

W. 14. b.

AGENDA COVER MEMO

DATE: October 26, 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 June 29, 2005, the Board conducted a public hearing on the subject Measure 37 claim. The Board closed the public hearing and at Mr. Sadri's request left the record open to October 26th to allow Mr. Sadri the time necessary for him to provide additional information on his claim. On October 4th, Mr. Sadri submitted additional information and is now ready for the Board to consider his Measure 37 claim.

B. Application to Lane County for Measure 37 Claim

Applicant: Steve Cornacchia on behalf of Asghar Sadri

Owner: Asghar Sadri

Address: P.O. Box 1475
Eugene, OR 97440

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

Acreeage: 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.

C. 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 been provided
- 2) Payment of the initial deposit for fees and costs has been provided by the applicant.
- 3) Contact information of the property owner filing the application has been provided.
- 4) Legal description of the property has been determined.
- 5) A current title report for the property has not been provided.
- 6) 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 under LC 16.212(7)(a), 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 been provided.
- 9) A written statement addressing the criteria listed in LC 2.740(1)(a)-(d) has been provided.

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 the application 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 some of 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;*

The appraisal provided by Mr. Sadri provides an analysis of the decreased property value resulting from application of the land use restrictions. Because he was denied the ability to place a dwelling on his property the appraisal asserts 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 the application 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. It is also unclear whether there are other provisions in the current EFU zone that would enable placement of a dwelling on the property.

Conclusion: It seems reasonable to conclude that the current E-40 zone \$80,000 income dwelling provisions adopted after Mr. Sadri acquired the property may have 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. 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 consideration under Measure 37 and LC 2.740.

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 can demonstrate that he 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 all the restrictive dwelling land use regulations of LC 16.212 have been enforced against Mr. Sadri to preclude dwelling approval 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, due to the discretionary nature of the dwelling provisions in effect at the time Mr. Sadri acquired the property, 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.

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 determined by the appraisal 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. 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. October 4, 2005 M37 Claim

**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 left the record open until October 26, 2005, and has now 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. If the ruling of the Marion County Circuit Court in *MacPherson v. Dept. of Administrative Services*, (Marion County Circ. Ct. Case No. 00C15769, October 14, 2005) becomes final and that decision or any subsequent court decision has application to Lane County in a manner that affects the authority of this Board to grant relief under Ballot Measure 37 and LC 2.700 through 2.770, then the validity and effectiveness of this Order shall be governed by LC 2.770 and the ruling of the court.

DATED this _____ day of _____, 2005.

Anna Morrison, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 10-19-2005 Lane County

Stephen J. Barber
OFFICE OF LEGAL COUNSEL

Application for Claims Under LC 2.700 through 2.770

Due to Regulatory Reduction of Property Value Under Provisions Added to ORS Chapter 197 by BM37

Note: This completed form together with the referenced supporting documentation and application fee must be submitted to the Lane County Land Management Division, 125 East 8th Avenue, Eugene, Or., 97401 for all claims subject to the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), to be considered for compensation under LC 2.700 through 2.770. In all cases, the applicant has the burden of demonstrating, with competent evidence, that all applicable criteria are met and the applicant would be entitled to compensation if the land use regulation continues to apply. Use additional paper, if necessary.

1. Applicant/ Agent

<u>Asghar Sadri</u>	<u>203 East Reserve, Vancouver, WA</u>	<u>(360)909-8482</u>
Applicant Name, (Please Print)	Mailing Address 98661	Phone
<u>Steve Cornacchia</u>	<u>P.O. Box 1475, Eugene, OR 97440</u>	<u>(541)686-8511</u>
Agent Name (Please Print)	Mailing Address	Phone

2. Property Owner

Please provide the Name, Mailing Address and telephone number of all property owners of record holding interest in the property that is the subject of this application. Include a complete listing of all lien holders, trustees, renters, lessees or anyone with an interest in the property and describe the ownership interest.

<u>Asghar Sadri</u>	<u>203 East Reserve, Vancouver, WA</u>	<u>(360)909-8482</u>
Property Owner Name (Please Print)	Mailing Address 98661	Phone
_____	_____	_____
Property Owner Name (Please Print)	Mailing Address	Phone

3. Legal Description

Please provide an accurate legal description, tax account number(s), map, street address and location of all private real properties that are the subject of this application.

Assessor Map & Tax Lot 18-05-02 Tax Lot 100

Street Address None Legal Description Attached Yes

4. Identification of Imposed Land Use Regulation

Please identify the Lane Code section or other land use regulation imposed on the private real property that is alleged to restrict the use of the subject property in a manner that reduces the fair market value. Include the date the regulation was first adopted, enforced or applied to the subject property and a written statement addressing all the criteria in LC 2.740(1).

Lane Code 16.212(6)(a)(i), first enforced on March 1, 1994. See Section 3.1.g of
written statement.

5. Title Report

Please attach a Preliminary Title Report showing title history and continuous ownership traced to the earliest family member ownership, the date of current owner(s) acquisition and all current interests of record for the subject property, issued within 30 days of the application submittal. Provide copies of relevant deeds.

LC 2.720 provides that the applicant may provide a copy of the deed conveying the subject interest to the applicant as an alternative to a title report. See attached deeds.

1. INTRODUCTION. The applicant, Asghar Sadri, claims that Lane County's enforcement of land use regulations that restrict the use of his property has reduced the fair market value of his property. The applicant is requesting, pursuant to the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and Lane Code 2.700, that Lane County pay him just compensation for the reduction in the fair market value of his property resulting from Lane County's enforcement of those restrictions on its use. This application constitutes written demand pursuant to Section (4) of Ballot Measure 37 (2004).

In lieu of such payment of just compensation, the applicant requests that Lane County waive the offending regulations, as discussed later in this application, that prevent the applicant from constructing a single family dwelling on the subject property.

The applicant, along with Frank T. Glaser and Mary E. Glaser, tenants in common, purchased the subject property on December 2, 1992. Frank T. Glaser and Mary E. Glaser conveyed all of their right, title and interest in the subject property to the applicant on October 18, 1993, and the applicant has owned the subject property continuously since that time. The applicant is the sole owner of the subject property. The applicant obtained his initial interest in the subject property on December 2, 1992.

The property is zoned Exclusive Farm Use 40 Acre Minimum (EFU 40) and is comprised of predominantly high value soils as those soils are defined by Oregon law. The Lane Code provisions implementing the EFU 40 zone will not permit the placement of a residential dwelling customarily provided in conjunction with farm use on the subject property unless the applicant can demonstrate that it is currently employed for the farm use, as defined in LC 16.090, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. See LC 16.212(6)(a)(i) (Also see ORS 215.213 and OAR 660-033-0130 and 0135). At the time the applicant obtained his interest in the subject property, Lane Code, and state law, did not contain the \$80,000 farm product income requirement. At the time the applicant obtained his interest in the subject property he could have demonstrated that the requirements of Lane Code regarding the placement of a residential dwelling customarily provided in conjunction with farm use could have been met.

2. BACKGROUND INFORMATION.

2.1 General Site Description. The property subject to this application consists of a single parcel, approximately 266 acres in

Size, located west of Eugene in the Coyote Creek area and adjacent to Hwy 126.

The subject property is described as Tax Lot 0100 of Lane County Assessor's Map No. 18-05-02.

The subject property is undeveloped.

The subject property receives the following public services: Eugene School District No. 4J (schools); EWEB (electrical power); Lane County Rural Fire Protection District No. 1 (fire and

ambulance); Qwest (telephone); LTD (bus service); Lane County Sheriff's Department and Oregon State Police.

2.2 List of Exhibits:

- Exhibit A - Lane County Application Form
- Exhibit B - Legal Description
- Exhibit C - Assessor's Map No. 18-05-02
- Exhibit D - 1992 Warranty Deed (Cuddeback to Sadri and Glaser's)
- Exhibit E - 1993 Quitclaim Deed (Glaser's to Sadri)
- Exhibit F - 1992 Lane Code 16.212
- Exhibit G - Appraisal Reports prepared by Craig E. McKern, Certified Real Estate Appraiser

3. APPLICABLE CRITERIA. (Lane Code 2.700 - Real Property Compensation/Regulation Application Process)

3.1 Lane Code 2.720 Application for Claim

Lane Code 2.720 requires that the applicant be the present owner of the property that is the subject of the claim at the time the claim is submitted. The applicant is the present, and sole owner; of the subject property.

Lane Code 2.720 also contains the required items for a completed application as follows:

- a. A completed application form;**

Response:

A completed application form is attached hereto as Exhibit A.

- b. 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;**

Response:

The applicant is the sole owner of the property, free and clear of all encumbrances and interests of record other than those of the applicant. The applicant's name, mailing address and phone number are provided in the application form attached hereto. The applicant has signed the application form attached hereto.

- c. A legal description and tax lot number of the subject property as well as a street address for the property (if any);**

Response:

A legal description of the subject property is attached hereto as Exhibit B. The Lane County Assessor's Map No. for the subject property is 18-05-02, a copy of which is attached as Exhibit C. The subject property is assigned Tax Lot No. 0100. The subject property has no street address.

d. 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 petition;

Response:

A copy of the original December 2, 1992, Warranty Deed between the applicant and the Glaser's, as Grantee, and S. A. Cuddeback and Ruby Cuddeback, husband and wife, as Grantors, conveying the subject property to the applicant and the Glaser's, is attached hereto as Exhibit D. A copy of the October 18, 1993, Quitclaim Deed between the applicant, as Grantee, and the Glaser's, as Grantor, conveying all of the Glasers' interest in the subject property to the applicant, is attached hereto as Exhibit E.

e. 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;

Response:

The subject property was zoned Exclusive Farm Use (EFU 40/RCP) in 1984. Currently, Lane Code 16.212 implements the Exclusive Farm Use Zone. LC 16.212(6)(a)(i) will not permit the placement of a residential dwelling customarily provided in conjunction with farm use on the subject property unless the applicant can demonstrate that it is currently employed for the farm use, as defined in LC 16.090, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. (Also see ORS 215.213 and OAR 660-033-0130 and 0135) LC 16.212(6)(a)(i) was first enforced by Lane County on March 1, 1994. The subject property does not produce at least \$80,000 in gross annual income from farm products. Because the applicant cannot demonstrate compliance with the gross annual income criteria of LC 16.212(6)(a)(i), he is not permitted by Lane County to place a residential dwelling on the subject property. The county's restriction of the applicant's ability to place a residential dwelling on the subject property diminishes the market value of the subject property.

Lane County Ordinance No. 10-92, adopted on November 12, 1992, implemented the Exclusive Farm Use zone in 1984 and was in effect on December 2, 1992, at the time the applicant obtained his interest in the subject property. On December 2, 1992, Lane Code 16.212 contained the Exclusive Farm Use provisions implementing Ordinance No. 10-92. A copy of that Lane

Code section is attached as Exhibit F. On the date that the applicant obtained his interest in the subject property, LC 16.212(2)(f) would have permitted the applicant to place a residential dwelling customarily provided in conjunction with existing farm use, provided the applicant could demonstrate compliance with the following requirements (LC 16.212(2)(f)(i)-(iii)):

LC 16.212(2)(f)(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.

The subject property and the contiguous property in the same ownership were undeveloped on December 2, 1992. The applicant could have demonstrated that the subject property complied with LC 16.212(2)(f)(i).

LC 16.212(2)(f)(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.

On December 2, 1992, (and thereafter to the present date) the subject property was managed for the annual production of ryegrass. LC 16.212(6)(d) required a farm parcel size of 160 acres for the production of field crops (which included grass seed production). Because the subject property exceeded 160 acres in size and was managed for grass seed production on December 2, 1992, the applicant could have demonstrated that the subject property complied with LC 16.212(2)(f)(ii). Because the subject property is over 40 acres in size, the applicant could have demonstrated that the subject property complied with LC 16.212(2)(f)(ii).

LC 16.212(2)(f)(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.

The applicant and his family would have resided on the subject property if permitted. The applicant could have demonstrated that the subject property complied with 16.212(2)(f)(iii).

In addition to LC 16.212(6)(a)(i), the following Lane County regulations restrict the use of the subject property by the applicant:

- LC 10.100-10, 30 and 40

f. 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 the application of each of the challenged regulations, individually, and after the application of all of the challenged regulations, cumulatively;

Response:

The applicant retained the services of Craig E. McKern, Certified Residential Real Estate Appraiser, to prepare a written appraisal of the subject property indicating the difference in the current fair market value of it without the right to place a residential dwelling and the market value of it with the right to place a residential dwelling on it. Mr. McKern's appraisals and report is attached hereto as Exhibit G.

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

LC 2.740(1)(a) through (d) provides the following criteria:

(a) The county has either adopted or enforced a land use regulation that restricts the use of private property or any interest therein:

Response:

The subject property is zoned Exclusive Farm Use (EFU 40/RCP). The primary land use regulations that restrict the use of the subject property are found in Lane Code 16.212(6). Those regulations require the applicant, in order to obtain county approval of the placement of a residential dwelling on the subject property, to demonstrate that the subject property is currently employed for the farm use, as defined in LC 16.090, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. As discussed earlier in this application, the subject property does not produce the required \$80,000 in gross annual farm income and the applicant cannot demonstrate compliance with the regulations.

(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;

Response:

See earlier discussion in sections 3.1(e) and (f) and discussion below in section 3.1(h).

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

Response:

See discussion above in sections 3.1(d) and (e).

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

Response:

Lane Code 16.212(6)(a)(i) is a land use regulation as defined by provisions added to ORS Chapter 197 by Ballot Measure 37. It does not restrict or prohibit public nuisances, is not a public health and safety protection regulation, is not required to comply with federal law, does not relate to the use of the property for pornography or nude dancing and was not enacted prior to the date the applicants acquired the property.

h. 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

Response:

The applicant claims from Lane County the sum of \$100,000 which represents the reduction in market value of the subject property resulting from Lane County's enforcement of the aforementioned regulations that restrict the use of the property by preventing the placement of a residential dwelling on the subject property. The fair market value of the property before the application of the aforementioned challenged land use regulation is \$590,000. The fair market value of the property after the application of the aforementioned challenged land use regulation is \$490,000. The reduction in fair market value of the subject property resulting from Lane County's restrictions on its use totals \$100,000, the amount of the claim herein.

i. 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 shall also 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 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).

Response:

The subject property is free and clear of any encumbrances that would restrict the use of it.

4. CONCLUSION.

The applicant has demonstrated that Lane County's enforcement of LC 16.212(6)(a)(i) restricts the use of the subject property by not allowing the placement of a residential dwelling on the subject property. That restriction reduces the fair market value of the property from what it would be if a residential dwelling was allowed to be placed on it. The applicant has

demonstrated compliance and consistency with the provisions added to ORS Chapter 197 by Ballot Measure 37 and LC 2.700. Accordingly, the applicant's claim for just compensation for the reduction in the fair market value of his property as a result of the restriction should be paid by Lane County. In lieu of such payment of just compensation, Lane County should waive the offending regulations as provided above that prevent the applicants from placing a residential dwelling on the subject property.

Respectfully submitted:

HERSHNER HUNTER, LLP

/s/Steve Cornacchia

By _____
Steve Cornacchia

EXHIBIT B

PROPERTY DESCRIPTION

PARCEL 1

Beginning at a point which is 1004.3 feet North 21° 15' East of a point which is 1188.7 feet North of the 1/4 section corner on the South line of Section 2 in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; run thence North 21° 15' East a distance of 1684.8 feet, more or less, to the center line of Coyote Creek; thence meandering down the said center line as follows: North 49° 25' West 200.0 feet; thence North 76° 16' West 830 feet; thence North 24° 46' West 458.0 feet; thence North 8° 34' West 388.5 feet; thence North 48° 41' West 240.00 feet to the West line of said property; thence South 21° 15' West along said West line 1200.0 feet, more or less, to an iron pipe; thence South 69° 10' East a distance of 360.0 feet; thence South 46° 13' East a distance of 1200.0 feet; thence South 21° 55' West a distance of 250.0 feet; thence South 46° 13' East a distance of 120.0 feet; thence South 21° 55' West a distance of 350.0 feet; thence South 46° 13' East a distance of 202.8 feet to the Place of Beginning, all in Lane County, Oregon.

PARCEL 2

Beginning at a point 2.60 chains West of the Northeast corner of the Southeast 1/4 of Section 2, Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; running thence South 33.84 chains, parallel with the East line of said Section; thence West 38.37 chains to the West line of the Southeast 1/4 of said Section 2; thence North along the West line of the Southeast 1/4 of said Section 2 to the tract of land deeded by Ole Haldorson and Mary Haldorson by Deed recorded in Book 91, Page 137, Lane County Oregon Deed Records; thence following the line of said tract of land Northeasterly to Coyote Creek; thence Southeasterly along Coyote Creek until the same intersects with the East line of said Section 2; thence South to the Southeast corner of said Northeast 1/4 of Section 2; and thence West 2.60 chains to the Place of Beginning, in Lane County, Oregon;

EXCEPT that portion lying Southerly of the Northerly line of County Road No. 1166 as described in deed to Lane County, recorded December 4, 1986, Real No. 1433, Reception No. 8649208, Lane County Official Records, in Lane County, Oregon.

PARCEL 3

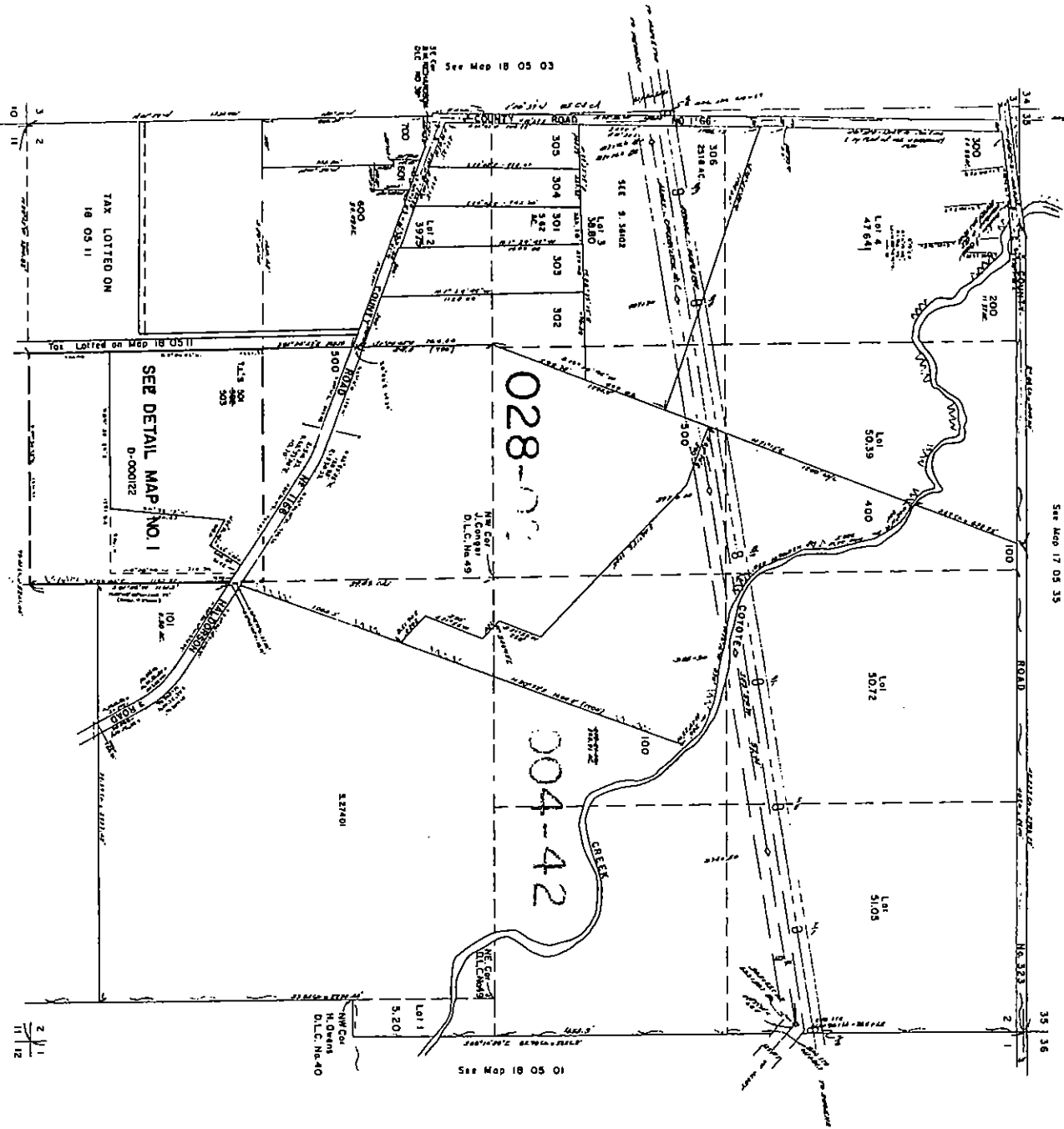
All that part of Section 2, in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon, lying North and East of Coyote Creek;

EXCEPTING: Beginning at a point on the North line of Section 2 aforesaid, 42.225 chains West of the Northeast corner thereof; and running thence West 27.83 chains to the center of Coyote Creek; thence Southeasterly along the center of Coyote Creek to a point South 21° 15' West 9.67 chains from the Place of Beginning; thence North 21° 15' East 9.67 chains to the Place of Beginning, Lane County, Oregon;

ALSO EXCEPTING a strip of land 30 feet in width, the North line of which begins at the Northeast corner of said Section 2 and runs thence West 47.22 chains along the North line of said Section 2, for road purposes, in Lane County, Oregon.

EXHIBIT C

Section 2 T.18S. R5W.W.M.
LANE COUNTY
1"=400'



FORM No. 143 - WARRANTY DEED - STATUTORY FORM (Individual Grantor)

STATE OF OREGON, DEPARTMENT OF REVENUE

WARRANTY DEED - STATUTORY FORM
INDIVIDUAL GRANTOR

9269179

S. A. CUDDEBACK and RUBY CUDDEBACK, husband and wife

Grantee,
conveys and warrants to ASGHAR R. SADRI, Grantee, an undivided one-half (1/2) interest; F. I. GLASSER as the Trustee of the F. I. Glasser Revocable Living Trust, dated January 21, 1991, Grantee, (continued below at **) the following described real property free of encumbrances except as specifically set forth herein situated in Lane County, Oregon, to-wit:
See Exhibit "A" attached hereto and made a part hereof by reference.

(** Grantee continued) an undivided one-quarter (1/4) interest; and MARY E. GLASSER, as Trustee of the Mary E. Glasser Revocable Living Trust dated January 21, 1991, Grantee, an undivided one-quarter (1/4) interest, as tenants in common, in

6056DEC:07'92HO2REC 15.00
6056DEC:07'92HO2PFUND 10.00

IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE
The said property is free from encumbrances except covenants, conditions and restrictions, zoning ordinances, building and use restrictions, reservations, easements, rights of way and encumbrances of record, and rights of the current Lessee, also taxes and penalties that may be levied if the property becomes disqualified for special assessment as land zoned or classified for farm use.

The true consideration for this conveyance is \$200,000.00. (Here comply with the requirements of ORS 93.030) In addition, part of the consideration consists of other property of value given or promised.

Dated this 2nd day of December, 1992

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

S. A. Cuddeback
Ruby Cuddeback

STATE OF OREGON, County of Lane,) ss.
This instrument was acknowledged before me on Dec 7, 1992



Sunny Lee Maloy
Notary Public for Oregon
My commission expires 11/5/96

WARRANTY DEED
S.A. and Ruby Cuddeback GRANTOR
Asghar R. Sadri, et al GRANTEE
203 E. Beavercreek
Vancouver, WA 98661
GRANTEE'S ADDRESS, ZIP
After recording, return to:
Asghar R. Sadri, et al
NAME, ADDRESS, ZIP
Until a change is requested, all tax statements shall be sent to the following address:
Asghar R. Sadri, et al
203 E. Beavercreek
Vancouver, WA 98661
NAME, ADDRESS, ZIP

STATE OF OREGON,) ss.
County of _____
I certify that the within instrument was received for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and recorded in book/reel/volume No. _____ on page _____ or as fee/title/instrument/microfilm/reception, No. _____, Record of Deeds of said county.
Witness my hand and seal of County affixed.
NAME TITLE
By _____ Deputy

9269179

Exhibit "A"

PROPERTY DESCRIPTION

PARCEL 1

Beginning at a point which is 1004.3 feet North 21° 15' East of a point which is 1188.7 feet North of the 1/4 section corner on the South line of Section 2 in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon, run thence North 21° 15' East a distance of 1684.8 feet, more or less, to the center line of Coyote Creek, thence meandering down the said center line as follows: North 49° 25' West 200.0 feet; thence North 76° 16' West 830 feet; thence North 74° 46' West 459.0 feet; thence North 8° 34' West 388.5 feet; thence North 48° 41' West 240.00 feet to the West line of said property; thence South 21° 15' West along said West line 1200.0 feet, more or less, to an iron pipe; thence South 69° 10' East a distance of 360.0 feet; thence South 46° 13' East a distance of 1200.0 feet; thence South 21° 55' West a distance of 250.0 feet; thence South 46° 13' East a distance of 120.0 feet; thence South 71° 55' West a distance of 350.0 feet; thence South 46° 13' East a distance of 202.8 feet to the Place of Beginning, all in Lane County, Oregon.

PARCEL 2

Beginning at a point 2.60 chains West of the Northeast corner of the Southeast 1/4 of Section 2, Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; running thence South 33.84 chains parallel with the East line of said Section 2; thence West 38.37 chains to the West line of the Southeast 1/4 of said Section 2; thence North along the West line of the Southeast 1/4 of said Section 2 to the tract of land deeded by Ole Halderson and Mary Halderson by Deed recorded in Book 91, Page 137, Lane County Oregon Deed Records; thence following the line of said tract of land Northeasterly to Coyote Creek; thence Southeasterly along Coyote Creek until the same intersects with the East line of said Section 2; thence South to the Southeast corner of said Northeast 1/4 of Section 2; and thence West 2.60 chains to the Place of Beginning, in Lane County, Oregon;
EXCEPT that portion lying Southerly of the Northerly line of County Road No. 1156 as described in deed to Lane County, recorded December 4, 1986, Reel No. 1433, Reception No. 8649208, Lane County Official Records, in Lane County, Oregon.

-continued-

9269179

Exhibit "A" - continued

PROPERTY DESCRIPTION - continued

PARCEL 3

All that part of Section 2, in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon, lying North and East of Coyote Creek;

EXCEPTING: Beginning at a point on the North line of Section 2 across said 42.225 chains West of the Northeast corner thereof; and running thence West 27.83 chains to the center of Coyote Creek; thence Southeasterly along the center of Coyote Creek to a point South 21° 15' West 9.67 chains from the Place of Beginning; thence North 21° 15' East 9.67 chains to the Place of Beginning, Lane County, Oregon;

ALSO EXCEPTING a strip of land 40 feet in width, the North line of which begins at the Northeast corner of said Section 2 and runs thence West 42.22 chains along the North line of said Section 2, for road purposes, in Lane County, Oregon.

PARCEL 4

Lot 1 of Section 2, Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon.

9269179

State of Oregon,
County of Lane--ss.

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

7 DEC 92 4:21

1809R

Lane County OFFICIAL Records.
Lane County Clerk

By: *[Signature]*
County Clerk

EXHIBIT E

15
10
20

9369345

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That Frank T. Glaser and Mary E. Glaser,
husband and wife, hereinafter called grantor,
for the consideration hereinafter stated, does hereby convey, release and quitclaim unto Asghar R. Sadri,
a single man
hereinafter called grantee, and unto grantee's heirs, successors and assigns all of the grantor's right, title and interest
in that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in any
way appertaining, situated in the County of Lane, State of Oregon, described as follows, to-wit:

Legal description attached as Exhibit "A", and is two pages long.

4671OCT.28'93H06REC 15.00
4671OCT.28'93H06PFUND 10.00
4671OCT.28'93H06AAT FUND 20.00

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

To Have and to Hold the same unto the grantee and grantee's heirs, successors and assigns forever.
The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ Trade
(However, the actual consideration consists of or includes other property or value given or promised which is
part of the consideration (Indicate which). (If the sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030.)
In constituting this deed, where the context so requires, the singular includes the plural and all grammatical
changes shall be made so that this deed shall apply equally to corporations and to individuals.
In Witness Whereof, the grantor has executed this instrument this 17 day of Nov, 1993;
if a corporate grantor, it has caused its name to be signed and its seal, if any, affixed by an officer or other person
duly authorized thereto by order of its board of directors.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Frank T. Glaser
Mary E. Glaser

STATE OF ~~OREGON~~ Washington, County of Clark
This instrument was acknowledged before me on 10-18-93, 1993
by Frank T. Glaser and Mary E. Glaser
This instrument was acknowledged before me on _____, 19____
by _____

DOROTHY GRAZUL
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
MAY 1, 1994

Notary Public for Oregon
My commission expires _____

Grantor's Name and Address

Grantor's Name and Address
After recording return to (Name, Address, Zip)
Asghar R. Sadri
202 E. Riverside
Vancouver, WA 98667
Grantor's Name and Address
After recording return to (Name, Address, Zip)
Asghar R. Sadri
202 E. Riverside
Vancouver, WA 98667

STATE OF OREGON,
County of _____ } ss.
I certify that the within instrument
was received for record on the _____ day
of _____, 19____, at
_____ o'clock _____ M., and recorded in
book/roll/volume No. _____ on page
_____ and/or as fee/title/instru-
ment/microfilm/reception No. _____
Record of Deeds of said County.
Witness my hand and seal of
County aforesaid.
By _____ TITLE
Deputy

9369345

Our. No: CT-191881
Page: 3

Exhibit "A"

PROPERTY DESCRIPTION

PARCEL 1

Beginning at a point which is 1004.3 feet North 21° 15' East of a point which is 1188.7 feet North of the 1/4 section corner on the South line of Section 2 in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; run thence North 21° 15' East a distance of 1684.8 feet, more or less, to the center-line of Coyote Creek; thence meandering down the said center line as follows: North 49° 25' West 200.0 feet; thence North 76° 16' West 830 feet; thence North 24° 46' West 458.0 feet; thence North 8° 34' West 388.5 feet; thence North 48° 41' West 240.00 feet to the West line of said property; thence South 21° 15' West along said West line 1200.0 feet, more or less, to an iron pipe; thence South 69° 10' East a distance of 360.0 feet; thence South 46° 13' East a distance of 1200.0 feet; thence South 21° 55' West a distance of 250.0 feet; thence South 46° 13' East a distance of 120.0 feet; thence South 21° 55' West a distance of 350.0 feet; thence South 46° 13' East a distance of 202.8 feet to the Place of Beginning, all in Lane County, Oregon.

PARCEL 2

Beginning at a point 2.60 chains West of the Northeast corner of the Southeast 1/4 of Section 2, Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; running thence South 33.84 chains, parallel with the East line of said Section; thence West 38.37 chains to the West line of the Southeast 1/4 of said Section 2; thence North along the West line of the Southeast 1/4 of said Section 2 to the tract of land deeded by Ole Haldorson and Mary Haldorson by Deed recorded in Book 91, Page 137, Lane County Oregon Deed Records; thence following the line of said tract of land Northeasterly to Coyote Creek; thence Southeasterly along Coyote Creek until the same intersects with the East line of said Section 2; thence South to the Southeast corner of said Northeast 1/4 of Section 2; and thence West 2.60 chains to the Place of Beginning, in Lane County, Oregon;

EXCEPT that portion lying Southerly of the Northerly line of County Road No. 1166 as described in deed to Lane County, recorded December 4, 1986, Reel No. 1433, Reception No. 8649208, Lane County Official Records, in Lane County, Oregon.

total Acreage to be 311 Acres more/less

-continued-

*A.S.
M&S.*

9369345

Exhibit "A" - continued
PROPERTY DESCRIPTION - continued

PARCEL 3

All that part of Section 2, in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon, lying North and East of Coyote Creek;

EXCEPTING: Beginning at a point on the North line of Section 2 aforesaid, 42.225 chains West of the Northeast corner thereof; and running thence West 27.83 chains to the center of Coyote Creek; thence Southeasterly along the center of Coyote Creek to a point South 21° 15' West 9.67 chains from the Place of Beginning; thence North 21° 15' East 9.67 chains to the Place of Beginning, Lane County, Oregon;

ALSO EXCEPTING a strip of land 40 feet in width, the North line of which begins at the Northeast corner of said Section 2 and runs thence West 42.22 chains along the North line of said Section 2, for road purposes, in Lane County, Oregon.

PARCEL 4

Lot 1 of Section 2, Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon.

9369345

State of Oregon,
County of Lane--ss.

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

23 OCT 95, 9:40
Recd **1890R**

Lane County OFFICIAL Records,
Lane County Clerk

By: 
County Clerk

16.212(1)

Lane Code

16.212(2)

EXCLUSIVE FARM USE ZONE (E-RCP)RURAL COMPREHENSIVE PLAN

BOOK 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."

16.212(3)

Lane Code

16.212(3)

(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.

- (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.

<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.

(9) Residence Maintenance, Repair and Replacement Standards.

(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.

EXHIBIT G

Craig E. McKern, Appraiser, P.C.

State Certified Residential Real Estate Appraiser

Mailing: 1574 Coburg Road, PMB 397, Eugene, Oregon 97401-4802

Telephone 541-345-0744

Facsimile 541-345-0577

email: cem9th@msn.com

September 29, 2005

Asghar R. Sadri
203 East Reserve
Vancouver, Washington 98861

c/o Steve Cornacchia
Hershner Hunter
180 East 11th Avenue
Eugene, Oregon 97401

RE: Lane Code 2.740 (6)

Steve,

For your files, here is the Ballot Measure 37 summary for Mr. Sadri's property at Number Not Assigned Haldorson Road, Eugene, Oregon 97402; Tax Lot 18-05-02-00-00100.

The scenario for these two appraisal reports is captioned on the cover letter. In addition it should be said there appears to be a significant dollar difference in "before" and "after" estimated values. Especially when the range of choices a potential suburban to rural residential home site purchaser still has in selecting a homesite smaller than 265+ acres is considered. The number of potential purchasers for a larger site like the subject may be somewhat limited by projected use and utility however it can be seen that, given the hypothetical permitted use for one single family residence on the 265+ acres, a purchaser having horses or cattle could find having such large acreage desirable for grazing, pasture, riding, arena or other permitted EFU uses.

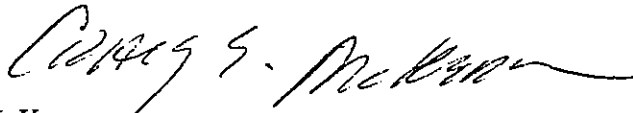
Another factor in the value difference is that the acreage difference is adjusted at \$2,000 per acre for the net acre difference including the creek bottom, riparian and fenceline areas in the hypothetical, one single family residence scenario. In that instance, the creek and riparian zones become a positive site attribute as opposed to the "before" instance where an estimated 15% portion of the total 265+ acre site which must be purchased but cannot be tilled.

Hypothecated value of subject in "after" instance with hypothetical building permit for on single family residence -	\$590,000
Estimated value of subject in "before" instance with no single family residence permitted -	\$490,000
Estimated Value Difference =	\$100,000

Please contact me if you have any question.

Cordially,

Craig E. McKern



16.212(8)

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

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

(9) Residence Maintenance, Repair and Replacement Standards.

(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.

(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.

(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

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

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(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

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.

(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

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.

(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

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."

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(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(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:

(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.

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.

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

16.212(1)

Lane Code

16.212(2)

EXCLUSIVE FARM USE ZONE (E-RCP)RURAL COMPREHENSIVE PLAN

BOOK 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.

9369345

Exhibit "A" - continued
PROPERTY DESCRIPTION - continued

PARCEL 3

All that part of Section 2, in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon, lying North and East of Coyote Creek;

EXCEPTING: Beginning at a point on the North line of Section 2 aforesaid, 42.225 chains West of the Northeast corner thereof; and running thence West 27.83 chains to the center of Coyote Creek; thence Southeasterly along the center of Coyote Creek to a point South 21° 15' West 9.67 chains from the Place of Beginning; thence North 21° 15' East 9.67 chains to the Place of Beginning, Lane County, Oregon;

ALSO EXCEPTING a strip of land 40 feet in width, the North line of which begins at the Northeast corner of said Section 2 and runs thence West 42.22 chains along the North line of said Section 2, for road purposes, in Lane County, Oregon.

PARCEL 4

Lot 1 of Section 2, Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon.

9369345

State of Oregon,
County of Lane--ss.

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

23 OCT 93 9:03
Reel 1890R

Lane County OFFICIAL RECORDS
Lane County Clerk

By: 
County Clerk

9369345

Our No: CT-191881
Page: 3

Exhibit "A"

PROPERTY DESCRIPTION

PARCEL 1

Beginning at a point which is 1004.3 feet North 21° 15' East of a point which is 1188.7 feet North of the 1/4 section corner on the South line of Section 2 in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; run thence North 21° 15' East a distance of 1684.8 feet, more or less, to the center line of Coyote Creek; thence meandering down the said center line as follows: North 49° 25' West 200.0 feet; thence North 76° 16' West 830 feet; thence North 24° 46' West 458.0 feet; thence North 8° 34' West 388.5 feet; thence North 48° 41' West 240.00 feet to the West line of said property; thence South 21° 15' West along said West line 1200.0 feet, more or less, to an iron pipe; thence South 69° 10' East a distance of 360.0 feet; thence South 46° 13' East a distance of 1200.0 feet; thence South 21° 55' West a distance of 250.0 feet; thence South 46° 13' East a distance of 120.0 feet; thence South 21° 55' West a distance of 350.0 feet; thence South 46° 13' East a distance of 202.8 feet to the Place of Beginning, all in Lane County, Oregon.

PARCEL 2

Beginning at a point 2.60 chains West of the Northeast corner of the Southeast 1/4 of Section 2, Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; running thence South 33.84 chains, parallel with the East line of said Section; thence West 38.37 chains to the West line of the Southeast 1/4 of said Section 2; thence North along the West line of the Southeast 1/4 of said Section 2 to the tract of land deeded by Ole Haldorson and Mary Haldorson by Deed recorded in Book 91, Page 137, Lane County Oregon Deed Records; thence following the line of said tract of land Northeasterly to Coyote Creek; thence Southeasterly along Coyote Creek until the same intersects with the East line of said Section 2; thence South to the Southeast corner of said Northeast 1/4 of Section 2; and thence West 2.60 chains to the Place of Beginning, in Lane County, Oregon;

EXCEPT that portion lying Southerly of the Northerly line of County Road No. 1166 as described in deed to Lane County, recorded December 4, 1986, Reel No. 1433, Reception No. 8643208, Lane County Official Records, in Lane County, Oregon.

total Acreage to be 311 Acres more/less

-continued-

*A.S.
M.E.H.*

EXHIBIT E

15
60
20

FORM No. 721—QUITCLAIM WITH ASSIGNMENT OF CONTRACTS... COPY THIS BY MAIL... ASTORIA, OREGON... PORTLAND, OREGON

9369345

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That Frank T. Glaser and Mary E. Glaser,
husband and wife, hereinafter called grantor,
for the consideration hereinafter stated, does hereby remise, release and quitclaim unto Asghar R. Sadri,
a single man
hereinafter called grantee, and unto grantee's heirs, successors and assigns, all of the grantor's right, title and interest
in that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in any
way appertaining, situated in the County of Lane State of Oregon, described as follows, to-wit:

Legal description attached as Exhibit "A", and is two pages long.

4671OCT.28*93H06REC 15.00
4671OCT.28*93H06PFUND 10.00
4671OCT.28*93H06A&T FUND 20.00

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

To Have and to Hold the same unto the grantee and grantee's heirs, successors and assigns forever.
The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ TRAC
However, the actual consideration consists of or includes other property or value given or promised which is
part of the consideration (Indicate which). (The sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030.)
In continuing this deed, where the context so requires, the singular includes the plural and all grammatical
changes shall be made so that this deed shall apply equally to corporations and to individuals.
In Witness Whereof, the grantor has executed this instrument this _____ day of _____, 19____;
if a corporate grantor, it has caused its name to be signed and its seal, if any, affixed by an officer or other person
duly authorized thereto by order of its board of directors.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Frank T. Glaser
Mary E. Glaser

Washington
STATE OF OREGON, County of Clark ss.
This instrument was acknowledged before me on 10-18-93, 19____
By Frank T. Glaser and Mary E. Glaser
This instrument was acknowledged before me on _____, 19____
by _____

DOROTHY GRAZUL
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
MAY 1, 1994

Notary Public for Oregon
My commission expires _____

Grantor's Name and Address
Grantor's Name and Address
After recording return to Grantor, Address, City
Asghar R. Sadri
203 E. Reserve
Vancouver, WA 98661
Mail returned information send all tax documents to Grantor, Address, City
Asghar R. Sadri
203 E. Reserve
Vancouver, WA 98661

SPACE RESERVED FOR REGORDOR'S USE

STATE OF OREGON, } ss.
County of _____ }
I certify that the within instrument
was received for record on the _____ day
of _____, 19____, at
_____ o'clock _____ M., and recorded in
book/roll/volume No. _____ on page
_____ and/or on fee/title/instru-
ment/microfilm/recapition No. _____
Record of Deeds of said County.
Witness my hand and seal of
County, aforesaid.

By _____ TITLE
Deputy

9269179

Exhibit "A" - continued

PROPERTY DESCRIPTION - continued

PARCEL 3

All that part of Section 2, in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon, lying North and East of Coyote Creek;

EXCEPTING: Beginning at a point on the North line of section 2 aforesaid 42.225 chains West of the Northeast corner thereof; and running thence West 27.83 chains to the center of Coyote Creek; thence Southeasterly along the center of Coyote Creek to a point South 21° 15' West 9.67 chains from the Place of Beginning; thence North 21° 15' East 9.67 chains to the Place of Beginning, Lane County, Oregon;

ALSO EXCEPTING a strip of land 40 feet in width, the North line of which begins at the Northeast corner of said Section 2 and runs thence West 42.21 chains along the North line of said Section 2, for road purposes, in Lane County, Oregon.

PARCEL 4

Lot 1 of Section 2, Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon.

9269179

State of Oregon,
County of Lane--s.

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

7 DEC 92 4:21

1809R

Lane County OFFICIAL Records,
Lane County Clerk

By: *[Signature]*
COUNTY CLERK

9269179

Exhibit "A"

PROPERTY DESCRIPTION

PARCEL 1

Beginning at a point which is 1004.3 feet North 21° 15' East of a point which is 1188.7 feet North of the 1/4 section corner on the South line of Section 2 in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; run thence North 21° 15' East a distance of 1684.8 feet, more or less, to the center line of Coyote Creek; thence meandering down the said center line as follows: North 49° 25' West 200.0 feet; thence North 76° 16' West 830 feet; thence North 74° 46' West 459.0 feet; thence North 8° 34' West 188.5 feet; thence North 40° 41' West 240.00 feet to the West line of said property; thence South 21° 15' West along said West line 1200.0 feet, more or less, to an iron pipe; thence South 69° 10' East a distance of 160.0 feet; thence South 46° 13' East a distance of 1200.0 feet; thence South 21° 55' West a distance of 250.0 feet; thence South 46° 13' East a distance of 120.0 feet; thence South 11° 55' West a distance of 350.0 feet; thence South 46° 13' East a distance of 202.8 feet to the Place of Beginning, all in Lane County, Oregon.

PARCEL 2

Beginning at a point 2.60 chains West of the Northeast corner of the Southeast 1/4 of Section 2, Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; running thence South 33.84 chains parallel with the East line of said Section; thence West 38.37 chains to the West line of the Southeast 1/4 of said Section 2; thence North along the West line of the Southeast 1/4 of said Section 2 to the tract of land deeded by Ole Halderson and Mary Halderson by Deed recorded in Book 91, Page 137, Lane County, Oregon Deed Recorder; thence following the line of said tract of land Northeastly to Coyote Creek; thence Southeastly along Coyote Creek until the same intersects with the East line of said Section 2; thence South to the Southeast corner of said Northeast 1/4 of Section 2; and thence West 2.60 chains to the Place of Beginning, in Lane County, Oregon;
EXCEPT that portion lying Southerly of the Northerly line of County Road No. 1166 as described in deed to Lane County, recorded December 4, 1986, Reel No. 1433, Reception No. 8649208, Lane County Official Records, in Lane County, Oregon.

-continued-

9269179

WARRANTY DEED - STATUTORY FORM
INDIVIDUAL GRANTOR

S. A. CUDDEBACK and RUBY CUDDEBACK, husband and wife, Grantee,
conveys and warrants to ASGHAR R. SADRI, Grantee, an undivided one-half (1/2) interest; P.T. GLASSER as the Trustee of the P.T. Glasser Revocable Living Trust, dated January 21, 1991, Grantee, (continued below as **) Grantee, the following described real property free of encumbrances except as specifically set forth herein situated in Lane County, Oregon, to-wit:
See Exhibit "A" attached hereto and made a part hereof by reference.

(** Grantee continued) an undivided one-quarter (1/4) interest; and MARY E. GLASSER, as Trustee of the Mary E. Glasser Revocable Living Trust dated January 21, 1991, Grantee, an undivided one-quarter (1/4) interest, as tenants in common, in

6054DEC.07'92H03REC 15:00
6054DEC.07'92H02PFUND 10:00

The said property is free from encumbrances except covenants, conditions and restrictions, zoning ordinances, building and use restrictions, reservations, easements, rights of way and encumbrances of record, and rights of the current Lessee, also taxes and penalties that may be levied if the property becomes disqualified for special assessment as land zoned or classified for farm use.
The true consideration for this conveyance is \$200,000.00 (Here comply with the requirements of ORS 93.030)
In addition, part of the consideration consists of other property or value given or promised.

Dated this 2nd day of December, 1992.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

S. A. Cuddeback
Ruby Cuddeback

STATE OF OREGON, County of Lane ss.
This instrument was acknowledged before me on Dec 4 1992



Sunny Lee Maloy
Notary Public for Oregon
My commission expires 11/5/94

WARRANTY DEED
S.A. and Ruby Cuddeback GRANTOR
Asghar R. Sadri, et al. GRANTOR
203 E. Basalts
Vancouver, WA 98661
GRANTEE'S ADDRESS, ZIP
After recording return to:
Asghar R. Sadri, et al
NAME, ADDRESS, ZIP
Until a change is requested, all tax statements shall be sent to the following address:
Asghar R. Sadri, et al
203 E. Basalts
Vancouver, WA 98661
NAME, ADDRESS, ZIP

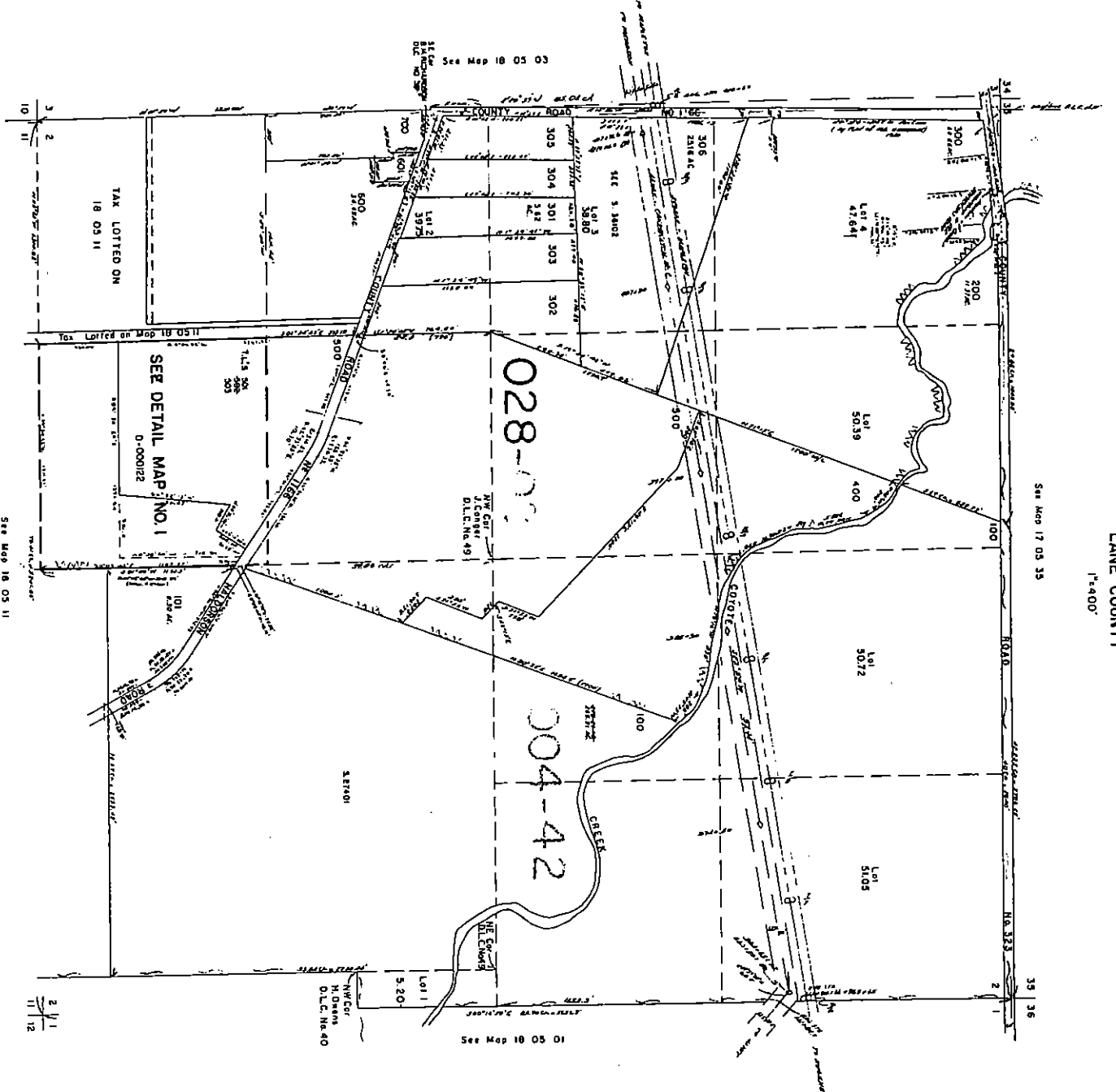
SPACE RESERVED FOR RECORDER'S USE

STATE OF OREGON,
County of _____ ss.
I certify that the within instrument was received for record on the _____ day of _____, 19____ at _____ o'clock _____ M., and recorded in book/roll/volume No. _____ on page _____ or as fee/title/instrument/microfilm/reception No. _____, Record of Deeds of said county.
Witness my hand and seal of County affixed.
NAME TITLE
By _____ Deputy

EXHIBIT C

Section 2 T18S, R5W, W1M,
LANE COUNTY
1"=400'

18 05 02



See Map 18 05 11

See Map 17 05 35

See Map 18 05 01

EXHIBIT B

PROPERTY DESCRIPTION

PARCEL 1

Beginning at a point which is 1004.3 feet North 21° 15' East of a point which is 1188.7 feet North of the 1/4 section corner on the South line of Section 2 in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; run thence North 21° 15' East a distance of 1684.8 feet, more or less, to the center line of Coyote Creek; thence meandering down the said center line as follows: North 49° 25' West 200.0 feet; thence North 76° 16' West 830 feet; thence North 24° 46' West 458.0 feet; thence North 8° 34' West 388.5 feet; thence North 48° 41' West 240.00 feet to the West line of said property; thence South 21° 15' West along said West line 1200.0 feet, more or less, to an iron pipe; thence South 69° 10' East a distance of 160.0 feet; thence South 46° 13' East a distance of 1200.0 feet; thence South 21° 55' West a distance of 250.0 feet; thence South 46° 13' East a distance of 120.0 feet; thence South 21° 55' West a distance of 350.0 feet; thence South 46° 13' East a distance of 202.8 feet to the Place of Beginning, all in Lane County, Oregon.

PARCEL 2

Beginning at a point 2.60 chains West of the Northeast corner of the Southeast 1/4 of Section 2, Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon; running thence South 33.84 chains, parallel with the East line of said Section; thence West 38.37 chains to the West line of the Southeast 1/4 of said Section 2; thence North along the West line of the Southeast 1/4 of said Section 2 to the tract of land deeded by Ole Haldorson and Mary Haldorson by Deed recorded in Book 91, Page 137, Lane County Oregon Deed Records; thence following the line of said tract of land Northeasterly to Coyote Creek; thence Southeasterly along Coyote Creek until the same intersects with the East line of said Section 2; thence South to the Southeast corner of said Northeast 1/4 of Section 2; and thence West 2.60 chains to the Place of Beginning, in Lane County, Oregon;

EXCEPT that portion lying Southerly of the Northerly line of County Road No. 1166 as described in deed to Lane County, recorded December 4, 1986, Reel No. 1433, Reception No. 8649208, Lane County Official Records, in Lane County, Oregon.

PARCEL 3

All that part of Section 2, in Township 18 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon, lying North and East of Coyote Creek;

EXCEPTING: Beginning at a point on the North line of Section 2 aforesaid, 42.225 chains West of the Northeast corner thereof; and running thence West 27.83 chains to the center of Coyote Creek; thence Southeasterly along the center of Coyote Creek to a point South 21° 15' West 9.67 chains from the Place of Beginning; thence North 21° 15' East 9.67 chains to the Place of Beginning, Lane County, Oregon;

ALSO EXCEPTING a strip of land 40 feet in width, the North line of which begins at the Northeast corner of said Section 2 and runs thence West 42.22 chains along the North line of said section 2, for road purposes, in Lane County, Oregon.

demonstrated compliance and consistency with the provisions added to ORS Chapter 197 by Ballot Measure 37 and LC 2.700. Accordingly, the applicant's claim for just compensation for the reduction in the fair market value of his property as a result of the restriction should be paid by Lane County. In lieu of such payment of just compensation, Lane County should waive the offending regulations as provided above that prevent the applicants from placing a residential dwelling on the subject property.

Respectfully submitted:

HERSHNER HUNTER, LLP

/s/Steve Cornacchia

By _____
Steve Cornacchia

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

Response:

Lane Code 16.212(6)(a)(i) is a land use regulation as defined by provisions added to ORS Chapter 197 by Ballot Measure 37. It does not restrict or prohibit public nuisances, is not a public health and safety protection regulation, is not required to comply with federal law, does not relate to the use of the property for pornography or nude dancing and was not enacted prior to the date the applicants acquired the property.

h. 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

Response:

The applicant claims from Lane County the sum of \$100,000 which represents the reduction in market value of the subject property resulting from Lane County's enforcement of the aforementioned regulations that restrict the use of the property by preventing the placement of a residential dwelling on the subject property. The fair market value of the property before the application of the aforementioned challenged land use regulation is \$590,000. The fair market value of the property after the application of the aforementioned challenged land use regulation is \$490,000. The reduction in fair market value of the subject property resulting from Lane County's restrictions on its use totals \$100,000, the amount of the claim herein.

i. 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 shall also 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 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).

Response:

The subject property is free and clear of any encumbrances that would restrict the use of it.

4. CONCLUSION.

The applicant has demonstrated that Lane County's enforcement of LC 16.212(6)(a)(i) restricts the use of the subject property by not allowing the placement of a residential dwelling on the subject property. That restriction reduces the fair market value of the property from what it would be if a residential dwelling was allowed to be placed on it. The applicant has

value of the property by showing the difference in the fair market value of the property before and after the application of each of the challenged regulations, individually, and after the application of all of the challenged regulations, cumulatively;

Response:

The applicant retained the services of Craig E. McKern, Certified Residential Real Estate Appraiser, to prepare a written appraisal of the subject property indicating the difference in the current fair market value of it without the right to place a residential dwelling and the market value of it with the right to place a residential dwelling on it. Mr. McKern's appraisals and report is attached hereto as Exhibit G.

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

LC 2.740(1)(a) through (d) provides the following criteria:

(a) The county has either adopted or enforced a land use regulation that restricts the use of private property or any interest therein:

Response:

The subject property is zoned Exclusive Farm Use (EFU 40/RCP). The primary land use regulations that restrict the use of the subject property are found in Lane Code 16.212(6). Those regulations require the applicant, in order to obtain county approval of the placement of a residential dwelling on the subject property, to demonstrate that the subject property is currently employed for the farm use, as defined in LC 16.090, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. As discussed earlier in this application, the subject property does not produce the required \$80,000 in gross annual farm income and the applicant cannot demonstrate compliance with the regulations.

(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;

Response:

See earlier discussion in sections 3.1(e) and (f) and discussion below in section 3.1(h).

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

Response:

See discussion above in sections 3.1(d) and (e).

Code section is attached as Exhibit F. On the date that the applicant obtained his interest in the subject property, LC 16.212(2)(f) would have permitted the applicant to place a residential dwelling customarily provided in conjunction with existing farm use, provided the applicant could demonstrate compliance with the following requirements (LC 16.212(2)(f)(i)-(iii)):

LC 16.212(2)(f)(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.

The subject property and the contiguous property in the same ownership were undeveloped on December 2, 1992. The applicant could have demonstrated that the subject property complied with LC 16.212(2)(f)(i).

LC 16.212(2)(f)(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.

On December 2, 1992, (and thereafter to the present date) the subject property was managed for the annual production of ryegrass. LC 16.212(6)(d) required a farm parcel size of 160 acres for the production of field crops (which included grass seed production). Because the subject property exceeded 160 acres in size and was managed for grass seed production on December 2, 1992, the applicant could have demonstrated that the subject property complied with LC 16.212(2)(f)(ii). Because the subject property is over 40 acres in size, the applicant could have demonstrated that the subject property complied with LC 16.212(2)(f)(ii).

LC 16.212(2)(f)(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.

The applicant and his family would have resided on the subject property if permitted. The applicant could have demonstrated that the subject property complied with 16.212(2)(f)(iii).

In addition to LC 16.212(6)(a)(i), the following Lane County regulations restrict the use of the subject property by the applicant:

- LC 10.100-10, 30 and 40

f. 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

Response:

A legal description of the subject property is attached hereto as Exhibit B. The Lane County Assessor's Map No. for the subject property is 18-05-02, a copy of which is attached as Exhibit C. The subject property is assigned Tax Lot No. 0100. The subject property has no street address.

d. 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 petition;

Response:

A copy of the original December 2, 1992, Warranty Deed between the applicant and the Glaser's, as Grantee, and S. A. Cuddeback and Ruby Cuddeback, husband and wife, as Grantors, conveying the subject property to the applicant and the Glaser's, is attached hereto as Exhibit D. A copy of the October 18, 1993, Quitclaim Deed between the applicant, as Grantee, and the Glaser's, as Grantor, conveying all of the Glaser's' interest in the subject property to the applicant, is attached hereto as Exhibit E.

e. 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;

Response:

The subject property was zoned Exclusive Farm Use (EFU 40/RCP) in 1984. Currently, Lane Code 16.212 implements the Exclusive Farm Use Zone. LC 16.212(6)(a)(i) will not permit the placement of a residential dwelling customarily provided in conjunction with farm use on the subject property unless the applicant can demonstrate that it is currently employed for the farm use, as defined in LC 16.090, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. (Also see ORS 215.213 and OAR 660-033-0130 and 0135) LC 16.212(6)(a)(i) was first enforced by Lane County on March 1, 1994. The subject property does not produce at least \$80,000 in gross annual income from farm products. Because the applicant cannot demonstrate compliance with the gross annual income criteria of LC 16.212(6)(a)(i), he is not permitted by Lane County to place a residential dwelling on the subject property. The county's restriction of the applicant's ability to place a residential dwelling on the subject property diminishes the market value of the subject property.

Lane County Ordinance No. 10-92, adopted on November 12, 1992, implemented the Exclusive Farm Use zone in 1984 and was in effect on December 2, 1992, at the time the applicant obtained his interest in the subject property. On December 2, 1992, Lane Code 16.212 contained the Exclusive Farm Use provisions implementing Ordinance No. 10-92. A copy of that Lane

ambulance); Qwest (telephone); LTD (bus service); Lane County Sheriff's Department and Oregon State Police.

2.2 List of Exhibits:

- Exhibit A - Lane County Application Form
- Exhibit B - Legal Description
- Exhibit C - Assessor's Map No. 18-05-02
- Exhibit D - 1992 Warranty Deed (Cuddeback to Sadri and Glaser's)
- Exhibit E - 1993 Quitclaim Deed (Glaser's to Sadri)
- Exhibit F - 1992 Lane Code 16.212
- Exhibit G - Appraisal Reports prepared by Craig E. McKern, Certified Real Estate Appraiser

3. APPLICABLE CRITERIA. (Lane Code 2.700 - Real Property Compensation/Regulation Application Process)

3.1 Lane Code 2.720 Application for Claim

Lane Code 2.720 requires that the applicant be the present owner of the property that is the subject of the claim at the time the claim is submitted. The applicant is the present, and sole owner; of the subject property.

Lane Code 2.720 also contains the required items for a competed application as follows:

- a. A completed application form;**

Response:

A completed application form is attached hereto as Exhibit A.

- b. 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;**

Response:

The applicant is the sole owner of the property, free and clear of all encumbrances and interests of record other than those of the applicant. The applicant's name, mailing address and phone number are provided in the application form attached hereto. The applicant has signed the application form attached hereto.

- c. A legal description and tax lot number of the subject property as well as a street address for the property (if any);**

1. INTRODUCTION. The applicant, Asghar Sadri, claims that Lane County's enforcement of land use regulations that restrict the use of his property has reduced the fair market value of his property. The applicant is requesting, pursuant to the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and Lane Code 2.700, that Lane County pay him just compensation for the reduction in the fair market value of his property resulting from Lane County's enforcement of those restrictions on its use. This application constitutes written demand pursuant to Section (4) of Ballot Measure 37 (2004).

In lieu of such payment of just compensation, the applicant requests that Lane County waive the offending regulations, as discussed later in this application, that prevent the applicant from constructing a single family dwelling on the subject property.

The applicant, along with Frank T. Glaser and Mary E. Glaser, tenants in common, purchased the subject property on December 2, 1992. Frank T. Glaser and Mary E. Glaser conveyed all of their right, title and interest in the subject property to the applicant on October 18, 1993, and the applicant has owned the subject property continuously since that time. The applicant is the sole owner of the subject property. The applicant obtained his initial interest in the subject property on December 2, 1992.

The property is zoned Exclusive Farm Use 40 Acre Minimum (EFU 40) and is comprised of predominantly high value soils as those soils are defined by Oregon law. The Lane Code provisions implementing the EFU 40 zone will not permit the placement of a residential dwelling customarily provided in conjunction with farm use on the subject property unless the applicant can demonstrate that it is currently employed for the farm use, as defined in LC 16.090, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. See LC 16.212(6)(a)(i) (Also see ORS 215.213 and OAR 660-033-0130 and 0135). At the time the applicant obtained his interest in the subject property, Lane Code, and state law, did not contain the \$80,000 farm product income requirement. At the time the applicant obtained his interest in the subject property he could have demonstrated that the requirements of Lane Code regarding the placement of a residential dwelling customarily provided in conjunction with farm use could have been met.

2. BACKGROUND INFORMATION.

2.1 General Site Description. The property subject to this application consists of a single parcel, approximately 266 acres in

Size, located west of Eugene in the Coyote Creek area and adjacent to Hwy 126.

The subject property is described as Tax Lot 0100 of Lane County Assessor's Map No. 18-05-02.

The subject property is undeveloped.

The subject property receives the following public services: Eugene School District No. 4J (schools); EWEB (electrical power); Lane County Rural Fire Protection District No. 1 (fire and

Measure 37 Claim Number: M37-

Application for Claims Under LC 2.700 through 2.770

Due to Regulatory Reduction of Property Value Under Provisions Added to ORS Chapter 197 by BM37

Note: This completed form together with the referenced supporting documentation and application fee must be submitted to the Lane County Land Management Division, 125 East 8th Avenue, Eugene, Or., 97401 for all claims subject to the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), to be considered for compensation under LC 2.700 through 2.770. In all cases, the applicant has the burden of demonstrating, with competent evidence, that all applicable criteria are met and the applicant would be entitled to compensation if the land use regulation continues to apply. Use additional paper, if necessary.

1. Applicant/ Agent

<u>Asghar Sadri</u>	<u>203 East Reserve, Vancouver, WA</u>	<u>(360)909-8482</u>
Applicant Name, (Please Print)	Mailing Address 98661	Phone
<u>Steve Cornacchia</u>	<u>P.O. Box 1475, Eugene, OR 97440</u>	<u>(541)686-8511</u>
Agent Name (Please Print)	Mailing Address	Phone

2. Property Owner

Please provide the Name, Mailing Address and telephone number of all property owners of record holding interest in the property that is the subject of this application. Include a complete listing of all lien holders, trustees, renters, lessees or anyone with an interest in the property and describe the ownership interest.

<u>Asghar Sadri</u>	<u>203 East Reserve, Vancouver, WA</u>	<u>(360)909-8482</u>
Property Owner Name (Please Print)	Mailing Address 98661	Phone
_____	_____	_____
Property Owner Name (Please Print)	Mailing Address	Phone

3. Legal Description

Please provide an accurate legal description, tax account number(s), map, street address and location of all private real properties that are the subject of this application.

Assessor Map & Tax Lot 18-05-02 Tax Lot 100

Street Address None Legal Description Attached Yes

4. Identification of Imposed Land Use Regulation

Please identify the Lane Code section or other land use regulation imposed on the private real property that is alleged to restrict the use of the subject property in a manner that reduces the fair market value. Include the date the regulation was first adopted, enforced or applied to the subject property and a written statement addressing all the criteria in LC 2.740(1).

Lane Code 16.212(6)(a)(i), first enforced on March 1, 1994. See Section 3.1.g of
written statement.

5. Title Report

Please attach a Preliminary Title Report showing title history and continuous ownership traced to the earliest family member ownership, the date of current owner(s) acquisition and all current interests of record for the subject property, issued within 30 days of the application submittal. Provide copies of relevant deeds.

LC 2.720 provides that the applicant may provide a copy of the deed conveying the subject interest to the applicant as an alternative to a title report. See attached deeds.

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. If the ruling of the Marion County Circuit Court in *MacPherson v. Dept. of Administrative Services*, (Marion County Circ. Ct. Case No. 00C15769, October 14, 2005) becomes final and that decision or any subsequent court decision has application to Lane County in a manner that affects the authority of this Board to grant relief under Ballot Measure 37 and LC 2.700 through 2.770, then the validity and effectiveness of this Order shall be governed by LC 2.770 and the ruling of the court.

DATED this _____ day of _____, 2005.

Anna Morrison, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 10-19-2005 Lane County

Stephen J. Parker
OFFICE OF LEGAL COUNSEL

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

**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 left the record open until October 26, 2005, and has now 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

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. October 4, 2005 M37 Claim

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 determined by the appraisal 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. 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.

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, due to the discretionary nature of the dwelling provisions in effect at the time Mr. Sadri acquired the property, 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.

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

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 consideration under Measure 37 and LC 2.740.

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 can demonstrate that he 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 all the restrictive dwelling land use regulations of LC 16.212 have been enforced against Mr. Sadri to preclude dwelling approval 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

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 the application 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 some of 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;*

The appraisal provided by Mr. Sadri provides an analysis of the decreased property value resulting from application of the land use restrictions. Because he was denied the ability to place a dwelling on his property the appraisal asserts 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 the application 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. It is also unclear whether there are other provisions in the current EFU zone that would enable placement of a dwelling on the property.

Conclusion: It seems reasonable to conclude that the current E-40 zone \$80,000 income dwelling provisions adopted after Mr. Sadri acquired the property may have 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. The