Supplemental Memo

Memo Date: Order Date:

April 4, 2007 April 17, 2007

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 (PA06-6951, Dowdy)

BACKGROUND AND ANALYSIS

At the March 13, 2007, public hearing on this claim, the Board had insufficient information to approve an order to waive the current land use regulations applicable to this property. The Board left the record open until April 6, 2007, to allow the applicant additional time to address the value reduction analysis. On April 4, 2007, additional information on the valuation of the property was submitted by the applicant to address the deficiencies described in the previous report. The alleged reduction in fair market value is \$1,417,414, based on the opinion of value reduction as evidenced by a Comparative Market Analysis prepared by a real estate broker. Because of this competent form of value reduction analysis, the County Administrator has waived the appraisal requirement for this claim. Based on that information this claim appears to be valid. The attached order reflects the new information and provides a basis for final action on this claim.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations.

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 (Dowdy/PA06-6951)

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 landowner 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 Donald D. and Jacqueline E. Dowdy (PA06-6951), the owner of real property located north of Bryant Road, southwest of Creswell, and more specifically described in the records of the Lane County Assessor as map 19-03-22, tax lot 1400, consisting of approximately 22.5 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 owner 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 March 13, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-6951) of Donald D. and Jacqueline E. Dowdy and has now determined that the restrictive E-30 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Donald D. and Jacqueline E. Dowdy from developing the property as might have been allowed at the time they acquired an interest in the property on August 28, 1969, and that the public benefit from application of the current E-30 dwelling and

division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Donald D. and Jacqueline E. Dowdy request either \$1,417,414 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the division of land into lots containing less than thirty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time they acquired an interest in 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 E-30 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 Donald D. and Jacqueline E. Dowdy 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 an interest in 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 Donald D. and Jacqueline E. Dowdy 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 an interest in 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 Donald D. and Jacqueline E. Dowdy shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E-30 (Exclusive Farm Use) Zone shall not apply to Donald D. and Jacqueline E. Dowdy, so she can make application for approval to develop the property located north of Bryant Road, southwest of Creswell, and more specifically described in the records of the Lane County Assessor as map 19-03-22, tax lot 1400, consisting of approximately 22.5 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in the property on August 28, 1969.

IT IS HEREBY FURTHER ORDERED that Donald D. and Jacqueline E. Dowdy still need to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by them as restricting the division of the property or 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 Donald D. and Jacqueline E. Dowdy does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the applicant should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: http://www.oregon.gov/DAS/Risk/M37.shtml) and have the State of Oregon evaluate a 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 applicant to divide or build dwellings can be transferred to another owner. If the ruling of the Marion County Circuit Court in *MacPherson v. Dept. of Administrative Services*, (Marion County Circ. Ct. Case No. 00C15769, October 14, 2005) 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	, 2007.	
			•
		Faye Stewart, Chair	
		Lane County Board of County Co	ommissioners

APPROVED AS TO FORM



Nugget Realty

285 E. Oregon Ave. Creswell, Oregon 97426 Office (541) 895-2929 Fax (541) 895-2930 Website www.c21nugget.com E-Mail c21cw@oip.net fleared 4-07

Mr. Kent Howe Planning Director Lane County Land Management 125 E 8th Ave. Eugene, Oregon 97401

RE: Ballot Measure 37

Claim of Donald Dowdy PA06-6951

Dear Mr. Howe:

Thank You for allowing me to provide the enclosed information supporting Mr. Dowdy's Measure 37 Claim.

Enclosed you will find copies of the sale of four 1+ acre parcels located within ½ mile of Mr. Dowdy's property. At the present time Lane County has valued Mr. Dowdy's 22 acres at \$121,486.00 or \$5,522.00 per acre.

Under Measure 37 Mr. Downy is requesting approval to divide his 22 acres into eleven 2 acre parcels. Based on the enclosed information Mr. Dowdy's 2 acre parcels would be worth \$139,900.00 per parcel or \$1,538,900.00 which would indicate a loss to Mr. Dowdy of \$1,417,414.00.

Please feel free to contact me at your convenience should you have any questions. I have enclosed my business card with all my contact numbers.

Shcerely

Principal Broker

Century 21 Nugget Realty

285 E. Oregon Ave.

Creswell, Oregon 97426

541 895-2929

Pend: 4/12/2006

DOM: 149

Sold:

3/12/2007

Bryan Wesley **Client Full** Presented by: セッシリリジ Century 21 Nugget Realty LOTS AND LAND Status: SLD 4/3/2007 1:44:32 PM Area: 235 ML#: 5084908 List Price: \$139,000 Address: Camas Swale City: Creswell Zip:97426 Additional Parcels: / Map Coord: 0/O/0 Zoning: Tax ID: Not Found County:Lane Subdivision: Manufhs Okay: N CC&Rs:N Middle:CRESWELL Elem: CRESLANE High: CRESWELL Prop Type: RESID Legal: to be provided GENERAL INFORMATION 1-2.99AC Lot Dimensions: 200x280 Lot Size: Acres: **Availability: SALE** Waterfront: N / River/Lake: #Lots: Rd Surfc: PAVEDRD Υ Perc Test: RdFrntg: Seller Disc: EXEMPT Other Disc: View: Soil Type/Class: Lot Desc: Topography: **Present Use:** Soil Cond: **IMPROVEMENTS** POW-AVL, SPT-APP, WELL **Utilities:** Existing Structure: N / NONE REMARKS XSt/Dir: I-5 South, West on Oregon(turns to Camas Swale) to Property Public: PC1599 WOW! Super neat lots, wonderful location, close to town. Well is in, Septic Approval, approach is in. Lots are ready to go for a beautiful home. No Mobile Homes, No Manufactured Homes will be allowed -FINANCIAL -0 **HOA Dues: HOA Dues-2nd:** PTax/Yr: **HOA Incl:** COMPARABLE INFORMATION -

© RMLS™ 2007. ALL RIGHTS RESERVED. - INFORMATION NOT GUARANTEED AND SHOULD BE VERIFIED. SQUARE FOOTAGE IS APPROXIMATE & MAY INCLUDE BOTH FINISHED & UNFINISHED AREAS - CONSULT BROKER FOR INFO. SCHOOL AVAILABILITY SUBJECT TO CHANGE.

Terms: CASH

\$139,000

Sold:

O/Price: \$147,500

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Bryan Wesley Presented by:

Century 21 Nugget Realty

List Price:

LOTS AND LAND

Status: SLD 4/3/2007 1:44:32 PM

Client Full

ML#: 5084974

Area: 235

\$139,900

Address:Florence RD

City: Creswell

Zip:97426

#Lots:

Additional Parcels: / Map Coord: 0/O/0

Zoning:

County:Lane

Tax ID: Not Found

Subdivision:

Manufhs Okay: N

CC&Rs:N

Elem: CRESLANE

Middle: CRESWELL

High: CRESWELL

Prop Type: RESID

Legal: to be provided

GENERAL INFORMATION

Lot Size:

1-2.99AC

POW-AVL, SPT-APP, WELL

DOM: 275

Acres:

Lot Dimensions: 175x295

River/Lake: RdFrntg: Υ Other Disc:

Availability: SALE

Rd Surfc: PAVEDRD

View:

Soil Type/Class:

Present Use:

Lot Desc: Topography: Soil Cond:

Utilities:

Waterfront:

Seller Disc:

Perc Test:

1

1

Existing Structure: N / NONE

REMARKS

XSt/Dir: 1-5 South, West on Oregon (turns to Camas Swale) Left on Florence to lot

Public: PC2845 WOW! Super neat lots, wonderful location, close to town. Well is in, Septic Approval, approach is in. Lots are

-FINANCIAL -

COMPARABLE INFORMATION

IMPROVEMENTS

ready to go for a beautiful home. No mobile homes, No Manufactured Homes will be allowed

0 PTax/Yr:

HOA Dues:

HOA Dues-2nd:

HOA Incl:

Pend: 8/16/2006

11/28/2006 Terms: OWNCONT Sold:

O/Price: \$147,500

\$139,900 Sold:

セッショック

Presented by: Bryan Wesley

Century 21 Nugget Realty

LOTS AND LAND

Status: SLD 4/3/2007 Area: 235

1:44:33 PM

Client Full

ML#: 5084999

List Price:

\$139,000

Address:Florence

City: Creswell

Zip:97426

#Lots:

Additional Parcels: /

Map Coord: 0/O/0 County:Lane

Zoning:

Tax ID: Not Found

Subdivision:

Manufhs Okay: N CC&Rs:N

Elem: CRESLANE High: CRESWELL

Middle: CRESWELL Prop Type: RESID

Legal: to be provided

GENERAL INFORMATION

Lot Size: Waterfront:

Perc Test:

1-2.99AC

Acres:

1.22

River/Lake: RdFrnta:

Other Disc:

Lot Dimensions: Availability: SALE

Rd Surfc: PAVEDRD

View:

Soil Type/Class:

Present Use:

Seller Disc: EXEMPT Lot Desc:

Topography: Soil Cond:

POW-AVL, SPT-APP, WELL **Utilities:**

Existing Structure: N / NONE

REMARKS

IMPROVEMENTS

I-5 South, West on Oregon(turns to Camas Swale) Left on Florence to lot XSt/Dir:

Public:

PC1602 WOW! Super neat lots, wonderful location, close to town. Well is in, Septic Approval, approach is in. Lots are ready to for a beautiful home. No mobile homes, No Manufactured Homes will be allowed...

-FINANCIAL

PTax/Yr: 0 **HOA Dues:**

HOA Dues-2nd:

HOA Incl:

Pend: 4/25/2006

DOM: 162

Sold:

12/7/2006

COMPARABLE INFORMATION Terms: CONV

O/Price: \$145,500

Sold:

\$139,900

45/2000

Bryan Wesley Presented by:

Century 21 Nugget Realty

Client Full

LOTS AND LAND

Status: SLD Area: 235

4/3/2007 List Price: 1:44:33 PM \$149,500

ML#: 5084978 Address:Florence RD

Zip:97426

City: Creswell

Additional Parcels: / Map Coord: 0/O/0

Zoning:

Tax ID: Not Found

County:Lane Subdivision:

Manufhs Okay: N Elem: CRESLANE CC&Rs:N

Middle: CRESWELL

High: CRESWELL Legal: to be provided Prop Type: RESID

GENERAL INFORMATION

Lot Size:

1-2.99AC

Acres:

1.69

Lot Dimensions: Availability: SALE

#Lots:

Waterfront: Perc Test:

River/Lake: RdFrnta:

Rd Surfc:

Seller Disc: DSCLOSUR

Other Disc:

View:

Soil Type/Class:

Present Use:

Topography: Soil Cond:

Lot Desc:

POW-AVL, SPT-APP, WELL **Utilities:**

IMPROVEMENTS

Existing Structure: N / NONE

DOM: 155

REMARKS

XSt/Dir:

I-5 South, West on Oregon(turns to Camas Swale), Left on Florence to lot

PC2838 WOW! Super neat lots, wonderful location, close to town. Well is in, Septic Approval, Approach is in. Lots are Public:

ready to go for a beautiful home. No Mobile Homes, No Manufactured Homes will be allowed.

-FINANCIAL -

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HOA Dues:

HOA Dues-2nd:

PTax/Yr: **HOA Incl:**

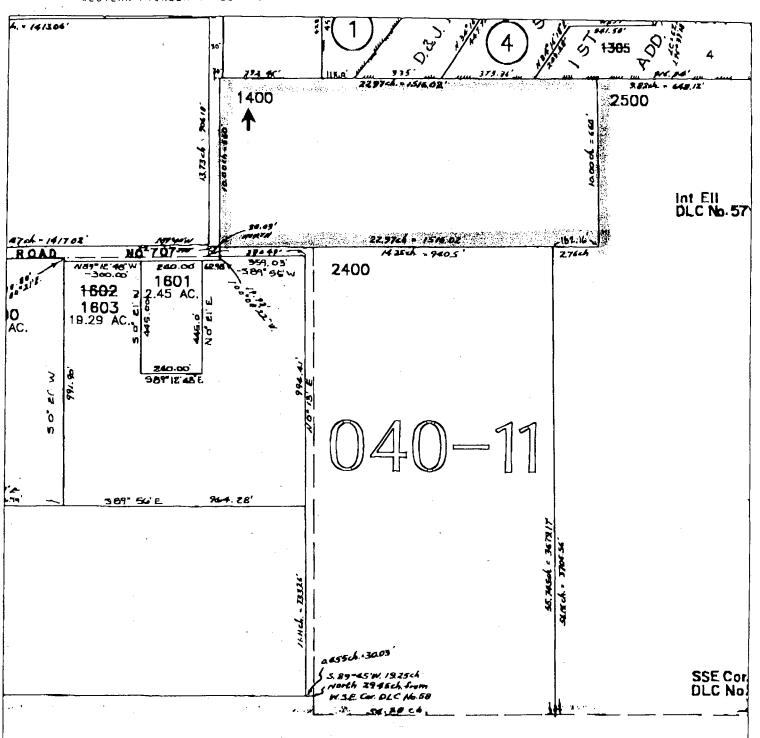
Pend: 4/18/2006

Sold:

COMPARABLE INFORMATION 6/20/2006 Terms: CONV

O/Price: \$149,500

\$149,500 Sold:



See Map 19 0327

Mr. Kent Howe Planning Director Lane County Land Management 125 E 8th Ave. Eugene, Oregon 97401

RE: Ballot Measure 37 Claim of Donald Dowdy PA06-6951

Dear Mr. Howe:

Thank You for allowing me to provide the enclosed information supporting Mr. Dowdy's Measure 37 Claim.

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Please feel free to contact me at your convenience should you have any questions. I have enclosed my business card with all my contact numbers.

Sincerely,

Bryan Wesley Principal Broker Century 21 Nugget Realty 285 E. Oregon Ave. Creswell, Oregon 97426 541 895-2929

Bryan Wesley Client Full Presented by: もう グリリデ Century 21 Nugget Realty Status: SLD 1:44:32 PM LOTS AND LAND 4/3/2007 Area: 235 ML#: 5084908 List Price: \$139,000 Address: Camas Swale City: Creswell Zlp:97426 3 Additional Parcels: / Map Coord: 0/O/0 Zonina: County:Lane Tax ID: Not Found Subdivision: Manufhs Okay: N CC&Rs:N Elem: CRESLANE Middle: CRESWELL High: CRESWELL Prop Type: RESID Legal: to be provided **GENERAL INFORMATION** 1-2.99AC Lot Size: Acres: 1.29 Lot Dimensions: 200x280 Waterfront: N / Availability: SALE River/Lake: #Lots: Perc Test: Rd Surfc: PAVEDRD RdFrntg: Seller Disc: EXEMPT Other Disc: View: Lot Desc: Soil Type/Class: Topography: Soil Cond: Present Use: **IMPROVEMENTS** POW-AVL, SPT-APP, WELL Utilities:

Existing Structure: N / NONE REMARKS

XSt/Dir: I-5 South, West on Oregon(turns to Camas Swale) to Property

Public: PC1599 WOW! Super neat lots, wonderful location, close to town. Well is in, Septic Approval, approach is in. Lots are

HOA Dues-2nd:

ready to go for a beautiful home. No Mobile Homes, No Manufactured Homes will be allowed

-FINANCIAL -

PTax/Yr: 0 **HOA Dues:**

HOA Incl:

COMPARABLE INFORMATION

Pend: 4/12/2006 3/12/2007 Terms: CASH O/Price: \$147,500 \$139,000 **DOM: 149** Sold: Sold:

Presented by: **Bryan Wesley Client Full** むだりが Century 21 Nugget Realty Status: SLD 1:44:32 PM **LOTS AND LAND** 4/3/2007 ML#: 5084974 Area: 235 List Price: \$139,900 Address:Florence RD City: Creswell Zlp:97426 Additional Parcels: / Map Coord: 0/0/0 Zoning: County:Lane Tax ID: Not Found Subdivision: Manufhs Okay: N CC&Ra:N **Elem: CRESLANE** Middle: CRESWELL High: CRESWELL Prop Type: RESID Legal: to be provided GENERAL INFORMATION Lot Size: 1-2.99AC Acres: 1.18 Lot Dimensions: 175x295 Waterfront: River/Lake: Availability: SALE #Lots: Perc Test: Rd Surfc: PAVEDRD RdFrntg: Seller Disc: Other Disc: View: Lot Desc: Soil Type/Class: Topography: Soil Cond: Present Use: **IMPROVEMENTS**

POW-AVL, SPT-APP, WELL Utilities:

Existing Structure: N / NONE

I-5 South, West on Oregon (turns to Camas Swale) Left on Florence to lot XSt/Dir:

Public: PC2845 WOW! Super neat lots, wonderful location, close to town. Well is in, Septic Approval, approach is in. Lots are

REMARKS

ready to go for a beautiful home. No mobile homes, No Manufactured Homes will be allowed

FINANCIAL .

0 PTax/Yr: **HOA Dues: HOA Dues-2nd:**

HOA Incl: COMPARABLE INFORMATION

Pend: 8/16/2006 11/28/2006 Terms: OWNCONT O/Price: \$147,500 \$139,900 DOM: 275 Sold: Sold:

Client Full

Presented by: シンリリブ Century 21 Nugget Realty LOTS AND LAND Status: SLD 4/3/2007 1:44:33 PM ML#: 5084999 Area: 235 **List Price:** \$139,000 Address:Florence City: Creswell Zip:97426 31 Additional Parcels: / Map Coord: 0/O/0 Zoning: County:Lane Tax ID: Not Found Subdivision: Manufhs Okay: N CC&Rs:N Elem: CRESLANE Middle: CRESWELL Prop Type: RESID High: CRESWELL Legal: to be provided **GENERAL INFORMATION** 1.22 Lot Dimensions: Lot Size: 1-2.99AC Acres: Availability: SALE #Lots: Waterfront: River/Lake: **PAVEDRD** Rd Surfc: RdFrntg: Perc Test: View: Seller Disc: EXEMPT Other Disc: Soil Type/Class: Lot Desc: Topography: Present Use: Soil Cond: **IMPROVEMENTS**

Bryan Wesley

POW-AVL, SPT-APP, WELL Utilities: Existing Structure: N / NONE

I-5 South, West on Oregon(turns to Camas Swale) Left on Florence to lot XSt/Dir:

PC1602 WOW! Super neat lots, wonderful location, close to town. Well is in, Septic Approval, approach is in. Lots are Public:

REMARKS

ready to for a beautiful home. No mobile homes, No Manufactured Homes will be allowed...

-FINANCIAL -

HOA Dues-2nd: 0 **HOA Dues:** PTax/Yr: **HOA incl:**

COMPARABLE INFORMATION

O/Price: \$145,500 \$139,900 Terms: CONV Sold: 12/7/2006 Pend: 4/25/2006 **DOM:** 162 Sold:

Presented by: **Bryan Wesley Client Full** むどりりゅ Century 21 Nugget Realty Status: SLD 1:44:33 PM 4/3/2007 LOTS AND LAND ML#: 5084978 Area: 235 **List Price:** \$149,500 Address: Florence RD City: Creswell Zip:97426 Additional Parcels: / Map Coord: 0/O/0 Zoning: County:Lane Tax ID: Not Found Subdivision: Manufhs Okay: N CC&Rs:N Middle:CRESWELL Elem: CRESLANE Prop Type: RESID High: CRESWELL Legal: to be provided **GENERAL INFORMATION** 1-2.99AC 1.69 Lot Dimensions: Lot Size: Acres: Availability: SALE Waterfront: River/Lake: #Lots: Rd Surfc: Perc Test: RdFrntg: Seller Disc: DSCLOSUR Other Disc: View: Lot Desc: Soil Type/Class: Topography: Soil Cond: Present Use: **IMPROVEMENTS**

XSt/Dir: I-5 South, West on Oregon(turns to Camas Swale), Left on Florence to lot

Public: PC2838 WOW! Super neat lots, wonderful location, close to town. Well is in, Septic Approval, Approach is in. Lots are ready to go for a beautiful home. No Mobile Homes, No Manufactured Homes will be allowed.

FINANCIAL

PTax/Yr: 0 HOA Dues: HOA Dues-2nd:

HOA Incl:

Utilities:

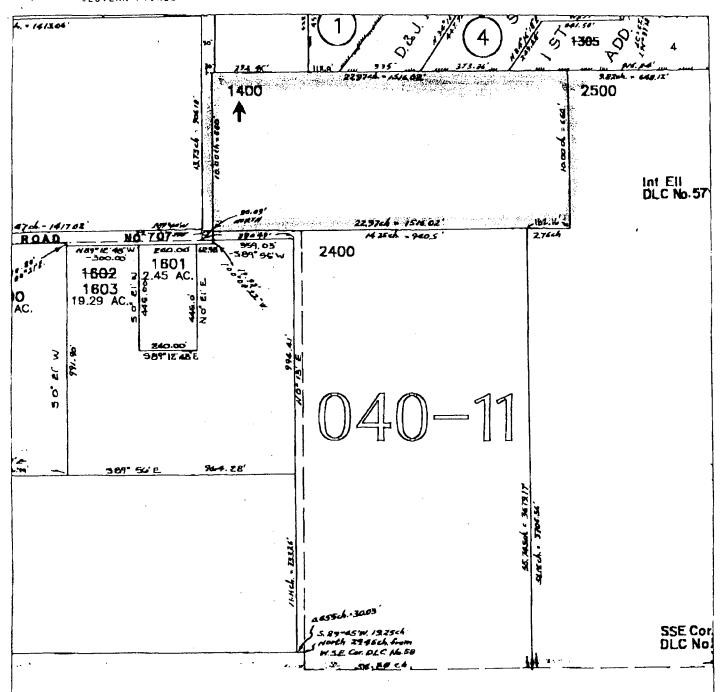
COMPARABLE INFORMATION

POW-AVL, SPT-APP, WELL

Existing Structure: N / NONE

Pend: 4/18/2006 DOM: 155 Sold: 6/20/2006 Terms: CONV O/Price: \$149,500 Sold: \$149,500

REMARKS



See Map 19 0327