

W. I. d.

AGENDA COVER MEMO

DATE: June 29, 2005

TO: BOARD OF COUNTY COMMISSIONERS

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

RE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA05-5163, Asghar Sadri)

I. MOTION: Move to Adopt Order

II. ISSUE OR PROBLEM

Shall the Board of County Commissioners compensate an applicant under Ballot Measure 37 and LC 2.700 through 2.770 for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of restrictive land use regulations or modify, remove, or discontinue application of those land use regulations to the subject property to allow Asghar Sadri to use the property for a use permitted at the time he acquired the property?

III. DISCUSSION

A. Background

On November 2004 the Oregon voters passed Ballot Measure 37 (M37) which in brief summary requires payment to landowners if certain land use regulations enacted or enforced by a public entity restrict the use and have the effect of reducing the fair market value of private real property.

As a general matter, when processing a claim under Measure 37, an agency must confirm that:

- the individual making the claim is the owner of the private real property for which the claim is made;
- the land use regulation has been enforced and has restricted the lawful use of the property in a manner that has the effect of reducing its fair market value; and
- the restrictive land use regulation does not fall within one or more of the exceptions provided by the measure.

When a claim is made, the property owner shall be paid just compensation unless the land use regulation is no longer applied to the property within 180 days of the date the property owner makes a written claim for compensation. Just compensation shall be

equal to the reduction in fair market value of the property resulting from enforcement of the restrictive land use regulation as of the date the owner makes a written demand for compensation. The measure allows local governments to choose to pay just compensation or to “modify, remove or not ... apply” the restrictive land use regulation in lieu of providing just compensation.

B. Lane County Measure 37 Claim Process

On December 1, 2004, the Lane County Board of Commissioners adopted a Real Property Compensation Claim Application Process codified in LC 2.700 through 2.770(Ordinance No.18-04) with requisite fees in LM 60.842 (Order No. 04-12-1-12). The ordinance enacted provisions require applicants to provide certain information necessary for the County to evaluate a Measure 37 claim. A specific list of required information is found in LC 2.720. Upon receipt of a claim providing the necessary information, LC 2.740 states that the County Administrator shall make a determination as to whether the application qualifies for Board compensation consideration. An application qualifies for compensation consideration if the applicant has shown that all of the criteria of LC 2.740(1) are met. (Refer to Analysis Section, below, for an assessment of the Sadri claim.)

C. Application to Lane County for Measure 37 Claim

Applicant: David Phillips and Mark Erikson of Erikson & Hirokawa, PLLC on behalf of Asghar Sadri

Owner: Asghar Sadri

Address: 1111 Main Street, Suite 402
Vancouver, WA 98660-2958

Legal Description of Property: Map 18-05-02, tax lot 100

Acreage: 266 acres

Current Zoning: Exclusive Farm Use (E-40/RCP)

Date Property Acquired: December 28, 1993

Land Use Regulations in Effect at Date of Acquisition: LC 16.212

County land use regulation which restricts the use and reduces the fair market value of claimant's property: LC 16.212 (E-40/RCP) (currently)

Specific Relief Sought: \$100,000 compensation or waiver of dwelling requirements to allow a single family dwelling.

On December 23, 2004, Asghar Sadri submitted a M37 claim to Lane County for compensation or waiver of land use restrictions. On January 4, 2005, the County Administrator sent a response to Mr. Sadri indicating that the claim was incomplete and identified the additional information required for Lane County to process a M37 claim.

No additional correspondence or payment of the application fee has been received from Mr. Sadri. The additional information requested includes an application form, copies of deed information establishing date of acquisition, land use regulations in

affect at the time of acquisition, title report, property appraisal, identification of the land use regulations restricting the use of the property and allegedly causing a reduction in the fair market value, the amount of the alleged reduction in fair market value of the property and payment of the fee deposit.

D. Lane Code Submittal Requirements

The following section highlights the documentation that the applicant has provided to address the LC 2.720 submittal requirements. (Refer to application for details)

- 1) A completed application form has not been provided
- 2) Payment of the initial deposit for fees and costs has not been provided by the applicant.
- 3) Contact information of the property owner filing the application has been provided but no indication if there are other owners of the subject property.
- 4) Legal description of the property has been determined.
- 5) A current title report for the property has not been provided.
- 6) No copies of deed records have been submitted.
- 7) Identification of the land use regulations restricting the use of the property and allegedly causing a reduction in the fair market value has been provided.
 - the property was zoned Exclusive Farm Use (E-40/RCP) in 1984
 - the Exclusive Farm Use ordinance that was in effect on December 28, 1993, was Ordinance No. 10-92 adopted on November 12, 1992.
 - in 2004 Mr. Sadri received Planning Director denial for a dwelling in conjunction with farm use because Mr. Sadri had not provided the necessary documentation that the soils of the subject property are non-High Value soils as required by the current provisions of Lane Code 16.212(7).
 - Under the Exclusive Farm Use regulations in effect on December 28, 1993, Mr. Sadri could have made application for Special Use Permit for a dwelling pursuant to Lane Code 16.212(2)(f), (2)(g), (3)(a), (3)(b), or (4)(j). The criteria for each of these dwelling provisions are discretionary and the outcome of a final land use decision is not certain. (Refer to the attached Exclusive Farm Use Zone in effect in 1993 for the applicable criteria.)
The E-40/RCP land use regulations allow qualifying parcels to build a single family dwelling. Because Mr. Sadri did not receive approval to build a single family dwelling, he is alleging a reduction in the fair market value of the property.
- 8) An appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, addressing the M37 and LC 2.720 requirements has not been provided.
- 9) A written statement addressing the criteria listed in LC 2.740(1)(a)-(d) has not been provided.
- 10) A statement by the applicant requests \$100,000 compensation but does not provide the analysis of the value of the property before and after application of the challenged land use regulation.
- 11) It is unknown whether there are any other development restrictions that may apply to the property that could affect its development or value.

E. Analysis

Application Review and Referral Determination

An application qualifies for compensation consideration if the applicant has shown that all of the following LC 2.740(1) criteria are met:

a) The County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein;

Since March 1, 1994, Lane County has enforced the E-40 zone dwelling requirements that restrict Mr. Sadri's ability to place a single family dwelling. In 2004, because the application did not comply with the requirements of ORS 215.213(1)(g), OAR 660-33-0130(1) and (30) and LC 16.212(7)(a), the Planning Director denied Mr. Sadri's request for dwelling approval. The land use regulation of LC 16.212(7)(a) that allegedly restricts the use of Mr. Sadri's property has been enforced and was not applicable at the time Mr. Sadri acquired the property.

Conclusion: At the time Mr. Sadri acquired the property it was subject to the Exclusive Farm Use zone requirements of E-40/RCP. In 1993, the EFU zone authorized dwellings under several discretionary options referenced above, provided it complied with the discretionary criteria. (Please refer to the attached Exclusive Farm Use Zone in effect in 1993 for the applicable regulations.) Currently, the E-40/RCP zone dwelling provisions (LC 16.212) would restrict the allowance of a dwelling on a lot if it is composed of predominantly High Value soils.

Lane County has enforced the EFU zone dwelling requirements that restrict Mr. Sadri's ability to place a single family dwelling. In 2004, because the application did not comply with ORS 215.213(1)(g), OAR 660-33-0130(1) and (30) and LC 16.212(7)(a), the Planning Director denied Mr. Sadri's request for dwelling approval. The land use regulation of LC 16.212(7)(a) that restricts the use of Mr. Sadri's property has been enforced and was not applicable at the time Mr. Sadri acquired the property.

b) The restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed;

Mr. Sadri has not provided an analysis of the decreased property value resulting from application of the land use restrictions, but alleges that because he was denied the ability to place a dwelling on his property that the fair market value of the property is reduced by \$100,000.

The 1993 EFU zone authorized dwellings under several options referenced above, provided it complied with the discretionary criteria. Given the uncertainty of the outcome of application of the 1993 requirements in the Exclusive Farm Use zone (E-40) and the M37 impact on the market for dwelling sites, it is difficult to determine what the exact nature of the fair market value reduction, if any, would be for these properties.

Conclusion: It seems reasonable to conclude that the current E-40 zone adopted after Mr. Sadri acquired the property has had an effect on the ability to site a dwelling on the property and, therefore, may have reduced the fair market value of the property if the property would have qualified for a dwelling under the discretionary EFU dwelling provisions in effect in 1993. However, it is not known whether a dwelling would have been allowed under the regulations in effect at the time Mr. Sadri acquired the property. Given the uncertainty of the impacts M37 will have on fair market value, it has not been shown that there has been a fair market value reduction on this property. The Board will need to conclude the E-40 regulations in LC 16.212(7)(a) have the effect of reducing the fair market value of the applicants' property to conclude Mr. Sadri complies with this criteria and is entitled to just compensation under M37.

c) The challenged land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner; and

Asghar Sadri first acquired the property on December 28, 1993. The current and more restrictive limitations on dwellings in the E-40 zone were made applicable to the property in 1994 after Mr. Sadri acquired the property. In 2004, the Planning Director denied Mr. Sadri's application for a dwelling in the E-40 zone under LC 16.212(7)(a).

Conclusion: At the time Mr. Sadri acquired the property it was subject to the Exclusive Farm Use zone (E-40/RCP) requirements of LC Chapter 16.212. Mr. Sadri applied in 2004 to Lane County for a dwelling in the Exclusive Farm Use zone and approval was denied. The Board will need to conclude the E-40 regulations have been enforced against Mr. Sadri in order to give rise to a claim under M37 and find compliance with this criteria.

d) The challenged regulation is not an exempt regulation as defined in LC 2.710.

The provisions of LC 16.212(7)(a) establish the dwelling approval requirements in the E-40 zone. The dwelling authorization requirements are not part of the exempt regulations addressing public nuisances, public health and safety, federal law, or restrictions to prohibit use of the property for pornography or nude dancing. The parts of the E-40 zone and other sections of Lane Code that do not restrict the use of the property for a home site and reduce the value of the property should remain applicable until shown otherwise.

Conclusion: This criterion does appear to be met. These regulations are not part of the exempt regulations defined in LC 2.710.

Final Conclusion: If Mr. Sadri could be successful at meeting the discretionary criteria of the 1993 version of the Exclusive Farm Use zone for a dwelling (LC16.212), then the claim of reduction in fair market value seems reasonable and this application would appear to qualify for compensation consideration because the criteria of LC 2.740(1)(a)-(d) have generally been met, particularly if the Board agrees the restrictive land use regulations have been enforced against the Mr. Sadri and the Board accepts his alleged reduction in fair market value.

F. Ultimate Referral Determination

If an application meets all of the criteria in LC 2.740(1)(a)-(d), the County Administrator shall refer the application to the Board and recommend, based on consideration of the criterion at LC 2.760(3)(whether the public interest would be better served by compensating the applicant, or by modifying, removing, or choosing not to apply the challenged land use regulations to the subject property), that the Board either compensate the applicant for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation or modify, remove, or discontinue application of the land use regulation to the subject property to allow the owners to use the property for a use permitted at the time the owners acquired the property. The following referral determination is provided for Board consideration:

If Mr. Sadri could be successful at meeting the discretionary criteria for a dwelling pursuant to the 1993 version of the Exclusive Farm Use zone (LC16.212), then the claim of reduction in fair market value seems reasonable and the application would meet all of the criteria in LC 2.740(1)(a)-(d). Based on an affirmative determination of the value reduction analysis, the County Administrator recommends referral to the Board for the Board to confirm the application qualifies under Measure 37 and determine whether to compensate the applicant for the reduction in the fair market value of the subject property resulting from the enactment of the dwelling requirements in the Exclusive Farm Use zone, or modify, remove, or discontinue application of the restrictive land use regulations to the subject property to allow Mr. Sadri to use the property as authorized by Measure 37.

G. Policy Considerations for the Board of Commissioners

There are a number of issues raised and left unanswered by the text of Measure 37. Some of those issues were discussed when the Board enacted Ordinance No. 18-04 to establish the provisions of LC 2.700 through 2.770 (reasonableness of fees; creating a private cause of action for neighbors; and "waiver" transferability). The county regulations provide for some County Administrator and Board discretion to reach most of those issues and resolve them in the context of an individual M37 claim. Of course, those resolutions and interpretations of Measure 37 could be challenged and the reviewing courts may disagree with the Board. In any event, any Board Order acting on a specific M37 claim can resolve all the issues as necessary to reflect the Board consensus on the best way to resolve the risks inherent in the claim. In this particular case, the issues described above and the following additional policy considerations are presented to the Board:

- A) Due to the discretionary nature of the dwelling provisions in effect at the time Mr. Sadri acquired the property, staff is unable to determine whether a dwelling could have been authorized and therefore, unable to establish a basis for a reduction in Fair Market Value which provides the Board with a basis for concluding the Measure 37 claim is valid. If Mr. Sadri could be successful with the application of the discretionary 1993 dwelling requirements of the EFU zone, then he has a valid Measure 37 claim and waiving the current restrictive dwelling regulations is appropriate. If he is not successful in obtaining land use approval under the 1993

dwelling provisions, “no harm no foul” has occurred and Mr. Sadri has been given the opportunity to make his case.

- B) A written appraisal has not been provided by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon. The applicant has not provided a market value analysis demonstrating the reduction of Fair Market Value as required in LC 2.720(6). Does the statement provided by the applicant adequately address the code requirements or Measure 37 in lieu of an appraisal?
- C) Does the Board want an independent review of comparable property value information or analysis of whether current LC 16.212 dwelling restrictions reduce the value of Mr. Sadri’s property?

H. Conclusion/County Administrator Recommendation

After careful consideration of the application and other evidence in the record, the County Administrator is to determine the amount of compensation due the applicant for the reduction of the property’s fair market value resulting from the affect of the land use regulation on the property. The County Administrator is to compare the public benefits from application of the land use regulation to the applicant’s property with the public burden of paying the required compensation to the owner if the “waiver” of the land use regulation is not granted.

The amount of just compensation resulting from the restrictive land use regulations applied to the subject property is not specifically determined in this analysis, but has been alleged by the applicant to be \$100,000. Lane County has not appropriated funds for compensation for M37 claims and has no funds available for this purpose. The public benefit from application of the land use regulation to the applicant’s property seems to be outweighed by the public burden of paying the required compensation.

If “waiver” or modification of a land use regulation is necessary to avoid owner entitlement to compensation, the County Administrator shall make a recommendation either to grant a “waiver” or modification of the land use regulation that will avoid owner entitlement to compensation, grant a “waiver” or modification of the land use regulation that will not avoid but will reduce the compensation to which the owner is entitled and pay the reduced compensation, or deny a “waiver” or modification of the land use regulation and pay the compensation to which the owner is entitled.

The applicant requests compensation in the amount of \$100,000 for the alleged reduction in fair market value of his property. Measure 37 gives the option to Lane County to “waive” certain land use regulations rather than pay compensation.

The County Administrator recommends the Board allow the claimant to apply for a land use application for a dwelling pursuant to the provisions of the 1993 Exclusive Farm Use zone in effect at the time Asghar Sadri acquired the property. If Mr. Sadri could be successful in obtaining land use approval under the 1993 provisions, then “waiving” the current E-40 regulations is appropriate. Because of the discretionary nature of the

dwelling requirements in effect in 1993, it is not at all certain that the applicant will qualify for a dwelling under those requirements. If the applicant does qualify for a dwelling under the 1993 requirements, all other sections of Lane Code should remain applicable unless it can be shown they restrict the use and have the effect of reducing the fair market value of the Sadri property.

V. ALTERNATIVE/OPTIONS

1. Recommend the County Administrator conclude the application is not a valid claim and issue a final written decision denying the Claim.
2. Recommend an independent review of comparable property value information and/or the applicant to provide additional information.
3. Recommend the application appears valid and adopt an order reflecting the Board of County Commissioners agreement with the County Administrator referral recommendation and determining the final disposition of the Sadri Measure 37 claim.

VI. RECOMMENDATION

Alternative 3.

VII. IMPLEMENTATION / FOLLOW-UP

Upon adoption of the final Board determination that “waiver” or modification of a land use regulation is necessary to avoid owner entitlement to compensation, the County Administrator will provide notice of the Board of County Commissioners final decision pursuant to LC 2.760.

VIII. ATTACHMENTS:

1. Order
2. December 23, 2004, M37 Claim
4. February 24, 2005, Oregon Attorney General Opinion
5. Measure 37/LC 2.700 through 2.770
6. 1993 dwelling requirements of LC 16.212

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No.) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (Asghar Sadri / PA05-5163)

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

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

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by Asghar Sadri (PA05-5163), the owner of real property south of Fern Ridge Reservoir off Halderson Road and more specifically described in the records of the Lane County Assessor as map 18-05-02, tax lot 100, of approximately 266 acres in Lane County, Oregon; and

WHEREAS, the County Administrator has determined that the application appears to meet all of the criteria of LC 2.740(1)(a)-(d), appears to be eligible for just compensation and appears to require modification, removal or not applying the restrictive land use regulations in lieu of payment of just compensation and has referred the application to the Board for public hearing and confirmation that the application qualifies for further action under Measure 37 and LC 2.700 through 2.770; and

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

WHEREAS, the County Administrator has determined under LC 2.740(4) that modification, removal or not applying the restrictive land use regulation is necessary to avoid owner entitlement to just compensation under Ballot Measure 37 and made that recommendation to the Board; and

WHEREAS, on June 29, 2005, the Board conducted a public hearing on Asghar Sadri's Measure 37 claim (PA05-5163) and determined that the current restrictive Exclusive Farm Use zone (E-40) dwelling requirements of Lane Code 16.212(7)(a) that were enforced and made applicable to the property prevent Asghar Sadri from developing his property with a dwelling as may be allowed under the 1993 E-40 regulations of Lane Code 16.212 in effect at the time Mr. Sadri acquired the property and that the public benefit from application of the current E-40

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

WHEREAS, Asghar Sadri requests \$100,000 compensation for reduction in the fair market value of his property as a result of Lane County's enforcement of the farm income standard and Agricultural Land Rule (OAR 660-33); and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the current E-40 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Mr. Sadri to make application to develop the subject property under those regulations; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Asghar Sadri made a valid claim under Ballot Measure 37 by specifying the amount of the claim, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that he acquired the property before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment the Sadri request shall be granted and the current E-40 restrictions for a dwelling in Lane Code 16.212(7) that restrict placement of a dwelling shall not apply to Asghar Sadri, so that he can make application for a dwelling on the property described as Assessors Map 18-05-02, tax lot 100, in a manner consistent with the regulations of the 1993 E-40 zone (Lane Code 16.212) in effect when he acquired the property.

IT IS HEREBY FURTHER ORDERED that Asghar Sadri will still need to make application and receive approval for a dwelling under other land use regulations applicable to placing dwellings on the property that were not specifically identified or established as restricting Mr. Sadri's use of the property. To the extent necessary to effectuate the Board action to not apply the dwelling restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of any new dwelling to show the specific development proposal and in the event additional county land use regulations result in a restriction of those uses that has the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal. All other Lane Code land use and development regulations shall remain applicable to the subject property until such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to Asghar Sadri's use of his property does not constitute a waiver or modification of any corresponding state law or administrative rules and does not authorize immediate construction of a dwelling. The requirements of state law, including ORS 215.213, Goal 3 and

OAR chapter 660, division 33, contain specific standards regulating development on Exclusive Farm Use Land and the applicant should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: <http://www.oregon.gov/DAS/Risk/M37.shtml>) and have the State of Oregon evaluate a claim for this property before seeking county land use approval. The county land use regulations and other rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. This order shall be effective and in effect as described in LC 2.770 and Ballot Measure 37 to the extent permitted by law. This order does not resolve several questions about the effect and application of Measure 37, including the question of whether the right of the applicant to build another dwelling can be transferred to another owner.

DATED this _____ day of _____, 2005.

Anna Morrison, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date _____ Lane County

OFFICE OF LEGAL COUNSEL

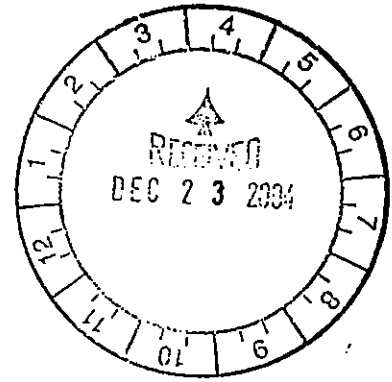
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Mark A. Erikson*
Keith H. Hirokawa*
David M. Phillips

*Licensed in Oregon & Washington



December 21, 2004

FACSIMILE AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Kent Howe
Planning Director
Lane County Land Management Division
125 East 8th Avenue
Eugene, OR 97401
Facsimile (541) 682-3947

Jerry Kendall
Associate Planner
Lane County Land Management Division
125 East 8th Avenue
Eugene, OR 97401

**Re: Demand for Compensation under Measure 37 (ORS Chapter 197);
PA 04-5615 - Special Use Permit for placement of dwelling upon
Parcel #0741619, Map & Tax Lot #18-05-02-00-00100**

Dear Mr. Howe and Mr. Kendall:

We represent Asghar Sadri in matters regarding Parcel # 0741619, Map and Tax Lot # 18-05-02-00-00100, located in Section 2, Township 18 South, Range 5 West, of the Willamette Meridian, Lane County, Oregon. Mr. Sadri acquired his property by *Quitclaim Deed* in December 1993 from *The P. T. Glaser Revocable Living Trust* and *The Mary E. Glaser Revocable Living Trust*.¹ Mr. Sadri has applied to place a dwelling upon the property, has obtained Mobile Home Placement Permit BP 03-0457, and Septic Installation Permit SP 3-7076. The Lane County Land Management Division placed a "planning hold" on these applications on June 9, 2003, pending approval of a Special Use Permit to locate a dwelling in an "Exclusive Farm Use" zone. The Lane County Code requires a Special Use Permit to place a dwelling upon the property, enforcing the Farm Income Standard and Agricultural Land Rule (OAR 660-33).

As you know, Measure 37 passed by vote of the Oregon electorate. These new provisions of Chapter 197 ORS provide compensation to landowners whose property is reduced in fair market value by enforcement of land use regulations enacted subsequent to acquisition by the landowner. In the present case, Lane County has enforced two land use regulations, namely the Farm Income

¹Filed for Record in Lane County under Auditor's File No. 9385764.

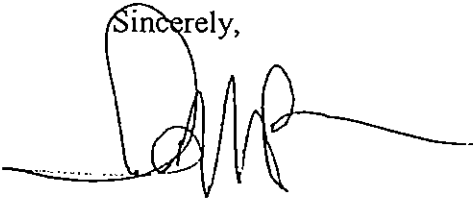
Mr. Howe and Mr. Kendall
Re: Demand for Compensation under Measure 37
December 21, 2004
Page 2

Standard and Agricultural Land Rule (OAR 660-33), which conspire to preclude Mr. Sadri from placing a dwelling on his property.² The Farm Income Standard and Agricultural Land Rule (OAR 660-33) were both enacted by the Oregon Land Conservation and Development Commission in 1994, after Mr. Sadri's acquisition of the subject property.

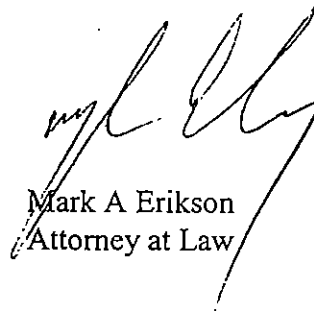
Mr. Sadri hereby demands compensation in the amount of One Hundred Thousand and 00/100's Dollars (\$100,000.00) for reduction in the fair market value of his property as a result of Lane County's enforcement of the Farm Income Standard and Agricultural Land Rule (OAR 660-33).

We note that Lane County may have adopted administrative regulations requiring the submittal of application materials and payment of fees in order to assert a claim under Measure 37. We hereby give notice of appeal of the application of such procedures to the present claim, and allege that such procedures are *ultra vires*, deprive Mr. Sadri of due process, and constitute a taking of his property for public purpose, without compensation, in violation of the 5th and 14th Amendments to the U.S. Constitution, and parallel provisions of the Oregon State Constitution.

Sincerely,



David M. Phillips
Attorney at Law



Mark A Erikson
Attorney at Law

DMP/III
SADA0113.L08.wpd

Enclosure

cc: Client

²See attached letter from Mr. Kendall to David M. Phillips, dated September 2, 2004.

September 2, 2004

Erikson & Hirokawa, PLLC
c/o David M. Phillips
1111 Main St., Suite 402
Vancouver, Wa. 98660

Re: PA 04-5615; application for farm dwelling per LC 16.212(7)(a) for Mr. Sadri

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

Dear Mr. Phillips:

As you recall, we discussed this application during the week of August 16 to a degree sufficient to allow me to send referrals out, per LC 14.050(3)(c). The specifically, the purpose of that conversation was to establish which tax lots were owned by Mr. Sadri. We agreed that in addition to tax lot 100 (of map 18-05-02), that he also owns tax lot 400. The application was so noticed. These two tax lots appear to be identical to parcels 1 and 2 of county approved partition PA 653-86. In any event, I await a written response from you in this regard.

In addition, I noted that you would need to address LC 16.212(10)(a)-(d), to resolve the acreage discrepancies, and to revise your submittal to include soils information for both tax lots, and not just for tax lot 100, as provided.

After having reviewed the submittal more in depth today, I have the following comment:

1. Regarding tax lot 100, the #85 Natroy soils are high value soils. See LC 16.212(2)(e)(iii)(dd), and the corresponding OAR 660-033-0020(8)(c)(D). In addition, so too is the #105A Pengra, #135C Willakenzie, and the #128B Veneta Loam. The Natroy soils alone add up to 83% of tax lot 100. Enclosed is RLID data source for tax lot 400. It shows 48% of the soils to be high value. Together, the subject property, tax lots 100 and 400, are predominantly composed of high value soils, and therefore, if this data holds as true, the application fails under LC 16.212(7).
2. The income data in Exhibit #17 is unsigned, not specific as to what property it includes, and includes no backup documentation. Please have the statement modified to identify the subject property, and include a signed letter from the applicant's accountant as to farm income earned during the required timeframe. In the alternative, provide a copy of the "Schedule F" from the IRS tax returns filed for the same time periods, or any other schedules which provide this information.

Please provide the above requested information by September 10, 2004. If you need more time, consider providing a waiver to the 150 day statutory processing timelines. A form to do such is enclosed.

Please contact me if you have any questions or comments.

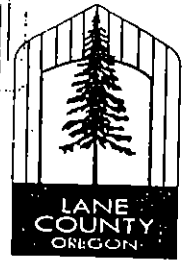
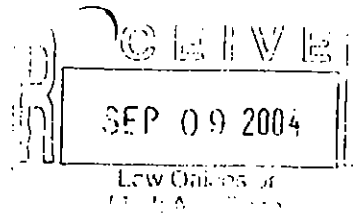
Sincerely,



Jerry Kendall/Associate Planner (541-682-4057; jerry.kendall@co.lane.or.us)

C: Asghar R. Sadri (no enclosures)
203 E. Reserve
Vancouver, Wa. 98661

(Failed too
on
9-3-04)



HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

February 24, 2005

Mr. Lane Shetterly, Director
Oregon Department of Land Conservation and Development
635 Capitol Street NE Suite 150
Salem, Oregon 97301-2540

Re: Oregon Ballot Measure 37

Dear Mr. Shetterly:

You have asked that we address two questions concerning 2004 Oregon Ballot Measure 37. Your first question concerns sections 8 and 10 of the measure, which provide that certain entities may elect to waive ("modify, remove, or not apply") a law as an alternative to paying compensation to a property owner. Generally, you want to know if a waiver under Measure 37 is personal to the current owner of the property or runs with the land. That is, does the waiver remain if the current owner conveys the property to a new owner?

The short answer to your first question is that when a public entity finds that there is a valid claim for compensation under Measure 37, but elects to provide relief by "not applying" the law, that relief is personal to the current owner of the real property. If the current owner conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost. We also consider the result where the public entity elects to "modify or remove" the law that was the basis for a valid claim. In general, where the law being modified or removed is a law that the public entity would otherwise be required to have in place (as a result of some other law or legal requirement), we believe that Measure 37 authorizes the public entity to modify or remove the law only to the extent required to provide relief to a current owner with a valid claim under the measure. This means that even where a public entity provides relief by modifying or repealing a law, in cases where the public entity is otherwise legally required to have that law in place, it may do so only so as to provide relief to the current owner.

Your second question is whether a public entity's decision to "modify, remove, or not apply" a law under section 8 of Ballot Measure 37 may be made on a "blanket" basis, that is whether a public entity may decide in advance that all claims that involve a particular law, or that involve owners who acquired their property after a particular date, or some other subset of the potential universe of claimants, will be granted relief. The short answer to this question is that Measure 37 authorizes public entities to "modify, remove, or not apply" the law only after the

affected owner has established his entitlement to relief. In other words, before deciding to grant relief to a Measure 37 claimant, a public entity must determine at least that:

- the claimant acquired the affected property before the law in question was adopted;
- the law restricts the use of the property in question;
- the law reduces the fair market value of the property in question;
- the law is not one that regulates activities that are commonly and historically recognized as a public nuisance;
- the law is not one that protects public health and safety; and
- the law is not required to comply with federal law.

To determine if Measure 37 applies, the public entity will have to consider facts specific to the particular property at issue and its present owner. As a result, the short answer is that we do not believe public entities may adopt rules or ordinances or other laws that provide "blanket waivers" of laws under Ballot Measure 37.

Analysis

When interpreting a statutory provision adopted through the initiative process, the Oregon Supreme Court applies the same methodology that it applies to the construction of a statute. *Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 61, 11 P3d 228 (2000); *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 612 n 4; 859 P2d 1143 (1993). The objective is to determine the intent of the voters who pass the measure. "The best evidence of the voters' intent is the text of the provision itself." *Roseburg School Dist. V. City of Roseburg*, 316 Or 374, 378, 851 P2d 595 (1993). In interpreting the text, we consider statutory and judicially developed rules of construction "that bear directly on how to read the text," such as "not to insert what has been omitted, or to omit what has been inserted," and to give words of common usage their plain, natural and ordinary meaning. *PGE*, 317 Or at 611; ORS 174.010. However, the meaning of the terms in a measure cannot be assessed in isolation from the context in which the measure's drafters used those words. See *PGE*, 317 Or at 610-11. The Oregon Supreme Court, however, is unlikely to conclude analysis of an initiated measure at the first level of review. *Stranahan*, 331 Or at 64.

The second level of review is an examination of the history of the provision. The history of an initiated provision includes information available to the voters at the time the measure was adopted that discloses the public's understanding of the measure. *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551, 560 n 8, 871 P2d 106 (1994). Sources of such information include the ballot title, explanatory statement and arguments for and against the measure included in the Voters' Pamphlet as well as contemporaneous news reports and editorials on the measure. *Id.* The extent to which these sources of information will be considered depends on their objectivity, as well as their disclosure of public understanding of the measure. *Stranahan*, 331 Or at 65 (citing *LaGrande/Astoria v. PERB*, 284 Or 173, 184 n 8, 586 P2d 765 (1978)).

If, after considering the text, context and history of the measure, the intent of the voters remains unclear, we may resort to judicial rules of construction to resolve any remaining uncertainty. *PGE, 317 Or at 612 n 4.*

1. Transferability of Measure 37 Relief

Your first question concerns whether a public entity's decision to modify, remove or not apply a law is personal to the owner making the claim or whether the grant of non-monetary relief runs with the land. In other words, when a public entity provides non-monetary relief to the present owner of property by waiving a law to allow a use of the property, what happens if the owner conveys the property to a new owner? We conclude that the relief is personal to the owner making the claim. In reaching that conclusion, we consider three potential answers: (1) Measure 37 only authorizes waiver for the present owner making the claim; (2) Measure 37 only authorizes waiver that runs with the land; or (3) Measure 37 grants the public entity making the decision on waiver the discretion to determine its duration. Nothing in Measure 37 expressly answers these questions, so we must discern the voters' intent, beginning our analysis with the measure's text.

Sections (8) and (10) of the measure authorize certain public entities to grant a waiver from a law that would otherwise require the payment of compensation.¹ Subsection (8) provides that:

"Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply [*sic*] the land use regulation or land use regulations *to allow the owner to use the property for a use permitted at the time the owner acquired the property.*" (emphasis added).

Section (10) provides that:

"* * * Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, *the owner shall be allowed to use the property as permitted at the time the owner acquired the property.*" (emphasis added.)

Subsection (11)(C) defines "[o]wner" as "the *present* owner of the property, or any interest therein." (emphasis added.)

¹ For every law, there is of course a public body that already has authority independent of Measure 37 to amend or repeal it, e.g., the Legislative Assembly for statutes.

The highlighted language is the only text concerned with the nature of the non-monetary relief authorized by the measure. Standing alone, it only provides authority for a public entity to waive a law to the extent necessary to allow an otherwise prohibited use by the "present" owner, i.e., the owner at the time the exemption is granted. In other words, this language only authorizes a public entity to make exemptions personal to the owner making the claim.

We also consider the immediate context of this text. Sections (8) and (10) of the measure provide three means for a public entity to waive a law. An authorized public entity may (1) "modify," (2) "remove," or (3) "not apply" the law. The plain, natural and ordinary meaning of "modify" best suited to the circumstances is "lessen the severity of : MODERATE . . . <traffic rules were *modified* to let him pass - Van Wyck Brooks>." WEBSTER'S THIRD NEW INT'L DICTIONARY 982 (unabridged ed 1993)1452. None of the definitions of "remove" is ideally suited to the circumstances, but "eliminate" comes the closest. *Id.* at 1921. To "apply" a rule of law is "to put [it] in effect : IMPOSE." *Id.* at 105.

The first two means of providing non-monetary relief - modifying or removing the law - appear to entail making a change in the law itself. That is, the ordinary meaning of how a public entity would "modify" a law would be for the public entity to amend the law. Similarly, the ordinary meaning of how a public entity would "remove" a law would be for the public entity to repeal it. How the law was amended or repealed would seemingly determine whether that action was personal to the current owner or permanent. For example, one way to grant John Doe non-monetary relief for his property on Maple Drive would be to modify the law to provide that "this law shall not affect the real property at 111 Maple Drive, Anytown, Oregon." On its face, a modification taking that form would have the effect of making the law not apply to the property irrespective of its ownership.² Moreover, to make the law begin applying again once it was acquired by a new owner, the public entity would need to repeal or amend the decision to remove or modify the law, which would seemingly entitle the new owner to relief in his own right. And if that owner were then granted the same type of modification, the owner that followed him would likewise be entitled to relief, and so on.

By contrast, if a law were modified to provide that "this law shall not affect any real property at 111 Maple Drive, Anytown, Oregon *that is owned by John Doe*," the exemption would be limited to the owner making the request for compensation and the property would again be subject to the original law upon its acquisition by a new owner, absent independent grounds for an exemption. In sum, the first two means of modifying or removing the law so that it does not apply to a property could be accomplished either by actions that are personal to the current owner or by actions that run with the land. The fact that either is technically possible means that this context does not shed any light one way or the other on whether the voters intended non-monetary relief to be personal to the present owner or to run with the land.

The third means of non-monetary relief - to "not apply" the law - presumably has a different meaning than the first two. ORS 174.010. As noted above, the ordinary meaning of

² Similarly, the law could be repealed in whole or in part (as to particular property or as to a particular person). As discussed below, we do not believe Measure 37 authorizes a public entity to repeal a law that it is required by other law to have in place (except, perhaps, with regard to a specific, valid, Measure 37 claim).

"apply" is to put something into effect or to impose or enforce it. Thus, it appears that the intended meaning of "not applying" a law in this context is to stop enforcing it in a way that does not involve repealing or amending the law. Instead, the relevant public entity is authorized simply to not give effect to an existing law, *i.e.*, to discontinue enforcing it. This construction also is consistent with the text of section (4), which entitles the present owner to compensation if a law "continues to be enforced against the property" 180 days after he submitted a claim. Therefore, if the third means were used, as long as the present owner continues to own the property, the public entity would stop enforcing or applying the law to the property. However, the law would otherwise continue unaltered, and if the present owner conveys the property to a new owner the public entity would have no lawful basis for not enforcing it if the conditions that created the right to relief under Measure 37 ceased to exist, *e.g.*, if the property were acquired by someone who was not entitled to an exemption in his own right. For that reason, to "not apply" a law would necessarily be personal to the owner submitting the claim.³

Although the text and context of the measure strongly suggest that the voters intended that non-monetary relief be personal to the present owner of the property, we also review the history of the measure to determine if it sheds any light on your question. We turn first to the Voters' Pamphlet, which is the primary source for Measure 37's history. The ballot title states that "Governments must pay owners, or forgo enforcement, when certain land use restrictions reduce property value." The explanatory statement declares that "government must pay owner reduction in fair market value of affected property interest, or forgo enforcement. Governments may repeal, change or not apply restrictions in lieu of payment; if compensation not timely paid, *owner* not subject to restrictions." (emphasis added.)

The arguments in favor include 40 submissions, although the last two are apparently ironic and intended to discourage "yes" votes. Slightly more than half of the arguments discuss the perceived adverse effects of land use laws in the abstract. Except as discussed below, none sheds any light on the question at hand. Slightly fewer than half are statements about how land use laws are preventing a specific owner from putting his or her property to some particular current use. All of those specific concerns could be remedied either by a decision that is personal to that owner or one that ran with the land, with the possible exception of several owners who expressed dissatisfaction with not being able to subdivide their property and give parcels to descendents, sell them to third parties, or both. Allowing an owner to subdivide property by not applying a prohibition would do him no good, of course, unless the subdivision remained lawful after its transfer to one or more new owners. Existing laws generally allow new owners to perpetuate non-conforming uses that were lawful when instituted, but it is not certain whether all would apply to a decision under Measure 37. *See, e.g.*, ORS 215.130.⁴ None of the

³ Measure 37's context includes related statutes that were already on the books at the time of its approval by the voters. *See Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 62 n15, 11 P3d 228 (2000). The breadth of Measure 37 results in a very large number of existing statutes that are related to Measure 37. We have not found anything in those statutes bearing directly on whether a Measure 37 exemption was intended by the voters to be personal or to run with the land.

⁴ ORS 215.130 provides in relevant part:

arguments in favor addresses whether subsequent purchasers would acquire the rights, or step into the shoes, of owners covered by the measure. Likewise, no argument directly mentions the effect of laws on a property's resale value, although one argument states that they restrict the use of home equity to fund owners' retirements. The latter implies an adverse effect on resale value, which might be recognized by discerning voters as a problem that would only be remedied if the exemptions ran with the land. On the other hand, an argument in favor of the measure by the chief petitioners expressly states that if an owner entitled to Measure 37 compensation conveys her property, that will establish a new "date of acquisition" for purposes of determining what laws may give rise to a claim. This is a clear statement that the chief petitioners expected that the relief available under the measure depends on when the current owner acquired the property -- that the relief is personal to the current owner. If the current owner is eligible for relief, but sells the property, then only laws adopted after the new owner acquired the property create a right to relief.⁵ The arguments in opposition include nothing that bears on this issue.

Measure 37 received considerable attention in the state's newspapers, but none of the articles or editorials we have seen discuss whether a decision to grant non-monetary relief would be personal or run with the land. Like the Voters' Pamphlet, the newspaper commentary we have reviewed does not address whether subsequent purchasers would acquire the rights, or step into the shoes, of owners covered by the measure. The same appears to be true of the television advertising on this measure.

"(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted." (emphasis added.)

This statute allows the continuation of uses that have been made unlawful by a subsequent change in the law. But if a decision to grant non-monetary relief under Measure 37 is personal to the owner, uses covered by an decision would be made unlawful not by a change in the law but by a change in ownership, which does not come under ORS 215.130. Therefore, voters whose decision to support the measure was motivated by the arguments about subdivision restrictions presumably expected either that a decision to grant non-monetary relief would run with the land or that existing law would not require that a subdivision be undone upon the property's sale. Additional legislation may be needed to implement that intent.

⁵ The argument in the Voters Pamphlet states:

"If the current owner sells an interest in her property, so long as the current owner still has a current possessory interest, or a reversionary interest in the property, the provisions of Ballot Measure 37 apply using the date the current owner acquired the property. Only if a current owner sells all of her interest in a piece of property does the date of acquisition change for purposes of determining what regulations are subject to Ballot Measure 37 protections."

Voters' Pamphlet, Volume 1 - State Measures. Oregon Vote by Mail General Election, November 2, 2004, at page 113. Argument in Favor furnished by Dorothy English, Barbara Prete and Eugene Prete.

In conclusion, the phrases "to allow the owner to use the property for a use permitted at the time the owner acquired the property" and "the owner shall be allowed to use the property as permitted at the time the owner acquired the property," together with the definition of "owner" as "the present owner of the property, or any interest therein" are the only text that directly addresses whether a decision to grant non-monetary relief by "not applying" or modifying or removing a law applies to the present owner or to the property. Those phrases specify the minimum that a public body *must* do to avoid paying compensation, i.e. modify, remove or not apply the law to allow *present owner* to use the property as permitted at the time the *present owner* acquired it. Absent independent authority to amend, repeal or otherwise disregard the law at issue, *see* note 1 *supra*, we believe that those phrases also specify the maximum that a public body *may* do to avoid paying compensation. This interpretation is reinforced by other text, namely, the three means by which government may stop the law from applying, as the third means could never be used if all decisions to grant non-monetary relief were intended to run with the land. The measure's history is generally consistent with this interpretation as well and provides no justification for an interpretation at odds with the plain meaning of the measure's text.

Where a local government has discretion concerning whether or not to adopt the ordinance, local government may have authority to modify or repeal that ordinance with regard to both present and future property owners. However, where local government has adopted an ordinance to implement a requirement of state or federal law, Measure 37 authorizes that local government to waive the ordinance only as to the present owner of the property.⁶ We therefore conclude that Measure 37 only authorizes government bodies to "modify, remove or not to [*sic*] apply" a law (as an alternative to compensation) that the government is otherwise required to apply where that decision is personal to the current owner of the property.

2. "Blanket Waivers"

Some local governments have expressed an intention to repeal laws in response to Ballot Measure 37, either on a wholesale basis (as applied to all persons and property) or on a more limited basis (for example, as applied to all owners of real property acquired before the effective date of the law in question). If a locally adopted law is required by state law, then subsections (8) and (10) permit a local body to *modify, remove or not apply* the law only with respect to a valid Measure 37 claim. That is, Measure 37 authorizes a public entity to modify, remove or not apply a local law that is required by state law only as to owners who have established valid claims under the measure. Cities or counties that repeal or amend local ordinances that are required by state law on a broader basis are, we believe, acting in violation of state law.

An owner establishes a valid Measure 37 claim only if the authorized public entity determines that a series of conditions are met, including:

⁶ ORS 197.646 generally requires a local government to amend its comprehensive plan and land use regulations to implement new land use statutes and land use goal and rules of the Land Conservation and Development Commission (LCDC).

- The public entity has enforced the law;
- The law restricts the use of private real property or any interest therein
- The law has the effect of reducing the fair market value of the claimant's property or any interest therein
- The owner of the property has made a written demand to the public entity
- The law was enacted after the date the claimant acquired the property
- The law does not restrict or prohibit activities commonly and historically recognized as public nuisances under common law;
- The law does not restrict or prohibit activities to protect public health and safety
- The law is not required to comply with federal law.

If any of those conditions is not satisfied, relief is not authorized by Ballot Measure 37. If the law or laws in question are ones that a city or county was required to adopt by state law, the city or county may not repeal or amend those laws except to the extent authorized by the measure. As a result, any ordinance that purports to waive otherwise applicable laws that are required by state law, without providing for the determinations set forth above to be made, is beyond the authority provided by Ballot Measure 37 and likely violates the state law that would otherwise require the local government to have the local law in question in place.

In the arena of land use, ORS 197.646 generally requires local governments to amend their comprehensive plans and land use regulations to implement new or amended statewide planning goals and rules, and land use statutes (such as ORS ch. 215). As a result, if a county were to "modify, remove or not apply" its own ordinance adopted to implement state law in response to a valid written demand made under Ballot Measure 37, it could do so only if it first determined that all of the conditions required for a claim to be valid and entitled to relief have been met.⁷

If you have any questions about this advice, please do not hesitate to contact me. The nature of this advice is necessarily general, and there may be aspects of existing state or local laws that require additional analysis as we work through questions arising from the implementation of this measure.

Very truly yours,



Stephanie Striffler
Special Counsel to the Attorney General

DNI:HRM:W:SLS:gvk:AG515162

⁷ We expressly do not address whether such an action by a city or county would entitle a property owner to carry out a use. That question is beyond the scope of this advice.

Measure 37

Proposed by Initiative petition to be voted on at the General Election, November 2, 2004.

Ballot Title

37

GOVERNMENTS MUST PAY OWNERS OF REAL PROPERTY WHEN CERTAIN LAND USE RESTRICTIONS REDUCE PROPERTY VALUE

RESULT OF "YES" VOTE: "Yes" vote requires that governments pay owners of real property when certain land use regulations reduce property value.

RESULT OF "NO" VOTE: "No" vote requires retaining that governments pay owners of real property when certain land use regulations reduce property value.

SUMMARY: Currently, Oregon Constitution requires governments to pay owners of real property when certain laws, regulations, or ordinances are enacted or amended that restrict the use of real property or any interest therein, if the restriction is not a public use or public interest. Measure 37 requires that certain laws, regulations, or ordinances that restrict the use of real property or any interest therein, if the restriction is not a public use or public interest, shall be paid for by the government. Measure 37 also requires that governments pay owners of real property when certain laws, regulations, or ordinances are enacted or amended that restrict the use of real property or any interest therein, if the restriction is not a public use or public interest. Measure 37 also requires that governments pay owners of real property when certain laws, regulations, or ordinances are enacted or amended that restrict the use of real property or any interest therein, if the restriction is not a public use or public interest. Measure 37 also requires that governments pay owners of real property when certain laws, regulations, or ordinances are enacted or amended that restrict the use of real property or any interest therein, if the restriction is not a public use or public interest.

ESTIMATE OF FINANCIAL IMPACT: The measure would require governments to pay owners of real property when certain laws, regulations, or ordinances are enacted or amended that restrict the use of real property or any interest therein, if the restriction is not a public use or public interest. The measure would require governments to pay owners of real property when certain laws, regulations, or ordinances are enacted or amended that restrict the use of real property or any interest therein, if the restriction is not a public use or public interest.

The measure may require compensation to landowners. The amount of state expenditures needed to pay claims for compensation cannot be determined.

There is no financial effect on state revenues.

The measure would require local government administrative expenditures to respond to claims for compensation of between \$16 million and \$300 million per year.

The measure may require compensation to landowners. The amount of local government expenditures needed to pay claims for compensation cannot be determined.

The effect of the measure on local government revenues cannot be determined.

Text of Measure

The following provisions are added to and made a part of ORS chapter 197:

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

(3) Subsection (1) of this act shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

(6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.

(7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015(10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this

Measure 37

act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions – for purposes of this section:

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission;

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

Explanatory Statement

Ballot Measure 37 adds a new statute to ORS chapter 197. As specified in the measure, the owner of private real property is entitled to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces its fair market value.

If a property owner proves that a land use regulation restricts the use of the owner's property, and reduces its value then the government responsible for the regulation will have a choice: pay the owner of the property an amount equal to the reduction in value or modify, change or not apply the regulation to the owner's property.

The measure allows the state, county, city or metropolitan service district to adopt procedures for processing claims for compensation, but prohibits those procedures from being treated as a prerequisite to the filing of a claim in circuit court.

The measure does not apply to commonly and historically recognized public nuisances, public health and safety regulations, regulations required to comply with federal law, and regulations restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

The measure specifies that compensation is due if the regulation remains in force 180 days after the owner makes written demand for compensation. After that time, the present owner may file an action in the circuit court in the county in which the property is located. The measure also specifies that the present owner is entitled to reasonable attorney fees, expenses, costs and other disbursements reasonably incurred to collect compensation.

The measure provides no new revenue source for payments, if any, required under this measure.

The measure defines several terms that are used in the statute including "family member" which is defined as wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

Committee Members:

David Hunnicutt
Dale Riddle
Bernie Bottomly
Patricia McCaig
Jack Roberts

Appointed by:

Chief Petitioners
Chief Petitioners
Secretary of State
Secretary of State
Members of the Committee

(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 251.215.)

REAL PROPERTY COMPENSATION/REGULATION APPLICATION PROCESS

2.700 Findings and Purpose.

(1) Findings. On November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37 which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowners if a government land use regulation reduces property value. Ballot Measure 37 permits owners of private real property to apply for compensation for the reduction of property value resulting from imposition of a land use regulation that restricts the use of private real property and the government has 180 days from such application to deny or pay the claim or take action to modify, remove, or not apply the regulation on the property. Since Ballot Measure 37 does not set forth a specific process for review of applications for compensation, it is in the best interests of Lane County to establish such a process in order to be able to assess such claims in a timely manner.

(2) Purpose. The provisions of LC 2.700 through 2.770 implement the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The provisions of LC 2.700 through 2.770 establish a prompt, open, thorough and consistent process that enables property owners to present their legitimate claims consistent with the Oregon and U.S. Constitutions; enable persons with claims to have an adequate and fair opportunity to present them to the County; preserve and protect limited public funds; and establish a record of decision capable of appellate review. The provisions of LC 2.700 through 2.770 shall become operative only when the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) become effective. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.710 Definitions.

For the purpose of LC 2.700 through 2.770 the following terms, phrases, words and their derivations shall have the meaning given in LC 2.710. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. Words not defined in LC 2.700 through 2.770 shall be given the meaning intended in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), or as those words may be subsequently defined by statute. Words used in LC 2.700 through 2.770 that are the same as words used in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) shall have the same meaning as the words used in those provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), notwithstanding any different definition in any other regulation. If not defined there, the words shall be given their common and ordinary meaning.

Claim. A claim filed under Ballot Measure 37.

County Administrator. The County Administrator or the Administrator's designee.

Exempt Land Use Regulation. A land use regulation that:

- (1) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
- (2) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
- (3) Is required to comply with federal law;

(4) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or

(5) Was enacted prior to the date of acquisition of the property by the owner or a family member

Family Member. Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

Land Use Regulation. Includes:

- (a) Any statute regulating the use of land or any interest therein;
- (b) Administrative rules and goals of the Land Conservation and Development Commission; and
- (c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances.

Owner. The present owner of the property, or any interest therein.

Valid Claim. A claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by Lane County that restricts the use of the private real property in a manner that reduces the fair market value of the real property.
(Revised by Ordinance No. 9-00, Effective 12.6.00)

2.720 Application for Claim.

An applicant seeking to file a claim under LC 2.700 through 2.770 shall be the present owner of the property that is the subject of the claim at the time the claim is submitted. An applicant shall submit an application to the County Administrator consisting of all of the items set out in LC 2.720(1) through (9). The County Administrator may waive the submission of any materials if not deemed applicable to the evaluation of the specific claim. Within 10 working days of when the application is first submitted, the County Administrator may require additional information beyond that listed in LC 2.720(1) through (9) where useful to address approval criteria. The applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. The County will not deem the application complete until all information required by the County Administrator has been submitted. Unless specifically waived by the County Administrator, the following must be submitted:

- (1) A completed application form;
- (2) The name, mailing address, and phone number of the property owner filing the application, and of each of the other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each, if any, along with the signature of each of the other owners indicating consent to the application claim;
- (3) A legal description and tax lot number of the subject property as well as a street address for the property (if any);
- (4) A title report issued within 30 days of the application's submittal, including title history and including a statement of the date the applicant acquired ownership of the subject property and showing the ownership interests of all owners of the property or, as an alternative to the title report, a copy of the deed(s) granting all existing ownership interests to the owner(s) of the subject property signing the application;

(5) A statement specifically identifying the section of Lane Code or other land use regulation that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property, including the date the regulation was adopted, first enforced or applied to the subject property;

(6) A copy of a written appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, addressing the requirements of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and indicating the amount of the alleged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after application of each of the challenged regulations, individually, and after the application of all of the challenged regulations, cumulatively;

(7) A written statement addressing the criteria listed in LC 2.740(1)(a) through (d);

(8) A statement by the applicant specifying the amount of the claim, and the fair market value of the property before and after application of the challenged land use regulation(s); and

(9) Copies of any leases or covenants, conditions and restrictions applicable to the subject property if any exist that impose restrictions on the use of the property. Unless waived by the County Administrator, an application also shall include an application fee, in the amount established by Order of the Board, to at least partially cover the County costs of processing the application, to the extent an application fee may be required as a condition of acceptance of filing of an application for a claim under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The County shall refund the application fee if it is determined by the County or by a court that the applicant is entitled to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.730 Completeness Review.

The County Administrator shall review a claim application and, within 10 working days of its receipt, notify the applicant as to whether the application is complete. If the County Administrator determines that the application is complete, the County Administrator shall begin the application review process. If the County Administrator determines that the application is incomplete, the county shall advise the applicant in writing of the necessary missing information. Within 10 days of the mailing of a notice of missing information, the applicant shall submit to the county a written statement indicating either an intent to submit the missing information or a refusal to submit the missing information. A statement indicating an intention to submit missing information shall constitute a waiver of the 180-day deadline contained in the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) for a period of time equal to the time it takes to supply the missing information. The County shall accept the application and begin review either:

- (1) Upon receipt of all of the missing information requested by the County;
- (2) Upon receipt of a written statement from the applicant indicating that the missing information will not be provided; or
- (3) Upon the 20th day after mailing the notice of missing information referred to above, if the applicant has not responded. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.740 Application Review and Recommendation.

(1) The County Administrator shall make a determination as to whether the application qualifies for Board compensation consideration. An application qualifies for compensation consideration if the applicant has shown that all of the following criteria are met:

- (a) The County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein;
- (b) The restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed;
- (c) The challenged land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner; and
- (d) The challenged regulation is not an exempt regulation as defined in LC 2.710.

(2) If an application fails to meet one or more of the criteria listed above, the County Administrator shall issue a written final decision denying the claim and explaining the reason(s) for determining that the application does not qualify for compensation consideration and will not be referred to the Board. If the application meets all of the criteria in LC 2.740(1)(a) through (d), the County Administrator shall refer the application to the Board and recommend, based on consideration of the criterion at LC 2.760(3), that the Board either compensate the applicant for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation or modify, remove, or discontinue application of the land use regulation to the subject property.

(3) After consideration of the information included in the application and any other evidence obtained or received, the County Administrator shall determine whether modifying, removing, or discontinuing application of a land use regulation is necessary to avoid owner entitlement to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if so the extent needed to avoid the entitlement to such compensation and the amount of compensation to which the owner would be entitled without modifying, removing, or discontinuing application of a land use regulation. The County Administrator shall compare the public benefits from application of the land use regulation to the private real property with the public burden of paying the required compensation to the owner if a modification or waiver of the land use regulation is not granted, taking into consideration the financial resources of the County for the payment of such claims. Based on this comparison, the County Administrator shall prepare a written report to the Board stating these determinations and the evidence on which they are based.

(4) If waiver or modification of a land use regulation is necessary to avoid owner entitlement to compensation, the County Administrator shall make a recommendation either to grant a waiver or modification of the land use regulation that will avoid owner entitlement to compensation, grant a waiver or modification of the land use regulation that will not avoid but will reduce the compensation to which the owner is entitled and pay the reduced compensation, or deny a waiver or modification of the land use regulation and pay the compensation to which the owner is entitled.

(5) Notice of the denial or recommendation to Board shall be mailed to the applicant.

(6) The County Administrator shall issue a decision denying the claim or making a referral recommendation to the Board by the 45th day after the application was accepted. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.750 Application Notice.

(1) Within 5 days of the referral to the Board, but no less than 20 days before the Board holds a public hearing, written notice of the application referral shall be mailed to all of the following:

(a) The applicant;

(b) Other owners of the subject property and anyone with any interest in the property, including lien holders, trustees, renters, or lessees, as listed on the application;

(c) Owners of record on the most recent property tax assessment roll of properties located within 500 feet of the perimeter of the subject property located entirely within an urban growth boundary or Rural Community and within 1500 feet of the perimeter of all other subject properties;

(d) Neighborhood groups or community organizations officially recognized by the Board and whose boundaries include the subject property; and

(e) Other agencies or interested parties as determined by the County Administrator.

(2) The failure of any person to receive notice shall not affect or invalidate any proceedings under LC 2.700 through 2.770.

(3) The notice shall include all of the following:

(a) The street address or other easily understood geographical reference to the subject property;

(b) The criterion for the decision;

(c) The place, date, and location of the hearing;

(d) The nature of the application and the proposed use or uses which could be authorized if the identified land use regulation is waived or modified with respect to the subject property;

(e) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;

(f) The name and telephone number of a county contact person;

and

(g) A brief summary of the local decision making process for the decision being made. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.760 Board Consideration and Decision.

(1) Upon conclusion of any hearing on a claim application, and prior to the expiration of 180 days from the date a claim was filed, the Board shall either declare:

(a) The claim is a valid claim and the amount of compensation, if any, due to the owner(s) of the subject property; or

(b) The claim is a valid claim and the County will, as of the date of the final Board decision, modify, remove, or choose not to apply the challenged land use regulation(s) in a manner which reduces the value of the subject property and allows the owner to use the property for a use permitted at the time the owner acquired the property.

(2) Where more than one regulation is being challenged, the Board may provide for a combination of the two remedies listed above.

(3) The Board decision shall be based upon consideration of whether the public interest would be better served by compensating the applicant, or by modifying, removing, or choosing not to apply the challenged land use regulation(s) to the subject property. The Board decision shall be accompanied by a written decision that states the

facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria set forth in LC 2.760(3).

(4) Within 5 days after the Board renders a decision, the County shall mail notice of the decision to all parties to the proceeding. The notice shall include a summary of the decision.

(5) The County shall record notice of the Board decision in the county deed records. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

2.770 Board Decision Effect.

(1) Pursuant to Ballot Measure 37 (November 2, 2004), and notwithstanding any other law, rule, ordinance, resolution, goal or other enforceable enactment of the County, and notwithstanding any other procedure for release, exception, or otherwise in the Lane Code, the Board is authorized to modify, remove, or discontinue application of a challenged land use regulation by Order pursuant to LC 2.700 through 2.770 when the Board, in its discretion, elects to do so rather than paying compensation to the property owner.

(2) Any modification, removal, or discontinued application of a regulation shall be in effect during such time as the owner owns the subject property and shall automatically cease when the property is owned by a new owner. Following termination of ownership of the property by the owner, the discontinued regulation or any subsequent amendments shall be reinstated and apply to the property, and the new property owner shall, to the maximum extent permitted by law, bring the property immediately into compliance with the reinstated regulation.

(3) If the Board grants an Order modifying, removing, or discontinuing application of a challenged land use regulation as a means to avoid having to compensate, or as a means to limit compensation to, an owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if, based on an appellate court interpretation or invalidation of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), in the same or any other case, the applying owner was not entitled to compensation in relation to the modified, removed, or discontinued challenged land use regulation, then the Order shall be deemed to have been invalid and ineffective as of and after the date of the Board's Order. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the County being required to compensate the owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

(4) Any modification, removal, or discontinued application of a challenged land use regulation Order granted under LC 2.700 through 2.770 shall terminate automatically on the occurrence of any event which determines the owner or future owner of the private real property that is the subject of the modified, removed, or discontinued application of a challenged land use regulation Order would not be entitled to just compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) in relation to the land use regulation made inapplicable by the Board Order. *(Revised by Ordinance No. 9-00, Effective 12.6.00)*

EXCLUSIVE FARM USE ZONE (E-RCP)RURAL COMPREHENSIVE PLANBOOK **146** PAGE **1817**16.212 Exclusive Farm Use Zone (E-RCP).

(1) Purpose. The purpose of the Exclusive Farm Use (E-RCP) Zone is to provide areas for the continued practice of commercial agriculture, guarantee the preservation and maintenance of areas so classified and minimize activities that may be incompatible with commercial agriculture. The Exclusive Farm Use Zone is to be applied to land designated as agricultural by the Rural Comprehensive Plan.

It is the County's policy to protect forestry and agricultural operations from conflicting land uses. Nothing in this section is intended to interfere with normal forestry or agricultural management or practices that might result in conditions such as noise, dust, smoke, visual impacts or odors for temporary periods of time. Existing or proposed nonforest or nonfarm uses (i.e. dwellings) within the Exclusive Farm Use Zone must recognize that the intent of the Zone is to protect resource management activities and that, in the event of conflict between residential uses and farm forestry or forestry practices, this Chapter will be interpreted in favor of these resource management practices.

(2) Permitted Uses. In the EFU Zone, the following uses and activities are permitted subject to the general provisions and exceptions set forth by this Chapter.

- (a) Farm Use (See farm use definition)
- (b) Propagation or harvesting of a forest product.
- (c) Public or private schools, including all buildings essential to the operation of a school.
- (d) Churches.
- (e) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for use by public sale and transmission towers over 200 feet in height.

(f) A dwelling or mobile home customarily provided in conjunction with farm use (existing), provided it complies with the following requirements:

(i) The proposed dwelling or mobile home will be the only dwelling or mobile home on the subject property, contiguous property in the same ownership and any noncontiguous property which is managed as part of the same farm operation.

(ii) The proposed dwelling or mobile home will be located on a legal lot that is currently managed as part of a farm operation of a size equal to or greater than that described in LC 16.212(6)(d) below, and will be located on a legal lot that is not smaller than the minimum size allowed for the division of land as described in LC 16.212(7) below.

16.212(2)

Lane Code

16.212(2)

(iii) At least one occupant of the proposed dwelling or mobile home will be employed in conjunction with the current farm use of the farm operation.

(iv) Sufficient information is submitted by the person applying for the proposed dwelling or mobile home which factually documents compliance with the above criteria. Such information shall include, but not necessarily be limited to:

(aa) The size, location and ownership of the total property involved in the farm operation.

(bb) A copy of any farm use, lease agreements for the total property involved in the farm operation.

(cc) Identification of the specific farm uses conducted on the total property involved in the farm operation and the number of acres for each specific farm use.

(dd) Identification of the extent of involvement in the farm use activity by the occupants of the proposed dwelling or mobile home.

(ee) Identification by reference to LC 16.212(6)(d) below of the type of farm operation (i.e., farm group) that the proposed dwelling or mobile home would be customarily provided in conjunction with.

(g) A dwelling or mobile home customarily provided in conjunction with farm use (contemplated) which complies with the following requirements:

(i) The proposed dwelling or mobile home will be located on a legal lot which will be managed as part of a farm operation of a size equal to or greater than that described in LC 16.212(6)(d) below, but is not currently so managed.

(ii) The proposed dwelling or mobile home will be located on a legal lot that is not smaller than the minimum size allowed for the division of land as described in LC 16.212(7) below.

(iii) At least one occupant of the proposed dwelling or mobile home would be employed in conjunction with the proposed farm operation.

(iv) There is no other dwelling or mobile home on the subject property, contiguous property in the same ownership and any noncontiguous property which would be managed as part of the same farm operation.

(v) Sufficient information is submitted by the persons applying for the proposed dwelling or

mobile home which factually addresses the above criteria. Such information shall include:

(aa) The size, location and ownership of the total property involved in the farm operation.

(bb) A copy of any farm use lease agreements for the total property involved in the farm operation and the number of acres for each specific farm use.

(cc) Identification by reference to LC 16.212(6)(d) below of the type of farm operation (farm group) that the proposed dwelling or mobile home would be in conjunction with.

(dd) Identification of the planned extent of involvement in the proposed farm use activity by the occupants of the proposed dwelling or mobile home and the experience of the occupants in prior farm use activities.

(ee) A copy of a farm management plan for the proposed farm operation which provides factual details addressing the farm operation concerns pertinent to the farm operation proposed, including:

Land preparation.

Ripping and plowing.

Fencing.

Surveying.

Crop cultivation.

Irrigation.

Herbicide; fungicide and/or fertilizer application.

Machinery.

Accessory farm buildings.

Breeding and livestock raising concerns.

Labor.

Projected expenses associated with the above.
Date by which the farm management plan would be substantially implemented.

(ff) The residence shall be so located on the subject property as to provide the least interference with farming activities which will thereon occur. A site plan shall be submitted which shows the location of the residence and explains the rationale of the location in reference to the above criterion.

(vi) Upon substantial completion of the details represented in the above farm management plan, the dwelling or mobile home shall be allowed on the subject property. During the interim while the farm management plan is being implemented on the subject property, a temporary mobile home in conjunction with the farm use may be allowed for a period not to exceed five years. If the farm management plan is not implemented within the five-year period, the temporary mobile home shall be removed or another special permit under this subsection may be made.

(h) A dwelling or mobile home customarily provided in conjunction with farm use (existing) which complies with the following requirements:

(i) The proposed dwelling or mobile home would be in addition to another dwelling or mobile home already on the subject property, contiguous property in the same ownership and any noncontiguous property which is managed as part of the same farm operation.

(ii) The occupant or occupants of the proposed dwelling or mobile home will be employed in conjunction with the current farm use of the farm operation and the occupant or occupants of the existing dwellings or mobile homes are employed in conjunction with the current farm use of the farm operation.

(iii) The proposed dwelling or mobile home will be located on a legal lot that is currently managed as part of a farm operation of a size equal to or greater than that described in LC 16.212(6)(d) below, and will be located on a legal lot that is not smaller than the minimum size allowed for the division of land as described in LC 16.212(7) below.

(iv) Sufficient information is submitted by the person applying for the proposed dwelling or mobile home which factually documents compliance with the above criteria. Such information shall include, but not necessarily be limited to:

(aa) The size, location and ownership of the total property involved in the farm operation.

(bb) A copy of any farm use, lease agreements for the total property involved in the farm operation.

(cc) Identification of the specific farm uses conducted on the total property involved in the farm operation and the number of acres for each specific farm use.

16.212(2)

Lane Code

16.212(2)

(dd) Identification of the extent of involvement in the farm use activity by the occupants of the proposed dwelling or mobile home, and by the occupants of the existing dwellings or mobile homes.

(ee) Identification by reference to LC 16.212(6)(d) below to the type of farm operation (i.e., farm group) that the proposed dwelling or mobile home would be customarily provided in conjunction with.

(i) A dwelling or mobile home on real property used for farm use if the dwelling or mobile home is:

(i) Located on the same legal lot as the dwelling or mobile home of the farm operator; and

(ii) Occupied by a relative, which means grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.

(iii) Establishment of the second dwelling or mobile home may not be used for future justification of land division, and Lane County shall not approve any subdivision or partition of a lot or parcel for which such a second dwelling or mobile home has been approved.

(iv) The farm operator submits a statement that:

(aa) The second dwelling or mobile home is necessary for his or her farm operation.

(bb) Identifies the family relationship of the persons who will occupy the second dwelling or mobile home.

(cc) He or she fully understands the conditions under which the building permit is being approved.

(j) One mobile home in conjunction with an existing dwelling or mobile home on the same legal lot as the existing dwelling or mobile home as a temporary use for the term of a hardship suffered by the existing resident or a relative of the existing resident subject to compliance with the following conditions:

(i) A resident of the existing dwelling or mobile home and a resident of the mobile home are family members.

(ii) One of the residents mentioned above suffers a hardship and needs the care of the other above-mentioned resident and family member.

(iii) Satisfactory evidence of the family member's hardship is furnished which shall include:

16.212(2)

Lane Code

16.212(2)

(aa) A written statement, on a form provided by the Department, from the family member's physician, therapist, or other professional counselor, disclosing the existence and general nature of the hardship.

(bb) A written statement, on the form provided by the Department, disclosing the family relationship of the person with the hardship and the person who will provide care.

(iv) The temporary mobile home will be located on the same legal lot as the existing dwelling or mobile home.

(v) The temporary mobile home will be connected to the same on-site sewage disposal system serving the existing dwelling or mobile home.

(vi) The temporary mobile home will comply with sanitation and building code requirements.

(vii) Approval of temporary mobile home permits shall be valid until December 31 of the year following the year of original permit approval and may be renewed once every two years until the hardship situations cease.

(k) Nonresidential buildings customarily provided in conjunction with farm use.

(l) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead; and operations for the exploration for minerals as defined by ORS 517.750..

(m) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(n) Family day care facility in an existing residence or a residence established in accordance with the applicable review processes set forth in this district.

(o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been inventoried and designated in the Rural Comprehensive Plan as a historic property meeting the standards of ORS 356.480.

(p) Seasonal farm worker housing which complies with the following requirements:

16.212(2)

Lane Code

16.212(3)

(i) The proposed housing development will be on a legal lot which is currently managed as part of a farm operation of a size equal to or greater than that described in LC 16.212(6)(d) below, and will be located on a legal lot not smaller than the minimum size allowed for the division of land as described in LC 16.212(7) below.

(ii) The proposed housing development is needed to provide temporary seasonal farm worker housing for the farm operation described in LC 16.212(2)(p)(i) above, such need to be measured by the character and requirements of the specific farm operation as described in written documentation provided by the person applying for the approval.

(iii) The proposed housing development satisfies the provisions of LC 16.257 (Site Review).

(q) Winery, developed only as specifically defined in LC 16.090, provided that the vineyards described in the definition of winery are planted or that the long-term contract for vineyard produce is executed, and further provided that the following conditions are shown at the time of application to be satisfied in a manner that demonstrated conflicts with accepted farming or forest practices on adjacent lands are limited:

(i) A 100-foot setback is maintained from all property lines to the outside perimeter of the winery and all associated public gathering places;

(ii) There is provision of direct road access to the site, including adequate internal circulation, and parking as defined in LC 16.250(2)(a)(vii).

(r) Creation of, restoration of, or enhancement of wetlands.

(s) Uses necessary and accessory to those permitted above.

(3) Special Uses - Director Approval. The following uses are allowed subject to prior submittal of an application pursuant to LC 14.050 and approval of the application by the Director pursuant to LC 14.100 and LC Chapter 16, and subject to conformance with the applicable approval criteria:

(a) A dwelling or mobile home in conjunction with farm use or the propagation or harvesting of a forest product on a legal lot that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(i) Consists of 20 or more acres.

(ii) Is not smaller than the average farm or woodlot in the County producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(iii) Does not already have a dwelling or mobile home on it.

16.212(3)

Lane Code

16.212(3)

(b) A dwelling or mobile home in conjunction with farm use or the propagation or harvesting of a forest product on a legal lot that is managed as part of a farm operation or woodlot smaller than required under LC 16.212(6)(d) below if the legal lot:

(i) Has produced at least \$10,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$10,000 in annual gross farm income; or

(ii) Is a woodlot capable of producing an average over the growth cycle of \$10,000 in gross annual income.

(iii) Does not already have a dwelling or mobile home on it.

(c) One dwelling or mobile home, not provided in conjunction with farm use, on a vacant legal lot not larger than three acres provided:

(i) The dwelling or mobile home, or activities associated with the dwelling or mobile home, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use; and

(ii) If the legal lot is located within the Willamette Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by Lane Code relating specifically to the Willamette Greenway, floodplains or geological hazard areas, whichever is applicable; and

(iii) The dwelling complies with other conditions considered necessary by the governing body or its designate; and

(iv) The legal lot was created between January 1, 1948 and before July 1, 1983.

(v) For the purposes of the above subsection, only one legal lot exists if:

(aa) The legal lot is contiguous to one or more lots or parcels in which, on July 1, 1983, greater than possessory interests are held in those contiguous lots by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(bb) As used in the LC 16.212(3)(c)(v) (aa) above, contiguous means "lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road."

(vi) Notice and review of an application under LC 16.212(3)(c) above shall occur in compliance to LC 16.100(2).

(d) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in a dwelling or mobile home, or other buildings normally associated with uses permitted under LC 16.212(2) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.212(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the property owner or applicant who received initial approval, or a renewal pursuant to this Section, shall provide the Director with written request for renewal of the Home Occupation and written information sufficient to allow the Director to determine if the Conditions of approval and other approval criteria have been satisfied. The Director shall review this information for each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval, or for which a request for renewal is not received pursuant to this Section, shall not receive extended approval by the Director, and the

Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(e) A residential home, subject to compliance with the following conditions:

(i) Conforms to the limitations for "residential home" as defined in LC 16.090.

(ii) Will be located in a lawfully existing residence and on a legal lot.

(iii) Will comply with sanitation and building code requirements.

(iv) Will not be used as justification for a zone change.

(f) The propagation, cultivation, maintenance and harvesting of aquatic species, subject to the following conditions:

(i) The harvesting which occurs on the subject property is conducted by the owner(s) or the employees of the owner(s).

(4) Special Uses - Hearings Official Approval. The following uses are allowed subject to prior approval of the Hearings Official pursuant to LC 14.300 and pursuant to compliance with the below approval criteria of this subsection and LC 16.212(5).

(a) Commercial activities that are in conjunction with farm use.

(b) Subsurface resource recovery operations as follows:

(i) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted by LC 16.212(2)(1) above.

(ii) Mining of aggregate and other mineral and other subsurface resources to an amount exceeding 1,000 total cubic yards of material or excavation preparatory to mining a surface area of more than one acre.

(iii) Processing, as defined in ORS 517.750, of aggregate into asphalt or portland cement; provided such processing does not take place within two air miles of a vineyard planted at the time the initial processing application is made.

(iv) Processing of other mineral resource and other subsurface resources.

(c) Community centers owned and operated by a governmental agency or a nonprofit community organization, hunting and fishing preserves, parks, playgrounds and campgrounds.

- (d) Golf courses.
- (e) Commercial utility facilities for the purpose of generating power for public use by sale.
- (f) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing

as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

(g) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203(2). Such a facility may be approved for a one year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber growth upon a parcel of land or contiguous land where the primary processing facility is located.

(h) The boarding of horses for profit.

(i) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality, together with equipment facilities or buildings necessary for its operation.

(j) A dwelling or mobile home not provided in conjunction with farm use provided:

(i) The dwelling or mobile home is situated upon a legal lot with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on Oct. 12, 1983.

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

(iii) The dwelling or mobile home is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(iv) The approval of a dwelling or mobile home shall comply with the provisions of ORS 215.236, 1983 Replacement Part, regarding establishment of the nonfarm residence; procedures; disqualification for farm use valuation; and additional tax or penalty.

16.212(4)

Lane Code

16.212(6)

(k) A transmission tower over 200 feet in height.
(l) Kennel, Commercial; or Kennel, Commercial Breeding.

(m) Shelter Care Homes.

(n) Room and board arrangements for a maximum of five unrelated persons in an existing dwelling or a dwelling permitted by this district.

(5) Hearings Official Special Use Approval Criteria.

(a) Compatibility of the use or activities associated with the use with the Agricultural Lands Policies of the Rural Comprehensive Plan Policies, ORS 215.243 and the purpose of this zone.

(b) The use, or activities associated with the use, will not force a significant change in or significantly increase the cost of accepted farming or forestry practices on nearby lands devoted to farm or forest use.

(c) The use, or activities associated with the use, complies with other conditions considered necessary by the Approval Authority in order to meet the applicable approval criteria.

(d) The above criteria (a) and (c) shall not be applicable to uses identified under LC 16.212(4)(b) above if such uses are also subject to review under Willamette Greenway requirement LC 16.254(3).

(6) Farm Operations.

(a) A farm operation is all agricultural activities occurring under a single management. For purposes of this section, it is immaterial whether the activities occur on a single parcel of land, on contiguous parcels of land or on separate parcels of land. It is also immaterial if the operator has less than fee interest in the land on which the agricultural activity occurs.

(b) Farm operations shall be classified into one of the groups set forth in LC 16.212(6)(d) below. In the event a farm operation consists of agricultural activities described by more than one group, the activity that accounts for more than half of the gross revenue of the farm operation shall determine the group classifications.

(c) Farm operations of a size equal to or greater than the size shown for its respective group in LC 16.212(6)(d) below shall be deemed as contributing in a substantial way to the agricultural economy of the County.

(d) <u>Farm Group</u>	<u>-----Size</u>
Cash grains	-----120 acres
Field crops (includes grass seed production	-----160 acres
Tree fruit and nuts	-----40 acres
Horticultural specialties	-----20 acres
General farm, primarily crop	-----320 acres
Extensive animal grazing	-----120 acres

16.212(6)

Lane Code

16.212(7)

Intensive animal husbandry-----40 acres
 Dairy farm-----240 acres
 General farm, primarily
 livestock-----80 acres
 Berries and grapes-----20 acres
 Vegetables and melons-----120 acres

(7) Area. Land within the Exclusive Farm Use District shall be designated as E-25, E-30, E-40 or E-60, consistently with Agricultural Lands Policy #10 of the Lane County Rural Comprehensive Plan, and the creation of a lot or parcel shall be subject to the following:

(a) Except as provided in LC 16.212(7)(b),(c) and (d) below, the minimum area shall be:

E-25-----25 acres
 E-30-----30 acres
 E-40-----40 acres
 E-60-----60 acres

(b) A division of land may be allowed down to 20 acres for horticultural specialties, berries and grapes. A farm management plan including the factors identified in LC 16.212(2)(g)(v)(ee) above shall address and establish the suitability of the land for the intended use.

(c) A division of land may be allowed for the nonfarm uses identified in LC 16.212(4)(c),(d),(e) and (i) above, provided the parcel for the nonfarm use is not larger than the minimum size necessary for the use.

(d) A division of land may be allowed for a dwelling not provided in conjunction with farm use if the dwelling has been approved pursuant to the above LC 16.212(4)(j) above and if the division would not conflict with the purpose of this zone.

(e) Divisions pursuant to LC 16.212(7)(a),(b),(c) or (d) above are subject to the applicable application procedures of LC Chapter 13 and the applicable review procedures of LC Chapter 14. Divisions under LC 16.212(7)(a) and (b) above shall also require that a statement be placed on the face of the map for the partition disclosing that a dwelling or mobile home is not guaranteed unless the provisions of this zone for obtaining a dwelling or mobile home are met.

(f) A person who sells or otherwise transfers real property zoned Exclusive Farm Use (E) may retain a life estate in a dwelling or mobile home on that property and the tract of land under and around the dwelling or mobile home. Partition approval is not required for the creation of such a life estate.

16.212(7)

Lane Code

16.212(8)

(g) A division of land may be allowed to create a parcel with an existing historic property meeting the standards of ORS 358.480, provided the parcel is not larger than the minimum size necessary for the use and if the division would not conflict with the purpose of this zone.

(h) A division of land may be allowed to create a parcel with an existing Residential Home meeting the standards of ORS 197.660-670, provided the parcel is not larger than the minimum size necessary for the use and if the division would not conflict with the purpose of this zone.

(8) Property Development Standards. All uses or activities permitted or conditionally permitted above, except farm use, shall be subject to the following development standards:

7-87; 6.17.87

16-62a

WP 1/co/00053/C
REV: 1/cr/00070/C

(a) The Approval Authority shall balance the setback standards of LC 16.212(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.212 in order to minimize adverse impacts upon forest uses and to assure optimal siting of proposed residences consistent with the purposes of the E zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.212(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU.

(ii) Residences to be sited upon all other tracts shall be sited as follows:

(aa) Where possible, in consideration of the dimensions and topography of the tract, at least 500 feet from adjoining lines of property zoned F-1 and 100 feet from adjoining lines of property zoned F-2 or EFU.

(bb) On the least valuable farm or forest areas of the tract or located near residences on other tracts.

(b) Property Line Setbacks. No structure other than a fence or sign shall be located closer than:

(i) 20 feet from the planned right-of-way of a State road, County road or a local access public road specified in Lane Code Chapter 15; and

(ii) 20 feet from an existing right-of-way of a State road, County road or a local access public road; and

(iii) 10 feet from all other property lines except as provided below.

(c) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(d) Maintenance Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.212(8)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.212(8)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Commercial forest practices regulated by the Oregon Forest Practices Act.

(bb) Vegetation removal necessary to provide water access for a water dependent use.

(cc) Removal of dead or diseased vegetation that poses a safety or health hazards.

(dd) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(e) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

Standards. (9) Residence Maintenance, Repair and Replacement

(a) Maintenance and repair of lawfully existing residences shall be permitted in the Exclusive Farm Use (E) zone.

(b) Replacement of any residence lawfully existing, occupied, suitable for occupancy or in the process of being constructed shall be permitted. The replacement need not be in kind (i.e., a mobile home may replace a dwelling or vice versa). Any replacement authorized under this subsection shall be for a residence to be located on the same site as the previous residence and such replacement shall commence within one year of the date of removal of the previous residence.