

W.H.A.



Memo Date: August 27, 2007
Hearing Date: September 12, 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 (PA 07-5975, Miller-5975)

BACKGROUND

Applicant: Clifford & Claudia Miller
Current Owner: Clifford & Claudia Miller
Agent: Paul Vaughan, Hershner Hunter LLP
Map: 16-03-31-40 **Tax Lot:** 200
Acreage: 11.16 acres
Current Zoning: E30 (Exclusive Farm Use)
Date Property Acquired: March 23, 1964 (WD #7661691)
Date claim submitted: June 27, 2007
180-day deadline: December 27, 2007
Land Use Regulations in Effect at Date of Acquisition: unzoned;
Restrictive County land use regulation: Minimum parcel size of thirty acres and limitations on new dwellings in the E30 (Exclusive Farm Use) zone (LC 16.212).

ANALYSIS

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

The current owners are Clifford & Claudia Miller. They acquired an interest in the property on March 23, 1964, when it was unzoned (WD #7661691). The Miller's have owned the property continuously since their date of acquisition. Currently, the property is zoned E30. Lane County applied the E30 land use regulations (LC16.212) to the subject property after December 4, 2006. Specifically, the applicant applied to divide the property and place a dwelling on each parcel via Lane County File # PA 07-5967 and PA 07-5968, which were subsequently denied. The applicant now seeks relief by means of this Measure 37 claim.

2. The restrictive land use regulation has the effect of reducing the fair market value of the property, and

The property was unzoned when it was acquired by the current owners. The minimum lot size and limitations on new dwellings in the E30 zone prevent the current owners from developing the property as could have been allowed when they acquired it. The alleged reduction in fair market value is \$251,775. The applicant has submitted a CMA or other competent evidence of valuation that the County Commissioners have accepted on previous claims. Because of this, the County Administrator has waived the requirement for an appraisal.

The applicant is also claiming that the following sections of Lane Code have restricted the use of the subject property:

LC10.100-10, 30 & 40– These provisions only apply to those EFU (Exclusive Farm Use District) zoned properties within the Urban Growth Boundaries of a city and are not applicable to the subject property.

LC13.050(1), (2), (5), (12) – These provisions apply to subdivision and partitioning of property. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC15.070 – These provisions apply to building setback requirements along public roads. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC15.080 - These provisions apply to building setback requirements along interior property lines. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC15.137 - These provisions apply to access management requirements along public roads. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC15.138 These provisions apply to road and driveway approach spacing standards along public roads. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

The minimum lot size and restrictions on new dwellings do not appear to be exempt regulations.

CONCLUSION

It appears this is a valid claim.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the E30 zone.

**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 (Miller-5975/ PA07-5975).

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 Clifford & Claudia Miller (PA07-5975), the owners of real property described in the records of the Lane County Assessor as map 16-03-31-40, tax lot 200, consisting of approximately 11.16 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 September 12, 2007, the Board conducted a public hearing on the Measure 37 claim (PA07-5975) of Clifford & Claudia Miller and has now determined that the restrictive E30 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Clifford & Claudia Miller from developing the property as might have been allowed on March 23, 1964, the date they acquired an interest in the property, and that the public benefit from application of the current E30 restrictions on new dwellings and the minimum parcel size to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Clifford & Claudia Miller request either \$251,775 as compensation for the reduction in value of the property, or waiver of all land use regulations that would prevent the division of the land into lots that contain less than 25 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 E30 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 Clifford & Claudia Miller 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 on March 23, 1964; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants Clifford & Claudia Miller made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations applied to prohibit 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 Clifford & Claudia Miller shall be granted and the restrictive provisions of LC 16.212 that prevent the division of the land into lots containing less than 30 acres and placement of a dwelling on each lot in the E30 (Exclusive Farm Use) Zone shall not apply to Clifford & Claudia Miller, so that they can make application for approval to develop the property described in the records of the Lane County Assessor as map 16-03-31-40, tax lot 200, in a manner consistent with the land use regulations in effect when they acquired an interest in the property on March 23, 1964.

IT IS HEREBY FURTHER ORDERED that Clifford & Claudia Miller still will need to make application and receive approval for a division of the property and placement of a dwelling under the other land use regulations applicable to dividing the land and placing a dwelling that were not specifically identified or established by Clifford & Claudia Miller 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 Clifford & Claudia Miller does not constitute a waiver or modification of state land use regulations and does not authorize immediate 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 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.

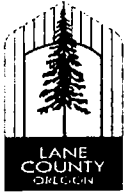
Faye Stewart, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 9-4-2007, Lane County



OFFICE OF LEGAL COUNSEL



Lane County

LAND MANAGEMENT DIVISION
125 EAST 8TH AVENUE
EUGENE, OREGON 97401

PHONE: 541-682-3823

FAX: 541-682-3947

September 12, 2007

ATTACHMENT "D"

SUPPLEMENTAL INFORMATION



LAND MANAGEMENT DIVISION

Measure 37 Claim Form

125 E 8th AVENUE, EUGENE OR 97401

PLANNING: 682-3807

For Office Use Only:

FILE # 075975

CODE: PLN-M37

FEE: \$850

This completed form, supporting documentation and processing fee must be submitted to the Lane County Land Management Division for all claims subject to the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 4, 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.

LOCATION

16 03 31 40 200
Township Range Section qtr section Taxlot

ORIGINAL

31944 Coburg Bottom Loop Road, Eugene, OR 97408

Site address

Applicant (print name): Clifford Miller and Claudia M. Miller

Mailing address: 31944 Coburg Bottom Loop Road

Phone: (541) 345-0009

Applicant Signature:

Clifford Miller

Applicant Signature:

Claudia M. Miller

Applicant's Agent: Paul Vaughan, Hershner Hunter LLP, 180 East 11th Avenue, Eugene, OR 97401

Phone: (541) 686-8511 **Fax:** (541) 344-2025

Email: pvaughan@hershnerhunter.com

Agent Signature:

Paul V. Vaughan

Land Owner (print name): Clifford Miller and Claudia M. Miller, husband and wife

Mailing address: 31944 Coburg Bottom Loop Road

Phone: (541) 345-0009

Land Owner Signature:

Clifford Miller

Land Owner Signature:

Claudia M. Miller

By signing this application, the applicant, agent and landowner(s) certify the following: 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 owners(s) agree to this claim as evidenced by the signature of those owners. (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 4, 2004).

Additional land owners, lien holders, trustees, lessees or anyone with an interest in the subject property. Describe the ownership interest. Attach more pages if necessary.

Name: Mountain States Power Company		Day Time Phone #:
Address:		
City:	State:	Zip:
Describe Interest in Property: Transmission Line Easement as shown on Title Policy as Exception 6.		

Name: Pacific Power & Light Company		Day Time Phone #:
Address:		
City:	State:	Zip:
Describe Interest in Property: Transmission Line Easement as shown on Title Policy as Exception 7.		

Name: Chad Egge Farms		Day Time Phone #: (541) 686-2348
Address: 91780 N. Coburg Road		
City: Eugene	State: Oregon	Zip: 97405
Describe Interest in Property: Chad Egge Farms leases the southerly approximately 5 acres of the subject property under an oral farm lease that may be terminated by either party in accordance with Oregon statutes pertaining to the termination of a tenancy from year to year. The lessee currently pays \$395 per year, in arrears, to lease that portion of the property, which payment is made in November.		

Name: Selco Community Credit Union (Selco Mortgage Company)		Day Time Phone #: (541) 686-8000 (541) 744-7730
Address: 925 Harlow Road		
City: Springfield	State: Oregon	Zip: 97477
Describe Interest in Property: Mortgage securing a home equity line of credit.		

Submit the following documents:

- **Title Report.** This report must identify the current land owner(s) and the date the current land owner(s) acquired the property or an interest in the property.
- **Description Card and deeds.** The description card is available in the Tax Assessor's Department. Submit all the deeds listed on the card from the date the current owner acquired an interest in the property. The deeds must verify the current land owner, as listed on the Title Report, and demonstrate continuous ownership by that owner since the date of acquisition.
- **If the property is in a Trust, LLC or other type of ownership,** submit documentation regarding the ownership. These document must show whether the Trust, LLC or other type of ownership is revocable and identify all persons with an interest in the ownership.
- **If the property was acquired through a land sale contract,** identify the original land owner and each person who assumed the contract prior to the current land owner. Include the documentation that demonstrates when the contract was conveyed. Also, submit the document(s) demonstrating the contract was completed and ownership was conveyed to the current owner.
- **Leases, covenants, conditions or restrictions** applicable to the subject property.
- **Reasonable and competent evidence of a reduction in fair market value from a land use regulation.**

Current Zoning: EFU 30

Acreage: 11.96 acres (per county records)

When did the current land owner acquire an interest in the property? March 23, 1964

When did the family acquire an interest in the property? N/A

Current fair market value of property: \$358,355

Alleged reduction in fair market value: at least \$251,775

EXISTING IMPROVEMENTS Identify any existing improvements to the property such as any homes, roads, other structures, etc.

The property is improved with a Class 3 single family home, well, septic, small barn, shop building, a second irrigation well, and is fenced.

What relief is being sought? Are you requesting monetary compensation or a waiver of a land use regulation(s)? If a waiver is desired, what is the desired use and/or how do you want to develop the property?

The applicants seek to partition the property into three parcels and to develop the two newly created unimproved parcels with a dwelling. See the attached Application Narrative for more detail.

APPROVAL CRITERIA

Lane Code 2.740(1)

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

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

Answer the following questions. Attach additional pages if necessary.

- What land use regulation(s) has been enacted since the current owner acquired the property that reduced the fair market value of the property?
- How has the identified regulation(s) reduced the fair market value of the property?
- What evidence are you providing that demonstrates the value reduction? Explain the evidence.

See the attached Application Narrative.

Additional Criterion:

ORS 197.352(5) provides:

For claims arising from land use regulations enacted prior to December 2, 2004, written demand for compensation under subsection (4) shall be made within two years of December 2, 2004, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after December 2, 2004, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

RESPONSE:

The applicants have met this requirement. The applicants filed an application with Lane County, Oregon requesting approval of their proposed three parcel partition and development of dwellings on two of the newly created unimproved parcels and on June 27, 2007, Lane County issued its decision denying that application. A copy of that decision is attached.

**ATTACHMENTS TO MEASURE 37 CLAIM
FILED IN LANE COUNTY, OREGON**

1. Application Narrative
2. Property Information Report - Lane County Regional Land Information Database
3. Tax Map
4. Lane County Official Zoning Map – Plot 347
5. Earnest Money Receipt
6. Collection Escrow Instructions
7. Land Sale Contract
8. Statutory Warranty Deed
9. Title Insurance Policy
10. Property Tax Statement
11. Tax Assessor's Description Card
12. Application to Lane County, Oregon
13. Final Decision of Lane County, Oregon
14. Opinion of Value Reduction / Appraisal

ATTACHMENT 1

(APPLICATION NARRATIVE)

APPLICATION NARRATIVE

1. INTRODUCTION.

The applicants, Clifford Miller and Claudia M. Miller, husband and wife, claim that Lane County's enforcement of land use regulations that restrict the use of their property has reduced the fair market value of their property. The applicants are requesting, pursuant to the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and pursuant to Lane Code Section 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 described below, which prevent the applicants from partitioning their property into three parcels and developing a dwelling on two of the newly created parcels that are not improved with a dwelling (there is currently one dwelling on the property).

The applicants obtained their interest in the subject property on March 23, 1964, and have owned the subject property continuously since that time. The applicants are the sole owners of the subject property. Lane County did not have an adopted zoning ordinance on March 23, 1964, and the subject property was not zoned, or otherwise regulated relative to use, by Lane County on that date.

The property is currently zoned Exclusive Farm Use—30 Acre Minimum Parcel Size (E30). That zoning, as applied by Lane Code Section 16.212, will not permit land divisions below 30 acres in size for the resulting parcels and will not permit the placement of dwellings on the property except under very limited circumstances.

2. BACKGROUND INFORMATION.

2.1 General Site Description.

The property subject to this application consists of one parcel approximately 11.96 acres in size. The subject property is located west of the City of Coburg at 31944 Coburg Bottom Loop Road, Eugene, OR 97408.

The property is described as Tax Lot 200 on Lane County Assessor's Map No. 16-03-31-40.

The property is improved with a Class 3 single family home, domestic well, septic system, a small barn, a shop building, an irrigation well, and is fenced.

The subject property receives the following public services: Eugene School District No. 4J (schools); Eugene Water and Electric Board (electrical power); Coburg Rural Fire Protection District (fire and ambulance); Qwest (telephone); LTD (bus service); Lane County Sheriff's Department and Oregon State Police.

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 applicants be the present owners of the property that is the subject of the claim at the time the claim is submitted. The applicants are the present and sole 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 application form has been submitted.

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 completed application form includes this information.

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

Response:

The completed application form and attachments include this information.

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:

The applicants acquired the subject property on March 23, 1964 as is evidenced by the Earnest Money Receipt, Collection Escrow Instructions, Land Sale Contract, Statutory Warranty Deed

and Title Insurance Policy attached to the application. The applicants have owned the property continuously since they acquired it on March 23, 1964. They purchased the property pursuant to a Land Sale Contract dated March 23, 1963. Their statutory Warranty Deed dated and executed on March 23, 1964 was deposited into a collection escrow. Upon fulfillment of their payment obligations under the Land Sale Contract, the Warranty Deed was released from the escrow and recorded on November 22, 1976.

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 zoned Exclusive Farm Use—30 Acre Minimum Parcel Size (E30) as shown on Lane County Official Zoning Map Plot 347, adopted by Lane County as part of Ordinance 884 on February 29, 1984. A copy of Plot 347 is attached to this application. In addition to Ordinance 884, the primary land use regulations that restrict the use of the property are Lane Code Sections 16.212(3)-(7) which restrict the residential use of the property and Lane Code Section 16.212(9) which requires a minimum area requirement of thirty acres for the creation of new lots or parcels in the Exclusive Farm Use Zone on property designated as E30 on Lane County Zoning Maps. Those Lane Code provisions and Zoning Map Plot 347 prevent the applicants from subdividing their property into residentially buildable parcels less than 30 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.

If the aforementioned Lane County regulations did not exist, or were consistent with provisions of Lane County regulations preceding March 23, 1964, the value of the applicants' property would be considerably higher if partitioned into three parcels for residential use (with the development of a new dwelling on two of the newly created parcels without a dwelling) rather than remaining in its current configuration with the aforementioned use and acreage restrictions in place.

In addition to Ordinance 884 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 have submitted the opinion of a licensed real estate broker, Randy Downing, which describes the difference in the fair market value of the property subject to the restrictive regulations that prohibit the partition of the property into three parcels for residential use and the value of the property if those restrictions did not apply. The opinion includes Mr. Downing's opinion of the decrease in the value of the property caused by the restrictive land use regulations. The applicants believe that Mr. Downing's opinion is "reasonable and competent evidence of a reduction in fair market value" caused by the restrictive land use regulations. However, to the extent a more formal appraisal is required; the applicants request that the County Administrator waive a more formal appraisal as allowed by Lane Code Section 2.720. If the County Administrator is unwilling to do so, the applicants will submit a more formal appraisal on request.

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 30 Acre Minimum (E30) as depicted on Lane County Official Zoning Map Plot 347, 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 Sections 16.212(3)-(7) which restrict the residential use of the subject property and Lane Code Section 16.212(9) which requires a minimum area requirement of thirty acres for the creation of new lots or parcels in the Exclusive Farm Use Zone on property designated as E30 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:

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 Sections 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 \$251,775, which sum represents (at a minimum) 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 create parcels smaller than 30 acres in size.

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 as proposed. The oral farm lease of the southerly five acres of the property can be terminated by

providing the required statutory notice and will not prevent the partition and development of the property as proposed.

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 30-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 thirty 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 with Lane Code Section 2.700. Accordingly, the applicants' claim for just compensation equal to the reduction in the fair market value of their property as a result of the restrictions 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 partitioning the subject property into three parcels for residential use and developing a new dwelling on two of the resulting parcels that are not improved with a dwelling.

ATTACHMENT 6

(COLLECTION ESCROW INSTRUCTIONS)

#14117

ESCROW INSTRUCTIONS from MARION L. SMITH and MILLIE SMITH husband and wife, as Sellers,
and CLIFFORD MILLER and GLAUDIA MAE MILLER, husband and wife, as Buyers, to the
Eugene Main Branch, The First National Bank of Oregon, Portland.

DEPOSITED HERewith IN ESCROW:

Contract of Sale dated March 23, 1964, between MARION L. SMITH and MILLIE SMITH, husband and wife, as vendors, and CLIFFORD MILLER and GLAUDIA MAE MILLER, husband and wife, as vendees, covering the real property described in said contract

Unrecorded deed in Warranty form dated March 23, 1964 from MARION L. SMITH and MILLIE SMITH, husband and wife to CLIFFORD MILLER and GLAUDIA MAE MILLER, husband and wife, covering the property described in the above contract.

Title Insurance No. 79713
Fire Insurance Policy No. JP 315795

AMOUNT TO BE PAID TO YOU BY BUYERS AND TERMS OF PAYMENT:

Present principal balance unpaid: \$ 25,000.00, to be paid in installments of \$ 150.00 or more.

Installments Including interest at 6 1/2 % per annum on unpaid balances. Interest begins January 1, 1965
(plus or including)

First installment due on or before February 10, 1965 and subsequent installments due on or before the 10th day of each month thereafter

until principal balance and interest paid in full.

DISPOSITION TO BE MADE BY YOU OF PROCEEDS OF PAYMENTS RECEIVED:

Deduct your collection charges.

Pay or deposit balance of proceeds as directed by Sellers. Pending other directions Marion L. Smith,
Route 2, Box 367A, Eugene, Oregon

From proceeds of final payment deduct sufficient amount to purchase U. S. Revenue Stamps on basis of total selling price of \$ 31,000.00, to be affixed to deed upon delivery.

YOUR ESCROW FEE of \$ 30.00 is paid herewith by 1 by each

(1) You are authorized to accept any payments tendered to you to apply upon the above provided installments whether such payment constitutes all or only part of any installment and whether or not it or any installment is then in default; but if any installment shall not be paid to you before the expiration of thirty days after due date thereof you are authorized to surrender to the Sellers or either of them, upon demand of either of them, without any notice to the Buyers or either of them, all documents then in your possession, thereby terminating this escrow. The payment of any installment directly to the Sellers or the existence of any offset, counterclaim, or difference as between the parties hereto or the acceptance of previous delinquent installments shall not alter or limit the terms of these instructions.

(2) You are authorized to accept the whole or any part of the then unpaid balance on the above described contract at any time.

(3) When you have received for the Sellers payment in full as above provided you will surrender all the above documents, other than the contract described above and any assignment thereof, to the Buyers or either of them upon demand, and you will surrender the said contract and assignment to the Sellers or either of them upon demand; but unless and until you have received payment in full as above provided or the Buyers become in default in the manner and to the extent hereinbefore provided, none of the above described documents shall be released by you to any person except upon the concurring written directions of all the parties hereto or their successors in interest.

(4) You are authorized to retain all funds coming into your hands hereunder after you shall have received notice of the death of one of the Sellers until you shall have received from the surviving Seller and the personal representative of the deceased Seller joint written instructions for the disposition of such funds, or until you shall have been otherwise satisfied of the identity of the person or persons entitled to receive such funds; and the provisions of this paragraph shall be applicable whether or not the Sellers are husband and wife and whether or not the contract deposited herewith shall create or purport to create a right of survivorship as between the Sellers.

(5) Notwithstanding anything to the contrary therein appearing, you have no duty to know or determine the performance or nonperformance of any term or condition of any contract or agreement between the parties hereto, and your duties and responsibilities are limited to those specifically stated herein. You have no responsibility for the authenticity, validity or sufficiency of any document deposited hereunder or for the accuracy of any description of any document deposited herewith, the description having been supplied by the parties hereto. Your sole duty with respect to such documents is to hold and dispose of the same as herein provided.

(6) If you shall receive notice in writing signed by the Transferors and the Transferees that either the Buyers or the Sellers have assigned or conveyed their interest in the property deposited with you or described in the instruments deposited with you, accompanied by your assignment fee of \$5.00, you shall take cognizance thereof. In such event, the Transferees shall thereupon be substituted for the Transferors for all the purposes of these instructions. You shall not be bound to recognize any conveyance or assignment unless you shall have received the above described notice in writing; and you shall be under no obligation to determine the sufficiency of any conveyance or assignment, the right of the Transferors to make the same, or whether, if consent of the other party to these instructions is required, such consent has been obtained.

(7) If a controversy shall arise between the parties hereto or with any third person, you may await the outcome of such controversy by final legal proceedings, or otherwise, as you may deem appropriate, or you may institute such interpleader or other proceedings as you may deem proper, and in any of such events you shall not be liable for interest or damages. In the event of any controversy whether or not resulting in litigation, or in the event of an action to recover your expenses or charges from either or both of the parties hereto, you shall be entitled to reasonable attorney's fees and reimbursement for your expenses.

(8) If any fire insurance or other insurance policies are deposited in this escrow, you shall have no responsibility for the sufficiency thereof, and you shall have no duty to pay or see to the payment of any premiums thereon or to renew or see to the renewal thereof or to notify any person of the expiration thereof. Your sole responsibility with respect to any such policy shall be the safekeeping thereof.

(9) In addition to the escrow fee paid or agreed upon at the inception of this escrow, the parties hereto jointly and severally agree to pay reasonable compensation for any services not specified in these instructions, and any other sums which may become due to you hereunder. In addition to any other remedies you may have, you are hereby given a lien upon all funds, documents, and other property held by you hereunder, to secure the payment of all your fees and expenses.

(10) At anytime after the expiration of one year from the time when this escrow should by its terms be concluded you may, without notice to the parties, close your records, thereby terminating your responsibilities with respect to this escrow.

(11) This agreement is binding upon the heirs, executors, administrators, successors, and assigns of all the parties hereto.

(12) As used in these instructions the words "Sellers", "Buyers", "Transferors" and "Transferees" shall include both the singular and the plural.

Dated this _____ day of _____, 19____.

Clifford Miller

Mason I. Smith

Claudia Mae Miller

Millie Smith

1690 Howard Place Eugene

The above Escrow Instructions received and accepted this _____ day of _____, 19____.

THE FIRST NATIONAL BANK OF OREGON, PORTLAND

BY

E. V. Fredrickson

Authorized Signature

The undersigned, Assignees of the Sellers or Buyers do hereby consent to and agree to be bound by the terms of the foregoing escrow instructions.

ATTACHMENT 7

(LAND SALE CONTRACT)

LAND SALE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: That MARION L. SMITH, and MILLIE SMITH, husband and wife, hereinafter referred to as sellers, and CLIFFORD MILLER and CLAUDIA MAE MILLER, husband and wife, hereinafter referred to as buyers, for and in consideration of the mutual promises and covenants hereinafter contained do hereby agree as follows:

1. The sellers hereby agree to sell and the buyers hereby agree to purchase the following-described real property at the price and on the terms hereinafter set forth:

Beginning at a point 0.605 chains North of the Northwest corner of the John S. Mansfield Donation Land Claim No. 59, Sect. No. 3376, in Township 16 South Range 3 West of the Willamette Meridian, running thence North $89^{\circ} 31'$ West 17.61 chains to the TRUE POINT OF BEGINNING of this description; thence North 5.68 chains to the south line of County Road No. 994, thence North $89^{\circ} 39'$ West along the south line of said road, 40 feet; thence South 430 feet, thence North $89^{\circ} 39'$ West 257.96 feet; thence North 250 feet; thence North $89^{\circ} 39'$ West 184 feet; thence North 180 feet to the south line of said County Road No. 994; thence North $89^{\circ} 39'$ West along said South line 185.75 feet; thence South 180 feet; thence South $89^{\circ} 30'$ West 150 feet; thence South 1161.78 feet to the southwest corner of that certain tract conveyed to Marion Smith by deed recorded Jan. 27, 1941 in Vol. 205 page 290 of Lane County Oregon Deed Records; thence East along the south line of said tract 12.39 chains more or less to a point due south of the true point of beginning; thence North 14.65 chains to the true point of beginning in Section 31, township 16 South Range 3 West of the Willamette Meridian, in Lane County, Oregon.

2. As the purchase price for said real property, the buyers agree to pay and bind their heirs and legal representatives to pay to the sellers the sum of THIRTY-ONE THOUSAND and NO/100 DOLLARS (\$31,000.00) in the following manner; The sum of SIX THOUSAND and NO/100 DOLLARS (\$6,000.00) upon the execution hereof, receipt of which is hereby acknowledged by sellers, and the balance of TWENTY-FIVE THOUSAND and NO/100 DOLLARS (\$25,000.00) payable at the rate of ONE HUNDRED and FIFTY and NO/100 DOLLARS

(\$150.00) or more per month, including interest at the rate of SIX PER CENT (6%) per annum, interest to commence January 1, 1965, the first payment being due and payable February 10, 1965, and subsequent payments being due and payable on the 10th day of each month thereafter until principal and interest are fully paid. The payments herein provided for shall be applied first to the payment of interest on the unpaid principal balance, then toward the payment of the principal.

3. A deed for said real property has this day been executed by the sellers and is to be placed in escrow with the First National Bank of Oregon, Eugene main Branch, together with an executed copy of this contract, a policy of title insurance which the sellers agree to furnish, showing title to be vested in the sellers, free and clear from encumbrances except as herein stated, and a policy of fire insurance as hereinafter provided. The escrowee shall be instructed to deliver all of said documents unto buyers upon their full compliance with the terms of this contract and the payment to it, for the sellers, of the full purchase price, together with the interest thereon. Said escrowee shall be authorized to deduct from the last payment such sum as may be required for United States Revenue Stamps to place upon said deed.

4. Buyers agree to keep the premises insured against loss by fire in the sum of at least \$7,500.00, with loss, if any, payable unto sellers as their interest may appear.

5. Buyers shall have possession of said premises from September 1, 1964, so long as they comply with the terms of this agreement.

6. Buyers agree that they will pay promptly as the same become due all taxes or assessments of any nature which may hereafter

become due and payable against said premises during the life of this contract and that they will keep said premises free and clear from all other liens of every kind which would take precedence over the sellers' interest therein.

8. All future erections or additions to or upon the premises shall be and remain a part of the premises and shall not be removed therefrom until the terms of this contract have been fully met.

9. Any waiver of any breach of any provision hereof to be kept and performed by the buyers shall not be deemed a continuing waiver or a waiver of the provision itself and shall not operate to bar or prevent the sellers from declaring a forfeiture for any succeeding breach of any such provision or otherwise.

10. Time is of the essence of this contract and in case the buyers shall fail to make any of the payments above provided in the manner and at the time above specified or within thirty (30) days thereafter, or shall fail to comply with any other provision of this contract, then this contract shall at the option of the sellers be thenceforth null and void and sellers may declare a forfeiture of the premises and all rights and interests created herein or existing in favor of the buyers shall revert and re-vest in the sellers without any act of re-entry or any other act of the sellers and without right of the buyers to the return of any money paid on account of the purchase of said property as above stated, as fully and perfectly as if this contract and such payments had never been made, and all payments theretofore made on account of this contract shall be forfeited to, retained by, and belong to the sellers as the agreed reasonable rental of said premises up to the time of such default. Sellers shall have the right, in case of default, immediately or at any time thereafter, to enter upon the land above described without any process

of law and take immediate possession thereof, together with all improvements and appurtenances thereunto belonging.

11. In the event of the failure of buyers to comply with the terms of this contract, sellers may at their option elect to declare the whole of said purchase price due and proceed at once to strictly foreclose this contract in equity. In case suit or action is instituted to foreclose this contract or to enforce any provision thereof, the buyers agree to pay, in addition to the statutory costs and disbursements, such additional sums as the Court may adjudge reasonable for attorney's fees in such suit or action.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 23 day of March, 1964.

SELLERS: Manor L. Smith

Millie Smith

BUYERS: Clyde Miller

Clarence Mae Miller

ATTACHMENT 8

(STATUTORY WARRANTY DEED)

7661691 WARRA, FY DEED

For Value Received MARION L. SMITH and MILLIE SMITH, husband and wife,

the grantors, do hereby grant, bargain, sell and convey unto CLIFFORD MILLER and CLAUDIA MAE MILLER, husband and wife,

the grantee s, the following described premises, to wit:

Beginning at a point 0.605 chains North of the Northwest corner of the John S. Mansfield Donation Land Claim No. 59, Notf. No. 3376, in Township 16 South Range 3 West of the Willamette Meridian, running thence North 89° 31' West 17.61 chains to the TRUE POINT OF BEGINNING of this description; thence North 5.68 chains to the south line of County Road No. 994, thence North 89° 39' West along the south line of said road, 40 feet; thence South 430 feet, thence North 89° 39' West 257.96 feet; thence North 250 feet; thence North 89° 39' West 184 feet; thence North 180 feet to the south line of said County Road No. 994; thence North 89° 39' West along said South line 185.75 feet; thence South 180 feet; thence South 89° 30' West 150 feet; thence South 1161.78 feet to the southwest corner of that certain tract conveyed to Marion Smith by deed recorded Jan. 27, 1941 in Vol. 205 page 290 of Lane County Oregon Deed Records; thence East along the south line of said tract 12.39 chains more or less to a point due south of the true point of beginning; thence North 14.65 chains to the true point of beginning in Section 31, township 16 South Range 3 West of the Willamette Meridian, in Lane County, Oregon.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee s, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owner s in fee simple of said premises; that they are free from all incumbrances except easements and restrictions of record

and that they will warrant and defend the same from all other lawful claims whatsoever.

Dated: March 23, 1964

(SEAL)

(SEAL)

Marion L. Smith (SEAL)
Millie Smith (SEAL)

7661691

STATE OF OREGON, COUNTY OF LANE, ss:
On this 23 day of March 1964
personally came before me, a Notary Public in and for said
county of Lane, the within named
MARION L. SMITH and MILLIE SMITH,
husband and wife,
to me personally known to be the identical person s described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein named.

Witness my hand and seal this day and year last above written.

W. T. Coulterman
Notary Public for Oregon.

My Commission expires 6/3/65

State of Oregon,
County of Lane—ss.
I, D. M. Penfold, Director of the
Department of Records and Elections,
in and for the said County, do hereby
certify that the within instrument was
received for record at

1976 NOV 22 AM 11 27

Reel 822 R

Lane County OFFICIAL Records.

D. M. PENFOLD, Director of the
Department of Records & Elections.

By *A. Penfold* Deputy

B: C29-083-05

ATTACHMENT 9

(TITLE INSURANCE POLICY)

-----BORDER TO BORDER-----LAND TITLE SERVICE-----

OREGON TITLE INSURANCE CO.

731 S.W. STARK STREET CAPITOL 6-2744 PORTLAND 5, OREGON

Premium \$163.00

Order No. 79713

TITLE INSURANCE POLICY

Oregon Land Title Association
Standard Coverage Policy

OREGON TITLE INSURANCE CO., a corporation, (incorporated under the laws of the State of Oregon), hereinafter called the Company, for a valuable consideration paid for this policy of title insurance, the number, date, and amount of which are shown in Schedule A, does hereby insure the parties named as Insured in Schedule A, the heirs, devisees, personal representatives of such Insured, or, if a corporation, its successors by dissolution, merger or consolidation, against direct loss or damage not exceeding the amount stated in Schedule A, together with costs, attorneys' fees and expenses which the Company may be obligated to pay as provided in the Conditions and Stipulations hereof, which the Insured shall sustain by reason of:

1. Title to the land described in Schedule A being vested, at the date hereof, otherwise than as herein stated; or
2. Unmarketability, at the date hereof, of the title to said land of any vestee named herein, unless such unmarketability exists because of defects, liens, encumbrances, or other matters shown or referred to in Schedule B; or
3. Any defect in, or lien or encumbrance on, said title existing at the date hereof, not shown or referred to in Schedule B, or excluded from coverage in the Conditions and Stipulations; or
4. Any defect in the execution of any mortgage or deed of trust shown in Schedule B securing an indebtedness, the owner of which is insured by this policy, but only insofar as such defect affects the lien or charge of such mortgage or deed of trust upon said land; or
5. Priority, at the date hereof, over any such mortgage or deed of trust, of any lien or encumbrance upon said land, except as shown in Schedule B, such mortgage or deed of trust being shown in the order of its priority.

all subject, however, to SCHEDULES A and B, and the CONDITIONS and STIPULATIONS herein, all of which are hereby made a part of this policy.

In witness whereof, OREGON TITLE INSURANCE CO. has caused this policy to be sealed and authenticated by the facsimile signature of its Executive Vice-President, but this policy is not valid unless attested by the Secretary or an Assistant Secretary.

Issued By
TITLE ABSTRACT COMPANY
OF EUGENE (OREGON)



OREGON TITLE INSURANCE CO.,

By

Executive Vice-President

Attest:

Assistant Secretary

OTI-130

SCHEDULE A

Amount \$ 31,000.00

Date March 9, 1964

At 5:00 P.M.

INSURED

CLIFFORD MILLER and CLAUDIA MAE MILLER

The fee simple title to said land is, at the date hereof, vested in

MARION L. SMITH

The land referred to in this policy is described as:

Beginning at a point 0.605 chains North of the Northwest corner of the John S. Mansfield Donation Land Claim No. 59, Notf. No. 3376, in Township 16 South Range 3 West of the Willamette Meridian, running thence North 89° 31' West 17.61 chains to the TRUE POINT OF BEGINNING of this description; thence North 5.68 chains to the south line of County Road No. 994, thence North 89° 39' West along the south line of said road, 40 feet; thence South 430 feet; thence North 89° 39' West 257.96 feet; thence North 250 feet; thence North 89° 39' West 184 feet; thence North 180 feet to the south line of said County Road No. 994; thence North 89° 39' West along said South line 185.75 feet; thence South 180 feet; thence South 89° 30' West 150 feet; thence South 1161.78 feet to the southwest corner of that certain tract conveyed to Marion Smith by deed recorded Jan. 27, 1941 in Vol. 205 page 290 of Lane County Oregon Deed Records; thence East along the south line of said tract 12.39 chains more or less to a point due south of the true point of beginning; thence North 14.65 chains to the true point of beginning in Section 31, township 16 South Range 3 West of the Willamette Meridian, in Lane County, Oregon.

SCHEDULE B

This policy does not insure against loss by reason of the matters shown or referred to in this Schedule except to the extent that the owner of any mortgage or deed of trust is expressly insured in Paragraphs numbered 4 and 5 on page 1 of this policy.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; pending proceedings for vacating, opening or changing of streets or highways preceding entry of the ordinance or order therefor.

2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.

3. Easements, claims of easement or encumbrances which are not shown by the public records; unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.

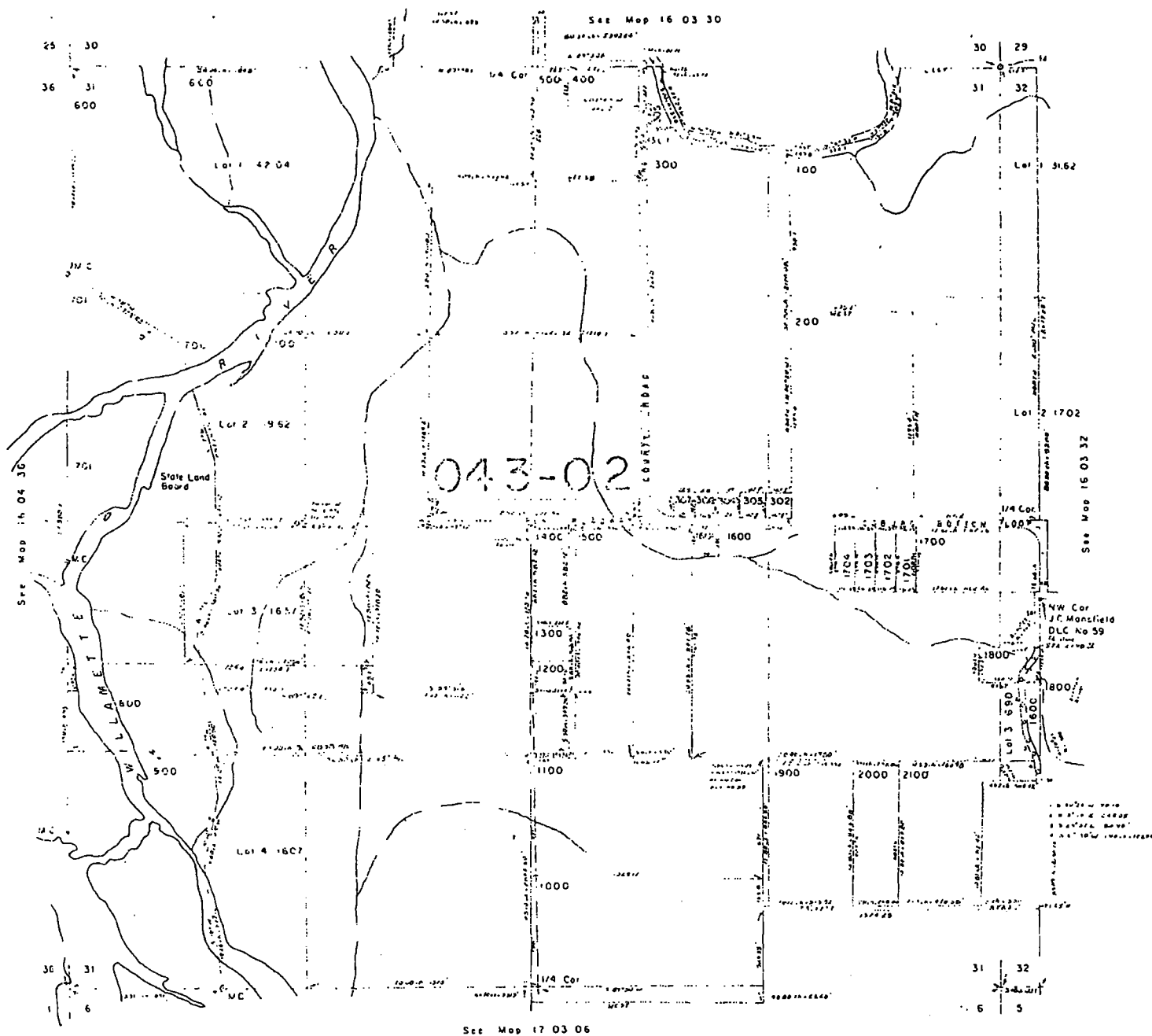
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.

5. Inchoate dower of wife of vestee.

6. Easement, including terms and provisions thereof, granted to Mountain States Power Company by instrument recorded December 5, 1946 at page 233 of volume 337, Clerk's Filing No. 28227, Lane County Oregon Deed Records.

7. Easement for transmission line, including the terms and provisions thereof, executed by Marion L. Smith and Millie A. Smith, his wife, to Pacific Power & Light Company, dated Oct. 10, 1962, recorded Feb. 28, 1963, clerk's filing No. 1245, Lane County Oregon Deed Records.

16 03 31



THIS MAP IS TO ASSIST LOCATING
PROPERTY. THE BUREAU ASSUMES
NO LIABILITY FOR INACCURACIES

ATTACHMENT 10

(PROPERTY TAX STATEMENT)

07-01-2006 * 06-30-2007 REAL PROPERTY T/ STATEMENT
LANE COUNTY 125 E. 8TH AVE. EUGENE, OR 97401 (541) 682-4321

www.co.lane.or.us/at

SITUS ADDRESS: 31944 COBURG BOTTOM LOOP RD
EUGENE, OR 97408

PROPERTY CLASS: 551
TAX CODE AREA: 00438 ACRES: 11.96
MAP & TAX LOT : 16-03-31-40-00200

MILLER CLIFFORD & CLAUDIA M
31944 COBURG BOTTOM LOOP
EUGENE, OR 97401

ACCOUNT # 0041036

LAST YEAR'S TAX 1,362.39
 See back for explanation of taxes marked with (*)

CURRENT TAX BY DISTRICT

U Lane Education Service Dist	26.92
U Lane Community College	74.67
U Eugene School District LO	180.92
U Eugene School District	572.72
Education Totals:	855.23
U Lane County	154.15
U Coburg RFPD	160.14
General Government Totals:	314.29
U Lane County Bond	15.74
U Lane Community College Bond	27.80
U Eugene School District Bond II	110.66
U Eugene School District Bond I	81.71
U Coburg RFPD Bond	38.85
Bonds - Other Totals:	274.76

VALUES AS OF 01/01/2006	LAST YEAR	THIS YEAR
REAL MARKET VALUE		
LAND	165,773	180,865
STRUCTURES	130,670	177,390
TOTAL	296,443	358,255
M5 SPECIAL		
ASSESSED VALUE	29,489	31,631
M5 REAL MKT VALUE	160,159	209,021
ASSESSED VALUE	117,175	120,611
EXEMPTIONS	0	0
TAXABLE VALUE	117,175	120,611

FARM DEFERRAL

Potential Additional Tax

MORTGAGE CO:

If a mortgage company pays your taxes,
 this statement is for your records only.

TAX PAYMENT OPTIONS

(See back of statement for payment instructions)

Pay By	Discount	Net Amount Due
In Full 11/15/2006	43.33	1,400.95
2/3 11/15/2006	19.26	943.59
1/3 11/15/2006	None	481.42

2006-2007 TAXES BEFORE DISCOUNT align="right">1,444.28

TOTAL TAX (After Discount) 1,400.95

*Pd-
11-06-06*

ATTACHMENT 11

(TAX ASSESSOR'S DESCRIPTION CARD)

DATE _____

16 03 31 1600OFFICE OF COUNTY ASSESSOR, LANE COUNTY, OREGON

YE/	NEW	16	03	31	40	200	ACCT NO.
	OLD	16	03	31		1600	41036

RANGE E. _____ OR W. ³ _____ W. M.

DEED RECORD

ACRES

VOL.

PAGE

REMAINING

BEARING	DISTANCE	BEARING REFERENCE OR LEGAL SUBDIVISION
		pg 2
		#994, thence
N89°39'W	40.00 ft	along the south line of said road,;
		thence
South	430 ft,	thence
N89°39'W	257.96 ft;	thence
North	250 ft;	thence
N89°39'W	184 ft;	thence
North	180 ft	to the south line of said County Road
		#994; thence
N89°39'W	185.75 ft	along said South line; thence
South	180 ft;	thence
S89°30'W	150 ft;	thence
South	1161.78 ft	to the SW corner of that certain tract
		conveyed to Marion Smith by deed
		recorded Jan 27, 1941 in Vol 205,
		page 290 of Lane County Oregon Deed
		Records; thence 817.74'
East along	the south line	of said tract 12.39 chs more or
	966.90'	less to a point due south of the
		true point of beginning; thence
North	14.65 chs	to the truepoint of beginning in
		Sec 31, T 16 S, R 3 W of the WM, in
		Lane County, Oregon.
		cont m/l
		Except: 10.00 ac to 1606 by R826/67723
		in 1977.
		Containing more or less

RECORDED
DATE _____

21.96

11.96

MICROFILMED
DATE _____

Recorded by [illegible]

TR 86-15212

7667733

MEMORANDUM AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by and between CLIFFORD MILLER and CLAUDIA MAE MILLER, husband and wife, as Sellers, and MICHAEL HORTON and MARTA L. GETTY, husband and wife, as Buyers, that on December 21st, 1976, the parties entered into a Real Estate Contract wherein and whereby Sellers agreed to sell and Buyers agreed to purchase the following described real property, to wit:

Beginning at a point 0.883 chains north of the southwest corner of the John S. Napier tract, Section 31, Township 16 South, Range 3 West of the Willamette Meridian, running thence North 89° 31' West 17.61 chains to the true point of beginning of this description; thence North 37° 08' East to the South line of County Road No. 994; thence North 31° 39' West along the South line of said road 40.0 feet; thence South 430.0 feet; thence North 89° 35' West 257.96 feet; thence South 627.44 feet; thence West 159.74 feet; thence South 283.39 feet to the Southwest corner of that certain tract conveyed to Marion Smith by deed recorded January 27, 1941 in Volume 205, Page 290 of Lane County Oregon Deed Records; thence East along the South line of said tract 817.69 feet to a point due South of the true point of beginning; thence North 964.13 feet to the TRUE POINT OF BEGINNING in Section 31, Township 16 South, Range 3 West of the Willamette Meridian, in Lane County, Oregon.

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

The true and actual consideration for this sale is \$30,000.00.

Until a change is requested, all tax statements shall be sent to the following address:

Michael L. Horton and Marta L. Getty
90341 Smith Lane
Eugene, Oregon 97401

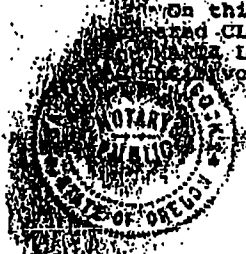
DATED: December 21st, 1976.

Clifford Miller
Claudia Mae Miller
Sellers.
Michael L. Horton
Marta L. Getty
Buyers.

7667733

STATE OF OREGON)
COUNTY OF LANE) ss.

On this 31st day of December, 1976, before me, personally
CLIFFORD MILLER, CLAUDIA MAE MILLER, MICHAEL L. HORTON
L. GETTY, and acknowledged the foregoing instrument to
be a voluntary act and deed.



[Signature]
Notary Public for Oregon
Comm. exp. 11-18-80

7667733

State of Oregon,
County of Lane ss.

I, D. M. Penfold, Director of the
Department of Records and Elections,
in and for the said County, do hereby
certify that the within instrument was
received for record at

1976 DEC 22 PM 1 09

826 R

Recd

Lane County OFFICIAL, Records.

D. M. PENFOLD, Director of the
Department of Records & Elections.

[Signature]
Deputy
673,041.05

ATTACHMENT 12

**(APPLICATION TO LANE COUNTY,
OREGON)**



LAND MANAGEMENT DIVISION

LAND USE APPLICATION
Land Use Compatibility Statement

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401 Planning: 682-3807

For Office Use Only: FILE #

CODE: ALUC

FEE:

Applicant (print name): Clifford Miller and Claudia Miller
Mailing address: 31944 Coburg Bottom Loop Road
Phone: (541) 345-0009

Applicant's Agent: Paul Vaughan, Hershner Hunter LLP, 180 East 11th Avenue, Eugene, OR 97401
Phone: (541) 686-8511 Fax: (541) 344-2025
Email: pvaughan@hershnerhunter.com

PROPERTY LOCATION

16-03-31-40 200
Township Range Section Taxlot

Subdivision/partition

lot/parcel

block

31944 Coburg Bottom Loop Road, Eugene, OR 97408
Site address

Attached is a detailed property information report on the above reference property obtained from the Lane County Regional Land Information Database (RLID). According to the report, the property contains 11.16 acres. However, the Applicants believe that the true acreage is 11.96 acres. The property is zoned E30. According to RLID, 93% of the property contains Newberg Loam soil, a Class II high value soil. There is an existing dwelling on the property.

The Applicants would like to partition their property into three parcels for the development of a dwelling on each of the two newly created parcels. The Applicants require a Land Use Compatibility Statement which they will then be able to provide to state agencies, such as the DEQ, OWRD and DSL for such things as well permits, septic permits and possible wetland fill permits needed in connection with their proposed development. Please apply the county land use regulations applicable to the Applicants' property and provide verification that they are entitled to partition their property into three parcels for the development of a dwelling on each of the two newly created parcels, each of which parcels may be conveyed separately from the parcel on which the existing dwelling is located.

SIGNATURES:

Applicant: See attached.

Applicant's Agent:

Paul V. Vaughan Hershner Hunter LLP
cc Cliff & Claudia
6/25/07 ao



LAND MANAGEMENT DIVISION

LAND USE APPLICATION
Land Use Compatibility Statement

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401 Planning: 682-3807

For Office Use Only: FILE #

CODE: ALUC

FEE:

Applicant (print name): Clifford and Claudia Miller

Mailing address: _____

Phone: _____ Email: _____

PROPERTY LOCATION

16033140200

Township Range Section Taxlot

Subdivision/partition

lot/parcel

block

31944 Coburg Bottom Loop Road, Eugene, OR
Site address

The Land Use Compatibility Statement (LUCS) is the form used when a customer needs a written response from the Planning Program. It is intended to assist customers who have a question that can not be answered in 10 minutes by the Planner at the front desk. However, it is not as complex as a Research Request.

In the space below, write the question you have for the Planner. Attach additional pages if necessary.

We authorize Hershner Hunter LLP
to file this application on our
behalf, see attached.

June 22, 2007

Claudia M. Miller Claudia M. Miller
Clifford Miller Clifford MILLER

LANE COUNTY REGIONAL LAND INFORMATION DATABASE

Site Address: 31944 COBURG BOTTOM LOOP RD

Map & Tax Lot #: 16-03-31-40-00200

Special Interest Code:

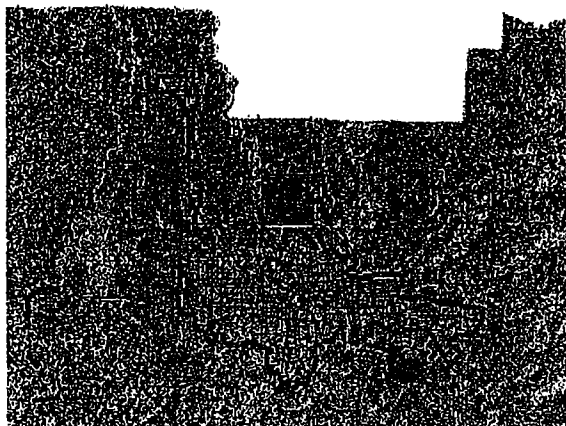
A & T Account #: 0041036

View Current RPD Document

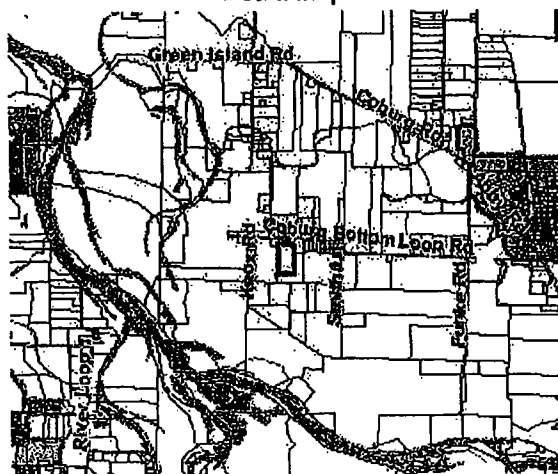
Tax Map

View Tax Map

Vicinity Map



Detail Map



Site Address State Plane Coordinates

X-Coord: 4240448

Y-Coord: 909895

Site Address Information

House	Suffix	Predir.	Street Name	PostDir.	Street Type	Unit Type	Unit
31944			COBURG BOTTOM LOOP		RD		
Mailing City			State	Zip Code	Zip+4	Carrier Route	
EUGENE			OR	97408	9214	R002	
Create Date: 1983-08-07				Update Date: 1992-04-22			

Land Use

Land use information has not been field verified.

Land Use Code and Description:

Code:

Description:

Use Code and Description:

1111

SINGLE FAMILY HOUSING

S

SINGLE FAMILY

Zoning

Please verify zoning information with local jurisdiction. Lane County overlay zones are not currently shown in RLID.

Code:

Description:

Zoning Jurisdiction:

LC

LANE COUNTY

Parent Zone 1:

E30

EXCLUSIVE FARM USE (30 ACRE MINIMUM)

Boundary Information

Please verify boundary information with local jurisdiction.

General

Incorporated City Limits:

Urban Growth Boundary:

Fire Protection Providers:

Node:

CBF

COBURG RFPD

N

Plan Designation:

[Display Current Metro Plan Map](#)

2000 Census Tract:

0300

2000 Block Group:

1

Year Annexed:

Annexation #:

Approximate Acreage: **11.16**
 Approximate Square Footage: **486,130**
Environmental Findings Please verify environmental information with local jurisdiction.
 Metro Flood Hazards: **A** **Areas of 100-year flood; base flood elevations and flood hazard factors not determined**
 Metro Wetlands:
FEMA Flood Hazard Zones Note: Some parcels may extend onto adjacent FIRM maps. Registration between parcel boundaries and flood hazard zones is approximate. Community numbers are based on the current city limits and may not reflect boundaries at the date of map publication. Consult FIRM maps or appropriate authority.
 FIRM Map Number: **41039C0639F** Community Number: **415591** Post - FIRM Date: **1985-12-18** Panel Printed? (Y/N): **Y**
 Code: **A** Description: **Areas of 100-year flood, no base flood elevations determined.**
X **Areas determined to be outside of 500-year flood.**
Soils
 Soil Map Unit Number: **96** Soil Type Description: **NEWBERG LOAM** Percentage of Tax Lot: **93**
22 **CAMAS GRAVELLY SANDY LOAM, OCCASIONALLY FLOODED** **7**
Schools
 District: **4J** Name: **EUGENE**
 Elementary School: **507** **COBURG**
 Middle School: **506** **CAL YOUNG**
 High School: **538** **SHELDON**
Service Districts
 LTD Service Area: **Y**
 LTD Ride Source:
 Ambulance District: **WC** Area: **WEST/CENTRAL** Provider: **EUGENE FIRE & EMS**
 Soil Water Conservation District: **LINN SWCD**
 Soil Water Conservation District Zone: **0**
Political Districts
 Election Precinct: **100153**
 County Commissioner District: **5** **EAST**
 County Commissioner: **FAYE STEWART**
 State Representative District: **11**
 State Representative Name: **PHIL BARNHART**
 City Council Ward:
 City Councilor Name:
 State Senate District: **6**
 State Senator: **WILLIAM MORRISETTE**
 LCC Board Zones: **2**
 EWEB Commissioner District:
Lane County Assessor's Office | Account Number: 0041036 | Map & Tax Lot: 16-03-31-40-00200
Property Owner
 Owner1 Name: **MILLER CLIFFORD & CLAUDIA M**
 Owner Address: **31944 COBURG BOTTOM LOOP**

City	State	Country	Zip Code
EUGENE	OREGON	UNITED STATES	97401
Taxpayer			

Taxpayer Name: MILLER CLIFFORD & CLAUDIA M

Taxpayer Address: 31944 COBURG BOTTOM LOOP

City	State	Country	Zip Code
EUGENE	OREGON	UNITED STATES	97401

Property Legal Description

Township: 16	Range: 03	Section: 31	Quarter: 40
Subdivision Type:	Subdivision Name:	Division/Phase:	
Lot/Tract/Unit Number: TL 00200			
Subdivision Number:			
Recording Number:			

Property Value and Taxes

	Land Value	Improvement Value	Total Value	
	<u>Real Market</u>	<u>Real Market</u>	<u>Real Market</u>	<u>Assessed</u>
2006	180,865	177,390	358,255	120,611
2005	165,773	130,670	296,443	117,175
2004	138,796	88,070	226,866	109,559
2003	126,120	89,870	215,990	110,792
2002	121,981	87,250	209,231	107,704
2001	101,037	101,450	202,487	112,407
2000	108,452	116,610	225,062	109,209
1999	100,120	88,340	188,460	106,027
1998	92,700	89,230	181,930	93,579
1997	85,050	81,860	166,910	91,519
1996	84,210	86,170	170,380	106,250
1995	73,870	83,660	157,530	101,690
	120,611	0	0	
	<u>Taxable Value</u>	Exemption Amount Regular (EAR)	Frozen Assessed Value (FZNPU)	

Tax Year

Tax (See Explanation of Tax)

2006	1,444.28
2005	1,362.39
2004	1,065.10
2003	1,073.73
2002	1,044.61
2001	1,033.19
2000	1,152.75
1999	1,004.58
1998	925.15
1997	939.17
1996	976.73
1995	963.65

Explanation of Tax

The tax shown is the amount certified in October, unless a value change has been processed on the property. Value changes typically occur as a result of appeals, clerical errors and omitted property. The owner either initiates the change, as in the case of appeals, or is notified by the department, in the case of clerical errors and omitted property. The amount shown is the full amount of tax for the year indicated and does not include any discounts offered, payments made, interest owing, or previous years owing.

Account Status

- ☒ Active for the 2006 Tax Year
- ☐ New Account Scheduled to be Active for the 2007 Tax Year

- ☒ Locally Assessed
- ☐ Pending Seg/Merge
- ☐ Pending Value Change
- ☐ Delinquency
- ☐ Delayed Foreclosure
- ☐ Bankruptcy
- ☐ Code Split Indicator

Remarks:

Potential Additional Tax

Special Assessment Program (if applicable)

Code:

ZFARM

Description:

ZONED FARM

General Information

Property Class:	551	FARM, EFU, IMPROVED
Statistical Class:	130	CLASS 3 SINGLE FAMILY HOME
Neighborhood Code:	60161	
Property Use Type:	502	
Account Type:	RP	
Category:	LAND AND IMPROVEMENTS	
Mortgage Company Name:		
Total Acreage for this Account:	11.96	
Fire Acres:		

Current Year Tax Code Area (Levy Code): 00438 Lane County Assessment and Taxation 2006-2007 Billing Rates

COBURG RURAL FIRE PROTECTION DISTRICT

EMERALD PEOPLES UTILITY DISTRICT

EUGENE SCHOOL DISTRICT 4J

LANE COMMUNITY COLLEGE

LANE COUNTY

LANE EDUCATION SERVICE DISTRICT

Sales Information

Sales Date:	Sales Price:	Grantor:	Grantee:	Instrument #:	<u>Analysis Code:</u>	Mult Acct?:
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Manufactured Structures

Building 1 Characteristics

<u>Account:</u>	0041036	Map & Tax Lot:	16-03-31-40-00200
<u>Inspection Date:</u>	03-26-1992	Roofstyle:	GABLE
Building Type:	31 STAT 130	Roof Cover:	COMP SHINGLE MEDIUM
Class:	3	Heating:	
<u>Year Built:</u>	1939	Exterior Wall:	T 111 PLYWOOD
<u>Effect Year Built:</u>	1960	Depreciation:	23
			Bedrooms: 4
			Full Baths: 2
			Half Baths:
			Fireplaces: NO
			Percent Improv. Complete: 100

<u>Floor</u>	<u>Base Area</u>	<u>Finished Area</u>	<u>Parking Area</u>
Basement:		Bsmt Gar sqft:	
First:	1976	1976 Att Gar sqft:	540
Second:		Att Port sqft:	
Attic:		Det Gar sqft:	
		Driveway Sqft:	1000
TOTAL	1976	1976 Paved Patio Sqft:	

[Search Results](#) | [New Property Search](#) | [Applications Menu](#)

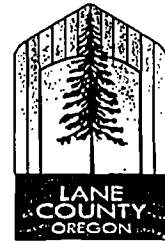
ATTACHMENT 13

**(FINAL DECISION OF LANE COUNTY,
OREGON)**

Land Use Compatibility Statement

PA 07-5965

This form documents the compatibility of the proposed use with statewide planning goals and the local comprehensive plan (ORS 192.180).



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

Property Owner/Applicant: Clifford & Claudia Miller
Applicant's Representative: Paul Vaughn, Hershner Hunter LLP
Location: 31944 Coburg Bottom Loop
Assessor's Map: 16-03-31-40 #200
Acreage: 11+ acres
Base Zone: Exclusive Farm Use, E30
Comprehensive Plan: Lane County Rural Comprehensive Plan (/RCP)

Project: Request for Review of a proposal to divide an 11-acre parcel into three parcels and place a dwelling on the two vacant parcels within the Exclusive Farm Use Zone.

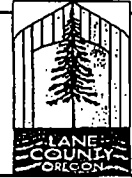
City / County Planning Department Affidavit (to be completed by local planning official):
Please check below the one that applies:

- ☐ This project is not regulated by the local comprehensive plan and zoning ordinance.
- ☐ This proposal has been reviewed and is consistent with the local comprehensive plan and zoning ordinance, LC 16.221(1)(bb).
- ☒ This project has been reviewed and is not consistent with the local comprehensive plan and zoning ordinance. (Cite appropriate plan policies, ordinance section, and case numbers) PA 07-5967 & PA 07-5968
- ☐ Consistency of this project with the local planning ordinance cannot be determined until the following local approval(s) are obtained:
- ☐ Conditional Use Permit(s): _____
 - ☐ Development Permit(s): _____
 - ☐ Plan Amendment: _____
 - ☐ Zone Change: _____
 - ☐ Other: _____
- An application ☐ has ☐ has not been made for local approvals checked above.

Signature of local planning official:

Thom Lanfear
Thom Lanfear - Associate Planner - Lane County

6-27-07
Date



LAND MANAGEMENT DIVISION

LAND USE APPLICATION
Land Use Compatibility Statement

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401 Planning: 682-3807

For Office Use Only: FILE # 9

CODE: ALUC

FEE:

Applicant (print name): Clifford Miller and Claudia Miller
Mailing address: 31944 Coburg Bottom Loop Road
Phone: (541) 345-0009

Applicant's Agent: Paul Vaughan, Hershner Hunter LLP, 180 East 11th Avenue, Eugene, OR 97401
Phone: (541) 686-8511 Fax: (541) 344-2025
Email: pvaughan@hershnerhunter.com

PROPERTY LOCATION

16-03-31-40	200			
Township	Range	Section	Taxlot	Subdivision/partition lot/parcel block

31944 Coburg Bottom Loop Road, Eugene, OR 97408
Site address

Attached is a detailed property information report on the above reference property obtained from the Lane County Regional Land Information Database (RLID). According to the report, the property contains 11.16 acres. However, the Applicants believe that the true acreage is 11.96 acres. The property is zoned E30. According to RLID, 93% of the property contains Newberg Loam soil, a Class II high value soil. There is an existing dwelling on the property.

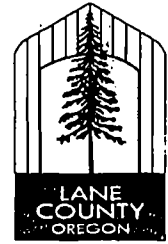
The Applicants would like to partition their property into three parcels for the development of a dwelling on each of the two newly created parcels. The Applicants require a Land Use Compatibility Statement which they will then be able to provide to state agencies, such as the DEQ, OWRD and DSL for such things as well permits, septic permits and possible wetland fill permits needed in connection with their proposed development. Please apply the county land use regulations applicable to the Applicants' property and provide verification that they are entitled to partition their property into three parcels for the development of a dwelling on each of the two newly created parcels, each of which parcels may be conveyed separately from the parcel on which the existing dwelling is located.

SIGNATURES:

Applicant: See attached.

Applicant's Agent: Paul V. Vaughan Hershner Hunter LLP

**NOTICE OF PENDING LAND USE DECISION
BY THE LANE COUNTY PLANNING DIRECTOR**



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

File:	PA 07-5967 & PA 07-5968
Report Date:	June 27, 2007
Property Owner/Applicant:	Clifford & Claudia Miller
Applicant's Representative:	Paul Vaughn, Hershner Hunter LLP
Location:	31944 Coburg Bottom Loop
Assessor's Map:	16-03-31-40 #200
Acreage:	11+ acres
Base Zone:	Exclusive Farm Use, E30
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff Planner:	Thom Lanfear, 541/682-4054

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for **Denial** of the applications by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information, and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: Request for Planning Director Review of a proposal to divide an 11-acre parcel into three parcels (PA 07-5968) and place a dwelling on the two vacant parcels (PA 07-5967) within the Exclusive Farm Use Zone pursuant to Lane Code (LC)13.050(2), LC 16.212(9), LC 16.212(5) and LC 16.212(6).

Enclosed is a map of the subject property and surrounding properties.

The proposed use(s) that could be authorized by approval of the land use application: division of one parcel into three parcels and the placement of a dwelling on the two new vacant parcels.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact **Thom Lanfear** and the telephone number where more information can be obtained is **541/682-4054**.

This decision will become final at 5 P.M. on July 9, 2007 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision.**

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: Thom Lanfear
Thom Lanfear, Associate Planner

Date: 6-27-07

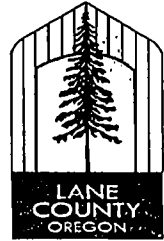
Authorized by: Matt Laird
Matt Laird, Principal Planner

Date: 06/27/07

PLANNING DIRECTOR LAND USE DECISION

Staff Report

File: PA 07-5967 & PA 07-5968
Report Date: June 27, 2007
Property Owner/Applicant: Clifford & Claudia Miller
Applicant's Representative: Paul Vaughn, Hershner Hunter LLP
Location: 31944 Coburg Bottom Loop
Assessor's Map: 16-03-31-40 #200
Acreage: 11+ acres
Base Zone: Exclusive Farm Use, E30
Comprehensive Plan: Lane County Rural Comprehensive Plan (/RCP)
Staff Planner: Thom Lanfear, 541/682-4054



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

I. PROPOSAL

Request for Planning Director Review of a proposal to divide an 11-acre parcel into three parcels (PA 07-5968) and place a dwelling on the two vacant parcels (PA 07-5967) within the Exclusive Farm Use Zone pursuant to Lane Code (LC)13.050(2), LC 16.212(9), LC 16.212(5) and LC 16.212(6).

II. BACKGROUND INFORMATION

On June 25, 2007, the above application was submitted to the Lane County Land Management Division. The application was reviewed and accepted as complete on June 26, 2007.

III. PROJECT DESCRIPTION

The subject tract is approximately 11.96 acres in size and is bounded on the north by Coburg Bottom Loop Road. The property is designated Agriculture in the Lane County Rural Comprehensive Plan, and is zoned Exclusive Farm Use, E30, consistent with the designation. The property is currently developed with one residence at 31944 Coburg Bottom Loop. The applicant proposes to divide the parcel into three parcels and develop a residence on each of the new vacant parcels.

IV. APPROVAL CRITERIA & FINDINGS OF FACT

The partition request is being evaluated for consistency with the criteria found in Lane Code (LC) 13.050(2), and LC 16.212(9). The dwellings request is being evaluated for consistency with the criteria found in Lane Code 16.212(5) & (6). The approval criteria are in boldface type, followed by the Findings of Fact.

A. LAND DIVISION

The land division request is subject to LC 13.050(2) and LC 16.212 area standards.

LC 13.050(2): Conformity with Zoning. All divisions shall comply with the specifications of the applicable zoning requirements in Lane Code, including uses of land, area and dimension requirements, space for off street parking landscaping and other requirements as may be set forth.

Review of the proposal for consistency with the area requirements of the Exclusive Farm Use Zone occurs below. It is found below that the proposal does not conform to any provision of the zone to allow the division of the 11-acre subject property into three parcels.

LC 16.212(9) Area. Land within the Exclusive Farm Use District shall be designated as E-25, E-30, E-40 or E-60, consistently with Agricultural Lands Policy #10 of the Lane County Rural Comprehensive Plan. The creation of a lot or parcel shall comply with the requirements in LC Chapter 13 for the submittal and approval of tentative plans and plats and with LC 16.212(9)(a) through (l) below.

The provisions of Lane Code 16.212(9)(a) through (l) to divide land within the Exclusive Farm Use Zone are summarized below. The provisions are attached in their entirety as Exhibit "A".

Finding #1

The provisions of Lane Code 16.212(9)(a) require a minimum area of 30 acres within each parcel in the E-30 Zone. The subject property is zoned E-30 and is only 11 acres in size. There is inadequate acreage to create any additional parcels that meet the 30-acre minimum land division requirement of Lane Code 16.212(9)(a).

Finding #2

The provisions of Lane Code 16.212(9)(b) are applicable for the division of land down to 20 acres for horticultural specialties, berries and grapes. The 11-acre subject property does not contain enough acreage to create any new parcels that meet the 20-acre requirement of Lane Code 16.212(9)(b).

Finding #3

The provisions of Lane Code 16.212(9)(c) are applicable to the division of land for development of a non-farm use allowed by Lane Code 16.212(4). Approval of the partition cannot be granted under this provision because the applicant's proposal to divide the property into three parcels, each with a residence, is not a development that is identified in Lane Code 16.212(4), attached as Exhibit "A".

Finding #4

The provisions of Lane Code 16.212(9)(d) are applicable to the division of land west of the summit of the Coast Range. Approval of the partition cannot be granted under this provision because the subject property is located near the city of Coburg, east of the summit of the Coast Range.

Finding #5

The provisions of Lane Code 16.212(9)(e) are applicable to the division of land east of the summit of the Coast Range for non-farm dwellings provided that the parcels are composed of at least 90 percent Class VI through VIII soils [LC16.212(9)(e)(iv)(bb)]. Approval of the partition cannot be granted under this provision because 93% of the subject property is comprised of Class II soil, Newberg Loam.

Finding #6

The provisions of Lane Code 16.212(9)(f) are applicable to the division of land east of the summit of the Coast Range for non-farm dwellings provided that the parcels are not smaller than 20 acres [LC16.212(9)(f)(ii)(ee)]. Approval of the partition cannot be granted under this provision because the 11-acre subject property is not large enough for any additional parcels to meet the 20-acre minimum acreage requirement.

Finding #7

The provisions of Lane Code 16.212(9)(i) are applicable to the division of land for a historic structure. Approval of the partition cannot be granted under this provision because the subject property does not contain any historic structure that meets the requirements of Lane Code 16.212(5)(e), i.e. currently listed on the National Register of Historic Places.

Finding #8

The provisions of Lane Code 16.212(9)(j) are applicable to the division of land to create a parcel with an existing dwelling to be used as a residential home. Approval of the partition cannot be granted under this provision because the applicant does not propose to develop a residential home.

Finding #9

The provisions of Lane Code 16.212(9)(k) are applicable to the division of land for the purposes of establishing a church. Approval of the partition cannot be granted under this provision because the applicant does not propose to develop a church.

Finding #10

The provisions of Lane Code 16.212(9)(l) are applicable to the division of land for the purposes of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels. Approval of the partition cannot be granted under this provision because the applicant does not propose to divide the property to allow the purchase of one of the parcels by a provider of public parks or open space, or a not-for-profit land conservation organization.

B. DWELLINGS

Ninety-three percent (93%) of the 11-acre subject property is comprised of Class II Newberg loam soil which is a soil type identified as High Value Farm Land by Lane Code 16.212(2)(e)(ii). The dwellings proposal is subject to the provisions contained within LC 16.212(5) & (6). It is found below that the proposal does not conform to any provision of the zone to allow the placement of additional dwellings on the 11-acre subject property.

LC 16.212(5) Allowable Residential Uses On High Value Farmland or Land That Is Not High Value Farmland. The provisions of Lane Code 16.212(5)(a) through (d) to place dwellings within the Exclusive Farm Use Zone are summarized below. The provisions are attached in their entirety as Exhibit "A".

Finding #11

The provisions of Lane Code 16.212(5)(a) are applicable to the replacement of an existing dwelling. The applicant does not propose to replace an existing dwelling on the property.

Finding #12

The provisions of Lane Code 16.212(5)(b) are also applicable to the replacement of an existing dwelling. The applicant does not propose to replace an existing dwelling on the property.

Finding #13

The provisions of Lane Code 16.212(5)(c) are applicable to the placement of an additional dwelling on the subject property for use by a family member to assist in the operation of a commercial farming operation on the same lot as the farm operator. The subject property is developed with one existing residence. The current owner does not conduct any farming activity on the subject property. Approximately 5 acres is leased for the production of grass seed and two acres are used for grazing sheep owned by a friend. Approval of a dwelling under this provision cannot be granted because there is no existing commercial farming operation being conducted on the subject property by the owner.

Finding #14

The provisions of Lane Code 16.212(5)(d) are applicable to the placement of a temporary manufactured dwelling for use by a family member with a medical hardship. The applicant does not propose to place an additional dwelling for the term of a hardship.

LC 16.212(6) Allowable Residential Uses On High Value Farmland. The provisions of Lane Code 16.212(6)(a) through (f) to place dwellings within the Exclusive Farm Use Zone are summarized below. The provisions are attached in their entirety as Exhibit "A".

Finding #15

The provisions of Lane Code 16.212(6)(a) are applicable to the placement of a dwelling customarily provided in conjunction with farm use on a property that is currently employed for farm use that produced at least \$80,000 in gross annual farm income in the last 2 years or 3 of the last 5 years. Five (5) acres of the 11-acre subject property is leased to a farmer who produces grass seed on the property. The gross annual income produced is less than \$80,000.

This level of income does not qualify either of the two proposed new parcels for a dwelling under this provision.

Finding #16

The provisions of Lane Code 16.212(6)(b) are applicable to the placement of an accessory dwelling for farm help on the same parcel as the primary dwelling. The applicant proposes to place a separate dwelling on each of the two proposed parcels reviewed under PA 07-5968. The new vacant parcels do not qualify for a dwelling under this provision because the new dwellings would not be located on the same parcel as another dwelling.

Finding #17

The provisions of Lane Code 16.212(6)(c) are applicable to the placement of a dwelling not provided in conjunction with farm use. The subject property is comprised of 93% Newberg Loam, a Class II soil. The subject property does not qualify for dwellings under this provision because Lane Code 16.212(c)(ii) limits approval to properties comprised of predominately Class IV to VIII soils.

Finding #18

The provisions of Lane Code 16.212(6)(d) are applicable to the placement of a dwelling not provided in conjunction with farm use on land located west of the summit of the Coast Range. The subject property does not qualify for a dwelling under this provision because it is located in the Willamette Valley, near the City of Coburg, east of the summit of the Coast Range.

Finding #19

The provisions of Lane Code 16.212(6)(e) are applicable to the placement of a dwelling in conjunction with a commercial dairy farm. The subject property does not qualify for a dwelling under this provision because it is not currently operated as a commercial dairy farm.

Finding #20

The provisions of Lane Code 16.212(6)(f) are applicable to the placement of a dwelling customarily provided in conjunction with farm use on a property. Approval for dwellings for the 11-acre subject property cannot be granted under this provision because Lane Code 16.212(6)(f)(iii)(bb) requires the subject property to be 30 acres within the E-30 Zone.

V. CONCLUSIONS

- A. Based upon the above findings of fact, the subject property does not qualify under any of the land division provisions of Lane Code 16.212(9)(a) through (l) to divide the 11-acre subject property into three parcels within the Exclusive Farm Use Zone. **The request for a land division is denied.**
- B. Based upon the above findings of fact, the subject property does not qualify under any of the dwelling provisions of Lane Code 16.212(5) or (6) to place dwellings on two newly created parcels within the Exclusive Farm Use Zone. **The request for dwellings is denied.**

FOR ASSESSMENT
AND TAXATION
ONLY

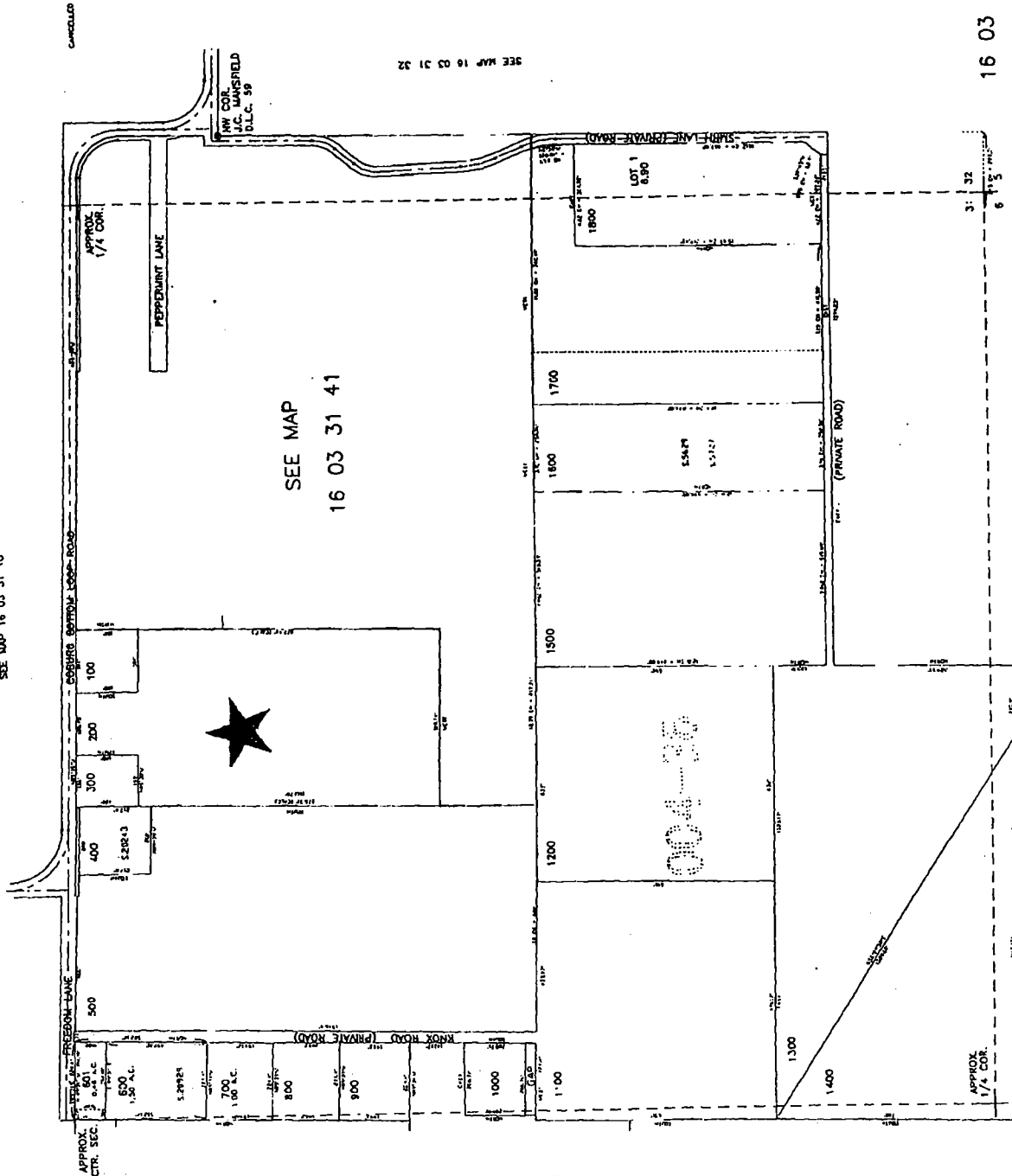
SE1/4 SECTION 31 T.16S. R.3W. W.M.
LANE COUNTY
SCALE 1" = 200'

16 03 31 40

NAD 83/91

NO.	SECTION	TOWNSHIP	RANGE	W.M.
1	31	16S	3W	W.M.
2	32	16S	3W	W.M.
3	33	16S	3W	W.M.
4	34	16S	3W	W.M.
5	35	16S	3W	W.M.
6	36	16S	3W	W.M.
7	37	16S	3W	W.M.
8	38	16S	3W	W.M.
9	39	16S	3W	W.M.
10	40	16S	3W	W.M.

SEE MAP 16 03 31 10



SEE MAP 16 03 31

SEE MAP 16 03 31 32

SEE MAP
16 03 31 41

SEE MAP 17 03 06

16 03 31 40

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

16.212 Exclusive Farm Use Zone (E-RCP).

(1) Purpose. The purposes of the Exclusive Farm Use (E-RCP) Zone are:

(a) To preserve open land for agricultural use as an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to the people of Lane County and the state of Oregon, whether living in rural, urban, or metropolitan areas;

(b) To preserve the maximum amount of the limited supply of agricultural land in large blocks in order to conserve Lane County's economic resources and to maintain the agricultural economy of Lane County and the state of Oregon for the assurance of adequate, healthful and nutritious food for the people of Lane County, the state of Oregon, and the nation;

(c) To substantially limit the expansion of urban development into rural areas because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion;

(d) To provide incentives for owners of rural lands to hold such lands in the exclusive farm use zone because of the substantial limits placed on the use of these lands and the importance of these lands to the public; and

(e) To identify and protect high value farm land in compliance with OAR 660 Division 33.

(2) Definitions. Except as otherwise provided in LC 16.212(2) below, the definitions in LC 16.090 shall be used for LC 16.212.

(a) Contiguous. "Contiguous" means connected in such a manner as to form a single block of land.

(b) Date of Creation and Existence. When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. "Reconfigured" means any change in the boundary of the lot, parcel or tract.

(c) Dwelling. "Dwelling" means a "Dwelling, Single-Family" as defined by LC 16.090 and may include a manufactured dwelling. "Manufactured dwelling" and "manufactured home" shall have the meaning set forth in ORS 446.003(26).

(d) Farm Unit. "Farm Unit" means the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use as defined in LC 16.090.

(e) High Value Farm Land. "High value farmland" means land in a tract composed predominantly of soils that are:

(i) Irrigated and classified prime, unique, Class I or II; or

(ii) Not irrigated and classified prime, unique, Class I or II.

(iii) That portion of Lane County lying east of the summit of the Coast Range including tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in LC 16.212(2)(e)(i) and (ii) above and the following soils:

(aa) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell, Carlton, Cascade, Chehalem, Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hullt, Jory, Kinton, Latourell, Laurelwood, Melbourne,

Multnomah, Nekia, Powell, Price, Quatama, Salkum, Santiam, Saum, Sawtell, Silverton, Veneta, Willakenzie, Woodburn and Yamhill;

(bb) Subclassification IIIw, specifically, Concord, Conser, Cornelius, Variant, Dayton (thick surface) and Sifton (occasionally flooded);

(cc) Subclassification IVe, specifically, Bellpine Silty Clay Loam, Carlton, Cornelius, Jory, Kinton, Latourell, Laurelwood, Powell, Quatama, Springwater, Willakenzie and Yamhill; and

(dd) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Natroy, Noti and Whiteson.

(iv) In addition to that land described in LC 16.212(2)(e)(i), (ii) and (iv) above, high value farmland, if west of the summit of the Coast Range and used in conjunction with a dairy operation on January 1, 1993, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection 16.212(2)(e)(i) through (ii) above and the following soils:

(aa) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;

(bb) Subclassification IIIw, specifically, Brennar and Chitwood;

(cc) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and

(dd) Subclassification IVw, specifically, Coquille.

(v) In addition to that land described in LC 16.212(2)(e)(i) through (ii) above, high value farmland includes tracts located west of U.S. Highway 101 composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in LC 16.212(2)(e)(i) through (ii) above and the following soils:

(aa) Subclassification IIIw, specifically, Ettersburg Silt Loam and Croftland Silty Clay Loam;

(bb) Subclassification IIIe, specifically, Klooqueth Silty Clay Loam and Winchuck Silt Loam; and

(cc) Subclassification IVw, specifically, Huffling Silty Clay Loam.

(vi) Lands designated and zoned by Lane County as Marginal Lands according to the criteria in ORS 215.247 (1991) are excepted from this definition of "high value farmland."

(f) Irrigated. "Irrigated" means watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is 'irrigated' if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. An area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.

(g) Tract. "Tract" means one or more contiguous lots or parcels in the same ownership.

(3) Permitted Uses. In the E-RCP Zone, the following uses and activities are allowed without notice and the opportunity for appeal subject to compliance with the general provisions and exceptions set forth by this chapter. A determination by the director for whether or not a use fits within the classification of uses listed in LC 16.212(3) below may constitute a "permit" as defined by ORS 215.402(4), "...discretionary approval of a proposed development of land..." For such a

operations in the local agricultural area, including the sale of retail incidental items and fee based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25% of the total annual sales of the farm stands; and

(ii) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(r) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonable be necessary. Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the buildings or facility pre-existed the use approved under this subsection. The site shall not include an aggregate surface or hard surface unless the surface preexisted the use approved under this subsection. As used in this subsection, "model aircraft" means a small version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.

(s) The breeding, kenneling and training of greyhounds for racing subject to compliance with the following requirements:

(i) New uses described in LC 16.212(3)(s) above are not permitted on high value farm land;

(ii) Lawfully existing uses described in LC 16.212(3)(s) above that are wholly within the Exclusive Farm Use zone may be expanded on the same tract; and

(iii) Notwithstanding LC 16.212(3)(s)(i) above, lawfully existing facilities described in LC 16.212(3)(s) above that are located on high value farmland may be maintained, enhanced or expanded on the same tract if the existing facilities are wholly located in the Exclusive Farm Use (E-RCP) zone and comply with the general provisions and requirements of LC Chapter 16.

(t) Fire service facilities providing rural fire protection services.

(u) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(v) Utility facility service lines that are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(i) A public right of way;

(ii) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(iii) The property to be served by the utility.

(w) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under LC 16.212(4)(i-i) below.

(4) Special Uses - Director Approval. These uses are allowed after submittal of an application pursuant to LC 14.050 and after review and approval of the application pursuant to LC 14.100 with the options for the Director to elect to conduct a hearing or to provide written notice of the decision and an opportunity for appeal.

(a) Home occupations that comply with these requirements:

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

(ii) Shall employ on the site no more than five full-time or part-time persons;

(iii) Shall be operated substantially in the dwelling, or other buildings normally associated with uses permitted by LC 16.212;

(iv) No structure shall be constructed for the home occupation use that would not otherwise be allowed by LC 16.212;

(v) Shall not unreasonably interfere with uses permitted by LC 16.212 or with existing uses permitted by the zoning of nearby lands;

(vi) LC 16.212(10)(f) through (g) below;

(vii) Shall not be used as a justification for a zone change;

(viii) Shall comply with any additional conditions of approval established by the Approval Authority;

(ix) May include the parking of vehicles if the home occupation is located on high value farm land; and

(x) Approved applications for home occupations shall be valid until December 31 of the year following the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided in LC 16.212(4)(a)(x) below. Prior to December 31 of the year that the approval expires, the property owner or applicant who received initial approval, or a renewal pursuant to this section, shall provide the Director with written request for renewal of the home occupation and written information sufficient to allow the Director to determine if the conditions of approval and other approval criteria have been satisfied. The Director shall review this information for each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a two-year extension of approval to December 31 of the second following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval, or for which a request for renewal is not received pursuant to this section, shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(b) A residential home or facility that complies with these requirements:

(i) Shall be a residential treatment or training or an adult foster home licensed by or under the authority of the Oregon Department of Human Services, as defined in ORS 443.400, under ORS 443.400 through 443.825, a residential facility registered under ORS 443.480 through 443.500 or an adult foster home licensed under ORS 443.705 through 443.825 which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home;

(ii) Shall be located in a lawfully existing residence; and

(iii) LC 16.212(10)(f) through (h) below.

(c) Commercial activities in conjunction with farm use but not including the primary processing of farm crops pursuant to LC 16.212(4)(h) below, that comply with LC 16.212(10)(f) through (g) below.

(d) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities that comply with these requirements:

(i) A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection