

W.K.d.



Memorandum Date: August 2, 2006
Order Date: August 23, 2006

TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: 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 (PA06-5683, KLEMP)

I. MOTION

Move to approve the Measure 37 Claim and adopt the order attached to this memo.

II. AGENDA ITEM SUMMARY

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 to use the property as could have been allowed at the time they acquired the property?

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

Applicant: Daniel and Ann Klemp

Current Owner: Daniel and Ann Klemp

Agent: Steve Cornacchia

Map and tax lot: 16-04-28 #1102

Acreage: Approximately 40 acres

Current Zoning: E40 (Exclusive Farm Use)

Date Applicants acquired an interest in the Property: Sept. 28, 1973.

Date claim submitted: April 26, 2006. The 180-day deadline is October 23, 2006.

Land Use Regulations in Effect at Date of Acquisition: AGT (Agriculture, Grazing and Timber). One acre minimum lot size.

County land use regulation which restricts the use and reduces the fair market value of claimant's property: LC 16.212: Minimum lot size and restrictions on new dwellings in the E40 (Exclusive Farm Use) zone.

B. Policy Issues

This claim does not involve any administrative policy or objective.

C. Board Goals

The public hearing will provide an opportunity for citizen participation in decision making, in conformance with the overall goals of the Lane County Strategic Plan.

D. Financial and/or Resource Considerations

The applicant has requested compensation of \$2,180,000 or a waiver of the E40 zone regulations that prohibit the division of the property into two-acre lots and development of single family dwellings.

E. Analysis

The property is zoned E40 and contains approximately 40 acres. The applicant wishes to subdivide the property into two-acre lots and place a dwelling on each lot. The current owners acquired an interest in the property on September 28, 1973 (Memorandum Agreement 7344700). On that date, the property was zoned AGT and the minimum lot size was one acre. The current zone requires 40 acres for new lots and a special use permit for a new dwelling. Because of these restrictions, the current owners are prevented from developing the property as could have been allowed when they acquired an interest in the property.

To have a valid claim against Lane County under Measure 37 and LC 2.700 through 2.770, the applicant must prove:

1. Lane County has enacted or enforced a restrictive land use regulation since the owner acquired the property, and
2. The restrictive land use regulation has the effect of reducing the fair market value of the property, and
3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

Restrictive Regulations

The current owners are Daniel and Ann Klemp. They acquired an interest in the property on September 28, 1973, as evidenced by Warranty Deed 8338919 and Memorandum Agreement 7344700.

In 1973, the property was zoned AGT and the minimum lot size was one acre. Currently, the property is zoned E40. This zone requires 40 acres for new lots and a special use permit for a new dwelling. Because of these restrictions, the current owners are prevented from developing the property as could have been allowed when they acquired an interest in the property.

Reduction in Fair Market Value

The applicant has submitted an appraisal by a certified real estate appraiser. Based on the appraisal, the existing 40 acres is worth \$140,000, if the property is not eligible for a dwelling under the current land use regulations. If the property was developed with single family dwellings on two-acre lots, the value would be \$2,320,000.

The Board must determine if the submitted evidence demonstrates a reduction in fair market value from enforcement of a restrictive land use regulation.

Exempt Regulations

The limitation on new dwellings and the minimum lot size of 30 acres do not appear to be exempt regulations described in Measure 37 or LC 2.710. A portion of the property is in the floodplain. The Lane County floodplain regulations are exempt from Measure 37 claims because they implement the federal floodplain program.

Conclusion

It appears this is a valid claim if the Board determines the submitted evidence demonstrates a reduction in fair market value resulting from enforcement of a restrictive land use regulation.

F. Alternatives/Options

The Board has these options:

1. Determine the application appears valid and adopt the order attached to this report.
2. Require more information regarding the reduction in value or ownership.
3. Conclude the application is not a valid claim and direct the issuance of a final written decision by the County Administrator denying the Claim.

V. TIMING/IMPLEMENTATION

If the Board determines this is a valid claim and waives a land use regulation, the

claimant must receive a similar waiver from the state before a land use application and/or development proposal is submitted.

VI. RECOMMENDATION

If the Board determines the submitted evidence demonstrates a reduction in fair market value from enforcement of a restrictive land use regulation, the County Administrator recommends the Board waive the restrictive land use regulations.

VII. FOLLOW-UP

If adopted, the order will be recorded.

VII. ATTACHMENTS

Order to approve the Measure 37 claim of Daniel and Ann Klemp.

Vicinity map.

Written claim dated April 26, 2006.

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

ORDER No.) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (David and Ann Klemp/
) PA06-5683).

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 David and Ann Klemp (PA06-5683), the owners of real property described in the records of the Lane County Assessor as map 16-04-28, tax lot 1102, consisting of approximately 40 acres in Lane County, Oregon; and

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

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

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

WHEREAS, on August 23, 2006, the Board conducted a public hearing on the Measure 37 claim (PA06-5683) of David and Ann Klemp and has now determined that the restrictive E40 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent David and Ann Klemp from developing the property as might have been allowed at the time it was acquired on September 28, 1973, and that the public benefit from application of the current E40 restrictions on new dwellings to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, David and Ann Klemp requests either \$2,180,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would prevent the division of the land into lots as small as 1-acre and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time they acquired the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E40 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 David and Ann Klemp to make application for development of the subject property in a manner similar to what they could have been able to do under the regulations in effect when they acquired the property; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant David and Ann Klemp made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that they acquired the property before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment, the request of David and Ann Klemp shall be granted and the restrictive provisions of LC 16.212 that prevent the division of the land into lots as small as 1-acre and placement of a dwelling on each lot in the E40 (Exclusive Farm Use) Zone shall not apply to David and Ann Klemp, so that they can make application for approval to develop the property described in the records of the Lane County Assessor as map 16-04-28, tax lot 1102, in a manner consistent with the land use regulations in effect when they acquired the property on September 28, 1973.

IT IS HEREBY FURTHER ORDERED that David and Ann Klemp still will need to make application and receive approval for land divisions and placement of dwellings under the other land use regulations applicable to dividing the land and placement of a dwelling that were not specifically identified or established by David and Ann Klemp as restricting the division of the land and placement of a dwelling, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of a new dwelling to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that have the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal to preclude entitlement to just compensation under Measure 37, and return to the Board for action, if necessary. All other Lane Code land use and development regulations shall remain applicable to the subject property until such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by David and Ann Klemp does not constitute a waiver or modification of state land use regulations and does not authorize immediate land division or construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the applicants should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: <http://www.oregon.gov/DAS/Risk/M37.shtml>) and have the State of Oregon evaluate a Measure 37 claim and provide evidence of final state action before seeking county land use approval.

IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. This order shall be effective and in effect as described in LC 2.770 and Ballot Measure 37 to the extent permitted by law. This order does not resolve several questions about the effect and application of Measure 37, including the question of whether the right of applicants to divide or build dwellings can be transferred to another owners. If the ruling of the Marion County Circuit Court in *MacPherson v. Dept. of Administrative Services*, (Marion County Circ. Ct. Case No. 00C15769, October 14, 2005) or any other court decision involving Ballot Measure 37 becomes final and that decision or any subsequent court decision has application to Lane County in a manner that affects the authority of this Board to grant relief under Ballot Measure 37 and LC 2.700 through 2.770 then the validity and effectiveness of this Order shall be governed by LC 2.770 and the ruling of the court.

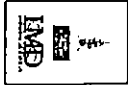
DATED this _____ day of _____, 2006.

Bill Dwyer, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

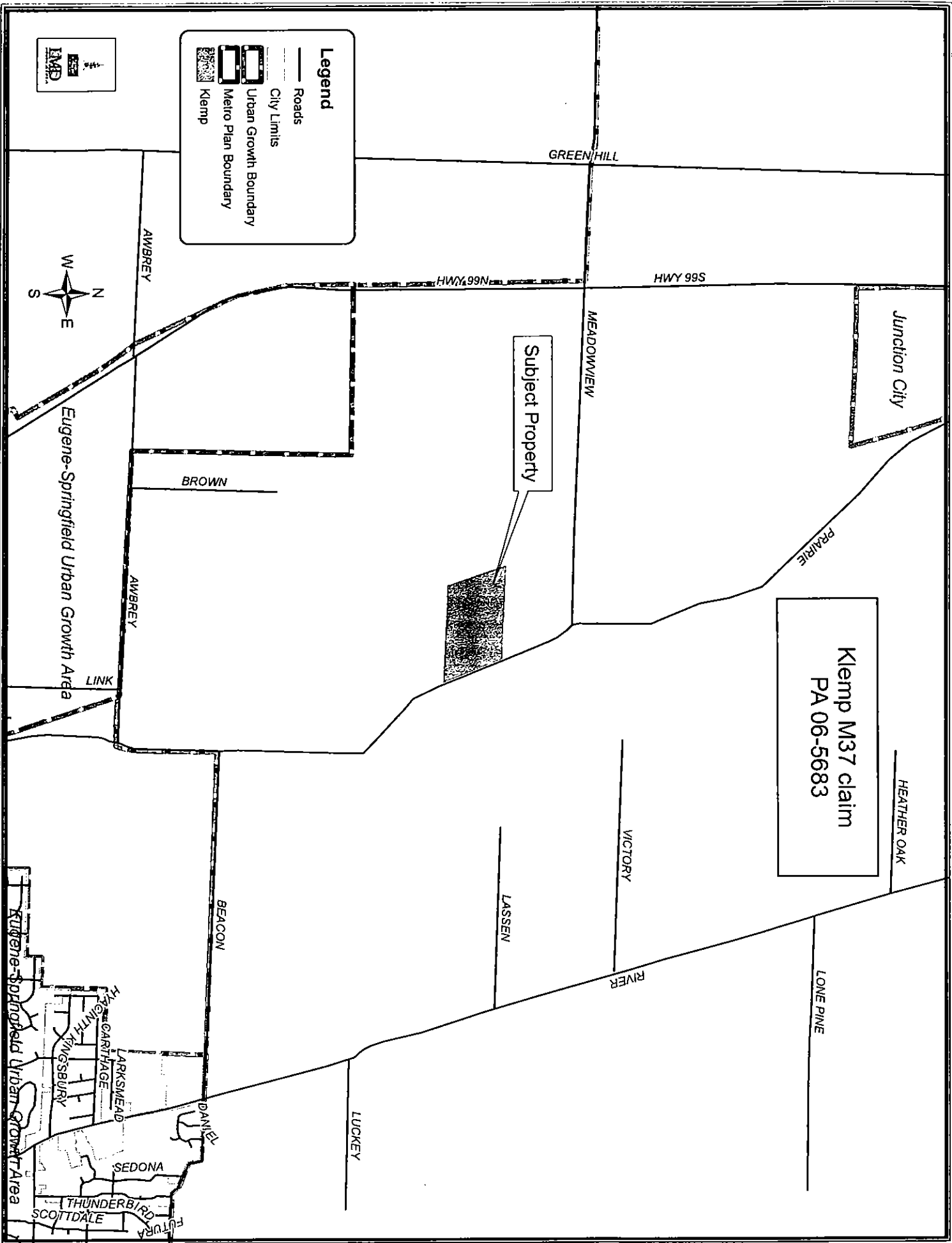
Date 8-15-2006 Lane County

Stephen J. Walker
OFFICE OF LEGAL COUNSEL



Legend

- Roads
- City Limits
- Urban Growth Boundary
- Metro Plan Boundary
- Klump



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>David and Ann Klemp</u>	<u>P.O. Box 51, Blachly, OR 97412</u>	<u>(541) 927-6181</u>
Applicant Name (Please Print)	Mailing Address	Phone
<u>Steve Cornacchia</u>	<u>180 E. 11th Ave., Eugene, OR 97401</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>Daniel Klemp</u>	<u>P.O. Box 51, Blachly, OR 97412</u>	<u>(541) 927-6181</u>
Property Owner Name (Please Print)	Mailing Address	Phone
<u>Ann Klemp</u>	<u>P.O. Box 51, Blachly, OR 97412</u>	<u>(541) 927-6181</u>
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 16-04-28 TL 1102Street Address None

Legal Description Attached _____

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).

See attached narrative.**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.

See Exhibits D and E of attached narrative.

6. Appraisal/Regulatory Effect

Please provide one original, signed appraisal prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon addressing the requirements of provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and indicating the amount of the alleged reduction in fair market value by showing the difference in the fair market value of the property before and after the application of the challenged regulations as of the date the owner makes written demand for compensation. Include all of the supporting methodology, assumptions and calculations affecting the appraisal.

See Exhibit K of attached narrative.

7. Leases, Covenants, Conditions and Restrictions

Please provide copies of any leases or covenants, conditions and restrictions applicable to the subject property.

None

8. Identification of Relief Sought

Please specifically indicate what relief is being sought, either a monetary value of the claim describing the reduction in fair market value of the property or the specific use authorization sought in any waiver of the land use regulation.

Monetary Claim: \$2,180,000

Waiver: Use and lot size restrictions preventing residential use on parcels less than 40 acres in size.

I (we) have completed all of the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) authorized to submit this application on behalf of all those with an interest in the property and all the owner(s) agree to this claim as evidenced by the signature of those owner(s) below. Include additional signatures, as necessary.

Entry by County or its designee upon the subject property is authorized by the owner(s) and the owner(s) consent to the application for claims under provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

Daniel Klemp
Ann L. Klemp
Owner(s) Signature

3/1/06
Date

Steve [Signature]
Applicant/Agent Signature

4/19/06
Date

The following contacts are provided to assist you in finding the necessary information for this application.

For zoning and land use information, please contact the Land Management Division at 682-3577.

This phone contact is a message line. Please leave a message and a Planner will return your call.

For deeds and records information, please contact Lane County Deeds and Records at 682-3654.

1. INTRODUCTION.

The applicants, Daniel and Ann Klemp, claim that Lane County's enforcement of land use regulations that restrict the use of their property has reduced the fair market value of that property. The applicants are 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 them just compensation for the reduction in the fair market value of their property resulting from 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 applicants request that Lane County waive the offending regulations, as provided herein below, that prevent them from subdividing the subject property to residentially-buildable lots of less than forty acres in size.

The applicants obtained an interest in the subject property on September 28, 1973, and have owned the subject property continuously since that time. Lane County adopted a zoning ordinance on May 31, 1949, and zoned the subject property as AGT – Agriculture Grazing and Timber Raising District in 1966. The subject property remained zoned as AGT on September 28, 1973. Land divisions below 40 acres in size and residential use of the resulting lots were allowed in the AGT zone on that date.

The property is currently zoned Exclusive Farm Use 40 (E40). That zoning, as applied by LC 16.212, will not permit land divisions below 40 acres in size for the resulting parcels and will not permit the placement of dwellings on the subject parcels except under very limited circumstances.

2. BACKGROUND INFORMATION.

2.1 General Site Description.

The property subject to this application is approximately 39.86 acres in size, and located south of Meadowview Road between Prairie Road and the Southern Pacific Railroad.

The subject property is described as Tax Lot 1102 of Lane County Assessor's Map No. 16-04-28.

The subject property is undeveloped and vacant.

The subject property receives the following public services: Junction City School District No. 69 (schools); Emerald Peoples Utility District (electrical power); Lane Rural Fire/Rescue; Qwest (telephone); LTD (bus service); Lane County Sheriff's Department and Oregon State Police.

2.2 List of Exhibits:

- Exhibit A - Assessor's Map No. 16-04-28
- Exhibit B - Legal Description
- Exhibit C - Lane County Application Form
- Exhibit D - Memorandum of Land Sale Contract

Exhibit E - O'Neil Warranty Deed
Exhibit F - Lane County Official Zoning Map Plot 295
Exhibit G - Ordinance No. 884
Exhibit H - Land Use Regulation Ordinance #4
Exhibit I - Ordinance No. 208
Exhibit J - Applicable provisions of July 1972 Reprint
Exhibit K - 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 applicants are the present owners 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 Lane County application form is attached hereto as Exhibit C.

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 applicants are the owners of the subject property, free and clear of all encumbrances. The names, mailing address and phone number of the applicants are:

Daniel and Ann Klemp, PO Box 51, Blachly, OR 97412; (541) 927-6181.

The applicants' name, mailing address and phone number are also provided in the Lane County application form attached hereto. The applicants have signed the application form attached hereto as Exhibit C.

The applicants are the owners of the subject property. The applicants obtained their interest in the subject property on September 28, 1973. On that date, the applicants obtained their interest in the subject property by entering into a land sale contract with Robert J. O'Neil and Hazel A. O'Neil. A copy of the Memorandum of that contract is attached as Exhibit D. Thereafter, upon

satisfaction of the contract, the O'Neil's conveyed the fee interest in the subject property to the applicants by Warranty Deed, dated September 28, 1973, and recorded on October 20, 1983. A copy of the O'Neil deed to the applicants is attached as Exhibit E.

The applicants have provided the requisite evidence to demonstrate that they are the true owners of the subject property and that they have had an interest in the subject property since September 28, 1973.

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 16-04-28. The subject property does not have a 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:

See discussion of 3.1.b. above.

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 is currently zoned Exclusive Farm Use 40 Acre Minimum (E40) as depicted on Lane County Official Zoning Map Plot 295, adopted by Lane County as part of Ordinance 884 on February 29, 1984. A copy of Plot 295 is attached as Exhibit F and a copy of Ordinance 884 is attached as Exhibit G. In addition to Ordinance 884, the primary land use regulations that restrict the use of the subject property are Lane Code 16.212(3)-(7) which restrict the residential use of the subject property and Lane Code 16.212(9) which requires a minimum area requirement of forty acres for the creation of new lots or parcels in the Exclusive Farm Use Zone on property designated as E40 on Lane County Zoning Maps. Those Lane Code provisions and Zoning Map Plot 295 prevent the applicants from subdividing their property into residentially-buildable parcels less than 40 acres in size as was allowed by Lane County regulations (or the lack thereof) prior to the county's adoption of Ordinance 884 and the current code provisions.

On May 31, 1949, the Lane County Court approved Land Use Regulation Ordinance #4 which established a basis to zone land in Lane County. A copy of the first and last page of that ordinance is attached as Exhibit H. On February 23, 1966, the Lane County Board of Commissioners adopted Ordinance No. 208 which established the first zoning of the subject property (as AGT, Agriculture, Grazing and Timber Raising District). A copy of Ordinance No. 208 is attached as Exhibit I.

On June 21, 1972, the Lane County Board of Commissioners enacted Ordinance No. 13-72 that contained the requirements of LC 10.110 for the AGT zone and the requirements of LC 10.320 for conditional use permits. The requirements of LC 10.110 and 10.320 were combined and published by Lane County in a document entitled, LANE COUNTY ZONING ORDINANCE REPRINT JULY 1972. A copy of the applicable portions of the publication is attached as Exhibit J. Lane Code provisions for the AGT zone at that time allowed a single-family dwelling, two-family dwelling and mobile home per lot, on a lot at least one acre in size and 150 feet in width and mobile home parks approved pursuant to a conditional use permit (LC 10.320).

On February 29, 1984, Lane County adopted Ordinance 884 which further restricted the applicants' use of their property subsequent to their acquisition of it by designating it on the Rural Comprehensive Plan diagram map as "Agricultural" and rezoning it as Exclusive Farm Use, E40, which it remains today. A copy of the relevant portions of that ordinance is attached as Exhibit G.

If the aforementioned current Lane County regulations did not exist, or were consistent with provisions of Lane County regulations preceding September 28, 1973, the value of the applicants' property would be considerably higher if divided into one-acre or larger parcels for residential use rather than remaining in its current configuration with the aforementioned use and acreage restrictions in place.

In addition to Ordinance 884, Zoning Map Plot 295 and LC 16.212 (3)-(7), (9) and (10), the following Lane County regulations restrict the use of the subject property by the applicant:

- LC 10.100-10, 30 and 40
- LC 13.050(1), (2), (5), and (12)
- LC 15.045(1)
- LC 15.070
- LC 15.080
- LC 15.137
- LC 15.138

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 applicants retained the services of Craig E. McKern, Certified Residential Real Estate Appraiser, to prepare written appraisals of the subject property indicating the difference in the fair market value of it as currently configured and restricted and as if configured into 16 buildable two-acre parcels. Mr. McKern's appraisals are attached hereto as Exhibit K.

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 40 Acre Minimum (E40) as depicted on Lane County Official Zoning Map Plot 295, adopted by Lane County as part of Ordinance 884 on February 29, 1984. In addition to Ordinance 884, the primary land use regulations that restrict the use of the subject property are Lane Code 16.212(3)-(7) which restrict the residential use of the subject property and Lane Code 16.212(9) which requires a minimum area requirement of forty acres for the creation of new lots or parcels in the Exclusive Farm Use Zone on property designated as E40 on Lane County Zoning Maps. (See discussion above in Section 3.1.e.)

(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 discussion above in sections 3.1(e) and (f) and 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:

Ordinance 884 and Zoning Map Plot 295 were adopted on February 29, 1984, subsequent to the applicants obtaining their interest in the subject property. 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:

Ordinance 884, Lane Code 16.212(3)-(7) and (9) and the Lane Code provisions listed in the Response to section 3.1(e) above are land use regulations as defined by provisions added to ORS

Chapter 197 by Ballot Measure 37. They do not restrict or prohibit public nuisances, are not public health and safety protection regulations, are not required to comply with federal law, do not relate to the use of the property for pornography or nude dancing and were 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 applicants claim from Lane County the sum of \$2,180,000, which sum represents the reduction in market value of the subject property resulting from Lane County's enforcement of the aforementioned regulations that restrict the residential use of the property and which prohibit land divisions to parcels less than 40 acres in size.

According to Mr. McKern's appraisal, the total fair market value of the subject property before the application of the aforementioned challenged land use regulations is \$2,320,000. Mr. McKern's appraisal is conservative, limited by his appraisal of the property as if configured in 16 two-acre buildable parcels. Under county regulations existing in 1973, the subject property could have been subdivided into parcels as small as one acre and, if appraised in that configuration, could arguably be worth more than if developed into fewer, larger, parcels. Mr. McKern appraised the property under a scenario containing only 16 lots on the subject property's approximately 39.86 total acres. According to Mr. McKern's appraisal, the fair market value of the subject property after the application of the aforementioned challenged land use regulation is \$140,000 (not assuming the ability to site a dwelling). The reduction in fair market value of the subject property resulting from Lane County's restrictions on its use totals at least \$2,180,000, 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.

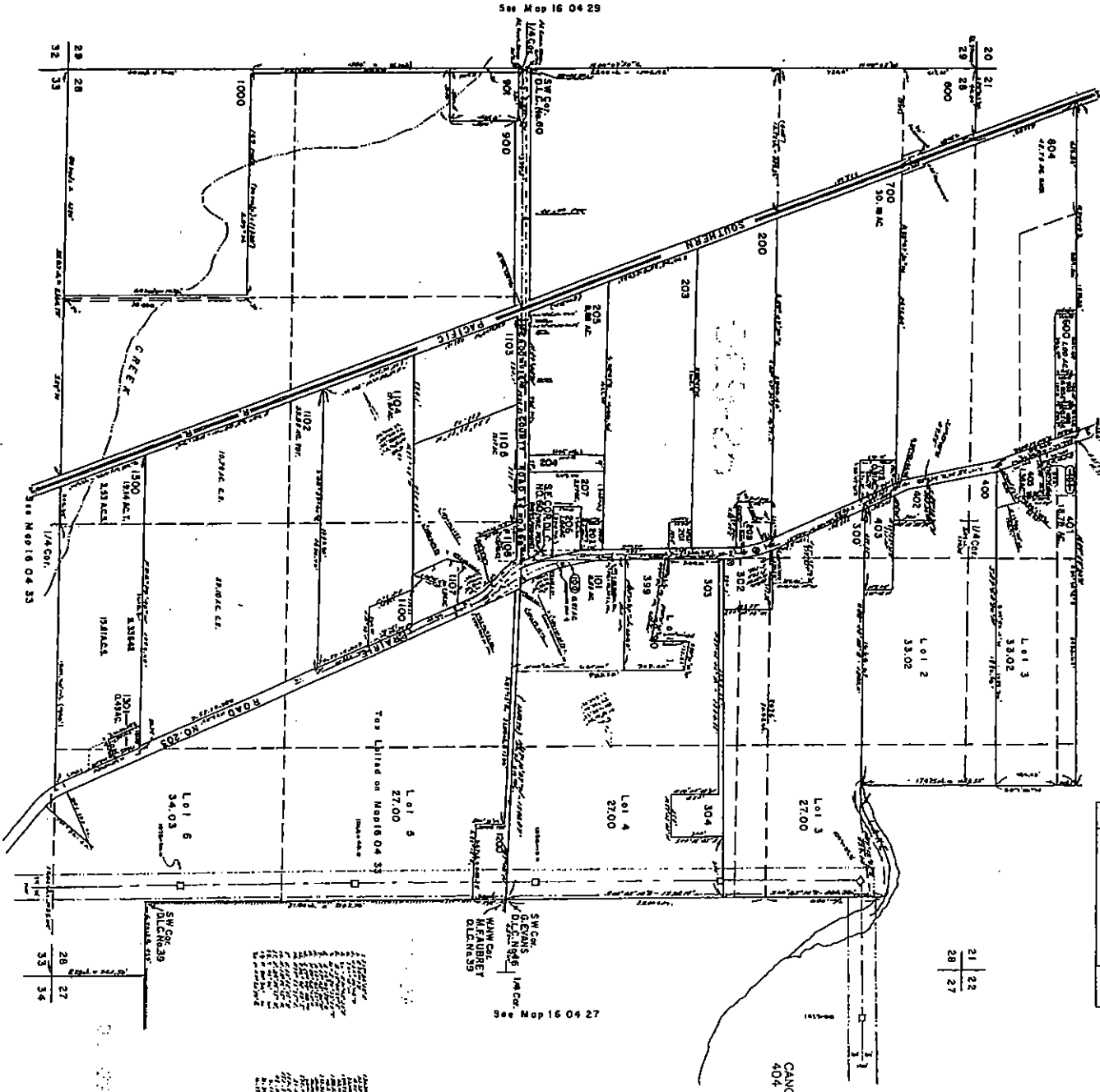
The applicants have demonstrated that Lane County's enforcement of Ordinance 884 and provisions of LC 16.212 restricts the use of the subject property to agricultural use on 40-acre minimum parcel sizes and that the restrictions reduce the fair market value of the property from what it would be if residential use on parcels less than forty acres in size was allowed. The applicants have demonstrated compliance and consistency with the provisions added to ORS Chapter 197 by Ballot Measure 37 and LC 2.700. Accordingly, the applicants' claim for just compensation for the reduction in the fair market value of their 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 subdividing the subject property to into buildable residential lots of less than forty acres in size.

EXHIBIT A

Section 28 T.16S. R.4W.W.M.
LANE COUNTY

1"=400'
See Map 16 04 21

NO.	DATE	BY	REVISION



16 04 28

See Map 16 04 27

CANCELLED
404

Exhibit B

Legal Description

Beginning at a point on the Easterly right of way line of the Southern Pacific Railroad, said point being North 88° 39' 40" West 222.19 feet and North 20° 23' 05" West 525.68 feet from the stone marking the South one-quarter corner of Section 28, Township 16 South, Range 4 West, Willamette Meridian; thence run along said railroad right of way line North 20° 23' 05" West 1101.74 feet; thence South 88° 39' 40" East 1696.72 feet to a point in the center of County Road No. 203 (Prairie Road); thence along said County Road South 24° 02' 25" East 1132.82 feet; thence North 88° 39' 40" West 1774.47 feet to the point of beginning, all in Lane County, Oregon.

7344700

MEMORANDUM AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by and between ROBERT J. O'NEIL and HAZEL A. O'NEIL, husband and wife, as First Parties, and DANIEL KLEMP and ANN L. KLEMP, husband and wife, as Second Parties, that on September 28, 1973, the parties entered into a Land Sale contract wherein and whereby First Parties agreed to sell and Second Parties agreed to purchase the following described real property:

Beginning at a point on the Easterly right of way line of the Southern Pacific Railroad, said point being North 88° 39' 40" West 222.13 feet and North 20° 23' 05" West 525.68 feet from the stone marking the South one-quarter corner of Section 28, Township 15 South, Range 4 West, Willamette Meridian; thence run along said railroad right of way line North 20° 23' 05" West 1101.74 feet; thence South 88° 39' 40" East 1596.72 feet to a point in the center of County Road No. 203 (Prairie Road); thence along said County Road South 24° 02' 25" East 1132.82 feet; thence North 88° 39' 40" West 1774.47 feet to the point of beginning, all in Lane County, Oregon.

The terms and conditions of said sale are fully set forth in said contract, and reference thereto is hereby made.

The true and actual consideration for said sale is \$40,780.00.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 28 day of Sept., 1973.

True and actual consideration is: \$40,780.00

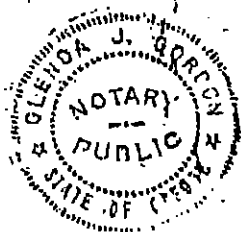
Robert J. O'Neil
Hazel A. O'Neil
First Parties.
Daniel Klemm
Ann L. Klemm
Second Parties.

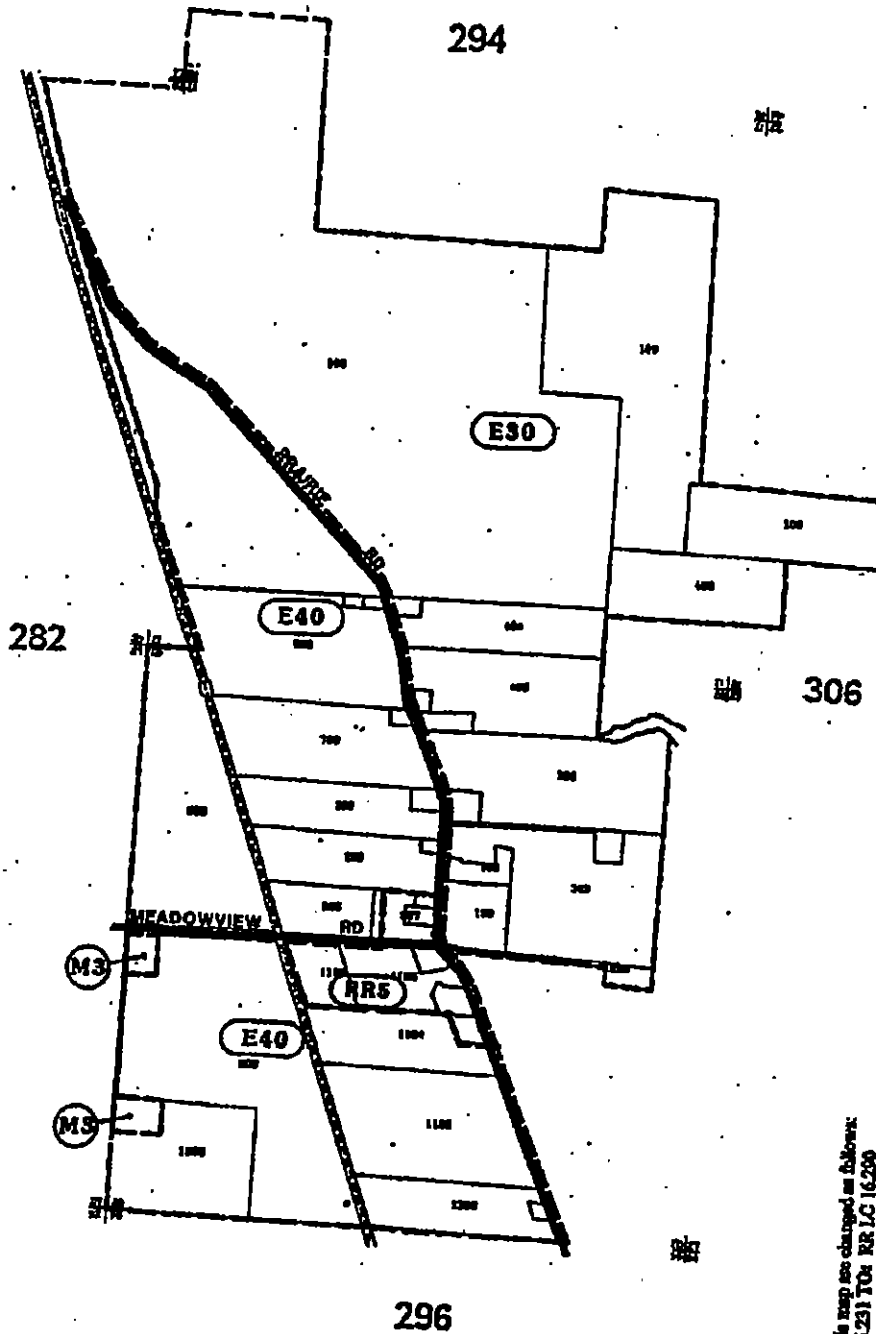
STATE OF OREGON)
(ss.
COUNTY OF LANE)

On this 28 day of Sept, 1973, before me, personally appeared ROBERT J. O'NEIL, HAZEL A. O'NEIL, DANIEL KLEMP and ANN L. KLEMP, and acknowledged the foregoing instrument to be their voluntary act and deed.

Vendee Address: 138 E. Anchor Eugene, Ore.

Gleason J. Gordon
Notary Public for Oregon.
My comm. exp.: 5-15-76





The RR zones on this map are changed as follows:
 FROM: RR LC 16.231 TO: RR LC 16.200
 The RR zone parcel sizes remain the same.

The zones on this map are changed as follows:
 From: RQ, RA, ~~RR~~ To: RR2
 From: CR, C1, C2, & C3 To: RC Rural Commercial
 From: M1, M2, & M3 To: RI Rural Industrial
 From: PF To: RPF Rural Public Facility
 From: PR To: RPR Rural Park & Recreation



one county



OFFICIAL ZONING MAP

PLOT # 295

Township Range Section

16 04 21

16 04 28

ORIGINAL ORD. # PA 884

DATE 2/29/1984 FILE # _____

REVISION # 1 ORD # PA 893

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 884)
)
) IN THE MATTER OF APPLYING THE RURAL
) COMPREHENSIVE PLAN DESIGNATIONS AND
) RURAL COMPREHENSIVE PLAN ZONES TO
) RURAL LANE COUNTY OUTSIDE THE
) METROPOLITAN AREA GENERAL PLAN
) BOUNDARY, AND OUTSIDE ALL URBAN
) GROWTH BOUNDARIES, REPEALING PRIOR
) ZONING DISTRICTS AND PLAN DESIGNA-
) TIONS, AND ADOPTING A SAVINGS AND
) SEVERABILITY CLAUSE

WHEREAS, the plan designations and zoning districts applicable to rural Lane County are not in full compliance with the Statewide Goals, and

WHEREAS, the Oregon State Land Conservation and Development Commission has granted Lane County an extension of time to revise its designations and zones to bring them into conformity with the Statewide Planning Goals; and

WHEREAS, the Board of County Commissioners has received from the Lane County Planning Commission and the West Lane County Planning Commission recommended application of the new plan designations and zones, and

WHEREAS, the Board of County Commissioners has conducted a public hearing and is now ready to take action, now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS:

1. The Plan Designation and Zones as set forth on the attached maps (Exhibit "A") are hereby applied to Rural Lane County outside the Metropolitan Area General Plan Boundary and outside all Urban Growth Boundaries as modified by the attached change request summary, Board of County Commissioners action column (Appendix "B").

2. With exception of the following:

- (a) Rural Transportation Plan (Adopted by Ordinance No. 3-80).
- (b) Willamette Greenway Plan (Adopted by Ordinance No. 783).
- (c) Parks and Open Space Plan (Adopted by Ordinance No. 850).
- (d) Solid Waste Management Plan (Adopted by Ordinance No. 771 and subsequent amendment).
- (e) Coastal Resources Management Plan (Adopted by Ordinance No. 803) (Amended by Ordinance Nos. 862 and 876).

- (f) Siuslaw River Dredged Material Disposal Plan (Adopted by Ordinance No. 749) (Amended by Ordinance Nos. 861 and 877).
- (g) Housing Plan (Adopted by Ordinance 1-78).

the prior Plan and Zone designations are repealed. However, the prior Plan designations and zoning districts remain in full force and effect to authorize prosecution of persons who violate their provisions prior to the effective date of this Ordinance.

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

4. The exceptions to Statewide Goals 3 and 4 are set forth in the attached Exhibit "B".

While not part of this Ordinance, the Board of County Commissioners adopt the Legislative Findings set forth in attached Exhibit "C" in support of this action.

Enacted this 29th day of February, 1984.



Chair, Lane County Board of
Commissioners



Recording Secretary for this
Meeting of the Board

ORDINANCE NO. PA 884 - LEGISLATIVE FINDINGS

Ordinance No. PA 884 is the implementation of the policies adopted in Ordinance No. PA 883. The support documents and Findings adopted in that Ordinance are, therefore, adopted as if fully set forth herein.

Major map changes, based upon a nonresource designation are supported by prior quasi-judicial or current Findings set forth on attached Exhibit "D".

The Diagrams and Zones reflect only one "need" exception arising from a prior quasi-judicial application. We, therefore, readopt the need exception set forth on attached Exhibit "E". Note that pursuant to CPR summary, the new designation is Destination Resort, rather than Commercial Zones. However, the exception to the Goal remains valid. The site review conditions are also readopted.

In addition, map changes occurring on the basis of a Marginal Lands designation are explained in the attached Exhibit "F".

All other changes to the maps from the original staff recommendation are supported by changes to the developed and committed exception and the information and Findings submitted with CPR requests. Because the amount of supporting information is very extensive, it is not possible to set out new Findings for each approval, nor is such analysis appropriate for a legislative Ordinance. However, the basis for the approval exists in the written attachments to the CPR's, public testimony and deliberation. This information is available on request.

LEGEND

(AO)

ZONES

Airport Operation

COMMERCIAL ZONES

(C1)

Limited Commercial

(C2)

Neighborhood Commercial

(C3)

Commercial

(CR)

Rural Commercial

AGRICULTURAL ZONES

(E25)

Exclusive Farm Use 25

(E30)

Exclusive Farm Use 30

(E40)

Exclusive Farm Use 40

(E60)

Exclusive Farm Use 60

FOREST ZONES

(F1)

Nonimpacted Forest Lands

(F2)

Impacted Forest Lands

INDUSTRIAL ZONES

(M2)

Light Industrial

(M3)

Heavy Industrial

RESOURCE ZONES

(NR)

Natural Resource

(PF)

Public Facility

(PR)

Park & Recreation

(QM)

Quarry & Mining

(SG)

Sand & Gravel

/CP

/ Controlled Processing

RESIDENTIAL ZONES

(RA)

Suburban Residential

(RG)

Garden Apartment

(RR1)

Rural Residential

(RR2)

Rural Residential

(RR5)

Rural Residential

(RR10)

Rural Residential

/SR

/ Site Review

LEGEND

(A)

PLAN DESIGNATIONS

Agricultural Land

(F)

Forest Land

(R)

Rural Land

COMMUNITY

Community

(PF)

Public Facility

(PR)

Park & Recreation

(C)

Commercial

(I)

Industrial

(+)

Airport

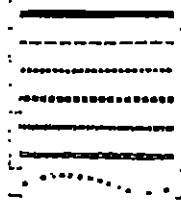
(NR:M)

Natural Resource : Mineral

(NRCA:)

Natural Resource : Conservation Area

Area Subject To Coastal Resources Management Plan



Roadway

Railroad

City Limits

Metro Plan Boundary

Urban Growth Boundary

County Line

Willamette River Greenway

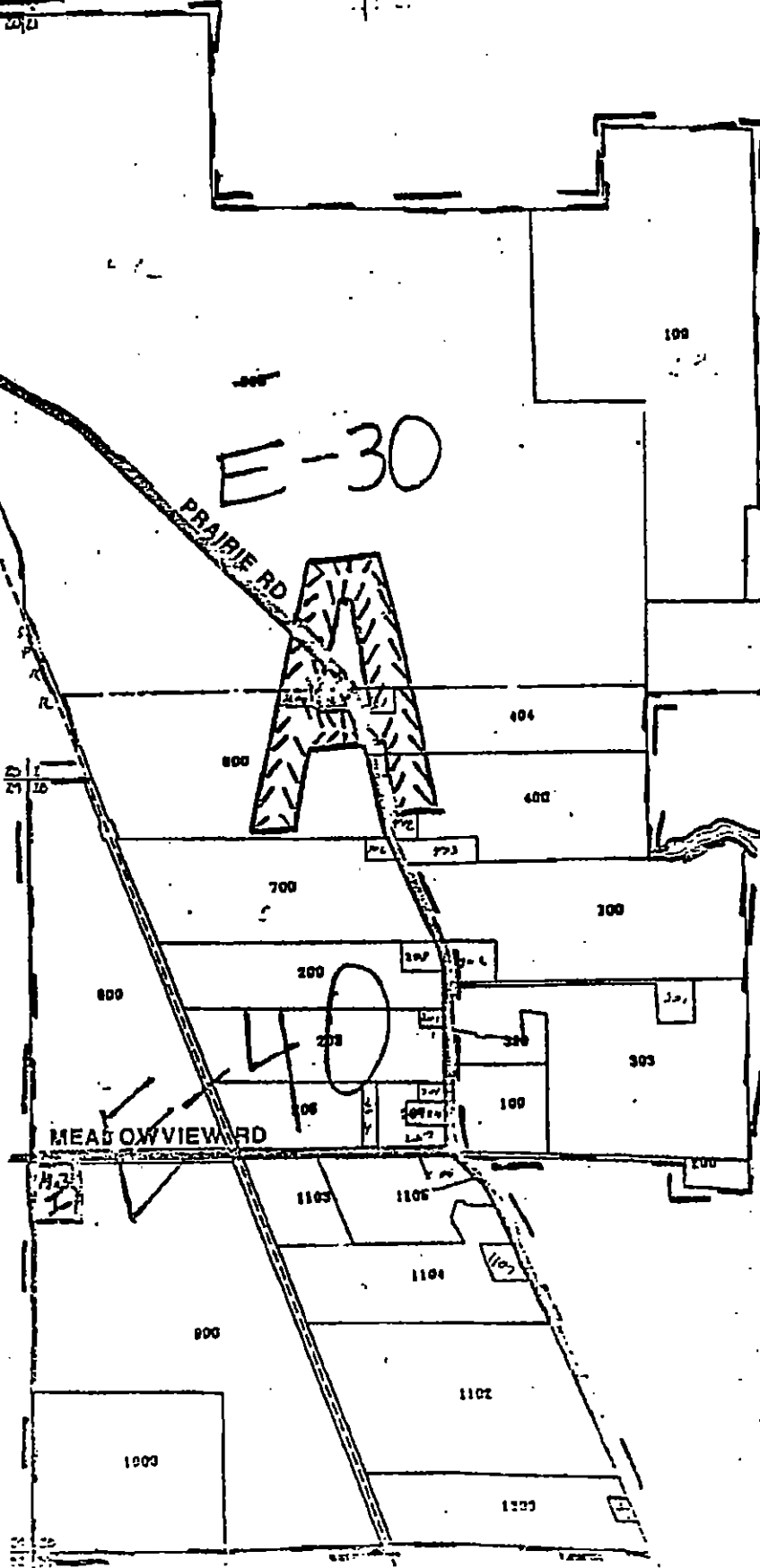
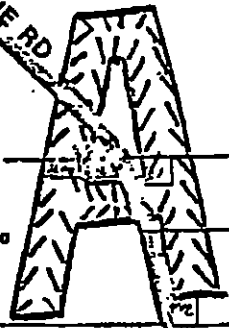
(295)

1615
2122

E-30

PRAIRIE RD

MEADOWVIEW RD



2122
2427

113

2122
2427

THURSDAY THE 2ND DAY OF JUNE 1949

IN THE COUNTY COURT OF THE STATE OF OREGON FOR LAKE COUNTY
Sitting in and for the Transaction of County Business

In the Matter of an Ordinance to Establish)
Zoning and Land Use Code to be used in. (ORDER
Establishing Land Use Districts)

Zoning and Land Use
Regulation Ordinance

Pursuant to the authority vested in the County Court by Chapter 537 Oregon Laws 1947 and by vote of the people on November 2, 1948 upon the question "Shall the County Court be authorized to enact zoning and land use regulations?" the following ordinance is hereby enacted:

AN ORDINANCE OF THE COUNTY OF LAKE, STATE OF OREGON, ADOPTING A PRECISE LAND USE MASTER PLAN TO REGULATE AND RESTRICT THE LOCATION AND USE OF BUILDINGS AND THE USE OF LAND IN THE UNINCORPORATED TERRITORY OF LAKE COUNTY BY DIVIDING THE COUNTY INTO LAND USE DISTRICTS; TO LIMIT THE HEIGHT AND BULK OF FUTURE BUILDINGS; TO PROVIDE FOR SETBACK LINES, SIZE OF YARDS, AND OTHER OPEN SPACES; TO ESTABLISH MINIMUM LOT SIZES; TO PROVIDE FOR THE PROTECTION OF FUTURE COUNTY ROADS AND THE WIDENING OF CERTAIN EXISTING ROADS; TO PROVIDE FOR AUTOMOBILE PARKING FACILITIES; TO PROVIDE FOR THE ENFORCEMENT, ADJUSTMENT, AND AMENDMENT THEREOF; AND TO PRESCRIBE PENALTIES FOR ITS VIOLATION IN THE COUNTY OF LAKE, STATE OF OREGON.

THE COUNTY COURT OF THE COUNTY OF LAKE, STATE OF OREGON, DOES ORDAIN AS FOLLOWS:

SECTION I. ADOPTION OF ZONING PLAN

A. There is hereby adopted a zoning plan for a portion of the County of Lake, State of Oregon.

B. This ordinance shall consist of the text hereof and maps entitled "Lake County Zoning Maps," and identified by the signatures of the County Judge, the chairman of the County Planning Commission, and the County Clerk.

C. This ordinance is adopted under the provisions of the State Enabling Act establishing County Planning and Zoning, Chapter 537 Oregon Laws 1947, approved by the Governor of the State of Oregon, April 23, 1947.

SECTION II. TITLE

This Ordinance shall be known as the "Zoning Plan of the County of Lake, State of Oregon."

FILED
AUG 2 10 O'CLOCK AM
1949
HARRY L. CHASE
COUNTY CLERK

SECTION XXXIX. VIOLATIONS AND PENALTIES

BOOK 27 PAGE 367

A person, firm, or corporation violating any of the provisions of this Ordinance shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars (\$100.00) and in default of payment thereof, by imprisonment for one day for each two dollars (\$2.00) of such unpaid fine. Each such person, firm or corporation shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Ordinance is committed or continued by such person, firm, or corporation, and shall be punished accordingly.

Approved by the affirmative vote of a majority of the Lane County Planning Commission after due public notices and hearings, this 27th day of May, 1949.

Ralph S. Rogers
Chairman

Howard W. Diefel
Secretary

Regularly passed and adopted by the County Court of the County of Lane, State of Oregon, this 31st day of May, 1949.

Clinton Hurd
County Judge

W. J. Hollenbach
County Commissioner

County Commissioner

EXHIBIT I

THURSDAY FEB 24TH DAY OF FEBRUARY, 1966

REF 28 PAGE 332

FILED

AT O'CLOCK M

FEB 24 1966

INA RANDOLPH, Director of the Dept. of Records and Elections of Lane County

BY *[Signature]* DEPUTY

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

LANE COUNTY ZONING AND)
LAND USE ORDINANCE NO. 208)

Zoning certain land in Sections 27, 28, 29, 32, 33, 34, Twp. 15S, R4W, W.M. and Sections 3, 4, 5, 8, 9, 10, 11, 13, 14, 15, 16, 17, 10, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, Twp. 16S, R4W, W.M. and Sections 1, 3, 4, 5, and 10, Twp 17S, R4W, W.M. and Section 6, Twp. 17S, R3W, W.M. and Sections 30 and 31, Twp 16S, R3W, W.M. to AGT Agriculture, Grazing, Timber Raising District, M-2 Light Industrial District, and M-3 Heavy Industrial District.

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

The following described land, to-wit:

Beginning at the intersection of the main line of the Southern Pacific Railroad and the Lane County line in Section 21 of Twp 15 South, Range 4 West; thence southwesterly along said main line to the north line of the city limits of Junction City; thence easterly, southerly and westerly along the city limits line of Junction City to the main line of the Southern Pacific Railroad in Section 32 of Twp. 15 South, Range 4 West; thence southerly along said main line seven and one-half (7 1/2) miles more or less to the north right-of-way line of Irving Road (County Road No. 303); thence easterly along said north line approximately 1990 feet to the east line of the James Peek D.L.C. No. 50 in Twp. 17 South, Range 4 West; thence northerly along said east line to a point 20 feet north of the northeast corner of said D.L.C. No. 50 said point being on the north line of Irvington Drive (County Road No. 540); thence easterly along said north line 850 feet more or less to the west line of Section 2 in Twp. 17 South, Range 4 West; thence northerly along said Section line and the west line of Section 35 in Twp. 16 South, Range 4 West to the quarter corner on the west line of Section 35; thence easterly along the east-west centerline of Sections 35 and 36 to the west bank of the Willamette River; thence southerly along said west bank to the west line of Tract No. 1 described in deed to Paul S. Chambers and Pearl C. Chambers, husband and wife, recorded in Book 332, Page 405 of the Lane County Deed Records; thence south along the west line of said tract to the south line of D.L.C. No. 54 in Twp. 16 South, Range 4 West; thence east along said south line to the centerline of County Road No. 11 (River Loop No. 1) extended north; thence south along said centerline approximately 3280 feet to the south line of a tract of land deeded to Harold E. Bailey and Joyce Pinner Bailey as recorded on Reel 152, Instrument No. 99034 of the Lane County Deed Records; thence east along said south line 650 feet; thence north 561.6 feet to the northeast corner of said tract; thence east to the west bank of the Willamette River; thence southerly along said west bank to the north line of the southeast 1/4 of the southeast 1/4 of Section 1 in Twp. 17 South, Range 4 West; thence east to the most easterly bank of the McKenzie River in Section 5 of Twp. 17 South, Range 3 West; thence northerly along the most easterly bank of the McKenzie and Willamette Rivers to the intersection of the east bank of the Willamette River and the north-south centerline of Section 10 in Twp. 16 South, Range 4 West; thence northerly along the said centerline to the north line of said Section 10, being

the Lane County line; thence Westerly and northerly along the county line approximately three and one-half (3 1/2) miles to the intersection with the main line of the Southern Pacific Railroad in Section 21 of Twp. 15 South, Range 4 West being also the Point of Beginning in Lane County, Oregon.

is hereby zoned to AGT AGRICULTURE, GRAZING, TIMBER RAISING DISTRICT;

AND ALSO:

Beginning at the intersection of the main line of the Southern Pacific Railroad and the south line of Section 21 in Twp. 16 South, Range 4 West said point being 442 feet east of the southwest corner of said Section 21; thence westerly along the south line of Sections 21 and 20 in Twp. 16 South and Range 4 West to the main line of the Oregon Electric Railroad; thence northerly along said main Oregon Electric Railroad line approximately three and seven-eighths (3 7/8) miles to the city limits of Junction City being 600 feet more or less south of the north line of Section 5 in Twp. 16 South, Range 4 West; thence easterly and northerly along said city limits line to the south right-of-way of 2nd Street if extended easterly; thence east to the main line of the Southern Pacific Railroad; thence southerly along said Southern Pacific Railroad main line approximately three and seven-eighths (3 7/8) miles to the south line of Section 21 in Twp. 16 South, Range 4 West being the Point of Beginning in Lane County, Oregon

is hereby zoned to N-2 LIGHT INDUSTRIAL DISTRICT;

AND ALSO:

Beginning at the intersection of the main line of the Southern Pacific Railroad and the north line of Section 28 in Twp. 16 South, Range 4 West, said point being 442 feet east of the northwest corner of said Section; thence southeasterly along said Southern Pacific Railroad main line approximately three (3) miles to the intersection with the north line of the SW 1/4 of the SW 1/4 of Section 3 in Twp. 17 South, Range 4 West; thence westerly along said north line to the west line of said Section 3; thence north approximately 30 feet to the north right-of-way line of Enid Station Road (County Road 618); thence westerly along said north right-of-way line 4340 feet more or less to the main line of the Oregon Electric Railroad; thence northwesterly along said Oregon Electric Railroad main line approximately three (3) miles to the north line of Section 29 in Twp. 16 South, Range 4 West; thence easterly along the north line of Sections 29 and 28, 3540 feet more or less to the main line of the Southern Pacific Railroad being also the Point of Beginning in Lane County, Oregon

is hereby zoned to M-3 HEAVY INDUSTRIAL DISTRICT and each above district being subject to the regulations provided therefor in Lane County Zoning and Land Use Regulation Ordinance No. 4, as amended, known as the "Zoning Plan of the County of Lane, State of Oregon," pursuant to O.R.S. Chapter 215.

Approved and recommended for enactment by the affirmative vote of a majority of the entire membership of the Lane County Planning Commission this

REL 28 PAGE 334

25th day of January, 1966, after giving due notice of public hearing and holding a public hearing on the 25th day of January, 1966.

John B. Leaky
Chairman

Howard W. Bishop
Secretary

Enacted this 28 day of February, 1966.

John H. ...
Chairman of the Board of County
Commissioners of Lane County

Kathy Stretcher
Recording Secretary of the board at
the meeting at which this ordinance
was enacted

LANE CODE

Chapter 10

Z O N I N G

10.095

Lane Code

10.095

DISTRICTS

In order to carry out the purpose and provisions of this Chapter, areas within the County may be classified in one or more of the following districts:

EFU 20	EXCLUSIVE FARM USE 20 DISTRICT	SECTION 10.100
F-F 20	FARM-FORESTRY 20 DISTRICT	SECTION 10.105
AGT	AGRICULTURE, GRAZING, TIMBER-RAISING DISTRICT	SECTION 10.110
FR 5	FARM AND RECREATION 5 DISTRICT	SECTION 10.115
/IA	INTERIM AGRICULTURE COMBINING DISTRICT	SECTION 10.120
PR	PUBLIC RESERVE DISTRICT	SECTION 10.125
RR	RURAL RESIDENTIAL DISTRICT	SECTION 10.130
RA	SUBURBAN RESIDENTIAL DISTRICT	SECTION 10.135
R-1	SINGLE-FAMILY RESIDENTIAL DISTRICT	SECTION 10.140
RG	GARDEN APARTMENT RESIDENTIAL DISTRICT	SECTION 10.145
RP	RESIDENTIAL-PROFESSIONAL DISTRICT	SECTION 10.150
C-1	LIMITED COMMERCIAL DISTRICT	SECTION 10.155
C-2	NEIGHBORHOOD COMMERCIAL DISTRICT	SECTION 10.160
C-3	COMMERCIAL DISTRICT	SECTION 10.165
M-1	LIMITED INDUSTRIAL DISTRICT	SECTION 10.170
M-2	LIGHT INDUSTRIAL DISTRICT	SECTION 10.175
M-3	HEAVY INDUSTRIAL DISTRICT	SECTION 10.180
MH	MOBILE HOME DISTRICT	SECTION 10.185
AV	AIRPORT VICINITY DISTRICT	SECTION 10.200
SG	SAND, GRAVEL & ROCK PRODUCTS DISTRICT	SECTION 10.205
SG/CP	SAND, GRAVEL & ROCK PRODUCTS - CONTROLLED PROCESSING DISTRICT	SECTION 10.210
PUD	PLANNED UNIT DEVELOPMENT SUB-DISTRICT [ADDED BY 15-72;9.8.72]	SECTION 10.700

AGRICULTURE, GRAZING, TIMBER RAISING DISTRICT (AGT)**-05. Purpose**

The Agriculture, Grazing, Timber Raising District is intended to provide areas for rural density residential development and continuation of farm uses and timber production where compatible with each other. It is appropriate to be applied to areas which have, by nature of use and land division activity, already begun a transition from rural to urban use, primarily in the outer portions of the rural-urban fringe areas where public facilities and services will be necessary before intensive urbanization should occur, and in rural lands with marginal suitability for agricultural production.

-10. Permitted Buildings and Uses

In the AGT District, the following types of buildings and uses are permitted as hereinafter specifically provided for by this Section, subject to the general provisions and exceptions set forth in this Chapter:

- (1) The following farm uses:
 - (a) General farming, including but not limited to the growing and raising of trees, vines, shrubs, berries, vegetables, nursery stock, hay grains, seed, and similar food and fibre products.
 - (b) Pastures and grazing.
 - (c) Except as limited by LC 10.110-15(1) following, animal husbandry, including the breeding and raising of cattle, sheep, horses, goats and rabbits; provided that such raising activities are not a part of, nor conducted in conjunction with any livestock sales yard, slaughter house, or animal by-product business; provided further that such uses on lots of less than five (5) acres shall be subject to the area requirements of LC 10.110-42(6).
 - (d) Raising and selling of fur bearing animals.
 - (e) Keeping of honey bees and the production and sale of honey.
- (2) The management, growing, and harvesting of forest products, including Christmas tree raising.
- (3) One single-family dwelling or two-family dwelling per lot or one mobile home per lot in compliance with the general requirements of this Chapter for mobile home permits (LC 10.200).
- (4) Normal accessories for a mobile home, such as, awning, cabana, ramada, patio, carport, garage or storage building, pursuant to an original mobile home use permit or subsequent permit for only accessories.

- (g) Feed lots.
- (h) Temporary and portable sawmills, barkers, and chippers.
- (i) Any other similar processing and allied farm commercial activities.
- (3) Sale of agricultural products raised on the premises where the sales floor area exceeds three hundred (300) square feet; the sale of livestock grown and raised on the premises.
- (4) Animal hospitals; kennels which do not satisfy the requirements for kennels allowed as a permitted use.
- (5) Churches.
- (6) Schools.
- (7) Day nurseries.
- (8) Group care homes.
- (9) Hospitals, nursing homes, and sanitariums.
- (10) Stables, riding academies, and commercial riding; provided such activities are contained on the property authorized for conditional use permit approval.
- (11) Radio and TV transmission towers.
- (12) Stadiums.
- (13) Electric transmission facilities transmitting electric current in excess of 75,000 volts on any single cable or line or group of cables or lines.
- (14) Flood control facilities and irrigation projects.
- (15) Accessory dwellings for persons employed on the premises.
- (16) Airports, heliports, or aircraft landing fields.
- (17) Cemeteries.
- (18) Correctional institutions.
- (19) Sanitary landfills.
- (20) Golf courses.
- (21) Jails.
- (22) Penal farms.
- (23) Radio and TV stations.
- (24) Rock, sand, gravel, and loam excavations and extraction of mineral resources, with incidental processing.
- (25) Sewage treatment plants.
- (26) Mobile home parks.
- (27) Tourist parks.
- (28) Camping vehicle parks.
- (29) Campgrounds.
- (30) Other uses not specifically authorized any place in this Chapter.

-23. Setback Requirements (Also see 10.300-15)

- (1) Front yard setback shall be twenty (20) feet.
- (2) Side yard setback shall be as follows:
 - (a) Ten (10) percent of the lot width for an interior yard, but in no case shall be more than fifteen (15) feet nor less than ten (10) feet.

- (4) A single-family dwelling or mobile home only may be established on any lot separately owned as of September 13, 1969, which does not conform to the area requirements provided in subsections (1) and (2) above.
- (5) The main building and accessory buildings located on any one building site or lot shall not cover in excess of thirty (30) percent of the lot area.
- (6) The following animal use area regulations shall apply on lots of less than five (5) acres:
 - (a) Cows, horses, sheep or goats cannot be kept on lots having an area of less than one (1) acre. The minimum area for such animals (other than their young under the age of six months) on less than five (5) acres shall be as follows:

Horses	One (1) per acre, plus one (1) additional for every 15,000 square feet.
Cow.....	One (1) per acre, plus one (1) additional for every 10,000 square feet.
Goat or sheep.....	Five (5) per acre, plus one (1) additional for every 2,000 square feet.

The area of a property may be utilized one time only for the computation of the above allowable animal usage.

- (b) The number of chickens, fowl and/or rabbits (over the age of six (6) months) shall not exceed one for each five hundred (500) square feet of property. The number of young chickens, fowl and/or rabbits (under the age of six (6) months) allowed on the property at any time shall not exceed three (3) times the allowable number of chickens, fowl, and/or rabbits over the age of six (6) months.
- (c) The number of colonies of bees allowed on a lot shall be limited to one (1) colony for each two thousand (2,000) square feet of lot area.
- (d) Animal runs, stables, barns, corrals of less than one-half acre, chicken or fowl pens, and colonies of bees shall be located on the rear half of the property, but not closer than seventy (70) feet from the front property line and no closer than forty (40) feet from any residence or other property line.

CONDITIONAL USE PERMITS-05. Purpose

Certain types of uses require special consideration prior to their being permitted in a particular district. The reasons for requiring such special consideration include, among others, the size of the area required for the full development of such uses, the nature of the traffic problems incidental to operation of the uses, and the effect such uses have on any adjoining land uses and on the growth and development of the county as a whole. All uses permitted conditionally possess unique and special characteristics making impractical their inclusion as outright uses in many of the various districts herein defined. Location and operation of designated conditional uses shall be subject to review and authorized only by issuance of a Conditional Use Permit. The purpose of review shall be to determine that the characteristics of any such use shall not be unreasonably incompatible with the type of uses permitted in surrounding areas, and for the further purpose of establishing such conditions as may be reasonable so that the basic purposes of this Chapter shall be served. Nothing herein shall be construed to require the granting of a Conditional Use Permit.

-15. Conditional Uses

- (1) In addition to those conditional uses provided specifically within the various zoning district classifications, the following uses are designated conditional uses and may be permitted in any zoning district classification, except as expressly limited:
 - (a) Airport, heliport, or aircraft landing field, together with accessory land uses relevant and appropriate to the operation.
 - (b) Amusement park.
 - (c) Carnival or circus, outdoor.
 - (d) Cemetery, animal.
 - (e) Cemetery, human.
 - (f) Correctional institution.
 - (g) Garbage dump, sanitary land fill.
 - (h) Golf course.
 - (i) Jail.
 - (j) Penal farm.
 - (k) Race track.
 - (l) Radio and television stations.
 - (m) Rock, sand, gravel, and loam excavation.
 - (n) Sewage treatment plant.
 - (o) Stable and academy, commercial riding.
 - (p) Mobile home park. (See Mobile Home Park Section for additional requirements.)
 - (q) Tourist park.
 - (r) Camping vehicle park.
 - (s) Campground.

Conditional Use Permits

10.320-35

Lane Code

10.320-55

-35. Application

Application for a Conditional Use Permit shall be filed with the Planning Department on the form prescribed by the Department by any person with a legal interest in the property, at least thirty (30) days prior to the Planning Commission's public hearing, and shall include the following:

- (1) Name and address of applicant.
- (2) Statement of the applicant's legal interest in the property (owner, contract purchaser, lessee, renter, etc.), a description of that interest, and in case the applicant is not the owner, that the owner knows of the application.
- (3) Address and legal description of property.
- (4) Six (6) copies of a plot plan, approximately to scale, illustrating the size and location of existing and proposed uses and structures on the property.
- (5) A statement explaining the intended use and nature of the operation.
- (6) The fee required by this Chapter to defray the cost of processing the application.
- (7) Any other materials or information as may be deemed necessary by the applicant to assist in evaluation of the request.

-45. Investigation and Reports

The Planning Director shall make or cause to be made an investigation to provide necessary information to insure that the proposed use is consistent with the Conditional Use Permit criteria (LC 10.320-20). Any report of such investigation shall be submitted to the Planning Commission for its consideration prior to or at the public hearing.

-55. Planning Commission Public Hearing and Notice

- (1) The Commission shall hold not less than one public hearing on each Conditional Use Permit application.
- (2) Notice of the time and place of hearing shall be given, at least ten (10) days in advance, by mail to the applicant, property owner (if not the applicant), and the owners of all property within three hundred (300) feet of the exterior boundaries of the contiguous property ownership involved.
- (3) The Planning Commission shall review the application and shall receive pertinent evidence as to the consistency of the proposed Conditional Use with the criteria for Conditional Use Permits (LC 10.320-20). The Planning Commission shall determine whether the evidence presented at the hearing is sufficient to show that the required criteria have been met, and shall approve or deny the application accordingly.

Conditional Use Permits

10.320-80

Lane Code

10.320-95

-80. Revocation

- (1) Conditional Use Permits are automatically revoked without special action if:
 - (a) The permit has not been exercised within two years of the date of approval; or
 - (b) The use approved by the Conditional Use Permit is discontinued for any reason for one continuous year or more.
- (2) The Planning Commission may revoke any Conditional Use Permit for failure to comply with any prescribed condition of the Conditional Use approval.
- (3) A hearing for revocation of a Conditional Use Permit may be requested of the Planning Commission by any administrative officer of the county who is of the opinion any or all of the bases for revocation as stated in this Section exist. Request for a revocation hearing shall be accomplished by submitting a letter to the Planning Commission stating the basis for requesting the hearing for the revocation. The Commission shall then set a hearing for the revocation if it determines a hearing is warranted.
- (4) The public hearing notification and appeal procedures for revocation hearings by the Planning Commission and Board of Commissioners shall be the same as those for original Conditional Use application hearings and appeals provided in this Section.

-95. Limitations on Refiling of Application

Applications for which a substantially similar application has been denied or revoked for cause within the previous year shall be heard by the Planning Commission only after the Commission's separate determination that for good cause shown the application may be refiled.

EXHIBIT K
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

April 14, 2006

Daniel and Ann Klemp

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 the properties located at Number Not Assigned Prairie Road, Junction City, Oregon 97448, Tax Lot 16-04-28-00-01102. Please refer also to the James Mann zoning findings attached to these files.

These are Summary Appraisal Reports of Complete Appraisals but restricted to the use of a Measure 37 claim only. Lane County is an anticipated reader/user however they are not my clients. The subject property is noted and summarized on the cover letter for the entire file 030106 and are presented as two reports under one cover for ease of reading and understanding by the reader.

The entire 1102 tax lot has not previously been built upon and it has apparently been utilized for grass seed and/or hay production for many years. The soils are suitable for some row crops though there is scant market in Lane County at this time for row crops due to lack of a commercial cannery. As is, the proximity of the railroad and Prairie Road have no affect so far as I can see on use of the site as farmland. As proposed, the hypothetical two acre parcels closest to these corridors would be most affected by obvious, if sporadic, noise factors.

In researching the subject site, it was noted that the shallow drainage channel which appears in the aerial and ground photos has a Class IVw soil classification with very slow permeability and ponding water in winter months. Because of the railroad, in this report I projected the owners would provide a buffer strip from the railroad right-of way of about one acre or more along the west boundary (about 40 feet wide). The purpose of the buffer are is for suggested planting of hybrid poplar or other fast growing trees for a visual break and eventually a partial sound absorbing foliage break from the railroad. In addition, the lots along this westerly buffer could also have an additional buffer strip designated that is 40' wide (as a conservation easement or similar) to provide added tree buffer area. It is my belief this would enhance eventual marketability at small cost.

The low area of the drainage channel is reported as about 13% of the total 39+ acres which computes to about 5 acres out of the whole. I used four acres as a deduction from the 39+ acre total to provide a drainage way through the subject with little ditching and with culverts only where driveway cross this drainage channel.

Page one of two

Klemp
C/o Cornacchia
Tax Lot 16-04-28-00-01102
Page two of two

It is also necessary to plan for driveway access to each of the projected two acre sites; while I do not have a projected site plan for the subject after partitioning, a rough estimate of acreage use for driveways is about 1,500 linear feet (subject to later changes) in a loop pattern with one access point on Prairie Road. The right of way may have to be 60 feet wide which would take two or so acres out of the total site; however I believe the roadway itself needs to be only 30 feet or so wide; the right of way edges could possibly be easements across the fronts of the projected lots. Therefore I considered only one acre or so would physically be taken out of the total for the shared service drive around the property as projected for partitioning.

In effect, the gross acreage available for platting into two acre separately buildable sites has been reduced by a total of six acres more or less. Starting with 39.86 acres more or less minus six acres appears to allow, arithmetically and not foreseeing any specific well or septic system placement or soil condition problems, a total of 16 buildable two acre sites.

For purposes of this letter and summary required by the county, the value difference using "as is before" appraised value and "hypothetical after" hypothecated appraised values is arrived at arithmetically. Therefore it is postulated:

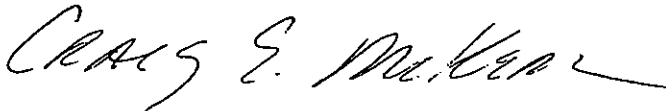
Value of 16 buildable two acre sites times hypothecated average of \$145,000 per site:	\$2,320,000
Value of subject site "as is" (farmland only, not a buildable site):	\$140,000

Hypothecated net difference is \$2,180,000; attributed to creating 16 buildable sites out of one non-buildable site. Please note that the value difference is a gross amount and does not include or deduct for any infrastructure (road/drive, utilities, drainage, survey, well and septic placement tests, etc.) or legal, planning, permit, marketing or other expenses incurred in bringing the projected 16 sites to sale ready condition.

Please call me if you have any questions.

Cordially,

Craig E. McKern



attachments

James A. Mann LLC
Land Use Planning & Development Permit Services
P.O. Box 51081
Eugene, Oregon 97405-0902
Telephone: (541) 514-3051 FAX: (541) 484-2761
Email: jamannllc@comcast.net

January 23, 2006

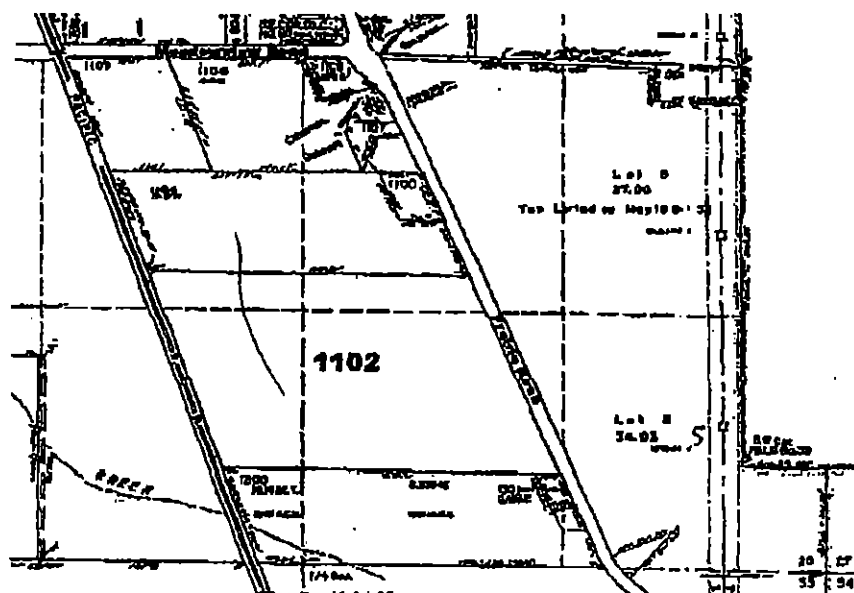
Daniel and Ann Klemp
PO Box 51
Blachly, OR 97412

**Subject: BM37 Report Regarding Lane County Land Use Regulations Applicable to:
Map 16-04-28 Tax Lot 1102**

Dear Daniel and Ann,

The purposes of this report are to provide a history of the Lane County land use regulations applicable to your property and to assist with a possible Ballot Measure 37 claim. This report identifies the Lane County land use regulations that were applicable to your property in September of 1973, and compares these regulations with the Lane County land use regulations currently applicable to your property. Your property contains approximately 39.86 acres and is located next to Prairie Road and the SP Railroad, ½ mile south of Meadowview Road, and approximately 2 miles north of the Eugene City limits. See the modified Lane County Assessment & Taxation map illustration, below:

Illustration - Modified Lane County A&T Map Illustration of the Property



I. Summary of Relevant Lane County Land Use Regulations.

In September of 1973, your property was zoned AGT - Agriculture, Grazing and Timber Raising District. The Lane County land use regulations for the AGT zone, in LC 10.110, allowed (subject to compliance with other requirements of Lane Code):

- one single family dwelling, mobile home or duplex per lot or parcel,
- land divisions for the creation of lots with a minimum area of one acre and a minimum width of 150 feet, and
- mobile home parks subject to conditional use permit requirements and approvals.

Your property is now zoned Exclusive Farm Use/E40. The Lane County land use regulations for the E40 zone, in LC 16.212, require:

- for new dwellings, review and approval of special permits that, with some exceptions, must demonstrate that the new dwellings will be in conjunction with commercial farming that generates a minimum gross yearly farm income of \$80,000 on the subject property if it is high value farm land or a minimum gross yearly farm income of \$32,500 on the subject property if it is not high value farm land; and
- a minimum area of 40 acres for the creation of each new parcel.

The Lane County land use regulations that are currently applicable to your property are much more restrictive than the Lane County land use regulations that were applicable to your property in September of 1973.

II. Chronology of Lane County Land Use Regulations Applicable to the Subject Property

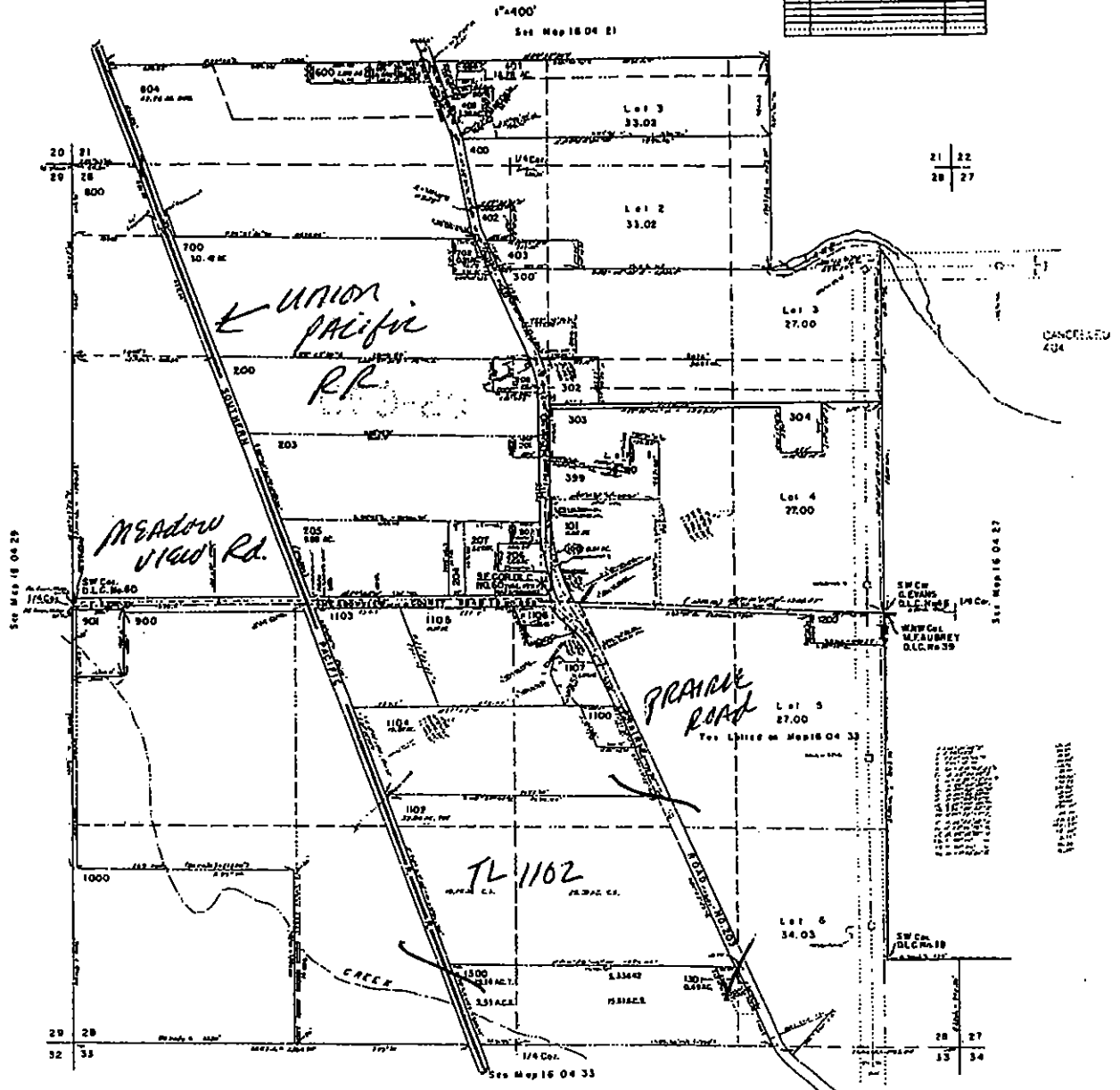
The following information is a chronology of the primary Lane County land use regulations that were applied to the subject property. Copies of these regulations are attached to this report.

1. On May 31, 1949, the Lane County Court (Board of Commissioners) enacted Land Use Ordinance #4 that established the authority to zone land in Lane County and the land use regulations applicable to zoned areas. Attachment 1A is a recorded copy of the title and signature pages of Ordinance #4. Attachment 1B is a recorded copy of Ordinance No. 208, enacted on February 23, 1966, that initially zoned the subject property and surrounding areas as AGT - Agriculture, Grazing, and Timber Raising District. The subject property remained zoned as AGT in September of 1973.
2. On June 21, 1972, the Lane County Board of Commissioners enacted Ordinance No. 13-72 that contained the requirements of LC 10.110 for the AGT zone and the requirements of LC 10.320 for conditional use permits. Attachment 2A is a copy of the applicable portions of Ord. No. 13-72. On August 9, 1972, the Lane County Board of Commissioners enacted Ordinance No. 15-72 that amended LC 10.110 to add animal regulations to LC 10.100. Attachment 2B is a copy of the applicable portions of Ord. No. 15-72. The requirements in Ords. Nos. 13-72 and 15-72 were combined and published by Lane County in a document entitled, LANE COUNTY

Section 28 T.16S. R.4W.W.M.
LANE COUNTY

16 04 28

Block	Area	Acres



CANCELLED
434

SW 1/4
DLC No 18
1904

SW 1/4
DLC No 19
1904

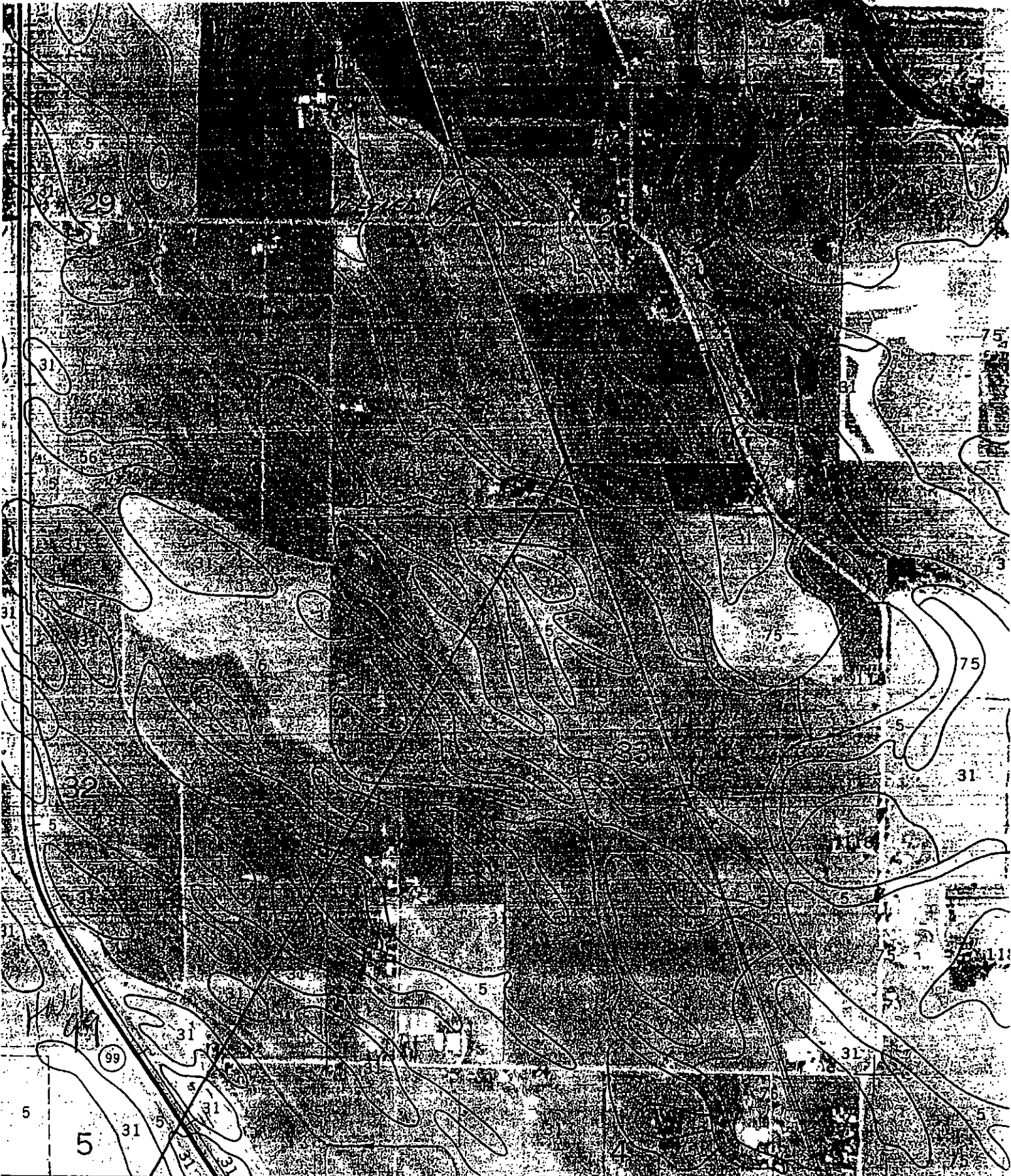
SW 1/4
DLC No 39
1904

SW 1/4
DLC No 18
1904

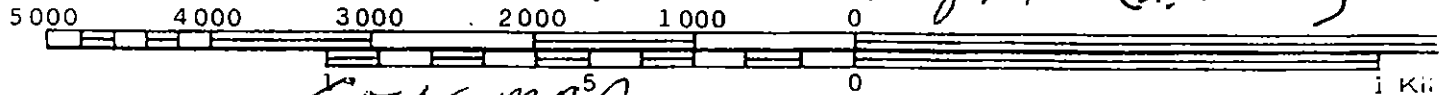
See Map 16 04 29

See Map 16 04 27

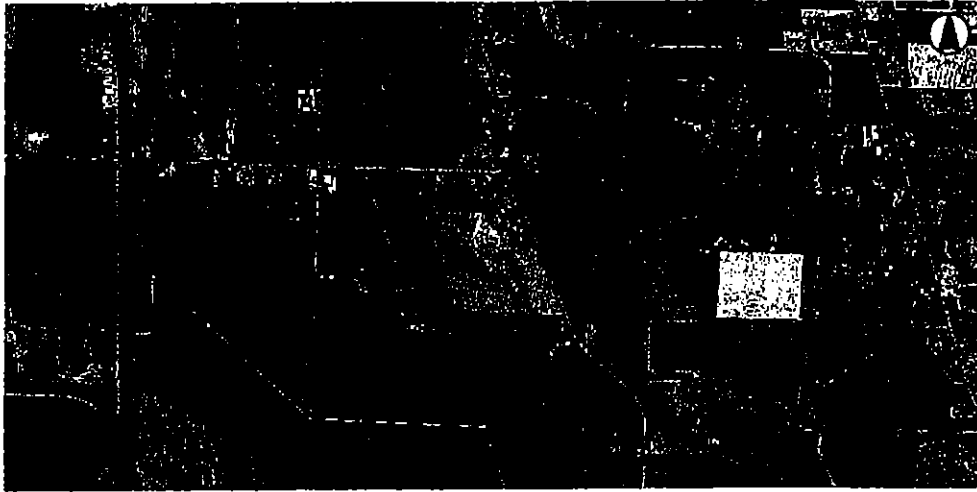
See Map 16 04 33



SUBJECT "5" Soils class 1VW = 13% of total (U.S.C.S.)



SOILS MAP
U.S. S.C.S.



General aerial view of subject area, subject in center of photo (lower 2/3rds of light brown colored field), Prairie Road to east, Union Pacific Railroad to left, Highway 99 far left, River Road far right, Meadowview Road east to west across top center



Detail aerial view, subject is light brown color parallelogram shaped field; shallow drainage way from south to north across subject and adjacent field to north (Tax Lot 1104)

FOR VALUE RECEIVED

ROBERT J. O'NEIL and HAZEL A. O'NEIL, husband and wife,
herein referred to as grantors, hereby grant, bargain, sell, and convey unto

DANIEL KLEMP and ANN L. KLEMP, husband and wife,

herein referred to as grantees, the following described real property, with tenements, hereditaments, and appurtenances, to wit:

Beginning at a point on the Easterly right of way line of the Southern Pacific Railroad, said point being North 88° 39' 40" West 222.19 feet and North 20° 23' 05" West 525.68 feet from the stone marking the South one-quarter corner of Section 28, Township 16 South, Range 4 West, Willamette Meridian; thence run along said railroad right of way line North 20° 23' 05" West 1101.74 feet; thence South 88° 39' 40" East 1696.72 feet to a point in the center of County Road No. 203 (Prairie Road); thence along said County Road South 24° 02' 25" East 1132.82 feet; thence North 88° 39' 40" West 1774.47 feet to the point of beginning, all in Lane County, Oregon.

0454A001 10/20/83 REC 4.00
0004

TO HAVE AND TO HOLD the said premises unto said Grantees, their heirs and assigns forever. And the said Grantors hereby covenant that they are lawfully seized in fee simple of said premises; that they are free from all incumbrances, except 1973-74 taxes;

and that they will warrant and defend the above granted premises against all lawful claims whatsoever, except as above stated.

The true and actual consideration for this transfer is \$ 40,780.00

Dated September 28 19 73

(Seal) Robert J. O'Neil (Seal)
(Seal) Hazel A. O'Neil (Seal)

STATE OF OREGON, County of Lane, ss.

Personally appeared the above named

ROBERT J. O'NEIL and HAZEL A. O'NEIL

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

Dated September 28 A.D. 19 73 Glandis Gordon
My Commission Expires 5-15-76 Notary Public for Oregon

Compliments of
CASCADE TITLE COMPANY
Eugene, Oregon
WARRANTY DEED

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

20 OCT 83 10:38

Reel

1267R

Lane County OFFICIAL Records.
Lane County Clerk

By:

[Signature]
Deputy

C 30-53

Return To:

Summary Appraisal Reports of Complete Appraisals of

a hypothetical vacant acreage located at
Portion of Tax Lot 16-04-28-00-01102
A 2.00 acre site, the "after" instance, file 030106B
(unsurveyed, not a legal lot; one buildable homesite assumed)

AND

an existing parcel known as
Tax Lot 16-04-28-00-01102
The 39.86 acre more or less present site, the "before" instance, file 030106A
(surveyed, a legal lot which is not buildable at this time)

Address:
Number Not Assigned Prairie Road
Junction City, Oregon 97448

Client:

Daniel and Ann Klemp

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

Purpose of the Appraisal:

To estimate market value of actual and hypothetical parcels subject to certain conditions
outlined in the text and exhibits of the reports 030106A and 030106B

Use of the Appraisal:

For use in a State Measure 37 proceeding brought by the owners and attorney in Lane County, Oregon

Date of Most Recent Inspection
and Effective Date of Report:
March 8, 2006

Report Completion Date:
April 14, 2006

Prepared by:

Craig E. McKern, Appraiser, P.C.
Certified Residential Real Estate Appraiser
1574 Coburg Road, PMB 397
Eugene, Oregon 97401-4802
files 030106A and 030106B

PHOTOGRAPH ADDENDUM One

Borrower/Client	No borrower				
Property Address	Number Not Assigned Prairie Road // Tax Lot 18-04-28-00-01102				
City	Eugene	County	Lane	State	Oregon
Lender	Kemp, Daniel and Ann c/o Steve Comacchia				



Looking south along Prairie Road, subject at right



Looking north along Prairie Road, subject at left



Looking easterly from Prairie Road toward distant Coburg Hills

PHOTOGRAPH ADDENDUM Two

Borrower/Client	No borrower				
Property Address	Number Not Assigned Prairie Road // Tax Lot 16-04-28-00- 01102				
City	Eugene	County	Lane	State	Oregon
Lender	Kemp, Daniel and Ann. c/o Steve Comacchia,				

Subject site looking southeasterly



Subject site looking southwesterly

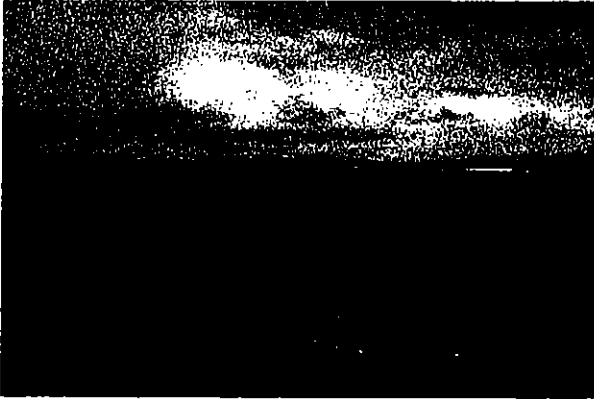


Subject site looking westerly



PHOTOGRAPH ADDENDUM Three

Borrower/Client	No borrower				
Property Address	Number Not Assigned Prairie Road // Tax Lot 16-04-28-00- 01102				
City	Eugene	County	Lane	State	Oregon
Lender	Kemp, Daniel and Ann c/o Steve Comacchia				



Subject site looking westerly by northerly



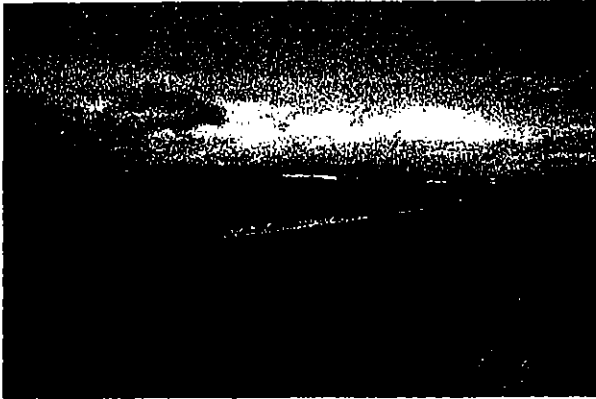
Subject site looking northwesterly



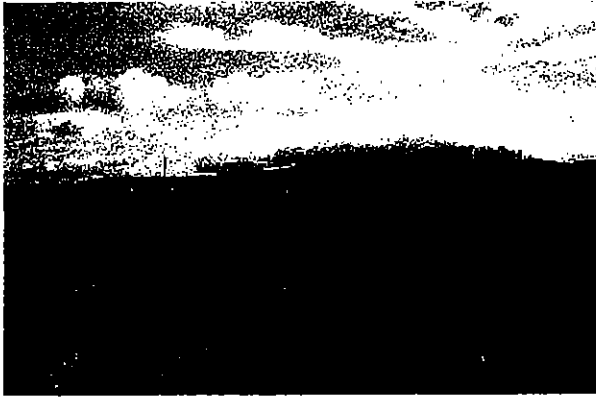
Subject site looking northerly

PHOTOGRAPH ADDENDA Four

Borrower/Client	No borrower				
Property Address	Number Not Assigned Prairie Road // Tax Lot 19-04-29-00- 01102				
City	Eugene	County	Lane	State	Oregon
Lender	Kemp, Daniel and Ann c/o Steve Comacchia,				
					Zip Code



Near center of subject site looking northwesterly
shallow drainage way to left



Looking easterly from near center of subject site

LAND APPRAISAL REPORT

Form with fields for Borrower, Property Address, City, Legal Description, Sale Price, Loan Terms, Appraiser, and various checkboxes for property characteristics and improvements.

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): Subject located about 2 miles north and west of present Eugene Urban Growth Boundary in an agricultural/industrial district between Highway 99 and River Road.

Form with fields for Dimensions, Zoning Classification, Highest and Best Use, and various checkboxes for site improvements and utilities.

Comments (favorable or unfavorable including any apparent adverse easements, encroachments, or other adverse conditions): See plat, soil maps and aerial photos to visualize the wide range of residential and farmland site sizes in this location.

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties.

Table with 5 columns: ITEM, SUBJECT PROPERTY, COMPARABLE NO. 1, COMPARABLE NO. 2, COMPARABLE NO. 3. Rows include address, proximity to subject, sales price, price/acre, data source, date of sale and time adjustment, location, site/view, building/house, buildability/slope, well/septic, soils/drainage, sales or financing concessions, and total adjustment.

Comments on Market Data: Sale 1 is a resale of a foreclosed property previously sold in April 2003 with a home which was not permitted and subsequently lost rights to a dwelling; otherwise site was developed for residential use, further from urban services but in same school district as subject.

ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF March 8, 2006 to be \$ 140,000. The opinion of value stated is within a range of indicated values. Value opinion is provided for comparison purposes in a Measure 37 proceeding.

LAND APPRAISAL REPORT

File No. 0301068

HYPOTHETICAL

File No. 030106B

Borrower No borrower **Census Tract** 41-39-4.4 **Map Reference** See Below
Property Address Number Not Assigned Prairie Road // HYPOTHETICAL Portion of Tax Lot 16-04-28-00-01102
City Junction City **County** Lane **State** Oregon **Zip Code** 97448
Legal Description Lengthy Metes and Bounds Legal Description// see deed or preliminary title report
Sale Price \$ Not Sold **Date of Sale** N/A **Loan Term** N/A **Property Rights Appraised** Fee Leasehold De Minimis PUD
Actual Real Estate Taxes \$ TBA (yr) **Loan charges to be paid by seller** \$ N/A **Other sales concessions** Not Applicable
Lender/Client Klump, Daniel and Ann c/o Steve Cornacchia **Address attorney** 180 East 11th Avenue, Eugene, Oregon 97401
Occupant vacant land **Appraiser** Craig E. McKern **Instructions to Appraiser** appraise to market value per USPAP standards.
Craig E. McKern, Appraiser, P.C. 1574 Coburg Road, PMB 397, Eugene, Oregon 97401 telephone 541-345-0744 facsimile 541-345-0577

Location	<input type="checkbox"/> Urban	<input checked="" type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Good	Avg	Fair	Poor
Built Up	<input checked="" type="checkbox"/> Over 75%	<input type="checkbox"/> 25% to 75%	<input type="checkbox"/> Under 25%	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Growth Rate	<input type="checkbox"/> Fully Dev.	<input type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Steady	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Property Values	<input checked="" type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Demand/Supply	<input type="checkbox"/> Shortage	<input checked="" type="checkbox"/> In Balance	<input type="checkbox"/> Oversupply	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marketing Time	<input checked="" type="checkbox"/> Under 3 Mos.	<input checked="" type="checkbox"/> 4-6 Mos.	<input type="checkbox"/> Over 6 Mos.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Present Land Use	<input checked="" type="checkbox"/> 75% 1 Family	<input type="checkbox"/> 2% 2-4 Family	<input type="checkbox"/> 1% Apts.	<input type="checkbox"/> % Condo	<input type="checkbox"/> 2% Commercial	<input type="checkbox"/>	<input type="checkbox"/>
Change in Present Land Use	<input type="checkbox"/> 10% Industrial	<input type="checkbox"/> 5% Vacant	<input type="checkbox"/> 5% golf course, airport	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Predominant Occupancy	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Tenant	<input type="checkbox"/> 5% Vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Single Family Price Range	\$ <u>100,000</u> to \$ <u>500,000</u>		Predominant Value \$ <u>none</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Single Family Age	<u><5 yrs.</u> to <u>90+ yrs.</u>		Predominant Age <u>None yrs.</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): Subject located about 2 miles north and west of present Eugene Urban Growth Boundary in an agricultural/industrial district between Highway 99 and River Road. Land uses vary widely including Shadow Hills Golf Course, two active railroads, the Eugene Airport to the southwest and various industrial uses mainly at southern and northern ends of the geographic "triangle". Agricultural uses are mainly grass seed, hay, cattle/horses and some row crop/orchard ground.

Dimensions 295' x 295' more or less = 2.00 Sq. Ft. or Acres Corner Lot
Zoning classification RR-2 Rural Residential -2 acre min. for new partitions **Present improvements** do do not conform to zoning regulations
Highest and best use Present use Other (specify) hypothetical two acre site as postulated under present Measure 37 procedures
Public Other (Describe) _____
Topo Level _____
Size Typical small acres
Shape Arbitrarily square dimensions
View Distant Fields, hills
Drainage Adequate; FEMA map 41039C-0620F 06-20-1999; Zone X
Is the property located in a HUD Identified Special Flood Hazard Area? No Yes

Comments (favorable or unfavorable including any apparent adverse easements, encroachments, or other adverse conditions): Arbitrarily assumed two acre parcel for BM 37 comparison purposes; said parcel does not exist at this time. Approximately 15 other 2 acre sites to be created out of T. L. 1102 under BM 37 scenario, leaving 1 acre buffer strip along railroad right of way, providing 1 acre for private drives and 4+/- acres in drainage channel are where Class IVw soils naturally limit residential development. Adequate well flow and purity, approved septic system permit for each parcel assumed.

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior or more favorable than the subject property, a minus (-) adjustment is made thus reducing the indicated value of subject; if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	<u>NNA Prairie Rd. - HYPO 2 acre Junction City</u>	<u>93069 Applegate Trail Lot 9 Cheshire// asking \$159,000</u>	<u>93069 Applegate Trail Lot 1 Cheshire// asking \$150,000</u>	<u>90458 Goodman Road Junction City// asking \$199,000</u>
Proximity to Subject		<u>5 air miles northwest</u>	<u>5 air miles northwest</u>	<u>3 air miles southwest</u>
Sales Price	<u>Not Sold</u>	<u>\$ 159,000</u>	<u>\$ 150,000</u>	<u>\$ 160,000</u>
Price /acre				
Data Source	<u>Inspection/Owner</u>	<u>Barnhart Assoc. RE/Insp/Cnty</u>	<u>Barnhart Assoc. RE/Insp/Cnty</u>	<u>All State Real Estate/County</u>
Date of Sale and Time Adjustment	<u>03-08-2006</u>	<u>PENDING SALE</u>	<u>Active Listing</u>	<u>03-2005 (COE)</u>
Location	<u>Mixed Use Suburban</u>	<u>Rural Residential</u>	<u>Rural Residential</u>	<u>Rural Residential</u>
Site/View	<u>2 acres m// RR/Road</u>	<u>1.86 acres m//pond</u>	<u>1.96 acres m//road</u>	<u>3ac m//Fields/Airpt</u>
Lot/building/House	<u>None</u>	<u>None</u>	<u>None</u>	<u>Shop/garage/stor.</u>
Lot/ability/Slope	<u>Assumed/ level</u>	<u>Approved/ level</u>	<u>Approved/ level</u>	<u>Approved/ level</u>
Well / Septic	<u>Assumed / Permitted</u>	<u>Installed/ Part.Install</u>	<u>Installed/ Part.Install</u>	<u>Installed/ Installed</u>
Soils / drainage	<u>Cls I, IIw (IVw/drain)</u>	<u>Cls I, IIw/ flood plain</u>	<u>Cls I, IIw/ flood plain</u>	<u>Cls III, / no adverse</u>
Notes or Financing concessions	<u>Cash to Seller assumed</u>	<u>Cash or New Conv. Loan, no points</u>	<u>Cash or New Conv. Loan, no points</u>	<u>New Conv. Ln. No Points, Costs</u>
Net Adj. (Total)		<input type="checkbox"/> + <input checked="" type="checkbox"/> - : \$ <u>20,000</u>	<input type="checkbox"/> + <input type="checkbox"/> - : \$	<input type="checkbox"/> + <input checked="" type="checkbox"/> - : \$ <u>19,000</u>
Indicated Value of Subject		<u>Net: 12.6% \$ 139,000</u>	<u>Net: % \$ 150,000</u>	<u>Net: 11.9% \$ 141,000</u>

Comments on Market Data: Indicators 1 and 2 are in a never platted but not yet fully approved subdivision of 1 to 2 acre residential site just south of Cheshire and within 20 minute commute of downtown Eugene. Plat approval for all 12 lots expected April 2006. Overall location considered similar to subject; further from Eugene metro area, about same distance from Junction City schools, no railroad proximity, light road traffic noise
Comments and Conditions of Appraisal: The appraisal is made to cash equivalency per USPAP and FIRREA guidelines and USPAP departure provisions do not apply. See attached assumptions, limiting conditions and comments. Appraised value is for subject hypothetical site with road access to lot line, no well or septic installed but hypothetically assumed adequate and approved, utilities to the lot line and otherwise vacant and ready to build. Site as appraised does not exist and this report is useful only for hypothecating values for Ballot Measure 37 purposes.

Final Reconciliation: The market data (sale comparison) approach is the only reliable method of estimating vacant or non-residential site value. The cost approach is omitted as there are no improvements on this hypothetical site. The income approach does not normally apply to vacant land. Sales 1, 2 notes: adjustment for well/septic is made at \$4,000 for drilled well, \$1,000 for installed drainfield; buyer completes well, septic.
ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF March 8, 2006 **to be** \$ 145,000

The opinion of value stated is within a range of indicated values. Value opinion is provided for comparison purposes in a Measure 37 proceeding only and only an actual open market exposure test of an actual two acre approved site can be considered to prove a true market value.

Craig E. McKern Craig E. McKern 4/14/06 Did Did Not Physically Inspect Property
Appraiser(s) Craig E. McKern **Review Appraiser (if applicable)**

Craig E. McKern, Appraiser, P.C.

Comparable Photo Page

Borrower/Client	No borrower		
Property Address	Number Not Assigned Prairie Road // HYPOTHETICAL Portion of Tax Lot 16-04-28-00- 01 102		
City	Junction City	County	Lane
State	Oregon	Zip Code	97448
Lender	Kemp, Daniel and Ann c/o Steve Cornacchia,		

**Comparable 1**

93069 Applegate Trail Lot 9
 Prox. to Subject 5 air miles northwest
 Sale Price 159,000
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms
 Location Rural Residential
 View 1.86 acres m/l/pond
 Site
 Quality
 Age

Pending approval plat map
 five sites back to a pond;
 all sites are in flood plain of
 Long Tom River; total of 12 lots
 with private drive and setback
 areas included in plat.

Comparable 2

93069 Applegate Trail Lot 1
 Prox. to Subject 5 air miles northwest
 Sale Price 150,000
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms
 Location Rural Residential
 View 1.96 acres m/l/road
 Site
 Quality
 Age

general view looking west
 from common private drive
 in Applegate Meadows tract
 Houses are on other side of
 Applegate Trail Road. Added
 building costs for flood plain.

**Comparable 3**

90458 Goodman Road
 Prox. to Subject 3 air miles southwest
 Sale Price 160,000
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms
 Location Rural Residential
 View 3ac m/l/Fields/Airpt
 Site
 Quality
 Age

no photo available

Power No borrower File No. 030106B
Property Address Number Not Assigned Prairie Road // Tax Lot 16-04-28-00-01102
City Junction City County Lane State Oregon Zip Code 97448
Order Klemm, Daniel and Ann c/o Steve Comacchia

APPRAISAL AND REPORT IDENTIFICATION

This appraisal conforms to one of the following definitions:

- Complete Appraisal (The act or process of estimating value, or an opinion of value, performed without invoking the Departure Rule.)
Limited Appraisal (The act or process of estimating value, or an opinion of value, performed under and resulting from invoking the Departure Rule.)

This report is one of the following types:

- Self Contained (A written report prepared under Standards Rule 2-2(a) of a Complete or Limited Appraisal performed under STANDARD 1.)
Summary (A written report prepared under Standards Rule 2-2(b) of a Complete or Limited Appraisal performed under STANDARD 1.)
Restricted (A written report prepared under Standards Rule 2-2(c) of a Complete or Limited Appraisal performed under STANDARD 1, restricted to the stated intended use by the specified client or intended user.)

Comments on Standards Rule 2-3

certify that, to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.
The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions and conclusions.
I have no present or prospective interest in the property that is the subject of this report, and no (or the specified) personal interest with respect to the parties involved.
I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment.
My engagement in this assignment was not contingent upon developing or reporting predetermined results.
My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
My analyses, opinions and conclusions were developed and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
I have made a personal inspection of the property that is the subject of this report.
No one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.) I have made a personal observation of the subject property.

There is no guarantee from the appraiser that the attached report(s) will be found fully satisfactory to the Lane County jurisdiction for handling Measure 37 claims, as these requirements may change due to court ordered or Legislature passed modifications. The owners of the subject are represented by able counsel.

Comments on Appraisal and Report Identification

Note any departures from Standards Rules 1-3 and 1-4, plus any USPAP-related issues requiring disclosure:

This appraisal report is complete on the basis of the full site inspection, not the extent of commentary attached.

The appraised value includes a realty fee as did the sale prices of the comparables, unless otherwise stated.

There were directly observed toxic materials or hazardous substances in the immediate area of the subject and these are assumed to be safely stored and used according to label directions. A specific search for and recognition of toxic waste and hazardous materials such as might be found in a farm and ranch environment (a Level I assessment) is beyond the scope of the appraiser's training and knowledge. Common household, shop and garden chemicals and substances found in most homes and garages, including those of the reader, are assumed to exist around the site. These common toxic materials and hazardous substances include chemicals such as fertilizers, weed killers, pest poisons and sprays, bleach, detergent, oils, cleansers, solvents and fuels, among other solid, liquid and paste substances, and are assumed to be used according to label directions and Federal, state and local regulations unless otherwise specifically noted in this report. It is specifically assumed there is no toxic mold or fungus manifest on the site which would affect livability or marketability.

See attached supplemental addendum. This report has been prepared for use in a State Measure 37 proceeding and is restricted to that use only. See the cover letter page for brief explanations of the use and purpose of this report 030106A in conjunction with report 030106B which is the subject in HYPOTHETICAL Rural Residential 2 acre minimum zoning to provide "before and after" scenarios. The actual application of State Measure 37 is still in some question with Legislature involvement a probability but not a certainty, following Supreme Court decisions.

APPRAISER:
Signature: [Signature]
Name: Craig E. McKern
Date Signed: April 14, 2006
State Certification #: CR00024
State License #:
State: Oregon
Expiration Date of Certification or License: 09-30-2006

SUPERVISORY APPRAISER (only if required):
Signature:
Name:
Date Signed:
State Certification #: email: cem9th@msn.com
or State License #: phone 541-345-0744/fax 541-345-0577
State:
Expiration Date of Certification or License:

[] Did [] Did Not Inspect Property

SUPPLEMENTAL ADDENDUM

File No. 030106B

File No. 030106B

Borrower/Client	No borrower		
Property Address	Number Not Assigned Prairie Road // Tax Lot 16-04-28-00- 01102		
City Junction City	County Lane	State Oregon	Zip Code 97448
Lender	Klomp, Daniel and Ann c/o Steve Comacchia,		

Appraisal Development and Reporting Process:

As per prior agreement with the client named on the cover sheet and first form page of this report, the level of appraisal service requested is a Summary Appraisal Report of a Complete Appraisal of the subject property. This level of service has, in the past, been known as a "form appraisal" using standard FNMA or FHLMC forms to convey information to the reader. This level of appraisal service is for the most part the same as past "form appraisals".

This report is a Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2b of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Restricted Appraisal Report. As such, it represents only summary discussions of the data, reasoning and analyses used in the appraisal process to develop the appraiser's opinion of value stated elsewhere. Supporting documentation that is not provided with this report concerning the data, reasoning and analyses has been retained in the appraiser's file copy. The depth of the discussion contained in this report is specific to the needs of the client and for the intended use of this report stated below.

Scope of Work:

In preparing this report, the appraiser inspected the subject site and the improvements on March 8, 2006. Relevant information on comparable land and improved site sales, construction costs and accrued depreciation were also gathered, verified and considered.

All three approaches to value were considered; the sales comparison approach only was developed. The cost approach does not apply to mainly unimproved land.

A land value range was determined by appraisal of the subject site as is with present EFU zoning in report 030106A and for comparison purposes as hypothetically zoned Rural Residential 2 acre zoning in report 030106B.

The income approach, along with rents, comparative rental data and calculated formulas and multipliers, is used ONLY IF the subject is likely to remain a rental income property in the foreseeable future, which is Not the case for the subject site at this time; however, the site is leased for crop land on an annual or year to year basis.

Purpose of the Appraisal and Use of the Report:

The purpose of this appraisal report is to estimate the market value as defined on the attached certification/limiting conditions addendum included with the attached USPAP addendum.

This appraisal report is intended ONLY for the use of the client named for the purpose of establishing a fair market value by an independent third party for Measure 37 proceedings. The use of this report is restricted to the clients, Daniel and Ann Klomp, and their legal counsel, Steve Comacchia, for this purpose only. Duly constituted Lane County committees or courts for Measure 37 appeals are also an expected reader of this report but Lane County is not a client of the appraiser.

This report in its present configuration is not intended for any financing purpose whatsoever. Any other authorized use of this report will be stated either below or in the letter of engagement.

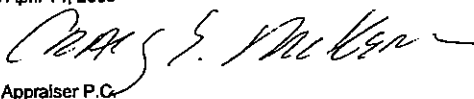
The appraiser is not and will not become responsible for any unauthorized use. Errors and omissions insurance is not extended to a future third party reader and the appraiser must be notified, timely and in writing, of any future transfer/assignment of this report to any third party.

Supplemental Certifications:

I certify that the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

In addition, I certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report prepared, with conformity to the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.

signed and dated April 14, 2006

Craig E. McKern 
 president
 Craig E. McKern Appraiser P.C.

IF THIS REPORT IS ELECTRONICALLY TRANSFERRED A SIGNATURE WILL NOT APPEAR ON THIS PAGE