon land use law says that a "property line adjustment means the relocation of a common property line between two abutting properties." Simple enough. In Lane County, property line adjustments are routinely used by developers and their consultants with assistance from our Land Management Division to create entirely new tax lots so developers can make money and the division rakes in fees. One hand washes the other.

I was completely ignorant of this property line adjustment nonsense until four years ago, when the Land Management Division/developer complex tried to smoke one past me next door using two of these adjustments that not only defied Oregon law, but Lane County land use policy as well. The county provided a staff lawyer to defend the developer's agenda and fought me all the way to Oregon's Court of Appeals before I won.

I call upon our county commissioners to bring the long-abused Lane County property line adjustment into compliance with Oregon law.

NORM MAXWELL
Lorane

MEMORANDUM

TO: Interested Persons

FROM: Legal Lot/Property Line Adjustment Review Committee

DATED: May 10, 2000

RE: Draft Outline of Ordinance Establishing Process and Criteria for Review and Approval of Property Line Adjustments and Recognition of Legal Lots

The Committee has scheduled a meeting on Thursday, May 18, 2000, to receive comments and recommendations regarding an outline of the major features of an ordinance that would establish a legal lot and property line adjustment procedure. Enclosed are those two outlines which we ask that you review and, in particular, test against real life situations that you might have encountered.

One of the primary objectives of the group was to codify existing Lane County processes and interpretations. To the extent possible, the group did not establish new policies or procedures, but when those arose, an attempt was made to highlight them for subsequent review. While we encourage comments and recommendations, we are cognizant of the recent Gorham case which is presently pending before both the Hearings Official on reconsideration and which eventually could go to the Board of Commissioners. While there are elements of the Gorham case that are inconsistent with the Committee's recommendations, it is not the intent of the Committee to try to incorporate or even consider the Hearings Official's decision in Gorham except in the context of the enclosed recommendations. In other words, we do not want to use the Committee's work and the May 18 meeting as a forum to debate Gorham. It is on a separate track and will be decided by the Hearings Official and perhaps the Board of Commissioners.

We look forward to your attendance and feedback. There is a possibility that we will move the meeting from the Gleaves Swearingen conference room on the 8th floor of the Citizens Building to a meeting room at the Town Club on the 9th floor. Since we are not sure how many people will attend, it would be appreciated if you could fax an RSVP before Friday, May 12, 2000. My fax number is 345-2034. Again, we look forward to your participation and comments.

LEGAL LOTS

Section 1 - LANE CODE REQUIREMENTS FOR REVIEW OF LEGAL LOT STATUS

LEGAL LOT VERIFICATIONS WILL BE REQUIRED FOR:

- All Lane Code uses that specify legal lot status as a requirement for the use
- Rezones/ plan amendments - Requiring a legal lot verification prior to any Plan or Zone change would avoid the creation of split-zoned parcels
- Land divisions – a requirement for legal lot verification prior to submittal of a request for a land division will assure that only complete parcels are divided and eliminate some unnecessary applications when more than one legal lot is discovered

LEGAL LOT VERIFICATION NOT REQUIRED FOR UNALTERED: - any alteration of the boundaries that have occurred would require review to assure that legal lot status has been retained. Verification of legal lot status available at landowners request.

- Subdivision lots – legal lots by definition no review necessary
- Partition parcels – legal lots by definition, no review necessary
- Minor subdivision lots from 5/2/1962 to 3/26/75 - legal lots by definition, no review necessary
- previously determined FINAL legal lots after adoption of revised Lane Code – This provision would assure that a final legal lot verification would remain valid unless that parcel configuration is changed.
- Prior "preliminary" legal lot verifications that received final approval through a valid Building Permit or other approval – This would finalize the older legal lot verification that have been acted upon to construct dwellings

EXCEPTIONS TO LEGAL LOT REQUIREMENTS

- Replacement of an existing home constructed with a valid Building Permit or constructed prior to Building Code or availability of records – this provision would eliminate the review of legal lot status for replacement of a residence in the Residential Zone. This would make the Residential Zone function similarly to the Resource Zones (F-2, EFU) for replacement dwellings that allow replacement of a lawfully established dwelling regardless of legal lot status.

PROPOSED CHANGES (to Existing Lane Code)

- Remove legal lot requirement for Temporary hardship mobile home – the requirement for legal lot status appears unnecessary for TMH as they are temporary in nature, accessory to the existing residence and must be renewed every two years
- Require owners' signature or authorization on application for Legal Lot Verification – this provision would conform to the requirements for all other land use applications.

- Create new Lane Code section for Legal Lot Verifications (Chapter 13 or 16) – For ease of administration and understanding, these provisions should be developed in one organized location rather than be spread throughout the Lane Code.
- Thorough review of linkages within Lane Code 13, 14, 16 – Review of the existing provisions must occur to assure there are no conflicts
- Definition of legal lot – There needs to be a section on the processes and types of documents that create legal lots, see below
- Definition of “preliminary” – The purpose and procedure for the obtaining of a “preliminary” legal lot verification must be codified

Section 2 –NOTICE REQUIREMENTS

MINISTERIAL DECISIONS (No notice required):

- One deed and one legal description – This would be a clear determination based upon the date of creation. Process for appeal of a denial must be placed into the Lane Code
- First deed before zoning/ partition laws (unaltered); creation of less than 4 parcels – these are deeds written prior to any land use provisions or land division ordinances
- Resource zoned parcel of 38 acres or more created from March 26, 1975 to August 31, 1978 – specific exemption to partition requirements was in place at this time
- Circuit court decrees from Oct. 5, 1973 to Oct. 4 1977 (unaltered) - specific exemption to partition requirements was in place at this time

DISCRETIONARY DECISIONS (requiring notice per L.C 14.100)

- All other legal lot verifications – This will require notice and opportunity for appeal to the surrounding land owners and conform to statutes governing land use decisions

PROCESS OPTIONS FOR THE DISCRETIONARY DECISIONS – A variety of process options could be accommodated within the Lane Code

- Preliminary decision ONLY (delay notice of final decision until future date) – a landowner may choose to have the research into legal lot status performed only. No notice would be sent to surrounding landowners.
- Final decision with notice (for previously made preliminary decision) -- This would allow the finalization of prior preliminary legal lot verifications
- Final decision with notice immediately – This would be the standard process for legal lot verifications
- Notice of final decision included with concurrent land use decision – Special use permits that require legal lot status as a standard could incorporate the legal lot verification into the notice of decision.

Section 3 DEFINITIONS

Creation of legal lot definitions section that specifies the policies for review of legal lot status:

- roads dividing property – public & County - a clear provision specifying the circumstances under which County and public roads divide property

- remainders - parcels that result from the creation of a legal lot out of a portion of the parent parcel, are legal lots although no deed description exists for the exact remaining configuration
- Date of creation - defined as the date of the signing or recording of the first legal description of a parcel or becoming a remainder
- Prior legal lot verifications issued without "preliminary" disclaimer
- Trust deeds mortgage foreclosures - foreclosure on the original deed that created the parcel
- Circuit court - Oct.3, 1973 - Oct 4, 1977
- Resource divisions - Resource zoned parcel of 38 acres or more created from March 26, 1975 to August 31, 1978 - specific exemption to partition requirements were in place at this time
- Also's & And's - definition of how these phrases within deeds are to be viewed in a legal lot verification - not legal lots unless they describe non-contiguous parcels
- Government lots - definition of how these lots are to be viewed in the legal lot context - separate legal lots if the Government lot is listed individually on a deed, or multiple non-contiguous Government lots are listed
- Parcels within old partitions - definition of County policy with regards to prior legal lots within existing partitions: old parcels can be recognized provided all parcels created during the later partition continue to comply with applicable minimum parcel sizes
- Donation Land Claims - considered legal lots
- Patents - considered legal lots
- Meandered Streams - separates parcels when stream bed ownership is claimed by State:
 - Tidewaters - 1996 Tidal Influence Creeks
 - Navigable Streams - identified by Court Cases
 - Meandered Streams - identified on GLO Plat Map 1851 - 1910
 - Meandered Lakes - identified on list of meandered lakes
- Tidewaters
- Adverse Possession - recognize Court Decision (Judgement of Possession) as a property line adjustment; must comply with minimum parcel size requirements in effect on date of original possession
- Federal lots - parcels created by the sale of Federal Lands by the Federal Government would be recognized as legal lots; not applicable to exchanges
- Legal lots recognized by virtue of recent Court decisions and LUBA opinions

POLICY ISSUES FOR BCC

- Is a legal lot verification required prior to a Plan Amendment/Zone Change
- Identification of Lane Code provisions that require legal lot verifications

PROPERTY LINE ADJUSTMENTS

County approval will be required for Complex Property Line Adjustments. The review process will occur in two-steps (similar to partitioning): a preliminary and a final. The legal lot status will not be determined at this time. A disclaimer will state that this is only a property line adjustment approval and not a legal lot verification. If the owner/owners want to determine a legal lot status (for ex. building permit, partition, subdivision, and zone change) then application can be made for a combination legal lot/ property line adjustment.

Section 1: TYPES OF PROPERTY LINE ADJUSTMENTS Property Line Adjustments fall into two categories: simple & complex.

SIMPLE PROPERTY LINE ADJUSTMENTS (No County Approval Required)

To be considered a simple property line adjustment, the proposal must comply with all the following criteria:

- a) No more than 2 units of land may be involved (use ORS 92.010(11) definition of property line adjustment: "relocation of a common property line between two abutting properties") – proposals that adhere to the statutory definition of property line adjustment are not regulated by the County.
- b) Both resulting parcels shall >10 acres and meet or exceed the minimum parcel zoning requirement; except existing substandard size resource zoned parcels – The ten acres is an arbitrary threshold. There are issues that arise when moving lines in parcels that are smaller in size
- c) Both parcels shall be within the same zoning district or have same Plan designations – if different zone boundaries are involved, then review is required, with the exception of Exclusive Farm Use Zones and Forest Zones
- d) Parcels with existing frontage on a public road must contain, after revision, an existing or approved physical access approach onto the public road. Legal access must be maintained.
- e) The revised line must not cause a violation of structural setback requirements of zone
- f) No dwellings or guest houses shall be moved from one parcel to another. Property line adjustments must not be used to develop vacant lands unless the requirements of the zoning designations are met.
- g) No conforming sized parcel shall be reduced to a size below the minimum acreage requirement of the applicable zoning district.
- h) A survey is required for all resulting parcels less than 10 acres in size per ORS 92.
- i) A property line adjustment document and, if appropriate, a conveyance deed must be recorded.

COMPLEX PROPERTY LINE ADJUSTMENTS (Requires County Approval)

Complex property line adjustments are all other property line adjustments

Section 2: PROPERTY LINE ADJUSTMENTS NOTICE REQUIREMENTS

Simple property line adjustments do not require County review and approval.

Complex property line adjustments require notice per Lane Code 14.100. These adjustments will be reviewed and processed as land use decisions.

Section 3: PROPERTY LINE ADJUSTMENTS REVIEW PROCEDURES

The following procedure shall be followed for complex property line adjustment:

PRELIMINARY SUBMITTAL – This process is similar to the one used for review of subdivisions and partitions.

The owners must submit either an 8.5 inch by 11 inch or 11 inch by 17 inch map and additional documentation that shows the following information:

- a) A description of both existing parcels
- b) Old property line
- c) New property line
- d) Zoning
- e) All buildings and other improvements including (but not limited to) roads, drainfields, wells, out buildings, and other improvements
- f) Legal and physical access into the parcels including road easements
- g) The approximate acreage of both parcels must be shown (before and after the adjustment)
- h) Owners of both parcels
- i) The map should be prepared by one of the owners or authorized agents
- j) General land use application plus fees

The Code would identify that the above requirements would be identified on a standard application form by the Department

FINAL SUBMITTAL

The owners/ owners must submit the following:

- a) A map prepared by a registered professional land surveyor consisting of
 - the final filed survey map (CSF#) or
 - If no survey is required, a map will be submitted to show the new boundary locations; (The map shall contain the elements similar to, but not exactly as, those required for a partition)
- b) The recorded property line adjustment deed, and, if applicable, conveyance deed on standardized form (ORS 92.190(4));
- c) General land use application plus fees

COMBINATION LEGAL LOT VERIFICATIONS/ PROPERTY LINE ADJUSTMENTS

Legal Lot Verifications may be combined with a Property Line Adjustment Review. Review and notice shall occur as required under each appropriate section but are combined into one procedure

Section 4: COMPLEX PROPERTY LINE ADJUSTMENT REVIEW CRITERIA

Complex Property Line adjustments shall meet the following review criteria of Lane Code 13.050 (as revised appropriately to meet the review needs):

- (2) Conformity with the Zoning;
- (5) access;
- (9) dangerous areas (floodway etc.);
- (12) sewerage facilities in non-resource zones.

Complex Property Line adjustments involving lands zoned for Resource use (EFU, F-1, F-2, PR) and lands within a Developed and Committed Exception Area or Community which result in a split-zoning of a parcel shall be required to comply with the following requirements:

- The Rural Residential portion of a split-zoned property may not be developed with a residence unless the Rural Residential acreage meets or exceeds the minimum acreage requirement of the Rural Residential Zone. This would be applied as a covenant requirement.

CONDITIONS

Conditions may be placed upon the preliminary approval including:

- A proposed complex property line adjustment within a plat may require a replat map to be filed as the final map. This shall be determined during the preliminary approval;
- Proof of legal access.

A disclaimer shall be placed on the final notice & information sheet that identifies the limitations of the approval (e.g. approval of adjusted boundaries does not guarantee development of the parcels).

PLAT REQUIREMENTS

Property Line Adjustments are permitted within plats, including the adjustment of boundaries with property outside of the plat boundaries. Property Line Adjustments must be accompanied by a vacation of the old plat lines. The review process for the preliminary Complex property line adjustments will include the referrals necessary for the vacation of the old plat lines. A replat map may be required as a condition of preliminary approval.

Construction on platted lines requires covenant for placement of dwelling or other uses requiring additional land use approval.

POLICY ISSUES FOR BCC

- property line adjustments across zone boundaries (see Section 4 above e.g. UGB/RR/Resource
- Can property lines of illegal parcels be adjusted other than to resolve legal lot status
- Are title reports required
- Can a vacation order be written to take effect upon final approval of the complex property line adjustment

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

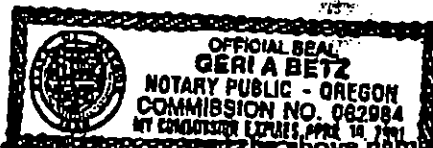
STATE OF OREGON)
)ss.
County of Lane)



On 2nd August, 2000, personally appeared the above named Mark W. Gorham and acknowledged the foregoing instrument to be a voluntary act and deed.

Geri A. Betz
Notary Public for Oregon
My Commission Expires: 4-30-2001

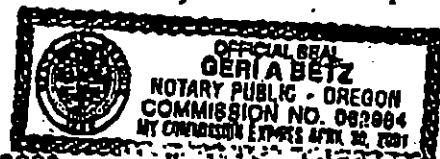
STATE OF OREGON)
)ss.
County of Lane)



On 2nd August, 2000, personally appeared the above named Joyce L. Gorham and acknowledged the foregoing instrument to be a voluntary act and deed.

Geri A. Betz
Notary Public for Oregon
My Commission Expires: 4-30-2001

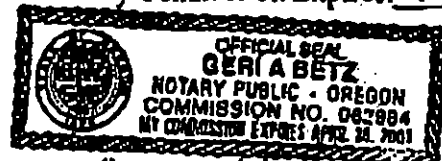
STATE OF OREGON)
)ss.
County of Lane)



On 2nd August, 2000, personally appeared the above named Darin Wayne Gorham and acknowledged the foregoing instrument to be a voluntary act and deed.

Geri A. Betz
Notary Public for Oregon
My Commission Expires: 4-30-2001

STATE OF OREGON)
)ss.
County of Lane)



On 2nd August, 2000, personally appeared the above named Nicki Lee Gorham and acknowledged the foregoing instrument to be a voluntary act and deed.

Geri A. Betz
Notary Public for Oregon
My Commission Expires: 4-30-2001

30-MIL



\$46.00

After Recording Return To:

APR DEED - 1 - B CASHIER 01
620.00 \$11.00 \$10.00

08/03/2000 10:01:48 AM

CORRECTION DECLARATION OF PROPERTY LINE ADJUSTMENT

This Declaration of property line adjustment is made by Mark W. Gorham, Joyce L. Gorham, Darin Gorham and Nicki Lee Gorham, (hereafter Gorham). This Declaration is made as the second of two adjustments required to correct a prior Declaration of property line adjustment recorded June 16, 1999 on Reel 2561 Instrument No. 99053888 Lane County, Oregon Deed Records. The first Declaration of property line adjustment required for the correction has been recorded on August 9, 2000 as Instrument Number 2000-044530 Lane County, Oregon Deed Records.

Gorham owned Parcels 1 and 2 on June 16, 1999 at the time the original Declaration was recorded. Gorham is setting forth this Declaration to set a "revised" adjusted boundary between Parcel 1 and Parcel 2 which complies with Lane County Land Use Regulations and the provisions of ORS 92.190(4).

The reference to the legal descriptions for the Parcel 1 and Parcel 2 properties prior to this adjustment is contained in the Declaration of property line adjustment recorded on August 9, 2000 as Instrument Number 2000-044530 Lane County, Oregon Deed Records.

Following this property line adjustment the legal description for the Parcel 1 property is described on the attached Exhibit "A".

Following this property line adjustment the legal description for the Parcel 2 property is described on the attached Exhibit "B".

The portion of the legal description which depicts the revised adjusted boundary line between Parcels 1 and 2 is underlined in the description of Parcel 1 attached as Exhibit "A".

This Declaration contains no conveyance of property and there is no true consideration.

Mark W. Gorham
Mark W. Gorham

Joyce L. Gorham
Joyce L. Gorham

Darin Gorham
Darin Gorham

Nicki Lee Gorham
Nicki Lee Gorham

Norm Maxwell

12/02/2002 11:11 AM

To:

cc:

cc:

Subject:

I selected this after the fact Correction Declaration of Property Line Adjustment to demonstrate the lack of notice of the behind the scenes maneuverings in the Fire Road story. This is also an excellent example of everything that is wrong with the Lane County "lot line adjustment."

Bear in mind that, the original "LLA" that this one supposedly corrects, was botched beyond repair during execution. Even so, if I hadn't challenged it, there never would have been a problem. The original "LLA" was supposed to make a 2 acre lot out of a 12 acre one in RR 10 zoning. How can this be possible? This aside, the original wasn't noticed to me although I lived immediately next door. This corrective one wasn't noticed to me either. More importantly, it wasn't noticed to the Bryants who (along with their lending institution) actually held title to the tax lot being "corrected" and lived there at the time. They had specifically denied the developer permission to perform this LLA. Maybe Mr. Howe or Mr Vorhes can explain this. I can't. If we follow this train of thought to its logical conclusion, I should be able to perform a lot line adjustment on your property. There is also another LLA on tl 900 that didn't even follow Lane LLA policy. It is now at least legal according to Lane County's own policy as part of the agreement between myself and the developer. Tax lot 601 has reverted back to its original 12 acres as part of the remedy. If you think I am making this up, talk to Felicia Bryant. Norm

This Lane County "Property Line Adjustment" performed by the developer on Fire Road on Land he no longer owned, despite the express wishes to the contrary of the then current owners, typifies all that is wrong with the LC LLA.

30-MIL



\$51.00

08/03/2000 10:01:48 AM

After Recording Return To:

RPR DEED - 1 - 5 CASHIER 01
\$30.00 \$11.00 \$10.00

CORRECTION DECLARATION OF PROPERTY LINE ADJUSTMENT

This Declaration of property line adjustment is made by Mark W. Gorham, Joyce L. Gorham, Darin Gorham and Nicki Lee Gorham, (hereafter Gorham), to correct a prior Declaration of property line adjustment recorded June 16, 1999 on Reel 2561 Instrument No. 99053888 Lane County, Oregon Deed Records. In order to correct the adjustment to comply with Lane County Land Use Regulations and the provisions of ORS 92.190(4) this Declaration is made as the first of two adjustments required to result in the configuration of the revised parcels described in the Declaration recorded on Reel 2561 Instrument No. 99053888.

Gorham owned Parcels 1 and 2 on June 16, 1999 at the time the original Declaration was recorded. Gorham is setting forth this Declaration to set a "revised" adjusted boundary between Parcel 1 and Parcel 2 which complies with Lane County Land Use Regulations and the provisions of ORS 92.190(4).

The reference to the legal description for the original Parcel 1 property prior to adjustment is contained in the Declaration of property line adjustment recorded on Reel 2413R, Instrument No. 9832445 Lane County, Oregon Deed Records.

The reference to the legal description for the original Parcel 2 property prior to adjustment is contained in that warranty deed recorded on Reel 2542, Instrument No. 99036902, Lane County, Oregon Deed Records.

Following this property line adjustment the corrected legal description for the Parcel 1 property is described on the attached Exhibit "A".

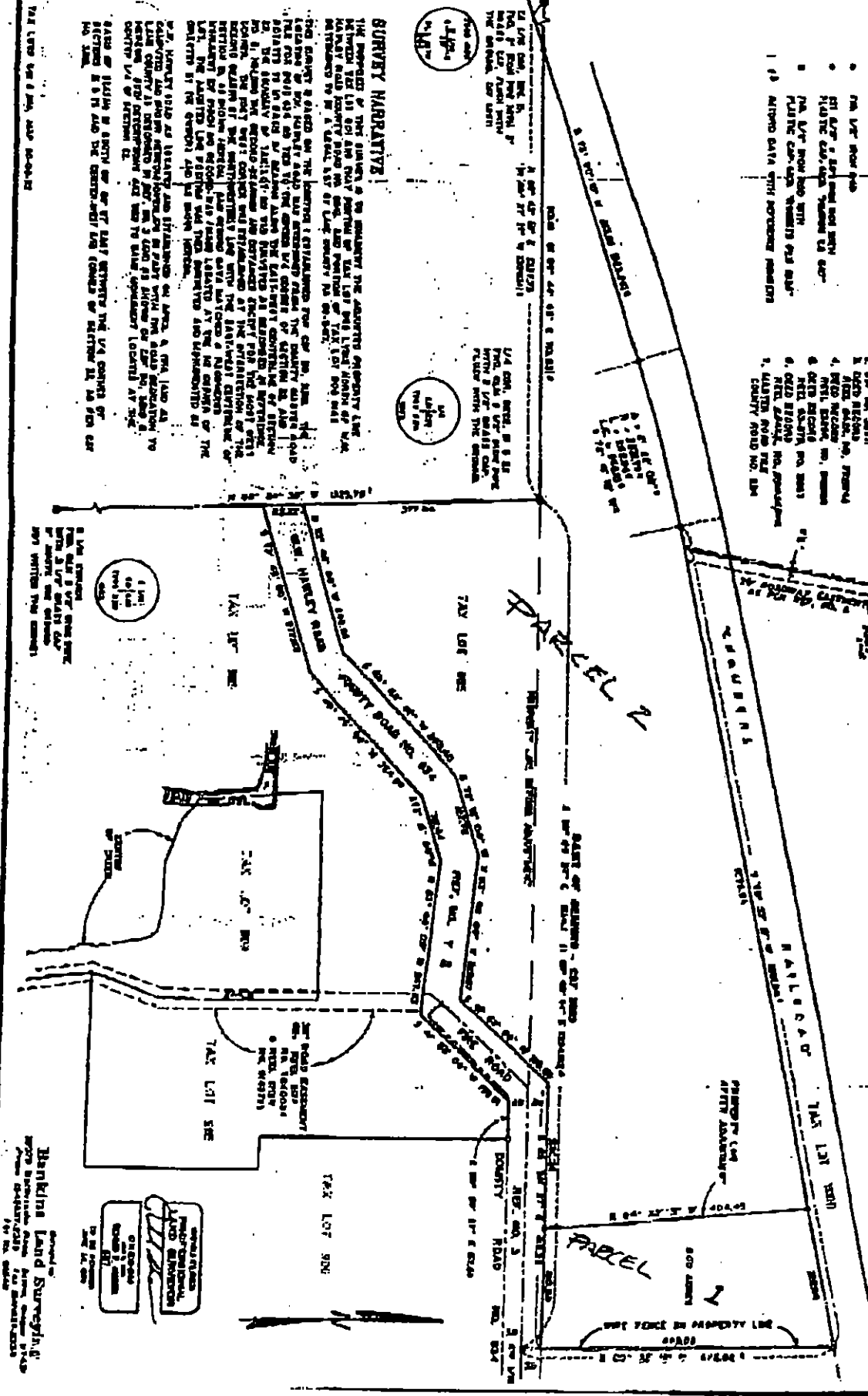
Following this property line adjustment the corrected legal description for the Parcel 2 property is described on the attached Exhibit "B".

The portion of the legal description which depicts the revised adjusted boundary line between Parcels 1 and 2 is underlined in the description of Parcel 1 attached as Exhibit "A".

This Declaration contains no conveyance of property and there is no true consideration.

PostNet Fax No	7671	Date	08-28-00
From	MARK W. GORHAM	Co.	LANE COUNTY
Phone #	541-400-4004	Phone #	541-400-4004
Fax #		Fax #	

- ### LEGEND
- 1. PA. ...
 - 2. ...
 - 3. ...
 - 4. ...
 - 5. ...
 - 6. ...
 - 7. ...
- ### REFERENCES
- 1. ...
 - 2. ...
 - 3. ...
 - 4. ...
 - 5. ...
 - 6. ...
 - 7. ...



SURVEY NARRATIVE

The purpose of this survey is to establish the accurate property line between the lands of ... and ... and to adjust the boundaries of the parcels to the actual ground conditions. The survey was conducted by a party of two, consisting of the surveyor and a witness. The survey was conducted in accordance with the provisions of the Oregon Surveying Act. The survey was completed on the 29th day of November, 2002.

Bankline Land Surveying
 1111 ...
 Lake County, Oregon
 Surveyor's Seal

EXHIBIT "B"

PARCEL 2

Beginning at the center-west one-sixteenth corner of Section 22, Township 20 South, Range 5 West of the Willamette Meridian monumented with a 1/2 inch iron rod; thence along the east line of the tract of land described in the Warranty Deed recorded on Reel 1849R, Reception No. 9330087, Lane County, Oregon, Deed Records, North 00° 35' 12" West 30.00 feet to a point on the northerly right-of-way line of W.W. Hawley Road (County Road No. 834) as described in the Lane County Master Road File; thence along said northerly right-of-way line, North 89° 59' 27" West 190.00 feet to a 5/8 inch iron rod and the TRUE POINT OF BEGINNING; thence continuing along said northerly right-of-way line, North 89° 59' 27" West 220.28 feet, and South 41° 53' 00" West 192.59 feet, and North 83° 46' 00" West 229.57 feet, and South 72° 16' 00" West 127.76 feet, and South 46° 46' 00" West 263.40 feet, and South 73° 46' 00" West 246.99 feet to a point on the line between sections 21 and 22; thence along said section line North 00° 54' 39" West 377.04 feet to the one-quarter corner of sections 21 and 22, monumented with a BLM iron post and brass cap; thence along the east-west centerline of said section 21 South 89° 43' 59" West 713.89 feet to a 5/8 inch iron rod located on the southerly right-of-way line of the J.H. Chambers Railroad as described in the aforementioned Warranty Deed; thence along said southerly right-of-way line, North 73° 00' 15" East 523.86 feet to a 5/8 inch iron rod, and along a 2831.79 foot radius curve to the right 265.24 feet (long chord bears North 75° 41' 15" East 265.16 feet) to a 5/8 inch iron rod, and North 78° 22' 15" East 1079.94 feet to a 5/8 inch iron rod; thence South 04° 32' 31" East 404.49 feet to the TRUE POINT OF BEGINNING, all in Lane County, Oregon.

Containing 13.66 acres, more or less.

EXHIBIT "A"
PARCEL 1

Beginning at the center-west one-sixteenth corner of Section 22, Township 20 South, Range 5 West of the Willamette Meridian monumented with a 1/2 inch iron rod; thence along the East line of the tract of land described in the Warranty Deed recorded on Reel 1849R, Reception No. 9330087, Lane County, Oregon Deed Records, North 00° 35' 12" West 30.00 feet to a point on the Northerly right-of-way line of W.W. Hawley Road (County Road No. 834) as described in the Lane County Master Road File and the TRUE POINT OF BEGINNING; thence along said Northerly right-of-way line, North 89° 59' 27" West 190.00 feet to a 5/8 inch iron rod; thence leaving said Northerly right-of-way line North 04° 32' 31" West 404.49 feet to a 5/8 inch iron rod located on the Southerly right-of-way line of C. H. Chambers Railroad as described in the aforementioned Warranty Deed; thence along said Southerly right-of-way line North 78° 22' 15" East 222.00 feet to a 5/8 inch iron rod located at the Northeast corner of the tract described in the aforementioned Warranty Deed; thence along the East line of the tract described in the aforementioned Warranty Deed South 00° 35' 12" East 448.02 feet to the TRUE POINT OF BEGINNING, all in Lane County, Oregon.



Richard P. Hankins

Registered Professional Land Surveyor

Phone
(541) 937-2338

82379 Rattlesnake Road
Dexter, OR 97431

PARCEL 1

TAYLOR 905 ADJUSTED

MARCH 31, 2000

Beginning at the center-west one-sixteenth corner of Section 22, Township 20 South, Range 5 West of the Willamette Meridian monumented with a 1/2 inch iron rod; thence along the east line of the tract of land described in the Warranty Deed recorded on Reel 1849R, Reception No. 9330087, Lane County, Oregon, Deed Records, North 00° 35' 12" West 30.00 feet to a point on the northerly right-of-way line of W.W. Hawley Road (County Road No. 834) as described in the Lane County Master Road File and the TRUE POINT OF BEGINNING; thence along said northerly right-of-way line, North 89° 59' 27" West 410.28 feet, and South 41° 53' 00" West 192.59 feet, and North 83° 46' 00" West 50.00 feet; thence leaving said northerly right-of-way line North 34° 06' 40" East 653.60 feet to a 5/8 inch iron rod located on the southerly right-of-way line of the J.H. Chambers Railroad as described in the aforementioned Warranty Deed; thence along said southerly right-of-way line North 78° 22' 15" East 222.00 feet to a 5/8 inch iron rod located at the northeast corner of the tract described in the aforementioned Warranty Deed; thence along the east line of the tract described in the aforementioned Warranty Deed South 00° 35' 12" East 448.02 feet to the TRUE POINT OF BEGINNING, all in Lane County, Oregon.

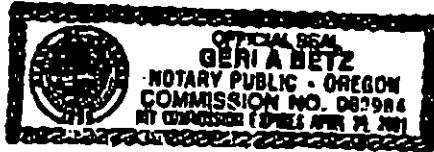
Containing 3.64 acres, more or less.

Mark W. Gorham Joyce L. Gorham
Mark W. Gorham Joyce L. Gorham

Darin Gorham Nicki Lee Gorham
Darin Gorham Nicki Lee Gorham

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

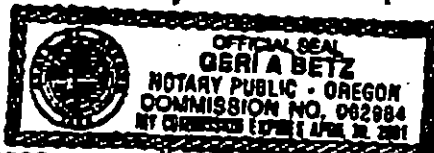
STATE OF OREGON)
County of Lane) ss.



On 2nd, August, 2000, personally appeared the above named Mark W. Gorham and acknowledged the foregoing instrument to be a voluntary act and deed.

Geri A. Betz
Notary Public for Oregon
My Commission Expires: 4-30-2001

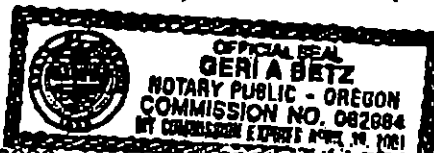
STATE OF OREGON)
County of Lane) ss.



On 2nd, August, 2000, personally appeared the above named Joyce L. Gorham and acknowledged the foregoing instrument to be a voluntary act and deed.

Geri A. Betz
Notary Public for Oregon
My Commission Expires: 4-30-2001

STATE OF OREGON)
County of Lane) ss.



On 2nd, August, 2000, personally appeared the above named Darin Wayne Gorham and acknowledged the foregoing instrument to be a voluntary act and deed.

Geri A. Betz
Notary Public for Oregon
My Commission Expires: 4-30-2001



Richard P. Hankins

Registered Professional Land Surveyor

Phone: (541) 937-1338

81379 Rattlesnake Road
Dexter OR 97431

PARCEL 2

TAYLOR LOT 601 ADJUSTED

MARCH 31, 2000

Beginning at the center-west one-sixteenth corner of Section 22, Township 20 South, Range 5 West of the Willamette Meridian monumented with a 1/2 inch iron rod; thence along the east line of the tract of land described in the Warranty Deed recorded on Reel 1849R, Reception No. 9330087, Lane County, Oregon, Deed Records, North 00° 35' 12" West 478.02 feet to a 5/8 inch iron rod located at the northeast corner of said tract of land, and being on the southerly right-of-way line of the J.H. Chambers Railroad as described in the aforementioned Warranty Deed; thence along said southerly right-of-way line South 78° 22' 15" West 222.00 feet to a 5/8 inch iron rod and the TRUE POINT OF BEGINNING; thence leaving said southerly right-of-way line, South 34° 06' 40" West 653.60 feet to a point on the northerly right-of-way line of W.W. Hawley Road (County Road No. 834) as described in the Lane County Master Road File; thence along said northerly right-of-way line, North 83° 46' 00" West 179.57 feet, and South 72° 16' 00" West 127.76 feet, and South 46° 46' 00" West 263.40 feet, and South 73° 46' 00" West 246.99 feet to a point on the line between sections 21 and 22; thence along said section line North 00° 54' 39" West 377.04 feet to the one-quarter corner of sections 21 and 22, monumented with a BLM iron post and brass cap; thence along the east-west centerline of said section 21 South 89° 43' 59" West 713.89 feet to a 5/8 inch iron rod located on the southerly right-of-way line of the J.H. Chambers Railroad as described in the aforementioned Warranty Deed; thence along said southerly right-of-way line, North 73° 00' 15" East 523.86 feet to a 5/8 inch iron rod, and along a 2831.79 foot radius curve to the right 265.24 feet (long chord bears North 75° 41' 15" East 265.16 feet) to a 5/8 inch iron rod, and North 78° 22' 15" East 1079.94 feet to the TRUE POINT OF BEGINNING, all in Lane County, Oregon.

Containing 12.02 acres, more or less.

January 5, 2004

UNNOTICED LLA's / Road
DIVISION PREP

To: The Board of Commissioners of Lane County, Oregon

In the matter of the **Resolution, Notice of Hearing and Order 3-11-5-6** to set a public hearing regarding the proposed vacation of a portion of W.W. Jackson Road

This purpose of this letter is to post an objection to the incompleteness of the Agenda cover memo, and Preliminary Director's report for Resolution, Notice of Hearing and Order 3-11-5-6 which subsequently was approved by the Board to set a public hearing on January 14th. On the petition to vacate the described section of W.W. Jackson Road.

In reading the written material provided with the Resolution one would think that the proposed road vacation is just a routine petition to vacate an old county road lying within the property of the petitioners. However, as will be explained, this is misleading the public. One only needs to review tax lot 200 on Attachment "A-1" and Attachment "G" to visually see that this proposed road vacation is not a simple routine road vacation. Rather, it is part of a land development scheme that uses legal lot verifications, property line adjustments and a road vacation that results in what afterwards may appear to be a subdivision or series land partition.

The purpose of the Resolution and Notice of Hearing and Order, Agenda cover memo and Preliminary Director's Report is to provide the Board and the public relevant and vital information specifically related to the proposal to set a public hearing to vacate the described road petitioned to be vacated.

The Board has a long standing expectation and policy that the Agenda format has within it sections and headings that are setup to provide the Board and the public a comprehensive report of the proposed action that the Board may consider.

The Board and the public rely on the written material provided by county staff in the Resolution documents to fully consider whether it is in the public interest to set a public hearing date to consider whether to vacate a public road. Or, perhaps the Board may elect to refuse to set a date for the public hearing. Or, the Board may elect to select other options that may include more information from the staff.

It is contended that all the relevant information regarding the proposed vacation of WW Jackson Road was not provided to the Board by public works staff that prepared and provided the Resolution documents. Consequentially, it is contended the Board did not have the opportunity to fully consider its options of whether to set a public hearing, delay the hearing or ask for additional information from staff. Likewise, for similar reasons, the public is denied the opportunity to fully evaluate whether they may want to participate in the proceedings and voice whether they are in favor or oppose the announced road vacation hearing.

Without going into great detail at this time, as the relevant information is very difficult to follow due to the many land records, legal lot approvals and property line adjustments the important issues of legal lots will be the focus of this letter.

Attachment C-1 is a systematic listing of relevant land use issue, dates and records regarding this petition to vacate this segment of county road described in the Resolution documents. In review of the chart one can observe that on January 22, 2001 Derek Jaros made an application for legal lot verification on his property along W.W. Jackson road. On September 5, 2001 a legal lot was conveyed on the south side of W.W. Jackson Road to Dianne F. Jaros and on September 7, 2001 a petition to vacate that same section of county road was provided to Lane County. This petition was amended and submitted April 25, 2002 that discloses the purpose of the road vacation was for property line adjustments after the road vacation was approved.

To write a comprehensive step by step report on these listing of items that pertain to the proposed vacation of a segment of W.W. Jackson Road would causes one to get lost in the detail and most likely lose the most important issues.

These issues are that it is contended by this writer and other records as will be disclosed later, that county planning staff in approving the application for legal lots by Derek Jaros or Audrey J. McAtee or Richard D. McAtee on each side of the section of county road proposed to be vacated are in violation of Oregon land use law. To develop these alleged "legal lots" into the most desirable parcels of land by subsequent property line adjustments by applicant Derek Jaros depend on the vacation of the section of county road petitioned to be vacated.

It is contended that the described legal lots and subsequent parcel that are proposed to be property line adjusted by use of the petition to vacate this section of county road is relevant and should have been disclosed in detail to the Board of Commissioners and to the public. The amended petition to vacate the noted section of county road states as one of the reasons to vacate the road is to proceed with property line adjustments as shown on survey 37162. This was not disclosed in the Resolution documents provided to the public. Please see attachment "E" and "G" that is an exhibit based on filed surveys 37161 and 37162.

Why would one contend that the approved application by county planning staff for legal lots on each side of W. W. Jackson Road are not in agreement with Oregon's land use laws? There are several reasons:

- (1) The most obvious reason is the W.W. Jackson road when it was established as a county road in 1912 was and is an easement for a road. In 1912, the land on each side and beneath the county road continued to be owned by the land owner where the road crossed his land. The county road that was establishment in 1912 by an easement for a road did not divide the property, it continued to be a single unit of land. One cannot now change that fact and create legal lots on each side of the county road as the county road is an easement and is not a property line and consequently no legal lot can exist on each side of the road as it never was a legal lot! It fails the test of a legal lot by definition.
- (2) County Planning staff, without doubt, are aware of the recent land use actions surrounding Fire Road that contains information where Lincoln County, just like Lane County, had a codified process to recognize legal lots. The problem comes when Lincoln County applied that process to allow a public road to divide property and to create legal lots on each side of the road!

One has only to read the contents of a Commission Enforcement Order letter dated February 9, 1999 from the Oregon Department of Land Conservation and Development to the Director of Lincoln County Planning Division. The letter provides that "Lincoln County routinely regards a parcel that is divided by a public road, as two legal parcels and discrete parcels. ... The petitioner and the department asserted that this practice is unlawful since ORS 92.010(7) (d) clearly provides that "any property divided by sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land,," Please see Attachment "H" pages 1 -5 for the letter from DLCD.

(With this DLCD letter in the Lane County Planning file it is not understood why county planning staff continue to approve applications for legal lots on each side of county roads as has been done in this very instance along the section of W.W. Jackson Road petitioned to be vacated.)

- (3) In the same Lane County Planning land use action file along Fire Road is a similar decision by Lane County Hearing Official like DLCD against Lincoln County. County Hearing Official Gary Darnielle provided a decision to Lane County Planning Department regarding the same issue of whether a county

road divides a property into two legal lots dated March 9, 2000. His decision, regarding the legal lot issue, is within a comprehensive 2 ½ page letter dated March 9 that clearly concludes that the county road does not divide property and does not create legal lots. Please see Attachment "I" pages 1-4.

Fox Hollow Road: Another item that is relevant, and not provided by county staff, in the Resolution documents, is that county Surveyors Office staff have been unable to locate sufficient records that establish Fox Hollow Road as a county road that runs somewhat parallel to W.W. Jackson road (county road 723) . It brings to question whether it is considered to be in the public interest whether the section of W.W. Jackson road should be vacated until necessary action is taken, such as legalization proceedings to legally establish Fox Hollow Road as a county road. Is it in the public interest to vacate a section of W.W. Jackson Road that is a legal county road until Fox Hollow is established as a legal county road?

For all of the reasons stated above it is believed that the Board's Resolution Documents packet fails to meet the intention of proper notice to the public as it is notable incomplete and consequently misleading. It is requested, then, that the Board not take actions to vacate the section of county road as described in Resolution and Order 03-11-5-6 until the Board and the public have been provided the usual and expected: Agenda Issue, Background Analysis, and the Board is provided Options relative to the complete information regarding the petition to vacate this described segment of W.W. Jackson county road.

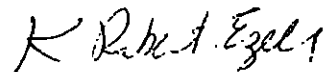
In light of the issues and information provided it is hoped that the Board would set up a work session with County Planning Staff and County Counsel to make a determination on whether county planning staff approving application for legal lots on each side of a public road are in compliance with Oregon laws as previously noted. Further, unrelated to this particular road vacation but within the context of legal lots and subsequent property line adjustments within the Derek Jaros tract (tax lot 200) is how small an area is a legal lot? It is noted that staff approved an application for a legal lot (PA 00-5653) from Derek Jaros for a legal lot along Fox Hollow Road within the same property of Jaros that when the usual building setbacks are applied the area of the parcel or lot would not support a single car garage! It seems that an area of land that could barely fit a single car garage defies the legal lot criteria as intended by the Oregon Law regarding legal lots.

So it is asked, as well, that minimum size legal lot criteria also be included with the proposed work session.

And finally, let it be known by all who may read this paper, that land developer Derek Jaros or Dianne F. Jaros or any other petitioner, that these property owners, by the policies of county planning, have properly applied for all the necessary legal lot verifications and property line adjustments within their property along the noted county road. Nothing is intended to suggest otherwise. The issue, it seems, is whether county planning staff are properly applying Oregon land use laws relative to legal lots where public roads cross their property! These issues and differing opinions are directly related to the petition to vacate this section of county road and should have been disclosed to the Board and public.

The opinions by DLCD and the County Hearing Official that legal lots are not divided by public roads and legal lots are then not created seems worthy of the halt to such type of applications for legal lots until a full review is completed.

K. Robert Ezell, retired County Surveyor, Wingate St. Eugene Oregon.



Attachments: A-1; C-1 ; E, G; H (1-5) and I (1-4)

ATTACHMENT "A"

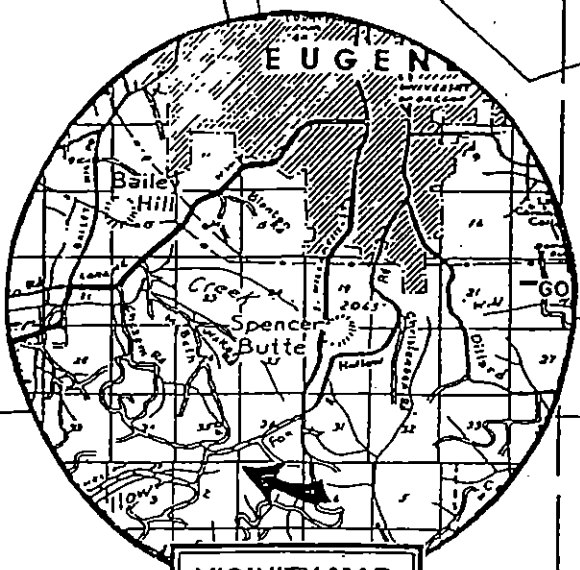
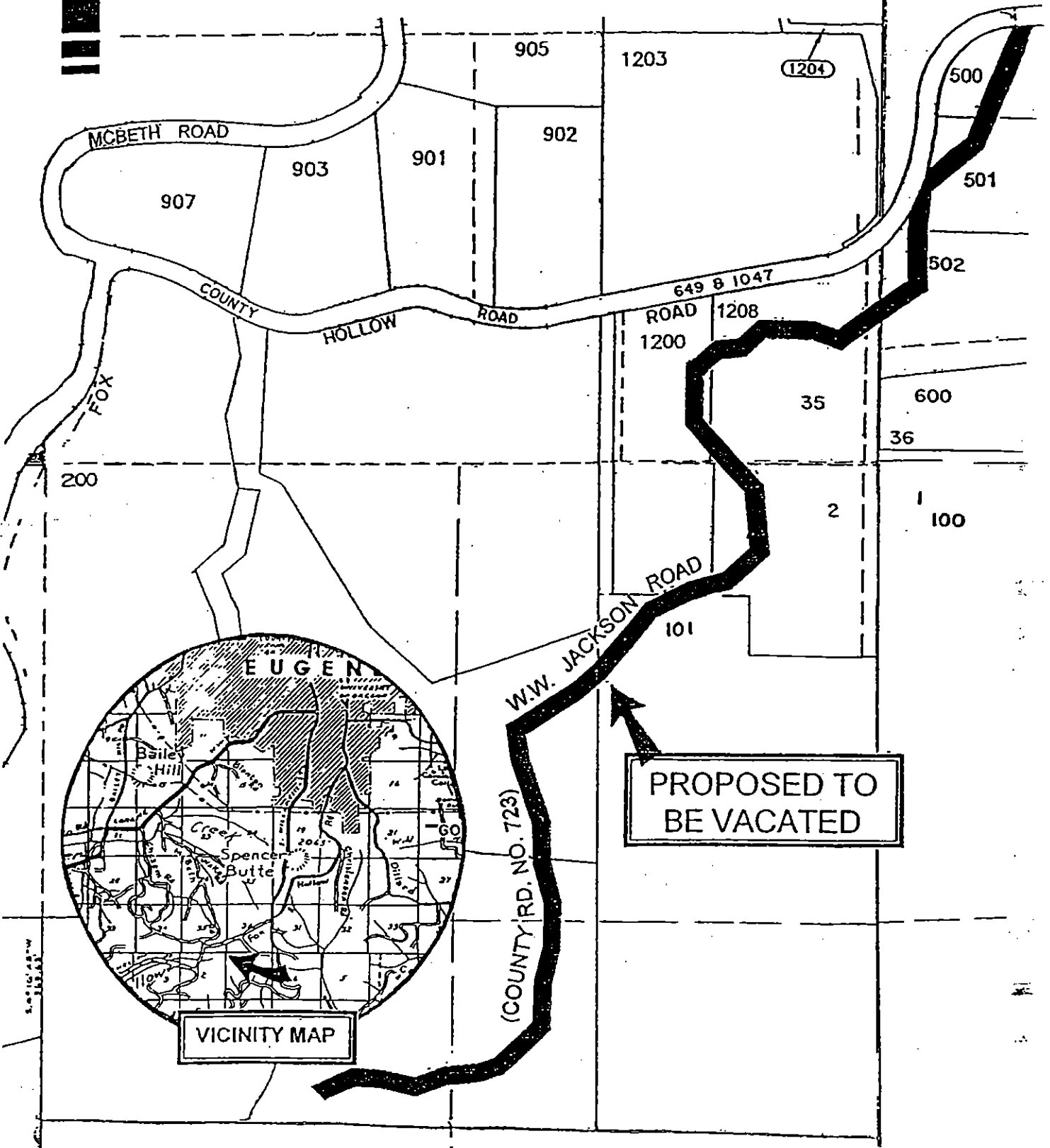
Sec. 35 & 36 T. 18S. R. 4W. W.M.

and

Sec. 2 T. 19S. R. 4W. W.M.

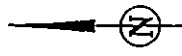
LANE COUNTY

NO SCALE

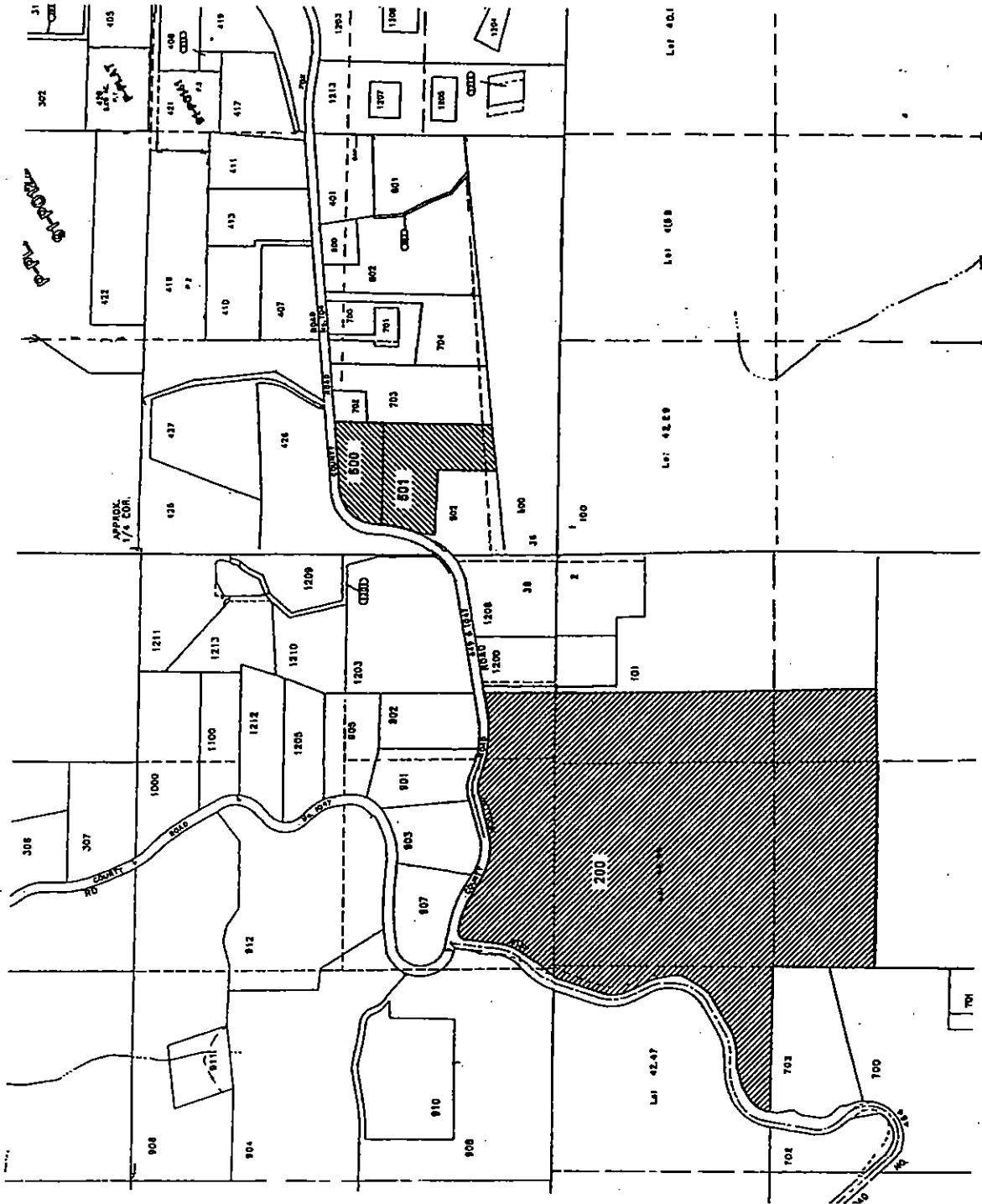


PROPOSED TO BE VACATED

(COUNTY RD. NO. 723)



NO SCALE

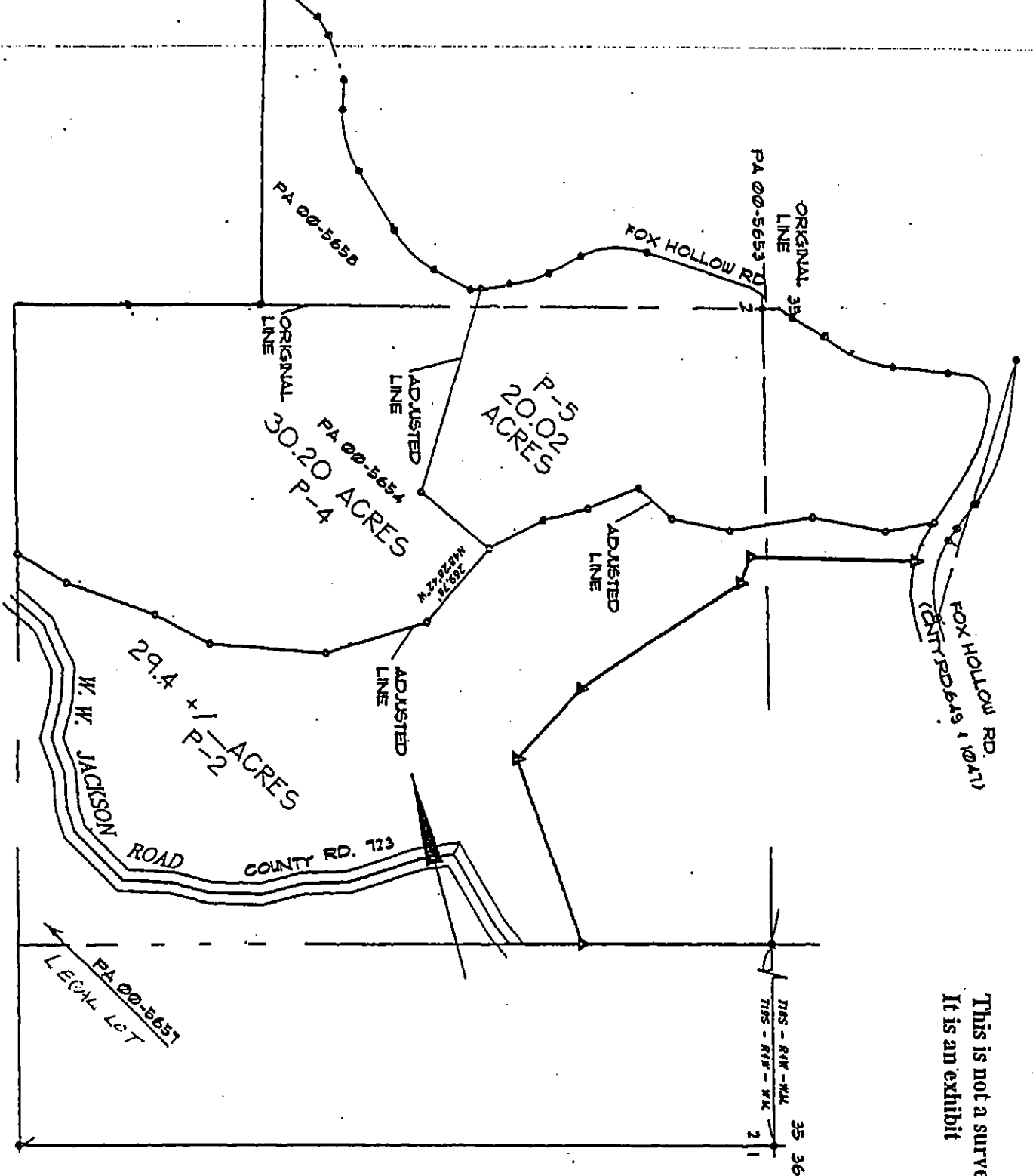


ATTACHMENT C-1
W.W. JACKSON ROAD

Sequence of Dates regarding the petition to vacate a section of W.W. Jackson Road, legal lots & property line adjustments:

Date & Item:

- Feb. 9, 1999 Oregon Department of Land Conservation and Development wrote to Lincoln County Planning Division.
- March 9, 2000 Letter by Lane County Hearings Official to Lane County Planning (Fire Road)
- Jan 22, 2001 Application for legal lot along W.W. Jackson Road by Derek Jaros (PA 00-5657)
- Jan 22, 2001 Application by Derek Jaros for legal lot along Fox Hollow Road (small parcel) (PA 00-5653)
- May 30, 2001 Application for legal lots along Fox Hollow Road (PA 01-5237)
- Aug. 20, 2001 Property line adjustment plan survey showing W.W. Jackson Road
- Sept. 5, 2001 Derek Jaros conveyed legal lot on south side of W.W. Jackson Road to Dianne Jaros.
- Sept. 7, 2001 Petition received to vacate W.W. Jackson Road
- Dec. 3, 2001 Derek Jaros conveyed 29.4 ac. property line adjusted legal lot north of W.W. Jackson to Ken Caiazza.
- Feb. 28, 2002 Special Use Permit applied for by Ken Caiazza for house site on 29.4 ac.
- April 25, 2002 Amended petition submitted to vacate section of W.W. Jackson Road



This is not a survey
It is an exhibit

ORIGINAL
SCALE 1" = 100'



NE 1/4-SEC2-T16-R4W-W1
AVE.
SE 1/4-SEC38-T16-R4W-W1
LANE COUNTY, OREGON

This exhibit shows legal lot verification from PA 00-5657. It allows property on the north side of W.W. Jackson Road to be the adjusted property line.

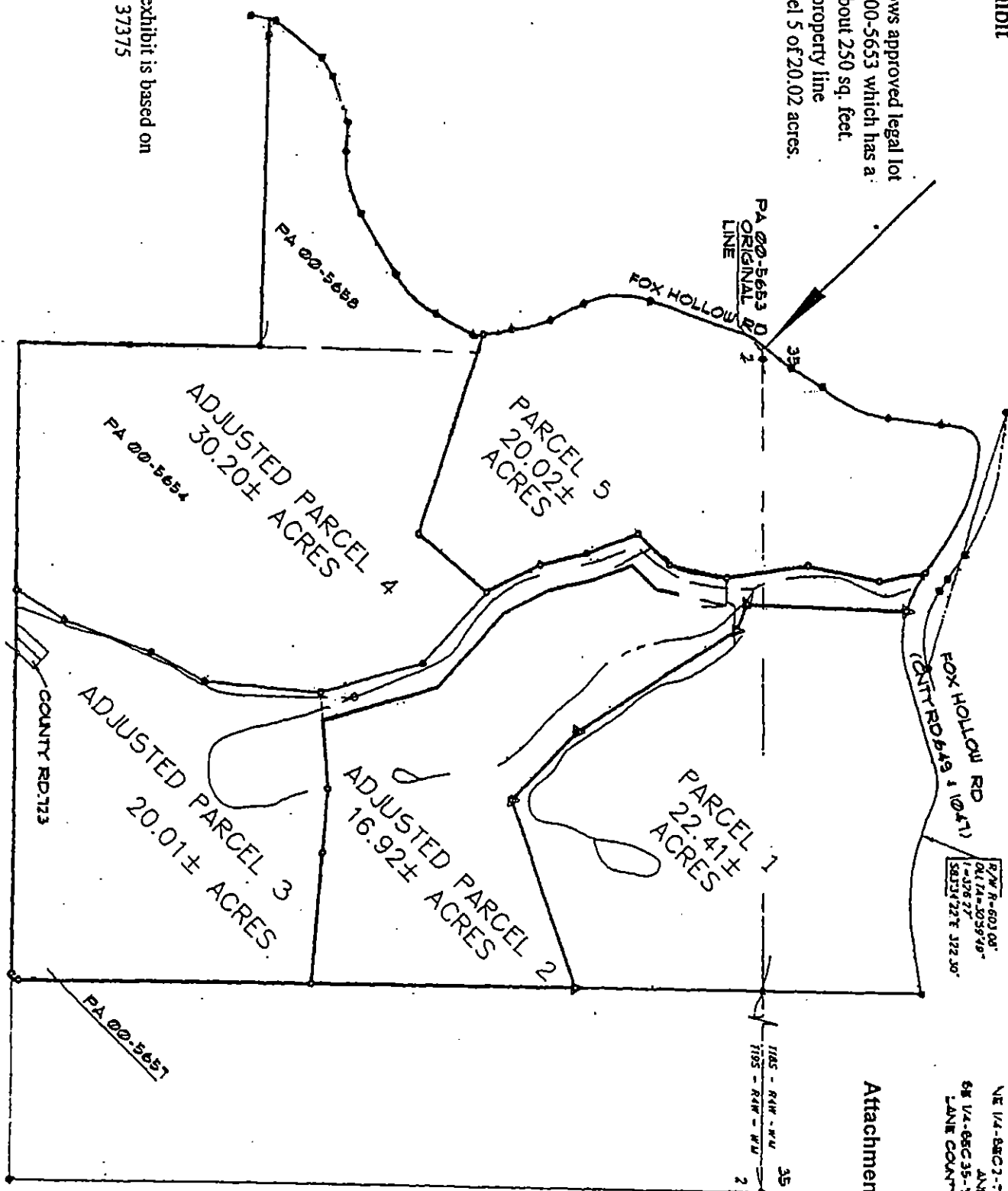
Note: This exhibit is based on survey CSF 37161

Attachment "E"

This is not a survey
It is an exhibit

This exhibit shows approved legal lot
verification PA 00-5653 which has a
usable area of about 250 sq. feet.
The legal lot is property line
adjusted to Parcel 5 of 20.02 acres.

Note: This exhibit is based on
survey CSF 37375



Attachment "G"

SCALE 1" = 200'
ORIGINAL
NE 1/4 SEC 2-785-RLU-W-1
AND
SE 1/4 SEC 35-786-RLU-W-1
LANE COUNTY, OREGON



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol St. NE, Suite 200

Salem, Oregon 97301-2540

Phone (503) 373-0050

Director's Fax (503) 378-5518

Main Fax (503) 378-6033

Rural/Coastal Fax (503) 378-5518

TGM/Urban Fax (503) 378-2687

Web Address: <http://www.lcd.state.or.us>

February 9, 1999

Post-it® Fax Note	7671	Date	2/10/99	# of Pages	6
To	Anne Davies	From	Dele Jordan		
Co./Dept.		Co.			
Phone #		Phone #	373-0050 x262		
Fax #	541-344-6266	Fax #			



Matt Spangler, Director
Lincoln County Planning Division
210 SW Second
Newport, Oregon 97365

RE: Compliance with Enforcement Order (97-EO-00754): Legal Lots and Parcels

Dear Matt:

The department has completed its review of Lincoln County's proposed text amendments to the A-C (LCC 1.1373) and T-C (LCC 1.1375) zones with respect to the definitions of what constitutes a lawful lot or parcel under Oregon land use law. These changes are being proposed to comply with the requirements of Enforcement Order 97-EO-00754. We have discussed this matter on several occasions and also submitted prior comments dated February 17, 1998 and March 9, 1998. Based on our review and research, the county's proposed amendments do not comply with the applicable provisions of Oregon law as required by the enforcement order for the following reasons.

Enforcement Order

The central issue in the adoption of the commission's enforcement order was the contention that Lincoln County routinely regards a parcel that is divided by a public road as two legal and discrete parcels. The County did not dispute that this was its practice. The petitioner and the department asserted that this practice is unlawful since ORS 92.010(7)(d) clearly provides that "any property divided by sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land..." This language was adopted by the Legislature to clearly and expressly state what was already the law in Oregon. [See State v. Emmich, 34 Or App 945, 949 (1978); Hershberger v. Clackamas County, 15 Or LUBA 401, 404 (1987) and O'Brien v. Lincoln County, 31 Or LUBA 262, 265 (1996)]. Further, ORS 92.012 states that "[n]o land may be subdivided or partitioned except in accordance with ORS 92.010 to 92.190."



Matt Spangler

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February 9, 1999

Relative to this issue, the stipulated enforcement order requires the county to amend the Lincoln County Code (LCC), Chapter 1, as follows:

"b. Amend LCC 1.1373 and 1.1375 to conform with the statutory definitions of 'lot,' 'partition land,' and 'parcel' as contained in ORS 92.010(3), 92.010(7) and 215.010(1), respectively. The County shall review and amend as necessary LC 1.1115 to ensure there are no conflicts with the new or amended definitions of 'lot,' 'parcel' and 'partition land.'" (Section 1.b. of Order)

County Response

The County's proposed revisions include amendments in response to the enforcement order. The proposed amendments include new definitions of the required terms "lot," "parcel" and "partition land." Our primary concern involves the proposed definitions for the terms "parcel" and "lawfully created lot or parcel" (LCC 1.1371(3) & (4)). Specifically, we do not believe that the proposed revisions to LCC 1.1371(3)(b), (4)(d) and (4)(f) correctly reflect state law or are consistent with ORS 215.010(1), ORS 92.010(7)(d) and ORS 92.014. The county's proposed provisions state:

"(3)(b) Units of land in the same ownership which are physically separated by another unit of land in a different ownership are considered separate parcels, notwithstanding the fact that such units of land may have been or are described or conveyed on a single deed or lands sales contract."

"(4)(d) Parcels created by deed or land sales contract after February 12, 1974 [effective date of Lincoln County Ordinance #34, Zoning] and before September 22, 1982 (effective date of Lincoln County Ordinance #180, Minor Partitioning Procedures) in conformance with lot size requirements imposed by zoning in effect at the time of creation.", and

"(4)(f) Parcels created in accordance with zoning regulations in effect at the time of creation, through division by a public road or alley created prior to November 5, 1991."

Department Review

In summary, these proposed revisions to the Lincoln County Code (LCC) recognize as legal and discrete units of land that are not "parcels" as defined in ORS 215.010(1). Thus, they are inconsistent with ORS 92.010(7)(d), 92.012 and 92.014 [See statutory provisions attached]. The department's concerns for each section are as follows:

Matt Spangler

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February 9, 1999

LCC 1.1371(3)(b):

This provision, as written, can be construed to recognize as parcels, units of land separated by a public road or other right of way because the public road or right of way could be considered "in a different ownership." This is not allowed under ORS 92.010(7)(d) and ORS 92.014. These two statutory provisions require subdivision or partition before property can be considered divided.

LCC 1.1371(4)(d):

This provision is intended to recognize as parcels, units of land created by deed or land sales contract between the time the county began zoning and the effective date of its minor partition ordinance. However, this will allow for the recognition of units of land not lawfully created in compliance with statewide goal 3 and ORS 215.263(1) (1981 edition) during the time these provisions were required to be applied to agricultural land by Lincoln County.

Statewide Planning Goal 3 "Agricultural Lands" became effective and applicable to land use decisions on January 1, 1975. Goal 3 required that agricultural land be "preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215." It also required that new farm parcels be "appropriate for the continuation of the existing commercial agricultural enterprise within the area."

ORS 215.263(1) was amended by the 1981 Legislature to make mandatory the prior review and approval or disapproval of any proposed division of land. This amendment became effective on August 24, 1981 [Section 48, Chapter 748 Oregon Laws 1981]. It required:

"(1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body of the county in which such land is situated. The governing body of a county by ordinance shall require such prior review and approval for such divisions of land within exclusive farm use zones established within the county."

Lincoln County amended its comprehensive plan and land use regulations in order to comply with the statewide planning goals including the application of an EFU zone on June 30, 1980. These amendments were required to comply with the statewide goals and statutory EFU zoning provisions. Land use decisions made after the adoption of these local amendments but before their acknowledgment by LCDC could not just rely on these locally adopted EFU provisions but also were required to apply directly statewide goal 3, "Agricultural Lands" and the statutory EFU zone provisions. [See Sunnyside Neighborhood v. Clackamas County, 280 Or 3 (1977), Meeker v. Clatsop County, 287 Or 665 (1979) and Jurgenson v. Union County, 42 Or App 505 (1979)].

Matt Spangler

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February 9, 1999

Thus, without a review for compliance with the applicable Goal 3 and statutory EFU standards, no unit of land created by deed or land sales contract after the 1981 Legislative mandate to review all land divisions in EFU zones under ORS 215.263(1) can be considered a lawfully created parcel.

LCC 1.1371(4)(f):

This provision intends to recognize units of land divided by public road or alley created prior to November 5, 1991, the effective date of Section 1, Chapter 763 Oregon Laws 1991 (SB 548). This Act amended ORS 92.010(7)(d) by adding to the statute a provision making clear that property had to be formally partitioned before it could be considered lawfully divided, and that the existence of a public road or other right of way, regardless of the nature or extent of the public ownership interest, did not in itself create new parcels. The county reasons that prior to this Act, public roads and other rights of way could be deeded to divide property. The County's reading of the statute is incorrect.

The amendment made by SB 548 was not new law but merely affirmed and continued the longstanding law as explained in several cases. [See Columbia County v. O'Black, 16 Or App 147 (1974), Scenic Sites v. Multnomah County, 33 Or App 199 (1978), State v. Emmich, 34 Or App 945, 949 (1978); and Hershberger v. Clackamas County, 15 Or LUBA 401, 404 (1987)]. The amendment is also a further clarification of the longstanding requirement in ORS 92.014 that "a street or road" cannot be used for the purpose of partitioning property "without the approval of the city or county..." (Section 3 Chapter 756 Oregon Laws 1955 & Section 4 Chapter 696 Oregon Laws 1973).

No beginning or end date is appropriate to use with regard to this provision. Since Oregon established subdivision and partitioning statutes, it has not been acceptable to consider property divided merely because it is crossed by a public road or other right of way. A unit of land described on a recorded deed by one single metes and bounds description "does not lose its unitary character by the happenstance of an intersecting boundary line, street or dedicated road." State v. Emmich, 34 Or App 945, 949 (1978).

The fact that this legal principle was not codified in state statute until 1991 does not allow a county to continue its prior improper practice of recognizing such units of land as being divided. Units of land defined by a unitary description on their recorded deeds remain a single discrete parcel regardless of any intersecting roads or other right of way.

Matt Spangler

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February 9, 1999

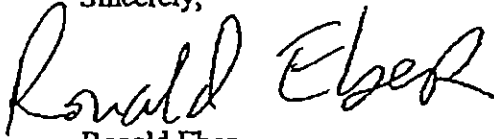
Summary

In order to comply with the Enforcement Order 97-EO-00754, the department recommends that Lincoln County do the following:

- (1) Delete the proposed Section (4)(f) of LCC 1.1373;
- (2) Amend Section (3)(b) to avoid any interpretation that recognizes lots or parcels separated by a road or other right of way; and
- (3) Amend Section (4)(d) so that units of land created by deed or land sales contract in the county's EFU zone after August 24, 1981 are not recognized as lawful unless in conformance with the applicable standards in ORS Chapter 215 and the statewide goals as well as any local zoning provisions, consistent with these statewide standards, in effect at the time the deed or land sales contract was recorded.

I trust this clarifies the department's position of Lincoln County's response to this part of the Enforcement Order and if you have any questions, please call me at (503) 373-0050 x 247.

Sincerely,



Ronald Eber
Rural Lands Specialist

c: Wayne Belmont, Lincoln County Counsel
Anne Davis, Attorney for Petitioner
Dennis Bartoldus, Attorney for Intervenor
Celeste Doyle, DOJ
Roger Alfred, DOJ
James Knight, DLCD
Dale Jordan, DLCD

Lane Council of Governments

99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

ORIGINAL

Attachment "I"
Page 1 of 4

March 9, 2000

Mr. Kent Howe, Director
Lane County Land Management Division
Public Service Building
125 E. 8th Ave.
Eugene, OR 97401

Dear Mr. Howe:

Please find the attached Lane County Hearings Official's decision denying the Gorham request (PA 98-1633) for the rezoning of tax lot 905, assessor's map 20-05-22 from RR-10 to RR-5.

Sincerely,


Gary L. Darnielle
Lane County Hearings Official

Attachment "I"
Page 2 of 4

- b. *ORS 92.010(7) does not allow a parcel to be legally divided by the intersection of a right-of-way.*

The fact pattern regarding this issue is as follows: Fire Road was created from the dedication of easements to the County in 1918. Shortly thereafter, common law in Oregon was interpreted to hold that a dedicated road did not divide a piece of property into two legal lots. In 1987, the County defined the term "contiguous" in its Code and has since applied this interpretation to its treatment of legal lot status. There is no evidence that this definition appeared in the body of Lane County regulations at an earlier date.

Presumably, the applicant purchased the subject property (as it was configured before the various lot line adjustments) as a single unit of land. On November 5, 1991, Section 1, Chapter 763 of Oregon Laws 1991, amended ORS 92.010(7)(d) to provide that the division of property by the sale or grant of property for road purposes did not serve to divide the property into separate legal lots.

The applicant's argument that Fire Road divides tax lot 905 into two legal lots is based upon the following two assumptions: (1) Fire Road has not been vacated; and (2) Lane County regulations, specifically the definition of "contiguous" that appears in Section 16.090 of the Lane Code, permit a road to divide a parcel into legal lots. For the reasons articulated above, the hearing official agrees with the applicant on his first assumption. It is the second assumption that the hearing official finds less convincing.

In a land use context, common law in Oregon holds that "a parcel of land does not lose its unitary character ... by the happenstance of an intersecting boundary line, street or dedicated road."⁹ The theory behind this position was first applied to homestead law in 1924¹⁰ but more recently has been associated with the administration of the Oregon Subdivision Control Law.¹¹

In the present case, the County hangs its interpretive hat on the definition of "contiguous" found in section 16.090 of the Lane Code. This definition, which was adopted in 1987, states that "Tracts of land under the same ownership and which are intervened by a street ... shall not be considered contiguous." It has been the consistent practice of the administrative land use branch of the County to interpret this definition to mean that a parcel under single ownership that is divided by a street or road becomes two legal lots.

A conclusion that a road bisecting a parcel results in the legal division of that parcel of land does not necessarily follow from the Lane Code's definition of "contiguous."¹² That is, there is no citation to legislative history of this code section that explains the reasons or circumstances that led to this definition. There is no guidance about whether there is a distinction between roads that are created through the dedication of easements, reflecting past practice, and roads that are dedicated in fee simple, which is a more prevalent practice today. Nor is there a citation to where the County Board of Commissioners have either expressly or impliedly embraced the current interpretation.

Even if it can be assumed that the LC 16.090 definition of "contiguous" is a clear expression of a legislative policy to allow the creation of legal lots through the bisection by a road easement, the hearing official believes that this policy conflicts with Oregon law regarding the division of parcels. First, it was suggested by the *Emmich* court that common law regarding the division of land by an intersecting road was consistent with the Oregon Subdivision

⁹ *State v. Emmich*, 34 Or App 945, 949 (1978) It should be noted that the *Emmich* court expressly differentiated between a situation where a parcel was separated by a parcel of land in separate ownership and the mere dedication of a road.

¹⁰ *Cabler v. Alexander, Sheriff, et al.*, 111 Or 257, 266-267 (1924). It is interesting to note that the Oregon Supreme Court specifically determined that parcels were "contiguous," for purposes of Oregon homestead law, if they were only separated by a street or alley. *Cabler* at 271.

¹¹ *State v. Emmich*, loc. cit.

¹² See, for instance, *City of Lake Oswego v. Grimm's Fuel Co.*, 34 Or App 67, 71 (1978), where an undeveloped road separating two portions of a quarry did not change the unitary nature of a nonconforming use.

Control Law. Second, it can be strongly argued that common law is embodied within ORS 92.014(1), a provision adopted in 1955¹³ that prohibits the creation of a road for the purposes of partitioning land without approval of applicable local government. Finally, even if ORS 92.010(7)(d) was a codification of existing case law, it operated to truncate any rights that the owner of tax lot 905 may have as those rights were not exercised prior to the 1991 adoption of the statute. That is, there is no evidence in the record that the applicant purchased tax lots 905A and B through separate deeds or that any actions have been taken in reliance upon LC 16.090's definition of "contiguous" until the first lot line adjustment in 1998. The applicant has argued that ORS 92.010(7)(d) is not applicable as the "sale or grant" of property creating Fire Road occurred prior to the operative effective date of ORS 92.010(7)(d). The hearings official believes that ORS 92.010(7)(d) represents a codification of common law and judicial interpretation of the Oregon Subdivision Control Act in regard to the definition of "partition land." In this respect, ORS 92.010(7)(d) can be distinguished from ORS 92.010(7)(a) where, for instance, the existing law was changed by statutory modification. ORS 92.010(7)(d) is similar to ORS 92.010(7)(b) in that both provisions clarify the prior intent of the statutory definition of "partition land."

It is therefore the conclusion of the hearings official that tax lots 905A and 905B constitute one legal lot

¹³ Section 3, Ch. 756 Oregon Laws 1955.

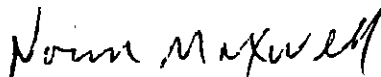
January 25, 2004

Lane County Board of Commissioners
125 E. 8th Ave.
Eugene, Or. 97401

On January 14th, you conducted a public hearing on the vacation of W.W. Jackson Rd. In order for you to arrive at an informed decision, it is critical that your staff provide you with accurate information.

In this regard, at one point in the hearing, Kent Howe, Planning Director, was explaining that there were five legal lots, and that they were associated with approved planning actions (implying that it was too late to do anything about it). Commissioner Dwyer interrupted, asking, in regards to the legal lots, "... would they have been made if the road hadn't existed"? Mr. Howe responded "No." This is contrary to legal lot determination PA 00-5657 (copy enclosed), which describes a legal lot east and south of W.W. Jackson Road. This legal lot determination cites a deed found in Book 102, page 319. That deed describes land on both sides of W.W. Jackson Road, but uses that road to "create" two legal lots out of one. Mr. Howe was wrong, the road did create a legal lot that would not have been there if the road was not allowed to separate it off from the rest of the parcel.

Fortunately, the majority of the Board smelled a rat, and denied the vacation. It is hoped that the "road dividing one tax lot into two or more" gambit will be examined in the upcoming work sessions by the Board of County Commissioners along with the interrelated Lane County "lot line adjustment" and all the Lane land use policy will be brought into compliance with Oregon land use law.



Norm Maxwell

Land Use Application



REQUEST / PROPOSAL FOR:

LEGAL LOT VERIFICATION

FILE NO. 10-5657
 ACTION ACCU FEE 370.00

LOCATION (PLEASE PRINT) #5
 19 04 02 200 - "MIDDLE 1/3 (SOUTH OF W.W. JACKSON)"
 TOWNSHIP RANGE SECTION 1/4 SECTION TAX LOT SUBDIVISION / PARTITION LOT / PARCEL BLOCK
 ZONED F-2 TAX CODE 322 PLOT # 322 ACERAGE
 LOCATION ADDRESS Fox Hollow

STRUCTURES NOW ON PROPERTY NONE

APPLICANT / AGENT Derek Jzros DATE 4/27/00
 NAME (PLEASE PRINT)
 ADDRESS 31030 Foxridge Ln
 CITY Eugene, OR 97405

OWNER Same
 NAME (PLEASE PRINT)
 ADDRESS
 CITY

DO YOU 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 _____ SCHOOL DISTRICT _____
 POWER COMPANY _____ PHONE COMPANY _____

(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.

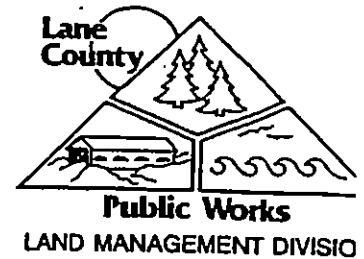
OWNER Signature _____ Date _____ APPLICANT Signature _____ Date _____

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

SPECIFIC SECTION OF LANE CODE REQUIRING THIS APPLICATION

STAFF COMMENTS: PART PORTION OF
PL. 200 THAT LAYS SOUTH OF CO. RD # 723
IS A LEGAL LOT, WITH THE SAME CO. RD.
PROVIDING ACCESS
Done 1/22/2001

RELATED PERMIT # _____



Date: JAN. 19 2001

APPLICANT: _____

OWNER: DEREK JAROS
31030 FOX RIDGE LANE
EUGENE, OR. 97405

PA: 00-5657

RE: Report and Verification of a Legal Lot
Tax Map: 19-0A-02-00 Taxlot: 200 (THAT PORTION LYING
SOUTH OF CO. RD # 723)

A more exact description by reference to Deed or Land Sales Contract
is BOOK 102 PAGE 319.

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.

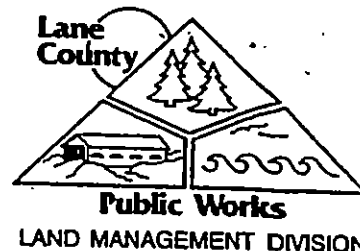
Findings

1. The subject property was created as a separate parcel on FEB. 24 1912.
See attached instruments BOOK 102 PAGE 319
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 effect to govern its creation. Lane County did not adopt applicable regulations for this kind of division until MARCH 20 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 effect at this time. The zoning for this property was adopted on AUGUST 22 1966.
-] When the subject parcel was created, there were the following zoning regulations in effect which the parcel complied with because _____

c. Additional Comments:

THIS LEGAL LOT IS FOR THAT PORTION OF THE ORIGINAL PARCEL, AS DESCRIBED ON THE ENCLOSED DEED, THAT LAYS SOUTH OF THE 60 FOOT WIDE COUNTY ROAD #723, SEE ENCLOSED MAP FOR LOCATION. THE SAME COUNTY ROAD PROVIDES ACCESS.

"This is a preliminary indication that the above referenced property, as further designated on the enclosed map, is a legal lot. The decision that this property constitutes a legal lot will be made at the time of the first permit or application action where a legal lot is required. If the boundaries of this legal lot have changed at the time of a permit or application which requires a legal lot, a new Legal Lot Verification will be required."

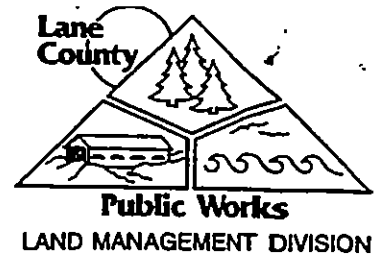
Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to D. G. Nickell.

D. G. NICKELL P.L.S.O.
Engineering Associate
541-682-3989

ATTACHMENTS

CC: TRS File



Date: JAN. 19 2001

APPLICANT: _____

OWNER: DERIEK JAROS
31030 FOX RIDGE LANE
EUGENE, OR. 97405

PA: 00-5653

RE: Report and Verification of a Legal Lot
Tax Map: 19-04-02-00 Taxlot: 200 (THAT PORTION OF SW 1/4
SEC. 35 SO. OF CO. RD. 40)

A more exact description by reference to Deed or Land Sales Contract
is BOOK 100 PAGE 173.

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 JULY 23 1913.
See attached instruments BOOK 100 PAGE 173
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 effect to govern its creation. Lane County did not adopt applicable regulations for this kind of division until MARCH 20 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 _____



Land Use Application



REQUEST / PROPOSAL FOR:

EX-107
00-5653
ACTION ALLU FEE 370.00

LOCATION (PLEASE PRINT) #1 180435 "MCGAVRAH TRIANGLE"
1' 04 02 200 SE 1/4 of SW 1/4 Lying East of Fox Hollow

ZONED FZ TAX CODE 322 PLOT # ACERAGE

LOCATION ADDRESS Fox Hollow Rd

STRUCTURES NOW ON PROPERTY NONE

APPLICANT / AGENT Derek Jaros 9/27/00
NAME (PLEASE PRINT) DATE

31030 FOXRIDGE LN 484-4684 954-0374
ADDRESS PHONE

Eugene, Or, 97405
CITY ZIP

OWNER Same
NAME (PLEASE PRINT) DATE

ADDRESS PHONE
CITY ZIP

DO YOU OWN ADJACENT PROPERTY? Yes No

MAP, PARCEL NUMBER

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 _____ SCHOOL DISTRICT _____

POWER COMPANY _____ PHONE COMPANY _____

(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.
Derek Jaros 4-21-00
OWNER Signature Date APPLICANT Signature Date

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

PECIFIC SECTION OF LANE CODE REQUIRING THIS APPLICATION
RELATED PERMIT #
TAFF COMMENTS: TRANSITION OF SW 1/4 THAT IS SOUTH & EAST OF O. RD 1246A IS A LEGAL LOT.
Date 1/22/2001

4
6AC.

18
4

912
21.86 AC.

1212

1210

1205

1203

905
902

910

907

901

1200
6.36 AC.

200
107.33 AC.

100
TAX
ON MAP

101
32.40 AC.

Lot 42.89

TAX LOTTED ON
MAP 19-04-02

Lot 42.68

50' WIDE
ON 195 FROM G.S.C.
DEC. 29 1938
UPON N. & HIND AT
LOT 42.47
FROM OLD COUNTY
S1/4 R/W
882421
882421

703
10.05 AC.

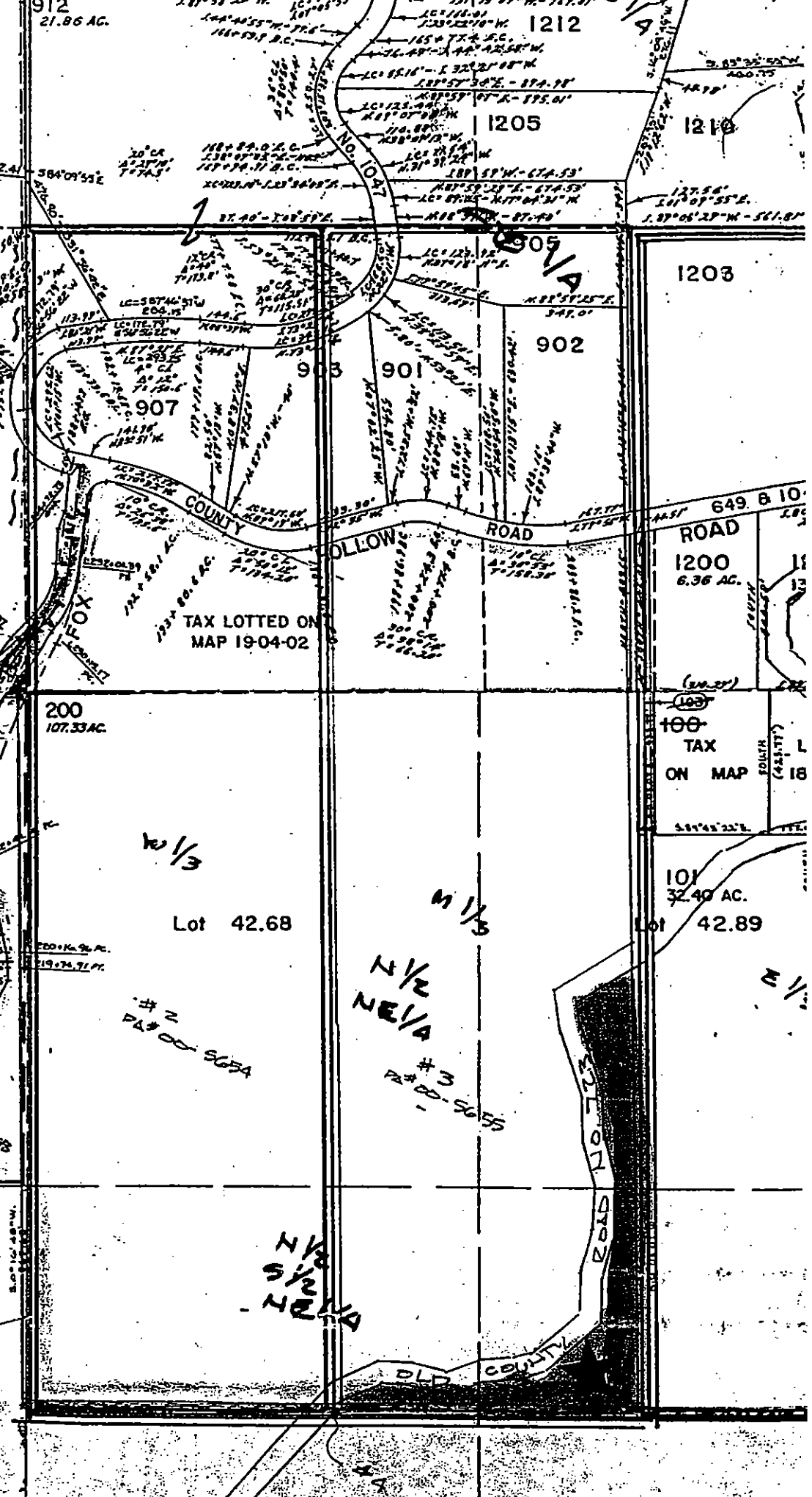
700
53.97 AC.

W 1/3

M 1/3

N 1/2
NE 1/4

N 1/2
S 1/2
NE 1/4



2/24/1912

H.E. SLATTERY → STEVENS & HULIN

(Middle 1/3)

also. Hulin/steven → McBeth

OK

WARRANTY DEED

6360 5461

THIS INDENTURE WITNESSETH, That we, Minna S. Slattery and H. E. Slattery, wife and husband his wife

for and in consideration of the sum of Ten Dollars and other good and valuable consideration... paid, do hereby bargain, sell and convey unto S. E. Stevens and L. G. Hulin, the following described premises, to wit:

The middle one-third running North and South of the following described real estate, to-wit: The South one-half of the southeast quarter of section thirty-five (35) in township eighteen (18) South of range four (4) West of the Willamette Meridian, and the North one-half of the Northeast quarter and the North one-half of the South one-half of the Northeast quarter of Section two (2) in township nineteen (19) South of Range 4 West of the Willamette Meridian, the same being a tract of land containing 63.52 1/3 acres of land in the County of Lane, State of Oregon. (This land is conveyed subject to easements for established public roads).

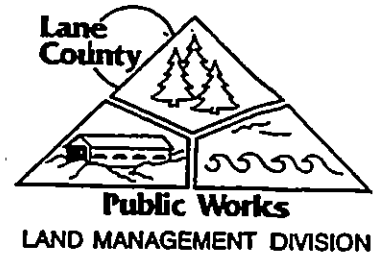
TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said S. E. Stevens and L. G. Hulin, their heirs and assigns forever And the said Minna S. Slattery and H. E. Slattery do hereby covenant to and with the said S. E. Stevens and L. G. Hulin, their heirs and assigns, that they are the owner in fee simple of said premises and that they are free from all incumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 24th day of February A. D. 1912

In the presence of N. B. Wood A. E. Jaeger

Minna S. Slattery H. E. Slattery (SEAL) (SEAL) (SEAL) (SEAL) (SEAL)

STATE OF OREGON) ss COUNTY OF LANE) personally came before me, a Notary Public in and for said County the within named Minna S. Slattery, wife and husband.



b. Zoning regulations:

-] When the subject parcel was created, there were no zoning regulations in effect at this time. The zoning for this property was adopted on AUGUST 22 1966.
- [] When the subject parcel was created, there were the following zoning regulations in effect which the parcel complied with because _____

c. Additional Comments:

THIS LEGAL LOT IS FOR THAT PORTION OF TL 200 BEING SOUTH OF COUNTY ROAD #404 OF THE SW 1/4 SEC. 25. THE COUNTY ROAD WAS ESTABLISHED ON DEC. 29 1938. THIS COUNTY ROAD #404 PROVIDES ACCESS TO THE LEGAL LOT.

"This is a preliminary indication that the above referenced property, as further designated on the enclosed map, is a legal lot. The decision that this property constitutes a legal lot will be made at the time of the first permit or application action where a legal lot is required. If the boundaries of this legal lot have changed at the time of a permit or application which requires a legal lot, a new Legal Lot Verification will be required."

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "D. G. Nickell".

D. G. NICKELL P.L.S.O.
Engineering Associate
541-682-3989

ATTACHMENTS

CC: TRS File

LANE COUNTY ROAD SURVEY, -11-91
SURVEY 299541 FOR NEW RIGHT-OF-WAY
SHOWING "TRIANGLE" IN THE S.E. 1/4
OF S.W. 1/4 OF SECTION 35.

[Intersection at Intersection with Fox Hollow Rd.]

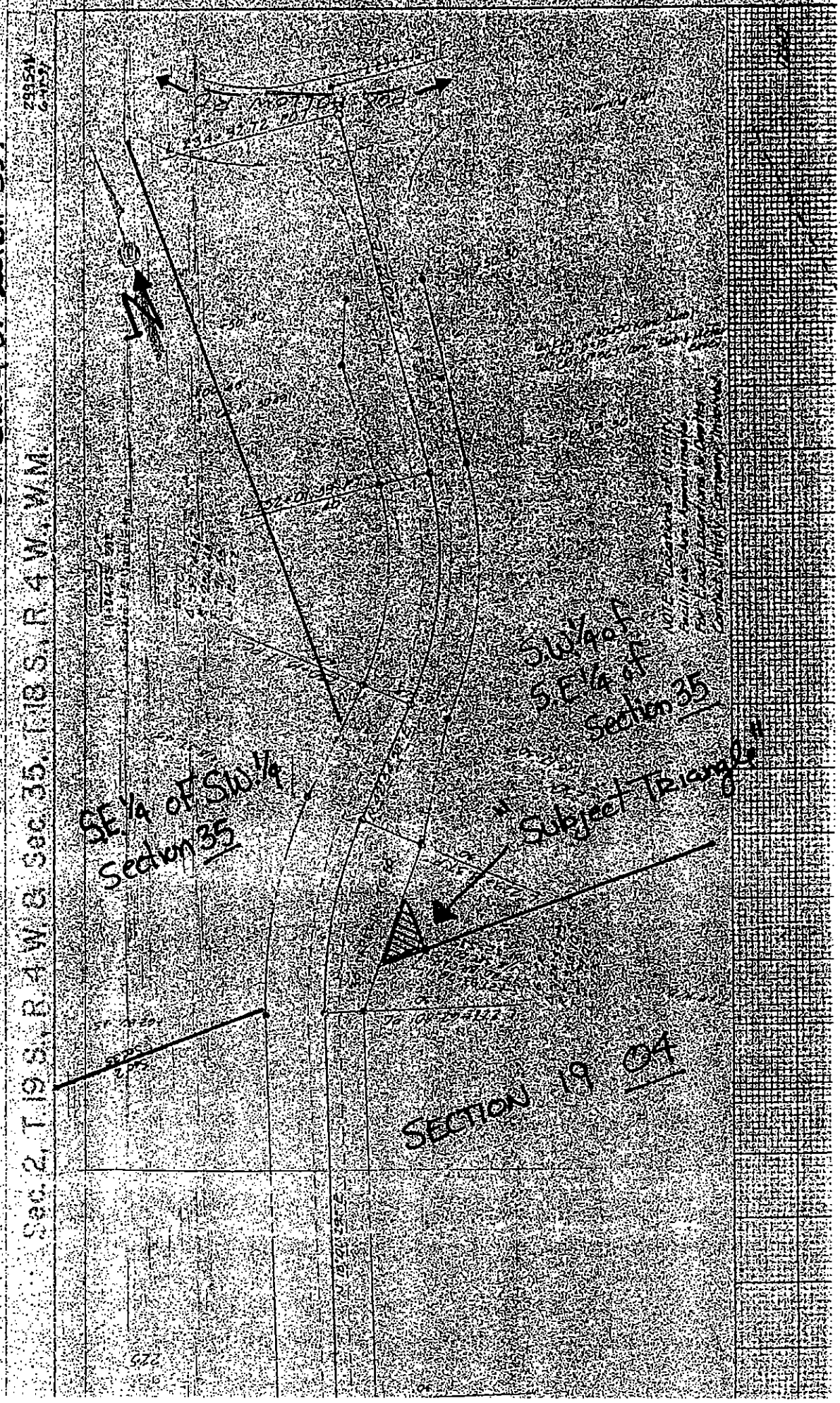
Sec. 2, T.19 S., R. 4 W. & Sec. 35, T.18 S., R. 4 W., W.M.

S.E. 1/4 of S.W. 1/4
Section 35

S.W. 1/4 of
S.E. 1/4 of
Section 35

Subject Triangle

SECTION 19
194



100-173 7/2-113 501 501
Walker → DR B W H U BETH

IS This In
Den's File
Pa 005653-5658

WARRANTY DEED

4065

THIS INDENTURE WITNESSETH That Charles A. Walker and Ruth E. Walker his wife
do hereby bargain, sell and convey unto David Ross McBeth and Walter Herbert McBeth their
premises, to-wit:
The southwest quarter of Section No. 35 in Township No. 31 North South Range No. 10
west of the Willamette Meridian, containing one hundred and sixty acres of land
according to the United States Government survey in Lane County, State of Oregon.
(L. L. Sec. 35, Ch. 15, S. P. 4, W.)

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said
David Ross McBeth and Walter Herbert McBeth their heirs and assigns forever. And the
said Charles A. Walker and Ruth E. Walker his wife do hereby covenant to
and with the said David Ross McBeth and Walter Herbert McBeth their heirs and assigns that
they are the owners in fee simple of said premises; that they are free from all encumbrances
and that they will warrant
and defend the same from all lawful claims, whatsoever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 22nd day of
July A. D. 1913.

Done in the presence of
J. W. Osbron
Charles A. Walker (SEAL)
Ruth E. Walker (SEAL)
Bertha R. Van Order (SEAL)

STATE OF GREGON,)
County of Lane) ss. Be it remembered that on this 22nd day of July A. D. 1913
personally came before me a Notary Public in and for said County
the within named Charles A. Walker and Ruth E. Walker his wife
to me personally known to be the identical person described in and who executed the within instrument, and
acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein named.
Witness my hand and seal this 22nd day of July 1913.

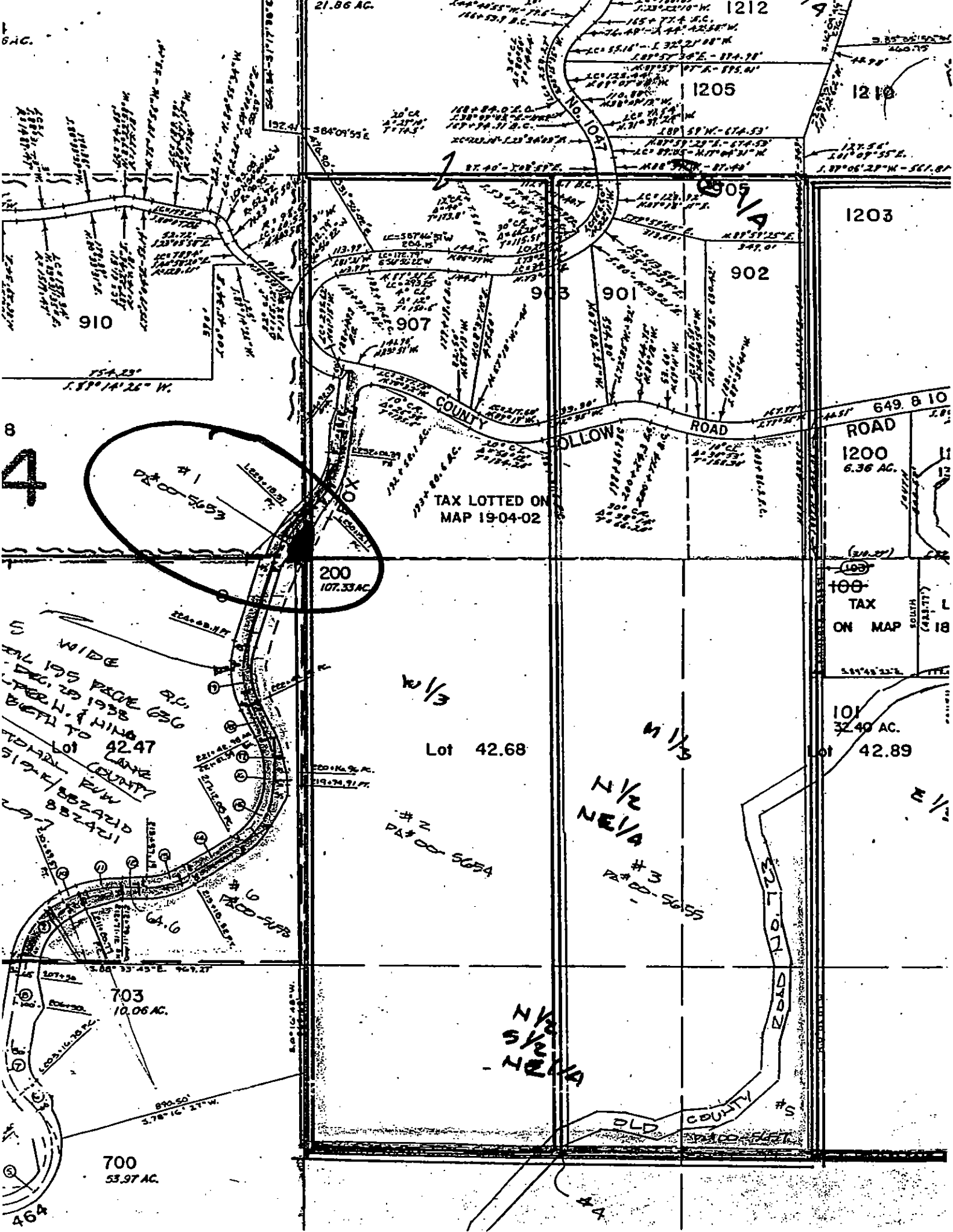
J. W. Osbron
Notary Public for Oregon

Filed for record Jul. 23, 1913, 11:02 o'clock A. M.
By G. A. Horton deputy

WARRANTY DEED

4068

THIS INDENTURE WITNESSETH That Clara A. Thomson
his wife, for and in consideration of the sum of
five hundred dollars to me paid, do hereby bargain, sell and convey unto David Ross McBeth
Powers the following described premises, to-wit: twenty acres of land of from the
North side of Lots one and two in Section Forteen township sixteen south of range
seven west of Willamette Meridian in Lane County, Oregon.



8
4

WIDE
195 FEET
DEC. 20 1938
UNDER N. & HIND
BOTH TO
LOT 42.47
LAKE
TOWNSHIP
SOUTH
882421
882421

TAX LOTTED ON
MAP 19-04-02

100
TAX
ON MAP
SOUTH
(443-77)
L
18

700
53.97 AC.

464

N 1/2
NE 1/4
#3
PA CO-5655

N 1/2
S 1/2
NE 1/4

ROAD NO. 723

OLD COUNTY

44