RECEIVED
JUL 31 2018
LINN COMMISSIONERS

STAFF REPORT

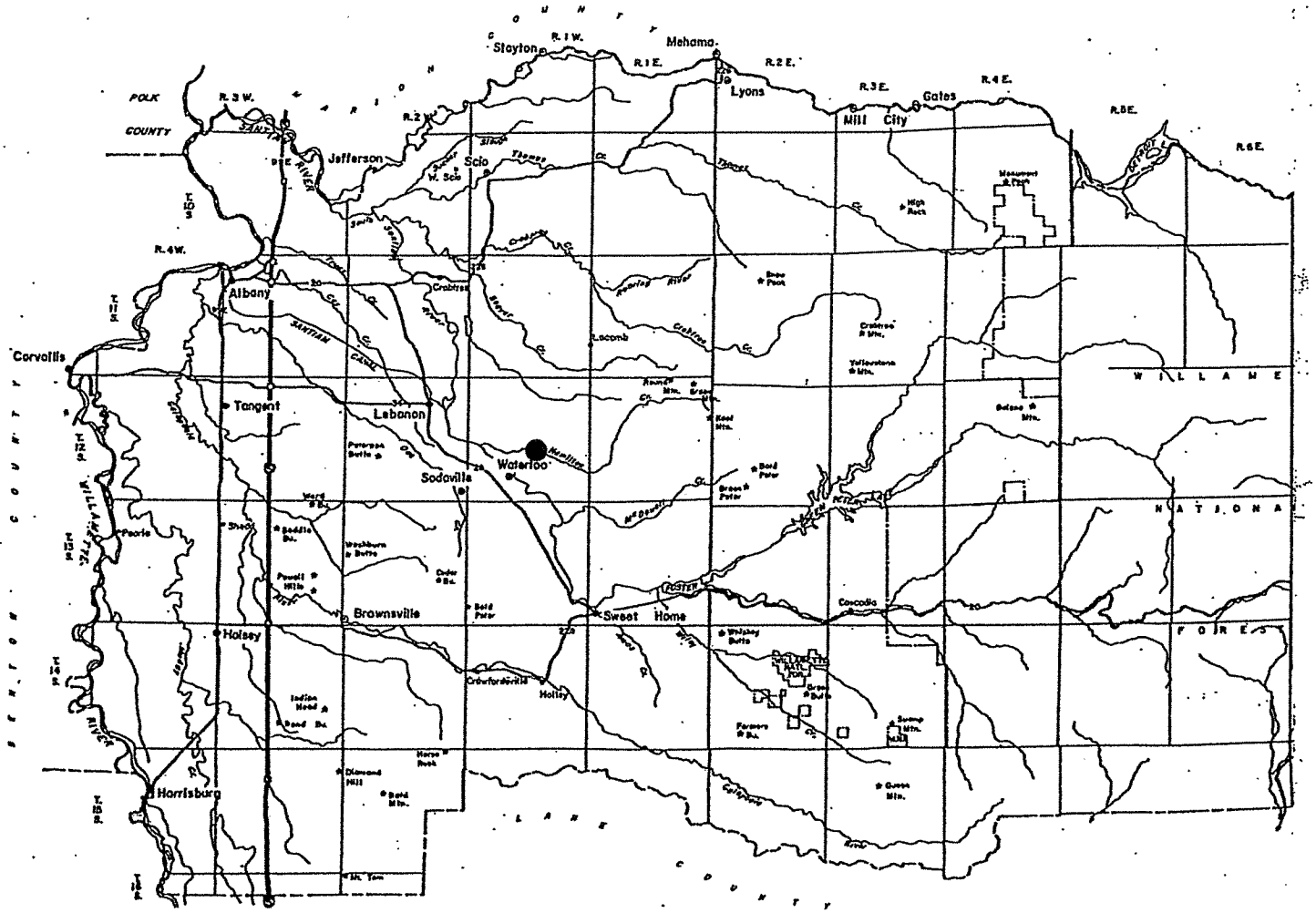
August 7, 2018

TO: Linn County Board of Commissioners

FROM: Linn County Planning and Building Department

PREPARED BY: Alyssa Boles, Senior Planner

RE: **VR18-0001**: An appeal of the Planning and Building Director decision to deny a vesting right to David Hickey that would authorize the development of three home sites on three parcels. The parcels were created through PD06-0203, which was the result of a Measure 37 claim (M37-145-05) approved for David and Gay Hickey Family LLC. The properties are located on the north side of Berlin Road, at the intersection of Berlin Road and Waterloo Road, and approximately 1.27 miles northeast of the city of Waterloo. The properties are described as Tax Lots 105, 112, and 113 on map T12S, R01W, Section 21. Linn County Code Sections 237.150 and 237.160 contain the applicable review criteria:



I. APPLICATION SUMMARY AND BACKGROUND

Before the Board is an appeal of the Planning and Building Director (Director) decision to deny a vesting right to David Hickey that would authorize the development of one home site on each of three parcels. The parcels were created pursuant to partition application PD06-0203, which was the result of a Linn County Measure 37 claim (M37-145-05) approved for David and Gay Hickey Family LLC (Applicant) on March 8, 2006.

The properties are located on the north side of Berlin Road, at the intersection of Berlin Road and Waterloo Road, and approximately 1.27 miles northeast of the city of Waterloo. The properties are identified in Linn County Assessor records as T12S, R01W, Section 21, Tax Lots 105, 112, and 113.

Pursuant to Linn County Code (LCC) 237.300(F), on the basis of the record before the Planning Director and the record submitted to the Board, the Board can affirm, in whole or in part, the decision of the Planning Director or deny, in whole or in part, the decision of the Planning Director.

The Board's vesting rights decision should consider the following application and permit history:

- On October 26, 2005, David and Gay Hickey Family, LLC (Applicant) submitted a Measure 37 (M37) Compensation Claim to Linn County (M37-145-05) for authorization to create four (4) lots and locate one dwelling on each lot. Linn County approved the M37 claim on March 8, 2006 (**Exhibit F**).

- On October 30, 2006 David and Gay Hickey Family, LLC submitted a Measure 37 claim (M130484) to the Oregon Department of Land Conservation and Development (DLCD) (**Exhibit I**).

- On April 5, 2007 the County approved an application (PD06-0203) to partition the property into three parcels (**Exhibit D**). A partition plat was recorded on December 5, 2007 (C.S. 24704).

- On April 23, 2007, DLCD issued a final order denying the Hickey's State Measure 37 claim, stating that the claimant's proposed use of the subject property was prohibited under the laws in effect when the property owner acquired the property.

- On November 6, 2007, Oregon voters approved Ballot Measure 49 (M49). Measure 49 repealed and replaced Measure 37, and nullified development approval on undeveloped Measure 37 claim properties. Pursuant to Measure 49, all Measure 37 waivers were required to be reprocessed by DLCD under the new Measure 49 regulations before they could be recognized as valid claims.

- Available DLCD records indicate that DLCD mailed a Measure 49 election packet to the property owners on March 11, 2008. Available DLCD records indicate that DLCD also sent a letter to the property owners on July 8, 2008 stating that they did not file a Measure 49 claim; therefore, DLCD closed the State Measure 37 claim without any further action (**Exhibit J**).

- On April 27, 2018, David Hickey submitted to the Planning and Building Department (Department) an application for a Measure 49 Vesting Rights Determination (VR18-

0001) (**Exhibit C**), requesting a determination that each of the three subject parcels can be developed for residential use.

- On June 22, 2018, the Department Director (Director) issued a decision denying the vesting rights determination application (**Exhibit B**), finding and concluding that the application does not comply with Linn County Code (LCC) 237.120. The Director denied the vesting right determination because the applicant was not able to provide a copy of a State of Oregon Order granting the applicant relief under Measure 37 for the subject property, as required by LCC 237.120.

- On July 2, 2018, the applicant submitted a notice of intent to appeal the Director decision to the Linn County Board of Commissioners (Board) (**Exhibit A**).

In the notice of intent to appeal, Applicant asserts three errors in the Directors vesting rights determination denial:

- That there are inadequacies in the Director decision,
- That the lack of State action is not relevant to the vesting determination, and
- That the Director decision did not contain an analysis of the vesting criteria, including expenditures for site development.

Applicant in the appeal further argues that:

- The Director decision is based solely on the fact that the applicant did not obtain a Measure 37 waiver from the State of Oregon.
- The decision does not address common law vesting criteria, and
- The decision does not discuss what the applicant asserts are errors made by the State in interpreting Measure 37 with regard to transfers of ownership.

The Director decision is based primarily on non-compliance with LCC 237.120(B). LCC 237.120(B) states:

> *"The Planning Director may not deem an application complete and may not approve an application if the applicant does not submit: (1) the application fee; (2) a Measure 37 waiver issued by the State approving the same property by the same applicant; and (3) all the applicable documentation required by LCC 237.110 or requested by the Planning Director by LCC 237.120(A)."*

As noted above, the Director determined that the vesting application does not comply with Linn County Code (LCC) 237.120. LCC 237.120(B) requires that the Director "may not approve" a vesting right determination if the applicant does not provide a copy of a State of Oregon Order granting the applicant relief under Measure 37 for the subject property.

On April 23, 2007, DLCD issued a final order denying Mr. Hickey's State Measure 37 claim. LCC Chapter 237 requires the applicant of a vesting rights determination to submit a copy of the State of Oregon order granting the applicant relief under Measure 37 for the subject property. Applicant asserts that the lack of State approval is not relevant to the vesting rights determination.

The common law vested right criteria in LCC 237.160 require the decision maker to consider the development costs and type of development improvements for the project approved in

the State and County M37 waivers. Staff cannot determine or verify these costs in the absence of a State Measure 37 waiver that authorized a specific development project.

In his appeal, Applicant includes a list of expenditures that Applicant claims demonstrate compliance with the common law vested right criteria (**Exhibit A, Pages 8-9**). According to the applicant, total qualifying expenditures incurred as part of the proposed residential development total $67,897.00. Applicant estimates the total development cost to be $400,000 to $500,000.

The Vesting Code requires the holder of a Measure 37 waiver to demonstrate that they satisfied the common law vested right criteria in LCC 237.160 **on or before December 6, 2007**. In reviewing the Applicant's stated expenditures, staff noted that a number of the stated expenditures were incurred in August and September 2016, almost nine (9) years after the December 6, 2007 cutoff.

Based on the information provided by Applicant, staff concludes that qualifying expenditures incurred prior to the December 6, 2007 cutoff total $40,427.50. The application states the total development cost of the project to be $450,000. Assuming a total development cost of $450,000, that amount would be approximately 9% of the total estimated development cost.

II. DECISION CRITERIA

Linn County Code (LCC) Sections 237.120, 237.150 and 237.160 contain the applicable decision criteria for this review.

LCC 237.120 – Deeming an application complete

(A) The Planning Director is authorized to determine when the application becomes a completed application and may require additional information beyond that originally submitted if the Planning Director considers it necessary to address the criteria to establish a common law vested right. The applicant is responsible for the completeness and accuracy of all information submitted with the application and all of the supporting documentation.
(B) The Planning Director may not deem an application complete and may not approve an application if the applicant does not submit:
(1) the application fee;
(2) a Measure 37 waiver issued by the State approving the same property by the same applicant; and
(3) all the applicable documentation required by LCC 237.110 or requested by the Planning Director by LCC 237.120(A).
(C) Failure to timely pay the application fee is jurisdictional grounds to not accept the application.
(D) The Planning Director shall exercise best efforts to make a timely decision on when an application is a completed application.
(E) If no comments from persons other than the applicant are received by 5 pm on the 21st calendar day following issuance of notice under LCC 237.130, the record is closed and the approving authority will make a M49 vesting decision on the record as it exists at that time.

LCC 237.150 - Determination of vested rights

(A) In accordance with the process described in LCC 237.100 to 237.200, the Planning Director shall determine vested rights under Oregon Laws, 2007, Chapter 424, Section 5(3) pursuant to the test established by common law as reflected in LCC 237.160.

(B) Basis of determination. The Planning Director must determine and base its M49 vesting decision on:
  (1) whether the applicant's use of the property complies with orders from the State and Board granting Measure 37 relief; and
  (2) whether the applicant has a common law vested right as of December 6, 2007, to complete and continue the use described in the waiver.
(C) The decision of the Planning Director shall contain at least the following elements:
  (1) findings of fact on the question whether the applicant's use complies with orders from the State and Board granting Measure 37 relief; and
  (2) findings of fact on the question whether the applicant has a common law vested right; and
  (3) an analysis of each of the criteria listed in LCC 237.160.

LCC 237.160 - Determination of vested rights

(A) The terms and conditions imposed in a M37 waiver approval resolution shall be considered to determine vesting to the extent that such conditions are not inconsistent with the criteria set forth in paragraphs (1) to (8) of subsection (C) of this section.
  (1) The Planning Director, and the Board on appeal, is authorized to make the determination whether the applicant has substantially complied with the terms and conditions of the M37 waiver resolution and the criteria set forth in paragraphs (1) to (8) of subsection (C) of this section.
  (2) If the holder of the M37 waiver is unable to demonstrate that the holder has substantially satisfied the terms and conditions of the M37 waiver resolution on or before December 6, 2007, the holder shall not be entitled to a common law vesting right.
  (3) If the holder of the M37 waiver is able to demonstrate that the holder has substantially satisfied the terms and conditions of the M37 waiver resolution and the criteria set forth in paragraphs (1) to (8) of subsection (C) of this section on or before December 6, 2007, the holder shall be entitled to a common law vesting right determination.
(B) The determination of common law vesting rights made by the Planning Director or the Board on appellate review shall be based on the criteria set forth in subsection (C) of this section.
(C) In determining whether the applicant has a vested right to continue and complete a use allowed under a Board resolution granting Measure 37 relief, the decision-maker must consider the following factors based on the evidence submitted in the application:
  (1) The amount of money spent on developing the use in relation to the total cost of the project approved in the State and County M37 waivers and whether it was a substantial expenditure.
  (2) The good faith of the property owner.
  (3) Whether the property owner had notice of the proposed change in law before beginning development.
  (4) The type of expenditures, i.e., whether the expenditures have any relation to the completed project or could apply to other various uses of the land;
  (5) The kind of project.
  (6) The location and ultimate cost of the project.
  (7) Whether the owner's acts rise beyond mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.
  (8) Other relevant factors decided by an Oregon appellate court or the State legislature.
(D) This vesting right determination is an issue of fact to be decided on a case-by-case basis.

III. EXHIBITS

A. Letter of appeal
B. Planning and Building Director decision to deny vesting claim
C. Hickey Measure 49 Vesting Rights Application
D. Planning and Building Director decision for partition approval
E. Partition application
F. Linn County Measure 37 approval for David and Gay Hickey, LLC
G. David and Gay Hickey, LLC Measure 37 application
H. Certificate of Notice to parties as described in LCC 237.300(D)(2)
I. State of Oregon Measure 37 Claim M130484 Final Order denying Measure 37 relief
J. DLCD letter to Hickey closing State Measure 37 Claim M130484

Exhibit A

Letter of Appeal

LINN COUNTY PLANNING AND BUILDING DEPARTMENT
Robert Wheeldon, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816 Fax 541-926-2060
www.co.linn.or.us

July 10, 2018

David Hickey
PO Box 401
Lebanon, OR 97355

RE: VR18-0001; an appeal of the denial of a Measure 49 Vesting Rights Determination for three parcels zoned Farm/Forest (F/F) (T12S, R01W, Section 21, Tax lots 105, 112, and 113).

Dear Mr. Hickey:

On July 2, 2018, the Department received your notice of intent to appeal the Planning and Building Director decision denying the above referenced Measure 49 Vesting Rights Determination to the Linn County Board of Commissioners (Board).

A hearing before the Board is scheduled for **August 7, 2018 at 10:00 am.** A staff report will be available one week prior to the hearing. Please contact me at (541) 967-3816 ext. 2360 or aboles@co.linn.or.us if you have any questions.

Sincerely,

Alyssa Boles
Senior Planner

c: Wallace W. Lien, P.C.
County Attorney

WALLACE W. LIEN
A PROFESSIONAL CORPORATION

LINN COUNTY
JUL 02 2018
Planning & Building Department

Wallace W. Lien
Attorney at Law
Contact by e-mail at
wallace.lien@lienlaw.com

June 28, 2018

RECEIVED
JUL - 2 2018
LINN COMMISSIONERS

Linn County Board of Commissioners
Linn County Courthouse
P. O. Box 100
Albany, OR 97321

Re: VR18-0001 - Hickey - Appeal of Staff Decision

Honorable Board of Commissioners:

Please be advised that I represent Mr. and Mrs. Dave Hickey in the matter of their Linn County property development. Enclosed is my client's appeal of a staff decision denying them a vested right to continue their development. Also attached is my client's check for $1,250 for the appeal filing fee.

Please process this appeal in due course and advise me of any upcoming hearing dates. Thank you for your consideration.

Yours truly,

WALLACE W. LIEN, P.C.

By: Wallace W. Lien

Encs: Appeal Justification
Client Check No. 789 for $1,250

cc: David Hickey (w/o encs)
Robert Wheeldon (by email)

Exhibit # A
Page 2 of 29

BEFORE THE BOARD OF COMMISSIONERS
FOR LINN COUNTY, OREGON

In the Matter of the Establishment of a Vested Right to Complete Dwelling Construction on Platted Parcels by:	)	
DAVID AND GAY HICKEY and the DAVID AND GAY HICKEY FAMILY LLC	)	Case No. VR18-0001 (On Appeal from a Staff Decision)
Pursuant to Linn County Approvals on Property identified as Tax Lots 105, 112 and 113 on Map 12S.1W.21	)	

APPELLANT'S STATEMENT SUPPORTING THEIR APPEAL

COMES NOW David and Gay Hickey, by and through their attorney, Wallace W. Lien of Wallace W. Lien, P.C. and presents the following facts and legal argument to support and justify their appeal of the Staff Decision dated June 22, 2018 which denied their application on the sole grounds that a State Measure 37 approval was not obtained.

1. Jurisdiction Over this Appeal

Jurisdiction over this appeal lies with the Linn County Board of Commissioners. This appeal is timely filed, complete in all respects, and includes the payment of $1,250 for the filing fee.

2. Background Facts

David and Gay Hickey purchased Tax Lot 105 on May 28, 1976, which was 21.85 acres in size. Pursuant to their estate plan, they created the David and Gay Hickey Family LLC on December 9, 1996, and deeded the property to the LLC on that date. The deed to the LLC was recorded as Vol 0843, Page 86 on December 23, 1996. David and Gay Hickey are the Trustors, Trustees and Beneficiaries of the Trust. See Record Exhibits 1 and 2.

When the property was purchased, the land use regulations allowed land divisions to a 5 acre minimum lot size, and each such parcel was entitled to have a single family dwelling constructed on it. At some time thereafter the land use regulations were amended to increase the minimum lot size to 80 acres, and to severely restrict the opportunities for dwelling placement.

On October 26, 2005, the Appellants applied for the ability to partition this property (TL105, Map 12S.1W.21) pursuant to the land use waiver process established in Measure 37. The application was assigned Case No. M37-145-05, and was processed in the normal fashion by Linn County.

On March 1, 2006, the Linn County Board of Commissioners unanimously approved the application, and adopted Resolution and Order No. 2006-084 which became effective immediately. This approval was duly recorded in the Linn County Clerk's Records on March 9, 2006 as Document No. 2006-05418 and is a part of the Record here as Exhibit 3.

The waiver adopted by the County Board of Commissioners essentially waived all land use regulations that restricted the partition of the subject property, and the development of non-farm dwelling on each new parcel. The waiver was subject to the following conditions:

1. Approval for septic site evaluations for each proposed parcel prior to submittal of the land division application.

2. Upon completion of the land division process, and compliance with the conditions in Order No. 2006-084, the "resulting parcels will be recognized as authorized units of land that are buildable."

3. The waiver is good for two (2) years. That is to say that the conditions of approval had to be accomplished by March 1, 2008.

4. If the land division is approved and recorded, and septic systems are installed on all approved parcels on or before March 1, 2008, the waiver shall be deemed vested and the parcels shall remain buildable thereafter.

5. Road access permits must be obtained prior to the submission of the land division application.

6. A Covenant shall be recorded against each new parcel prohibiting the owner or successors from filing any claims alleging injury from farm or forest practices in the area.

7. This waiver is effective only for David and Gay Hickey.

8. The final decision in Order No. 2006-084 is the conclusion of all matters related to Measure 37.

9. The validity of Order No. 2006-084 is subject to judicial judgments and legislative enactments.

In 1979, in anticipation of constructing a dwelling on the subject property (then TL105), the Appellants obtained septic site evaluation approval for the subject property in a location that would continue to be the building site for TL105 in the proposed partition to be filed in 2007. This septic site evaluation was approved as site #79-339 on August 29, 1979. See Record Exhibit 6.

On July 26, 2007, prior to the submission of the partition application, the Appellants, through

K&D Engineering, applied for the septic evaluations that were required by Order No. 2006-084(A) for proposed Parcels 1 and 3 (Parcel 2 having already been granted approval in 1979). The new septic site evaluations were approved for both Parcels 1 and 3 on August 14, 2006. See Record Exhibits 8 - 11.

On September 27, 2007, a new community well was dug to serve the three dwellings to be constructed pursuant to the proposed partition plan. The new well was identified as #L 91855 and was constructed and approved immediately thereafter. This well was assigned Well #DR-2157 by the State of Oregon on its Water Supply Well Report (Well Log). This well is a good producer, having a static water level of 21 feet, and the ability to pump 30 gallons a minute. See Record Exhibits 11 - 12.

The Applicant made application for road approach permits for driveway access to Berlin Road for each of the three parcel. Upon further evaluation and discussions with the County Public Works Department it was determined that all three parcels should access from one common access point on the apron located on TL105. That driveway was constructed, and was thereafter inspected and approved by the County. See Record Exhibit 13.

Thereafter, the Applicant applied for a partition of TL105 to create two new parcels of just over 5 acres each. This application, identified as PD06-0203, was approved by the County on April 5, 2007. The approved tentative partition plan was made into the permanent partition plat and submitted. See Record Exhibit 4.

The Partition Plat was then identified as PP No. 2007-118, and was approved by the Board of Commissioners on November 28, 2007, and then recorded in the Linn County Deed Records on December 5, 2007 in Document No. 2007-28072. This plat complied with the tentative plat by creating 2 new parcels, and resulting in Parcel 1 being 5.23 acres, Parcel 2 being 12.09 acres and Parcel 3 being 5.24 acres. All have frontage on Berlin Road, with their northerly boundaries being Hamilton Creek. Exhibit 5.

The three separate parcels created by the partition are now referred to as:

Tax Lot 112, Map 12S.1W.21, which is Parcel 1 on PP 2007-118 and is 5.23 acres.
Tax Lot 105, Map 12S.1W.21, which is Parcel 2 on PP 2007-118 and is 12.09 acres.
Tax Lot 113, Map 12S.1W.21, which is Parcel 3 on PP 2007-118 and is 5.24 acres.

On December 5, 2007, the Appellants caused to be recorded in the Clerk's Records the Covenant required by condition F of Order 2006-084. The Covenant was recorded as Document No. 2007-28056. See Record Exhibit 5A.

3. Compliance with Resolution and Order No. 2006-084

The first analysis in this vesting determination is compliance by the Appellants with all of the approval conditions in Order No. 2006-084. The Appellants assert they have fully complied with

all those conditions, which are addressed below in the order they are set forth in Order No. 2006-084 as follows:

1. Septic site evaluations - On August 29, 1979 the Appellants obtained septic site evaluation approval for TL105. That site evaluation was updated and re-approved in 2016. See Record Exhibit 7. Septic site evaluation was approved for TL112 and TL113 on August 14, 2006. With approved septic site evaluations on all three parcels, this condition has been fully complied with.

2. Recognition as Buildable Parcels - The land division process was complete with the recording of Partition Plat No. 2007-118. In addition, as set forth herein, there was full compliance with all the conditions of Order No. 2006-084. As such, this condition is complied with, and TL105, TL112 and TL113 became recognized as authorized units of land that are buildable.

3. Compliance By March 1, 2008 - The conditions of approval in Order No. 2006-084 were completely fulfilled with the recording of the Partition Plat, and thereafter recording of the required Covenant on December 5, 2007. This condition is complied with.

4. Vesting - The land division was approved and recorded. All that Order No. 2006-084 required with regard to the septic systems was obtaining approval of the septic site evaluations for all three parcels. The Appellants complied with that condition. There was no condition of approval that required the approved septic systems to be actually installed. Given this factor, together with Order condition B, that specifies that once the land division process was complete and the Order otherwise complied with, the newly created parcels would be recognized as authorized units of land that are buildable, the language used in the Order regarding vesting being dependent upon actual construction of the septic systems by March 1, 2008 is superfluous and of no effect on vesting. Also supporting this position is ORS 92.010(3) which provides that a lawfully established unit of land is one that was done using approval from the governmental authority and the partition process in ORS 92.010 et seq. Once the parcels were lawfully created, ORS 92.017 provides that the parcels shall remain lawful discrete parcels of land thereafter. Linn County signed off on Partition Plat 2007-118. This condition is complied with.

5. Road Access Permits - The road access for all three parcels is a common driveway. This driveway was approved by the County and has been installed. This condition is complied with.

6. Covenant - The Covenant was duly and timely recorded against the entire

area that is now encompassed in the three new Tax Lots. This condition is fully complied with.

7. Effectiveness - All applications in this matter, from the Measure 37 application to the Partition application were made in the name of the David and Gay Hickey Family LLC. David and Gay Hickey are the only members of the LLC, and David Hickey is the Managing Member. Under both the Linn County Code and Measure 37, a wholly owned LLC does not act as a transfer that resets the acquisition date. Therefore the David and Gay Hickey Family LLC, is to be treated in the same manner as if David and Gay Hickey still held title to the three Tax Lots in their individual names. This condition is complied with and the application is appropriate in the name of the LLC.

8. Measure 37 Conclusion - This aspect of Order No. 2006-084 is not a condition of approval for the Appellants to comply with, but is rather a statement by the County that all matters related to Measure 37 were then concluded. This condition is complied with.

9. Validity - Again, this is not a condition of approval for the Appellants to comply with, but is rather a disclaimer that future court cases or new legislation may effect the decision. It should be noted that as of December 5, 2007 when the Appellant had fully and completely complied with Order No. 2006-084, Measure 37 was in effect and no court cases had been decided that adversely impacted the implementation of Measure 37. In addition, there had been no legislation to amend or replace Measure 37. Further, Ballot Measure 49, which was a referral to the voters, did not become effective until December 6, 2007, and therefore could have no impact on the vesting of this application. In any event the common law of vesting is the measure of vesting applicable here, and compliance with vesting law is shown below.

The Appellants have fully and completely complied with each and every condition of approval in Order No. 2006-084. Once it is determined that the original Order has been fully complied with, the next review required is an evaluation of the vesting requirements under Oregon law. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

4. Expenditure Evaluation - Vesting Criteria

Pursuant the approval of their land use waiver, and the approval of the partition plan, together with the approval and recording of the final partition plat, the Appellants continued on with the process of developing the lots with single family dwellings. In the course of that construction, the Appellants expended significant sums of money toward the completion of the project. Those

expenses are summarized[1] as follows:

Date	Payee	Activity	Amount	Comment
05/28/1976	Harold E. Waller	Purchase of the property	$16,800.00	As per the deed Is Not a Qualified Expense
2005/2007	K&D Engineering	Engineering, surveying, platting	$13,181.50	As per Nov 14, 2017 Letter Is a Qualified Expense
2016-2017	K&D Engineering	construction supervision	$2,892.50	As per Nov 14, 2017 Letter Is a Qualified Expense
06/12/2007	Knife River	Create the new driveway	$9,767.00	Is a Qualified Expense
09/26/2007	Nugent Well Drilling	Construct new community well	$5,329.00	Is a Qualified Expense
06/26/2007	Performed by the Appellants and their hired help	Land clearing, establishment of three dwelling sites, landscaping	$8,100.00	Is a Qualified Expense
05/30/2007	Linn County	Road approach permit fees	$130.00	Is a Qualified Expense
05/30/2007	Linn County	Permitting Costs for driveway	$3,420.00	As per Invoice Is a Qualified Expense
08/18/2016	Linn County	Application for review of septic on TL105	$350.00	Is a Qualified Expense
08/31/2016	K & D Engineering	Site Evaluation for TL105	$1,100.00	Is a Qualified Expense
08/31/2016	Linn County	Septic permit fees	$960.00	Is a Qualified Expense
08/15/2016	Consumer's Power	Bring electricity to the parcels	$8,110.00	Is a Qualified Expense
08/20/2016	Consumer's Power	Electrical conduits, trenching and backfilling	$2,672.00	Is a Qualified Expense
09/15/2016	Knife River	construct internal roadway system, turn outs and the fire truck turn around	$2,717.00	Is a Qualified Expense
09/15/2016	Knife River	rock and paving of the driveway and internal roads	$4,618.00	Is a Qualified Expense
09/22/2016	Star Water Systems	Upgrade and test the well, install pump, test the water quality	$4,000.00	Is a Qualified Expense

[1] *Receipts and invoices and cancelled checks, to the extent available can be supplied upon request to prove the facts set forth in this table.*

Date	Payee	Activity	Amount	Comment
10/01/2007	Performed by the Appellants and their hired help	Construct the Pump House to protect the well	$500.00	Is a Qualified Expense
09/07/2006	Weatherford Thompson	Attorney fees for M37 case	$119.00	Is Not a Qualified Expense
10/31/2006	Weatherford Thompson	Attorney fees for M37 case	$1,326.60	Is Not a Qualified Expense
04/02/2007	Weatherford Thompson	Attorney fees for M37 case	$52.50	Is Not a Qualified Expense
10/14/2005	Commercial Real Estate Services	Procure info on property for development analysis	$375.00	Weatherford Advance - Invoice No. 55518 - Is not a qualified Expense
10/24/2005	Linn County	Filing Fee for M37 claim	$100.00	Weatherford Advance - Invoice No. 55518 - Is not a qualified Expense
08/21/1976	Linn County	Septic permit fee for TL105	$50.00	Is a Qualified Expense
10/20/2007	Ticor Title	Title Report	$200.00	As per Invoice Is not a Qualified Expense
130/2008	R. D. L. Northwest	Remove commercial timber from the property, clear brush and remove slash	$17,502.50	As per Invoice Is not a qualifying Expense
TOTAL OF ALL EXPENSES INCURRED IN DEVELOPMENT OF THE THREE PARCELS			$104,372.60	
TOTAL QUALIFYING EXPENSES INCURRED			$67,897.00	
TOTAL NON-QUALIFYING EXPENSES INCURRED			$36,475.60	

Appellants, such as Mr. and Mrs. Hickey, who have a valid and approved Measure 37 decision on December 6, 2007, still must seek a vested rights determination under Subsection 5(3) of Measure 49. *DLCD v. Clatsop County*, supra. A vested rights determination under Measures 37/49 must satisfy the criteria for vesting set out in the seminal case of *Clackamas County v. Holmes*, 265 Or 193, 198-99, 508 P2d 190 (1973). That Court created a multi-faceted test to determine if a permit has been vested. That test is a consideration of all of the following factors:

1. The ratio of expenditures incurred to the total cost of the project. In the review of this factor the cost of the land should not be included.

2. The good faith of the property owner, that is whether or not they had notice of any proposed zoning or amendatory zoning before starting his

improvements.

3. The type of expenditures, and whether the expenditures have any relation to the completed project.

4. The kind of development proposed.

5. The location and ultimate cost of the total development.

In reviewing these factors, the actions of the owner needs to rise beyond contemplation or mere preparation such as preliminary negotiations with contractors and architects.

In the *Holmes* case, the property owner spent a total of $33,000 on land improvements such as installing a septic system, drilling a well, planting some landscaping and bringing power to the site. The total estimated cost of that development was between $400,000 and $500,000 dollars. Supra Page 196. This was a ratio of expenses to total development costs of 8.25% - 6.60%.

Applying the *Holmes* factors to this case, shows full compliance with legal standards for vesting as follows:

1. The ratio of expenditures. The standard set in *Holmes* of between 6.6% and 8% is well satisfied in this case. As shown in the above table, the Appellants spent $67,897.00 in qualifying expenses. The total development costs involved here, not counting the cost of the land, is $150,000 per dwelling, for a total development cost of $450,000. This is a ratio of expenses to the total project cost of 15%. Said another way, the Appellants are 15% completed with the three parcel development. The court in *Holmes* found the expenditure of $33,000 to be significant, meaning the expenditure of $67,897 here also has to be considered significant, and the 15% ratio in this case is double that which was approved in *Holmes*.

2. The good faith of the property owner. At the time the Appellants purchased the property, they had the right to partition it to lots with a minimum lot size of 5 acres, and to build a house on each new parcel. The Appellants fully and reasonably believed that they had the right to partition the land and build houses, and they acted on it accordingly in good faith. When Measure 37 came into being, the Appellants did everything required of them to apply for and obtain a Measure 37 approval from Linn County. Upon approval thereof, the Appellants diligently moved forward with compliance with all the conditions of approval in the Measure 37 waiver. They had fully complied with the County approval prior to the effective date of Measure 49, rendering the provisions thereof unnecessary due to their vesting. During the entire process of compliance with the County approval, the Appellants acted in good faith and with County approvals for septic and driveway permits.

3. The type of expenditures. Each and every kind of expenditure relied on here for vesting involved some construction and investment in and on the land itself. The septic system test pits were dug in to the land. The well was drilled into the land. The driveways were cut and filled and rocked on the land. Electricity was trenched in and extended to the building sites. The site clearing and landscaping all occurred on the land.

4. The kind of development proposed. This development is three single family dwellings. Two new parcels of just over 5 acres and the remnant, each proposed for a new house. This land is only suitable for rural residential housing. It is not good farm land, and the attempt at harvesting timber resulted in little more than break even.

5. The location and ultimate cost. As noted above the total cost of the houses and the improvements necessary thereto is $450,000 (not including the land). Very reasonable and in keeping with new dwelling costs in this area. The property is located in rural Linn County on Berlin Road near its intersection with Waterloo Road. The area is a mix of parcel sizes and land uses. The predominate uses along Berlin Road in this area are small tract rural residential dwellings, with some as small as1 acre, and many close to the same 5 acre size as the smaller two parcels owned by the Appellants. Hamilton Creek borders the full length of the northerly boundary of TL 112 and 105. See Record Exhibit 15.

While no single factor is controlling according to the *Holmes* decision, the totality of all the factors in this case point to full vesting in the Appellants by the time Partition Plat 2007-118 was recorded.

Under the law of vesting, once the vesting has occurred it has implemented the approval and can never to be taken away. As such, the Linn County decision in Order No. 2006-084 remains valid and building permits for each of the three parcels should be authorized.

While State law on vesting controls, it is noted that the factors set forth in Linn County Code (LCC) Section 237.160 basically follow the same requirements as stated above from the *Holmes* decision. The County criteria is as follows:

1. The amount of money spent on developing the use in relation to the total cost of the project approved in the M37 waiver. The Holmes standard is between 6% and 8%. The Appellants here are at 15%. This criteria is satisfied.

2. The good faith of the property owner. The Appellants acted at all times in good faith. They were in constant contact with the planning department, and public works in obtaining permits in the development of their lots. This criteria is satisfied.

3. Whether the property owner had notice of the proposed change in the zoning before beginning development. This criteria does not apply in this case as it is a Measure 37 vesting case, and the waiver that was granted determined the change in zoning was such as to grant relief from those restrictions to the Applicant. This criteria is not relevant.

4. Whether the improvements could be used for other uses that are allowed under the law. The work completed on the land was designed specifically for single family dwellings. The power is extended to the three building sites, and that work is useless for anything but the three dwellings. The community well is a domestic well suitable only for dwellings. There are no water rights and no ability to use this well for irrigation. The driveway that ultimately ended up being decided upon by the County is one that is designed for residential uses, and includes paving, which would be torn up for any farm or forest use. The internal roadways from the access to the building sites are specific to the rural residential development and would serve no purpose for any other use. This criteria is satisfied.

5. The kind of use, location and cost of the development. The expenditure of $67,897 represents a significant investment in the development of the land. In the *Holmes* case, it was determined that expending $33,000 against a $500,000 development was sufficient expenditure to warrant vesting. The residential use of the property, located in an area with similar uses, makes sense and is compatible. This criteria is satisfied.

6. Whether the owner's acts rise beyond mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects. The expenses incurred on this development have been segregated into those qualifying expenses that actually involve development of the land. The expenses related to permitting, land acquisition, legal fees, etc have been deemed to be non-qualifying expenses. The Appellants have expended $67,897 in qualifying expenses, and as noted above, that is significant and warrants a vesting determination. This criteria is satisfied.

7. Other relevant factors. The highest and best use of the subject properties is for rural residential dwellings. The land is not suitable for farming or forestry. The presence of Hamilton Creek acts a deterrent to many uses, as it is a wetland, and no ditching or drain tile or any alteration of the natural drainage is allowed on the entirety of the property. See Record Exhibit 14. None of the parcels are on any tax deferral program. Linn County assesses the parcels at fair market value for rural residential use. TL105 is assessed at $168,260, TL112 is assessed at $128,920, and TL113 is assessed at

> $128,920. This is total valuation for the three parcels (21+ acres) of $426,100 (nearly $20,000 per acre), which is fair market value based on rural residential potential and not farm or forest uses which would be lucky to command one-quarter of that value. See Record Exhibits 16-18.

Based on the facts and compliance with all of the required criteria in LCC 237.160, the Appellants have satisfied both state law on vesting, and compliance with the vesting criteria in the County code and therefore vesting should be granted.

5. Lack of State Action Is Not Relevant

One of the unique factors in this situation is that the Appellants had already received its M37 County approval and had done sufficient activity under the vesting rules to have already vested the County approval by the time the State acted on the Appellants' State Claim. To complicate matters further, the State decision recommended denial of the claim on the grounds that the Applicant's lost all rights when they conveyed their property to their newly formed Limited Liability Company in 1996 as part of their estate planning.

Linn County recognized that the transfer was only a technicality and of no real force and effect as it relates to the approval of the waiver because the new Limited Liability Company was owned and controlled solely by the Appellants. There being no transfer of interest to any **third party**, the deed was not deemed relevant and the original acquisition date of the property of 1976 was held. The Appellants' assert the County was legally correct in that interpretation of the law, and the waivers issued in Order 2006-084 were valid and remain so to this day.

Given the truncated effectiveness of Measure 37 there is very little case law to guide interpretation of its provisions. This fact was made even more complicated with the adoption of Measure 49 which was deemed by the courts to have superseded Measure 37, resulting in the dismissal of all appeals of interpretations under Measure 37 as moot.

The following analysis explains why Linn County was correct in its interpretation of Measure 37 in ignoring the deeding of property to a wholly owned and controlled Limited Liability Company, and correspondingly why the State recommendation was incorrect. These arguments were pending before the court when the relevant cases were dismissed because of the adoption of Measure 49.

The legal question involves the effect on "ownership" under ORS 197.352 (Measure 37) status of a wholly owned and controlled Limited Liability Company (LLC). It is the Appellants' position that where an LLC is used by a family for estate or tax planning, it is simply an extension of the family and does not provide a "break in the chain of title" which would reset the waiver date.

An LLC for all practical purposes under Measure 37 is no different from a family trust, which has been determined to be an extension of the family member and does not "break the chain of title" for waiver purposes.

It became well established during the operation and implementation of Measure 37 that a family trust, where it is being used by the family for estate or tax planning purposes is simply an extension of the family and does not "break" the chain of title. A qualified trust is therefore ignored for establishment of the waiver date, and the date selected is the date of acquisition by the family member and not the date the family member transferred the land to the trust.

In order to reach this ultimate conclusion the analysis required three important qualifications to be involved with the trust. The first is that the trust must be "revocable". If a family member can put property into a trust and then revoke the trust and take the property back out, so the logic goes, the ownership designation and control remains dependent upon the family member and is not usurped by the separate trust entity. As long as a trust is "revocable" for all practical purposes it is no different from an ownership standpoint than the family member who deeded the property into the trust in the first place.

The second element is that the family member who contributes the property to the trust (grantor) has also to be the trustor and trustee of the trust. Because the trustor is the one who creates the trust, and the trustee is the one controlling the management of the trust, it makes sense that if this person is the family member, who prior to deeding the property controlled and managed the property, the ownership role of the family member has not changed just the title. Therefore the management and control of the land remains in the family member, and the trust acts as nothing more than an extension of that family member.

The final element necessary for a trust to be ignored for Measure 37 purposes, is that the family member is the beneficiary of the trust. The rents, profits and pecuniary benefit of property ownership in a trust vest in the beneficiary, and if that beneficiary is the family member who contributed the property to the trust in the first place, there again is practically no difference in the legal effect. The family owner retains all the benefit from that property, either directly if they retain the deed, or indirectly if they contribute the property to the trust.

The three elements in a family trust that have been determined to make it such that the trust is considered to be an extension of the family member and therefore not break the chain of title are similarly present in a family LLC.

The first requirement is that the entity be revocable. A family LLC is revocable. Oregon law indicates that an LLC can be terminated at any time. The simple act of filing a document with the Secretary of State can accomplish the termination. Upon revocation, the assets of the LLC are returned to the members of the LLC. As such, an LLC is identical in all respects to a trust. Both are revocable, meaning that the family member using the entity for estate or planning purposes remains in full control of the subject property. In all respects the LLC and trust are identical for revocation purposes. If a trust can be ignored in the chain of title because it is revocable, then so can the LLC.

The second element is the control and management of the property after it is placed in the entity. In a trust it is required that the grantor also be the trustor and trustee. In a family LLC this is exactly the situation that exists. The family member owner of the property creates the LLC,

therefore the role is identical to the trustor who creates the trust. The family member is the managing member of the LLC, which is in all respects the identical role of the trustee in a trust. Where it is considered that a trust is only an extension of the family member because they control the land after it has been put in the trust, the same is true for a managing member of an LLC. They are identical theoretical precepts. If a trust can be ignored in the chain of title because it is managed and controlled by the family member, then so can the LLC.

The third and final element of the trust situation is the requirement that the family member who contributed the property to the trust also be the beneficiary of the trust. This again is the same situation that arises in the LLC, which is owned by its members who gain all the benefit from the land in the LLC. A family member who contributes property to an LLC, and is a member of that LLC, is similarly situated to a beneficiary to a trust. Both are entitled to the ownership rights and benefits from the property. If a trust can be ignored in the chain of title because the beneficiary of the trust is the same as the beneficiary of the trust, then so can the LLC.

In all respects a family owned LLC is the same as a family trust. Both are revocable. Both stay in the management and control of the family member; and in both situations the family member who contributed the property remains the one who will get all the benefit from the property. Both the trust and the LLC are routinely used by families in the State of Oregon for estate and tax planning purposes.

Why then did the State ignore a trust as an extension of the family member for Measure 37 purposes, but disqualified the LLC? That is a question that remains unanswered thanks to the adoption of Measure 49 and dismissal of pending cases that would have resolved this issue. While there certainly are legal differences in creation and operation between the two entities, on the big three elements important to the administration of Measure 37, there are no differences and they should be treated the same. Where an LLC is created and used by a family as its estate and tax planning tool, and provided the family member who contributed the property was placed as the managing member and remains as the beneficiary, then it to is no more than an extension of the family member and should not break the chain of title.

In this case the Appellants first acquired title to the subject property in 1976. The family held the property until 1996 when they elected to use the LLC as an estate planning tool. The Hickey family created the LLC and are the managing members of the LLC. The Appellants then deeded their interests in the subject property to the LLC. Upon creation of this LLC, it was no different than had the family elected to use a family trust to accomplish the same purpose. The LLC was revocable, the Hickey family was still in control of management of the land, and all the benefits of ownership flowed to them.

Appellants specifically seek a determination that the LLC created in this instance would be treated no different from a family trust, and that the waiver date be set at 1976, the date the Hickey family originally purchased the property.

The State has argued that the LLC does not have family members as defined by Measure 37,

therefore the Hickey family who deeded the property to the LLC are not family members of the LLC. Based on this interpretation, it is argued that the Hickey family members are not current owners of the property, and the waiver date must be reset to the date the property was deeded to the LLC.

When interpreting a statute, the first level of analysis is to discern the legislative intent by examining the text and context of the statute. *Portland General Elec. Co. v. Bureau of Labor and Industries*, 317 Or 606, 610 (1993); *Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 61 (2000) (applying the same methodology to statutes adopted through the initiative process). "The best evidence of the voters' intent is the text of the provision itself." *Roseburg School Dist. v. City of Roseburg*, 316 Or 374, 378 (1993). If the intent is clear, further inquiry is unnecessary. *PGE*, 317 Or at 611.

Measure 37 was codified at ORS 197.352. The statute provides that when a public entity enacts or enforces a land use regulation that restricts the use of the private property, reducing its fair market value, then the owner shall be paid just compensation. ORS 197.352(1). There are several exceptions to the general rule, but only one is relevant here. The rule does not apply to land use regulations "[e]nacted prior to the date of acquisition of the property by the owner *or a family member of the owner*." ORS 197.352(3)(E) (emphasis added). In other words, if the owner acquired the property from a "family member," the date of acquisition will be the date the family member first acquired the property and not the date it was later transferred to the present owner.

The term "family member" is defined in Section (11)(A) to include:

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

This expansive definition includes both traditional family relationships between individuals and legal relationships between family members, like family estates and family-owned business entities.

The plain meaning of the text clearly permits a limited liability company to be deemed a "family member" of the owner. Any legal entity owned by the owner or his family members is itself a family member of the owner. For example, if the John Doe Family, LLC transfers real property to the John Doe individually, John Doe is the present owner of the property and the LLC is a "family member" of John Doe because it is a legal entity owned by John Doe and by any one or a combination of his family members. If John Doe applies for compensation under Measure 37, the question will be whether the regulation at issue was enacted before the LLC, rather than John Doe, first acquired the property.

The State seems to be relying upon a hyper-technical reading of ORS 197.352(11) to conclude that when individual family members transfer property into a family-owned LLC, the individuals will not be "family members" of the resulting legal entity because the individual family members would not be a mother, father, brother, etc. of the LLC *as an entity*. Nor would the

individual family member be an estate or a legal entity composed of family members.

Such an interpretation is implausible because it not only confounds the purposes of Measure 37, it defies common sense. *Dept. of Land Conservation and Dev. v. Yamhill County*, 151 Or App 367, 372-73 (1997) ("[T]he linguistic tenability of a proffered interpretation . . . does not make the interpretation 'plausible' if a different interpretation . . . is decisively more consistent with the sense and purpose of the statute.") Family members in the ordinary sense–such as parents, children and in laws–always enjoy parity in their relationships. If John is a family member of Jane, then Jane is necessarily a family member of John. There is no reason to assume that, despite less than precise drafting, the authors of Measure 37 did not intend family-owned entities to enjoy the same parity. *PGE*, 317 Or at 611 (words of common usage should be given their plain, natural and ordinary meaning). Since individuals are more likely to transfer property interests to entities for business or estate planning purposes than to acquire property in a business name and later transfer it to individuals, the narrow construction makes the unique definition of "family member" practically useless. It would mean that family-owned businesses may transfer property to individual family members without giving up Measure 37 protection, but individuals cannot transfer property to their family-owned businesses or estates without giving up their right to compensation.

The State's application of the "family member" provision in Measure 37 to legal entities ignores the inherent limitations in the definition of the term "family member" as it applies in the overall context of Measure 37. This over-simplified explanation is that an LLC cannot have "a family member."[2] The family member provision in Measure 37 is limited to only specific legal entities. Only legal entities owned by the property owner or his family members may be deemed "family members" under Section (11)(A). Indeed, one of the basic concepts behind Measure 37 was to provide relief to families that had held property for extended periods. It is the ownership of the entity that determines its status. It must be owned by people appropriately related to each other and to the entity, ensuring that tacking occurs only if the property stays in the family. Parity of reasoning requires that the same inquiry determine whether an individual is a "family member" of the entity under the statute. If all of the members of John Doe Family, LLC, are parents, children or other "family members" of John Doe, then John Doe must be a family member of the LLC. The property has never passed from family control. *See, e.g., DLCD*, 151 Or App at 374-75 (rejecting the State's similarly narrow construction of "owner" because the general purpose of the statute was to provide relief from regulatory land use restrictions).

The point is also made clear by considering what happens when one legal entity transfers property to another. Suppose that the John Doe Family LLC transfers its interest in property to John Doe Family Partnership. The partners and members are exactly the same, John Doe and his wife. The question is whether the partnership is a "family member" of the LLC, but this time the answer

---

2

It is worth noting that the definition of "family member" is not limited to corporate entities, but includes any legal entity owned by specified family members. Thus, it would include partnerships, trusts and other legal entities that are not corporations, such as LLC's.

is indeterminate under such a narrow construction. The partnership is a legal entity not owned by LLC, but is it owned by "family members" of the LLC? To answer that question, one would have to decide if the partnership is a "family member," which was the very question raised. The narrow construction leads to a circular answer. But if the common sense construction is adopted, the answer is simple. The partnership is a legal entity owned by the Doe family, who are the owners (members) of the LLC. Therefore, the partnership is a "family member" of the LLC under the statute.

The issue presented centers on how the voters intended the "family member" provision in ORS 197.352(3)(E) to apply. ORS 197.352(1) is the operative paragraph in Measure 37. It provides that if a public entity enacts or enforces a land use regulation and has the effect of reducing the fair market value of property, the current owner may demand just compensation. The language of ORS 197.352(1) applies to any land use regulation whether enacted before or after the current owner acquired the property. ORS 197.352(3) lists the land use regulations that are exempt from the compensation claims provided for in ORS 197.352(1). ORS 197.353(3)(E) lists, as one exemption, land use regulations enacted before the owner of the real property or a family member of the owner of the property acquired the property. If a claimant acquires property from an unrelated third party, the claimant's acquisition date is the date they acquired title. Only regulations enacted after that date can be the basis of a claim for compensation. However, if a claimant acquired the property from a family member, they are entitled to use the family member's acquisition date to determine if compensation is due. All regulations enacted after that earlier acquisition date can be the basis of a claim for compensation.

The issues presented in this case require the County to confirm its prior decision that the deeding of the property to a family owned LLC does not require the reset of the acquisition date. In effect this is an interpretation of how the voters intended to apply the term "family member" as defined for purposes of ORS 197.352(3)(E)[3]. The language used in the definition of family member, and adopted by the voters, illustrates at least three significant points about the intent of the voters, all of which confirm the correctness of the prior County decision in Order No. 2006-084.

First, the voters intended to create a broad and expansive definition of family member. A family under ORS 197.352 was not limited to immediate family. To be in a family one does not have to be related by blood. In fact, one does not even have to be a natural person.

Second, the voters intended that the term family member included legal entities owned by members of an extended family; a family member can be an entity owned by any combination of the family members listed in ORS 197.352(3)(E).

Third, when read in context with ORS 197.352(3)(E), the family member definition plainly contemplates that property will be transferred among various family members and that transfers will include transfers involving legal entities owned by family members.

3

See quoted definition of "family member" from ORS 197.352(3)(E) above.

The State's interpretation applies the family member definition out of context and to an unreasonable end. Ignoring any of the context behind ORS 197.352, the State adopts a technical linguistic reading of the definition to conclude that the David and Gay Hickey were not family members of this LLC.

In every family situation, the definition of family member involves parity of relationships. If a husband is a family member of a wife, the wife is also a family member of the husband. There could not be a family member relationship without parity. If, in that case, the husband conveyed property to his wife and the wife in turn conveyed it back to the husband, the family membership chain would not be broken. Both conveyances are between family members.

More importantly, the State's interpretation creates a situation that is not logically possible. It can not be disputed that legal entities were intended to be family members within the context of ORS 197.352. Legal entities owned by an owner of property or a combination of family members (brothers, sisters, parents, uncles, etc.) are expressly included as family members in the definition. Even under its technical interpretation, if an LLC transfers property to a member of the LLC, and the member then filed a claim under ORS 197.352, the member could use the LLC's acquisition date because the LLC, assuming it was still in existence, would be an entity owned by the claimant, who is the owner of the property. However under the State's interpretation, if the same person re-conveyed the same property to the same LLC, and later filed a claim for compensation, the LLC cannot use the individual member's acquisition date because when the claim was filed, the owner was the LLC and, technically, LLC's cannot have family members that are natural persons.

The above example helps illustrate the fundamental flaw in the State's position. In the above example where an entity conveys property to an individual who is an owner of the entity, the transfer would qualify as a transfer from a family member. The property owner would be transferring to an entity the individual owns. It is not apparent why the State failed to acknowledge the fact that an entity can be a family member in such a transaction. It is not possible for an entity to receive property from a family member if the individual is not also considered a family member of the entity. One cannot have a family member relationship with another unless both are considered family members of each other. That is the essence of the term family member. A family is a combination of people related to one another. The State offers no explanation of how a person who receives property from an entity can be a family member of the entity and then lose that status just because they transfer the property back to the same family member entity. Indeed, there is no logical or reasonable explanation.

The State's interpretation is precisely the type of interpretation the court rejected in *DLCD v. Yamhill County*, 151 Or App 367, 948 P2d 730 (1997). The interpretation, while a linguistically tenable interpretation of the statutory language, is not plausible because there is another linguistically supportable interpretation more consistent with the sense and purpose of the statute. A more detailed examination of the decision in *DLCD v. Yamhill County* helps illustrate the weakness of the State's argument here.

In *DLCD v. Yamhill County*, the parties were debating the meaning of the term "owner" in

ORS 215.705, which provides in relevant parts:

> *(1) A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710, 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:*
>
> *(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:*
>
> *(A) Prior to January 1, 1985; or*
>
> *(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.*
>
> *(b) The trace on which the dwelling will be sited does not include a dwelling*
>
> * * * * *
>
> *(d) The lot or parcel on which the dwelling will be sited, if zoned for farm use, is not on that high-value farmland described in ORS 215.710 except as provided in [subsections of the statute that are not material here].*
>
> * * * * *
>
> *(g) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.*
>
> * * * * *
>
> *(6) For purposes of subsection (1)(a) of this section, 'owner' includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members. (emphasis added)*

The county had concluded that the owner of the subject property who acquired it from this father qualified as the present owner and stood in the same position as his father for purposes of siting a dwelling on the property. The DLCD disagreed arguing that the only way the son could be considered the present owner was if he had inherited the property from his father who acquired it prior to 1985. The DLCD argued:

'Present owner' has a clear and unambiguous meaning: the person who currently owns the lot. If that person purchased the lot before January 1, 1985, the present owner qualifies for a lot of record dwelling. ORS 215.705(1)(a)(A). ORS 215.705(1)(a)(B) expands the class of 'present owners' to include the relatives of a deceased owner. This is plain language which must be given its plain meaning. ORS 174.010.

The court rejected DLCD's argument. The court concluded:

> *DLCD's argument is plausible only in a linguistic sense. However, as a linguistic matter, it is at least equally plausible to read "present" as a purely chronological term relating to when the owners must have and have had the necessary association with the property, as distinct from who the owners are. As we indicated in Fechtig v. City of Albany (A97764), 150 Or App 10, 19-20, 946 P2d 280 (1997), and in Steele v. Employment Department, 143 Or App 105, 113, 923 P2d 1252, rev allowed 324 Or 487 (1996), the linguistic tenability of a proffered interpretation of a statutory term does not make the interpretation "plausible" if a different interpretation that is also linguistically supportable is decisively more consistent with the sense and purpose of the statute and its surrounding language. Here, DLCD's interpretation of the term "present owner" is not plausible under that test. (emphasis in text)*

DLCD v. Yamhill County at 372-373.

In interpreting voter passed legislation, courts are instructed against ending their analysis with the text. *Lipscomb v. State Board of Higher Ed.*, 305 Or 472, 485 753 P2d 939 (1988). The court of appeals reiterated that position in *State v. Allison*, 143 Or App 241, 247, 923 P2d 1224 (1996), where the court stated:

> *At the outset, it bears emphasis that in examining the statutory language, we are permitted to rest on a first level textual analysis only if the words will permit a single construction and all other are wholly implausible.*

It is certainly plausible, given the common and universal concept of what constitutes a family relationship, that the voters intended for the people listed in ORS 197.352(11) to be considered family members of an entity they owned. That intent and interpretation would result in a consistent application of the family member definition. Such an interpretation would not result in a consistent application of the family member definition. Such an interpretation would not result in a situation where an entity could transfer property to an individual who was a family member, and have that same person deemed not to be a family member of the same entity. Since another interpretation is plausible, the court can consider information the voters considered prior to the 2004 election. *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551, 560, n. 8, 871 P2d 106 (1994).

When that information is considered, the State should not seriously dispute that one component of ORS 197.352 provided added protection to owners of property that had been retained

within a family setting. The statute was designed to provide relief to owners of property who held the property that would be valuable to the owner but for regulations that had been enacted that restricted the use of the property. The family member provision in ORS 197.352(3)(E) recognizes that real property is often an important asset in a family and a way for relatives to pass on wealth to their members. Moreover, the definition of family member in ORS 197.352(11) expressly recognizes that families use entities to hold real property.

Against that background, an interpretation that individuals and the legal entities they own have a commonly accepted reciprocal family relationship is far more consistent with the sense and purpose of ORS 197.352. It is more plausible that the voters intended the "family member" provision to operate the same in a transaction involving a family-owned entity as it operates in transactions involving individual family members. Again, the focus of the family member provision is on transactions where the property is transferred. If an entity can transfer property to an individual and be considered a family member of the individual, the only logical interpretation the voters could have adopted is that the individual is a family member of the entity. It is simply not possible to have a family where only one member is considered a family member.

Even if an LLC is considered to break the chain of title, that does not mean the waiver date should be advance to the date of transfer of the property to the LLC. An LLC is a qualified family member under ORS 197.352(11)(A) because it is "a legal entity owned by" the property owner or a family member.

Appellants here takes the position that the same date must be used for determination of payment of money and the determination of waiver. The current interpretation creating a two tiered system is contrary to the language of the measure, and common sense. It is further unjust and inequitable to use an alternative remedy (waiver) to defeat an admitted right to just compensation.

Interpretation of a statute enacted through the initiative petition process is no different than interpreting a statute enacted by the Legislature. The interpretive principles of the Oregon Supreme Court's decision in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-612, 859 P2d 1143 (1993), apply. We begin by examining the text and context of the statute itself. *Id.* If the statute remains ambiguous after that examination, we turn to the legislative history and relevant canons of statutory construction. *Id.* However, for a statute enacted by the voters of the state, the relevant legislative history, or voters' intent, is the material available to the voters prior to the election. The intent of the drafter of an initiative measure is not relevant in construction of the text of that measure. *Ecumenical Ministries of Oregon v. Oregon State Lottery Comm.*, 318 Or 551, 559, 871 P2d 106 (1994).

"In interpreting a statute enacted by initiative, we apply standard principles of statutory construction." *Id.* "We attempt to ascertain the intention of the voters, looking first to the text of the measure in its context. If that inquiry does not clearly reveal the voters' intention, we also examine the legislative history and, if necessary, other aids to construction." *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). The courts should apply the same analysis, in most respects, to the construction of an initiated constitutional provision as it applies to

initiated statutes. *PGE*, 317 Or at 612 n 4. In *Roseburg School Dist. v. City of Roseburg*, the Oregon Supreme Court described the method of inquiry:

> "In interpreting a constitutional provision adopted through the initiative process, our task is to discern the intent of the voters. The best evidence of the voters' intent is the text of the provision itself. The context of the language of the ballot measure may also be considered; however, if the intent is clear based on the text and context of the constitutional provision, the court does not look further."

316 Or 374, 378, 851 P2d 595 (1993) (citations and footnotes omitted). In determining the intent of the voters from the text and context of the statute, the Oregon Supreme Court made it clear in *Shilo Inn Portland/205, LLC v. Multnomah County* that:

> "The court * * * will not lightly conclude that the text is so clear that further inquiry is unnecessary. If any doubt remains, the court will consider the history of an initiated or referred constitutional provision in an effort to resolve the matter."

333 Or 101, 112, *recons*, 334 Or 11, 45 P3d 107 (2002)(citing *Ecumenical Ministries*, 318 Or at 559). Courts are only permitted to find that a statute is unambiguous, and therefore rely on "first level" textual analysis only if the text "will permit a single construction and all other possibilities are 'wholly implausible.'" *State v. Allison*, 143 Or App 241, 247, 923 P2d 1224 (1996) (Citing, *Owens v. MVD*, 319 Or 259, 268, 875 P2d 463 (1994)).

One thing most pundits agree upon is that Measure 37 was not a model of clarity. The Act left much to be determined by the courts, and clarity from courts was cut off by the passage of Measure 49, leaving significant interpretations up in the air. The processes within Measure 37 were inconsistent with its substance; its definitions use the defined terms in its own definition; and much of the relief makes no sense; let alone how does this new cause of action fit with existing statutes such as the writs of review to appeal local government decisions. Certainly there can be no question that Measure 37 as written is ambiguous, and that there are more than one plausible construction of the Measure.

Nothing in Measure 37 creates two claim dates, or a two tier system. The two tier system is an interpretation of the law, created by the State to limit the Measure's application. The text of Measure 37 provides a right to just compensation and says nothing about a two-tier "waiver date, compensation date" system:

<u>Section 1</u> - Substantive provision which provides a right to just compensation.

<u>Section 3</u> - Exempts certain regulations.

<u>Section 3E</u> states,
"(3) Subsection (1) of this act shall not apply to land use regulations:
* * *

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

Sections 1 and 3 make no mention of a waiver date or whether the substantive relief afforded by Measure 37 is affected by the "present owner's" acquisition of the property. In fact, Sections 1 and 3 specifically incorporate family ownership into the compensation calculus. Only under a restrictive interpretation of section 8 is relief limited to the time the "present owner" acquired the property. However, that limitation is in direct conflict with all other sections of the Measure.

Therefore, pursuant to the express language of Sections 1 and 3, land use regulations enacted after the family first acquired the property are subject to the Measure and the owner is entitled to just compensation based on the affect of those regulations.

Section 8 provides the government the option of essentially waiving application of the offending regulations, instead of providing just compensation. It states:

"* * * [I]n lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to [sic] apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property."

However, the waiver provisions of Section 8 do not take precedence over the remainder of Measure 37. Section 8 begins by saying "Notwithstanding any other state statute or the availability of funds under subsection 10 * * *". Note that section 8 does not mention other sections of the act. It does not state "notwithstanding" Sections 1, 3 or 10. Therefore the applicability of those other sections continue to apply and take precedence over Section 8. In addition, the applicability of land use regulations enacted after the family first owned the property is also intact. Nothing in Section 8 takes that away.

Section 8 does provide the government an option of either paying compensation or waiving the offending land use regulations. That waiver is "in lieu" of compensation. However, without providing a waiver of regulations that caused the loss in value, and a waiver that equates to what just compensation would have been, a limited waiver does not comply with the text or intent of the Measure.

Section 10 provides, in part, that "[i]f a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property." Here, Section 10 mandates that the offending land use regulations are, in effect, waived if compensation has not been paid within two years of when the claim was filed.

According to the State, out of all that, voters were to have decided, not that the Measure provides relief to property owners in the form of just compensation or waiver, but that Measure 37 would create a two tier system, granting just compensation to all valid claims, but allowing governments to make an "end-run" around the substance of the measure and grant meaningless

waivers. Measure 37, if anything, is ambiguous.

Appellants' construction is equally, if not more plausible than the governments' version, given that the governments' construction leads to the practical result of no relief for a whole class of otherwise valid claims. Therefore this court should find the text of Measure 37 is ambiguous, and move to the next step in the *PGE* analysis.

The State's two tiered approach to relief - or shall we say failure to grant relief - elevates form over substance. Process over the basic rights granted. No law should ever be interpreted in such a way.

It is the Appellants' position that Measure 37, much like many new laws, first contains the grant of a new substantive right. Once that substantive right is established, there follow provisions to carry out that right. Proper interpretation ensures that the process manifests and enables the substance, and does nothing to thwart the right first granted. In Measure 37 the grant of right takes place at the beginning of Act.

Sections 1, 2, and 3 create the new substantive rights afforded by Measure 37. Section 1 makes it clear that "the owner of the property shall be paid just compensation" without qualification. There is no mention of the fact that you might qualify and have a valid claim but yet get no relief. Further, there is no mention of any two tiered system. Section 1 reads as follows:

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

If your Claim qualifies by meeting the basic elements stated in Section 1 you are unequivocally entitled to relief.

Section 2 then defines what constitutes "just compensation" and how it should be calculated. Section 2 provides:

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

Again there is nothing in this substantive language that supports the two tiered approach to eliminating relief in ancestral cases.

The substance of Measure 37 is rounded out with Section 3 where a list of types of things are set forth to determine what activities the Act applies to and which it does not. It is in this Section

3, especially subsection E where the government's interpretation falls apart. The text of Section 3(E) states:

> *(3) Subsection (1) of this act shall not apply to land use regulations:*
>
> "* * * * *
>
> *(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.*

This section makes it clear that the only land use regulations that are subject to a new Measure 37 cause of action are those which were; 1) enacted prior to the date of acquisition of the present owner of the property; or 2) which were enacted prior to the date of acquisition of a family member of the present owner who owned the property before the present owner; or 3) which were enacted prior to the date of inheritance by the present owner. Any of these three circumstances qualifies an owner for relief under the Act, and the government can not pick and choose which date. The Act specifically states that the government must use the earliest of the three dates (i.e. "whichever occurred first").

Beginning then with Section 4 and continuing through the end of the Act are sections dealing with the process of carrying out the substantive rights established in the first 3 sections. As previously stated, this process must be interpreted in such a way as to carry out the purpose and intent of the substantive right, not to eliminate it as is being done by the government. The State's determination to elevate form over substance must fail.

The identified two tiered system is inconsistent with common sense. The State essentially relies on Section 8 for the establishment of the entire two tiered system. When the measure extends the option to the State to waive the oppressive land use regulations its reference is to the "owner", which term is defined as the "present owner", and otherwise to allow the owner to use the property without regard for the after adopted restrictive land use regulations. The State then extrapolates this section to mean that it overrides the substantive rights granted in Section 1. The same word, "owner", is also used in Section 1. What is there about Section 8 that makes the word "owner" apply differently?

The purpose and intent of Measure 37 was to provide relief to long time owners of property and to breathe value back into land that restrictive regulations had choked out. Looking at Section 1 and 3 combined with the definitions of family members in 11(A) seem to indicate a direct purpose to consider ancestry when calculating relief. In the context of the Act, the word owner in Section 8 can be read to mean the present owner, or their ancestors, thereby allowing the waiver to match the payment of money.

The right to this waiver is not qualified by any other operative section in the Act, and neither do the waiver provisions of Section 8 take precedence over the remainder of Measure 37. Section

8 begins by saying "Notwithstanding any other state statute or the availability of funds under subsection 10 * * *." Note that Section 8 does not mention other sections of the Act, such as "notwithstanding" Sections 1, 3, or 10. Therefore the applicability of those other sections continue to apply and take precedence over Section 8.

Where is the basic common sense in having a two tiered system, where the second tier trumps the first and eliminates the possibility of any relief? The inconsistency in first finding that a claim is valid, but then providing no remedy based on a second acquisition date is more than normal common sense can bear. This Act should be interpreted, as Linn County did to make sure that valid claims obtain relief, and the only way to do that is to determine that there is no two tier system. The Act creates a right to relief from oppressive land use regulations and cause a loss in value, for which the government has two options in granting that relief; either provide just compensation, or waive the regulations that caused the loss in value. The State's interpretation of Measure 37 leads to an absurd result; one which is contra to the plain text and context of the Act and which is contra to the intent of the voters. Linn County's decision applies common sense and logic and correctly implements the purpose and intent of Measure 37.

Appellants' believe Section 10 further supports the County's position by providing that where payment in money is ordered to the present owner of the property, but remains unpaid for a period of 2 years, then waiver again kicks in. Read in context with Sections 1, 3 and 8, what Section 10 tells us is that the substantive provisions of Sections 1 and 3 control. Said another way, a valid claim for payment in money in an ancestral case is dependant on the acquisition date of the ancestor, not the present owner. So the ancestral date then is the operative and controlling date. When the money awarded based on the ancestral date is not paid for 2 years, then the waiver happens automatically.

If the government could simply waive back only to the latest date of acquisition, Section 10 would have no meaning, as the State would never award money damages. In every ancestral case the State would simply elect a waiver to avoid providing the claimant with any relief whatsoever. The Act should be interpreted in such a way to recognize the context of the waiver provisions of Section 8 with the substantive provisions of Sections 1, 2 and 3 as well as Sections 10 and 11.

The State interprets the Act in isolation, picking and choosing text that benefit its position and ignoring the remainder. That is not an appropriate method under current text and context interpretative methodology, and should be rejected here in favor of the determinations made by Linn County in Order No. 2006-084. Looking at the entire Act, the ambiguities should be resolved in favor of providing relief, not eliminating it.

It is well settled law in Oregon that, for a voter approved ballot measure, it is the voters' intent, not the drafter's intent that the relevant inquiry. *Ecumenical Ministries v. Oregon State Lottery Comm'n,* 318, Or. At 559 (1994).

Reliance on after-election statements, by the drafter, or anyone else, such as a FAQ page on the drafter's website or statements made by the drafter after the election, provide no insight into the minds of voters when they decided to approve Ballot Measure 37. The primary source for voters'

intent are the statements contained in the voters' pamphlet. Included in the voters' pamphlet are; 1) the text of the proposed ballot measure; 2) the Chief Petitioner's Statement (which states nothing about a two-tiered system), and; 3) arguments for and against the Ballot Measure.

In fact to the extent that after-election comments are relevant to voters' intent, the Chief Petitioner, in a speech regarding this issue said:

> *(P)philosophically we disagree or we believe that a claim of property right and a claim the rights that the - that the owner has should be extinguished upon their death. However from a political - from a political point of view *** we were afraid that we would face the argument that if you go back two generations then you*** would have to allow people to use land in the way that grandpa could have done it when grandpa purchased the property *** We wanted to take that argument away from the opponents of Measure 37,* ***and they ended up making it anyway****** Emphasis supplied. Exhibit D, page 1, lines 15-23 and page 2, lines 1 and 2.

In other words, even the drafter and Chief Petitioner admit that arguments were made during the public debate before the election that match exactly Appellants' interpretation.

The relevant information before the voters prior to the election supports the concept that the conceived two tiered system was not what the voters thought or believed they would get when they approved Measure 37. The two tiered system was not even alluded to in either the Ballot Title or the Explanatory Statement, both important documents in what the voters had in their minds when they cast their ballots.

Everything in the Ballot Title and arguments in the Voters' Pamphlet confirm that the voters' intention was to compensate property owners for any and all decreases in property values resulting from land use restrictions. The Ballot Title of Measure 37 states:

> *RESULT OF "YES" VOTE: "Yes" vote requires that governments pay owners, or forgo enforcement by repealing, changing, not applying restrictions, when certain land use restrictions reduce owners' property value.*

Nowhere is there mention of any mechanism of a two tiered system.

Arguments in the voters' pamphlet consistently argue for "compensation" and the reliance on the value of the property for future income for the family, children and grandchildren. The argument in favor submitted by Leigh Foxall, Oregon Homeowner's Association stated, "Ballot Measure 37 is a family's first and best line of defense for the protection of their property." The argument in favor submitted by Dorothy English stated that "My husband and I purchased or property in 1953. It was our dream to someday divide the property, give some of it to our children and grandchildren, and sell the remainder for our retirement." Another argument in favor submitted by the Josephine County Farm Bureau stated, "No one should be able to use a legal loophole to take away your property without compensation. Especially not government." It is clear from these

arguments that voters were looking for compensation for their family for any restrictions reducing property values.

In summary, the State's decision to reset the acquisition date of Appellants' ownership from their original purchase date in 1976 to 1996 when the LLC was created is not relevant because the Appellants' had already vested the waiver approval granted by Linn County. In addition, the State's interpretation of Measure 37 to disregard a family owned LLC, and to reset the acquisition date based on the deed to the LLC is legally incorrect, and should not be adopted.

6. Inadequacies of the Staff Decision

The Staff Decision is based solely on the fact that the Appellants did not obtain a Measure 37 waiver from the State of Oregon. There is no discussion whatsoever regarding the prior vesting of the partition and dwelling approval before there was a ruling from the State. There is no discussion about the concept of vesting at all under current case law. There is no discussion about the errors made by the State in interpreting Measure 37 with regard to transfers to an LLC.

Where an applicant raises legitimate issues that go to the core of the application, the County has an obligation to address those issues. Failure to do so is error, and the Board of Commissioners has an obligation to look at all the facts of this case. Here, the County approved the partition and dwelling placement. The Appellants vested that approval by their actions on the land as affirmed by the elements of the case law on vesting. As such the lack of a State Measure 37 waiver is not relevant, since vesting had already occurred.

7. Conclusion

The Appellants have provided sufficient legal and factual justification for approval of their vesting claim. All aspects of state law on vesting are satisfied. All aspects of the county code on vesting are satisfied here. The lack of State approval of the claim is not relevant and incorrect in any event. Rural residential dwellings are the highest and best use of the property, and in keeping and compatible with the surrounding area.

This application for vesting of the right to construct houses on each of the three parcels should be approved.

DATED this 28th day of June, 2018.

Wallace W. Lien, OSB #793011
Of Wallace W. Lien, P.C.
Attorney for the Appellants

Exhibit B

Planning & Building Director

Decision to Deny Vesting Claim

LINN COUNTY PLANNING AND BUILDING DEPARTMENT
Robert Wheeldon, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816 Fax 541-926-2060
www.co.linn.or.us

NOTICE OF DECISION
MEASURE 49 VESTING RIGHTS DETERMINATION

June 22, 2018

David Hickey
PO Box 401
Lebanon, OR 97355

RE: VR18-0001; Measure 49 Vesting Rights Determination for three parcels zoned Farm/Forest (T12S, R01W, Section 21, Tax Lots 105, 112, and 113). The vesting request is a result of a Measure 37 claim (M37-145-05).

Dear Mr. Hickey:

On April 27, 2018, you submitted an application for a Measure 49 Vesting Rights Determination to the Linn County Planning and Building Department (Department). On May 21, 2018, the Department sent you a letter indicating the application was missing a copy of the State of Oregon order granting relief under Measure 37 for the subject property, which is required pursuant to Linn County Code (LCC) 237.110(C)(5). The letter indicated that you had 30 days to provide the missing information to the Department. On May 24, 2018, the Department received a letter from your attorney, Wallace Lien, P.C., stating that an approved State Measure 37 waiver could not be provided.

LCC Section 237.120(B) states, "The Planning Director may not deem an application complete and may not approve an application if the applicant does not submit: (1) the application fee; (2) a Measure 37 waiver issued by the State approving the same property by the same applicant; and (3) all the applicable documentation required by LCC 237.110 or requested by the Planning Director by LCC 237.120(A)."

Because a Measure 37 waiver issued by the State approving the same property by the same applicant was not submitted, the Director cannot approve your Measure 49 Vesting Rights Determination application. Pursuant to LCC 237.120(B), your Measure 49 Vesting Rights Determination application is denied.

This decision is effective unless a notice of intent to appeal to the Linn County Board of Commissioners is filed with the Department before 5:00 p.m., July 6, 2018. An appeal will be accepted only when based upon identified inadequacies, omissions, or errors in the decision's findings and conclusions. A $1,250 filing fee must accompany an appeal.

Please contact Alyssa Boles in our Department at 541-967-3816, ext. 2360 or aboles@co.linn.or.us if questions arise or if we may be of assistance.

Sincerely,

Robert Wheeldon

Robert Wheeldon
Director

RW: AB

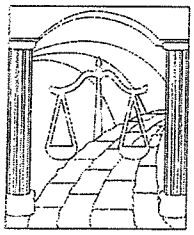
C: Wallace Lien, P.C.
County Attorney

Exhibit C

Hickey Measure 49

Vesting Rights Application

WALLACE W. LIEN
A PROFESSIONAL CORPORATION



LINN COUNTY
MAY 24 2018
Planning & Building Department

Wallace W. Lien
Attorney at Law
Contact by e-mail at
wallace.lien@lienlaw.com

May 24, 2018

Ms. Alyssa Boles
Senior Planner
Linn County
P. O. Box 100
Albany, OR 97321

By Email to: aboles@co.linn.or.us

Re: VR18-0001 - Hickey - M49 Vesting Application

Dear Ms. Boles:

I am in receipt of your letter of May 21, 2018 asking for additional information in the above referenced application. Specifically you asked for a copy of the State M37 approval, which I am sure you are aware is a document that does not exist. It is Mr. Hickey's opinion, as is expressed in his application, that his partition approval was vested before any decision by State was made on his M37 application, making that information irrelevant to his position on vesting. In addition, the decision by the State to deny his M37 application was not correct, and the theory used to deny regarding transfers to trust was subsequently abandon by the State, and would not be upheld today if collaterally challenged.

In any event, since there was no State M37 approval, Mr. Hickey is unable to comply with your request. Therefore, pursuant to ORS 215.427(2)(c), please consider this letter to be notice that the requested information will not be provided. Please continue with the processing of his application based on the current status of the record.

Yours truly,

WALLACE W. LIEN, P.C.

Wallace W. Lien

By: Wallace W. Lien

cc: David Hickey

LINN COUNTY PLANNING AND BUILDING DEPARTMENT
Robert Wheeldon, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816 Fax 541-926-2060
www.co.linn.or.us

May 21, 2018

David Hickey
PO Box 401
Lebanon, OR 97355

RE: VR18-0001; Measure 49 Vesting Rights Application – Request for Missing Information (T12S, R01W, Section 21, Tax lot 105, 112, and 113).

Dear Mr. Hickey:

Your Measure 49 (M49) Vesting Rights application has been reviewed pursuant to Linn County Code (LCC) 237.120 and has been found to be missing information. The application is missing the following information:

- A copy of the State of Oregon order granting relief under Measure 37 for the subject property, pursuant to LCC 237.110(C)(5).

Please submit the missing information to the Planning and Building Department within 30 days. Your application will be reviewed and decided in accordance with the applicable procedures, time frames and decision criteria found in the Linn County M49 Vesting Rights Code. Failure to submit requested information deemed necessary for the timely disposition of your application may result in denial of your application.

Sincerely,

Alyssa Boles
Senior Planner

c: Wallace Lien
County Attorney

LINN COUNTY PLANNING & BUILDING DEPARTMENT

APPLICATION FOR M49 VESTING RIGHTS DECISION

PD File # VR18-0001
Date 4/27/18
Rec'd By XJB
Fee rec'd $250

300 4th Avenue SW, PO BOX 100, Albany OR 97321
• Tel: 541.967.3816 • Fax: 541.926.2060

APPLICANT	OTHER OWNER
Hickey (Last Name) DAVID (First) J (MI)	Hickey (Last Name) GAY (First) M (MI)
P.O. Box 401 (Mailing Address (Street or PO Box))	P.O. Box 401 (Mailing Address (Street or PO Box))
Lebanon (City) OR (State) 97355 (Zip)	Lebanon (City) OR (State) 97355 (Zip)
541-979-7150 (Telephone)	541-979-7150 (Telephone)

List any other owners of subject property:
David and Gay Hickey Family LLC

PROPERTY INFORMATION

Tax Lot(s) 105, 112, 113 Map 12S.1W.21 Size of parcel: Combined 21.85 Acres

Street address, if any: NONE

Note: LCC 237 allows a Measure 37 claimant to obtain a determination by the county Planning Director as to whether the claimant has a vested right to continue and complete a use allowed under a State and a County order granting Measure 37 relief on the property subject to the determination (the "subject property"). The determination is referred to as the "M49 vesting decision." This application is required by LCC 237 before the M49 vesting decision may be reviewed on appeal by the Board of County Commissioners for Linn County and before a final decision may be made the subject of a judicial review in a court.

Note: If the holder of the M37 waiver is unable to demonstrate that the holder has substantially satisfied the terms and conditions of the M37 waiver resolution on or before December 6, 2007, the holder shall not be entitled to a common law vesting right. If the holder of the M37 waiver is able to demonstrate that the holder has substantially satisfied the terms and conditions of the M37 waiver resolution on or before December 6, 2007, the holder may be entitled to a common law vesting right determination. The Planning Director, and the Board on appeal, is authorized to make the determination whether the applicant has substantially complied with such terms and conditions and the criteria set forth in LCC 237.160(C).

THE APPLICANT MUST SUBMIT ALONG WITH THIS APPLICATION:

1. The legal description of subject property.
2. A copy of the State of Oregon order granting Measure 37 relief for the subject property.
3. Any additional information you deem appropriate to enable the Planning Director to make a M49 vesting decision.

LINN COUNTY
APR 27 2018
Planning & Building Department

Exhibit # C
Page 3 of 114

Note: LCC 237.160 states that "In determining whether the applicant has a vested right to continue and complete a use allowed by a Board resolution granting Measure 37 relief, the decision-maker must consider [several] factors based on the evidence submitted in the application." They include, and you must provide evidence addressing these factors:

4. The amount of money spent on developing the use in relation to the total cost of project approved in the State and County M37 waivers.
5. The good faith of the property owner.
6. Whether the property owner had notice of the proposed change in law before beginning development.
7. Whether the improvements could be used for other uses that are allowed under the new law.
8. The kind of use, location, and cost of the development.
9. Whether the owner's acts rise beyond mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.
10. Other relevant factors.

Please complete this application and attach the information required in this application and the additional information required by LCC 237.110(C) and any other documents desired to assist the Planning Director in making a decision. Once the Planning Director determines the application is complete, notice of the application will be provided to surrounding property owners and to others. Public comments on the application will then be received for 21 calendar days. If public comments are received, the applicant has 14 calendar days to provide rebuttal comments. The M49 vesting decision is subject to judicial review.

I hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that the information submitted with this application is true and correct to the best of my knowledge.

I understand that issuance of a M49 vesting decision is subject to appeal to the Board of Commissioners for Linn County and that a decision made from an appeal is subject to review by the circuit court. I understand that judicial review by the circuit court is limited to information in the record before the Board at the time the final vesting decision is made. I understand it is unlikely the court will accept any additional factual information regarding vesting of the Measure 37 waiver other than information in the record before the Board at the time the final vesting decision is made.

I understand that due to uncertainties of Measure 49, I proceed with any development based on a Measure 37 waiver at my own risk. I understand that any M49 vesting decision will not excuse me from complying with any other applicable ordinances and laws regulating the use of the land and buildings. I hereby grant permission for and consent to Linn County, its officers, agents, and employees coming upon the subject property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.

David J Hickey — 4-27-2018
Applicant's signature — Date

Gay M. Hickey — 04-27-2018
Additional property owner's signature — Date

David J Hickey Manager — 4-27-2018
Additional property owner's signature — Date

Additional property owner's signature — Date

Additional property owner's signature — Date

Additional property owner's signature — Date

BEFORE THE PLANNING DIVISION
FOR LINN COUNTY

In the Matter of the Establishment of a Vested Right to Complete Dwelling Construction on Platted Parcels by:	)	
DAVID AND GAY HICKEY and the DAVID AND GAY HICKEY FAMILY LLC	)	Case No. _____
Pursuant to Linn County Approvals on Property identified as Tax Lots 105, 112 and 113 on Map 12S.1W.21	)	

JUSTIFICATION FOR VESTED RIGHTS DETERMINATION

COMES NOW David and Gay Hickey, by and through their attorney, Wallace W. Lien of Wallace W. Lien, P.C. and presents the following facts and legal argument to support and justify their application for vested rights to construct dwellings on three parcels created under Measure 37.

1. Background Facts

David and Gay Hickey purchased Tax Lot 105 on May 28, 1976, which was 21.85 acres in size. Pursuant to their estate plan, they created the David and Gay Hickey Family LLC on December 9, 1996, and deeded the property to the LLC on that date. The deed to the LLC was recorded as Vol 0843, Page 86 on December 23, 1996. David and Gay Hickey are the Trustors, Trustees and Beneficiaries of the Trust. Exhibits 1 and 2.

When the property was purchased, the land use regulations allowed land divisions to a 5 acre minimum lot size, and each such parcel was entitled to have a single family dwelling constructed on it. At some time thereafter the land use regulations were amended to increase the minimum lot size to 80 acres, and to severely restrict the opportunities for dwelling placement.

On October 26, 2005, the Applicants applied for the ability to partition this property (TL105, Map 12S.1W.21) pursuant to the land use waiver process established in Measure 37. The application was assigned Case No. M37-145-05, and was processed in the normal fashion by Linn County.

On March 1, 2006, the Linn County Board of Commissioners unanimously approved the application, and adopted Resolution and Order No. 2006-084 which became effective immediately. This approval was duly recorded in the Linn County Clerk's Records on March 9, 2006 as Document No. 2006-05418. Exhibit 3.

The waiver adopted by the County Board of Commissioners essentially waived all land use

regulations that restricted the partition of the subject property, and the development of non-farm dwelling on each new parcel. The waiver was subject to the following conditions:

1. Approval for septic site evaluations for each proposed parcel prior to submittal of the land division application.

2. Upon completion of the land division process, and compliance with the conditions in Order No. 2006-084, the "resulting parcels will be recognized as authorized units of land that are buildable."

3. The waiver is good for two (2) years. That is to say that the conditions of approval had to be accomplished by March 1, 2008.

4. If the land division is approved and recorded, and septic systems are installed on all approved parcels on or before March 1, 2008, the waiver shall be deemed vested and the parcels shall remain buildable thereafter.

5. Road access permits must be obtained prior to the submission of the land division application.

6. A Covenant shall be recorded against each new parcel prohibiting the owner or successors from filing any claims alleging injury from farm or forest practices in the area.

7. This waiver is effective only for David and Gay Hickey.

8. The final decision in Order No. 2006-084 is the conclusion of all matters related to Measure 37.

9. The validity of Order No. 2006-084 is subject to judicial judgments and legislative enactments.

In 1979, in anticipation of constructing a dwelling on the subject property (then TL105), the Applicants obtained septic site evaluation approval for the subject property in a location that would continue to be the building site for TL105 in the proposed partition to be filed in 2007. This septic site evaluation was approved as site #79-339 on August 29, 1979. Exhibit 6.

On July 26, 2007, prior to the submission of the partition application, the Applicant, through K&D Engineering, applied for the septic evaluations that were required by Order No. 2006-084(A) for proposed Parcels 1 and 3 (Parcel 2 having already been granted approval in 1979). The new septic site evaluations were approved for both Parcels 1 and 3 on August 14, 2006. Exhibits 8 - 11.

On September 27, 2007, a new community well was dug to serve the three dwellings to be constructed pursuant to the proposed partition plan. The new well was identified as #L 91855 and

was constructed and approved immediately thereafter. This well was assigned Well #DR-2157 by the State of Oregon on its Water Supply Well Report (Well Log). This well is a good producer, having a static water level of 21 feet, and the ability to pump 30 gallons a minute. Exhibits 11 - 12.

The Applicant made application for road approach permits for driveway access to Berlin Road for each of the three parcel. Upon further evaluation and discussions with the County Public Works Department it was determined that all three parcels should access from one common access point on the apron located on TL105. That driveway was constructed, and was thereafter inspected and approved by the County. Exhibit 13.

Thereafter, the Applicant applied for a partition of TL105 to create two new parcels of just over 5 acres each. This application, identified as PD06-0203, was approved by the County on April 5, 2007. The approved tentative partition plan was made into the permanent partition plat and submitted. Exhibit 4.

The Partition Plat was then identified as PP No. 2007-118, and was approved by the Board of Commissioners on November 28, 2007, and then recorded in the Linn County Deed Records on December 5, 2007 in Document No. 2007-28072. This plat complied with the tentative plat by creating 2 new parcels, and resulting in Parcel 1 being 5.23 acres, Parcel 2 being 12.09 acres and Parcel 3 being 5.24 acres. All have frontage on Berlin Road, with their northerly boundaries being Hamilton Creek. Exhibit 5.

The three separate parcels created by the partition are now referred to as:

Tax Lot 112, Map 12S.1W.21, which is Parcel 1 on PP 2007-118 and is 5.23 acres.
Tax Lot 105, Map 12S.1W.21, which is Parcel 2 on PP 2007-118 and is 12.09 acres.
Tax Lot 113, Map 12S.1W.21, which is Parcel 3 on PP 2007-118 and is 5.24 acres.

On December 5, 2007, the Applicant caused to be recorded in the Clerk's Records the Covenant required by condition F of Order 2006-084. The Covenant was recorded as Document No. 2007-28056. Exhibit 5A.

2. Compliance with Resolution and Order No. 2006-084

The first analysis in this vesting determination is compliance by the Applicants with all of the approval conditions in Order No. 2006-084. The Applicants assert they have fully complied with all those conditions, which are addressed below in the order they are set forth in Order No. 2006-084 as follows:

1. Septic site evaluations - On August 29, 1979 the Applicant obtained septic site evaluation approval for TL105. That site evaluation was updated and re-approved in 2016. Exhibit 7. Septic site evaluation was approved for TL112 and TL113 on August 14, 2006. With approved septic site evaluations on all three parcels, this condition has been fully complied with.

2. Recognition as Buildable Parcels - The land division process was complete with the recording of Partition Plat No. 2007-118. In addition, as set forth herein, there was full compliance with all the conditions of Order No. 2006-084. As such, this condition is complied with, and TL105, TL112 and TL113 became recognized as authorized units of land that are buildable.

3. Compliance By March 1, 2008 - The conditions of approval in Order No. 2006-084 were completely fulfilled with the recording of the Partition Plat, and thereafter recording of the required Covenant on December 5, 2007. This condition is complied with.

4. Vesting - The land division was approved and recorded. All that Order No. 2006-084 required with regard to the septic systems was obtaining approval of the septic site evaluations for all three parcels. The Applicants complied with that condition. There was no condition of approval that required the approved septic systems to be actually installed. Given this factor, together with Order condition B, that specifies that once the land division process was complete and the Order otherwise complied with, the newly created parcels would be recognized as authorized units of land that are buildable, the language used in the Order regarding vesting being dependent upon actual construction of the septic systems by March 1, 2008 is superfluous and of no effect on vesting. Also supporting this position is ORS 92.010(3) which provides that a lawfully established unit of land is one that was done using approval from the governmental authority and the partition process in ORS 92.010 et seq. Once the parcels were lawfully created, ORS 92.017 provides that the parcels shall remain lawful discrete parcels of land thereafter. Linn County signed off on Partition Plat 2007-118. This condition is complied with.

5. Road Access Permits - The road access for all three parcels is a common driveway. This driveway was approved by the County and has been installed. This condition is complied with.

6. Covenant - The Covenant was duly and timely recorded against the entire area that is now encompassed in the three new Tax Lots. This condition is fully complied with.

7. Effectiveness - All applications in this matter, from the Measure 37 application to the Partition application were made in the name of the David and Gay Hickey Family LLC. David and Gay Hickey are the only members of the LLC, and David Hickey is the Managing Member. Under both the Linn County Code and Measure 37, a wholly owned LLC does not act as a transfer that resets the acquisition date. Therefore the David and Gay Hickey Family LLC, is to be treated in the same manner as if David and Gay Hickey

still held title to the three Tax Lots in their individual names. This condition is complied with and the application is appropriate in the name of the LLC.

8. Measure 37 Conclusion - This aspect of Order No. 2006-084 is not a condition of approval for the Applicants to comply with, but is rather a statement by the County that all matters related to Measure 37 were then concluded. This condition is complied with.

9. Validity - Again, this is not a condition of approval for the Applicant to comply with, but is rather a disclaimer that future court cases or new legislation may effect the decision. It should be noted that as of December 5, 2007 when the Applicant had fully and completely complied with Order No. 2006-084, Measure 37 was in effect and no court cases had been decided that adversely impacted the implementation of Measure 37. In addition, there had been no legislation to amend or replace Measure 37. Further, Ballot Measure 49, which was a referral to the voters, did not become effective until December 6, 2007, and therefore could have no impact on the vesting of this application. In any event the common law of vesting is the measure of vesting applicable here, and compliance with vesting law is shown below.

The Applicants have fully and completely complied with each and every condition of approval in Order No. 2006-084. Once it is determined that the original Order has been fully complied with, the next review required is an evaluation of the vesting requirements under Oregon law. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

3. Expenditure Evaluation - Vesting Criteria

Pursuant the approval of their land use waiver, and the approval of the partition plan, together with the approval and recording of the final partition plat, the Applicants continued on with the process of developing the lots with single family dwellings. In the course of that construction, the Applicants expended significant sums of money toward the completion of the project. Those expenses are summarized[1] as follows:

Date	Payee	Activity	Amount	Comment
05/28/1976	Harold E. Waller	Purchase of the property	$16,800.00	As per the deed Is Not a Qualified Expense
2005/2007	K&D Engineering	Engineering, surveying, platting	$13,181.50	As per Nov 14, 2017 Letter Is a Qualified Expense

1

Receipts and invoices and cancelled checks, to the extent available can be supplied upon request to prove the facts set forth in this table.

Date	Payee	Activity	Amount	Comment
2016-2017	K&D Engineering	construction supervision	$2,892.50	As per Nov 14, 2017 Letter Is a Qualified Expense
06/12/2007	Knife River	Create the new driveway	$9,767.00	Is a Qualified Expense
09/26/2007	Nugent Well Drilling	Construct new community well	$5,329.00	Is a Qualified Expense
06/26/2007	Performed by the Applicants and their hired help	Land clearing, establishment of three dwelling sites, landscaping	$8,100.00	Is a Qualified Expense
05/30/2007	Linn County	Road approach permit fees	$130.00	Is a Qualified Expense
05/30/2007	Linn County	Permitting Costs for driveway	$3,420.00	As per Invoice Is a Qualified Expense
08/18/2016	Linn County	Application for review of septic on TL105	$350.00	Is a Qualified Expense
08/31/2016	K & D Engineering	Site Evaluation for TL105	$1,100.00	Is a Qualified Expense
08/31/2016	Linn County	Septic permit fees	$960.00	Is a Qualified Expense
08/15/2016	Consumer's Power	Bring electricity to the parcels	$8,110.00	Is a Qualified Expense
08/20/2016	Consumer's Power	Electrical conduits, trenching and backfilling	$2,672.00	Is a Qualified Expense
09/15/2016	Knife River	construct internal roadway system, turn outs and the fire truck turn around	$2,717.00	Is a Qualified Expense
09/15/2016	Knife River	rock and paving of the driveway and internal roads	$4,618.00	Is a Qualified Expense
09/22/2016	Star Water Systems	Upgrade and test the well, install pump, test the water quality	$4,000.00	Is a Qualified Expense
10/01/2007	Performed by the Applicants and their hired help	Construct the Pump House to protect the well	$500.00	Is a Qualified Expense
09/07/2006	Weatherford Thompson	Attorney fees for M37 case	$119.00	Is Not a Qualified Expense
10/31/2006	Weatherford Thompson	Attorney fees for M37 case	$1,326.60	Is Not a Qualified Expense
04/02/2007	Weatherford Thompson	Attorney fees for M37 case	$52.50	Is Not a Qualified Expense

Date	Payee	Activity	Amount	Comment
10/14/2005	Commercial Real Estate Services	Procure info on property for development analysis	$375.00	Weatherford Advance - Invoice No. 55518 - Is not a qualified Expense
10/24/2005	Linn County	Filing Fee for M37 claim	$100.00	Weatherford Advance - Invoice No. 55518 - Is not a qualified Expense
08/21/1976	Linn County	Septic permit fee for TL105	$50.00	Is a Qualified Expense
10/20/2007	Ticor Title	Title Report	$200.00	As per Invoice Is not a Qualified Expense
130/2008	R. D. L. Northwest	Remove commercial timber from the property, clear brush and remove slash	$17,502.50	As per Invoice Is not a qualifying Expense
TOTAL OF ALL EXPENSES INCURRED IN DEVELOPMENT OF THE THREE PARCELS			$104,372.60	
TOTAL QUALIFYING EXPENSES INCURRED			$67,897.00	
TOTAL NON-QUALIFYING EXPENSES INCURRED			$36,475.60	

Applicants, such as Mr. and Mrs. Hickey, who have a valid and approved Measure 37 decision on December 6, 2007, still must seek a vested rights determination under Subsection 5(3) of Measure 49. *DLCD v. Clatsop County*, supra. A vested rights determination under Measures 37/49 must satisfy the criteria for vesting set out in the seminal case of *Clackamas County v. Holmes*, 265 Or 193, 198-99, 508 P2d 190 (1973). That Court created a multi-faceted test to determine if a permit has been vested. That test is a consideration of all of the following factors:

1. The ratio of expenditures incurred to the total cost of the project. In the review of this factor the cost of the land should not be included.

2. The good faith of the property owner, that is whether or not they had notice of any proposed zoning or amendatory zoning before starting his improvements.

3. The type of expenditures, and whether the expenditures have any relation to the completed project.

4. The kind of development proposed.

5. The location and ultimate cost of the total development.

In reviewing these factors, the actions of the owner needs to rise beyond contemplation or mere

preparation such as preliminary negotiations with contractors and architects.

In the *Holmes* case, the property owner spent a total of $33,000 on land improvements such as installing a septic system, drilling a well, planting some landscaping and bringing power to the site. The total estimated cost of that development was between $400,000 and $500,000 dollars. Supra Page 196. This was a ratio of expenses to total development costs of 8.25% - 6.60%.

Applying the *Holmes* factors to this case, shows full compliance with legal standards for vesting as follows:

1. The ratio of expenditures. The standard set in *Holmes* of between 6.6% and 8% is well satisfied in this case. As shown in the above table, the Applicants spent $67,897.00 in qualifying expenses. The total development costs involved here, not counting the cost of the land, is $150,000 per dwelling, for a total development cost of $450,000. This is a ratio of expenses to the total project cost of 15%. Said another way, the Applicants are 15% completed with the three parcel development. The court in *Holmes* found the expenditure of $33,000 to be significant, meaning the expenditure of $67,897 here also has to be considered significant, and the 15% ratio in this case is double that which was approved in *Holmes*.

2. The good faith of the property owner. At the time the Applicants purchased the property, they had the right to partition it to lots with a minimum lot size of 5 acres, and to build a house on each new parcel. The Applicants fully and reasonably believed that they had the right to partition the land and build houses, and they acted on it accordingly in good faith. When Measure 37 came into being, the Applicants did everything required of them to apply for and obtain a Measure 37 approval from Linn County. Upon approval thereof, the Applicants diligently moved forward with compliance with all the conditions of approval in the Measure 37 waiver. They had fully complied with the County approval prior to the effective date of Measure 49, rendering the provisions thereof unnecessary due to their vesting. During the entire process of compliance with the County approval, the Applicants acted in good faith and with County approvals for septic and driveway permits.

3. The type of expenditures. Each and every kind of expenditure relied on here for vesting involved some construction and investment in and on the land itself. The septic system test pits were dug in to the land. The well was drilled into the land. The driveways were cut and filled and rocked on the land. Electricity was trenched in and extended to the building sites. The site clearing and landscaping all occurred on the land.

4. The kind of development proposed. This development is three single family dwellings. Two new parcels of just over 5 acres and the remnant, each

proposed for a new house. This land is only suitable for rural residential housing. It is not good farm land, and the attempt at harvesting timber resulted in little more than break even.

5. The location and ultimate cost. As noted above the total cost of the houses and the improvements necessary thereto is $450,000 (not including the land). Very reasonable and in keeping with new dwelling costs in this area. The property is located in rural Linn County on Berlin Road near its intersection with Waterloo Road. The area is a mix of parcel sizes and land uses. The predominate uses along Berlin Road in this area are small tract rural residential dwellings, with some as small as1 acre, and many close to the same 5 acre size as the smaller two parcels owned by the Applicants. Hamilton Creek borders the full length of the northerly boundary of TL 112 and 105. Exhibit 15.

While no single factor is controlling according to the *Holmes* decision, the totality of all the factors in this case point to full vesting in the Applicants by the time Partition Plat 2007-118 was recorded.

Under the law of vesting, once the vesting has occurred it has implemented the approval and can never to be taken away. As such, the Linn County decision in Order No. 2006-084 remains valid and building permits for each of the three parcels should be authorized.

While State law on vesting controls, it is noted that the factors set forth in Linn County Code (LCC) Section 237.160 basically follow the same requirements as stated above from the *Holmes* decision. The County criteria is as follows:

1. The amount of money spent on developing the use in relation to the total cost of the project approved in the M37 waiver. The Holmes standard is between 6% and 8%. The Applicants here are at 15%. This criteria is satisfied.

2. The good faith of the property owner. The Applicants acted at all times in good faith. They were in constant contact with the planning department, and public works in obtaining permits in the development of their lots. This criteria is satisfied.

3. Whether the property owner had notice of the proposed change in the zoning before beginning development. This criteria does not apply in this case as it is a Measure 37 vesting case, and the waiver that was granted determined the change in zoning was such as to grant relief from those restrictions to the Applicant. This criteria is not relevant.

4. Whether the improvements could be used for other uses that are allowed under the law. The work completed on the land was designed specifically for single family dwellings. The power is extended to the three building sites,

and that work is useless for anything but the three dwellings. The community well is a domestic well suitable only for dwellings. There are no water rights and no ability to use this well for irrigation. The driveway that ultimately ended up being decided upon by the County is one that is designed for residential uses, and includes paving, which would be torn up for any farm or forest use. The internal roadways from the access to the building sites are specific to the rural residential development and would serve no purpose for any other use. This criteria is satisfied.

5. The kind of use, location and cost of the development. The expenditure of $67,897 represents a significant investment in the development of the land. In the *Holmes* case, it was determined that expending $33,000 against a $500,000 development was sufficient expenditure to warrant vesting. The residential use of the property, located in an area with similar uses, makes sense and is compatible. This criteria is satisfied.

6. Whether the owner's acts rise beyond mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects. The expenses incurred on this development have been segregated into those qualifying expenses that actually involve development of the land. The expenses related to permitting, land acquisition, legal fees, etc have been deemed to be non-qualifying expenses. The Applicants have expended $67,897 in qualifying expenses, and as noted above, that is significant and warrants a vesting determination. This criteria is satisfied.

7. Other relevant factors. The highest and best use of the subject properties is for rural residential dwellings. The land is not suitable for farming or forestry. The presence of Hamilton Creek acts a deterrent to many uses, as it is a wetland, and no ditching or drain tile or any alteration of the natural drainage is allowed on the entirety of the property. Exhibit 14. None of the parcels are on any tax deferral program. Linn County assesses the parcels at fair market value for rural residential use. TL105 is assessed at $168,260, TL112 is assessed at $128,920, and TL113 is assessed at $128,920. This is total valuation for the three parcels (21+ acres) of $426,100 (nearly $20,000 per acre), which is fair market value based on rural residential potential and not farm or forest uses which would be lucky to command one-quarter of that value. Exhibits 16-18.

Based on the facts and compliance with all of the required criteria in LCC 237.160, the Applicants have satisfied both state law on vesting, and compliance with the vesting criteria in the County code and therefore vesting should be granted.

4. Lack of State Action Is Not Relevant

One of the unique factors in this situation is that the Applicants had already received its M37 County approval and had done sufficient activity under the vesting rules to have already vested the County approval by the time the State acted on the Applicants' State Claim. To complicate matters further, the State decision recommended denial of the claim on the grounds that the Applicant's lost all rights when they conveyed their property to their newly formed Limited Liability Company in 1996 as part of their estate planning.

Linn County recognized that the transfer was only a technicality and of no real force and effect as it relates to the approval of the waiver because the new Limited Liability Company was owned and controlled solely by the Applicants. There being no transfer of interest to any **third party**, the deed was not deemed relevant and the original acquisition date of the property of 1976 was held. The Applicants' assert the County was legally correct in that interpretation of the law, and the waivers issued in Order 2006-084 were valid and remain so to this day.

Given the truncated effectiveness of Measure 37 there is very little case law to guide interpretation of its provisions. This fact was made even more complicated with the adoption of Measure 49 which was deemed by the courts to have superseded Measure 37, resulting in the dismissal of all appeals of interpretations under Measure 37 as moot.

The following analysis explains why Linn County was correct in its interpretation of Measure 37 in ignoring the deeding of property to a wholly owned and controlled Limited Liability Company, and correspondingly why the State recommendation was incorrect. These arguments were pending before the court when the relevant cases were dismissed because of the adoption of Measure 49.

The legal question involves the effect on "ownership" under ORS 197.352 (Measure 37) status of a wholly owned and controlled Limited Liability Company (LLC). It is the Applicants' position that where an LLC is used by a family for estate or tax planning, it is simply an extension of the family and does not provide a "break in the chain of title" which would reset the waiver date.

An LLC for all practical purposes under Measure 37 is no different from a family trust, which has been determined to be an extension of the family member and does not "break the chain of title" for waiver purposes.

It became well established during the operation and implementation of Measure 37 that a family trust, where it is being used by the family for estate or tax planning purposes is simply an extension of the family and does not "break" the chain of title. A qualified trust is therefore ignored for establishment of the waiver date, and the date selected is the date of acquisition by the family member and not the date the family member transferred the land to the trust.

In order to reach this ultimate conclusion the analysis required three important qualifications to be involved with the trust. The first is that the trust must be "revocable". If a family member can

put property into a trust and then revoke the trust and take the property back out, so the logic goes, the ownership designation and control remains dependent upon the family member and is not usurped by the separate trust entity. As long as a trust is "revocable" for all practical purposes it is no different from an ownership standpoint than the family member who deeded the property into the trust in the first place.

The second element is that the family member who contributes the property to the trust (grantor) has also to be the trustor and trustee of the trust. Because the trustor is the one who creates the trust, and the trustee is the one controlling the management of the trust, it makes sense that if this person is the family member, who prior to deeding the property controlled and managed the property, the ownership role of the family member has not changed just the title. Therefore the management and control of the land remains in the family member, and the trust acts as nothing more than an extension of that family member.

The final element necessary for a trust to be ignored for Measure 37 purposes, is that the family member is the beneficiary of the trust. The rents, profits and pecuniary benefit of property ownership in a trust vest in the beneficiary, and if that beneficiary is the family member who contributed the property to the trust in the first place, there again is practically no difference in the legal effect. The family owner retains all the benefit from that property, either directly if they retain the deed, or indirectly if they contribute the property to the trust.

The three elements in a family trust that have been determined to make it such that the trust is considered to be an extension of the family member and therefore not break the chain of title are similarly present in a family LLC.

The first requirement is that the entity be revocable. A family LLC is revocable. Oregon law indicates that an LLC can be terminated at any time. The simple act of filing a document with the Secretary of State can accomplish the termination. Upon revocation, the assets of the LLC are returned to the members of the LLC. As such, an LLC is identical in all respects to a trust. Both are revocable, meaning that the family member using the entity for estate or planning purposes remains in full control of the subject property. In all respects the LLC and trust are identical for revocation purposes. If a trust can be ignored in the chain of title because it is revocable, then so can the LLC.

The second element is the control and management of the property after it is placed in the entity. In a trust it is required that the grantor also be the trustor and trustee. In a family LLC this is exactly the situation that exists. The family member owner of the property creates the LLC, therefore the role is identical to the trustor who creates the trust. The family member is the managing member of the LLC, which is in all respects the identical role of the trustee in a trust. Where it is considered that a trust is only an extension of the family member because they control the land after it has been put in the trust, the same is true for a managing member of an LLC. They are identical theoretical precepts. If a trust can be ignored in the chain of title because it is managed and controlled by the family member, then so can the LLC.

The third and final element of the trust situation is the requirement that the family member

who contributed the property to the trust also be the beneficiary of the trust. This again is the same situation that arises in the LLC, which is owned by its members who gain all the benefit from the land in the LLC. A family member who contributes property to an LLC, and is a member of that LLC, is similarly situated to a beneficiary to a trust. Both are entitled to the ownership rights and benefits from the property. If a trust can be ignored in the chain of title because the beneficiary of the trust is the same as the beneficiary of the trust, then so can the LLC.

In all respects a family owned LLC is the same as a family trust. Both are revocable. Both stay in the management and control of the family member; and in both situations the family member who contributed the property remains the one who will get all the benefit from the property. Both the trust and the LLC are routinely used by families in the State of Oregon for estate and tax planning purposes.

Why then did the State ignore a trust as an extension of the family member for Measure 37 purposes, but disqualified the LLC? That is a question that remains unanswered thanks to the adoption of Measure 49 and dismissal of pending cases that would have resolved this issue. While there certainly are legal differences in creation and operation between the two entities, on the big three elements important to the administration of Measure 37, there are no differences and they should be treated the same. Where an LLC is created and used by a family as its estate and tax planning tool, and provided the family member who contributed the property was placed as the managing member and remains as the beneficiary, then it to is no more than an extension of the family member and should not break the chain of title.

In this case the Applicants first acquired title to the subject property in 1976. The family held the property until 1996 when they elected to use the LLC as an estate planning tool. The Hickey family created the LLC and are the managing members of the LLC. The Applicants then deeded their interests in the subject property to the LLC. Upon creation of this LLC, it was no different than had the family elected to use a family trust to accomplish the same purpose. The LLC was revocable, the Hickey family was still in control of management of the land, and all the benefits of ownership flowed to them.

Applicants specifically seek a determination that the LLC created in this instance would be treated no different from a family trust, and that the waiver date be set at 1976, the date the Hickey family originally purchased the property.

The State has argued that the LLC does not have family members as defined by Measure 37, therefore the Hickey family who deeded the property to the LLC are not family members of the LLC. Based on this interpretation, it is argued that the Hickey family members are not current owners of the property, and the waiver date must be reset to the date the property was deeded to the LLC.

When interpreting a statute, the first level of analysis is to discern the legislative intent by examining the text and context of the statute. *Portland General Elec. Co. v. Bureau of Labor and Industries*, 317 Or 606, 610 (1993); *Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 61 (2000) (applying the same methodology to statutes adopted through the initiative process). "The best evidence of the

voters' intent is the text of the provision itself." *Roseburg School Dist. v. City of Roseburg*, 316 Or 374, 378 (1993). If the intent is clear, further inquiry is unnecessary. *PGE*, 317 Or at 611.

Measure 37 was codified at ORS 197.352. The statute provides that when a public entity enacts or enforces a land use regulation that restricts the use of the private property, reducing its fair market value, then the owner shall be paid just compensation. ORS 197.352(1). There are several exceptions to the general rule, but only one is relevant here. The rule does not apply to land use regulations "[e]nacted prior to the date of acquisition of the property by the owner *or a family member of the owner*." ORS 197.352(3)(E) (emphasis added). In other words, if the owner acquired the property from a "family member," the date of acquisition will be the date the family member first acquired the property and not the date it was later transferred to the present owner.

The term "family member" is defined in Section (11)(A) to include:

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

This expansive definition includes both traditional family relationships between individuals and legal relationships between family members, like family estates and family-owned business entities.

The plain meaning of the text clearly permits a limited liability company to be deemed a "family member" of the owner. Any legal entity owned by the owner or his family members is itself a family member of the owner. For example, if the John Doe Family, LLC transfers real property to the John Doe individually, John Doe is the present owner of the property and the LLC is a "family member" of John Doe because it is a legal entity owned by John Doe and by any one or a combination of his family members. If John Doe applies for compensation under Measure 37, the question will be whether the regulation at issue was enacted before the LLC, rather than John Doe, first acquired the property.

The State seems to be relying upon a hyper-technical reading of ORS 197.352(11) to conclude that when individual family members transfer property into a family-owned LLC, the individuals will not be "family members" of the resulting legal entity because the individual family members would not be a mother, father, brother, etc. of the LLC *as an entity*. Nor would the individual family member be an estate or a legal entity composed of family members.

Such an interpretation is implausible because it not only confounds the purposes of Measure 37, it defies common sense. *Dept. of Land Conservation and Dev. v. Yamhill County*, 151 Or App 367, 372-73 (1997) ("[T]he linguistic tenability of a proffered interpretation . . . does not make the interpretation 'plausible' if a different interpretation . . . is decisively more consistent with the sense and purpose of the statute.") Family members in the ordinary sense–such as parents, children and in laws–always enjoy parity in their relationships. If John is a family member of Jane, then Jane is

necessarily a family member of John. There is no reason to assume that, despite less than precise drafting, the authors of Measure 37 did not intend family-owned entities to enjoy the same parity. *PGE*, 317 Or at 611 (words of common usage should be given their plain, natural and ordinary meaning). Since individuals are more likely to transfer property interests to entities for business or estate planning purposes than to acquire property in a business name and later transfer it to individuals, the narrow construction makes the unique definition of "family member" practically useless. It would mean that family-owned businesses may transfer property to individual family members without giving up Measure 37 protection, but individuals cannot transfer property to their family-owned businesses or estates without giving up their right to compensation.

The State's application of the "family member" provision in Measure 37 to legal entities ignores the inherent limitations in the definition of the term "family member" as it applies in the overall context of Measure 37. This over-simplified explanation is that an LLC cannot have "a family member."[2] The family member provision in Measure 37 is limited to only specific legal entities. Only legal entities owned by the property owner or his family members may be deemed "family members" under Section (11)(A). Indeed, one of the basic concepts behind Measure 37 was to provide relief to families that had held property for extended periods. It is the ownership of the entity that determines its status. It must be owned by people appropriately related to each other and to the entity, ensuring that tacking occurs only if the property stays in the family. Parity of reasoning requires that the same inquiry determine whether an individual is a "family member" of the entity under the statute. If all of the members of John Doe Family, LLC, are parents, children or other "family members" of John Doe, then John Doe must be a family member of the LLC. The property has never passed from family control. *See, e.g., DLCD*, 151 Or App at 374-75 (rejecting the State's similarly narrow construction of "owner" because the general purpose of the statute was to provide relief from regulatory land use restrictions).

The point is also made clear by considering what happens when one legal entity transfers property to another. Suppose that the John Doe Family LLC transfers its interest in property to John Doe Family Partnership. The partners and members are exactly the same, John Doe and his wife. The question is whether the partnership is a "family member" of the LLC, but this time the answer is indeterminate under such a narrow construction. The partnership is a legal entity not owned by LLC, but is it owned by "family members" of the LLC? To answer that question, one would have to decide if the partnership is a "family member," which was the very question raised. The narrow construction leads to a circular answer. But if the common sense construction is adopted, the answer is simple. The partnership is a legal entity owned by the Doe family, who are the owners (members) of the LLC. Therefore, the partnership is a "family member" of the LLC under the statute.

The issue presented centers on how the voters intended the "family member" provision in

---

2

It is worth noting that the definition of "family member" is not limited to corporate entities, but includes any legal entity owned by specified family members. Thus, it would include partnerships, trusts and other legal entities that are not corporations, such as LLC's.

ORS 197.352(3)(E) to apply. ORS 197.352(1) is the operative paragraph in Measure 37. It provides that if a public entity enacts or enforces a land use regulation and has the effect of reducing the fair market value of property, the current owner may demand just compensation. The language of ORS 197.352(1) applies to any land use regulation whether enacted before or after the current owner acquired the property. ORS 197.352(3) lists the land use regulations that are exempt from the compensation claims provided for in ORS 197.352(1). ORS 197.353(3)(E) lists, as one exemption, land use regulations enacted before the owner of the real property or a family member of the owner of the property acquired the property. If a claimant acquires property from an unrelated third party, the claimant's acquisition date is the date they acquired title. Only regulations enacted after that date can be the basis of a claim for compensation. However, if a claimant acquired the property from a family member, they are entitled to use the family member's acquisition date to determine if compensation is due. All regulations enacted after that earlier acquisition date can be the basis of a claim for compensation.

The issues presented in this case require the County to confirm its prior decision that the deeding of the property to a family owned LLC does not require the reset of the acquisition date. In effect this is an interpretation of how the voters intended to apply the term "family member" as defined for purposes of ORS 197.352(3)(E)[3]. The language used in the definition of family member, and adopted by the voters, illustrates at least three significant points about the intent of the voters, all of which confirm the correctness of the prior County decision in Order No. 2006-084.

First, the voters intended to create a broad and expansive definition of family member. A family under ORS 197.352 was not limited to immediate family. To be in a family one does not have to be related by blood. In fact, one does not even have to be a natural person.

Second, the voters intended that the term family member included legal entities owned by members of an extended family; a family member can be an entity owned by any combination of the family members listed in ORS 197.352(3)(E).

Third, when read in context with ORS 197.352(3)(E), the family member definition plainly contemplates that property will be transferred among various family members and that transfers will include transfers involving legal entities owned by family members.

The State's interpretation applies the family member definition out of context and to an unreasonable end. Ignoring any of the context behind ORS 197.352, the State adopts a technical linguistic reading of the definition to conclude that the David and Gay Hickey were not family members of this LLC.

In every family situation, the definition of family member involves parity of relationships. If a husband is a family member of a wife, the wife is also a family member of the husband. There

---

[3] See quoted definition of "family member" from ORS 197.352(3)(E) above.

could not be a family member relationship without parity. If, in that case, the husband conveyed property to his wife and the wife in turn conveyed it back to the husband, the family membership chain would not be broken. Both conveyances are between family members.

More importantly, the State's interpretation creates a situation that is not logically possible. It can not be disputed that legal entities were intended to be family members within the context of ORS 197.352. Legal entities owned by an owner of property or a combination of family members (brothers, sisters, parents, uncles, etc.) are expressly included as family members in the definition. Even under its technical interpretation, if an LLC transfers property to a member of the LLC, and the member then filed a claim under ORS 197.352, the member could use the LLC's acquisition date because the LLC, assuming it was still in existence, would be an entity owned by the claimant, who is the owner of the property. However under the State's interpretation, if the same person re-conveyed the same property to the same LLC, and later filed a claim for compensation, the LLC cannot use the individual member's acquisition date because when the claim was filed, the owner was the LLC and, technically, LLC's cannot have family members that are natural persons.

The above example helps illustrate the fundamental flaw in the State's position. In the above example where an entity conveys property to an individual who is an owner of the entity, the transfer would qualify as a transfer from a family member. The property owner would be transferring to an entity the individual owns. It is not apparent why the State failed to acknowledge the fact that an entity can be a family member in such a transaction. It is not possible for an entity to receive property from a family member if the individual is not also considered a family member of the entity. One cannot have a family member relationship with another unless both are considered family members of each other. That is the essence of the term family member. A family is a combination of people related to one another. The State offers no explanation of how a person who receives property from an entity can be a family member of the entity and then lose that status just because they transfer the property back to the same family member entity. Indeed, there is no logical or reasonable explanation.

The State's interpretation is precisely the type of interpretation the court rejected in *DLCD v. Yamhill County*, 151 Or App 367, 948 P2d 730 (1997). The interpretation, while a linguistically tenable interpretation of the statutory language, is not plausible because there is another linguistically supportable interpretation more consistent with the sense and purpose of the statute. A more detailed examination of the decision in *DLCD v. Yamhill County* helps illustrate the weakness of the State's argument here.

In *DLCD v. Yamhill County*, the parties were debating the meaning of the term "owner" in ORS 215.705, which provides in relevant parts:

> *(1) A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710, 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:*

(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

(A) Prior to January 1, 1985; or

(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

(b) The trace on which the dwelling will be sited does not include a dwelling

* * * * *

(d) The lot or parcel on which the dwelling will be sited, if zoned for farm use, is not on that high-value farmland described in ORS 215.710 except as provided in [subsections of the statute that are not material here].

* * * * *

(g) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.

* * * * *

(6) For purposes of subsection (1)(a) of this section, 'owner' includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members. (emphasis added)

The county had concluded that the owner of the subject property who acquired it from this father qualified as the present owner and stood in the same position as his father for purposes of siting a dwelling on the property. The DLCD disagreed arguing that the only way the son could be considered the present owner was if he had inherited the property from his father who acquired it prior to 1985. The DLCD argued:

'Present owner' has a clear and unambiguous meaning: the person who currently owns the lot. If that person purchased the lot before January 1, 1985, the present owner qualifies for a lot of record dwelling. ORS 215.705(1)(a)(A). ORS 215.705(1)(a)(B) expands the class of 'present owners' to include the relatives of a deceased owner. This is plain language which must be given its plain meaning. ORS 174.010.

The court rejected DLCD's argument. The court concluded:

> *DLCD's argument is plausible only in a linguistic sense. However, as a linguistic matter, it is at least equally plausible to read "present" as a purely chronological term relating to when the owners must have and have had the necessary association with the property, as distinct from who the owners are. As we indicated in Fechtig v. City of Albany (A97764), 150 Or App 10, 19-20, 946 P2d 280 (1997), and in Steele v. Employment Department, 143 Or App 105, 113, 923 P2d 1252, rev allowed 324 Or 487 (1996), the linguistic tenability of a proffered interpretation of a statutory term does not make the interpretation "plausible" if a different interpretation that is also linguistically supportable is decisively more consistent with the sense and purpose of the statute and its surrounding language. Here, DLCD's interpretation of the term "present owner" is not plausible under that test. (emphasis in text)*

DLCD v. Yamhill County at 372-373.

In interpreting voter passed legislation, courts are instructed against ending their analysis with the text. *Lipscomb v. State Board of Higher Ed.*, 305 Or 472, 485 753 P2d 939 (1988). The court of appeals reiterated that position in *State v. Allison*, 143 Or App 241, 247, 923 P2d 1224 (1996), where the court stated:

> *At the outset, it bears emphasis that in examining the statutory language, we are permitted to rest on a first level textual analysis only if the words will permit a single construction and all other are wholly implausible.*

It is certainly plausible, given the common and universal concept of what constitutes a family relationship, that the voters intended for the people listed in ORS 197.352(11) to be considered family members of an entity they owned. That intent and interpretation would result in a consistent application of the family member definition. Such an interpretation would not result in a consistent application of the family member definition. Such an interpretation would not result in a situation where an entity could transfer property to an individual who was a family member, and have that same person deemed not to be a family member of the same entity. Since another interpretation is plausible, the court can consider information the voters considered prior to the 2004 election. *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551, 560, n. 8, 871 P2d 106 (1994).

When that information is considered, the State should not seriously dispute that one component of ORS 197.352 provided added protection to owners of property that had been retained within a family setting. The statute was designed to provide relief to owners of property who held the property that would be valuable to the owner but for regulations that had been enacted that restricted the use of the property. The family member provision in ORS 197.352(3)(E) recognizes that real property is often an important asset in a family and a way for relatives to pass on wealth to their members. Moreover, the definition of family member in ORS 197.352(11) expressly recognizes that families use entities to hold real property.

Against that background, an interpretation that individuals and the legal entities they own have a commonly accepted reciprocal family relationship is far more consistent with the sense and

purpose of ORS 197.352. It is more plausible that the voters intended the "family member" provision to operate the same in a transaction involving a family-owned entity as it operates in transactions involving individual family members. Again, the focus of the family member provision is on transactions where the property is transferred. If an entity can transfer property to an individual and be considered a family member of the individual, the only logical interpretation the voters could have adopted is that the individual is a family member of the entity. It is simply not possible to have a family where only one member is considered a family member.

Even if an LLC is considered to break the chain of title, that does not mean the waiver date should be advance to the date of transfer of the property to the LLC. An LLC is a qualified family member under ORS 197.352(11)(A) because it is "a legal entity owned by" the property owner or a family member.

Applicants here takes the position that the same date must be used for determination of payment of money and the determination of waiver. The current interpretation creating a two tiered system is contrary to the language of the measure, and common sense. It is further unjust and inequitable to use an alternative remedy (waiver) to defeat an admitted right to just compensation.

Interpretation of a statute enacted through the initiative petition process is no different than interpreting a statute enacted by the Legislature. The interpretive principles of the Oregon Supreme Court's decision in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-612, 859 P2d 1143 (1993), apply. We begin by examining the text and context of the statute itself. *Id.* If the statute remains ambiguous after that examination, we turn to the legislative history and relevant canons of statutory construction. *Id.* However, for a statute enacted by the voters of the state, the relevant legislative history, or voters' intent, is the material available to the voters prior to the election. The intent of the drafter of an initiative measure is not relevant in construction of the text of that measure. *Ecumenical Ministries of Oregon v. Oregon State Lottery Comm.*, 318 Or 551, 559, 871 P2d 106 (1994).

"In interpreting a statute enacted by initiative, we apply standard principles of statutory construction." *Id.* "We attempt to ascertain the intention of the voters, looking first to the text of the measure in its context. If that inquiry does not clearly reveal the voters' intention, we also examine the legislative history and, if necessary, other aids to construction." *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). The courts should apply the same analysis, in most respects, to the construction of an initiated constitutional provision as it applies to initiated statutes. *PGE*, 317 Or at 612 n 4. In *Roseburg School Dist. v. City of Roseburg*, the Oregon Supreme Court described the method of inquiry:

> "In interpreting a constitutional provision adopted through the initiative process, our task is to discern the intent of the voters. The best evidence of the voters' intent is the text of the provision itself. The context of the language of the ballot measure may also be considered; however, if the intent is clear based on the text and context of the constitutional provision, the court does not look further."

316 Or 374, 378, 851 P2d 595 (1993) (citations and footnotes omitted). In determining the intent of the voters from the text and context of the statute, the Oregon Supreme Court made it clear in *Shilo Inn Portland/205, LLC v. Multnomah County* that:

> "The court * * * will not lightly conclude that the text is so clear that further inquiry is unnecessary. If any doubt remains, the court will consider the history of an initiated or referred constitutional provision in an effort to resolve the matter."

333 Or 101, 112, *recons*, 334 Or 11, 45 P3d 107 (2002)(citing *Ecumenical Ministries*, 318 Or at 559). Courts are only permitted to find that a statute is unambiguous, and therefore rely on "first level" textual analysis only if the text "will permit a single construction and all other possibilities are 'wholly implausible.'" *State v. Allison*, 143 Or App 241, 247, 923 P2d 1224 (1996) (Citing, *Owens v. MVD*, 319 Or 259, 268, 875 P2d 463 (1994)).

One thing most pundits agree upon is that Measure 37 was not a model of clarity. The Act left much to be determined by the courts, and clarity from courts was cut off by the passage of Measure 49, leaving significant interpretations up in the air. The processes within Measure 37 were inconsistent with its substance; its definitions use the defined terms in its own definition; and much of the relief makes no sense; let alone how does this new cause of action fit with existing statutes such as the writs of review to appeal local government decisions. Certainly there can be no question that Measure 37 as written is ambiguous, and that there are more than one plausible construction of the Measure.

Nothing in Measure 37 creates two claim dates, or a two tier system. The two tier system is an interpretation of the law, created by the State to limit the Measure's application. The text of Measure 37 provides a right to just compensation and says nothing about a two-tier "waiver date, compensation date" system:

> Section 1 - Substantive provision which provides a right to just compensation.
>
> Section 3 - Exempts certain regulations.
>
> Section 3E states,
> "(3) Subsection (1) of this act shall not apply to land use regulations:
> * * *
> (E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first."

Sections 1 and 3 make no mention of a waiver date or whether the substantive relief afforded by Measure 37 is affected by the "present owner's" acquisition of the property. In fact, Sections 1 and 3 specifically incorporate family ownership into the compensation calculus. Only under a restrictive interpretation of section 8 is relief limited to the time the "present owner" acquired the property. However, that limitation is in direct conflict with all other sections of the Measure.

Therefore, pursuant to the express language of Sections 1 and 3, land use regulations enacted after the family first acquired the property are subject to the Measure and the owner is entitled to just compensation based on the affect of those regulations.

Section 8 provides the government the option of essentially waiving application of the offending regulations, instead of providing just compensation. It states:

> "* * * [I]n lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to [sic] apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property."

However, the waiver provisions of Section 8 do not take precedence over the remainder of Measure 37. Section 8 begins by saying "Notwithstanding any other state statute or the availability of funds under subsection 10 * * *". Note that section 8 does not mention other sections of the act. It does not state "notwithstanding" Sections 1, 3 or 10. Therefore the applicability of those other sections continue to apply and take precedence over Section 8. In addition, the applicability of land use regulations enacted after the family first owned the property is also intact. Nothing in Section 8 takes that away.

Section 8 does provide the government an option of either paying compensation or waiving the offending land use regulations. That waiver is "in lieu" of compensation. However, without providing a waiver of regulations that caused the loss in value, and a waiver that equates to what just compensation would have been, a limited waiver does not comply with the text or intent of the Measure.

Section 10 provides, in part, that "[i]f a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property." Here, Section 10 mandates that the offending land use regulations are, in effect, waived if compensation has not been paid within two years of when the claim was filed.

According to the State, out of all that, voters were to have decided, not that the Measure provides relief to property owners in the form of just compensation or waiver, but that Measure 37 would create a two tier system, granting just compensation to all valid claims, but allowing governments to make an "end-run" around the substance of the measure and grant meaningless waivers. Measure 37, if anything, is ambiguous.

Applicants' construction is equally, if not more plausible than the governments' version, given that the governments' construction leads to the practical result of no relief for a whole class of otherwise valid claims. Therefore this court should find the text of Measure 37 is ambiguous, and move to the next step in the *PGE* analysis.

The State's two tiered approach to relief - or shall we say failure to grant relief - elevates form over substance. Process over the basic rights granted. No law should ever be interpreted in

such a way.

It is the Applicants' position that Measure 37, much like many new laws, first contains the grant of a new substantive right. Once that substantive right is established, there follow provisions to carry out that right. Proper interpretation ensures that the process manifests and enables the substance, and does nothing to thwart the right first granted. In Measure 37 the grant of right takes place at the beginning of Act.

Sections 1, 2, and 3 create the new substantive rights afforded by Measure 37. Section 1 makes it clear that "the owner of the property shall be paid just compensation" without qualification. There is no mention of the fact that you might qualify and have a valid claim but yet get no relief. Further, there is no mention of any two tiered system. Section 1 reads as follows:

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

If your Claim qualifies by meeting the basic elements stated in Section 1 you are unequivocally entitled to relief.

Section 2 then defines what constitutes "just compensation" and how it should be calculated. Section 2 provides:

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

Again there is nothing in this substantive language that supports the two tiered approach to eliminating relief in ancestral cases.

The substance of Measure 37 is rounded out with Section 3 where a list of types of things are set forth to determine what activities the Act applies to and which it does not. It is in this Section 3, especially subsection E where the government's interpretation falls apart. The text of Section 3(E) states:

> *(3) Subsection (1) of this act shall not apply to land use regulations:*
>
> "* * * * *
>
> *(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or*

inheritance by the owner, whichever occurred first.

This section makes it clear that the only land use regulations that are subject to a new Measure 37 cause of action are those which were; 1) enacted prior to the date of acquisition of the present owner of the property; or 2) which were enacted prior to the date of acquisition of a family member of the present owner who owned the property before the present owner; or 3) which were enacted prior to the date of inheritance by the present owner. Any of these three circumstances qualifies an owner for relief under the Act, and the government can not pick and choose which date. The Act specifically states that the government must use the earliest of the three dates (i.e. "whichever occurred first").

Beginning then with Section 4 and continuing through the end of the Act are sections dealing with the process of carrying out the substantive rights established in the first 3 sections. As previously stated, this process must be interpreted in such a way as to carry out the purpose and intent of the substantive right, not to eliminate it as is being done by the government. The State's determination to elevate form over substance must fail.

The identified two tiered system is inconsistent with common sense. The State essentially relies on Section 8 for the establishment of the entire two tiered system. When the measure extends the option to the State to waive the oppressive land use regulations its reference is to the "owner", which term is defined as the "present owner", and otherwise to allow the owner to use the property without regard for the after adopted restrictive land use regulations. The State then extrapolates this section to mean that it overrides the substantive rights granted in Section 1. The same word, "owner", is also used in Section 1. What is there about Section 8 that makes the word "owner" apply differently?

The purpose and intent of Measure 37 was to provide relief to long time owners of property and to breathe value back into land that restrictive regulations had choked out. Looking at Section 1 and 3 combined with the definitions of family members in 11(A) seem to indicate a direct purpose to consider ancestry when calculating relief. In the context of the Act, the word owner in Section 8 can be read to mean the present owner, or their ancestors, thereby allowing the waiver to match the payment of money.

The right to this waiver is not qualified by any other operative section in the Act, and neither do the waiver provisions of Section 8 take precedence over the remainder of Measure 37. Section 8 begins by saying "Notwithstanding any other state statute or the availability of funds under subsection 10 * * *." Note that Section 8 does not mention other sections of the Act, such as "notwithstanding" Sections 1, 3, or 10. Therefore the applicability of those other sections continue to apply and take precedence over Section 8.

Where is the basic common sense in having a two tiered system, where the second tier trumps the first and eliminates the possibility of any relief? The inconsistency in first finding that a claim is valid, but then providing no remedy based on a second acquisition date is more than normal common sense can bear. This Act should be interpreted, as Linn County did to make sure that valid

claims obtain relief, and the only way to do that is to determine that there is no two tier system. The Act creates a right to relief from oppressive land use regulations and cause a loss in value, for which the government has two options in granting that relief; either provide just compensation, or waive the regulations that caused the loss in value. The State's interpretation of Measure 37 leads to an absurd result; one which is contra to the plain text and context of the Act and which is contra to the intent of the voters. Linn County's decision applies common sense and logic and correctly implements the purpose and intent of Measure 37.

Applicants' believe Section 10 further supports the County's position by providing that where payment in money is ordered to the present owner of the property, but remains unpaid for a period of 2 years, then waiver again kicks in. Read in context with Sections 1, 3 and 8, what Section 10 tells us is that the substantive provisions of Sections 1 and 3 control. Said another way, a valid claim for payment in money in an ancestral case is dependant on the acquisition date of the ancestor, not the present owner. So the ancestral date then is the operative and controlling date. When the money awarded based on the ancestral date is not paid for 2 years, then the waiver happens automatically.

If the government could simply waive back only to the latest date of acquisition, Section 10 would have no meaning, as the State would never award money damages. In every ancestral case the State would simply elect a waiver to avoid providing the claimant with any relief whatsoever. The Act should be interpreted in such a way to recognize the context of the waiver provisions of Section 8 with the substantive provisions of Sections 1, 2 and 3 as well as Sections 10 and 11.

The State interprets the Act in isolation, picking and choosing text that benefit its position and ignoring the remainder. That is not an appropriate method under current text and context interpretative methodology, and should be rejected here in favor of the determinations made by Linn County in Order No. 2006-084. Looking at the entire Act, the ambiguities should be resolved in favor of providing relief, not eliminating it.

It is well settled law in Oregon that, for a voter approved ballot measure, it is the voters' intent, not the drafter's intent that the relevant inquiry. *Ecumenical Ministries v. Oregon State Lottery Comm'n,* 318, Or. At 559 (1994).

Reliance on after-election statements, by the drafter, or anyone else, such as a FAQ page on the drafter's website or statements made by the drafter after the election, provide no insight into the minds of voters when they decided to approve Ballot Measure 37. The primary source for voters' intent are the statements contained in the voters' pamphlet. Included in the voters' pamphlet are; 1) the text of the proposed ballot measure; 2) the Chief Petitioner's Statement (which states nothing about a two-tiered system), and; 3) arguments for and against the Ballot Measure.

In fact to the extent that after-election comments are relevant to voters' intent, the Chief Petitioner, in a speech regarding this issue said:

> *(P)philosophically we disagree or we believe that a claim of property right and a claim the rights that the - that the owner has should be extinguished upon their*

*death. However from a political - from a political point of view *** we were afraid that we would face the argument that if you go back two generations then you*** would have to allow people to use land in the way that grandpa could have done it when grandpa purchased the property *** We wanted to take that argument away from the opponents of Measure 37,* ***and they ended up making it anyway***** Emphasis supplied. Exhibit D, page 1, lines 15-23 and page 2, lines 1 and 2.

In other words, even the drafter and Chief Petitioner admit that arguments were made during the public debate before the election that match exactly Applicants' interpretation.

The relevant information before the voters prior to the election supports the concept that the conceived two tiered system was not what the voters thought or believed they would get when they approved Measure 37. The two tiered system was not even alluded to in either the Ballot Title or the Explanatory Statement, both important documents in what the voters had in their minds when they cast their ballots.

Everything in the Ballot Title and arguments in the Voters' Pamphlet confirm that the voters' intention was to compensate property owners for any and all decreases in property values resulting from land use restrictions. The Ballot Title of Measure 37 states:

RESULT OF "YES" VOTE: "Yes" vote requires that governments pay owners, or forgo enforcement by repealing, changing, not applying restrictions, when certain land use restrictions reduce owners' property value.

Nowhere is there mention of any mechanism of a two tiered system.

Arguments in the voters' pamphlet consistently argue for "compensation" and the reliance on the value of the property for future income for the family, children and grandchildren. The argument in favor submitted by Leigh Foxall, Oregon Homeowner's Association stated, "Ballot Measure 37 is a family's first and best line of defense for the protection of their property." The argument in favor submitted by Dorothy English stated that "My husband and I purchased or property in 1953. It was our dream to someday divide the property, give some of it to our children and grandchildren, and sell the remainder for our retirement." Another argument in favor submitted by the Josephine County Farm Bureau stated, "No one should be able to use a legal loophole to take away your property without compensation. Especially not government." It is clear from these arguments that voters were looking for compensation for their family for any restrictions reducing property values.

In summary, the State's decision to reset the acquisition date of Applicants' ownership from their original purchase date in 1976 to 1996 when the LLC was created is not relevant because the Applicants' had already vested the waiver approval granted by Linn County. In addition, the State's interpretation of Measure 37 to disregard a family owned LLC, and to reset the acquisition date based on the deed to the LLC is legally incorrect, and should not be adopted.

5. Conclusion

The Applicants have provided sufficient legal and factual justification for approval of their vesting claim. All aspects of state law on vesting are satisfied. All aspects of the county code on vesting are satisfied here. The lack of State approval of the claim is not relevant and incorrect in any event. Rural residential dwellings are the highest and best use of the property, and in keeping and compatible with the surrounding area.

This application for vesting of the right to construct houses on each of the three parcels should be approved.

DATED this 26th day of April, 2018.

Wallace W. Lien, OSB #793011
Of Wallace W. Lien, P.C.
Attorney for the Applicants

INDEX TO EXHIBITS

APPLICATION FOR VESTING DETERMINATION
DAVID AND GAY HICKEY FAMILY LLC

EXHIBIT 1 Original Acquisition Deed dated May 28, 1976, Recorded V135, P699

EXHIBIT 2 Deed to the Family LLC dated December 9, 1996, Recorded V843, P86

EXHIBIT 3 Linn County Resolution and Order No. 2006-084

EXHIBIT 4 Notice of Decision, approving Partition, Case No. PD06-0203

EXHIBIT 5 Partition Plat No. 2007-118

EXHIBIT 5A Covenant dated December 4, 2007, recorded on December 5, 2007 as Document No. 2007-28056

EXHIBIT 6 Septic Site Evaluation for TL105, Approved on August 29, 1979, Site #79-339

EXHIBIT 7 Updated Septic Site Evaluation for TL105, Approved August 31, 2016

EXHIBIT 8 Application for Septic Site Evaluations on TL112 and 113 from K&D Engineering dated July 26, 2007

EXHIBIT 9 Septic Site Evaluation for TL112, approved on August 14, 2006

EXHIBIT 10 Septic Site Evaluation for TL113, approved on August 14, 2006

EXHIBIT 11 Well Log #91855, approved for Well No. DE-2157 on September 27, 2007

EXHIBIT 12 Oregon Water Resources Well Construction Start Card dated September 26, 2007

EXHIBIT 13 Linn County Right of Way Encroachment Permit No. 07-1987

EXHIBIT 14 United States Department of Agriculture (SCS) letter restricting drainage

EXHIBIT 15 Linn County Assessor Map No. 12.1W.21

EXHIBIT 16 Linn County Assessment Report for TL105

EXHIBIT 17 Linn County Assessment Report for TL112

EXHIBIT 18 Linn County Assessment Report for TL113

FORM No. 147. CONTRACT—REAL ESTATE—Partial Payments. VOL 135 PAGE 699

1-1-74

CONTRACT—REAL ESTATE

THIS CONTRACT, Made the 28 day of May, 1976, between HAROID E. WALLER and DARWINA P. WALLER, husband and wife, of the County of Deschutes and State of Oregon, hereinafter called the first party, and DAVID J. HICKEY and GAY M. HICKEY, husband and wife, of the County of Linn and State of Oregon, hereinafter called the second party,

WITNESSETH, That in consideration of the stipulations herein contained and the payments to be made as hereinafter specified, the first party hereby agrees to sell, and the second party agrees to purchase, the following described real estate, situate in the County of Linn, State of Oregon, to-wit:

That portion of the following described property lying Southerly of Hamilton Creek: Beginning at a point 26.22 chains West of the Southeast Corner of the Donation Land Claim of John W. Moore and wife, Not. No. 2599, and Claim No. 44 in Township 12 South of Range 1 West of the Willamette Meridian, Linn County, Oregon, said Southeast Corner being in Southwest Quarter of Section 22 in said Township and Range aforesaid, and running thence North to the North line of said Claim No. 44; thence West to the Northwest Corner of said Claim No. 44; thence South to a point due West of the place of beginning, being the

(continued on reverse side)

for the sum of SIXTEEN THOUSAND EIGHT HUNDRED and No/100 Dollars ($16,800.00) on account of which Two Thousand Eight Hundred and No/100 Dollars ($ 2,800.00) is paid, on the execution hereof (the receipt of which is hereby acknowledged by the first party), and the remainder to be paid to the order of the first party with interest at the rate of 8 per cent per annum from June 1, 1976, on the dates and in amounts as follows:

In monthly installments of not less than $125.00 in any one payment, which includes the full amount of interest due at the time of payment of each installment, the first payment to be made on the 1st day of July, 1976, and a like payment on the 1st day of each month thereafter, until the whole sum, principal and interest, has been fully paid.

Recorded by Willamette Valley Title Co. 23996-L

The buyer (also called second party) warrants to and covenants with the seller that the real property described in this contract is

*(A) primarily for buyer's personal, family, household or agricultural purposes,
(B) for an organization or (even if buyer is a natural person) is for business or commercial purposes other than agricultural purposes.

June 1, 1976

Taxes for the current tax year shall be prorated between the parties hereto as of the date of this contract. The second party, in consideration of the premises, hereby agrees to pay all taxes hereafter levied and all public and municipal liens and assessments hereafter lawfully imposed upon said premises, all promptly and before the same or any part thereof become past due, that he will keep all buildings now or hereafter erected on said premises insured in favor of the first party against loss or damage by fire (with extended coverage) in an amount not less than $

in a company or companies satisfactory to first party, and will have all policies of insurance on said premises made payable to the first party as their party's interest may appear and will deliver all policies of insurance on said premises to the first party as soon as insured. All improvements placed thereon shall remain, and shall not be removed before final payment be made for said above described premises.

(Continued on reverse)

*IMPORTANT NOTICE: Delete, by lining out, whichever phrase and whichever warranty (A) or (B) is not applicable. If warranty (A) is applicable and if the seller is a creditor, as such word is defined in the Truth-in-Lending Act and Regulation Z, the seller MUST comply with the Act and Regulation by making required disclosures; for this purpose, use Stevens-Ness Form No. 1308 or similar unless the contract will become a first lien to finance the purchase of a dwelling in which event use Stevens-Ness Form No. 1307 or similar.

SELLER'S NAME AND ADDRESS

BUYER'S NAME AND ADDRESS

After recording return to:
McPHERSON REAL ESTATE
555 MAIN
LEBANON
NAME, ADDRESS, ZIP

Until a change is requested all tax statements shall be sent to the following address.
David J. Hickey
Route 2, Box 151
Lebanon, OR 97355
NAME, ADDRESS, ZIP

SPACE RESERVED FOR RECORDER'S USE

STATE OF OREGON,
County of .....
I certify that the within instrument was received for record on the ..... day of ....., 19..., at ..... o'clock ..... M., and recorded in book ..... on page ..... or as file/reel number .....
Record of Deeds of said county.
Witness my hand and seal of County affixed.

..... Recording Officer
By ..... Deputy

Exhibit # C
Page 33 of 114

EXHIBIT 1

The first party agrees that at his expense and within 30 days from the date hereof, he will furnish unto second party a title insurance policy insuring (in an amount equal to said purchase price) marketable title in and to said premises in the first party on or subsequent to the date of this agreement, save and except the usual printed exceptions and the building and other restrictions and easements now of record, if any. First party also agrees that when said purchase price is fully paid and upon request and upon surrender of this agreement, he will deliver a good and sufficient deed conveying said premises in fee simple unto the second party, his heirs and assigns, free and clear of encumbrances as of the date hereof and free and clear of all encumbrances since said date placed, permitted or arising by, through or under first party, excepting, however, the said easements and restrictions and the taxes, municipal liens, water rents and public charges so assumed by the second party and further excepting all liens and encumbrances created by the second party or his assigns.

But in case the second party shall fail to make the payments aforesaid, or any of them, punctually and upon the strict terms and at the times above specified, or fail to keep any of the other terms or conditions of this agreement, time of payment and strict performance being declared to be of the essence of this agreement, then the first party shall have the following rights: (1) to declare this contract null and void, (2) to declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable and/or (3) to foreclose this contract by suit in equity, and in any of such cases, all the right and interest hereby created or then existing in favor of the second party derived under this agreement, shall utterly cease and determine, and the premises aforesaid shall revert and revest in the first party without any declaration of forfeiture or act of re-entry, or without any other act by first party to be performed and without any right of the second party of reclamation or compensation for money paid or for improvements made as absolutely, fully and perfectly as if this agreement had never been made.

Second Party is aware of the fact that in 1975 an application for a Septic Tank Permit was not granted by the Linn County Building Department; and no representations with respect to the granting of a permit have been made by the First Party.

The true and actual consideration paid for this transfer, stated in terms of dollars, is $16,800.00 (Strike the words which do not apply. This sentence MUST be stricken if only a part of the consideration is represented by money paid, or if property or value is given or promised which is the whole consideration. Indicate which.)

And in case suit or action is instituted to foreclose this contract or to enforce any of the provisions thereof, second party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed plaintiff in said suit or action and if an appeal is taken from any judgment or decree of such trial court, the buyer further promises to pay such sum as the appellate court shall adjudge reasonable as plaintiff's attorney's fees on such appeal.

The second party further agrees that failure by the first party at any time to require performance by the second party of any provision hereof shall in no way affect first party's right hereunder to enforce the same, nor shall any waiver by said first party of any breach of any provision hereof be held to be a waiver of any succeeding breach thereof or as a waiver of the provision itself.

In construing this contract, it is understood that the first party or the second party may be more than one person; that if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally, all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF, said parties have executed this instrument in duplicate; if either of the undersigned is a corporation, it has caused its corporate name to be signed and its corporate seal affixed hereto by its officers duly authorized thereunto by order of its board of directors.

Harold E. Waller

Darwina P. Waller

David J. Waller

Gay M. Hurley

NOTE—The sentence between the symbols ①, if not applicable, should be deleted. See ORS 93.030.

STATE OF OREGON, County of Deschutes } ss.

May 24, 1976

Personally appeared the above named Harold E. Waller and Darwina P. Waller and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me: Evelyn B. Fleisher

(OFFICIAL SEAL)

Notary Public for Oregon

My commission expires: 1-22-78

STATE OF OREGON, County of ....., 19.....

Personally appeared ..... and ..... who, being duly sworn, each for himself and not one for the other, did say that the former is the president and that the latter is the secretary of ..... a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Before me:

(OFFICIAL SEAL)

Notary Public for Oregon

My commission expires:

Exhibit # C

Page 34 of 114

Exhibit B 1

Page 16 of 28

VOL 135 PAGE 701

FORM NO. 23 — ACKNOWLEDGMENT

STATE OF OREGON,
County of Linn } ss.

BE IT REMEMBERED, That on this 28th day of May, 1976, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named David J. Hurley and Kay M. Hurley

known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Joe McPherson
Notary Public for Oregon.
My Commission expires Dec 15, 1978

(DESCRIPTION CONTINUED)

Northwest Corner of a tract of land conveyed by John McKinney and wife to Jacob Newman on March 4, 1873, by Deed recorded at page 132 of Volume M of the Deed Records of Linn County, Oregon; thence East to the place of beginning, EXCEPT tract sold to Gerheart Kieper, et ux, by William H. McPherson, et ux, as conveyed in Book 306, page 329, described as follows: Beginning on the North line of and East 58.30 chains from the Northwest Corner of the South Half of Section 21, Township 12 South, Range 1 West of the Willamette Meridian in Linn County, Oregon; thence East 130 feet; thence South 1° West 580 feet, more or less, to the North line of the Lebanon-Berlin Market Road; thence Westerly along a curve on said roadway 125 feet, more or less, to the East line of land deeded by Kinder Estate to Donald Piper; thence North 0° 20' East along said East line 555 feet, more or less, to the point of beginning.

SAVE AND EXCEPT that portion of the above described tract of land lying within the boundaries of public roads and highways.

The premises herein conveyed lies south of the center line of the main channel of Hamilton Creek.

424586

STATE OF OREGON ss.
County of Linn

I hereby certify that the within was received and duly recorded by me in Linn County Records:
Vol. MF 135 Page 699
(Date)

JUN 1 4 01 PM '76

DEL W RILEY CLERK
By [illegible]
DEPUTY

Exhibit # C
Page 25 of 124

Exhibit # L
Page 17 of 28

After Recording Return To:
Dennis D. Ashenfelter
Weatherford, Thompson, et al
P. O. Box 667
Albany, Oregon 97321

Assessor's Account Nos. 0355293; 0182630

VOL 0843 PAGE 86

Until requested otherwise send all tax statements to:
NO CHANGE

WARRANTY DEED
AND ASSIGNMENT OF LEASES
(DAVID J. HICKEY and GAY M. HICKEY to the DAVID AND GAY HICKEY FAMILY L.L.C.)

KNOW ALL MEN BY THESE PRESENTS, That DAVID J. HICKEY and GAY M. HICKEY, and each of them, hereinafter called Grantor, for the consideration hereinafter stated, do hereby convey and warrant to DAVID AND GAY HICKEY FAMILY L.L.C., and Oregon limited liability company, Grantee, and unto said Grantees' heirs, successors and assigns all of Grantor's interest in that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the County of Linn, State of Oregon, described as follows, to-wit:

All of Grantor's interest in and to the following described real property, TOGETHER WITH, all of Grantor's interest in and to any and all leases, and the rents, royalties, issues and profits therefrom, pertaining to and derived from any or all of the below described real property, or any portion thereof:

SAID REAL PROPERTY BEING MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN.

SUBJECT TO: All easements, conditions, restrictions and encumbrances listed as exceptions to title by the document by which Grantor received record title to the property; and all easements, conditions, restrictions, and encumbrances created or suffered by the grantor; and all leases entered into by grantor encumbering the property, if any, whether or not of record.

To Have and to Hold the same unto the said Grantee and Grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is $ -0- . However, the actual consideration consists of or includes other property or value given or promised which is the whole consideration.

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

In Witness Whereof, the Grantor has executed this instrument this 9 day of December, 1996.

David J. Hickey
DAVID J. HICKEY

Gay M. Hickey
GAY M. HICKEY

STATE OF OREGON)
) ss.
County of Linn)

This instrument was acknowledged before me on December 9, 1996, by DAVID J. HICKEY and GAY M. HICKEY.

OFFICIAL SEAL
DENNIS D. ASHENFELTER
NOTARY PUBLIC-OREGON
COMMISSION NO. 035966
MY COMMISSION EXPIRES JULY 20, 1998

Dennis D. Ashenfelter
Notary Public for Oregon
My commission expires: 07-20-98

DAVID J. HICKEY and GAY M. HICKEY
TO
DAVID AND GAY HICKEY FAMILY L.L.C.
[ker:C:\OFFICE\WPWIN\CLIENTS\HICKEY\DEED.FAM:12/9/95]

Exhibit # C
Page 36 of 194

EXHIBIT
2

EXHIBIT "A"
TO WARRANTY DEED
(DAVID J. HICKEY and GAY M. HICKEY to
the DAVID AND GAY HICKEY FAMILY L.L.C.)

PARCEL 1

That portion of the following described property lying Southerly of Hamilton Creek: Beginning at a point 26.22 chains West of the Southeast corner of the Donation Land Claim of John W. Moore and wife, Not. No. 2509, and Claim No. 44 in Township 12 South of Range 1 West of the Willamette Meridian, Linn County, Oregon, said Southeast Corner being in Southwest Quarter of Section 22 in said Township and Range aforesaid, and running thence North to the North line of said Claim No. 44; thence West to the Northwest Corner of said Claim No. 44; thence South to a point due West of the place of beginning, being the Northwest corner of a tract of land conveyed by John McKinney and wife to Jacob Newman on March 4, 1873, by Deed recorded at page 132 of Volume M of the Deed Records of Linn County, Oregon; thence East to the place of beginning, EXCEPT tract sold to Gerheart Kieper, et ux, by William H. McPherson, et ux as conveyed in Book 306, page 329, described as follows: Beginning on the North line of and East 58.30 chains from the Northwest Corner of the South Half of Section 21, Township 12 South, Range 1 West of the Willamette Meridian in Linn County, Oregon; thence East 130 feet; thence South 1° West 580 feet, more or less, to the North line of the Lebanon-Berlin Market Road; thence Westerly along a curve on said roadway 125 feet, more or less, to the East line of land deeded to Kinder Estate to Donald Piper; thence North 0° 20' East along said East line 555 feet, more or less, to the point of beginning. SAVE AND EXCEPT that portion of the above described tract of land lying within the boundaries of public roads and highways.

PARCEL 2

Beginning at a 1/2 inch pipe which bears North 7° 38' East 160 feet from the Southeast corner of the James Ralston Donation Land Claim No. 49 in Township 12 South, Range 2 West of the Willamette Meridian in Linn County, Oregon; thence North 89° 58' West 420.48 feet to a 1/2 inch pipe; thence North 26° 10' East 100.47 feet to a 1/2 inch pipe; thence North 15° West 227.04 feet to a 1/2 inch pipe on the South line of Grant Street; thence Easterly following the South line of Grant Street 476.2 feet, more or less to a point which bears North 8° 31' East from the place of beginning; thence South 8° 31' West 271.15 feet more or less to the place of beginning.

[illegible]C:\OFFICE\WPWIN\CLIENTS\HICKEY\EXBA-LIN FAM:12/9/96]

STATE OF OREGON
County of Linn

I hereby certify that the attached was received and duly recorded by me in Linn County records.
STEVE DRUCKENMILLER
Linn County Clerk
By RJ, Deputy

H
R 10
S 10
A 20
O 5
MF 843
PAGE 86

8:30 O'clock a.m.
DEC 23 1996

45

EXHIBIT "A"
Page 1 of 1

Exhibit # C
Page 37 of 114

Exhibit # 1
Page 21 of 28

FILED

MAR 8 2006

STEVE DRUCKENMILLER, CLERK

Clerk

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR LINN COUNTY

IN THE MATTER OF A MEASURE 37 CLAIM FILED BY DAVID AND GAY HICKEY FAMILY LLC SEEKING COMPENSATION BASED ON A REDUCTION IN FAIR MARKET VALUE BY REGULATION RESTRICTING SUBDIVISION OF A 21.85-ACRE UNIT OF LAND IN THE FARM/FOREST ZONING DISTRICT INTO FIVE ACRE BUILDABLE LOTS T12S, R1W Section 21, Tax Lot 105 Assessor's Account # 0355293	RESOLUTION & ORDER NO. 2006-084 (M 37 Approval) (M37-145-05)

COMES NOW, Mr. Steve Michaels the Linn County Planning and Building Director, in a regularly scheduled and duly advertised meeting on March 1, 2006 and respectfully requests that the Board of County Commissioners for Linn County (Board) consider a Measure 37 claim as set forth in Exhibit 1, attached hereto; and,

WHEREAS, The Director has filed a recommendation (Exhibit 1) regarding a measure 37 claim for compensation filed by the claimants wherein the Director recommends that the Board approve the claim for David and Gay Hickey only and in lieu of making payment of compensation, not apply the restrictive land use regulations and allow the use requested;

WHEREAS, The claim was filed based on Ballot Measure 37, which was approved by Oregon voters on November 2, 2004;

WHEREAS, Measure 37 was made a part of ORS Chapter 197; and

WHEREAS, Linn County adopted LCC Chapter 225, Measure 37 Claims Compensation Code on December 2, 2004, as a means to implement the provisions of Measure 37; and, now, therefore,

FINDINGS OF FACT – BACKGROUND

The Linn County Board of Commissioners (Board) specifically incorporates the background and general findings of facts set forth in the Department's (Exhibit 1) recommendation as the Board's findings of facts.

Exhibit # C
Page 38 of 114

LINN COUNTY, OREGON 2006-05418
COM-M37 03/09/2006 09:56:06 AM
Cnt=1 Stn=7 S. WILSON
This is a no fee document NO FEE

0000608820060005418001001 5

I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Steve Druckenmiller - County Clerk

EXHIBIT 3

FINDINGS OF FACT (SPECIFIC TO THE CRITERIA IN LCC 225.500(F)

The Linn County Board of Commissioners (Board) specifically incorporates the findings of fact as to the specific criteria in LCC 225.500 (F) as set forth in the Department's recommendation (Exhibit 1) as the Board's findings of facts.

FINDINGS OF FACT (ADDITIONAL)

1. Staff submitted a recommendation pursuant to LCC 225.300(G), wherein staff made the following recommendations:

   a. That the Board recognize the validity of David and Gay M. Hickeys' Measure 37 claim only;

   b. That the Board not apply the applicable current County code regulations:

      i. LCC 934.510, Rural Resource Zone area, Width and Depth Development Standards to wit: the restrictive minimum property size standard is 80 acres and the width and depth dimensions are 800 feet, thereby enabling the above claimants to apply for subdivision approval to create four at least 5.00 acre parcels;

      ii. LCC 933.310 through 933.708 to wit: the decision criteria for siting a dwelling in a resource zone; and

      iii. LCC 905.100 through 905.120 Agricultural Resource Lands sections of the Comprehensive *Plan*

2. That the Board adopt as part of this decision the certain conditions and requirements which are set forth herein; and, now, therefore, the Board makes the following

CONCLUSIONS

1. That the criteria in LCC Chapter 225.500 (F) have been met.

2. That, based on the Linn County Assessor's information, because of the restrictive land use regulations a reduction in fair market value in the amount of $200,190 has resulted. This Board finds that the claimants have demonstrated that there would likely be a reduction in fair market value. The Board finds that claimant may be entitled to a claim for compensation up to but not to exceed the estimated amount of $193,190. This is a preliminary estimation of the reduction in fair market value. This estimate is subject to one or more certified appraisals being conducted establishing the true impact on fair market value.

LEGISLATIVE AND POLICY DECISION

The Linn County Board of Commissioners having considered the evidence and deciding that compensation in

an amount yet to be decided is owing now considers as a matter of policy and legislative rule as applied to this claim whether payment will be made or whether the restrictive land use regulation complained of will be modified, removed, or not applied as to the property subject to the claim herein. The Board notes that funds have not been set aside for payment of just compensation owed the claimant, and even if such funds had been set aside, such payment may, in the discretion of the entity enacting the restrictive land use regulation, be waived and a use allowed the current owner of the subject property; and, now, therefore, the *Linn County Board of Commissioners*,

RESOLVES, That compensation owed the claimant not be paid; and

RESOLVES, That the land use regulations enacted by Linn County currently codified at LCC 934.510, LCC 933.310 through 933.708 and LCC 905.100 through 905.120 restricting the subdivision and development of the subject property for the use requested not be applied and that the claimant's requested use on the subject property be allowed subject to the following terms and conditions:

a. That David and Gay Hickey shall apply and receive approval for septic site evaluations from the Environmental Health Program for each of the proposed vacant lots prior to the submittal of a subdivision application.

b. That the Hickeys are entitled through this action to submit a subdivision application to the Linn County Planning and Building Department for review and approval. Upon completion of the subdivision, including compliance with conditions and requirements, the resulting parcels will be recognized as authorized units of land that are buildable.

c. That the waiver granted in this decision allowing the subdivision of tax lot 105, T12S, R1W, Section 21 is valid for two (2) years from the date of this decision.

d. That to remain buildable beyond the two years provided for in Condition "c" and prior to the sale of any of the lots, the final subdivision plat shall be approved and recorded and a septic system installed on each of the vacant lots no later than March 1, 2008.

e. That, the claimants shall obtain a new road access permit from the Linn County Road Department. You may contact Chuck Knoll or Mary Price at (541) 967-3919 regarding access requirements for the subdivision prior to submitting the subdivision application.

f. That when new deeds are recorded for each of the proposed parcels, a covenant shall be included on the deed binding the landowner, and the landowners successors in interest, from pursuing a

claim for relief or cause of action alleging injury from farming or forest practices in the area. The following is an example of the language the may be used:

> *Grantees and their heirs, legal representatives, assigns and lessees hereby acknowledge by the placement of this covenant, or the acceptance and recording of this instrument, that the property herein described is situated in an Exclusive Farm Use zoning district of Linn County, Oregon. As such, they may be subjected to common, customary and accepted farm or forest management activities for the operation of a commercial farm or forest that includes management and harvesting of agricultural products or timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, and any other accepted and customary farm or forest management activity conducted in accordance with federal and state laws. The above practices ordinarily and necessarily produce noise, dust, smoke and other types of visual, odor or noise impacts which grantees accept as normal and necessary farming or forestry management activities and as part of the risk of siting a residential dwelling in Farm/Forest zoning district.*

g. That this Measure 37-claim approval is for David and Gay Hickey only.

h. That the Hickeys acknowledge that the adoption of this order by the Linn County Board of Commissioners concludes all of his Measure 37 claims for the subject property.

i. That the validity of this waiver is dependent on, condition upon, and subject to judicial judgments and legislative enactments. If a court of competent jurisdiction determines that any part or the whole of Measure 37 is invalid, the waiver is invalid to the extent of that determination;

ORDERED, That a copy of this resolution and order without the exhibits be filed in the deed records of Linn County. _____

Decided and effective March 1, 2006.
Signed this 8th day of March, 2006.

BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

Roger Nyquist, Chairman

John K. Lindsey, Commissioner

Cliff Wooten, Commissioner

APPROVED AS TO CONTENT:

Steve Michaels
Linn County Planning & Building Director

Exhibit # C
Page 41 of 114

"Resolution format pre-approved as to form by Legal Counsel pursuant to MOU #05-PD-001, dated June 6, 2005."
This pre-approval is void after June 21/2006.

APPROVED AS TO CONTENT & CERTIFICATION OF COMPLIANCE WITH MOU #05-PD-001:

[Official's name] [Official's title]

LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Steve Michaels, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816, 1-800-319-3816
Fax 541-926-2060 www.co.linn.or.us

March 1, 2006

To: Linn County Board of Commissioners

From: Kathy Krabbe

Re: Measure 37 Claim (M37-145-05) Public Meeting on March 1, 2006

RESOLUTION 2006-084; IN THE MATTER OF A MEASURE 37 CLAIM FILED BY DAVID AND GAY HICKEY FAMILY L.L.C. SEEKING COMPENSATION BASED ON A REDUCTION IN FAIR MARKET VALUE BY REGULATIONS RESTRICTING SUBDIVIDING OF A 21.85-ACRE UNIT OF LAND IN THE FARM/FOREST ZONING DISTRICT INTO FIVE-ACRE BUIDLABLE LOTS THAT CAN BE SOLD.

I. Background

David and Gay Hickey Family L.L.C., the property owner, filed a Measure 37 compensation claim (*exhibit 1*) on October 26, 2005. The subject property is identified as tax lot 105 on the Linn County Assessor's map T12S, R1W, Section 21 and consists of 21.85 acres. It is located on the north side of Berlin Road and at the junction of Berlin Road and Waterloo Road and abuts the Mallard Creek Golf Course to the east. It is about five miles east of the city of Lebanon. The current zoning is Farm/Forest with an 80-acre minimum lot size. This property is vacant land planted in poplar trees. Maps of the subject property are included as *exhibit 2*

The subject property was created at 21.85 acres at least in 1968, which was prior to zoning in Linn County. David J. and Gay M. Hickey acquired joint interest in the property on June 4, 1976 by the recording of a Real Estate Contract from Harold E. Waller and Darwina P. Waller (Vol. 135, Pg. 699). The property was zoned Agriculture, Residential and Timber (ART) at that time with a 5-acre minimum lot size and dwellings were allowed outright. A Warranty Deed was subsequently recorded in September 1990 when the contract was satisfied (Vol. 542, Pg. 453). On December 3, 1990, a new Warranty Deed was recorded from David J. and Gay M. Hickey to David and Gay Hickey Family L.L.C. (Vol. 843, Pg. 86). Copies of the deeds are included as *exhibit 3.*

The Hickeys would like to subdivide tax lot 105 into up to four parcels (each of which would be no less than five acres), that would become buildable lots that could be sold. This proposal would have been possible under the ART zoning when the Hickeys acquired an interest in the property in 1976.

The current minimum lot size of 80 acres and the lot width and depth requirement of 800 feet in the F/F zone do not allow the claimants to apply for subdividing the subject property. Dwellings are not an outright use in the F/F zoning district as they were under the ART zoning district. The Hickeys are asking for a waiver of Linn County Land Development Code (LCC) 934.510 (D) size, width and depth requirements in the F/F zone, LCC 933.310 thru 933.780, decision criteria for siting dwellings and LCC 905.300 through 905.330, Farm/Forest Lands that contain the sections of the *Comprehensive Plan* applicable to properties with an F/F *Comprehensive Plan* designation.

The Hickeys indicated that the current value of the subject property is $125,000 and without the restrictive regulations, the value would increase to $500,000. No information was submitted with the claim to substantiate these values. Mark Noakes, Linn County Assessor, submitted information that, based on the 2005-2006-tax year, the current real market value of the land only is $116,190 for tax purposes. If the property were divided into the four proposed lots, the land only value would increase to a total of $310,180 for tax purposes. The Assessor's information suggests a value lost of $193,990. The Assessor's information is contained in (*exhibit 4).*

If a Measure 37 waiver were to be granted, the Hickeys could apply for a subdivision to divide the subject property as proposed. LLC Chapter 926, Subdividing Code, describes the process for subdivisions.

II. Findings to Support a Final Decision

The Board's final decision shall be based upon a record containing facts and findings supporting its decision [LCC 225-500(F)]. Such facts and findings may include, but are not limited to the following.

A. That the claimant is the current owner of the property.

Finding

David and Gay Hickey Family L.L.C, the claimant, is the current property owner. David J. and Gay M. Hickey acquired an interest in the subject property by the recording of a Real Estate Contract in June 1976 (Vol. 135, Pg. 699) and a subsequent Warranty Deed that was recorded in September 1990 (Vol. 542, Pg. 453). On December 3, 1990, a new Warranty Deed was recorded from the Hickeys to the David and Gay Hickey Family L.L.C. (Vol. 843, Pg. 86).

B. That the property complained of is private real property in Linn County.

Finding

The subject property is identified as real property in Linn County (Assessor's account number 0355293).

C. That all joint-owners in fee and all less than fee interest holders have been identified and have signed the claim form demonstrating agreement with claimant's action.

Finding

Both David and Gay Hickey have signed the Measure 37 Compensation Claim on behalf of the David and Gay Hickey Family L.L.C. No other public records were found indicating other interests in the property.

D. What the nature of each interest in the subject property is: of the claimant, and if applicable, of joint-owners in fee and less-than-fee interest holders.

Exhibit # C
Page 44 of 114

Finding

David L. and Gay M. Hickey are the sole interest holders of the David and Gay Hickey Family L.L.C. which owns the subject property.

E. That the property was or the properties were legally created.

Exhibit # 1
Page 2 of 28

Finding

The deed records indicate that the subject property was created at 21.85 acres at least in 1968, which was prior to zoning in Linn County. The subject property qualifies as an authorized unit of land.

F. **That the land use regulations supplied by the claimant supports claimant's claim for compensation and/or by a waiver of a restrictive regulation enacted or enforced within the time limitations imposed by Measure 37 and this Chapter.**

Finding

As stated earlier, David J. and Gay M. Hickey first acquired an interest in the property in June of 1976. The property was zoned Agriculture, Residential and Timber (ART) at that time with a 5-acre minimum lot size and dwellings were allowed outright. In the Measure 37 claim, the Hickeys relied on all land use regulations that went into effect in September of 1980 when the property was rezoned from ART to F/F through the current F/F regulations in effect today which restrict their ability to subdivide their property as proposed. Their Measure 37 was filed October 26, 2005, after Measure 37 went into effect on December 2, 2004 and within the two-year time limit for submitting applications.

G. **That the restriction was caused by either the enactment or the enforcement of that land use regulation.**

Finding

The restrictions affecting the claimants' property were enacted in September 1980 when the property was rezoned from ART to F/F. Dwellings were allowed only thru a conditional use review on parcels less than 40 acres and, under current regulations, dwellings are still allowed through a conditional use review, however, the criteria were changed significantly in 1993.

On April 20, 1994, the Linn County Commissioners approved a zone amendment (ZA-1-93/94) that implemented the changes in 1993 of House Bill 3661 and the Oregon Administrative Rules (OAR). These changes included the establishment of an 80-acre minimum lot size, and a lot width and depth standard of 800 feet for the creation of new parcels in the F/F zoning district and new criteria for siting a dwelling. LCC 905.300 through 905.330, Farm/Forest Lands, contain the sections of the *Comprehensive Plan* applicable to properties with an F/F zone designation. Under the current regulations, the Planning and Building Department cannot accept an application to subdivide the subject property as proposed and to site dwellings on the proposed vacant lots. Therefore, the restrictive regulations that do not allow subdividing this property were therefore enacted and enforced on the subject property and do not allow dwellings as an outright use were enacted and enforced on this property.

H. **That the restriction complained of had not existed in the land use regulations and had not been enforced immediately prior to acquisition of the property.**

Finding

As evidenced previously, the restrictions complained of had not existed in land use regulations and had not been enforced prior to acquisition of the property.

I. **That the use alleged to be restricted by the enactment or enforcement, as the case may be, is provided for in the land use regulation complained of.**

Finding

When the zoning was changed to F/F in September of 1980, dwellings were no longer allowed as an outright use unless the owner had 40 acres and it was being farmed. Current LCC does not provide for small lot subdivisions in the F/F zoning district. The 80-acre minimum parcel size and 800-foot width and depth dimensions are found in LCC 934.510. Criteria for dwellings are found in LCC 933.310 through 933.780 which implements LCC 905.100 through 905.120 of the *Comprehensive Plan.* Therefore, the proposed use alleged to be restricted, that is, the subdividing of a 21.85-acre property into five-acre parcels with dwellings allowed outright is not provided for in the land use regulations complained of.

J. **That the result of the alleged restrictive enactment or enforcement, as the case may be, is a reduction of fair market value of the property.**

Finding

The Hickeys indicated that the current value of the subject property is $125,000 and without the restrictive regulations, the value would increase to $500,000. No information was submitted with the claim to substantiate these values. Mark Noakes, Linn County Assessor, submitted information that, based on the 2005-2006 tax year, the current real market value of the land only is $116,190 for tax purposes. If the property were divided into the four proposed lots, the land only value would increase to a total of $310,180 for tax purposes. Based on the Assessor's valuations, one could come to the conclusion that the result of the enactment or enforcement of new restrictive regulations is a reduction of the fair market value of the subject property.

K. **That the value of the reduction in fair market value is $_____, which is based on one or more appraisals, supplied by and reasonably relied on by the claimant.**
Finding

The claimants did not submit an appraisal, however, based on the Assessor's information related above, the reduction in the fair market value of the land only is $193,990.

L. **That the claim is a valid claim, is not barred and the processing fee has been paid.**

Finding

One could conclude from the review to this point that the Hickey's Measure 37 claim for a waiver of regulations that restrict their ability to subdivide the 21.85-acre property into four buildable lots that could be sold is a valid claim. The claim is not barred. The $100.00 processing fee was paid on October 26, 2006.

Exhibit # C
Page 96 of 114

M. **Whether the land use regulation complained of is not one or more of the exemptions allowed by Measure 37 and set forth in LCC 225.150.**

Exhibit # 1
Page 4 of 28

Finding

The land use regulations that are in effect that restrict the Hickeys from subdividing the subject property into four lots are not any of the exemptions allowed by Measure 37 and LCC 225.150. No new land use of the property will occur that might be construed as a public nuisance or a threat to public health or safety. All of the proposed lots will have to be evaluated for septic feasibility by the Linn County Environmental Health Program (EHP). Depending on how the property is divided, an easement review and approval by the Linn County Planning and Building Department may be required. The 80-acre minimum parcel size and the 800-foot width requirements and the decision criteria for siting new dwellings in the F/F zone are not required in order to comply with any federal law.

N. **Whether the land use regulation in question was solely enacted by the county or whether the regulation is solely, or is also, an enactment by another governmental entity for which State or Federal laws or rules or regulations may require the County to enforce or with which the claimant shall comply.**

Finding

As the result of a review by the State of the County's proposed Comprehensive Plan, changes were implemented in September of 1980 that resulted in the change of zoning on the subject property from ART to F/F and new regulations that resulted in the need for land use reviews in order to divide and/or develop property. As outlined previously in this report, the zone amendment (ZA-1-93/94) that was approved in 1994 implemented new changes in the review criteria for the resource zones required in House Bill (HB) 3661 that went into affect in November 1993 and the new Oregon Administrative Rules (OAR) that followed. Therefore, these land use regulations in question were not solely enacted by Linn County.

It is not known if the Hickeys have filed a Measure 37 claim with the Oregon Department of Administrative Services.

O. **Whether the County has or has not taken final action to enact, enforce or apply the land use regulation to the property.**

Finding

Under the current regulations, the Linn County Planning and Building Department cannot accept an application to subdivide the Hickey's property as proposed.

P. **Whether the owner is not entitled to compensation under Measure 37, for a reason other than those provided herein.**

Finding

The review of this claim has not revealed a reason why the Hickeys would not be entitled to compensation or a waiver.

Exhibit # C
Page 47 of 114

III. Conclusion and Recommendation

The Hickeys' Measure 37 compensation claim filed under the name of David and Gay Hickey Family L.L.C. qualifies under Section 1 of the Measure. Section 1 states: *If a public entity enacts or enforces*

Exhibit # 1
Page 5 of 28

a new land use regulation or enforces a land use regulation prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation. Section 8 in Measure 37 allows the governing body to.... *modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.*

Based on the findings in Section II above, it appears that the criteria in LCC Chapter 225.500 (F)(1) except (f), the requirement for submitting an appraisal, have been met. Information provided by the Linn County Assessor indicates that the real market value of the four proposed lots is greater than one 21.85-acre parcel. LCC Chapters 225.200(B)(1)(k) and 225.300 (E)(3) discuss the claimant's burden of proof with respect to demonstrating a loss of value. However, LCC 225.300(F) states.... *Notwithstanding a claimant's failure to attend, to provide, or to otherwise cooperate with the County in soliciting claimant's burden of production and of proof regarding any of the information identified in subsection (E) of this section, the County may review and act on a claim.*

Staff recommends that the Board recognize the Hickeys' Measure 37 claim and waive the applicable Linn County Code regulations in LCC 905.300 through 905.330, Farm Forest Lands, of the *Comprehensive Plan,* LCC 934.510, Rural Resource Zone size, width and depth development standards (80-acre minimum lot size and lot width and depth requirement of 800 feet) and 933.310 through 933.780, decision criteria for dwellings in the F/F zone. Waiving these regulations would enable the Hickeys to apply for a subdivision to divide and develop the subject property as proposed.

If the Board approves the Measure 37 claim, the Board should adopt as part of this decision the following conditions and requirements: *

1. The Hickeys shall apply and receive approval for septic site evaluations from the Environmental Health Program for each of the proposed vacant lots prior to the submittal of a subdivision application.

2. The Hickeys are entitled through this action to submit a subdivision application to the Linn County Planning and Building Department for review and approval. Upon completion of the subdivision, including compliance with conditions and requirements, the resulting parcels will be recognized as authorized units of land that are buildable and can be sold.

3. The waiver granted in this decision allowing the subdivision of tax lot 105, T12S, R1W, Section 21 is valid for two years from the date of this decision.

4. To remain buildable beyond the two years provided for in Condition #3 and prior to the sale of any of the lots, the final subdivision plat shall be approved and recorded and a septic system installed on each of the vacant lots no later than February 8, 2008.

5. The claimants shall obtain a new road access permit from the Linn County Road Department. You may want to contact Chuck Knoll or Mary Price at (541) 967-3919 regarding access requirements for the subdivision prior to submitting the application.

6. When new deeds are recorded for each of the proposed lots, a covenant shall be included on the deed binding the landowner, and the landowners successors in interest, from pursuing a claim for relief or cause of action alleging injury from farming or forest practices in the area. A copy of the new deeds with the covenant shall be submitted to the Department prior to the

Exhibit # C
Page 148 of 114

Exhibit # 1
Page 6 of 28

issuance of building or placement permits. The following is an example of the language that may be used:

Grantees and their heirs, legal representatives, assigns and lessees hereby acknowledge by the placement of this covenant, or the acceptance and recording of this instrument, that the property herein described is situated in a Farm/Forest Use zoning district of Linn County, Oregon. As such, they may be subjected to common, customary and accepted farm or forest management activities for the operation of a commercial farm or forest that includes management and harvesting of agricultural products or timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, and any other accepted and customary farm or forest management activity conducted in accordance with federal and state laws. The above practices ordinarily and necessarily produce noise, dust, smoke and other types of visual, odor or noise impacts which grantees accept as normal and necessary farming or forestry management activities and as part of the risk of siting a residential dwelling in a Farm/Forest use zoning district.

7. This Measure 37 claim approval is for David and Gay Hickey only.

8. The Hickeys acknowledge that the adoption of this order by the Linn County Board of Commissioners concludes all of their Measure 37 claims for the subject property.

9. The validity of this waiver is dependent on, conditioned upon, and subject to judicial judgments and legislative enactments. If a court of competent jurisdiction determines that any part or the whole of Measure 37 is invalid, the waiver is invalid to the extent of that determination.

* There is the potential for both county and state approval on a Measure 37 claim. The Oregon Department of Administrative Services is responsible for accepting Measure 37 claims. Linn County's decision on this matter is limited to applicable provisions in the Linn County Land Development Code.

Exhibit # C
Page 49 of 114

Exhibit # 1
Page 7 of 28

EXHIBIT 1

MEASURE 37 CLAIM (M37-145-05)

LINN COUNTY

OCT 26 2005

Planning & Building Department

Appendix 1

Measure 37 Compensation Claim for damages because of alleged land use regulation enacted or enforced against my property
[filed pursuant to M37 & LCC 225]

For official use only:
Date claim filed: 10/27/05 $100 paid? ☐ yes ☐ no
LCC chapter 225 provided to Claimant? ☐ Yes
Deed attached? ☐ yes ☐ no Appraisal attached? ☐ yes ☒ no
M37- 145 - 05 Resolution No. 2005-

PART ONE (*All Claimants must answer the following questions*)

My name: David and Gay Hickey Family, LLC Telephone: (541) 979-7150 Date: September 21, 2005

Identification of the affected property: T 12 S, R 1 W, Section 21, Tax-lot(s) 105

The date I acquired the property: My wife and I transferred the property into our family LLC in December 23, 1996.

The land use regulation that went into effect after I acquired that property that restricts the use of my land: See below

The date that land use regulation was enacted ☐ or enforced ☐ against my property: See below

I can show that the current value of my property with the restrictive regulation is: $ 125,000.00

I can show that the value of my property without the restrictive regulation would be: $ 500,000.00

My residence is: 36939 Gore Drive, Lebanon, OR 97355

My mailing address (if different from # 4) is: My attorney: Edward F. Schultz, P.O. Box 667, Albany, OR 97321

Fax: (541) 967-6579 Email address: eschultz@wtlegal.com

Are you the sole owner of the property in # 4? ☒ yes ☐ no

Are there any other interest holders in your property such as lease holders, security holders? ☒ no ☐ yes

If, so, who?

The remedy that I seek is: Waiver of all land use regulations back to the regulations that were in place when I acquired the property June 14, 1996. The applicable zoning regulation at that time was ART-5. This allowed 5-acre residential lots which could be sold to third parties. I ask that all regulations be waived so I may divide the property into 5-acre parcels & sell these properties to third parties.

PART TWO (*Only Claimants relying on Family Members need to answer the following questions*)

If you are relying on an earlier family member, then complete this section:

The name of the family member who previously owned my property:: Gay M. Hickey and David J. Hickey

Has the property remained in your family between the time that family member acquired the property to the time that you acquired the property? ☒ yes ☐ no if, not, why?

The date the family member acquired the property is: June 14, 1976

The land use regulation that went into effect after my family member acquired the property that restricted my family member's use of the land: In 1980, the land use regulations changed the zoning on my property from ART-5 to a more restrictive farm forest zone. When I purchased the property, it was eligible to be divided into 5-acre lots with the right to sell to third parties. Subsequent land use regulation changes have prohibited me from doing that.

The regulation was enacted ☒ or enforced ☐ against my family member on what date: September of 1980

I can show that the value of the property *when owned by my family member* and when the restrictive regulation was enacted or enforced against the property was $ _____.

Exhibit # C
Page 51 of 114

Exhibit # 1

Form Explanation: In order to assist in the gathering of information and allow space to answer the questions on page one of the form, please follow the instructions and answer the following questions on a separate sheet of paper:

1. If you are the claimant but you are not the sole owner in fee of the property, please name all the joint owners whose interests add up to a fee simple interest in your property. Please include all persons who represent all recorded interests in property, such as co-owners, holders of less than fee simple interests, leasehold owners, lien holders, and security interest holders. (if any).
2. Provide the dates that each of the joint-owners, and other persons of interest in your property acquired their interest in your property that you listed.
3. Have you provided with this claim, or will you soon provide appraisals that demonstrate a reduction in fair market value to your property that was a result of a land use regulation enacted or enforced by Linn County restricting your use of your property? ☒ yes ☐ no
4. Have you attached to this claim a copy of your deed on this property? ☒ yes ☐ no
5. Have you attached to this claim a copies of certified ~~appraisals~~ valuations? ☐ yes ☒ no
6. Do you desire that the Board make a decision to allow you a use your property in a certain manner (subject to the notices below) in lieu of making payment for just compensation? ☒ yes ☐ no

NOTICES

NOTICE: You must understand that other jurisdictions may govern the uses allowed on your property and, if so, you need to file a claim on those other jurisdictions before development may occur on your property.

NOTICE: You will be invited to a conference described in LCC 225.300 (D) where additional information may be identified which may be needed to assist you in your claim. It is important to understand that unless you provide this information, the County may be unable to properly and adequately address your claim and to assist you in achieving your objective.

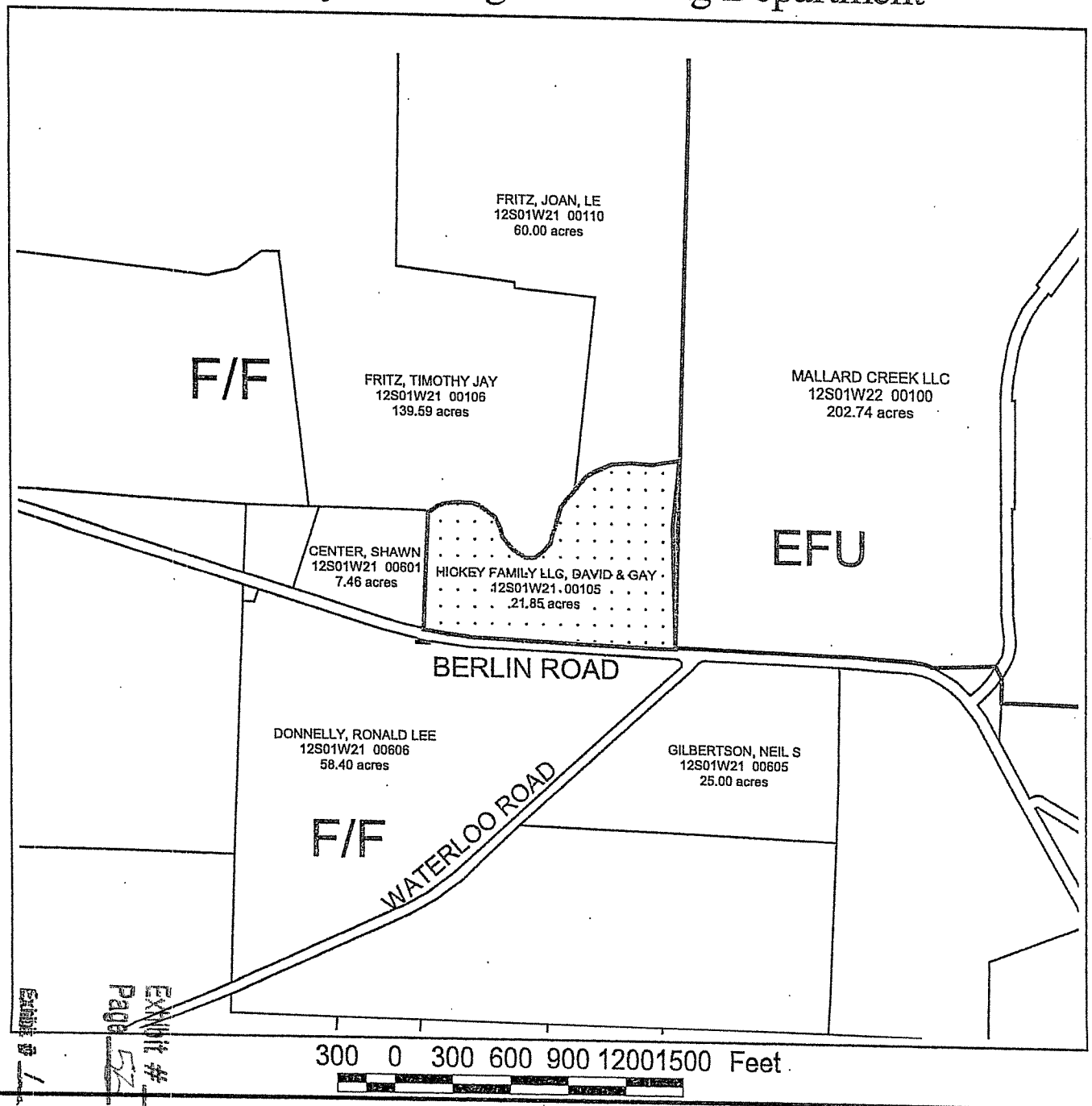
NOTICE: If the decision of the Board, in lieu of paying just compensation, is to modify, remove, or not apply a restrictive land use regulation that has reduced the fair market value of claimant's property the development under that waiver shall not only be conditioned on the claimant's obtaining the appropriate decision from other affected governmental entities, but any and all development shall remain subject to all land use regulation development standards and public health and safety standards exempted by Measure 37.

David J Hickey	9-21-2005	
Property Owner signature date	Property Owner signature date	Property Owner signature date
Clay M. Hickey	09-21-05	
Property Owner signature date	Property Owner signature date	Property Owner signature date

(The signatures of all owners of the property/properties are required)

Linn County Planning & Building Department

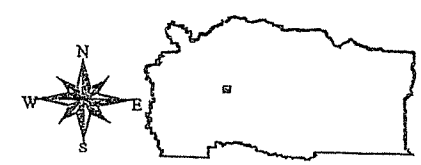
Zoning Map



Legend

- Subject Property
- Tax Lots
- Zoning

DAVID & GAY
HICKEY
M37-145-05
12S-1W-21A-105
ZONING: FARM
FOREST
21.85 acres



Date: Feb. 7, 2006

Exhibit # C
Page 52 of 111

Exhibit # 1
Page 12 of 28

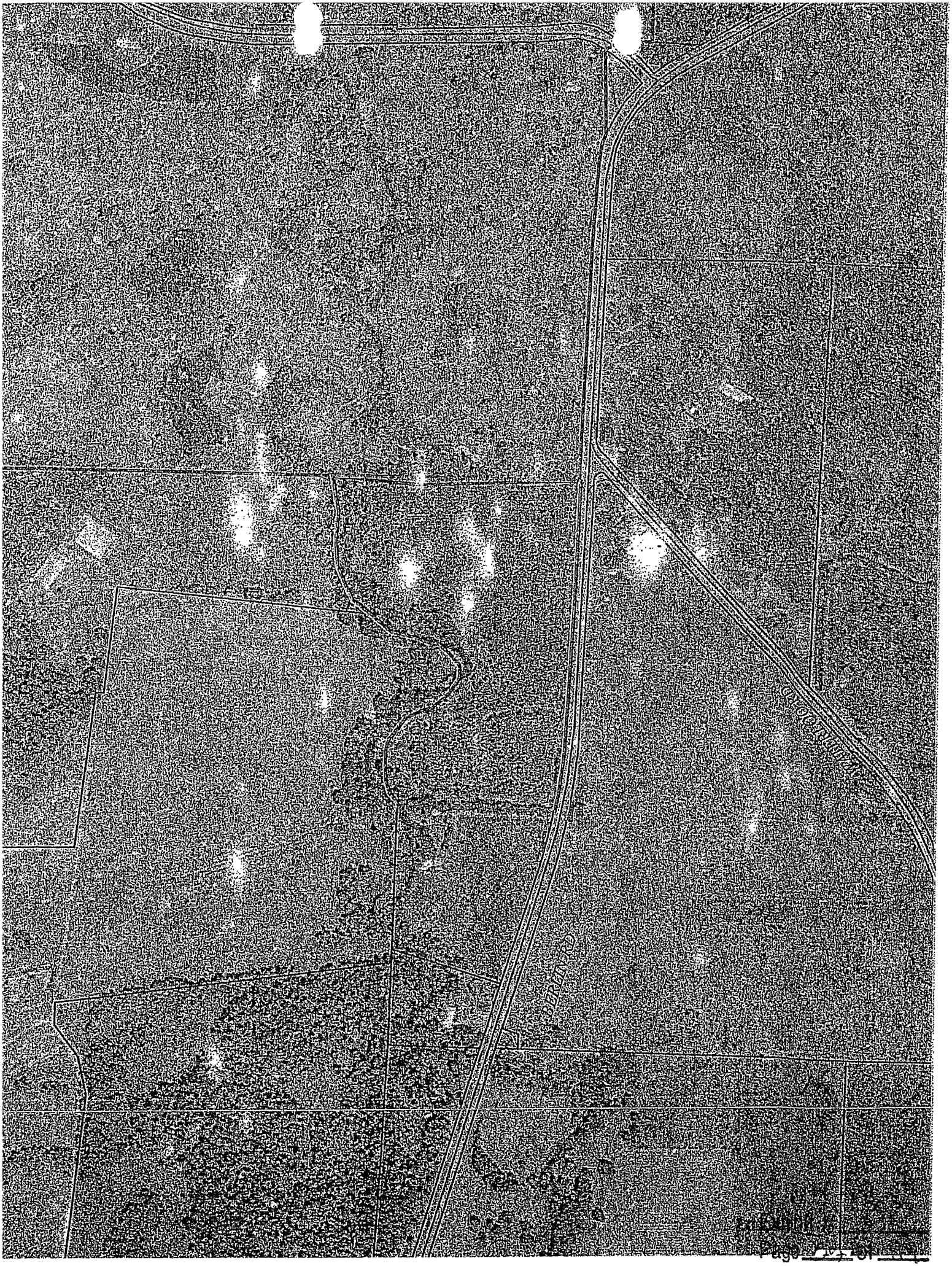


EXHIBIT 3

COPY OF THE REAL ESTATE CONTRACT
AND
SUBSEQUENT DEEDS
AND
LLC OPERATING AGREEMENT

LINN COUNTY PLANNING AND BUILDING DEPARTMENT
Steve Michaels, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816, 1-800-319-3816
Fax 541-926-2060 www.co.linn.or.us

NOTICE OF DECISION

April 5, 2007

Hickey Family LLC
David Hickey
PO Box 401
Lebanon,OR 97355

RE: PD06-0203; T12S, R1W, Section 21, Tax lot 105; as the result of a Measure 37 claim approval by Linn County, the property owner submitted an application for a partition to divide a 21.85 acre unit of land into three acre parcels: a 6.02 acre parcel, a 5.01 acre parcel and a 12.29 acre parcel. Each parcel would be entitled to a dwelling as an outright use under the original zoning of Agriculture, Residential and Timber. The subject property is currently zoned Farm/Forest (F/F).

Dear Mr. Hickey:

The Linn County Planning and Building Department completed review of your partition application on April 4, 2006. Your application was found to comply with the specified decision criteria in Sections 924.200 and 924.210. Preliminary approval has been granted. Final approval will be given once the following requirements have been met:

A. Pursuant to ORS 92.050 to 92.080 and 209.250, parcels being created that are 10 acres or smaller are required to be surveyed and monumented and to have a partition plat map prepared within **180** days of the tentative approval. An extension is available upon written request if one becomes necessary.

Pursuant to ORS 92.050-92.080, a parcel being created that is **larger than 10 acres** requires the preparation of a partition plat map. This parcel does not need to be surveyed or monumented but must include adequate descriptive information to identify the specific parcel being created. The acreage of each unsurveyed parcel must be shown and the words "unsurveyed" shall be placed in bold letters adjacent to the parcel number.

Exhibit # C
Page 56 of 114

The partition plat must include the following:

1. A certificate which indicates whether or not the lands described have been surveyed and shall indicate that the survey complies with ORS. 92.050-080 and ORS 209.250. It shall include a notation of any monuments which could not be set and for which a reference monument was set;

2. The surveyor's stamp and the notarized signature of the owner(s) of the land prop partitioning;

EXHIBIT
4

3. The Planning and Building Department's case file number and a designated space for the Director, Linn County Planning Department, to indicate when the partition has received final planning approval. A designated space for the signature of the Linn County Surveyor and Linn County Assessor shall also be provided.

4. A partition plat report containing the following information shall accompany the final plat: name of current owner; any easements of record; and any other encumbrances on the subject property.

The plat map must receive final approval from the Planning and Building Department. Once approval has been given, the plat map must be recorded with the Linn County Clerk.

A partition must be approved, platted and recorded before ownership interests in the authorized parcels are changed.

B. Since the approval of this partition is the result of a Measure 37 claim, in order for the parcels to remain buildable, an approved septic system shall be installed on each of the newly created parcels and a Certificate of Satisfactory Completion shall be issued **prior to the sale of any one of the parcels.**

C. It must be demonstrated that the proposed use will be served by an adequate supply of potable (drinkable) water prior to the issuance of a placement or building permit. If a well is already located on the property, a copy of the well driller's log or a copy of a pump test will suffice. A copy of a water quality test must also be submitted.

D. Road access permits shall be obtained from the Linn County Road Department prior to the issuance of any building permits.

E. Prior to the issuance of any building permits, the construction of the driveways must comply with the following minimum improvement standards contained in Section 935.200 (B) of the LCC. When the driveways are complete, you shall contact the Road Department (541-967-3919) to review the work for compliance.

1. The all weather driveways must be built and maintained to the minimum access requirements and shall be at least **12 feet** in width split between the newly created tax parcels and consist of a minimum of six inches of crushed rock or crushed gravel. An acceptable alternative base for a roadbed is six inches of quarry-run rock topped with a minimum of four inches of 1" minus crushed rock or 1" minus crushed gravel. The access route, including any culverts and bridges, must be capable of supporting the gross vehicle weight (GVW) of 50,000 pounds. The County reserves the right to require written verification of compliance with the GVW standard from an Oregon Registered Professional Engineer.

2. The driveways shall be provided with an unobstructed vertical clearance of at least 13 feet six inches and an unobstructed horizontal clearance of 20 feet and a minimum curve radius of 48 feet.

3. At least one intervisible turnout every 500 feet shall be provided in any access roadway less than 20 feet wide. The turnout should provide passage space at least 20 feet wide and 40 feet long.

4. Roadside ditches must be provided if deemed appropriate by the Linn County Road Department. Please contact the Linn County Engineer at the Linn County Road Department (967-3919) prior to construction of the driveway

5. Dead-end driveways over 150 feet in length should provide and maintain a cleared turnaround, with a turning radius of at least 40 feet, adequate for emergency vehicles.

6. Roadway grades shall not exceed 12 percent.

7. Driveways shall be marked with the resident's rural address unless the residence is visible from the County roadway and the address is clearly visible on the residence. Letters or numbers hall be a minimum of three inches in height and constructed of reflective material.

F. The land owner must sign and record in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, from pursuing a claim for relief or cause of action alleging injury from farming or forest practices in the area. Enclosed you will find a form that is acceptable to the Linn County Recorder <u>or</u> you may include the language of the covenant in the new deeds for the two one-acre parcels.

Your proposal shall be initiated within **180** days after the date of decision. Please contact Kathy Krabbe, Associate Planner, at (541) 967-3816, ext. 2360 if questions arise or if we may be of further assistance.

Sincerely,

Steve Michaels
Director

cc: Linn County Assessor's Office
Linn County Surveyor's Office
Linn County Environmental Health Program
Linn County Road Department
Jack Burrell, K & D Engineering

enc.

C.S. 24704

PARTITION PLAT No. 2007-118

FOR

DAVID J. AND GAY M. HICKEY FAMILY LLC

LOCATED IN

SE 1/4 + NE 1/4 SEC. 21, T. 12 S., R. 1 W., W.M.
LINN COUNTY, OREGON
NOVEMBER 27, 2007
COUNTY CASE No. PDOG-0203

FOUND MONUMENT LIST

[92] INITIAL POINT
POINT "A"
FOUND 5/8" I.R. (A) HELD; DISTURBED BY BRUSH CLEARING, RE-SET AT TIED LOCATION; MONUMENT IS N89°07'58"W 6.03' FROM FENCE CORNER.

[91] FOUND RR RAIL (A) THAT IS S86°03'13"E 9.68 FEET FROM INITIAL POINT. (EAST 5.5')(A)

[92] FOUND 3/8" I.R (A) ON NORTH R-O-W LINE OF BERLIN RD.

[93] POINT "C" (REMON BOOK 13 PAGE 73)
FOUND 3/4" ALUM. CAP; HELD, LINN COUNTY C.P.S. 93144 1/4 COR. SEC. 20/SEC. 21.

[89] POINT "D"
FD. 1/2" (5/8") BOLT W/SQUARE HEAD (B) HELD TO ESTABLISH POINT "C-1"; SAID BOLT IS N00°36'09"E 0.55' OF TRUE POINT.

[96] FD. 3/4", (5/8" SQUARE BAR) G.R. 208-1930, SQUARE I.R. (B) HELD TO ESTABLISH R-O-W.

[98] POINT "B" (NORTHEAST CORNER SEC. 21) (A)
FD. 2" I.P. HELD.

[94] FD. 5/8" I.R. (A) AT FENCE CORNER ON LINE; HELD AS WITNESS CORNER.

[90] FD. 2" I.P. (E) ON R-O-W AND IN FENCE HELD.

LINE TABLE

LINE	LENGTH	BEARING
1	60.72'	N87°45'26"W

RECORD REFERENCE LIST

(A) C.S. 12955
(B) C.S. 7811
(C) C.S. 21818
(D) HICKEY DEED REFERENCE MF VOL. 135, PAGE 699
(E) COUNTY ROAD RECORD MAP DATED JULY 1958

LEGEND

- • FOUND MONUMENT, AS NOTED; SEE "FOUND MONUMENT LIST"
- ⊙ FOUND MONUMENT USED TO ESTABLISH BOUNDARY
- ○ SET 5/8" X 30" ROD W/YPC MARKED: "K+D ENGR. LS 58561"
- △ CENTER OF HAMILTON CREEK ESTABLISHED BY A COMBINATION OF SURVEYED LOCATION AND LINN COUNTY GIS INFORMATION. NO MONUMENT SET.
- □ CALCULATED POINT FROM RECORD DATA
- ( ) RECORD DATA; SEE "RECORD REFERENCE LIST"
- [ ] CALCULATED DATA
- FD. FOUND
- I.R. IRON ROD
- I.P. IRON PIPE (INSIDE DIAMETER)
- YPC YELLOW PLASTIC CAP
- C.S. COUNTY SURVEY
- P.P. PARTITION PLAT
- CH= 1 CHAIN = 66'
- [90] FOUND MONUMENT REFERENCE; SEE "FOUND MONUMENT LIST"
- (A) RECORD SURVEY REFERENCE; SEE "RECORD REFERENCE LIST"
- (1) CURVE DATA REFERENCE; SEE "CURVE TABLE"
- ◇1 LINE DATA REFERENCE; SEE "LINE TABLE"

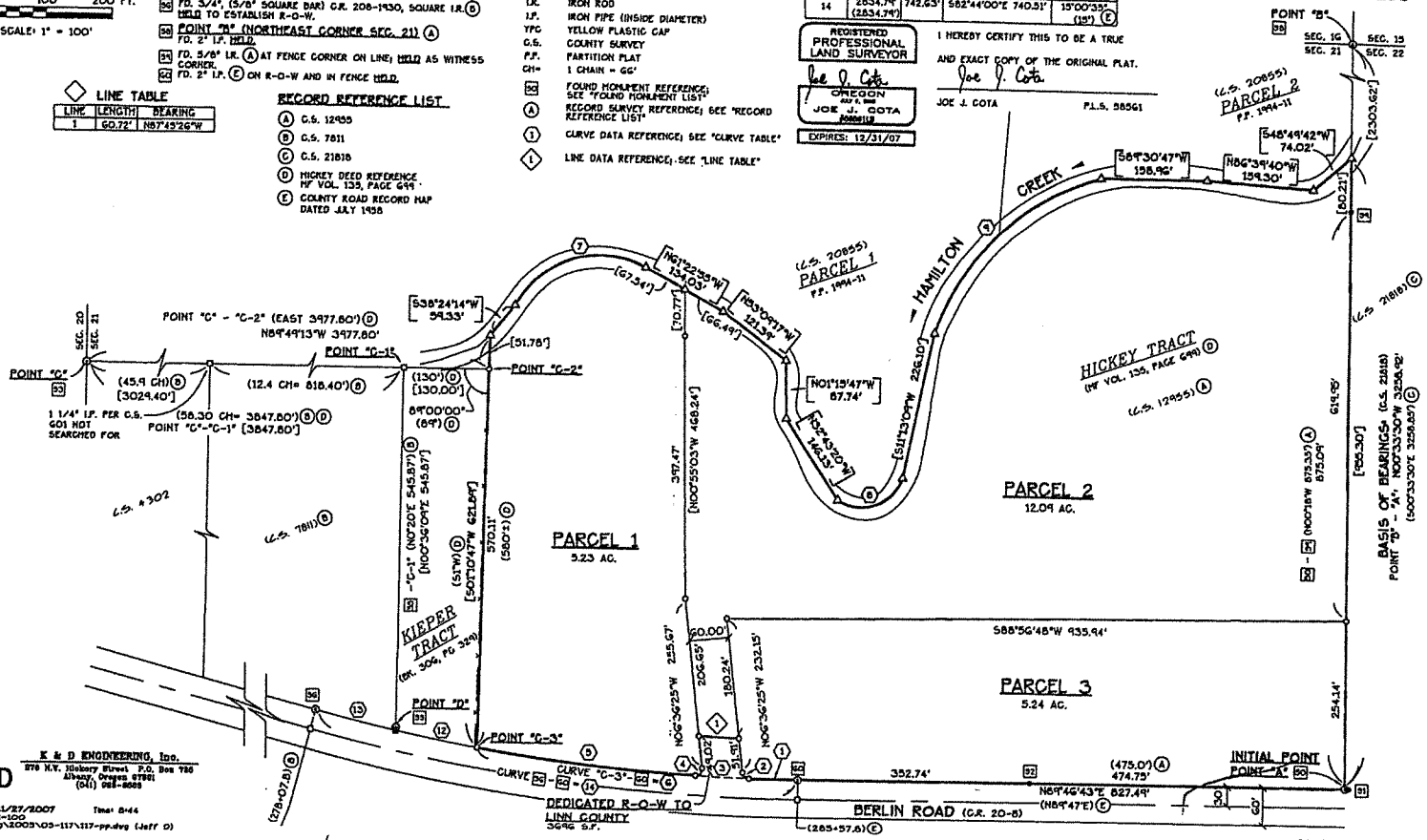
CURVE TABLE

CURVE	RADIUS	LENGTH	CHORD	DELTA
1	2834.79'	74.35'	S88°24'13"E 74.35'	01°30'10"
2	10.00'	14.33'	S47°40'15"E 13.14'	82°07'43"
3	2834.79'	81.22'	S87°34'53"E 81.22'	01°38'30"
4	10.00'	17.37'	S45°08'58"W 15.27'	99°30'47"
5	2834.79'	333.11'	N83°42'27"W 334.91'	06°49'23"
6	2834.79' (2834.79') (C)	490.66'	S85°16'47"E 490.06'	09°55'03"
7	346.87'	229.12'	S72°34'54"W 225.38'	84°22'56"
8	67.48'	119.40'	S70°31'34"W 104.42'	101°22'45"
9	342.33'	338.41'	S49°37'22"W 344.43'	56°43'25"
10	50.00'	241.46'	S70°31'34"W 104.42'	277°15'34"
11	20.86'	16.07'	S78°53'36"W 66.04'	44°07'51"
12	2834.79'	126.32'	S78°02'40"E 126.31'	02°33'11"
13	2834.79'	125.64'	S76°24'53"E 125.63'	02°32'21"
14	2834.79' (2834.79')	742.63'	S62°44'00"E 740.51'	15°00'35" (15°) (E)

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON JULY 9, 1986
JOE J. COTA
EXPIRES: 12/31/07

I HEREBY CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL PLAT.

JOE J. COTA P.L.S. 58561



SHEET 1 OF 2

Exhibit # C
Page 56 of 114

EXHIBIT 5

NARRATIVE:

PURPOSE:

THE PURPOSE OF THIS SURVEY IS TO COMPLETE AN APPROVED LAND PARTITION PER LINN COUNTY CASE No. PDOG-0203.

BOUNDARY DETERMINATION:

EXISTING MONUMENTS OF RECORD AND CALCULATED POINTS WERE HELD TO ESTABLISH THE BOUNDARY LINES AS SHOWN ON THE PLAT AND FURTHER DESCRIBED BELOW.

BERLIN ROAD RIGHT-OF-WAY (60' WIDE R-O-W)
EXISTING MONUMENTS 60, 90 + 60 WERE HELD TO ESTABLISH THE NORTH RIGHT-OF-WAY LINE OF BERLIN ROAD.

EAST LINE AND NORTHEAST CORNER
EXISTING MONUMENTS AT POINT "A" AND "B" WERE HELD TO ESTABLISH THE EAST BOUNDARY LINE. THE NORTHEAST CORNER WAS CALCULATED AT THE INTERSECTION OF SAID EAST LINE WITH THE CENTERLINE OF HAMILTON CREEK.

NORTH LINE
THE NORTH LINE IS THE CENTER OF HAMILTON CREEK. THE CENTER OF THE CREEK WAS DETERMINED BY USING LINN COUNTY GIS MAPS AND AERIALS AND VERIFIED BY FIELD TIES.

POINT "C-1"
CALCULATED AT DISTANCE-DISTANCE INTERSECTION HOLDING POINTS "C" AND "D" AND RECORD DISTANCES PER C.S. 7811.

POINT "C-2"
SET AT RECORD DISTANCE OF 3477.80' EASTERLY OF POINT "C" ALONG THE PROJECTION OF THE LINE ESTABLISHED BY POINTS "C" AND "C-1".

POINT "C-3" (SW CORNER)
SET ON THE NORTH R-O-W LINE AT RECORD ANGLE FROM POINT "C-2".

NORTHWEST CORNER
CALCULATED AT THE INTERSECTION OF THE CENTERLINE OF HAMILTON CREEK AND LINE "C-3"-"C-2".

SURVEYOR'S CERTIFICATE:

I, JOE JASON COTA, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF OREGON, HAVE CORRECTLY SURVEYED THE LANDS AS REPRESENTED AND HAVE FOUND A PROPER MONUMENT TO INDICATE THE INITIAL POINT AND HAVE ACCURATELY DESCRIBED THE LAND UPON WHICH THE PARCELS ARE LAID OUT AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, A 5/8 INCH ROD THAT IS SOUTH 00°33'30" EAST 3256.92 FEET FROM THE NORTHEAST CORNER OF SECTION 21 AND ON THE NORTH RIGHT-OF-WAY OF BERLIN ROAD (C.R. 208); THENCE NORTH 00°33'30" WEST 495.30 FEET TO THE CENTER OF HAMILTON CREEK; THENCE ALONG THE CENTER OF SAID CREEK THE FOLLOWING (12) COURSES: 1) SOUTH 48°49'42" WEST 74.02 FEET; 2) THENCE NORTH 86°39'40" WEST 159.30 FEET; 3) THENCE SOUTH 64°30'47" WEST 158.96 FEET; 4) THENCE ALONG THE ARC OF A 362.53 FOOT RADIUS CURVE TO THE LEFT (THE LONG CHORD OF WHICH BEARS SOUTH 49°57'22" WEST 344.43 FEET) A DISTANCE OF 358.91 FEET; 5) THENCE SOUTH 11°13'09" WEST 226.10 FEET; 6) THENCE ALONG THE ARC OF A 67.48 FOOT RADIUS CURVE TO THE RIGHT (THE LONG CHORD OF WHICH BEARS SOUTH 70°31'39" WEST 104.42 FEET) A DISTANCE OF 119.40 FEET; 7) THENCE NORTH 32°43'20" WEST 146.13 FEET; 8) THENCE NORTH 01°19'47" WEST 87.74 FEET; 9) THENCE NORTH 53°09'17" WEST 121.39 FEET; 10) THENCE NORTH 01°22'53" WEST 134.03 FEET; 11) THENCE ALONG THE ARC OF A 146.87 FOOT RADIUS CURVE TO THE LEFT (THE LONG CHORD OF WHICH BEARS SOUTH 72°54'59" WEST 209.58 FEET) A DISTANCE OF 224.12 FEET; 12) THENCE SOUTH 38°24'14" WEST 54.33' FEET; THENCE LEAVING SAID CENTER LINE SOUTH 01°10'47" WEST 621.84 FEET TO A 5/8 INCH ROD ON SAID NORTH RIGHT-OF-WAY LINE; THENCE ALONG SAID RIGHT-OF-WAY LINE ON THE ARC OF A 2834.79 FOOT RADIUS CURVE TO THE LEFT (THE LONG CHORD OF WHICH BEARS SOUTH 85°16'47" EAST 490.06 FEET) A DISTANCE OF 490.68 FEET TO A 2" IRON PIPE; THENCE NORTH 89°46'43" EAST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 827.49 FEET TO THE POINT OF BEGINNING. CONTAINING 22.66 ACRES, MORE OR LESS.

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON JULY 9, 1986 JOE J. COTA 58361
EXPIRES: 12/31/07

I HEREBY CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL PLAT.

JOE J. COTA P.L.S. 58361

Date: 11/27/2007 Time: 8:44
Scale: 1=100
File: dwg\2008\08-117\117-pp.dwg (Jeff D)

DECLARATION:

LET ALL PERSONS BY THESE PRESENTS KNOW THAT DAVID J. AND GAY M. HICKEY FAMILY LLC, AN OREGON LIMITED LIABILITY COMPANY, IS THE OWNER OF THE LAND REPRESENTED ON THIS PARTITION MAP AND MORE PARTICULARLY DESCRIBED IN THE SURVEYOR'S CERTIFICATE AND HAS CAUSED THE SAME TO BE SURVEYED AND PLATTED INTO PARCELS AS SHOWN, IN ACCORDANCE WITH THE OREGON REVISED STATUTES, CHAPTER 92.

DAVID AND GAY HICKEY FAMILY LLC:

BY: David J. Hickey
DAVID J. HICKEY, MEMBER

BY: Gay M. Hickey
GAY M. HICKEY, MEMBER

ACKNOWLEDGMENT:

STATE OF OREGON
COUNTY OF Benton } S.S.

THIS IS TO CERTIFY THAT ON THIS 5TH DAY OF December 2007, BEFORE ME, A NOTARY PUBLIC FOR AND IN SAID STATE AND COUNTY, PERSONALLY APPEARED THE WITHIN NAMED DAVID J. HICKEY AND GAY M. HICKEY, MEMBERS OF THE DAVID J. AND GAY M. HICKEY FAMILY LLC, WHO, BEING DULY SWORN, DID SAY THAT THEY ARE THE PERSONS NAMED IN THE FOREGOING INSTRUMENT AND WHO ACKNOWLEDGED SAID INSTRUMENT TO BE THEIR VOLUNTARY ACT AND DEED.

BY: Nancy L. Fisher
NOTARY PUBLIC FOR OREGON (SIGNATURE)

BY: NANCY L. FISHER
NOTARY PUBLIC FOR OREGON (PRINTED)

MY COMMISSION EXPIRES: 4-11-09

MY COMMISSION No.: 388889

K&D K & D ENGINEERING, Inc.
870 N.W. Hickory Street P.O. Box 788
Albany, Oregon 97321
(541) 926-3825

C.S. 24704
PARTITION PLAT No. 2007-118
FOR
DAVID J. AND GAY M. HICKEY FAMILY LLC
LOCATED IN
SE 1/4 + NE 1/4 SEC. 21,
T. 12 S., R. 1 W., W.M.
LINN COUNTY, OREGON
NOVEMBER 27, 2007
COUNTY CASE No. PDOG-0203

APPROVALS:

Roger Nyquist — LINN COUNTY COMMISSIONER, CHAIRPERSON — DATE: 11/28/07

LINN COUNTY COMMISSIONER — DATE: 11-28-07

Jeff Wood — LINN COUNTY COMMISSIONER — DATE: 11-28-07

Steve Muchmore by Robert Wheeler — DIRECTOR, LINN COUNTY PLANNING + BUILDING DEPARTMENT — DATE: 11-28-07

BY: [signature] (DEPUTY) — LINN COUNTY SURVEYOR — DATE: 12/5/2007

LINN COUNTY ROADMASTER — DATE: 12-04-2007

ASSESSOR/TAX COLLECTOR STATEMENT:

I HEREBY CERTIFY THAT ALL TAXES IN THE WITHIN DESCRIBED PROPERTY ARE PAID AS OF THIS 5TH DAY OF DECEMBER, 2007.

Mark Nooker
LINN COUNTY ASSESSOR/TAX COLLECTOR

RECORDER'S STATEMENT:

STATE OF OREGON
COUNTY OF LINN } S.S.

I HEREBY CERTIFY THAT THE PARTITION PLAT WAS RECEIVED AND DULY RECORDED BY ME IN THE LINN COUNTY RECORD BOOK OF PARTITION PLATS AS PLAT No. 2007-118, ON THIS 5TH DAY OF December, 2007, AT 11:10 O'CLOCK A.M.; TARGET SHEET RECORDED IN DOCUMENT NUMBER 2007-29072.

STEVE DRUCKEMILLER BY: Jean M. Wilson
LINN COUNTY CLERK

SHEET 2 OF 2

Exhibit # C
Page 120 of 114

After Recording Return To:
Dave Hickey
P.O. Box 401
Lebanon, OR 97355-0401

COVENANT

The following covenant binds the owners and successors in interest to property (identified on the Linn County Assessor's map as Tax Lot 105, T 12 South, R 1 ~~East~~/West, Section 21) described in the deed records at MF VOL 843, PAGE 86 of the Linn County Clerks Office:

Grantees and their heirs, legal representatives, assigns and lessees hereby acknowledge by the placement of this covenant, or the acceptance and recording of this instrument, that the property herein described is situated in a Farm/Forest zoning district of Linn County, Oregon. As such, they may be subjected to common, customary and accepted farm or forest management activities for the operation of a commercial farm or forest that includes management and harvesting of agricultural products or timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, and any other accepted and customary farm or forest management activity conducted in accordance with federal and state laws. The above practices ordinarily and necessarily produce noise, dust, smoke and other types of visual, odor or noise impacts which grantees accept as normal and necessary farming or forestry management activities and as part of the risk of building a residential dwelling in a Farm/Forest zoning district.

Signed this 4th of December 2007.
DAVID and Gay Hickey Family L.L.C., an Oregon Limited Liability Company

BY: David J. Hickey
David J. Hickey, member

Gay M. Hickey
Gay M. Hickey, member

State of Oregon)
)ss
County of Linn)

This instrument was acknowledged before me on December 4, 2007, by David J. Hickey and Gay M. Hickey.

Nancy L. Mehr
Notary Public

My Commission Expires:
4-11-09

OFFICIAL SEAL
NANCY L. MEHR
NOTARY PUBLIC-OREGON
COMMISSION NO. 388889
MY COMMISSION EXPIRES APRIL 11, 2009

EXHIBIT
5A

LINN COUNTY, OREGON
CCR-COV
Cnt=1 Stn=1 COUNTER
$5.00 $11.00

2007-28056
12/05/2007 08:35:58 AM
$16.00

0006823320070028056001 0019

I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Steve Druckenmiller - County Clerk

Exhibit # C
Page 61 of 114

T 12 R 01W S 21 TL 00105

SITE # 79-339 PERMIT # _____

Application for site evaluation and/or permit for sewage disposal

Applicant: (last name first)	Telephone No:	Site Fee:	Permit Fee:
Hickey, David J.	258-5644	$50.00 #5381	

Mailing Address:	Date:	Applicant's Signature:
36939 Gore Drive Lebanon, Oregon 97355	8-21-79	David J. Hickey

Property Size:	Legal Access:	Proposed Use:	No. Bedrooms:	Water Supply:	Type of Permit:
21.85 acres	Berlin Rd.	farm - house	three	well	New XX Repair [] Alter. []

Property Location (specific directions)
Out Berlin Road east of Santiam River until just before road "Y'S" south to Waterloo Bridge and north towards Lacomb. On left on Hamilton Creek.

VICINITY MAP:

Planning Department Approval: Yes [✓] No [] Date: 8/21/79 By:

RECORD OF INSTALLATION

Septic Tank: _____ gal. Drainfield: _____ Lineal feet

Distances from well: Septic Tank _____ Drainfield _____

Sketch of work as installed (by Sanitarian):

Installed By: _____

Date test pits ready: 8/21/79

Site Evaluation

Site is [X] Approved for subsurface sewage
Site is not []
Sanitarian: [signature] Date: 8/21/79
Notification Date: 8/29/79

Permit

Permit Issued To: _____
Date: _____ Mapped [] Logged []
Permit Issued By: _____

Certificate of Satisfactory Completion Issue: Date: _____
Sanitarian: _____

LINN COUNTY ENVIRONMENTAL HEALTH DIVISION
COURTHOUSE, P.O. BOX 100
ALBANY, OR PHONE 928-2321

RECEIVED AUG 21 1979

EXHIBIT 6

Page 62 of 114
Exhibit # C

EVALUATION FOR DETERMINING SITE SUITABILITY
FOR DEVELOPMENT UTILIZING SUBSURFACE
SEWAGE DISPOSAL METHODS

SURFACE FEATURE CONSIDERATIONS:

Slope (1'/100') 2% in lower terrace area

Plants fir, brush

Streams and/or drainage ways Hamilton Crk

Flood plain —

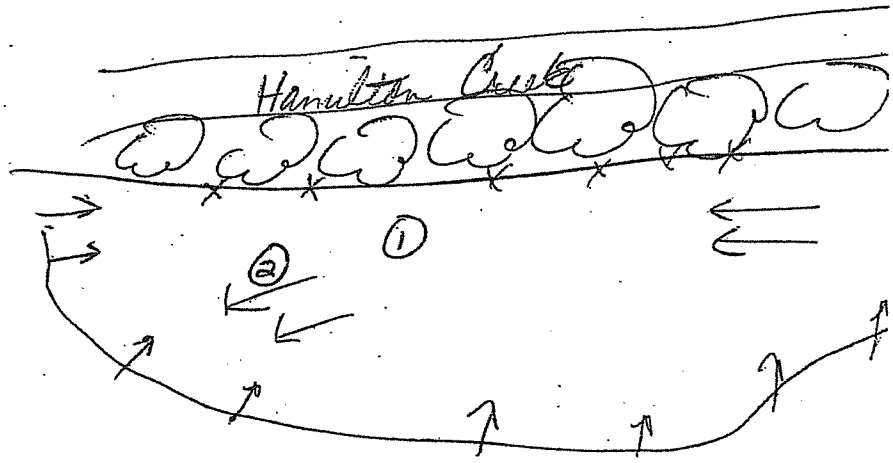
Cut banks —

Site Does ~~Site Does Not~~ Meet minimum standard for individual waste disposal.

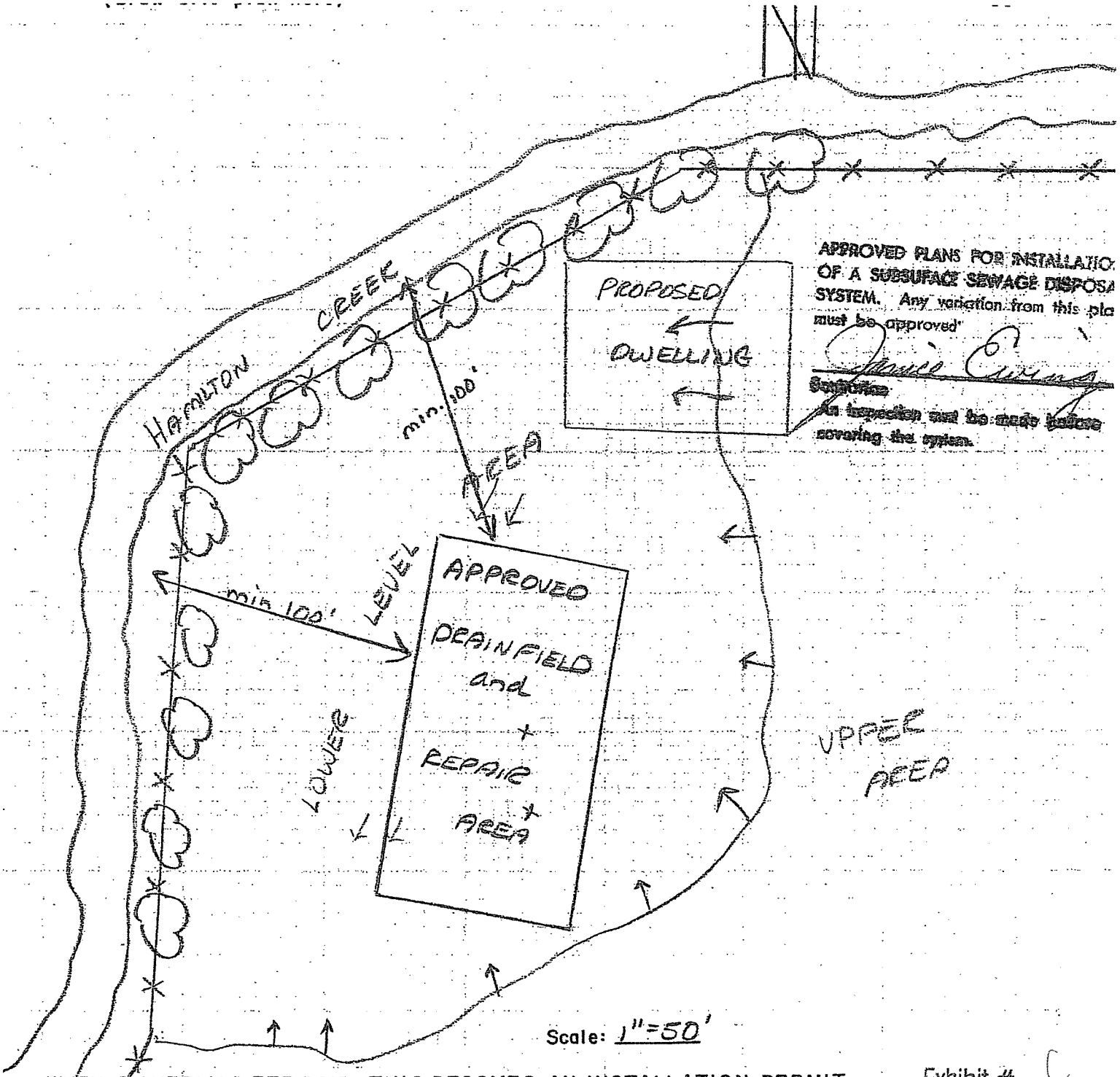
8/28/79 JE

#1 0-15 brn. sicl
15-35 yellowish brn. sandy cl loam, cl skins good rooting
no mott to 35"

#2 similar profile



upper flat area



APPROVED PLANS FOR INSTALLATIO OF A SUBSURFACE SEWAGE DISPOSA SYSTEM. Any variation from this pla must be approved.

Janice Curry
Sanitarian

An inspection must be made before covering the system.

Scale: 1"=50'

WHEN SIGNED AND FEE PAID, THIS BECOMES AN INSTALLATION PERMIT.

Prior to cover, this system must be inspected.

Exhibit # C
Page 64 of 114

Name: David J. Hickey

Legal Description: T 12 R 1W S 21 TL 105

System Used For:

Date of Issuance:

Permit Number:

IMPORTANT Keep this document with your records. This approval is valid one year from date of issuance. Any changes of approved plot plan must be made through this office.

DRAINFIELD SPECIFICATIONS: Staff use only.

Septic Tank Capacity 1000 Gal. Min.

Linear Feet Drainline Required 350

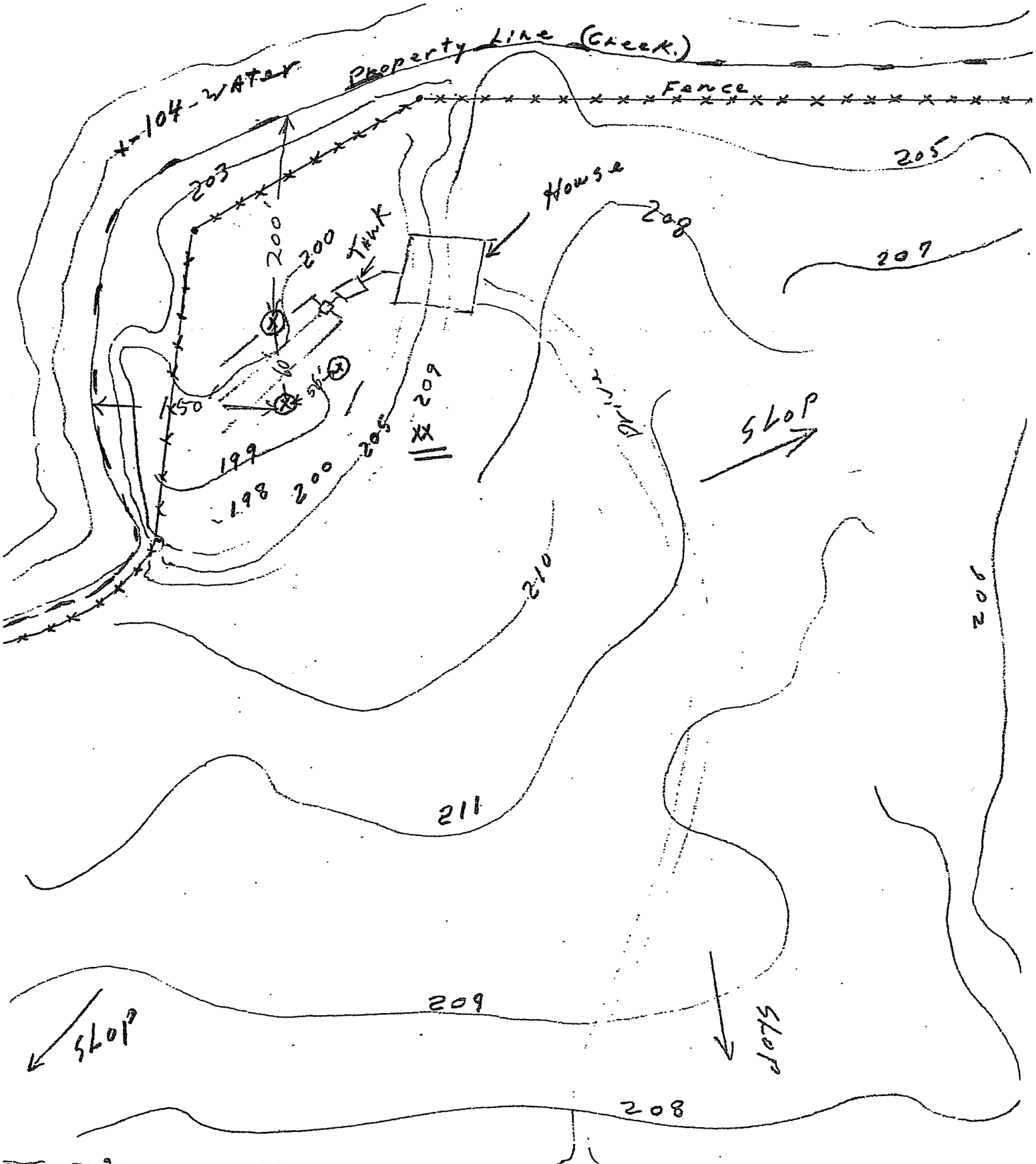
Depth of Drainrock 6" (under tile)

Type of System serial distribution

Curtain Drain ( )Yes (X)No

Maximum Trench Depth 24"

Comments: Sized for 750 gpd



⊗ Test Holes Flages

xx Location Flag

1" — 100'

T 12 R 01W S 21 TL 00105

Hickey, David J.
36939 Gore Drive
Lebanon Oregon 97355
258-5644

N

Exhibit # C
Page 65 of 114

315 SW 4th Ave
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 924-6904

Rec #: 1602
ID: 393

REPORT FOR ON-SITE SEWAGE DISPOSAL

(Technical Report - This is not a Permit)

Applicant: **DAVID HICKEY** Map PIN: **12S01W21 00105**

Site Location: **The subject property is Parcel 2 of Partition Plat 2007-118.**

Lot Designation: Property Size: **21.85 AC** Zoning: **FF** Sewer Available: ☐

System Capacity: **450** gallons / day **Four (4) bedroom single family dwelling**

This approval is limited to residential strength wastewater.

Existing Tank: **NA** Test Water-Tightness: ☑

Required Tank Capacities (gallons): **Septic: 1000** **Dosing: 500** (if needed) Effluent Filter Required: ☐

System Requirements	Initial Disposal Area	Replacement Disposal Area
System Type:	**Tile Dewatering**	**Sand Filter or ATT w/ Treatment Standard 1**
Min Trench Depth:	**18** inches	**12** inches
Max Trench Depth:	**24** inches	**18** inches
Sizing Ratio:	**150** feet / 150 gallons	**50** feet / 150 gallons
System Criteria:	**Soil Group C / high water table**	**Treated Effluent**
Total Trench Length:	**450** feet	**150** feet

Curtain Drain Required: ☒ Min Curtain Drain Depth: **72** inches

Inspection of System Stakeout Required: **Prior to permit issuance**

Detailed site-specific plans must be submitted for review and approval before permit is issued.
See attached table of required setbacks. All site developments must adhere to the listed setbacks, or this report may be invalidated.
System may only be installed when soils are dry, generally June through October. Installation during other times of the year may be considered on a case by case basis.

This approval is based on a rural area consideration.
Old approval (1979). New pits evalauted in 2016.

EXHIBIT
7

WARNINGS:

Any alteration of the natural conditions in the area approved for the on-site system or replacement area may void this approval. This approval is given on the basis that the lot or parcel described will not be further partitioned or subdivided and that conditions on subject or adjacent properties have not been altered in any manner which would prohibit issuance of a permit in accordance with O.R.S. 454.605 through 454.755 and Administrative Rules of the Environmental Quality Commission. Any such subdivision, partitioning or alteration may void this report.

This document is a technical report for on-site sewage disposal only. It may be converted to a permit only if, at the time of application, the parcel has been found to be compatible with applicable LCDC-Goals. The Statement of Compatibility may be made on the attached form or its equivalent. Authorized Agent approval is required before a construction permit can be issued. This report is valid until an on-site sewage disposal system is installed pursuant to a construction permit obtained from Linn County Environmental Health, or until earlier cancellation, pursuant to Commission rules, with written notice thereof by the Department of Environmental Quality to the owners according to Department records or the County Tax records. Subject to the foregoing, this report runs with the land and will automatically benefit subsequent owners.

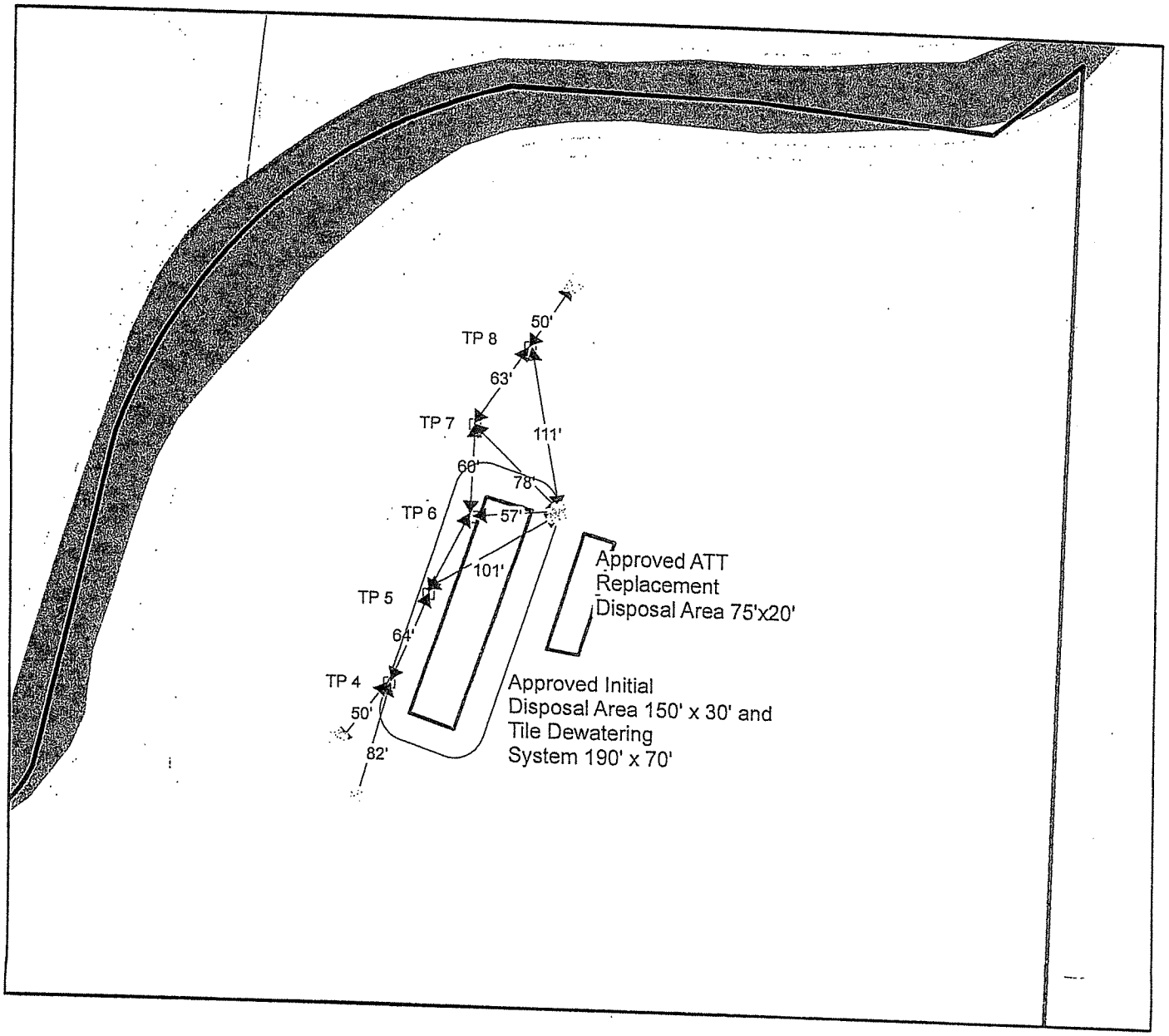
(Signature of Authorized Agent)	(Title)	(Date)	(Office)
	EHS	8/31/16	Linn Co. Env. Health

County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services

Environmental Health Program

Phone (541) 967-3821
Fax (541)926-2060



Site Evaluation Plot Plan

Property ID: 12S01W21 00105
Record Number: 1602
Date Produced: 8/31/2016

1 inch = 100 feet

Exhibit # C
Page 62 of 114

PO Box 100 Albany, OR 97321

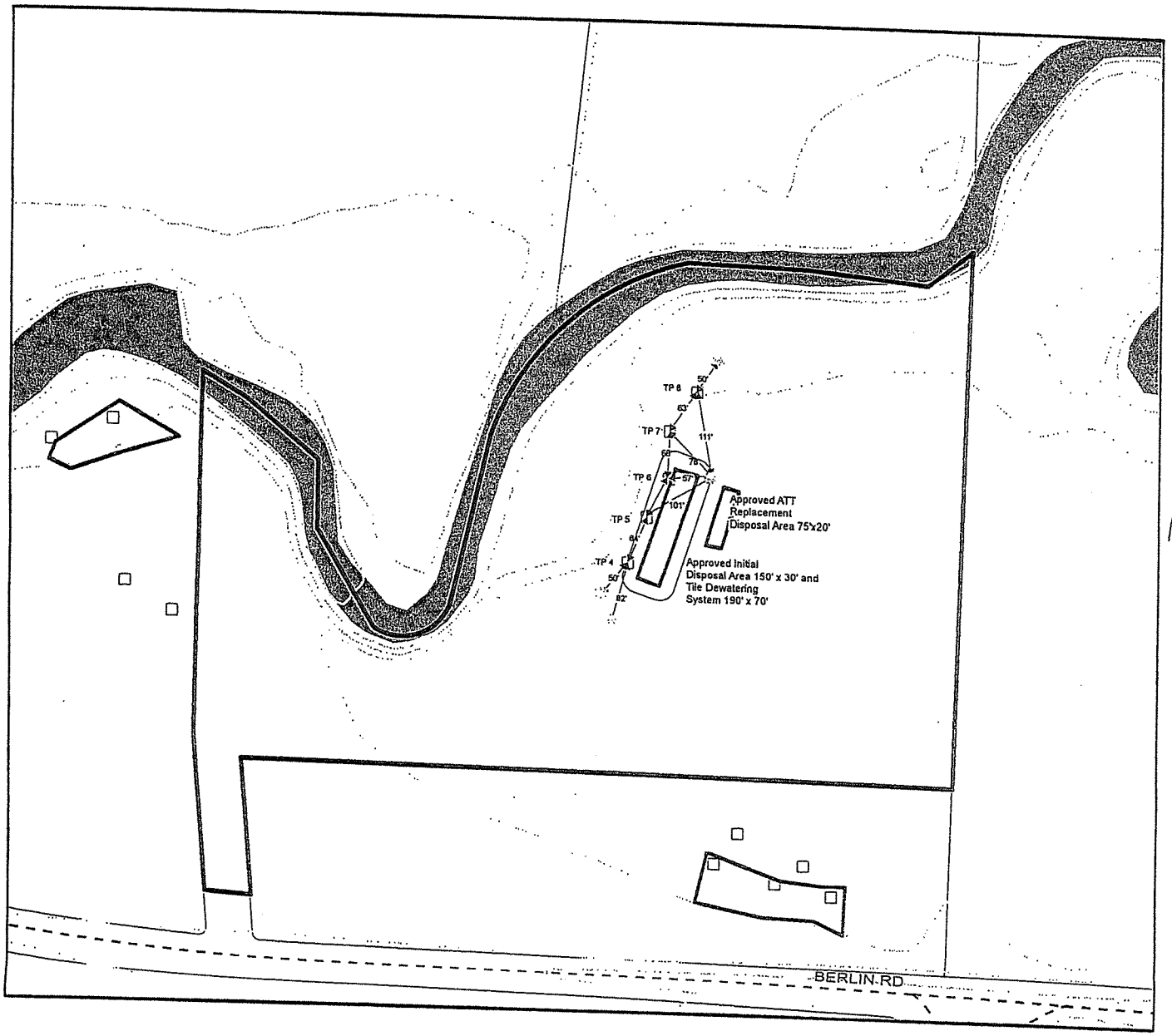
Linn County Department of Health Services

Environmental Health Program

Phone (541) 967-3821
Fax (541)926-2060

Site Evaluation Plot Plan

Property ID: 12S01W21 00105
Record Number: 1602
Date Produced: 8/31/2016



septic
testpits
wells

N

1 inch = 200 feet

Exhibit # 2
Page 68 of 112

Tile Dewatering System Construction

A tile dewatering system is approvable for sites with a natural outlet above annual high water, drainable soils, and a slope that does not exceed 3%. All other requirements for the system, except depth to groundwater must be met.

The depth of the dewatering trench is dependent on the type of water table on the site and depth to confining layers. The depth of the drain media is dependent on the type and depth of the water table.

Refer below for the required trench and media depths.

OAR 340-71-315 (2) Construction Requirements:

(a) Field collection drainage tile must be installed on a uniform grade of 0.2 to 0.4 feet of fall per 100 feet. The tile drainage trench must be constructed to the minimum depth required in the approved site evaluation report.

(b) A field collection drainage tile trench must be constructed at least 12 inches wide.

(c) Maximum drainage tile spacing must be 70 feet center to center.

(d) The minimum horizontal separation distance between the drainage tile and absorption facility must be 20 feet.

(e) Field collection drainage tile must be rigid smooth wall perforated pipe, or other pipe material approved by the agent, with a minimum diameter of 4 inches.

(f) Field collection drainage tile must be enveloped in clean drain media or underdrain media to within at least 30 inches of the soil surface in soils with permanent groundwater or to within at least 12 inches of the soil surface in soils with temporary groundwater. Drain media must be covered with filter fabric, treated building paper or other non-degradable material approved by the agent.

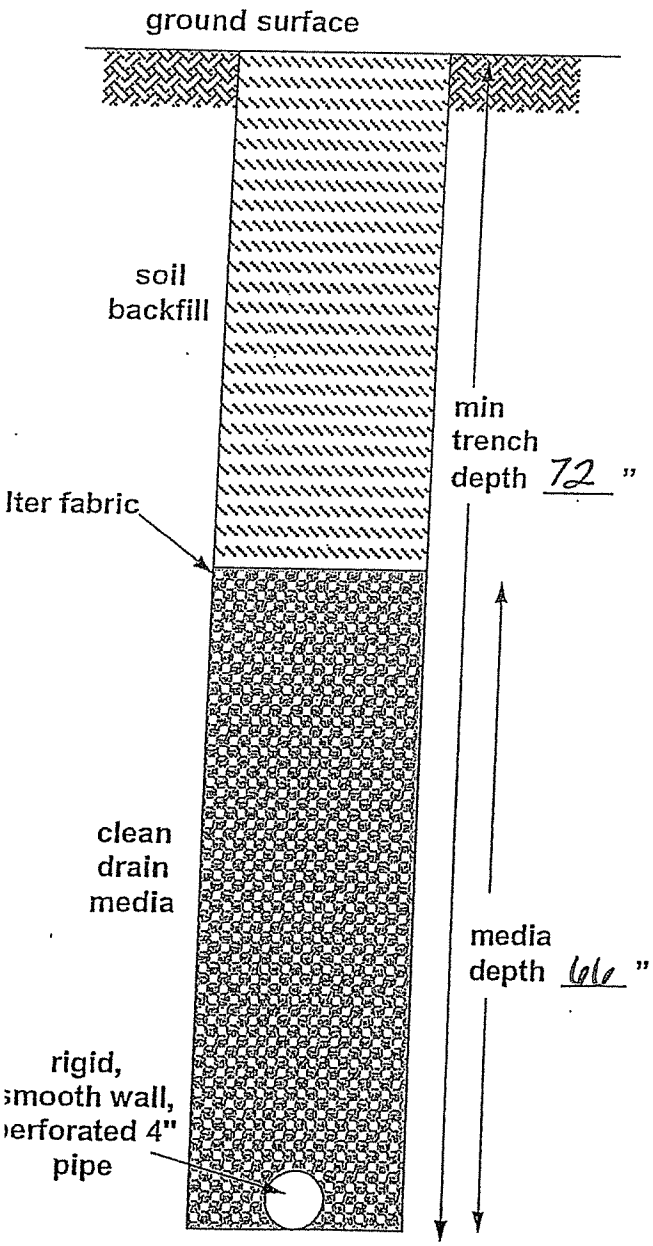
(g) Outlet tile must be rigid smooth-wall solid PVC pipe, meeting or exceeding ASTM Standard D-3034 with a minimum diameter of 4 inches. A flap gate or rodent guard may be required by the agent.

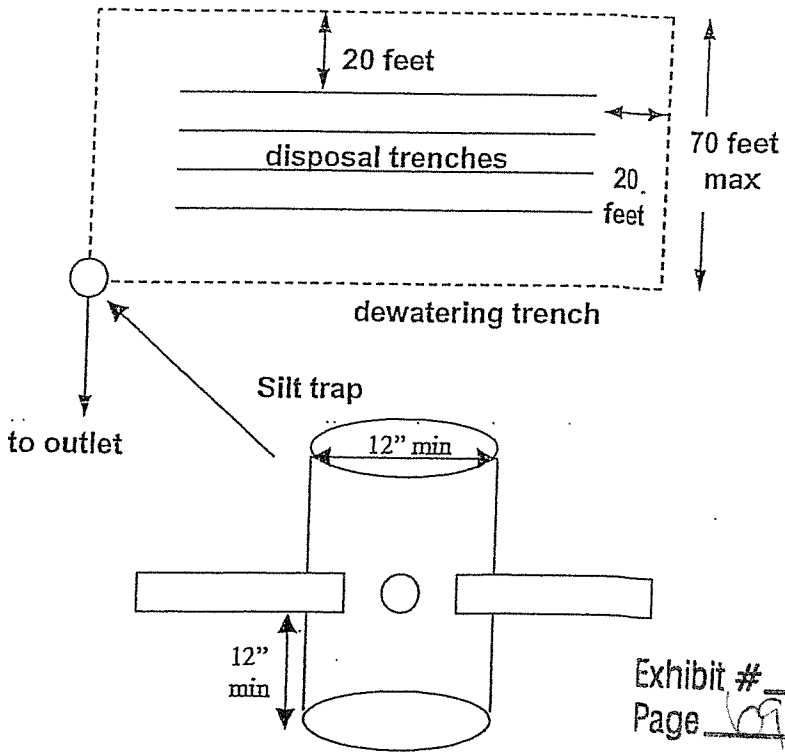
(h) A silt trap with a 12 inch minimum diameter must be installed between the field collection drainage tile and the outlet pipe unless otherwise authorized by the agent. The bottom of the silt trap must be at least 12 inches below the invert of the drainage pipe outlet.

(i) The discharge pipe and tile drainage system are integral parts of the system, but do not need to meet setback requirements to property lines, wells, streams, lakes, ponds or other surface waterbodies.

(j) Before issuing a site evaluation report approving the site, the agent may require demonstration that a proposed tile de-watering site can be effectively drained.

(k) The absorption facility must use equal or pressurized distribution.





SITE EVALUATION FIELD WORKSHEET

Tax Reference 12S01W21 00105 Evaluator NT

Applicant David Hickey Date 8/2/16 Parcel Size 21.85 acres

	Depth	Texture	Soil Matrix Color and Mottling (Notation), % Coarse Fragments, Roots, Structure, Layer Limiting Effective Soil Depth, etc.
Pit 1	0-10	SiCL	7.5YR 4/2, 4/1; 3 M->F SBK; 3 F roots
	10-24	SiL	7.5YR 4/1; 1 M SBK; <1 M roots
	24-36	LS	10YR 4/2 CFs, 7.5 YR 5/6 faint; 1 M SBK; <1 F Roots
	36-43	CO Sand	10YR 4/2 CFs; 1 CO SBK; no roots
Pit #	43-47	VC Sand	10YR 4/2 CFs; 1 CO SBK; no roots
	47-56	Sand	70YR 4/2 CFs, 5/6 concentrations; massive; no roots
	56+	Water	
Pit # 2	0-10	SiCL	7.5YR 4/2, 4/1; 3 M->F SBK; 3 F roots
	10-18	SiL	7.5YR 4/1; 1 M SBK; <1 M roots
	18-30	L	10YR 4/1, 5/6, 3/2; 1 M SBK; <1 F+M roots
	30-47	LS	10YR 4/1, 5/6; <1 F roots; massive
Pit #	47-68	LS	10YR 4/1, 5/6; moist; massive; no roots
	68+	Water	

Landscape Notes

Slope Flat Aspect Flat Groundwater Type Permanent

Other Site Notes

SITE EVALUATION FIELD WORKSHEET

Tax Reference 12S01W21 00105 Evaluator NT

Applicant David Hickey Date 8/2/16 Parcel Size 21.85 acres

	Depth	Texture	Soil Matrix Color and Mottling (Notation), % Coarse Fragments, Roots, Structure, Layer Limiting Effective Soil Depth, etc.
Pit 3	0-12	SiCL	10YR 3/1;3M->CO SBK; >5 VF+<1 M Roots;
	12-23	SiCL	10YR 3/1, 3/2 organics; 2 M SBK; <1 M roots
	23-52	C	10YR 2/1, 3/2; 1 CO SBK; <1 M roots
	52-72	LS	10YR 4/1, 5/6; massive; no roots
Pit 4	0-10	SiL	10YR 2/2; >5 F roots; 2 M->F GR
	10-38	Clay	10YR 4+/1, 2/2 films; 3 VC SBK->columnar
	38-61	Clay	10YR 5/2, 7.5YR 4/6; 1 CO SBK; <1 M roots
	61-70	CO Sandy Clay	10YR 5/1, 7.5Yr 4/6; 1 CO SBK. 50% Mn concretions; no roots
Pit 5	0-11		Sim to pit 4
	11-41		
	41-60		
	60-70		
Pit 6	0-16		Sim to pit 4
	16-40		+7.5YR 4/6 ox
	40-60		
	60-70		

Landscape Notes

Slope flat Aspect flat Groundwater Type Permanent

Other Site Notes

Pits 7 and 8 are similar to pit 6

K & D ENGINEERING, IN
276 N.W. Hickory Street • P.O. Box 725
Albany, OR 97321

Phone: (541) 928-2583
FAX: (541) 967-3458

LETTER OF TRANSMITTAL

1161

DATE 7/26/07	JOB NO. 05-117
ATTENTION Joan	
RE: Septic Evaluations Proposed Parcels 1 and 3 Tax Lot 105 [12-1W-21] 967-3821	

TO Linn County Environmental Health
Court House

WE ARE SENDING YOU ☑ Attached ☐ Under separate cover via _____ the following items:

☐ Shop drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications

☐ Copy of letter ☐ Change order ☐ _____

COPIES	DATE	NO.	DESCRIPTION
		1	two applications (Parcel 1 & Parcel 3)
		2	Evaluation Application Fee for $1000 (for both Parcels)
		3	Map showing test pits (11"x17" @ Scale 1"=200')

THESE ARE TRANSMITTED as checked below:

☑ For approval ☐ Approved as submitted ☐ Resubmit _____ copies for approval

☐ For your use ☐ Approved as noted ☐ Submit _____ copies for distribution

☐ As requested ☐ Returned for corrections ☐ Return _____ corrected prints

☐ For review and comment ☐ _____

☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

Two test holes have also been dug on the existing approved drainfield as shown for Parcel 2; It is my understanding that your staff wishes to visit these while on site doing the evaluations.

CLIENTS COPY

COPY TO David Hickey

Exhibit # C
Page 72 of 114

EXHIBIT 8

Proposed Parcel 3

County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-2060

Rec. # _____

ON-SITE SEWAGE DISPOSAL SYSTEM APPLICATION PAGE 2

IDENTIFICATION Owner: Hickey Family LLC T: 12 R: 1W S: 21 TL: 105
Subdivision: _____ Block: _____ Lot: _____

C. SITE VISIT

- **Site address:** ☐ Existing ☐ Adjacent _____
- **Directions to property:** Drive Hwy 20; Turn on Waterloo Road and follow signs to Mallard Creek Golf Course; See Vicinity Map on Plan
- **When will the site be ready for a site visit (test pits in or system uncovered)?** Call to arrange site meeting.

NOTE: A reinspection fee will be assessed if we make a site visit on or after the date you specify and the site is not ready for inspection.

D. OWNER INFORMATION (print clearly)

☑ Title Holder ☐ Legal Representative ☐ Contract Purchaser

Name Hickey Family, LLC (David Hickey)
Address P.O. Box 401 City Lebanon State OR Zip Code 97355
Phone Number (541) 979-7150 cell 2nd Phone Number (Work) 451-5090
Preferred #
By my signature, I certify that the information I have furnished is correct, and hereby grant the Department of Environmental Quality and its authorized agent permission to enter onto the above-described property for the purpose of this application.

David J Hickey 7-26-2006
Hickey LLC
Owner's Signature Date

E. APPLICANT INFORMATION (if not owner)

Relationship to Owner same as owner ☐ Authorization or contract enclosed
Name _____
Address _____ City _____ State _____ Zip Code _____
Phone Number (____) _____ 2nd Phone Number (____) _____

By my signature, I certify that the information I have furnished is correct, and hereby grant the Department of Environmental Quality and its authorized agent permission to enter onto the above-described property for the purpose of this application.

Applicant's Signature Date

DO NOT WRITE IN THIS BOX

ENVIRONMENTAL HEALTH TO / FROM

Receipt # _____ Fee _____ Date Received _____ Received By _____ Transfer _____

LAND USE COMPATIBILITY STATEMENT

Zoning: _____ **Legal Lot?** Yes___No___ **Building Setbacks:** Front:____ Side:____ Back:____ Riparian:____
Flood Plain? Yes___No___ **Geohazard?** Yes___No___ **Land use approved?** Yes___No___ **Permit #** _____
Please explain why land use is or is not approved. If it is not, what planning process will be required to get approval?

Date _____

Exhibit # C
Page 23 of 114

CLIENTS COPY

Pre ed Parcel 3

County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-2060

Rec. # _____

ON-SITE SEWAGE DISPOSAL SYSTEM APPLICATION PAGE 1

IDENTIFICATION Owner: Hickey Family LLC T: 12 R: 1 W S: 21 TL: 105

Subdivision: _____ Block: _____ Lot: _____

- **Current lot size** (acres): 21.85 **Water supply:** ☐ Existing Private ☑ Proposed Private (Well) ☐ Public

A. PROPOSAL

1. What do you want to do on this property?

☐ Develop a new homesite ☐ Construct a commercial building ☐ Replace a home
☐ Repair a septic system ☑ Evaluate site for new septic system ☐ Remodel a structure
☐ Other; explain: _____

2. Will the size or shape of the property change? ☑ YES ☐ NO **Proposed lot size** (acres): 5.0 ac
Which piece of land are we dealing with here: ("West side", "Parcel A", etc.) Parcel 3

3. Does this application concern an existing system? ☐ YES ☑ NO **Is it failing?** ☐ YES ☐ NO
What is connected to the system?
☐ Single Family Residence: # of bedrooms: ____ ☐ Additional hardship residence: # of bedrooms: ____
☐ Commercial: Type of business: _____
Number of shifts: ____ Number of employees per shift: ____ Fixtures (types and numbers of each):

4. What will the system be connected to after changes to the property are made?
☑ Single Family Residence: # of bedrooms: 4 ☐ Additional hardship residence: # of bedrooms: ____
☐ Commercial: Type of business: _____
Number of shifts: ____ Number of employees per shift: ____ Fixtures (types and numbers of each):

5. Specific Proposal (Tell us what you want to do.)
Septic Evaluation for pending Tentative Partition Plat under Measure 37; Test Pits are available at time of inspection.

6. Application Type: ☑ Site Evaluation ☐ Construction - Installation Permit
☐ Major Alteration Permit ☐ Major Repair Permit ☐ Existing System Evaluation ☐ Permit Renewal
☐ Minor Alteration Permit ☐ Minor Repair Permit ☐ Authorization ☐ Permit Transfer

B. REQUIRED PLOT PLAN INFORMATION

- The office personnel can provide you with an outline of the property.
- Check each **existing or proposed** feature below as: **NA:** not applicable or **Shown:** on your plot plan and labeled

Required	NA	Shown		NA	Shown	
☑ Name			All wells on property			Lakes, springs, streams, ditches, etc.
☑ Legal Description			Roads, driveways & parking lots			Neighboring water bodies (w/in 100')
☑ North arrow			Buildings and fences			Field drainage tiles
☑ Property Dimensions			Septic tanks and drainfields			Test Pits (w/ distance to property lines)
☑ Scale used			Areas of excavation ("cuts, fills")			Direction of slope
☐ Neighboring wells (w/in 100' of property line)			Easements and encumbrances			

CLIENT'S COPY

Proposed Parcel 1

County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-2060

Rec. # _____

ON-SITE SEWAGE DISPOSAL SYSTEM APPLICATION PAGE 1

IDENTIFICATION Owner: Hickey Family LLC T: 12 R: 1W S: 21 TL: 105

Subdivision: _____ Block: _____ Lot: _____

- **Current lot size** (acres): 21.85 **Water supply:** ☐ Existing Private ☑ Proposed Private (Well) ☐ Public

A. PROPOSAL

1. What do you want to do on this property?

☐ Develop a new homesite ☐ Construct a commercial building ☐ Replace a home
☐ Repair a septic system ☑ Evaluate site for new septic system ☐ Remodel a structure
☐ Other; explain: _____

2. Will the size or shape of the property change? ☑ YES ☐ NO **Proposed lot size** (acres): 6.02
Which piece of land are we dealing with here: ("West side", "Parcel A", etc.) Parcel 1

3. Does this application concern an existing system? ☐ YES ☑ NO **Is it failing?** ☐ YES ☐ NO
What is connected to the system?
☐ Single Family Residence: # of bedrooms: ____ ☐ Additional hardship residence: # of bedrooms: ____
☐ Commercial: Type of business: _____
Number of shifts: ____ Number of employees per shift: ____ Fixtures (types and numbers of each):

4. What will the system be connected to after changes to the property are made?
☑ Single Family Residence: # of bedrooms: 4 ☐ Additional hardship residence: # of bedrooms: ____
☐ Commercial: Type of business: _____
Number of shifts: ____ Number of employees per shift: ____ Fixtures (types and numbers of each):

5. Specific Proposal (Tell us what you want to do.)
Septic Evaluation for pending Tentative Partition Plat under Measure 37; Test Pits are available at time of inspection.

6. Application Type: ☑ Site Evaluation ☐ Construction - Installation Permit
☐ Major Alteration Permit ☐ Major Repair Permit ☐ Existing System Evaluation ☐ Permit Renewal
☐ Minor Alteration Permit ☐ Minor Repair Permit ☐ Authorization ☐ Permit Transfer

B. REQUIRED PLOT PLAN INFORMATION

- The office personnel can provide you with an outline of the property.
- Check each **existing or proposed** feature below as: **NA:** not applicable or **Shown:** on your plot plan and labeled

Required	NA	Shown		NA	Shown	
☑ Name	☑	☐	All wells on property	☐	☑	Lakes, springs, streams, ditches, etc.
☑ Legal Description	☐	☑	Roads, driveways & parking lots	☑	☐	Neighboring water bodies (w/in 100')
☑ North arrow	☐	☑	Buildings and fences	☑	☐	Field drainage tiles
☑ Property Dimensions	☑	☐	Septic tanks and drainfields	☐	☑	Test Pits (w/ distance to property lines)
☑ Scale used	☑	☐	Areas of excavation ("cuts, fills")	☐	☑	Direction of slope
☐ Neighboring wells (w/in 100' of property line)	☐	☑	Easements and encumbrances			

Proposed Parcel 1

Courthouse, Room 115
Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-2060

Rec. # _____

ON-SITE SEWAGE DISPOSAL SYSTEM APPLICATION PAGE 2

IDENTIFICATION Owner: Hickey Family LLC T: 12 R: 1W S: 21 TL: 105
Subdivision: _____ Block: _____ Lot: _____

C. SITE VISIT

- **Site address:** ☐ Existing ☐ Adjacent _____
- **Directions to property:** Drive Hwy 20; Turn on Waterloo Road and follow signs to Mallard Creek Golf Course; See Vicinity Map on Plan
- **When will the site be ready for a site visit (test pits in or system uncovered)?** Call to arrange site meeting.

NOTE: A reinspection fee will be assessed if we make a site visit on or after the date you specify and the site is not ready for inspection.

D. OWNER INFORMATION (print clearly)

☑ Title Holder ☐ Legal Representative ☐ Contract Purchaser

Name Hickey Family, LLC (David Hickey)
Address P.O. Box 401 City Lebanon State OR Zip Code 97355
~~Phone Number~~ (541) 979-7150 cell (PREFERRED) 2nd Phone Number (work) 451-5090

~~By my signature,~~ I certify that the information I have furnished is correct, and hereby grant the Department of Environmental Quality and its authorized agent permission to enter onto the above-described property for the purpose of this application.

David J Hickey — 7-26-2006
Hickey LLC Owner's Signature — Date

E. APPLICANT INFORMATION (if not owner)

Relationship to Owner same as owner ☐ Authorization or contract enclosed
Name _____
Address _____ City _____ State _____ Zip Code _____
Phone Number (____) _____ 2nd Phone Number (____) _____

By my signature, I certify that the information I have furnished is correct, and hereby grant the Department of Environmental Quality and its authorized agent permission to enter onto the above-described property for the purpose of this application.

_____ Applicant's Signature _____ Date

DO NOT WRITE IN THIS BOX

ENVIRONMENTAL HEALTH TO / FROM

Receipt # _____ Fee _____ Date Received _____ Received By _____ Transfer _____

LAND USE COMPATIBILITY STATEMENT

Zoning: _____ **Legal Lot?** Yes___No___ **Building Setbacks:** Front:___ Side:___ Back:___ Riparian:___
Flood Plain? Yes___No___ **Geohazard?** Yes___No___ **Land use approved?** Yes___No___ **Permit #** _____
Please explain why land use is or is not approved. If it is not, what planning process will be required to get approval?

Planner signature: _____ Date _____

County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-206

Rec. # 29416

REPORT OF EVALUATION FOR ON-SITE SEWAGE DISPOSAL

(Technical Report - This is not a Permit)

Applicant: **HICKEY FAMILY LLC** Map PIN: **12S01W21 ~~00105~~ 112**

Site Location: The southwest corner of the subject property is 1310 feet west and 600 feet south of the east 1/4 corner of Section 21.

Subdivision: Block: Lot:

Lot Designation: **PARCEL 1** Property Size: **21.85** Zoning: **FF** Sewer Available: ☐

System Capacity: **450** gallons / day : Four (4) bedroom single family dwelling

This approval is limited to residential strength wastewater.

Exisiting Tank: **NA** Test Water-Tightness: ☑

Required Tank Capacities (gallons): **Septic: 1000** **Dosing: 500** (if needed) Effluent Filter Required: ☐

System Requirements	Initial Disposal Area	Replacement Disposal Area
System Type:	**Sand Filter**	**Sand Filter**
Min Trench Depth:	**18** inches	**18** inches
Max Trench Depth:	**24** inches	**24** inches
Sizing Ratio:	**50** feet / 150 gallons	**50** feet / 150 gallons
Sizing Criteria:	**Sand Filter Effluent**	**Sand Filter Effluent**
Total Trench Length:	**150** feet	**150** feet

Curtain Drain Required: ☐ Min Curtain Drain Depth: **NA** inches

Inspection of System Stakeout Required: **Prior to permit issuance**

Detailed site-specific plans must be submitted for review and approval before permit is issued.
See attached table of required setbacks. All site developments must adhere to the listed setbacks, or this report may be invalidated.
System may only be installed when soils are dry, generally June through October. Installation during other times of the year may be considered on a case by case basis.
This site evaluation is for proposed Parcel 1, the western proposed parcel. The proposed parcel size is 6.02 acres.

EXHIBIT
9

WARNINGS:

Any alteration of the natural conditions in the area approved for the on-site system or replacement area may void this approval. This approval is given on the basis that the lot or parcel described will not be further partitioned or subdivided and that conditions on subject or adjacent properties have not been altered in any manner which would prohibit issuance of a permit in accordance with O.R.S. 454.605 through 454.755 and Administrative Rules of the Environmental Quality Commission. Any such subdivision, partitioning or alteration may void this report.

This document is a technical report for on-site sewage disposal only. It may be converted to a permit only if, at the time of application, the parcel has been found to be compatible with applicable LCDC-Goals. The Statement of Compatibility may be made on the attached form or its equivalent. Authorized Agent approval is required before a construction permit can be issued. This report is valid until an on-site sewage disposal system is installed pursuant to a construction permit obtained from Linn County Environmental Health, or until earlier cancellation, pursuant to Commission rules, with written notice thereof by the Department of Environmental Quality to the owners according to Department records or the County Tax records. Subject to the foregoing, this report runs with the land and will automatically benefit subsequent owners.

(Signature of Authorized Agent)	EHS (Title)	8-14-2006 (Date)	Linn Co. Env. Health (Office)

PO Box 100 Albany, OR 97321

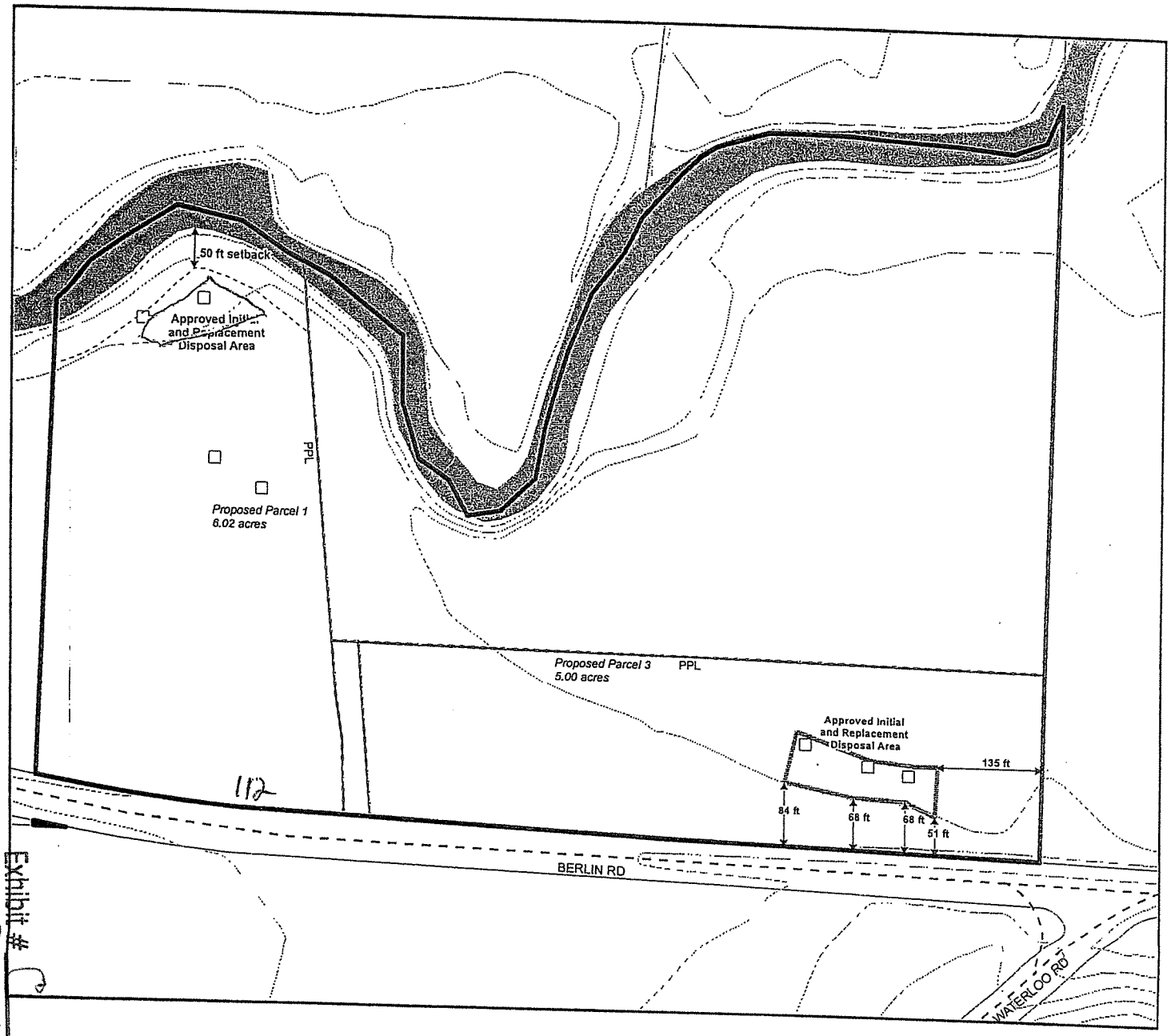
Linn County Department of Health Services

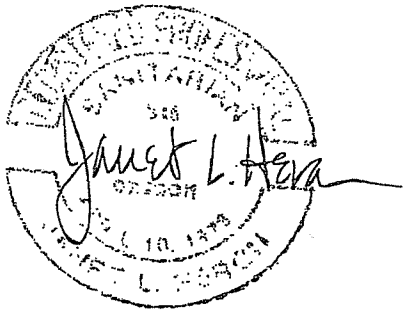
Environmental Health Program

Phone (541) 967-3821
Fax (541)926-2060

Site Evaluation Plot Plan

Property ID: 12S01W21 00105
Record Number: 29416 112
Date Produced: 8/14/2006





- Wells
- Holding tanks
- Test pits
- Disposal areas

N

1 inch equals 200 feet

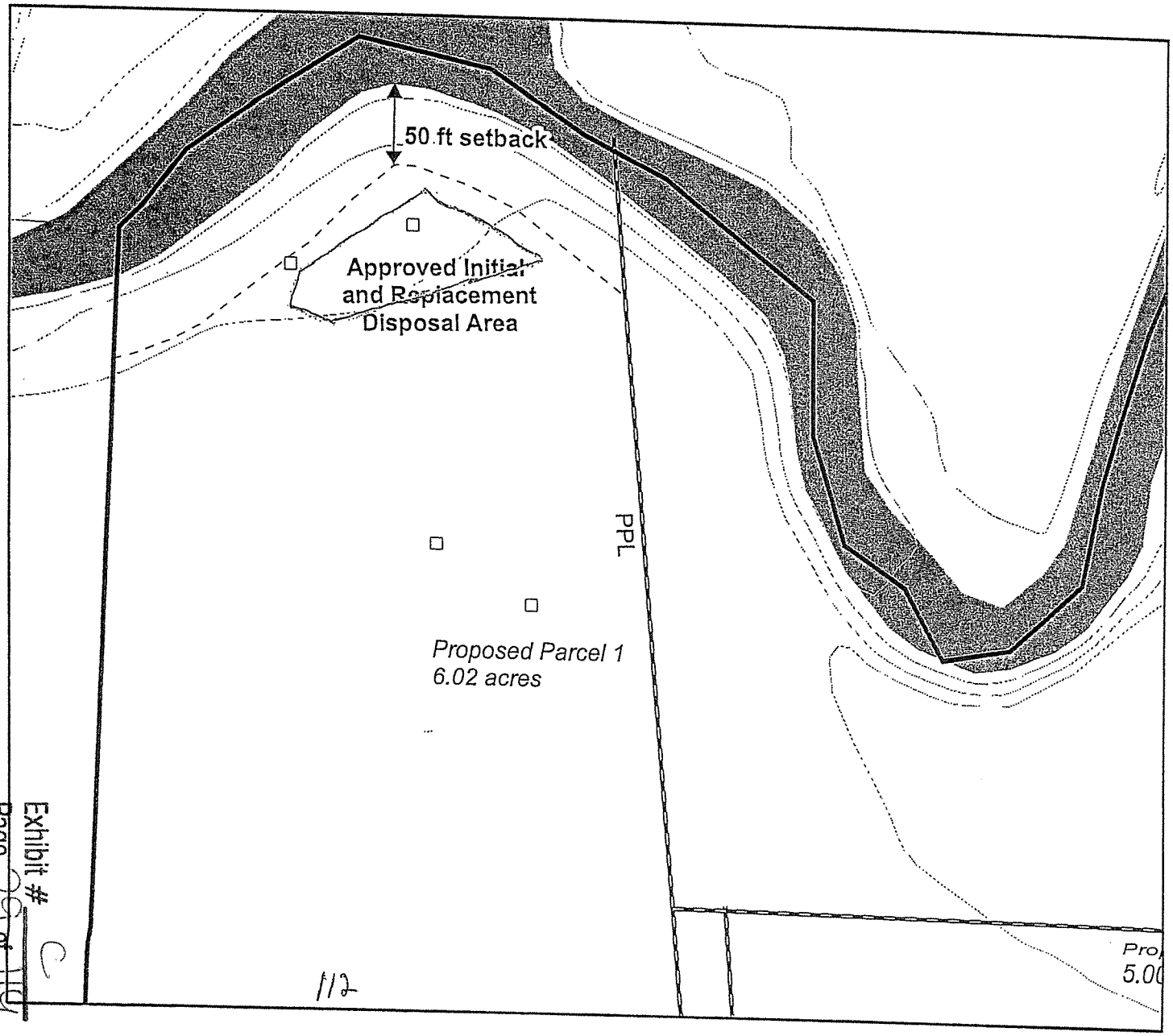
Exhibit # C
Page 28 of 111

PO Box 100 Albany, OR 97321

Linn County Department of Health Services

Environmental Health Program

Phone (541) 967-3821
Fax (541)926-2060



Site Evaluation Plot Plan

Property ID: 12S01W21 00105
Record Number: 29416
Date Produced: 8/14/2006

112

Janet L. Heran

○ Wells
△ Holding tanks
□ Test pits
Disposal areas

N

1 inch equals 100 feet

Exhibit # C
Page 29 of 114

112

SITE EVALUATION FIELD WORKSHEET

Tax Reference 12S01W21 00105 Parcel 1 Evaluator KA & RP

Applicant Hickey Family LLC Date 8-3-06 Parcel Size 21.85

	Depth	Texture	Soil Matrix Color and Mottling (Notation), % Coarse Fragments, Roots, Structure, Layer Limiting Effective Soil Depth, etc.
Pit 1	0-14	SIL	2SBK2 FewF+AF few Coarse 10YR 2/2
	14-26	SICL	2SBK2 FewCoarse Fine 10YR 5/3
	26-36	SIC	Massive FewF, Few Coarse 10YR 4/3 Mottles 10YR 4/4 10YR 5/2
	36-55	Saprolite Cr Highly weathered	Massive FewF Few Coarse 10YR 5/3 CL FILMS
Pit 2	0-15	SIL	WSBK1 10YR 3/2 ComF+F Coarse
	15-44	sap highly weathered	Massive-ABK 10YR 3/3 10YR 3/4 10YR 4/1 Com F F Coarse
	44-49+	2Cr 4/CL	Massive CL Films 10YR 6/1 / 10YR 5/1 10YR 5/1
Pit 3	0-15		
	15-23		Similar to 2
	23-57		
Pit 4			Clayal 11".

Landscape Notes

Slope Aspect Groundwater Type

Other Site Notes Close to Hamilton Creek.

SYSTEM SPECIFICATIONS

Type System: Design Flow 450 gpd. Disposal Field Size 300 Linear Feet

Initial Sandfilter System Sizing 50 /150 g. Max. Depth Absorption Facility (in.) 18-24"

Replacement Sandfilter System Sizing 50 /150 g. Max. Depth Absorption Facility (in.) 18-24"

Special Conditions Must have 50 foot setback from Hamilton creek.

PLOT PLAN ON REVERSE SIDE

Exhibit # C

Page 80 of 114

JEFFTROSS@MSN.COM 5TH AFTER 9:30 1720 LIBERTY ST

County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-206

Rec. # 29417

REPORT OF EVALUATION FOR ON-SITE SEWAGE DISPOSAL

(Technical Report - This is not a Permit)

113

Applicant: HICKEY FAMILY LLC

Map PIN: 12S01W21 ~~00105~~

Site Location: The southwest corner of the subject property (parent parcel) is 1310 feet west and 600 feet south of the east 1/4 corner of Section 21.

Subdivision: Block: Lot:

Lot Designation: PARCEL 3 Property Size: 21.85 Zoning: FF Sewer Available: ☐

System Capacity: 450 gallons / day : Four (4) bedroom single family dwelling

This approval is limited to residential strength wastewater.

Exisiting Tank: NA Test Water-Tightness: ☑

Required Tank Capacities (gallons): **Septic:** 1000 **Dosing:** 500 (if needed) Effluent Filter Required: ☐

System Requirements	Initial Disposal Area	Replacement Disposal Area
System Type:	Standard- Serial Distribution	Sand Filter
Min Trench Depth:	24 inches	18 inches
Max Trench Depth:	30 inches	24 inches
Sizing Ratio:	125 feet / 150 gallons	50 feet / 150 gallons
Sizing Criteria:	Soil Group C	Soil Group C
Total Trench Length:	375 feet	150 feet

Curtain Drain Required: ☐ Min Curtain Drain Depth: NA inches

Inspection of System Stakeout Required: Prior to permit issuance

Detailed site-specific plans must be submitted for review and approval before permit is issued.
See attached table of required setbacks. All site developments must adhere to the listed setbacks, or this report may be invalidated.
System may only be installed when soils are dry, generally June through October. Installation during other times of the year may be considered on a case by case basis.
This site evaluation is for proposed Parcel 3, the southeastern proposed parcel. The proposed parcel size is 5 acres.

EXHIBIT 10

WARNINGS:

Any alteration of the natural conditions in the area approved for the on-site system or replacement area may void this approval. This approval is given on the basis that the lot or parcel described will not be further partitioned or subdivided and that conditions on subject or adjacent properties have not been altered in any manner which would prohibit issuance of a permit in accordance with O.R.S. 454.605 through 454.755 and Administrative Rules of the Environmental Quality Commission. Any such subdivision, partitioning or alteration may void this report.

This document is a technical report for on-site sewage disposal only. It may be converted to a permit only if, at the time of application, the parcel has been found to be compatible with applicable LCDC-Goals. The Statement of Compatibility may be made on the attached form or its equivalent. Authorized Agent approval is required before a construction permit can be issued. This report is valid until an on-site sewage disposal system is installed pursuant to a construction permit obtained from Linn County Environmental Health, or until earlier cancellation, pursuant to Commission rules, with written notice thereof by the Department of Environmental Quality to the owners according to Department records or the County Tax records. Subject to the foregoing, this report runs with the land and will automatically benefit subsequent owners.

(Signature of Authorized Agent)	(Title)	(Date)	(Office)
	EHS	8-14-2006	Linn Co. Environ. Health

Exhibit # C
Page 81 of 114

PO Box 100 Albany, OR 97321

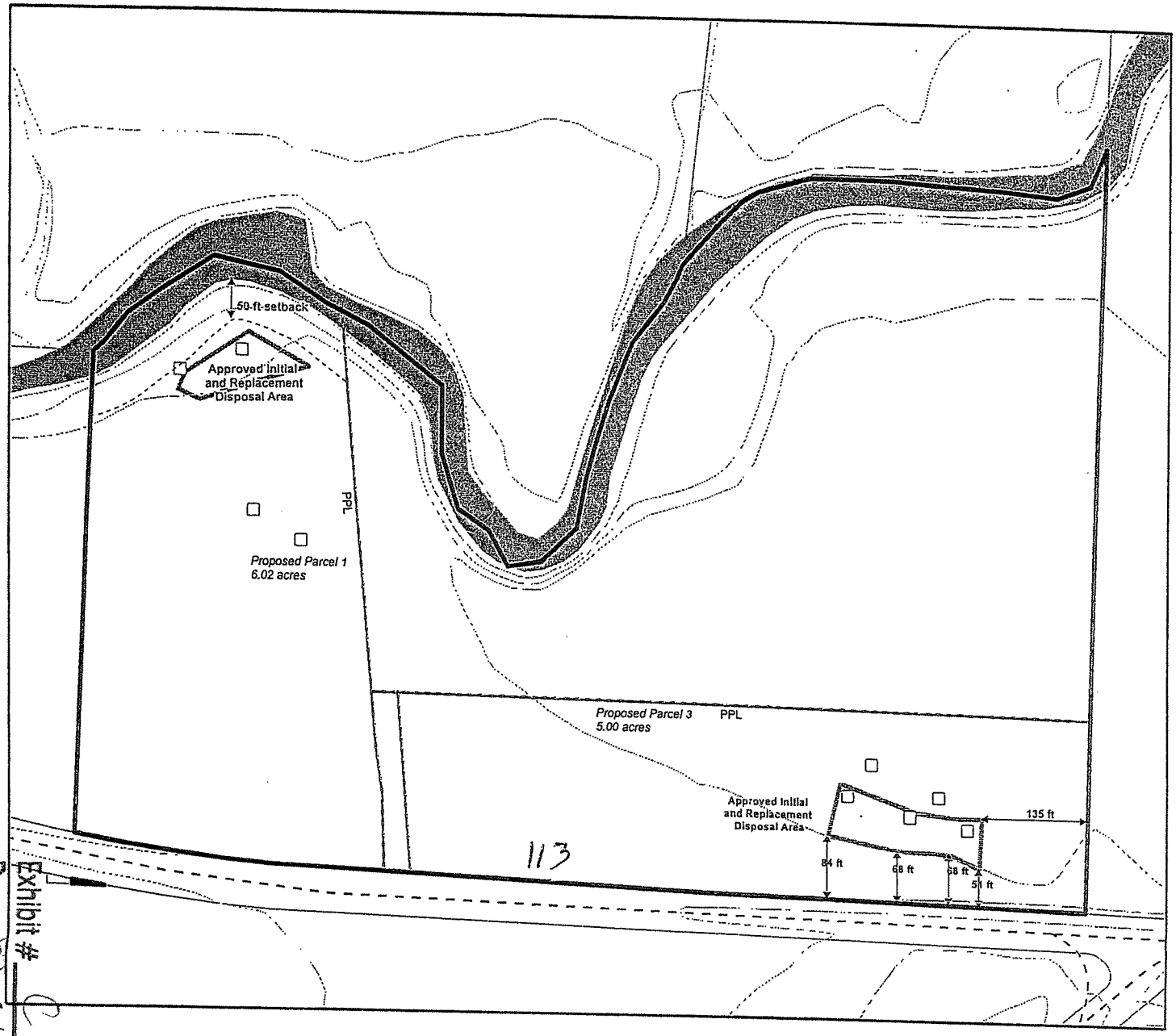
Linn County Department of Health Services

Environmental Health Program

Phone (541) 967-3821
Fax (541)926-2060

Site Evaluation Plot Plan

Property ID: 12S01W21 ~~00105~~ 113
Record Number: 29417
Date Produced: 8/15/2006



Wells
Holding tanks
Test pits
Disposal areas

N

1 inch equals 200 feet

Exhibit # C
Page 32 of 114

PO Box 100 Albany, OR 97321

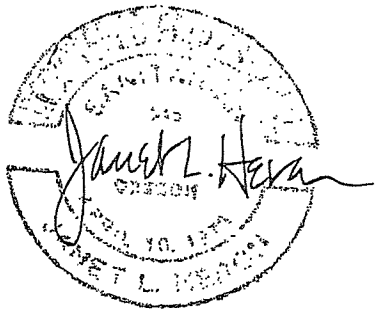
Linn County Department of Health Services

Environmental Health Program

Phone (541) 967-3821
Fax (541)926-2060

Site Evaluation Plot Plan

Property ID: 12S01W21 ~~00105~~ 113
Record Number: 29417
Date Produced: 8/15/2006



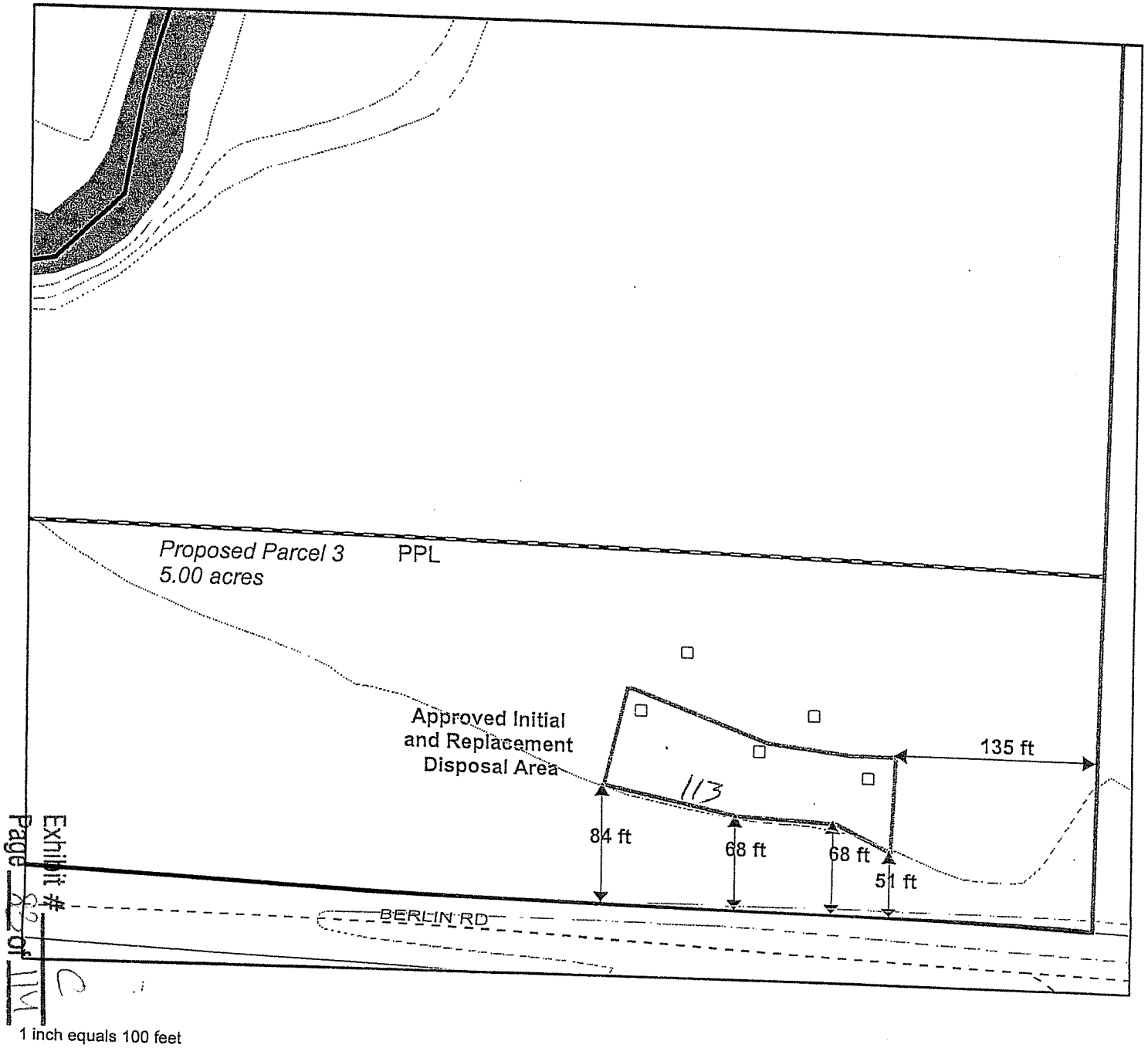


Exhibit # C
Page 32 of 114

SITE EVALUATION FIELD WORKSHEET

Tax Reference T12R1WS21TL~~105~~ Parcel 8 Evaluator KA + RP

Applicant Hickey Family LLC 113 Date 8/2/06 Parcel Size 21.85

	Depth	Texture	Soil Matrix Color and Mottling (Notation), % Coarse Fragments, Roots, Structure, Layer Limiting Effective Soil Depth, etc.
Pit 1	0-25	SiCL	WSBK 1 10YR 2/2 Com F+VF Roots Few Coarse
	25-39	SiCL +	MSBK 3 10YR 2/2 Few F+VF [illegible] 10YR 4/1 / 10YR 4/4
	39-62	SiCL -	massive 10YR 3/2 Very few [illegible]

CL Films 10YR 3/2 7.5YR 3/2 Clfilm 10YR 3/2

Pit 2	0-21		
	21 —	massive Clay	Similar to 1

Pit 3	0-16	SiL	7.5YR 3/1 WSBK 2 Many F+VF Roots
	16-20	SiCL	7.5YR 3/1 WSBK 2 Few F VF+Com
	20-37+		Saprolite Few F VF Com Clfilms - 4/1

Pit 4	0-18	SiL	
	18-24	SiCL	
	24-37+		

5 Similar to 3 + 4

Landscape Notes

Slope Aspect Groundwater Type Temporary

Other Site Notes Dixonville Hazelair complex

SYSTEM SPECIFICATIONS

Type System. Design Flow 450 gpd. Disposal Field Size 375 Linear Feet

Initial Standard Serial System Sizing 125 /150 g. Max. Depth Absorption Facility (in.) 24-30"

Replacement Sandfiter System Sizing 50 /150 g. Max. Depth Absorption Facility (in.) 18-24"

Special Conditions Must stay within approved area, require stake out inspection

PLOT PLAN ON REVERSE SIDE

Exhibit # C

Page 84 of 114

K & D ENGINEERING, II
276 N.W. Hickory Street • P.O. Box 725
Albany, OR 97321

Phone: (541) 928-2583
FAX: (541) 967-3458

LETTER OF TRANSMITTAL

1161

DATE 7/26/07	JOB NO. 05-117
ATTENTION Joan	
RE: Septic Evaluations Proposed Parcels 1 and 3 Tax Lot 105 [12-1W-21]	
967-3821	

TO Linn County Environmental Health
Court House

WE ARE SENDING YOU ☑ Attached ☐ Under separate cover via _____ the following items:

☐ Shop drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications

☐ Copy of letter ☐ Change order ☐ _____

COPIES	DATE	NO.	DESCRIPTION
		1	two applications (Parcel 1 & Parcel 3)
		2	Evaluation Application Fee for $1000 (For both Parcels)
		3	Map showing test pits (11"x17" @ Scale 1"=200')

THESE ARE TRANSMITTED as checked below:

☑ For approval ☐ Approved as submitted ☐ Resubmit _____ copies for approval

☐ For your use ☐ Approved as noted ☐ Submit _____ copies for distribution

☐ As requested ☐ Returned for corrections ☐ Return _____ corrected prints

☐ For review and comment ☐ _____

☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

Two test holes have also been dug on the existing approved drainfield as shown for Parcel 2; It is my understanding that your staff wishes to visit these while on site doing the evaluations.

CLIENT'S COPY

COPY TO David Hickey

Exhibit # e
Page 85 of 114

Proposed Parcel 3

County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-2060

Rec. # _____

ON-SITE SEWAGE DISPOSAL SYSTEM APPLICATION PAGE 2

IDENTIFICATION Owner: Hickey Family LLC T: 12 R: 1W S: 21 TL: 105
Subdivision: _____ Block: _____ Lot: _____

C. SITE VISIT

- **Site address:** ☐ Existing ☐ Adjacent _____
- **Directions to property:** Drive Hwy 20; Turn on Waterloo Road and follow signs to Mallard Creek Golf Course; See Vicinity Map on Plan
- **When will the site be ready for a site visit (test pits in or system uncovered)?** Call to arrange site meeting.

NOTE: A reinspection fee will be assessed if we make a site visit on or after the date you specify and the site is not ready for inspection.

D. OWNER INFORMATION (print clearly)

☑ Title Holder ☐ Legal Representative ☐ Contract Purchaser

Name Hickey Family, LLC (David Hickey)
Address P.O. Box 401 City Lebanon State OR Zip Code 97355
Phone Number (541) 979-7150 cell 2nd Phone Number (work) 451-5090
Preferred #) ~~936-2270 cell~~

By my signature, I certify that the information I have furnished is correct, and hereby grant the Department of Environmental Quality and its authorized agent permission to enter onto the above-described property for the purpose of this application.

David J Hickey 7-26-2006
Hickey LLC
Owner's Signature Date

E. APPLICANT INFORMATION (if not owner)

Relationship to Owner same as owner ☐ Authorization or contract enclosed
Name _____
Address _____ City _____ State _____ Zip Code _____
Phone Number (____) _____ 2nd Phone Number (____) _____

By my signature, I certify that the information I have furnished is correct, and hereby grant the Department of Environmental Quality and its authorized agent permission to enter onto the above-described property for the purpose of this application.

_____ _____
Applicant's Signature Date

DO NOT WRITE IN THIS BOX DO NOT WRITE IN THIS BOX

ENVIRONMENTAL HEALTH TO / FROM

Receipt # _____ Fee _____ Date Received _____ Received By _____ Transfer _____

LAND USE COMPATIBILITY STATEMENT

Zoning: _____ **Legal Lot?** Yes___No___ **Building Setbacks:** Front:____ Side:____ Back:____ Riparian:____
Flood Plain? Yes___No___ **Geohazard?** Yes___No___ **Land use approved?** Yes___No___ **Permit #** _____
Please explain why land use is or is not approved. If it is not, what planning process will be required to get approval?

_____

Planner signature: _____ Date _____

Exhibit # C
Page 86 of 114

CLIENT'S COPY

Proposed Parcel 3

County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-2060

Rec. # _____

ON-SITE SEWAGE DISPOSAL SYSTEM APPLICATION PAGE 1

IDENTIFICATION Owner: Hickey Family LLC T: 12 R: 1 W S: 21 TL: 105

Subdivision: _____ Block: _____ Lot: _____

- **Current lot size** (acres): 21.85 **Water supply:** ☐ Existing Private ☑ Proposed Private (Well) ☐ Public

A. PROPOSAL

1. What do you want to do on this property?

☐ Develop a new homesite ☐ Construct a commercial building ☐ Replace a home
☐ Repair a septic system ☑ Evaluate site for new septic system ☐ Remodel a structure
☐ Other; explain: _____

2. Will the size or shape of the property change? ☑ YES ☐ NO **Proposed lot size** (acres): 5.0 ac
Which piece of land are we dealing with here: ("West side", "Parcel A", etc.) Parcel 3

3. Does this application concern an existing system? ☐ YES ☑ NO **Is it failing?** ☐ YES ☐ NO
What is connected to the system?
☐ Single Family Residence: # of bedrooms: ____ ☐ Additional hardship residence: # of bedrooms: ____
☐ Commercial: Type of business: _____
Number of shifts: ____ Number of employees per shift: ____ Fixtures (types and numbers of each):

4. What will the system be connected to after changes to the property are made?
☑ Single Family Residence: # of bedrooms: 4 ☐ Additional hardship residence: # of bedrooms: ____
☐ Commercial: Type of business: _____
Number of shifts: ____ Number of employees per shift: ____ Fixtures (types and numbers of each):

5. Specific Proposal (Tell us what you want to do.)
Septic Evaluation for pending Tentative Partition Plat under Measure 37; Test Pits are available at time of inspection.

6. Application Type: ☑ Site Evaluation ☐ Construction - Installation Permit
☐ Major Alteration Permit ☐ Major Repair Permit ☐ Existing System Evaluation ☐ Permit Renewal
☐ Minor Alteration Permit ☐ Minor Repair Permit ☐ Authorization ☐ Permit Transfer

B. REQUIRED PLOT PLAN INFORMATION

- The office personnel can provide you with an outline of the property.
- Check each **existing or proposed** feature below as: **NA:** not applicable or **Shown:** on your plot plan and labeled

Required	NA	Shown		NA	Shown	
☑ Name	☑	☐	All wells on property	☐	☑	Lakes, springs, streams, ditches, etc.
☑ Legal Description	☐	☑	Roads, driveways & parking lots	☑	☐	Neighboring water bodies (w/in 100')
☑ North arrow	☐	☑	Buildings and fences	☑	☐	Field drainage tiles
☑ Property Dimensions	☑	☑	Septic tanks and drainfields	☐	☑	Test Pits (w/ distance to property lines)
☑ Scale used	☑	☐	Areas of excavation ("cuts, fills")	☐	☑	Direction of slope
☐ Neighboring wells (w/in 100' of property line)	☐	☑	Easements and encumbrances			

CLIENT'S COPY

Pr sed Parcel 1

County Courthouse, Room 115
PO Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-2060

Rec. # _____

ON-SITE SEWAGE DISPOSAL SYSTEM APPLICATION PAGE 1

IDENTIFICATION Owner: Hickey Family LLC T: 12 R: 1 W S: 21 TL: 105
Subdivision: _____ Block: _____ Lot: _____

- **Current lot size** (acres): 21.85 **Water supply:** ☐ Existing Private ☑ Proposed Private (Well) ☐ Public

A. PROPOSAL

1. What do you want to do on this property?

☐ Develop a new homesite ☐ Construct a commercial building ☐ Replace a home
☐ Repair a septic system ☑ Evaluate site for new septic system ☐ Remodel a structure
☐ Other; explain: _____

2. Will the size or shape of the property change? ☑ YES ☐ NO **Proposed lot size** (acres): 6.02
Which piece of land are we dealing with here: ("West side", "Parcel A", etc.) Parcel 1

3. Does this application concern an existing system? ☐ YES ☑ NO **Is it failing?** ☐ YES ☐ NO
What is connected to the system?
☐ Single Family Residence: # of bedrooms: ____ ☐ Additional hardship residence: # of bedrooms: ____
☐ Commercial: Type of business: _____
Number of shifts: ____ Number of employees per shift: ____ Fixtures (types and numbers of each):

4. What will the system be connected to after changes to the property are made?
☑ Single Family Residence: # of bedrooms: 4 ☐ Additional hardship residence: # of bedrooms: ____
☐ Commercial: Type of business: _____
Number of shifts: ____ Number of employees per shift: ____ Fixtures (types and numbers of each):

5. Specific Proposal (Tell us what you want to do.)
Septic Evaluation for pending Tentative Partition Plat under Measure 37; Test Pits are available at time of inspection.

6. Application Type: ☑ Site Evaluation ☐ Construction - Installation Permit
☐ Major Alteration Permit ☐ Major Repair Permit ☐ Existing System Evaluation ☐ Permit Renewal
☐ Minor Alteration Permit ☐ Minor Repair Permit ☐ Authorization ☐ Permit Transfer

B. REQUIRED PLOT PLAN INFORMATION

- The office personnel can provide you with an outline of the property.
- Check each **existing or proposed** feature below as: **NA:** not applicable or **Shown:** on your plot plan and labeled

Required	NA	Shown		NA	Shown	
☑ Name	☑	☐	All wells on property	☐	☑	Lakes, springs, streams, ditches, etc.
☑ Legal Description	☐	☑	Roads, driveways & parking lots	☑	☐	Neighboring water bodies (w/in 100')
☑ North arrow	☐	☑	Buildings and fences	☑	☐	Field drainage tiles
☑ Property Dimensions	☑	☐	Septic tanks and drainfields	☐	☑	Test Pits (w/ distance to property lines)
☑ Scale used	☑	☐	Areas of excavation ("cuts, fills")	☐	☑	Direction of slope
☐ Neighboring wells (w/in 100' of property line)	☐	☑	Easements and encumbrances			

Proposed Parcel 1

Courthouse, Room 115
Box 100 Albany, OR 97321

Linn County Department of Health Services
Environmental Health Program

Phone (541) 967-3821
Fax (541) 926-2060

Rec. # _____

ON-SITE SEWAGE DISPOSAL SYSTEM APPLICATION PAGE 2

IDENTIFICATION Owner: Hickey Family LLC T: 12 R: 1W S: 21 TL: 105
Subdivision: _____ Block: _____ Lot: _____

C. SITE VISIT

- **Site address:** ☐ Existing ☐ Adjacent _____
- **Directions to property:** Drive Hwy 20; Turn on Waterloo Road and follow signs to Mallard Creek Golf Course; See Vicinity Map on Plan
- **When will the site be ready for a site visit (test pits in or system uncovered)?** Call to arrange site meeting.

NOTE: A reinspection fee will be assessed if we make a site visit on or after the date you specify and the site is not ready for inspection.

D. OWNER INFORMATION (print clearly)

☑ Title Holder ☐ Legal Representative ☐ Contract Purchaser

Name Hickey Family, LLC (David Hickey)
Address P.O. Box 401 City Lebanon State OR Zip Code 97355
~~Phone Number~~ (541) 979-7150 cell 2nd Phone Number (work 451-5090
(PREFERRED) ~~[illegible] cell~~

~~By my signature,~~ I certify that the information I have furnished is correct, and hereby grant the Department of Environmental Quality and its authorized agent permission to enter onto the above-described property for the purpose of this application.

David J Hickey 7-26-2006
Hickey LLC Owner's Signature Date

E. APPLICANT INFORMATION (if not owner)

Relationship to Owner Same as owner ☐ Authorization or contract enclosed
Name _____
Address _____ City _____ State _____ Zip Code _____
Phone Number (____) _____ 2nd Phone Number (____) _____

By my signature, I certify that the information I have furnished is correct, and hereby grant the Department of Environmental Quality and its authorized agent permission to enter onto the above-described property for the purpose of this application.

_____ _____
Applicant's Signature Date

DO NOT WRITE IN THIS BOX DO NOT WRITE IN THIS BOX

ENVIRONMENTAL HEALTH TO / FROM

Receipt # _____ Fee _____ Date Received _____ Received By _____ Transfer _____

LAND USE COMPATIBILITY STATEMENT

Zoning: _____ **Legal Lot?** Yes___No___ **Building Setbacks:** Front:___ Side:___ Back:___ Riparian:___
Flood Plain? Yes___No___ **Geohazard?** Yes___No___ **Land use approved?** Yes___No___ **Permit #** _____
Please explain why land use is or is not approved. If it is not, what planning process will be required to get approval?

_____

Planner signature: _____ Date _____

Exhibit # C
Page 89 of 114

..TE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765)

..LL I.D. # L 91855

START CARD # 194992

Instructions for completing this report are on the last page of this form.

(1) LAND OWNER Well Number DR-2157
Name Dave Hickey L.L.C.
Address P.O. Box 4011
City Lebanon State Oregon Zip 97355

(2) TYPE OF WORK ☒ New Well
☐ Deepening ☐ Alteration (repair/recondition) ☐ Abandonment ☐ Conversion

(3) DRILL METHOD
☒ Rotary Air ☐ Rotary Mud ☐ Cable ☐ Auger ☐ Cable Mud
☐ Other

(4) PROPOSED USE
☒ Domestic ☐ Community ☐ Industrial ☐ Irrigation
☐ Thermal ☐ Injection ☐ Livestock ☐ Other

(5) BORE HOLE CONSTRUCTION Special Construction: ☐ Yes ☒ No
Depth of Completed Well 162 ft.
Explosives used: ☐ Yes ☒ No Type Amount

BORE HOLE Diameter	From	To	SEAL Material	From	To	Sacks or Pounds
10"	0	49	Bentonite	0	49	22 sacks
Under-Reamed			Cement	97	104	2 sacks *
6"	49	162				

How was seal placed: Method ☐ A ☐ B ☐ C ☐ D ☐ E
☒ Other Poured Dry Tremie *
Backfill placed from ft. to ft. Material
Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+1	104	.250	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner:					☐	☐	☐	☐
					☐	☐	☐	☐

Drive Shoe used ☐ Inside ☒ Outside ☐ None
Final location of shoe(s) 104'

(7) PERFORATIONS/SCREENS
☐ Perforations Method
☐ Screens Type Material

From	To	Slot Size	Number	Diameter	Tele/pipe size	Casing	Liner
						☐	☐
						☐	☐
						☐	☐
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour
☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
30		155	1 Hour

Temperature of water 54° Depth Artesian Flow Found
Was a water analysis done? ☐ Yes By whom
Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other
Depth of strata:

(9) LOCATION OF WELL (legal description)
County Linn
Tax Lot 105 Lot
Township 12 N or S Range 1 E or W WM
Section 21 SE 1/4 NE 1/4
Lat ° ' " or (degrees or decimal)
Long ° ' " or (degrees or decimal)
Street Address of Well (or nearest address) Berlin Rd
Lebanon Oregon

(10) STATIC WATER LEVEL
ft. below land surface. Date
21 ft. below land surface. Date 9-27-07
Artesian pressure lb. per square inch Date

(11) WATER BEARING ZONES
Depth at which water was first found 115'

From	To	Estimated Flow Rate	SWL
115	148	30 gpm	21'

(12) WELL LOG Ground Elevation

Material	From	To	SWL
Top Soil	0	1	
Clay-Tan	1	10	
Clay-Brown w/ Rock	10	12	
Clay-Brown	12	36	
Clay-Gray/Brown	36	94	
Rock-Brown	94	96	
Basalt-Blue	96	148	21'
Basalt-Blue-Hard	148	162	

Date Started 9-26-07 Completed 9-27-07

(unbonded) Water Well Constructor Certification
I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

WWC Number Date
Signed

(bonded) Water Well Constructor Certification
I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

WWC Number 664 Date 9-27-07
Signed [signature]

ORIGINAL – WATER RESOURCES DEPARTMEN... ...UCTOR SECOND COPY – CUSTOMER 06/16/2004

EXHIBIT
11

Exhibit # C
Page 90 of 114

FOR WATER RESOURCES DEPARTMENT USE ONLY

Postmarked _____ W 74992

Date Hand-Delivered _____ OWRD Receipt _____

Date Region Office Rec'd _____ Date Fee Received _____

Check No. _____

START CARD

NOTICE OF BEGINNING OF WELL CONSTRUCTION
(as required by ORS 537.762)

This form must be completed and the original mailed or delivered to the Water Resources Department, 725 Summer Street NE Suite A, Salem OR 97301-1271 for all new construction, conversion, alteration, deepening and abandonments. This original must be mailed or delivered before work is commenced. A $125 fee shall accompany the original for all new well construction, conversion, and deepenings (make checks payable to the Water Resources Department). In addition, the constructor shall provide a legible copy of this notice to the region office within which the well is being constructed, converted, altered, deepened, or abandoned using one of the following methods: (a) by regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; (b) by hand delivery, during regular office hours before work is commenced; or (c) by FAX before work is commenced. If method (c) is used, a legible copy of the start card shall also be mailed or delivered to the region office no later than the day work is commenced. The Water Resources Commission has authority to impose civil penalties for failure to submit the required $125 fee with the start card, for failure to submit the $125 fee in a timely manner, and for failure to timely submit start cards.

Owner's name and mailing address: Dave Hickey L.L.C.
P.O. Box 401
Lebanon Ore. 97355

Home Phone: ( )
Work Phone: ( ) 979-7150

Type of work: **Fee Required:** ☒ **New Construction** ☐ **Conversion** ☐ **Deepening** **Orig. Start Card No.** _____

No Fee Required: ☐ **Alteration (Repair/Recondition)** ☐ **Abandonment** **Orig. Start Card No.** _____

Proposed Commencement Date: 9-26-07

Existing or Proposed Well Depth: 100' Diameter: 6" Original Well I.D. Label Number: _____

Use: ☐ Monitoring ☒ Domestic ☐ Irrigation ☐ Community (Public System) ☐ Industrial/Commercial ☐ Livestock ☐ Dewatering ☐ Thermal ☐ Injection ☐ Other OR-2157

Proposed Well Location:

County Linn Township 12 (North or South) Range 1 (East or West) Section 21 Tax Lot 105

1/4 _____ 1/4 _____ Or Latitude _____ Longitude _____

Street Address of well, if not assigned, nearest address: Belin Rd. Lebanon, Ore

We have read the back of this form and the information provided is accurate to the best of our knowledge.

Owner/Agent Name	Bonded Water Supply/Monitor Well Constructor Name	License No.
Dave Hickey	[illegible signature]	664
Date Signed	Nugent Drilling Co. (Company)	Date Signed

OWNER PLEASE NOTE: This is not a water right application. The owner is responsible for obtaining a water right through the Water Resources Department, if required. The Oregon Health Division requires plans to be submitted and approved prior to construction if the well is to be used as a public system.

ADDITIONAL IMPORTANT INFORMATION ON BACK.

****

THIS COPY TO CUSTOMER

Exhibit # C
Page 91 of 114

EXHIBIT 12

FOR WATER RESOURCES DEPARTMENT USE ONLY

Postmarked _____ W 194992

Date Hand-Delivered _____ OWRD Receipt _____

Date Region Office Rec'd _____ Date Fee Received _____

Check No. _____

START CARD

NOTICE OF BEGINNING OF WELL CONSTRUCTION

(as required by ORS 537.762)

This form must be completed and the original mailed or delivered to the Water Resources Department, 725 Summer Street NE Suite A, Salem OR 97301-1271 for all new construction, conversion, alteration, deepening and abandonments. This original must be mailed or delivered before work is commenced. A $125 fee shall accompany the original for all new well construction, conversion, and deepenings (make checks payable to the Water Resources Department). In addition, the constructor shall provide a legible copy of this notice to the region office within which the well is being constructed, converted, altered, deepened, or abandoned using one of the following methods: (a) by regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; (b) by hand delivery, during regular office hours before work is commenced; or (c) by FAX before work is commenced. If method (c) is used, a legible copy of the start card shall also be mailed or delivered to the region office no later than the day work is commenced. The Water Resources Commission has authority to impose civil penalties for failure to submit the required $125 fee with the start card, for failure to submit the $125 fee in a timely manner, and for failure to timely submit start cards.

Owner's name and mailing address: Dave Hickey L.L.C.

Home Phone: ( ) _____ P.O. Box 491

Work Phone: ( ) 979-9150 Lebanon Ore. 97355

Type of work: **Fee Required:** ☐ **New Construction** ☐ **Conversion** ☐ **Deepening** **Orig. Start Card No.** _____

No Fee Required: ☐ **Alteration (Repair/Recondition)** ☐ **Abandonment** **Orig. Start Card No.** _____

Proposed Commencement Date: 9-6-07

Existing or Proposed Well Depth: 100' Diameter: 6" Original Well I.D. Label Number: _____

Use: ☐ Monitoring ☒ Domestic ☐ Irrigation ☐ Community (Public System) ☐ Industrial/Commercial

☐ Livestock ☐ Dewatering ☐ Thermal ☐ Injection ☐ Other Oil-2107

Proposed Well Location:

County Linn Township 12 (North or South) Range 1 (East or West) Section 21 Tax Lot 105

1/4 _____ 1/4 _____ Or Latitude _____ Longitude _____

Street Address of well, if not assigned, nearest address: Belin Rd. Lebanon, Ore

We have read the back of this form and the information provided is accurate to the best of our knowledge.

[signature]	[signature]	664
Owner/Agent Name	Bonded Water Supply/Monitor Well Constructor Name	License No.
	Nuhest Drilling Co.	
Date Signed	Company	Date Signed

OWNER PLEASE NOTE: This is not a water right application. The owner is responsible for obtaining a water right through the Water Resources Department, if required. The Oregon Health Division requires plans to be submitted and approved prior to construction if the well is to be used as a public system.

ADDITIONAL IMPORTANT INFORMATION ON BACK.

Exhibit # C

Page 92 of 114

****

..TE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765)

WELL I.D. # L 91855

START CARD # 194992

Instructions for completing this report are on the last page of this form.

(1) LAND OWNER Well Number DR-2157
Name Dave Hicken L.L.C.
Address P.O. Box 4011
City Lebanon State Oregon Zip 97355

(2) TYPE OF WORK ☒ New Well
☐ Deepening ☐ Alteration (repair/recondition) ☐ Abandonment ☐ Conversion

(3) DRILL METHOD
☒ Rotary Air ☐ Rotary Mud ☐ Cable ☐ Auger ☐ Cable Mud
☐ Other

(4) PROPOSED USE
☒ Domestic ☐ Community ☐ Industrial ☐ Irrigation
☐ Thermal ☐ Injection ☐ Livestock ☐ Other

(5) BORE HOLE CONSTRUCTION Special Construction: ☐ Yes ☒ No
Depth of Completed Well 162 ft.
Explosives used: ☐ Yes ☒ No Type Amount

BORE HOLE Diameter	From	To	SEAL Material	From	To	Sacks or Pounds
10"	0	49	Bentonite	0	49	22 Sacks
Under-Reamed			Cement	97	04	2 Sacks *
6"	49	162				

How was seal placed: Method ☐ A ☐ B ☐ C ☐ D ☐ E
☒ Other Poured Dry Tremie *
Backfill placed from ft. to ft. Material
Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+1	104	.250	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner:					☐	☐	☐	☐
					☐	☐	☐	☐

Drive Shoe used ☐ Inside ☒ Outside ☐ None
Final location of shoe(s) 104'

(7) PERFORATIONS/SCREENS
☐ Perforations Method
☐ Screens Type Material

From	To	Slot Size	Number	Diameter	Tele/pipe size	Casing	Liner
						☐	☐
						☐	☐
						☐	☐
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour
☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
30		155	1 Hour

Temperature of water 54° Depth Artesian Flow Found
Was a water analysis done? ☐ Yes By whom
Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other
Depth of strata:

(9) LOCATION OF WELL (legal description)
County Linn
Tax Lot 105 Lot
Township 12 N or S Range 1 E or W WM
Section 21 SE 1/4 NE 1/4
Lat ° ' " or (degrees or decimal
Long ° ' " or (degrees or decimal
Street Address of Well (or nearest address) Berlin Rd
Lebanon Oregon

(10) STATIC WATER LEVEL
ft. below land surface. Date
21 ft. below land surface. Date 9-27-07
Artesian pressure lb. per square inch Date

(11) WATER BEARING ZONES
Depth at which water was first found 115'

From	To	Estimated Flow Rate	SWL
115	148	30 gpm	21'

(12) WELL LOG Ground Elevation

Material	From	To	SWL
Top Soil	0	1	
Clay-Tan	1	10	
Clay-Brown w/ Rock	10	12	
Clay-Brown	12	36	
Clay-Gray/Brown	36	94	
Rock-Brown	94	96	
Basalt-Blue	96	148	21'
Basalt-Blue-Hard	148	162	

Date Started 9-26-07 Completed 9-27-07

(unbonded) Water Well Constructor Certification
I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

WWC Number Date

Signed

(bonded) Water Well Constructor Certification
I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

WWC Number 664 Date 9-27-07

Signed [signature]

Exhibit # C

..TE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765)

/ELL I.D. # L 91855

START CARD # 194992

Instructions for completing this report are on the last page of this form.

(1) LAND OWNER Well Number DR-2157
Name Dave Hickey L.L.C.
Address P.O. Box 4011
City Lebanon State Oregon Zip 97355

(2) TYPE OF WORK ☒ New Well
☐ Deepening ☐ Alteration (repair/recondition) ☐ Abandonment ☐ Conversion

(3) DRILL METHOD
☒ Rotary Air ☐ Rotary Mud ☐ Cable ☐ Auger ☐ Cable Mud
☐ Other

(4) PROPOSED USE
☒ Domestic ☐ Community ☐ Industrial ☐ Irrigation
☐ Thermal ☐ Injection ☐ Livestock ☐ Other

(5) BORE HOLE CONSTRUCTION Special Construction: ☐ Yes ☒ No
Depth of Completed Well 162 ft.
Explosives used: ☐ Yes ☒ No Type Amount

BORE HOLE Diameter	From	To	SEAL Material	From	To	Sacks or Pounds
10"	0	49	Bentonite	0	49	22 SACKS
UNDER-REAMER			Cement	99	64	2 SACKS *
6"	49	162				

How was seal placed: Method ☐ A ☐ B ☐ C ☐ D ☐ E
☒ Other Poured Dry TREMIE *
Backfill placed from ft. to ft. Material
Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+1	104	.250	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner:					☐	☐	☐	☐
					☐	☐	☐	☐

Drive Shoe used ☐ Inside ☒ Outside ☐ None
Final location of shoe(s) 104'

(7) PERFORATIONS/SCREENS
☐ Perforations Method
☐ Screens Type Material

From	To	Slot Size	Number	Diameter	Tele/pipe size	Casing	Liner
						☐	☐
						☐	☐
						☐	☐
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour
☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
30		155	1 HOUR

Temperature of water 54° Depth Artesian Flow Found
Was a water analysis done? ☐ Yes By whom
Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other
Depth of strata:

(9) LOCATION OF WELL (legal description)
County Linn
Tax Lot 105 Lot
Township 12 N or S Range 1 E or W WM
Section 21 SE 1/4 NE 1/4
Lat ° ' " or (degrees or decimal)
Long ° ' " or (degrees or decimal)
Street Address of Well (or nearest address) Berlin Rd
Lebanon Oregon

(10) STATIC WATER LEVEL
ft. below land surface. Date
21 ft. below land surface. Date 9-27-07
Artesian pressure lb. per square inch Date

(11) WATER BEARING ZONES
Depth at which water was first found 115'

From	To	Estimated Flow Rate	SWL
115	148	30 GPM	21'

(12) WELL LOG Ground Elevation

Material	From	To	SWL
TOP SOIL	0	1	
CLAY-TAN	1	10	
CLAY-BROWN W/ ROCK	10	12	
CLAY-BROWN	12	36	
CLAY-GRAY/BROWN	36	94	
ROCK-BROWN	94	96	
BASALT-BLUE	96	148	21'
BASALT-BLUE-HARD	148	162	

Date Started 9-26-07 Completed 9-27-07

(unbonded) Water Well Constructor Certification
I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

WWC Number Date

Signed

(bonded) Water Well Constructor Certification
I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

WWC Number 664 Date 9-27-07

Signed [signature]

ORIGINAL – WATER RESOURCES DEPARTMENT FIRST COPY – CONSTRUCTOR SECOND COPY – CUSTOMER 06/16/2004

Exhibit # C
Page 94 of 114

20B

Right-of-Way Encroachment Permit
Routing & Processing Checklist

ACCESS PERMIT

Not for public street

[KM] Permit Clerk – Entered in database check that fee is paid and give flagging materials to applicant — Permit No. 07-1987

[KM] Right-of-Way – Site map printed and attached

[KM] Permit Clerk – Send Copy to Planning for review

[FIC] Road Supervisor – Reviewed — District Lebanon

[ ] Operations Manager

[ ] Engineering – Reviewed

[KM] Permit Clerk – Complete database entry and print / add attachments

[ ] Roadmaster – Review and sign

[KM] Permit Clerk – Mail completed permit / copy to Road Supervisor and File

[ ] Permit Clerk – Update "final" status of permit in database after work completed

Note:

- Permit Comments shall at a minimum include; culvert type (M294 – Type "S"{not ADS N12}), size, and length if required, paving if required, and "Contact ***road supervisor*** for final inspection when work is completed"
- Attachments shall include Driveway Approach standard drawing (for private access) and standard provisions.
- Applicant is mailed completed permit form and attachments.
- Road Supervisor receives copy of permit form and site map and returns both to office after final inspection.
- Copy of permit form, application form, and checklist are retained in road file, permit form is replaced with "finaled" copy and checklist is removed.

EXHIBIT
13

Linn County Road Department
Right-of-Way Encroachment Permit

Pursuant to LCC chapter 690 and ORS chapter 374

Permit No. 07-1987

Permit Type: *Access, New*

Account Number: 4273

Hickey, David
P.O. Box 401
Lebanon, OR 97355-

Contact: Same
Phone: (541) 979-7150
Fax: (541) 451-3603
Email:

Road: 0020B - BERLIN RD
Location: T12S, R1W, SECTION 21, TAX LOT: 105
Permit Fee: $30.00

Description: INSTALL NEW PRIVATE ACCESS ROADWAY TO SERVE THREE NEW RESIDENTIAL LOTS FOR M37.

Comments: SEE SPECIAL PROVISIONS.

CONTACT ROAD SUPERVISOR FOR FINAL INSPECTION WHEN WORK IS COMPLETED.

Additional Special Provisions Attached: ☑ **Standard Drawings Attached:** ☐

Road List:

By signing below, Permittee agrees to comply with all comments, special provisions, and standard drawings contained herein or attached. Permittee also agrees to comply with the Linn County Road Department Right-of-Way Encroachment Permit Standard Provisions, revised 2/24/2004, which by this reference is made a part of this permit. Copies of Standard Provisions are available on-line at www.co.linn.or.us/Roads or may be obtained by contacting the Linn County Road Department at the address listed below. Permittee must keep a copy of this permit on site while work is being performed.

This permit is not valid unless signed by the Permittee. Call Linn County Road Department at the number below two business days prior to start of work.

Accepted By (Permittee): _____ **Date:** _____

ATTENTION: Call Before You Dig! Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center. Note: the telephone number for the Oregon Utility Notification Center is (800) 332-2344

Final Insp By:

Date:

Approved By: **Date:** 5/30/2007

LINN COUNTY ROAD DEPARTMENT · 3010 FERRY STREET SW · ALBANY, OREGON 97322
TELEPHONE: (541) 967-3919 FAX: (541) 924-0202
www.co.linn.or.us/Roads

Printed: 5/30/2007 12:46:18 PM

Linn County Road Department
Right-of-Way Encroachment Permit
Pursuant to LCC chapter 690 and ORS chapter 374

Permit No.
07-1987

Special Provisions

This permit is being issued for a new access to provide access and driveway to a new lot. The access when constructed will provide an access to two additional lots. A separate access permit shall be required when structures are constructed on these lots. Only one access to Berlin Road shall be allowed for these three lots. The following conditions shall apply:

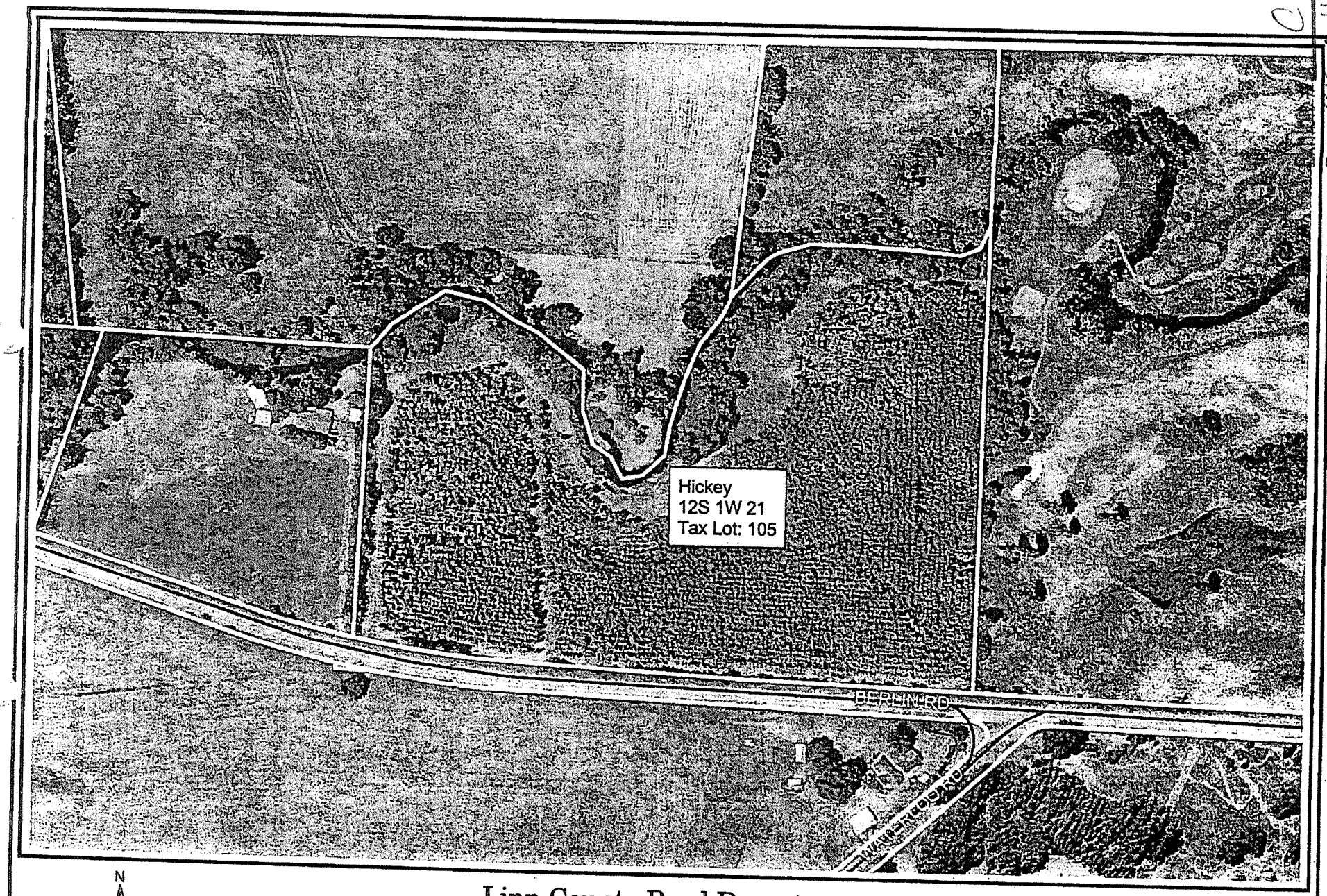
1. County Road Access: The access shall be constructed to meet the Linn County Road Department Right of Way Encroachment Permit Standard Provisions and Linn County Code 935. The driveway access shall be paved a minimum width of 12 feet (and not to exceed 22 feet wide) and connect to the paved edge of the county road with a 10 foot radiuses. The length of the paved access shall be a distance of 15 feet back from the paved edge of Berlin Road. The paved surface shall be supported by road base that is constructed 2 feet wider than the asphalt surface with a minimum of 6 inches of quarry rock and topped with 6 inches of one inch minus crushed rock.

2. Driveway: The private road and driveway shall be built and maintained according to the minimum requirements of Linn County Code 935.200. Minimum road and driveway width shall be 12 feet and constructed with a minimum of six inches of compacted quarry run rock and topped with a minimum of 6 inches of compacted one inch minus crushed rock. The driveway shall be capable of supporting gross vehicle weights of 50,000 pounds during all times of the year. The driveway shall be provided with an unobstructed vertical clearance of at least 13 feet 6 inches, and an unobstructed horizontal clearance of 20 feet and a minimum curve radius of 48 feet. If the driveway is longer than 150 feet from the County Road then a 40 foot radius turnaround as measured from the center of the road or a hammerhead turnaround with equivalent dimensions of 70 feet long by 20 feet wide with 10 foot turning radiuses at the corners shall be placed within 150 feet of the structure to provide access for emergency vehicles. If the driveway is longer than 500 feet, then the road must be widened to 20 feet for a distance of 40 feet every 500 feet to provide turnouts.

3. Drainage: The access shall have a minimum of 26 feet of 15 inch diameter M294-Type S plastic culvert or Class V concrete culvert installed in the bottom of the existing county ditch so the end of the culvert extends a minimum two feet beyond the road base. The ditch shall be cleaned out prior to installing the culvert to provide an even flow line. The culvert shall be backfilled with compacted one inch minus crushed rock.

LINN COUNTY ROAD DEPARTMENT · 3010 FERRY STREET SW · ALBANY, OREGON 97322
TELEPHONE: (541) 967-3919 FAX: (541) 924-0202
www.co.linn.or.us/Roads

Printed: 5/30/2007 12:46:13 PM



N
W E
S

Linn County Road Department
Access Permit No. 07-1987

0 125 250 500 Feet

Access Point No. 1

LINN COUNTY ROAD DEPARTMENT

3010 FERRY STREET SW, ALBANY, OREGON, 97322
TELEPHONE: (541) 967-3919 FAX: (541) 924-0202
www.co.linn.or.us/Roads

APPLICATION FOR RIGHT-OF-WAY ENCROACHMENT

APPLICANT

NAME: DAVID HICKEY

ADDRESS: P.O. Box 401
Lebanon, OR 97355

PHONE: 979-7150 (cell)
451-5090 (w)

FAX: 451-3603

EMAIL:

NAME OF CONTACT PERSON: DAVE HICKEY

DESCRIPTION & LOCATION OF WORK

(CHECK ALL THAT APPLY)

☑ ACCESS (indicate type and use below) Upgrade access to residence Use (~~No a Field access~~).

☒ NEW ☑ MODIFICATION ☐ CHANGE OF USE ☐ PUBLIC STREET

☐ UTILITY (describe below and attach drawings)

☐ PUBLIC ☐ PRIVATE ☐ UNDERGROUND ☐ OVERHEAD

☐ ROAD IMPROVEMENT (indicate purpose below and attach plans)

☐ OTHER (sign, shelter, stock guard, landscaping, etc. describe below)

BRIEF DESCRIPTION OF WORK TO BE PERFORMED (facilities to be installed):
Access to Parcel No. 1,2&3 of a pending Partition at Linn County Planning Dept. Identified as Access #2 on attached Map.

COUNTY ROAD OR LOCAL ACCESS ROAD NAME: Berlin Road (MR-20-b)

TOWNSHIP, RANGE, AND SECTION (INCLUDE TAXLOT AND SITE ADDRESS IF APPLICABLE):
Map 12-1W-21 Tax Lot # 105 (No Address)

APPLICANT SIGNATURE: David P. Hickey Hickey LLC. DATE: 8-28-2006

DEPARTMENT USE ONLY

DATE RECVD:	BY:	☒ ATTACHMENTS	☒ FEE PAID $ 30.00
May 10, 2007	Katie		

DIST SUPVSR:	DATE:	OPS / ENG:	DATE:	PERMIT NO:
Floyd Chase	5-15-07	CHK	5/29/07	07-1987

COMMENTS (CULVERT TYPE, SIZE, LENGTH, ETC.):
Needs to have 15in colvert back filled with 1"-0 or 3/4"-0 Rock and compacted

PLANNING, REVIEWED BY (ACCESS PERMITS ONLY): DATE:

COMMENTS:
minimum 30ft access with 10ft Radius down to minimum 20ft Road Width
access to be Paved ditches may be needed on driveway
Include a Hauled spill Ditch.

Revised 3-30-2004

Exhibit # C
Page 99 of 101

SPECIAL PERMIT CONDITIONS FOR PERMIT NO 07-1987
County Road – Berlin Road

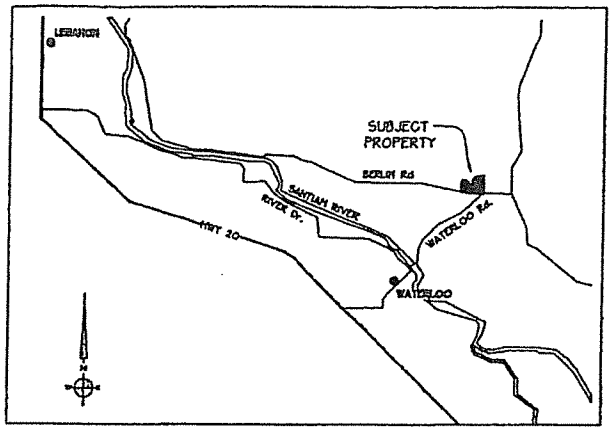
This permit is being issued for a new access to provide access and driveway to a new lot. The access when constructed will provide an access to two additional lots. A separate access permit will be required when structures are constructed on these lots. Only one access to Berlin Road will be allowed for these three lots. The following conditions shall apply:

1. County Road Access: The access shall be constructed to meet the Linn County Road Department Right of Way Encroachment Permit Standard Provisions and Linn County Code 935. The driveway access shall be paved a minimum width of 12 feet (and not to exceed 22 feet wide) and connect to the paved edge of the county road with a 10 ft radius. The length of the paved access shall be a distance of 15 feet back from the paved edge of the Berlin Road. The paved surface shall be supported by road base that is constructed 2 feet wider than the asphalt surface with a minimum of 6 inches of quarry rock and topped with 6 inches of one inch minus crushed rock.

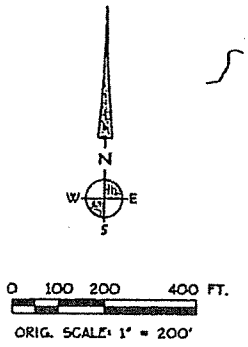
2. Driveway: The private road and driveway shall be built and maintained according to the minimum requirements of Linn County Code 935.200. Minimum road and driveway width shall be 12 feet and constructed with a minimum of six inches of compacted quarry run rock and topped with a minimum of 6 inches of compacted one inch minus crushed rock. The driveway shall be capable of supporting gross vehicle weights of 50,000 pounds during all times of the year. The driveway shall be provided with an unobstructed vertical clearance of at least 13 feet 6 inches, and an unobstructed horizontal clearance of 20 feet and a minimum curve radius of 48 feet. If the driveway is longer than 150 feet from the County Road then a 40 foot radius turnaround as measured from the center of the road or a hammerhead turnaround with equivalent dimensions of 70 feet long by 20 feet wide with 10 foot turning radiuses at the corners shall be placed within 150 feet of the structure to provide access for emergency vehicles. If the driveway is longer than 500 feet, then the road must be widened to 20 feet for a distance of 40 feet every 500 feet to provide turnouts.

3. Drainage: The access shall have a minimum of 26 feet of 15 inch diameter M294-Type S plastic culvert or Class V concrete culvert installed in the bottom of the existing county ditch so the end of the culvert extends a minimum two feet beyond the road base. The ditch shall be cleaned out prior to installing the culvert to provide an even flow line. The culvert shall be backfilled with compacted one inch minus crushed rock.

Chuck Knoll
or Darrin Lane
Direct.



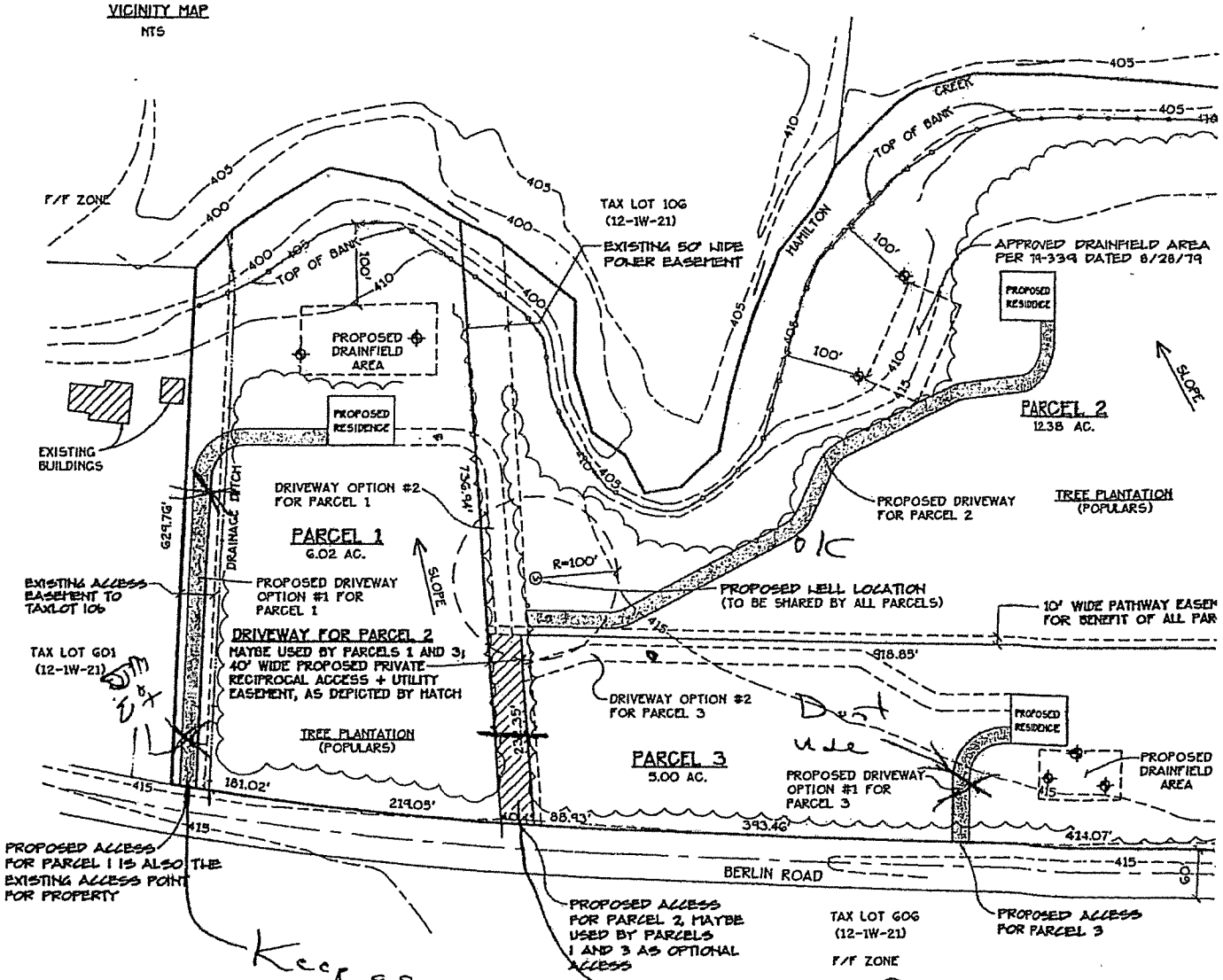
VICINITY MAP
NTS



See Comments
CR-Sale
8/28/06

TAX LOT 110
(12-1W-21)

PARCEL 2 (P.P. No. 1994-11)



Keep as field access

Use for access to all 3 Parcels

Date: 7/26/2006 Time: 10:33
Scale: 1=100(PS)
File: dwg\2005\05-117\117-tpp.dwg (Brian E)

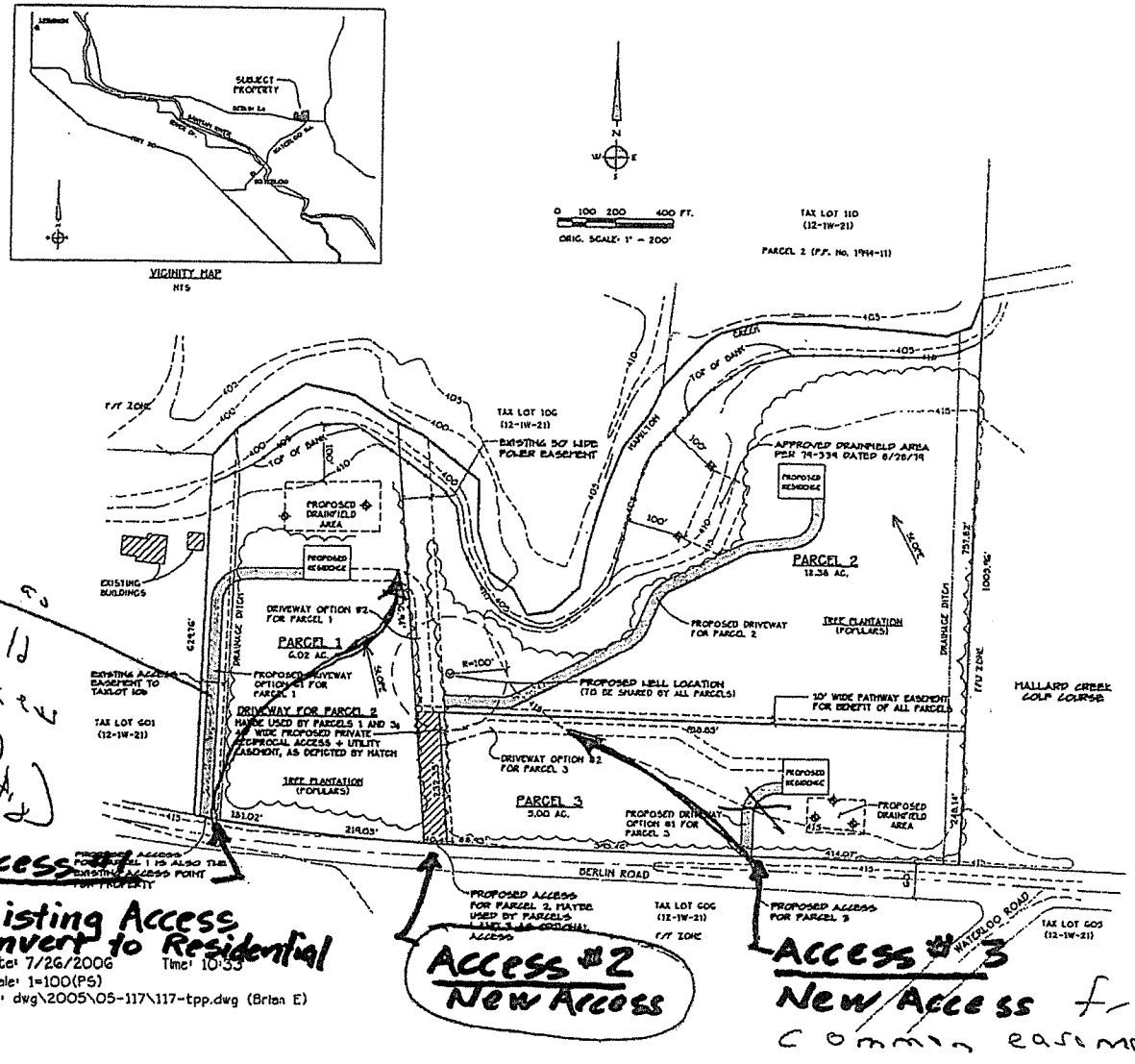
Exhibit # C
Page 101 of 110

TENTATIVE PARTITION PLAT
FOR
DAVID AND GAY HICKEY

LOCATED IN

SEC. 21, T. 12 S., R. 1 W., W.M.
LINN COUNTY, OREGON

JULY 19, 2006



Date: 7/26/2006 Time: 10:53
Scale: 1=100(PS)
File: dwg\2005\05-117\117-tpp.dwg (Brian E)

OWNER INFORMATION

DAVID + GAY HICKEY, HICKEY FAMILY LLC
P.O. BOX 401
LEBANON, OR. 97355

PROPERTY INFORMATION

CURRENT ZONING: FARM FOREST (FF)
AREA= 21.85 ACRES (ASSESSORS FIGURE)
TAX LOT NUMBER: 105
TAX MAP : 125-1W-21

MEASURE 37 WAIVER GRANTED
RESOLUTION 2006-84

ENGINEER / SURVEYOR:

DANIEL WATSON
K+D ENGINEERING, INC.
276 N.W. HICKORY STREET
ALBANY, OR 97321
(541) 928-2583

K&D K & D ENGINEERING, Inc.
276 N.W. Hickory Street P.O. Box 725
Albany, Oregon 97321
(541) 928-2583

LINN COUNTY PLANNING AND BUILDING DEPARTMENT
Steve Michaels, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816, 1-800-319-3816
Fax 541-926-2060 www.co.linn.or.us

NOTICE OF DECISION

April 5, 2007

Hickey Family LLC
David Hickey
PO Box 401
Lebanon,OR 97355

RE: PD06-0203; T12S, R1W, Section 21, Tax lot 105; as the result of a Measure 37 claim approval by Linn County, the property owner submitted an application for a partition to divide a 21.85 acre unit of land into three acre parcels: a 6.02 acre parcel, a 5.01 acre parcel and a 12.29 acre parcel. Each parcel would be entitled to a dwelling as an outright use under the original zoning of Agriculture, Residential and Timber. The subject property is currently zoned Farm/Forest (F/F).

Dear Mr. Hickey:

The Linn County Planning and Building Department completed review of your partition application on April 4, 2006. Your application was found to comply with the specified decision criteria in Sections 924.200 and 924.210. Preliminary approval has been granted. Final approval will be given once the following requirements have been met:

A. Pursuant to ORS 92.050 to 92.080 and 209.250, parcels being created that are 10 acres or smaller are required to be surveyed and monumented and to have a partition plat map prepared within 180 days of the tentative approval. An extension is available upon written request if one becomes necessary.

Pursuant to ORS 92.050-92.080, a parcel being created that is **larger than 10 acres** requires the preparation of a partition plat map. This parcel does not need to be surveyed or monumented but must include adequate descriptive information to identify the specific parcel being created. The acreage of each unsurveyed parcel must be shown and the words "unsurveyed" shall be placed in bold letters adjacent to the parcel number.

The partition plat must include the following:

1. A certificate which indicates whether or not the lands described have been surveyed and shall indicate that the survey complies with ORS. 92.050-080 and ORS 209.250. It shall include a notation of any monuments which could not be set and for which a reference monument was set;

2. The surveyor's stamp and the notarized signature of the owner(s) of the land proposed for partitioning;

3. The Planning and Building Department's case file number and a designated space for the Director, Linn County Planning Department, to indicate when the partition has received final planning approval. A designated space for the signature of the Linn County Surveyor and Linn County Assessor shall also be provided.

4. A partition plat report containing the following information shall accompany the final plat: name of current owner; any easements of record; and any other encumbrances on the subject property.

The plat map must receive final approval from the Planning and Building Department. Once approval has been given, the plat map must be recorded with the Linn County Clerk.

A partition must be approved, platted and recorded before ownership interests in the authorized parcels are changed.

B. Since the approval of this partition is the result of a Measure 37 claim, in order for the parcels to remain buildable, an approved septic system shall be installed on each of the newly created parcels and a Certificate of Satisfactory Completion shall be issued **prior to the sale of any one of the parcels.**

C. It must be demonstrated that the proposed use will be served by an adequate supply of potable (drinkable) water prior to the issuance of a placement or building permit. If a well is already located on the property, a copy of the well driller's log or a copy of a pump test will suffice. A copy of a water quality test must also be submitted.

D. Road access permits shall be obtained from the Linn County Road Department prior to the issuance of any building permits.

E. Prior to the issuance of any building permits, the construction of the driveways must comply with the following minimum improvement standards contained in Section 935.200 (B) of the LCC. When the driveways are complete, you shall contact the Road Department (541-967-3919) to review the work for compliance.

1. The all weather driveways must be built and maintained to the minimum access requirements and shall be at least **12 feet** in width split between the newly created tax parcels and consist of a minimum of six inches of crushed rock or crushed gravel. An acceptable alternative base for a roadbed is six inches of quarry-run rock topped with a minimum of four inches of 1" minus crushed rock or 1" minus crushed gravel. The access route, including any culverts and bridges, must be capable of supporting the gross vehicle weight (GVW) of 50,000 pounds. The County reserves the right to require written verification of compliance with the GVW standard from an Oregon Registered Professional Engineer.

2. The driveways shall be provided with an unobstructed vertical clearance of at least 13 feet six inches and an unobstructed horizontal clearance of 20 feet and a minimum curve radius of 48 feet.

3. At least one intervisible turnout every 500 feet shall be provided in any access roadway less than 20 feet wide. The turnout should provide passage space at least 20 feet wide and 40 feet long.

4. Roadside ditches must be provided if deemed appropriate by the Linn County Road Department. Please contact the Linn County Engineer at the Linn County Road Department (967-3919) prior to construction of the driveway

5. Dead-end driveways over 150 feet in length should provide and maintain a cleared turnaround, with a turning radius of at least 40 feet, adequate for emergency vehicles.

6. Roadway grades shall not exceed 12 percent.

7. Driveways shall be marked with the resident's rural address unless the residence is visible from the County roadway and the address is clearly visible on the residence. Letters or numbers hall be a minimum of three inches in height and constructed of reflective material.

F. The land owner must sign and record in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, from pursuing a claim for relief or cause of action alleging injury from farming or forest practices in the area. Enclosed you will find a form that is acceptable to the Linn County Recorder or you may include the language of the covenant in the new deeds for the two one-acre parcels.

Your proposal shall be initiated within **180** days after the date of decision. Please contact Kathy Krabbe, Associate Planner, at (541) 967-3816, ext. 2360 if questions arise or if we may be of further assistance.

Sincerely,

Steve Michaels
Director

cc: Linn County Assessor's Office
Linn County Surveyor's Office
Linn County Environmental Health Program
Linn County Road Department
Jack Burrell, K & D Engineering

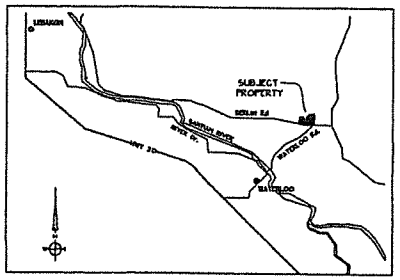
enc.

TENTATIVE PARTITION PLAT
FOR
DAVID AND GAY HICKEY

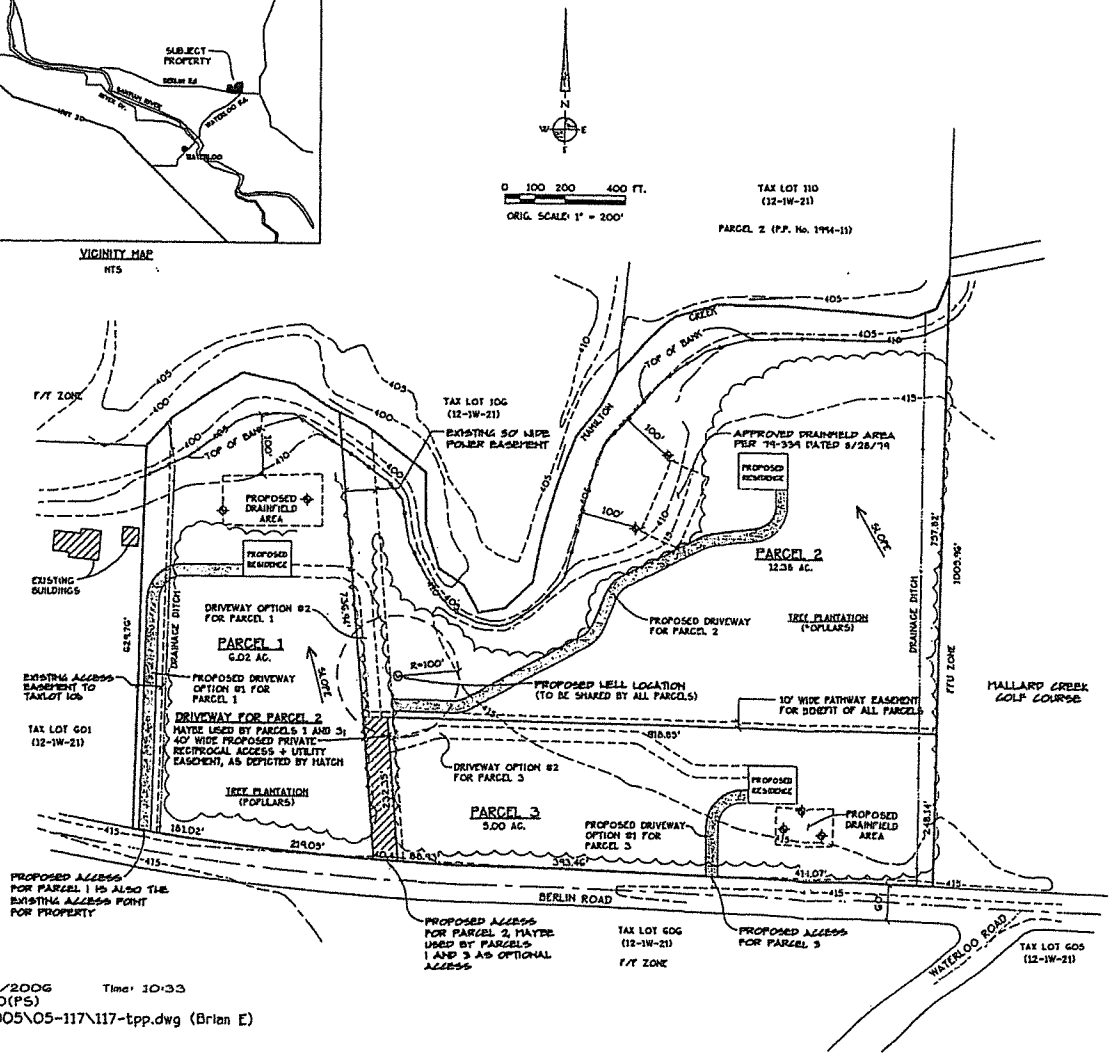
LOCATED IN

SEC. 21, T. 12 S., R. 1 W., W.M.
LINN COUNTY, OREGON

JULY 19, 2006



VICINITY MAP
NTS



Date: 7/26/2006 Time: 10:33
Scale: 1=100(PS)
File: dwg\2005\05-117\117-tpp.dwg (Brian E)

OWNER INFORMATION

DAVID + GAY HICKEY, HICKEY FAMILY LLC
P.O. BOX 401
LEBANON, OR. 97355

PROPERTY INFORMATION

CURRENT ZONING: FARM FOREST (FF)
AREA= 21.85 ACRES (ASSESSORS FIGURE)
TAX LOT NUMBER: 105
TAX MAP : 12S-1W-21

MEASURE 37 WAIVER GRANTED
RESOLUTION 2006-84

ENGINEER / SURVEYOR:

DANIEL WATSON
K+D ENGINEERING, INC.
276 N.W. HICKORY STREET
ALBANY, OR 97321
(541) 928-2583

K&D
K & D ENGINEERING, Inc.
276 N.W. Hickory Street P.O. Box 725
Albany, Oregon 97321
(541) 928-2583

Access Point No. 1

LINN COUNTY ROAD DEPARTMENT

3010 FERRY STREET SW, ALBANY, OREGON, 97322
TELEPHONE: (541) 967-3919 FAX: (541) 924-0202
www.co.linn.or.us/Roads

APPLICATION FOR RIGHT-OF-WAY ENCROACHMENT

APPLICANT

NAME: DAVID HICKEY

ADDRESS: P.O. Box 401
Lebanon, OR 97355

PHONE: 979-7150 (cell)
451-5090 (w)

FAX: 451-3603

EMAIL:

NAME OF CONTACT PERSON: DAVE HICKEY

DESCRIPTION & LOCATION OF WORK

(CHECK ALL THAT APPLY)

☒ ACCESS (Indicate type and use below) Upgrade access to residence Use (~~No a Field access~~).

☒ NEW ☒ MODIFICATION ☐ CHANGE OF USE ☐ PUBLIC STREET

☐ UTILITY (describe below and attach drawings)

☐ PUBLIC ☐ PRIVATE ☐ UNDERGROUND ☐ OVERHEAD

☐ ROAD IMPROVEMENT (indicate purpose below and attach plans)

☐ OTHER (sign, shelter, stock guard, landscaping, etc. describe below)

BRIEF DESCRIPTION OF WORK TO BE PERFORMED (facilities to be installed):
Access to Parcel No. 1,2&3 of a pending Partition at Linn County Planning Dept. Identified as Access #2 on attached Map.

COUNTY ROAD OR LOCAL ACCESS ROAD NAME: Berlin Road (MR-20-b)

TOWNSHIP, RANGE, AND SECTION (INCLUDE TAXLOT AND SITE ADDRESS IF APPLICABLE):
Map 12-1W-21 Tax Lot # 105 (No Address)

APPLICANT SIGNATURE: David P. Hickey Hickey LLC. DATE: 8-28-2006

DEPARTMENT USE ONLY

DATE RECVD:	BY:	ATTACHMENTS	FEE PAID $
May 10, 2007	Katie	☒	☒ 30.00

DIST SUPVSR:	DATE:	OPS / ENG:	DATE:	PERMIT NO:
				07-1987

COMMENTS (CULVERT TYPE, SIZE, LENGTH, ETC.):

PLANNING, REVIEWED BY (ACCESS PERMITS ONLY): DATE:

COMMENTS:
Planning can't sign until partition is completed
DMP 5/29/07

Revised 3-30-2004

Exhibit # C
Page 102 of 114

UNITED STATES DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE
33935 HWY. 99E.
ROOM #3
TANGENT OR 97389

Phone: (503)967-5927
FAX: (503)928-9345

Mr. David Hickey
36939 Gore Dr.
Lebanon, OR-97355

March 16, 1994

Dear Mr. Hickey,

Mark Nofziger, who farms your tract #651, was into the SCS office the other day and told me of the plans to plant hybrid poplar trees on the field currently designated as being highly erodible. He questioned whether the field was in fact highly erodible and asked that I make an on-site evaluation. I was at the field this morning and agree that it is not highly erodible and therefore does not require a conservation plan. I cannot explain why one was developed with Paul O'Driscoll back in 1989. By copy of this letter and form SCS-CPA-026 I am informing ASCS that a plan is not required.

I do want to caution you that wetland does occur in a shallow swale which runs generally east to west across the field. Do not alter the drainage of this wet area or you will convert a wetland which will jeopardize your and your tenants USDA program benefits. By altering the drainage I mean by ditching, diking, tiling or otherwise permanently changing the hydrology of the soil. You may plant trees on the field and harvest them on a 7 to 10 year rotation without affecting your USDA benefits. **To protect yourself, you should write a letter to ASCS saying that your plan is to plant trees and harvest them on a rotation and that you will not alter the drainage of the field.**

If you have questions or disagree with this determination, your appeal rights are shown on the back of the attached form SCS-CPA-026.

Sincerely,

Ron Edwards

Ronald Edwards
District Conservationist

pc: ASCS, Tangent
Mark Nofziger, Lebanon

Exhibit # C
Page 108 of 114

EXHIBIT
14

U.S.D.A. SCS-CP/ 6
Soil Conservation Service (June 91)

HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION

1. Name and Address of Person: David Hickey, 36939 Gore Dr., Lebanon OR 97355

2. Date of Request: by SCS 3/14/94

3. County: Linn

4. Name of USDA Agency or Person Requesting Determination: SCS

5. Farm No. and Tract No.: Fm# 3905 Tr # 651

SECTION I - HIGHLY ERODIBLE LAND

	FIELD NO.(s)	TOTAL ACRES
Is soil survey now available for making a highly erodible land determination? Yes ☑ No ☐		
Are there highly erodible soil map units on this farm? Yes ☐ No ☑		
List highly erodible fields that, according to ASCS records, were used to produce an agricultural commodity in any crop year during 1981-1985.	None	
List highly erodible fields that have been or will be converted for the production of agricultural commodities and, according to ASCS records, were not used for this purpose in any crop year during 1981-1985; and were not enrolled in a USDA set-aside or diversion program.	None	
This Highly Erodible Land determination was completed in the: Office ☐ Field ☑		

SECTION II - WETLAND

	FIELD NO.(s)	TOTAL ACRES
Are there hydric soils on this farm? Yes ☑ No ☐		
Wetlands (W), including abandoned wetlands, or Farmed Wetlands (FW) or Farmed Wetlands Pasture (FWP). Wetlands may be farmed under natural conditions. Farmed Wetlands and Farmed Wetlands Pasture may be farmed and maintained in the same manner as they were prior to December 23, 1985, as long as they are not abandoned.		
Prior Converted Cropland (PC). Wetlands that were converted prior to December 23, 1985. The use, management, drainage, and alteration of prior converted cropland (PC) are not subject to the wetland conservation provisions unless the area reverts to wetland as a result of abandonment.		
Artificial Wetlands (AW). Artificial wetlands includes irrigation-induced wetlands. These wetlands are not subject to the wetland conservation provisions.		
Minimal Effect Wetlands (MW). These wetlands are to be farmed according to the minimal-effect agreement signed at the time the minimal-effect determination was made.		
Mitigation Wetlands (MIW). Wetlands on which a person is actively mitigating a frequently cropped area or a wetland converted between December 23, 1985 and November 28, 1990.		
Restoration with Violation (RVW-year). A restored wetland that was in violation as a result of conversion after November 28, 1990, or the planting of an agricultural commodity or forage crop.		
Restoration without Violation (RSW). A restored wetland converted between December 23, 1985 and November 28, 1990, on which an agricultural commodity has not been planted.		
Replacement Wetlands (RPW). Wetlands which are converted for purposes other than to increase production, where the wetland values are being replaced at a second site.		
Good Faith Wetlands (GFW+year). Wetlands on which ASCS has determined a violation to be in good faith and the wetland has been restored.		
Converted Wetlands (CW). Wetlands converted after December 23, 1985 and prior to November 28, 1990. In any year that an agricultural commodity is planted on these Converted Wetlands, you will be ineligible for USDA benefits.		
Converted Wetland (CW+year). Wetlands converted after November 28, 1990. You will be ineligible for USDA program benefits until this wetland is restored.		
Converted Wetland Non-Agricultural use (CWNA). Wetlands that are converted for trees, fish production, shrubs, cranberries, vineyards or building and road construction.		
Converted Wetland Technical Error (CWTE). Wetlands that were converted as a result of incorrect determination by SCS.		

The planned alteration measures on wetlands in fields _____ are considered maintenance and are in compliance with FSA.

The planned alteration measures on wetlands in fields _____ are not considered to be maintenance and if installed will cause the area to become a Converted Wetland (CW). See item 22 for information on CW+year.

The wetland determination was completed in the office ☐ field ☐ and was delivered ☐ mailed ☐ to the person on _____.

Remarks: A complete wetland determination was not made on this tract. Hydric soils do occur and wetland may be present. Do not drain or alter wet areas without contacting SCS.

I certify that the above determination is correct and adequate for use in determining eligibility for USDA program benefits, and that wetland hydrology, hydric soils, and hydrophytic vegetation under normal circumstances exist on all areas outlined as Wetlands, Farmed Wetlands, and Farmed Wetlands Pasture.

30. Signature of SCS District Conservationist: Ronald Edwards

31. Date: 3/16/94

Assistance and programs of the Soil Conservation Service available without regard to race, religion, color, sex, age, or handicap.

Person Copy

Exhibit # C

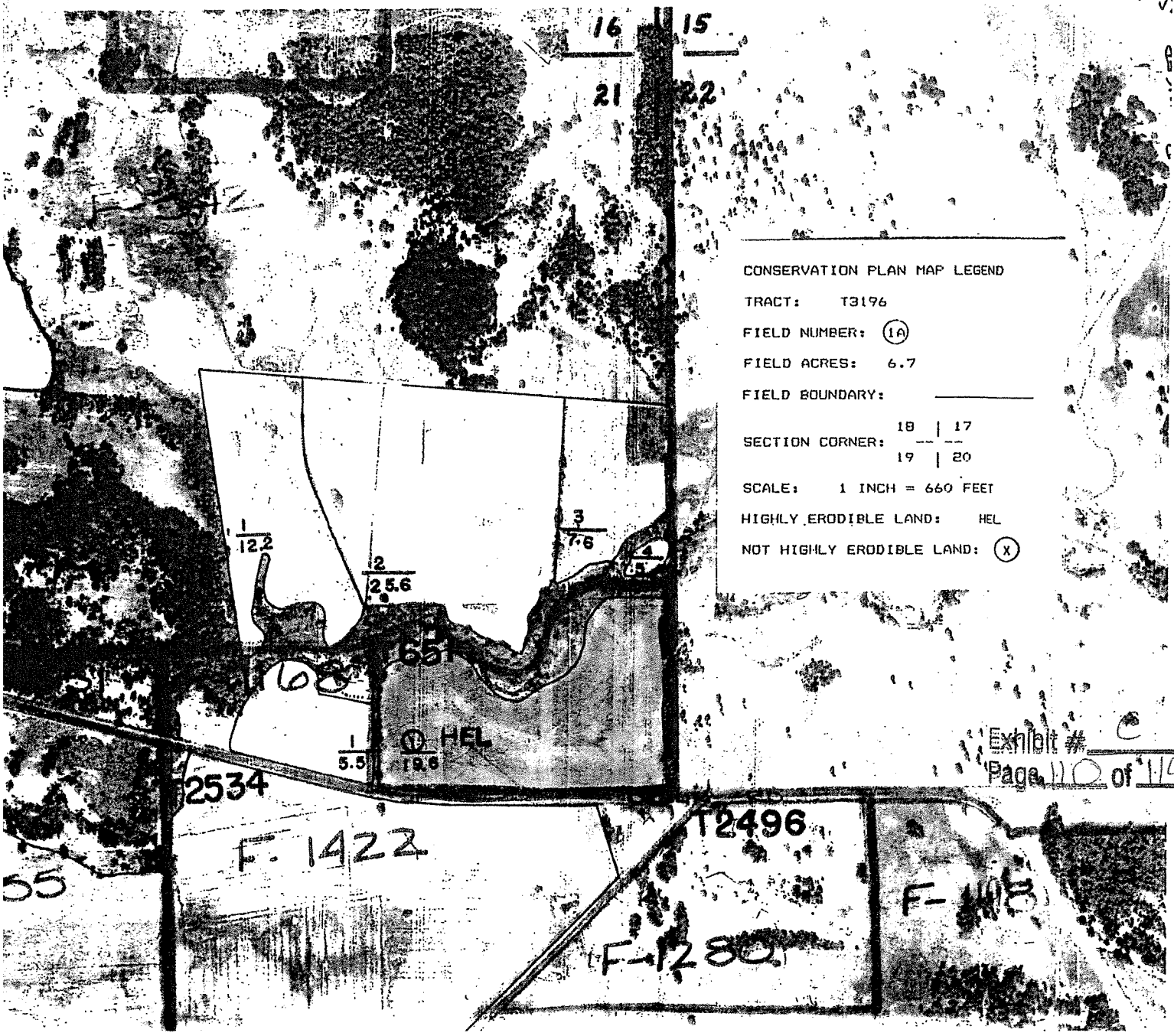
U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

T12S R1W

SCS - CPA - 16
2 - 81

CONSERVATION PLAN MAP

Owner _____ Operator Paul O'Driscoll
County Linn State Oregon Date 12/89
Approximate acres _____ Approximate scale 1 inch = 660 feet
Cooperating with Linn Soil & Water Conservation District
Plan identification Food Security Act Photo number ASCS - 411
Assisted by Fred Smith - Tangent Field Office USDA Soil Conservation Service



CONSERVATION PLAN MAP LEGEND

TRACT: T3196

FIELD NUMBER: (1A)

FIELD ACRES: 6.7

FIELD BOUNDARY: _____

SECTION CORNER: 18 | 17 / 19 | 20

SCALE: 1 INCH = 660 FEET

HIGHLY ERODIBLE LAND: HEL

NOT HIGHLY ERODIBLE LAND: (X)

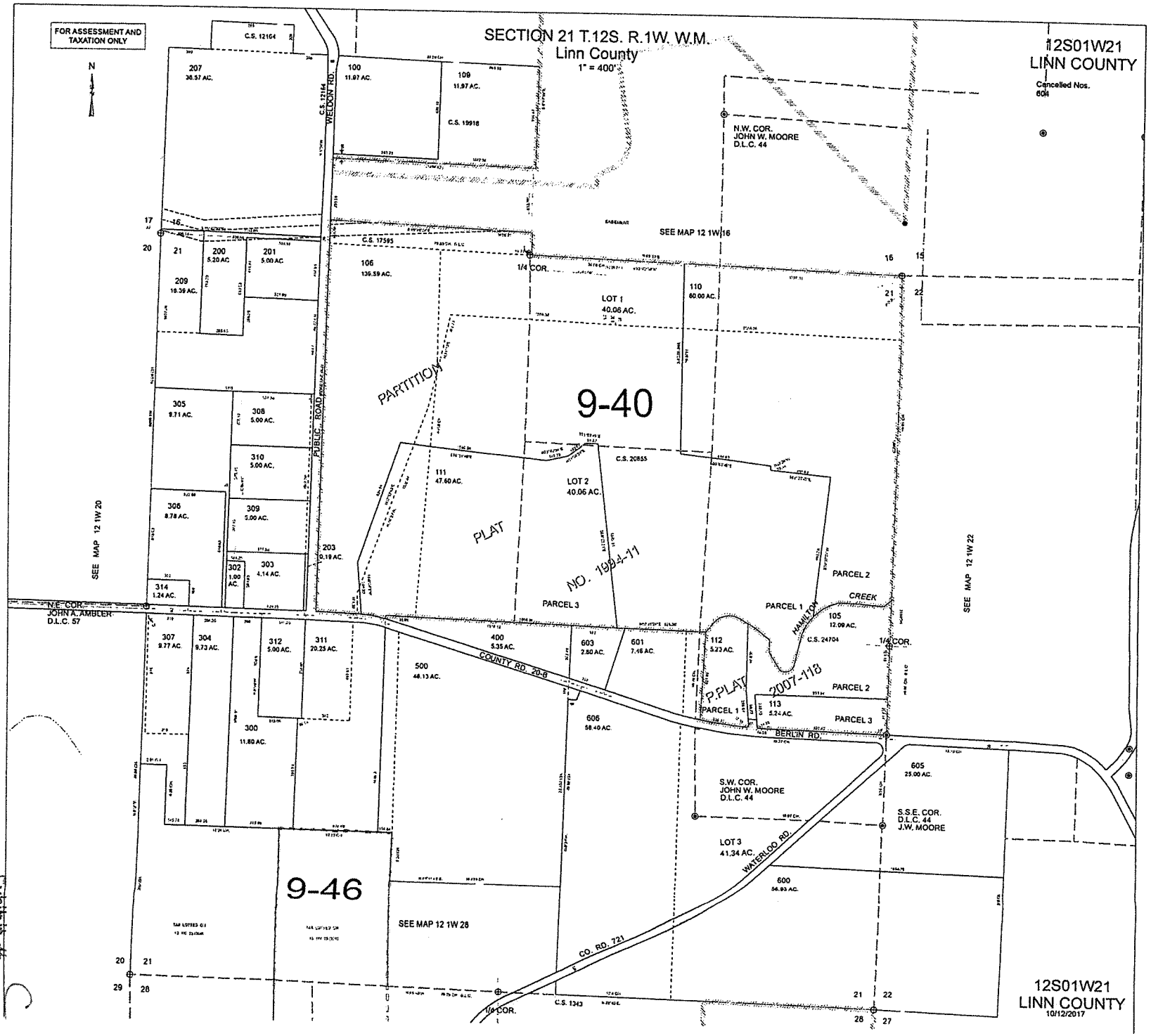


EXHIBIT 15

Exhibit # C
Page 111 of 114

LINN County Assessor's Summary Report

Real Property Assessment Report

FOR ASSESSMENT YEAR 2017

November 9, 2017 11:42:24 am

Account #	355293	**Tax Status**	ASSESSABLE
Map #	12S01W21-00-00105	**Acct Status**	ACTIVE
Code - Tax #	00940-355293	**Subtype**	NORMAL
Legal Descr	Metes & Bounds - See legal report for full description.		
Mailing Name	HICKEY FAMILY LLC DAVID & GAY	**Deed Reference #**	See Record
Agent		**Sales Date/Price**	See Record
In Care Of		**Appraiser**	GERGER, SAM
Mailing Address	PO BOX 401 LEBANON, OR 97355-0401		

		MA	SA	NH	Unit
Prop Class	540				
RMV Class	400	03	00	001	33395-1

Situs Address(s)	Situs City

Value Summary

Code Area		RMV	MAV	AV	RMV Exception		CPR %
00940	Land	168,260			Land	0	
	Impr.	0			Impr.	0	
Code Area Total		168,260	0	8,846		0	
Grand Total		168,260	0	8,846		0	

Land Breakdown

Code Area	ID#	RFD	Ex	Plan Zone	Value Source	TD%	LS	Size	Land Class	Irr Class	Irr Size
00940	1	R			Farm Use Unzoned	118	A	2.83	1		
00940	2	R			Farm Use Unzoned	118	A	9.26	3		
					Grand Total			12.09			0.00

Improvement Breakdown

Code Area	ID#	Yr Built	Stat Class	Description	TD%	Total Sq. Ft.	Ex%	MS Acct #	Trended RMV
				Grand Total		0			0

Exemptions/Special Assessments/Potential Liability

Code Area	Type
00940	

NOTATION(S):

- POT'L ADD'L TAX LIABILITY ADDED 2009 — Amount 0.00 Tax 0.00

Comments: ***** CAP NOTE - Type J **********
EV2008-36: RECOMPUTE AC 21.85 AC TO 22.64 AC, THEN .08 AC GONE TO ROAD LEAVING 22.56 AC. THEN SEG'D OUT 5.23 AC TO TL 112 (ACCT 925926). THEN SEG'D OUT 5.24 AC TO TL 113 (ACCT 925934). SOILS FROM SOIL ANALYSIS REPORT IN ELLA MAPS. SURVEY FILED 12/5/07. 2/13/08 JLS.

Exhibit # C
Page 112 of 114

EXHIBIT
16

LINN County Assessor's Summary Report

Real Property Assessment Report

FOR ASSESSMENT YEAR 2017

November 9, 2017 11:41:39 am

Account #	925926	**Tax Status**	ASSESSABLE
Map #	12S01W21-00-00112	**Acct Status**	ACTIVE
Code - Tax #	00940-925926	**Subtype**	NORMAL
Legal Descr	Metes & Bounds - See legal report for full description.		
Mailing Name	HICKEY FAMILY LLC DAVID & GAY	**Deed Reference #**	See Record
Agent		**Sales Date/Price**	See Record
In Care Of		**Appraiser**	GERGER, SAM
Mailing Address	PO BOX 401 LEBANON, OR 97355-0401		

Prop Class	503	**MA**	**SA**	**NH**	**Unit**
RMV Class	401	03	00	001	66121-1

Situs Address(s)	Situs City

Value Summary

Code Area		RMV	MAV	AV		RMV Exception	CPR %
00940	Land	128,920			Land	0	
	Impr.	0			Impr.	0	
Code Area Total		128,920	0	3,682		0	
Grand Total		128,920	0	3,682		0	

Land Breakdown

Code Area	ID#	RFD	Ex	Plan Zone	Value Source	TD%	LS	Size	Land Class	Irr Class	Irr Size
00940	1	R			Farm Use Unzoned	118	A	0.59	1		
00940	2	R			Farm Use Unzoned	118	A	4.64	3		
						Grand Total		5.23			0.00

Improvement Breakdown

Code Area	ID#	Yr Built	Stat Class	Description	TD%	Total Sq. Ft.	Ex%	MS Acct #	Trended RMV
					Grand Total	0			0

Exemptions/Special Assessments/Potential Liability

Code Area	Type
00940	

NOTATION(S):

- POT'L ADD'L TAX LIABILITY ADDED 2009 — Amount 0.00 — Tax 0.00

Comments: ***** CAP NOTE - Type J **********
EV2008-36: SEG'D THIS ACCT FROM 355293 (TL 105). SURVEY FILED 12/5/07.
2/13/08 JLS.

Exhibit # C
Page 113 of 114

EXHIBIT
17

LINN County Assessor's Summary Report

Real Property Assessment Report

FOR ASSESSMENT YEAR 2017

November 9, 2017 11:42:01 am

Account #	925934	**Tax Status**	ASSESSABLE
Map #	12S01W21-00-00113	**Acct Status**	ACTIVE
Code - Tax #	00940-925934	**Subtype**	NORMAL
Legal Descr	Metes & Bounds - See legal report for full description.		
Mailing Name	HICKEY FAMILY LLC DAVID & GAY	**Deed Reference #**	See Record
Agent		**Sales Date/Price**	See Record
In Care Of		**Appraiser**	GERGER, SAM
Mailing Address	PO BOX 401 LEBANON, OR 97355-0401		

Prop Class	503	MA	SA	NH	Unit
RMV Class	401	03	00	001	66122-1

Situs Address(s)	Situs City

Value Summary

Code Area		RMV	MAV	AV		RMV Exception	CPR %
00940	Land	128,920			Land	0	
	Impr.	0			Impr.	0	
Code Area Total		128,920	0	3,334		0	
Grand Total		128,920	0	3,334		0	

Land Breakdown

Code Area	ID#	RFD	Ex	Plan Zone	Value Source	TD%	LS	Size	Land Class	Irr Class	Irr Size
00940	1	R			Farm Use Unzoned	118	A	4.82	3		
00940	2	R			Farm Use Unzoned	118	A	0.42	6		
					Grand Total			5.24			0.00

Improvement Breakdown

Code Area	ID#	Yr Built	Stat Class	Description	TD%	Total Sq. Ft.	Ex%	MS Acct #	Trended RMV
				Grand Total		0			0

Exemptions/Special Assessments/Potential Liability

Code Area	Type
00940	

NOTATION(S):

- POT'L ADD'L TAX LIABILITY ADDED 2009 — Amount 0.00 — Tax 0.00

Comments: ***** CAP NOTE - Type J **********
EV2008-36: SEG'D FROM 355293. (TL 105). SURVEY FILED 12/5/07. 2/13/08 JLS.

Exhibit # C
Page 114 of 114

EXHIBIT
18

Exhibit D

Planning & Building Director Decision

For Partition Approval

LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Steve Michaels, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816, 1-800-319-3816
Fax 541-926-2060 www.co.linn.or.us

NOTICE OF DECISION

April 5, 2007

Hickey Family LLC
David Hickey
PO Box 401
Lebanon,OR 97355

RE: PD06-0203; T12S, R1W, Section 21, Tax lot 105; as the result of a Measure 37 claim approval by Linn County, the property owner submitted an application for a partition to divide a 21.85 acre unit of land into three acre parcels: a 6.02 acre parcel, a 5.01 acre parcel and a 12.29 acre parcel. Each parcel would be entitled to a dwelling as an outright use under the original zoning of Agriculture, Residential and Timber. The subject property is currently zoned Farm/Forest (F/F).

Dear Mr. Hickey:

The Linn County Planning and Building Department completed review of your partition application on April 4, 2006. Your application was found to comply with the specified decision criteria in Sections 924.200 and 924.210. Preliminary approval has been granted. Final approval will be given once the following requirements have been met:

A. Pursuant to ORS 92.050 to 92.080 and 209.250, parcels being created that are 10 acres or smaller are required to be surveyed and monumented and to have a partition plat map prepared within **180** days of the tentative approval. An extension is available upon written request if one becomes necessary.

Pursuant to ORS 92.050-92.080, a parcel being created that is **larger than 10 acres** requires the preparation of a partition plat map. This parcel does not need to be surveyed or monumented but must include adequate descriptive information to identify the specific parcel being created. The acreage of each unsurveyed parcel must be shown and the words "unsurveyed" shall be placed in bold letters adjacent to the parcel number.

The partition plat must include the following:

1. A certificate which indicates whether or not the lands described have been surveyed and shall indicate that the survey complies with ORS. 92.050-080 and ORS 209.250. It shall include a notation of any monuments which could not be set and for which a reference monument was set;

2. The surveyor's stamp and the notarized signature of the owner(s) of the land proposed for partitioning;

3. The Planning and Building Department's case file number and a designated space for the Director, Linn County Planning Department, to indicate when the partition has received final planning approval. A designated space for the signature of the Linn County Surveyor and Linn County Assessor shall also be provided.

4. A partition plat report containing the following information shall accompany the final plat: name of current owner; any easements of record; and any other encumbrances on the subject property.

The plat map must receive final approval from the Planning and Building Department. Once approval has been given, the plat map must be recorded with the Linn County Clerk.

A partition must be approved, platted and recorded before ownership interests in the authorized parcels are changed.

B. Since the approval of this partition is the result of a Measure 37 claim, in order for the parcels to remain buildable, an approved septic system shall be installed on each of the newly created parcels and a Certificate of Satisfactory Completion shall be issued **prior to the sale of any one of the parcels**.

C. It must be demonstrated that the proposed use will be served by an adequate supply of potable (drinkable) water prior to the issuance of a placement or building permit. If a well is already located on the property, a copy of the well driller's log or a copy of a pump test will suffice. A copy of a water quality test must also be submitted.

D. Road access permits shall be obtained from the Linn County Road Department prior to the issuance of any building permits.

E. Prior to the issuance of any building permits, the construction of the driveways must comply with the following minimum improvement standards contained in Section 935.200 (B) of the LCC. When the driveways are complete, you shall contact the Road Department (541-967-3919) to review the work for compliance.

1. The all weather driveways must be built and maintained to the minimum access requirements and shall be at least **12 feet** in width split between the newly created tax parcels and consist of a minimum of six inches of crushed rock or crushed gravel. An acceptable alternative base for a roadbed is six inches of quarry-run rock topped with a minimum of four inches of 1" minus crushed rock or 1" minus crushed gravel. The access route, including any culverts and bridges, must be capable of supporting the gross vehicle weight (GVW) of 50,000 pounds. The County reserves the right to require written verification of compliance with the GVW standard from an Oregon Registered Professional Engineer.

2. The driveways shall be provided with an unobstructed vertical clearance of at least 13 feet six inches and an unobstructed horizontal clearance of 20 feet and a minimum curve radius of 48 feet.

3. At least one intervisible turnout every 500 feet shall be provided in any access roadway less than 20 feet wide. The turnout should provide passage space at least 20 feet wide and 40 feet long.

4. Roadside ditches must be provided if deemed appropriate by the Linn County Road Department. Please contact the Linn County Engineer at the Linn County Road Department (967-3919) prior to construction of the driveway

5. Dead-end driveways over 150 feet in length should provide and maintain a cleared turnaround, with a turning radius of at least 40 feet, adequate for emergency vehicles.

6. Roadway grades shall not exceed 12 percent.

7. Driveways shall be marked with the resident's rural address unless the residence is visible from the County roadway and the address is clearly visible on the residence. Letters or numbers hall be a minimum of three inches in height and constructed of reflective material.

F. The land owner must sign and record in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, from pursuing a claim for relief or cause of action alleging injury from farming or forest practices in the area. Enclosed you will find a form that is acceptable to the Linn County Recorder <u>or</u> you may include the language of the covenant in the new deeds for the two one-acre parcels.

Your proposal shall be initiated within **180** days after the date of decision. Please contact Kathy Krabbe, Associate Planner, at (541) 967-3816, ext. 2360 if questions arise or if we may be of further assistance.

Sincerely,

Steve Michaels
Director

cc: Linn County Assessor's Office
Linn County Surveyor's Office
Linn County Environmental Health Program
Linn County Road Department
Jack Burrell, K & D Engineering

enc.

Exhibit E

Partition Application

If you have any questions about the partition process, please feel free to contact the Department. Planning staff is available Monday through Friday from 8:30 a.m. to 12:00 noon, and from 1:00 p.m to 5:00 p.m. and can be contacted by telephone at (541) 967-3816.

New

PARTITION APPLICATION

Application Check List (for departmental use only)

Date Received: 3/28/07 Receipt number: PD06-203 Fee paid: carryover ~~$250~~

Application accepted by: SM Completeness reviewed by: _____

Date deemed complete: 4-4-07 Final action time limit date: _____

File number assigned: PD 06-0203 Planner assigned: _____

Other applications included: _____

✓ Proposed parcels include recognized access. Type 1B. Criteria : LCC 924.200-210

_____ Proposal Requires Access Review(s). Type IIA. Criteria: LCC 924.200 & LCC 924.250

_____ Access Recognition Application Attached

_____ **Environmental Health Program Certification**

The proposed parcels each contain approved sewage disposal system and repair areas.

Signed: Parcel 1 SF Parcel 2 Std 8/14/06 Date 4/18/07

JD

_____ Verification of ownership

_____ Property is a legal unit of land

_____ Owner/applicant name(s), address(es)

_____ Owner/application signature(s)

✓ Tentative Partition Plan

_____ Complete Site Development Plans

_____ Property development standards can be met:

Lot size _____ Setbacks _____ Coverage _____

Width _____ Depth _____ Frontage _____

_____ Proposal is located within:

UGB _____ Planning area _____

A.O. Zone/Airport notification area _____

Floodplain _____ S.B.H.O. _____ Habitat _____ Historic _____ Greenway _____

Exhibit # E
Page 1 of 5

THIS FORM MUST BE FILLED OUT COMPLETELY, IN INK OR TYPEWRITTEN

I. Property Owner/Applicant Information

A. Applicant(s) Hickey Family LLC (Attn: David Hickey)
Address P.O. Box 401
City Lebanon State OR Zip Code 97355
Phone number (home) _____ (work) cell 541-979-7150

B. Property owner(s) Same
Address _____
City _____ State _____ Zip Code _____
Phone number (home) _____ (work) _____

C. Applicant's representative (if any) K & D Engineering, Inc
Address P.O. Box 725
City Albany State OR Zip Code 97321
Phone number (home) _____ (work) 928-2583

II. Property Information

A. Legal description of property: Township 12 Range 1 W Section(s) 21
Tax Lot(s) 105

B. Property size 21.85 ac

C. Site Address (if any): None

D. Zoning designation FF Comp Plan designation Resource

E.. Name of Fire Protection District Lebanon Rural Fire District

III. Development Information

Revised 3/28/07

A. Proposed Parcel Sizes: 12.29 ac 5.01 ac

Parcel 1: 6.02 ac Parcel 2: ~~12.38~~ ac Parcel 3: ~~5.00~~ ac

B. Describe any existing and proposed structures, fences, wells, septic systems or other improvements. Indicate the distance of each feature from each property boundary. Show these improvements and distances on your site plan.

Parcel 1: No features per above on site

Parcel 2: None per above

Parcel 3: None per above.

Exhibit # E
Page 2 of 5

C. Describe any natural features on the property such as drainage ways, creeks, streams, swales, ponds, steep slopes or hills. (Show these features on your site plan.)

Hamilton Creek on north. Property gently slopes to north. Property has been planted with Popular trees. Drainage Ditches carry run-off from Berlin Road along the east and west boundary lines.

D. How is access to be provided to each parcel?

Parcel 1: Public Road (name) Berlin Rd Flag strip____ Easement____

Parcel 2: Public Road (name) Berlin Rd Flag strip____ Easement____

Parcel 3: Public Road (name) Berlin Rd Flag strip____ Easement____

E. Describe the proposed driveway(s):

1. Will it be a public or private road? PUBLIC
2. How wide will the road right-of-way be? 61'
3. How wide will the road surface be? A minimum of 20'; (It will meet County requirements)
4. Will any water bodies be crossed by the road? Yes: Roadway Ditch
5. If so, will the crossing be by bridge or culvert(s)? Culvert
6. Will the road intersect with a county/public road at an existing access point or will this be a new access point? New

F. Will the property be partitioned again in the future? No.

If yes, when?____

IV. Site Plan

You must submit a site plan showing the property dimensions, location of existing and proposed structures and natural features with this application. Include the distance of any existing and proposed structures, wells and septic systems to each property line. A more complete description of what is required in a site plan is attached to the application.

V. Owner/Applicant Certifications

YOUR SIGNATURE CERTIFIES THAT YOU HAVE READ AND AGREE WITH THE FOLLOWING STATEMENTS. PLEASE READ BEFORE SIGNING THIS DOCUMENT.

1. I understand that, under State law, no person may at any time negotiate to sell a parcel until the preliminary plat has been approved.
2. I understand that, under State law, no person shall sell or convey any interest in a parcel until the plat has been signed by the Director and recorded with the County Clerk.
3. I understand that, Pursuant to *ORS 92.050-92.080*, parcels being created that are 10 acres or smaller are required to be surveyed and to have a partition plat map prepared. Those parcels being created

that are larger than 10 acres require the preparation of a partition plat map. The plat map must receive final approval from the Planning and Building Department within **180 days** of the tentative approval. Once Planning and Building Department approval has been given, the plat map must be recorded with the Linn County Clerk.

4. **I hereby certify that the statements, attachments, exhibits, plot plan and other information submitted as a part of this application are true and any approval granted based on this information may be revoked if it is found that such statements are false.**

Owner/applicant signature David J Hickey **Date** 7-26-2006

Owner/applicant signature Hickey LLC **Date** _____

VI. Verification of Ownership

Only the owner of the property is authorized to complete this section.

A. I hereby certify that this application does not violate any recorded codes, covenants or restrictions that are attached to the subject property.

B. I have the following legal interest in the property:

✓ owner of record

_____ land sales contract purchaser

_____ holder of a recorded exclusive option to purchase

C. **Property Owner Signature** David J Hickey Hickey LLC **Date** 7-26-2006

PLEASE NOTE: County ordinance does not allow an application to be reviewed unless the owner has first authorized it. The Assessor's office records are used to verify the ownership.

The Linn County Assessor's office records indicate that:

Township_____ Range_____ Section(s)_____ Tax Lot(s)_____

is owned or is being purchased by:_____

If more than one owner is included, please list all other owners.

Other owners:

(1)_____ (3)_____

(2)_____ (4)_____

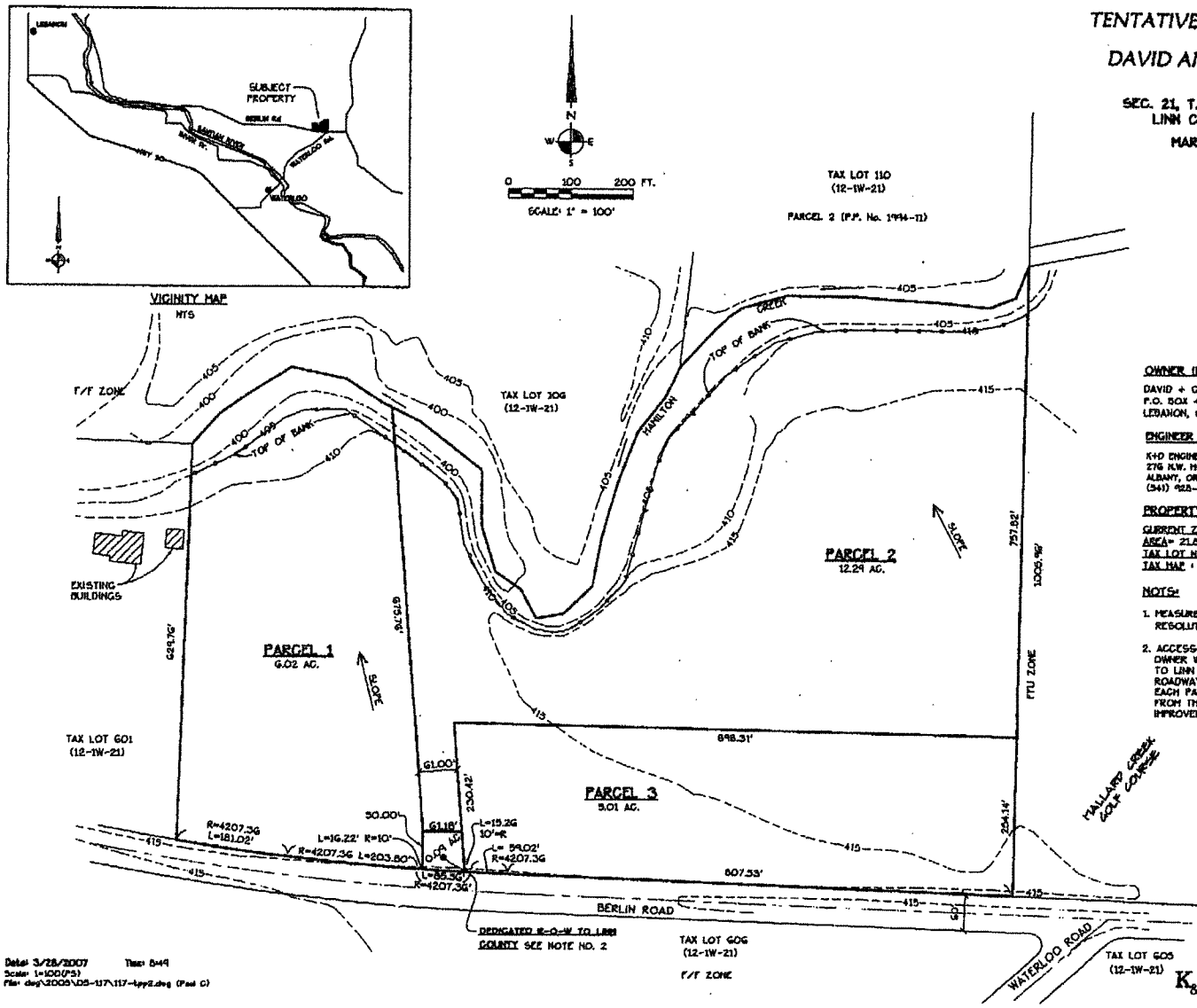
_____ _____

Assessor or Planning Staff Signature Date

Exhibit # E
Page 4 of 5

TENTATIVE PARTITION PLAT
FOR
DAVID AND GAY HICKEY

LOCATED IN
SEC. 21, T. 12 S., R. 1 W., W.M.
LINN COUNTY, OREGON
MARCH 28, 2007



OWNER INFORMATION:

DAVID + GAY HICKEY, HICKEY FAMILY LLC
P.O. BOX 401
LEBANON, OR. 97355

ENGINEER / SURVEYOR:

K+D ENGINEERING, INC.
276 N.W. HICKORY STREET
ALBANY, OR 97321
(541) 928-2583

PROPERTY INFORMATION:

CURRENT ZONING: FARM FOREST (FF)
AREA= 21.85 ACRES (ASSESSORS FIGURE)
TAX LOT NUMBER: 105
TAX MAP : 12S-1W-21

NOTS:

1. MEASURE 37 WAIVER GRANTED RESOLUTION 2006-64
2. ACCESS: OWNER WILL DEDICATE ACCESS ROAD TO LINN COUNTY AND IMPROVE THE ROADWAY TO COUNTY STANDARDS. EACH PARCEL SHALL TAKE ACCESS FROM THIS DEDICATED AND IMPROVED RIGHT-OF-WAY.

Date: 3/28/2007 Time: 8:49
Scale: 1=100(PS)
File: dwg\2005\05-117\117-tpp2.dwg (Paul C)

K&D ENGINEERING, Inc.

Exhibit # E
Page 5 of 5

Exhibit F

Linn County Measure 37 Approval

For David & Gay Hickey, LLC

FILED

MAR 8 2006

STEVE DRUCKENMILLER, CLERK

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR LINN COUNTY

IN THE MATTER OF A MEASURE 37 CLAIM FILED BY DAVID AND GAY HICKEY FAMILY LLC SEEKING COMPENSATION BASED ON A REDUCTION IN FAIR MARKET VALUE BY REGULATION RESTRICTING SUBDIVISION OF A 21.85-ACRE UNIT OF LAND IN THE FARM/FOREST ZONING DISTRICT INTO FIVE ACRE BUILDABLE LOTS T12S, R1W Section 21, Tax Lot 105 Assessor's Account # 0355293	RESOLUTION & ORDER NO. 2006-084 (M 37 Approval) (M37-145-05)

COMES NOW, Mr. Steve Michaels the Linn County Planning and Building Director, in a regularly scheduled and duly advertised meeting on March 1, 2006 and respectfully requests that the Board of County Commissioners for Linn County (Board) consider a Measure 37 claim as set forth in Exhibit 1, attached hereto; and,

WHEREAS, The Director has filed a recommendation (Exhibit 1) regarding a measure 37 claim for compensation filed by the claimants wherein the Director recommends that the Board approve the claim for David and Gay Hickey only and in lieu of making payment of compensation, not apply the restrictive land use regulations and allow the use requested;

WHEREAS, The claim was filed based on Ballot Measure 37, which was approved by Oregon voters on November 2, 2004;

WHEREAS, Measure 37 was made a part of ORS Chapter 197; and

WHEREAS, Linn County adopted LCC Chapter 225, Measure 37 Claims Compensation Code on December 2, 2004, as a means to implement the provisions of Measure 37; and, now, therefore,

FINDINGS OF FACT – BACKGROUND

The Linn County Board of Commissioners (Board) specifically incorporates the background and general findings of facts set forth in the Department's (Exhibit 1) recommendation as the Board's findings of facts.

LINN COUNTY, OREGON 2006-05418
COM-M37 03/09/2006 09:56:06 AM
Cnt=1 Stn=7 S. WILSON
This is a no fee document NO FEE
0000608820060005418001001 5
I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.
Steve Druckenmiller - County Clerk

FINDINGS OF FACT (SPECIFIC TO THE CRITERIA IN LCC 225.500(F)

The Linn County Board of Commissioners (Board) specifically incorporates the findings of fact as to the specific criteria in LCC 225.500 (F) as set forth in the Department's recommendation (Exhibit 1) as the Board's findings of facts.

FINDINGS OF FACT (ADDITIONAL)

1. Staff submitted a recommendation pursuant to LCC 225.300(G), wherein staff made the following recommendations:

   a. That the Board recognize the validity of David and Gay M. Hickeys' Measure 37 claim only;

   b. That the Board not apply the applicable current County code regulations:

      i. LCC 934.510, Rural Resource Zone area, Width and Depth Development Standards to wit: the restrictive minimum property size standard is 80 acres and the width and depth dimensions are 800 feet, thereby enabling the above claimants to apply for subdivision approval to create four at least 5.00 acre parcels;

      ii. LCC 933.310 through 933.708 to wit: the decision criteria for siting a dwelling in a resource zone; and

      iii. LCC 905.100 through 905.120 Agricultural Resource Lands sections of the Comprehe*nsive Plan*

2. That the Board adopt as part of this decision the certain conditions and requirements which are set forth herein; and, now, therefore, the Board makes the following

CONCLUSIONS

1. That the criteria in LCC Chapter 225.500 (F) have been met.

2. That, based on the Linn County Assessor's information, because of the restrictive land use regulations a reduction in fair market value in the amount of $200,190 has resulted. This Board finds that the claimants have demonstrated that there would likely be a reduction in fair market value. The Board finds that claimant may be entitled to a claim for compensation up to but not to exceed the estimated amount of $193,190. This is a preliminary estimation of the reduction in fair market value. This estimate is subject to one or more certified appraisals being conducted establishing the true impact on fair market value.

LEGISLATIVE AND POLICY DECISION

The Linn County Board of Commissioners having considered the evidence and deciding that compensation in

an amount yet to be decided is owing now considers as a matter of policy and legislative rule as applied to this claim whether payment will be made or whether the restrictive land use regulation complained of will be modified, removed, or not applied as to the property subject to the claim herein. The Board notes that funds have not been set aside for payment of just compensation owed the claimant, and even if such funds had been set aside, such payment may, in the discretion of the entity enacting the restrictive land use regulation, be waived and a use allowed the current owner of the subject property; and, now, therefore, the *Linn County Board of Commissioners*,

RESOLVES, That compensation owed the claimant not be paid; and

RESOLVES, That the land use regulations enacted by Linn County currently codified at LCC 934.510, LCC 933.310 through 933.708 and LCC 905.100 through 905.120 restricting the subdivision and development of the subject property for the use requested not be applied and that the claimant's requested use on the subject property be allowed subject to the following terms and conditions:

a. That David and Gay Hickey shall apply and receive approval for septic site evaluations from the Environmental Health Program for each of the proposed vacant lots prior to the submittal of a subdivision application.

b. That the Hickeys are entitled through this action to submit a subdivision application to the Linn County Planning and Building Department for review and approval. Upon completion of the subdivision, including compliance with conditions and requirements, the resulting parcels will be recognized as authorized units of land that are buildable.

c. That the waiver granted in this decision allowing the subdivision of tax lot 105, T12S, R1W, Section 21 is valid for two (2) years from the date of this decision.

d. That to remain buildable beyond the two years provided for in Condition "c" and prior to the sale of any of the lots, the final subdivision plat shall be approved and recorded and a septic system installed on each of the vacant lots no later than March 1, 2008.

e. That, the claimants shall obtain a new road access permit from the Linn County Road Department. You may contact Chuck Knoll or Mary Price at (541) 967-3919 regarding access requirements for the subdivision prior to submitting the subdivision application.

f. That when new deeds are recorded for each of the proposed parcels, a covenant shall be included on the deed binding the landowner, and the landowners successors in interest, from pursuing a

claim for relief or cause of action alleging injury from farming or forest practices in the area. The following is an example of the language the may be used:

> *Grantees and their heirs, legal representatives, assigns and lessees hereby acknowledge by the placement of this covenant, or the acceptance and recording of this instrument, that the property herein described is situated in an Exclusive Farm Use zoning district of Linn County, Oregon. As such, they may be subjected to common, customary and accepted farm or forest management activities for the operation of a commercial farm or forest that includes management and harvesting of agricultural products or timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, and any other accepted and customary farm or forest management activity conducted in accordance with federal and state laws. The above practices ordinarily and necessarily produce noise, dust, smoke and other types of visual, odor or noise impacts which grantees accept as normal and necessary farming or forestry management activities and as part of the risk of siting a residential dwelling in Farm/Forest zoning district.*

g. That this Measure 37-claim approval is for David and Gay Hickey only.

h. That the Hickeys acknowledge that the adoption of this order by the Linn County Board of Commissioners concludes all of his Measure 37 claims for the subject property.

i. That the validity of this waiver is dependent on, condition upon, and subject to judicial judgments and legislative enactments. If a court of competent jurisdiction determines that any part or the whole of Measure 37 is invalid, the waiver is invalid to the extent of that determination;

ORDERED, That a copy of this resolution and order without the exhibits be filed in the deed records of Linn County. _____

Decided and effective March 1, 2006.
Signed this 8th day of March, 2006.

BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

Roger Nyquist, Chairman

John K. Lindsey, Commissioner

Cliff Wooten, Commissioner

APPROVED AS TO CONTENT:

Steve Michaels
Linn County Planning & Building Director

"Resolution format pre-approved as to form by Legal Counsel pursuant to MOU #05-PD-001, dated June 6, 2005."
This pre-approval is void after June 21/2006.

APPROVED AS TO CONTENT & CERTIFICATION OF COMPLIANCE WITH MOU #05-PD-001:

[Official's name] [Official's title]

Exhibit G

David & Gay Hickey, LLC

Measure 37 Application

LINN COUNTY

OCT 26 2005

Planning & Building Department

Appendix 1

Measure 37 Compensation Claim for damages because of alleged land use regulation enacted or enforced against my property
[filed pursuant to M37 & LCC 225]

For official use only:
Date claim filed: 10/27/05 $100 paid? ☒ yes ☐ no
LCC chapter 225 provided to Claimant? ☐ Yes
Deed attached? ☐ yes ☐ no Appraisal attached? ☐ yes ☒ no
M37-145-05 Resolution No. 2005-

PART ONE (*All Claimants must answer the following questions*)

My name: David and Gay Hickey Family, LLC Telephone: (541) 979-7150 Date: September 21, 2005

Identification of the affected property: T 12 S, R 1 W, Section 21, Tax-lot(s) 105

The date I acquired the property: My wife and I transferred the property into our family LLC in December 23, 1996.

The land use regulation that went into effect after I acquired that property that restricts the use of my land: See below

The date that land use regulation was enacted ☐ or enforced ☐ against my property: See below

I can show that the current value of my property with the restrictive regulation is: $ 125,000.00

I can show that the value of my property without the restrictive regulation would be: $ 500,000.00

My residence is: 36939 Gore Drive, Lebanon, OR 97355

My mailing address (if different from # 4) is: My attorney: Edward F. Schultz, P.O. Box 667, Albany, OR 97321

Fax: (541) 967-6579 Email address: eschultz@wtlegal.com

Are you the sole owner of the property in # 4? ☒ yes ☐ no

Are there any other interest holders in your property such as lease holders, security holders? ☒ no ☐ yes

If, so, who?

The remedy that I seek is: Waiver of all land use regulations back to the regulations that were in place when I acquired the property June 14, 1996. The applicable zoning regulation at that time was ART-5. This allowed 5-acre residential lots which could be sold to third parties. I ask that all regulations be waived so I may divide the property into 5-acre parcels & sell these properties to third parties.

PART TWO (*Only Claimants relying on Family Members need to answer the following questions*)

If you are relying on an earlier family member, then complete this section:

The name of the family member who previously owned my property:: Gay M. Hickey and David J. Hickey

Has the property remained in your family between the time that family member acquired the property to the time that you acquired the property? ☒ yes ☐ no if, not, why?

The date the family member acquired the property is: June 14, 1976

The land use regulation that went into effect after my family member acquired the property that restricted my family member's use of the land: In 1980, the land use regulations changed the zoning on my property from ART-5 to a more restrictive farm forest zone. When I purchased the property, it was eligible to be divided into 5-acre lots with the right to sell to third parties. Subsequent land use regulation changes have prohibited me from doing that.

The regulation was enacted ☒ or enforced ☐ against my family member on what date: September of 1980

I can show that the value of the property *when owned by my family member* and when the restrictive regulation was enacted or enforced against the property was $ _____.

Exhibit # G
Page 1 of 2

Exhibit # 1

Form Explanation: In order to assist in the gathering of information and allow space to answer the questions on page one of the form, please follow the instructions and answer the following questions on a separate sheet of paper:

1. If you are the claimant but you are not the sole owner in fee of the property, please name all the joint owners whose interests add up to a fee simple interest in your property. Please include all persons who represent all recorded interests in property, such as co-owners, holders of less than fee simple interests, leasehold owners, lien holders, and security interest holders. (if any).
2. Provide the dates that each of the joint-owners, and other persons of interest in your property acquired their interest in your property that you listed.
3. Have you provided with this claim, or will you soon provide appraisals that demonstrate a reduction in fair market value to your property that was a result of a land use regulation enacted or enforced by Linn County restricting your use of your property? ☒ yes ☐ no
4. Have you attached to this claim a copy of your deed on this property? ☒ yes ☐ no
5. Have you attached to this claim a copies of certified ~~appraisals?~~ valuations ☐ yes ☒ no
6. Do you desire that the Board make a decision to allow you a use your property in a certain manner (subject to the notices below) in lieu of making payment for just compensation? ☒ yes ☐ no

NOTICES

NOTICE: You must understand that other jurisdictions may govern the uses allowed on your property and, if so, you need to file a claim on those other jurisdictions before development may occur on your property.

NOTICE: You will be invited to a conference described in LCC 225.300 (D) where additional information may be identified which may be needed to assist you in your claim. It is important to understand that unless you provide this information, the County may be unable to properly and adequately address your claim and to assist you in achieving your objective.

NOTICE: If the decision of the Board, in lieu of paying just compensation, is to modify, remove, or not apply a restrictive land use regulation that has reduced the fair market value of claimant's property the development under that waiver shall not only be conditioned on the claimant's obtaining the appropriate decision from other affected governmental entities, but any and all development shall remain subject to all land use regulation development standards and public health and safety standards exempted by Measure 37.

David J. Hickey	9-21-2005	
Property Owner signature date	Property Owner signature date	Property Owner signature date
Gay M. Hickey	09-21-05	
Property Owner signature date	Property Owner signature date	Property Owner signature date

(The signatures of all owners of the property/properties are required)

Exhibit # 6
Page 2 of 2

Exhibit # 1

Exhibit H

Certificate of Notice to Parties

As Described in LCC 237.300(D)

LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Robert Wheeldon, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816, Fax 541-926-2060

CERTIFICATION OF MAILING

I, *Breeanna Oxford*, of the Linn County Planning and Building Department, certify that the attached notice concerning matters to be reviewed on the 9th day of August 2018 was mailed to the persons on the attached list at the address shown below their name on the 17th day of July 2018.

DATED this 17th day of July 2018.

Breeanna Oxford

VR18-0001; HICKY FAMILY FARMS, LLC

LINN COUNTY PLANNING AND BUILDING DEPARTMENT
Robert Wheeldon, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816 Fax 541-926-2060
www.co.linn.or.us

NOTICE OF APPELLATE REVIEW BY THE BOARD

The following matter will be reviewed by the Linn County Board of Commissioners at a public meeting on **August 9, 2018 at 10:00 am** in Room 200 of the Linn County Courthouse.

VR18-0001; An appeal of the Planning and Building Department Director decision denying a vesting right to David Hickey that would authorize the development of three home sites on three parcels. The parcels were created through PD06-0203, which was the result of a Measure 37 claim (M37-145-05) approved for David and Gay Hickey Family LLC. The properties are located on the north side of Berlin Road, at the intersection of Berlin Road and Waterloo Road, and approximately 1.27 miles northeast of the city of Waterloo. The properties are described as Tax Lots 105, 112, and 113 on map T12S, R01W, Section 21.

COMMENTS:_____

BY _____ **AGENCY (IF ANY)**_____ **DATE**_____

==========

STAFF CONTACT PERSON: Alyssa Boles; (541)967-3816, ext.2360 or aboles@co.linn.or.us

Linn County					State of Oregon				Other
x	EHP		Sheriff		DEQ		ODOT/OSHD		School:
	Parks		Bldg Official		DOGAMI		ODSF		Landowners
x	Assessor		Roads		DSL	x	DLCD		City Of:
x	GIS		Surveyor		Water		Parks	x	Other: County Atty
	Flood Official				ODFW		State Fire Marshal		RFD:

1. This application will be reviewed and a decision will be made using the following decision criteria from Sections 237.150 and 237.160 of the Linn County Code.

Section 237.150 - Determination of vested rights

(A) In accordance with the process described in LCC 237.100 to 237.200, the Planning Director shall determine vested rights under Oregon Laws, 2007, Chapter 424, Section 5(3) pursuant to the test established by common law as reflected in LCC 237.160.

(B) Basis of determination. The Planning Director must determine and base its M49 vesting decision on:

(1) whether the applicant's use of the property complies with orders from the State and Board granting Measure 37 relief; and

(2) whether the applicant has a common law vested right as of December 6, 2007, to complete and continue the use described in the waiver.

(C) The decision of the Planning Director shall contain at least the following elements:

(1) findings of fact on the question whether the applicant's use complies with orders from the State and Board granting Measure 37 relief; and

(2) findings of fact on the question whether the applicant has a common law vested right; and

(3) an analysis of each of the criteria listed in LCC 237.160.

Section 237.160 - Determination of vested rights

(A) The terms and conditions imposed in a M37 waiver approval resolution shall be considered to determine vesting to the extent that such conditions are not inconsistent with the criteria set forth in paragraphs (1) to (8) of subsection (C) of this section.

(1) The Planning Director, and the Board on appeal, is authorized to make the determination whether the applicant has substantially complied with the terms and conditions of the M37 waiver resolution and the criteria set forth in paragraphs (1) to (8) of subsection (C) of this section.

(2) If the holder of the M37 waiver is unable to demonstrate that the holder has substantially satisfied the terms and conditions of the M37 waiver resolution on or before December 6, 2007, the holder shall not be entitled to a common law vesting right.

(3) If the holder of the M37 waiver is able to demonstrate that the holder has substantially satisfied the terms and conditions of the M37 waiver resolution and the criteria set forth in paragraphs (1) to (8) of subsection (C) of this section on or before December 6, 2007, the holder shall be entitled to a common law vesting right determination.

(B) The determination of common law vesting rights made by the Planning Director or the Board on appellate review shall be based on the criteria set forth in subsection (C) of this section.

(C) In determining whether the applicant has a vested right to continue and complete a use allowed under a Board resolution granting Measure 37 relief, the decision-maker must consider the following factors based on the evidence submitted in the application:

(1) The amount of money spent on developing the use in relation to the total cost of the project approved in the State and County M37 waivers and whether it was a substantial expenditure.

(2) The good faith of the property owner.

(3) Whether the property owner had notice of the proposed change in law before beginning development.

(4) The type of expenditures, i.e., whether the expenditures have any relation to the completed project or could apply to other various uses of the land;

(5) The kind of project.

(6) The location and ultimate cost of the project.

(7) Whether the owner's acts rise beyond mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.

(8) Other relevant factors decided by an Oregon appellate court or the State legislature.

(D) This vesting right determination is an issue of fact to be decided on a case-by-case basis.

2. Appellate review of a M49 vesting decision of the Planning Director is:
   (a) limited to the evidence in the record before the Planning Director at the time the Director made and signed a M49 vesting decision and any supplemental written evidence submitted to the Board, and
   (b) available only for issues that are raised before the Planning Director with sufficient specificity to afford the Planning Director and applicant an opportunity to respond.

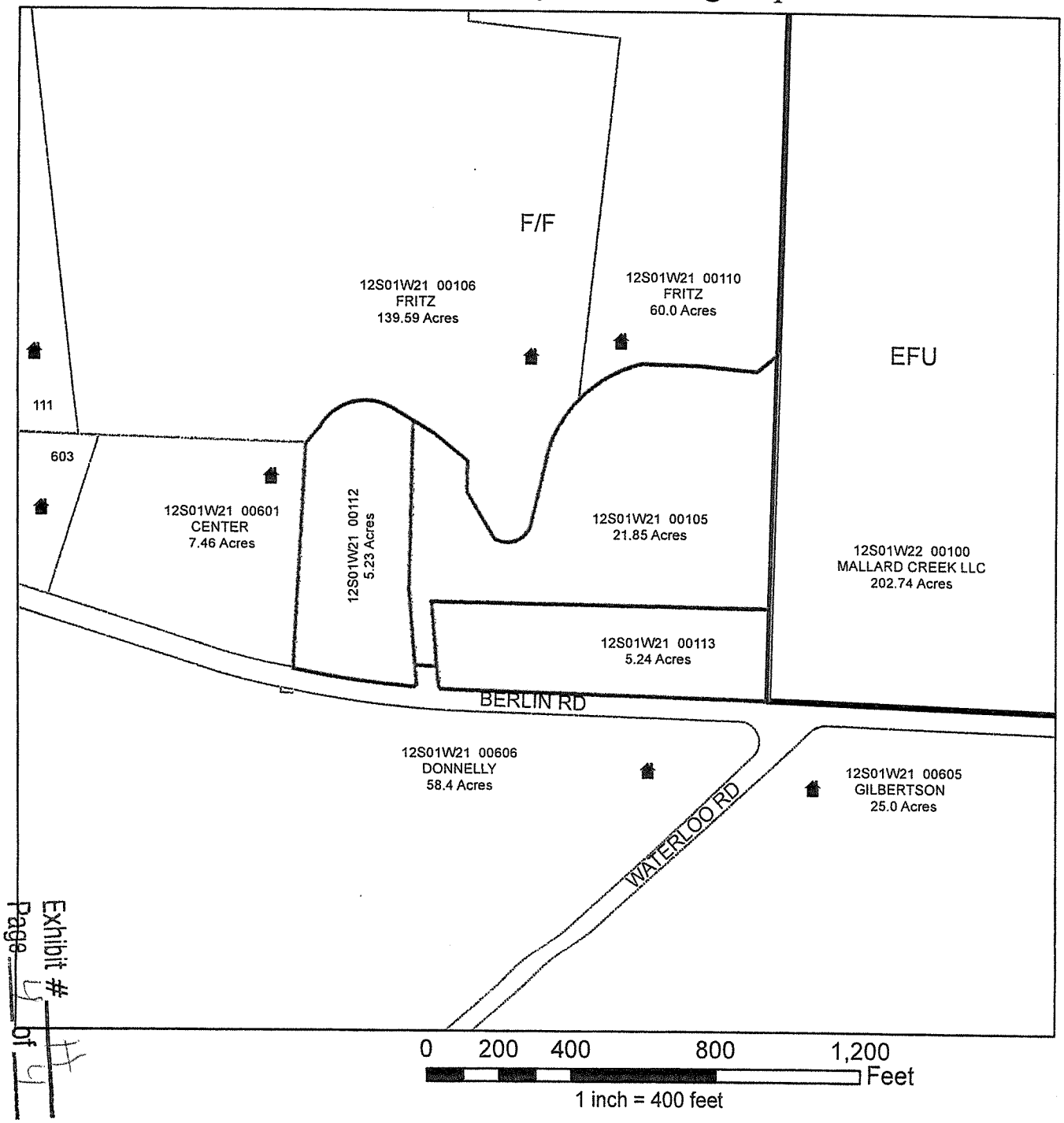
3. A copy of the notice of intent to appeal and the M49 vesting decision of the Planning Director are available for inspection at no cost and will be provided at reasonable cost.

4. Please note the deadline stated in the accompanying notice for submitting written evidence to the Board of Commissioners.

5. A map depicting the property under review and surrounding lands is attached to this notice.

Linn County Planning & Building Department

Notice Map



Subject Properties

taxlots

Zoning

VR18-0001
DAVID & GAY HICKEY FAMILY LLC
12S01W21 00105
12S01W21 00112
12S01W21 00113

N
W E
S

07/17/2018

Exhibit # 4
Page 5 of 4

Exhibit I

State of Oregon Measure 37 Claim M130484

Final Order denying Measure 37 relief

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Coastal Fax: (503) 378-6033
Second Floor/Director's Office Fax: (503) 378-5518
Third Floor/Measure 37 Fax: (503) 378-5318
Web Address: http://www.oregon.gov/LCD

April 23, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130484

Claimants: David J. Hickey, Gay M. Hickey and David and Gay Hickey Family, LLC

M37-145-05

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF David J. Hickey, Gay M. Hickey, and David and Gay Hickey Family LLC, CLAIMANTS	)))))	FINAL ORDER CLAIM NO. M130484

Claimants: David J. Hickey, Gay M. Hickey, and David and Gay Hickey Family LLC (the Claimants)

Property: Township 12S, Range 1W, Section 21, Tax lot 105, Linn County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director
DLCD
Dated this 23rd day of April, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 23rd day of April, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.

2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

April 23, 2007

STATE CLAIM NUMBER:	M130484
NAMES OF CLAIMANTS:	David J. Hickey Gay M. Hickey David and Gay Hickey Family LLC
MAILING ADDRESS:	36939 Gore Drive Lebanon, Oregon 97355
PROPERTY IDENTIFICATION:	Township 12S, Range 1W, Section 21 Tax lot 105 Linn County
OTHER CONTACT INFORMATION:	Edward F. Schultz Weatherford, Thompson, Cowgill, Black & Schultz, PC PO Box 667 Albany, Oregon 97321
DATE RECEIVED BY DAS:	October 30, 2006
180-DAY DEADLINE:	April 28, 2007

I. SUMMARY OF CLAIM

The claimants, David and Gay Hickey and David and Gay Hickey Family LLC, seek compensation in the amount of $327,180 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 21.85-acre subject property into four 5-acre parcels and to develop a dwelling on each parcel. The subject property is located near the intersection of Waterloo Road and Berlin Road, near Waterloo, in Linn County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is not valid because the claimants' desired use of the subject property was prohibited under the laws in effect when they acquired the property on or after December 9, 1996. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 14, 2007, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 10-day notice.

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), 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.

Findings of Fact

This claim was submitted to DAS on October 30, 2006, for processing under OAR 125, division 145. The claim identifies Linn County's Farm/Forest (F/F) zone as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

Claimants David and Gay Hickey assert that they acquired the subject property on May 24, 1976, as reflected by a real estate contract included with the claim. However, they conveyed their entire interest in the property to David and Gay Hickey Family LLC, an Oregon Corporation, on December 9, 1996, as reflected by a warranty deed included with the claim. According to the claimants, on December 26, 1996, David and Gay Hickey Family LLC transferred some interest in the subject property to the David J. Hickey Revocable Trust and Gay M. Hickey Revocable Trust of which the claimants assert they are the trustees. However, the claimants have not provided any documentation to support that acquisition date.[1] The Linn County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

Claimant David and Gay Hickey Family LLC, an Oregon Corporation, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of December 9, 1996. Claimants David and Gay Hickey acquired their present individual ownership interest in the property on or about December 26, 1996.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 21.85-acre subject property into four 5-acre parcels and to develop a dwelling on each resulting parcel and that the current zoning prevents that desired use.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) and forest land zoning. The subject property is zoned F/F by Linn County. The F/F zone is a mixed agricultural and forest land zone, as provided for by Goal 4 and the implementing provisions of OAR 660, division 6 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are

[1] A request for documentation to support the claimants' assertion was sent to the claimants on March 13, 2007. To date, claimants David and Gay Hickey have not provided any evidence to substantiate their current ownership. However, because the documentation in the claim establishes that they conveyed all of their individual ownership interest in the property to the LLC on December 9, 1996, they necessarily acquired their present ownership interest after December 9, 1996.

applicable based on the predominant use of the tract on January 1, 1993.[2] Depending on the predominant use on January 1, 1993, the property is subject to either the requirements for dwellings applicable under EFU zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Linn County's F/F zone is 80 acres. ORS 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993).

Claimant David and Gay Hickey Family LLC acquired the subject property on December 9, 1996, and claimants David and Gay Hickey acquired individual ownership interest in the property after that date. At that time, the claimants' property was subject to Linn County's acknowledged F/F zone and the zoning requirements, minimum lot size and dwelling standards under Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, currently in effect, as described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned mixed farm-forest in ORS 215 and OAR 660, division 6, were all enacted or adopted before the claimants, David and Gay Hickey and David and Gay Hickey Family LLC, acquired the subject property on or after December 9, 1996. These land use regulations do not allow the division of the 21.85-acre subject property into four 5-acre parcels or the development of a dwelling on each resulting parcel. Laws enacted or adopted since the claimants acquired the subject property in 1996 do not restrict the claimants' desired use of the property relative to when the claimants acquired it in 1996.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an estimate of $327,180 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' assessment of the property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are David and Gay Hickey Family LLC, which acquired the subject property on December 9, 1996, and David and Gay Hickey, who acquired the property on or about December 26, 1996. No state laws enacted or adopted

[2] No information was provided to the department regarding the predominant use of the subject property on January 1, 1993.

since the claimants acquired the subject property restrict the use of the property relative to the uses allowed in 1996. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Use Conservation and Development Commission (the Commission) or the department.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Linn County has implemented through its current F/F zone. As set forth in Section V.(2) of this report, all of these state land use regulations restricting the claimants' desired use of the subject property were in effect when the claimants acquired the property in 1996. The claim does not identify any state land use regulations enacted or adopted since the claimants acquired the subject property that restrict the use of the property relative to what would have been allowed when they acquired it on December 9, 1996.

Conclusions

All of the state land use regulations that restrict the claimants' desired use of the subject property were in effect when the claimants acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired the subject property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict the claimants' desired use of the subject property relative to what was permitted when the claimants acquired it in 1996 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record and the foregoing findings and conclusions, the claimants have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 30, 2007. OAR 125-145 0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.

Exhibit J

DLCD Letter to Hickey Closing

State Measure 37 Claim M130484

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
Measure 49 Development Services Division
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 373-0050
Fax: (503) 378-5318
http://www.oregon.gov/LCD/MEASURE49

July 8, 2008

M130484
Edward Schultz
PO Box 667
Albany, OR 97321

RE: State Measure 37/49 Claim M130484 - Hickey

Dear Claimant:

On March 11, 2008, the Department of Land Conservation and Development (Department) mailed you a Measure 49 Election Packet. This packet included a Notice and an Election Form. The packet instructions explained that to be eligible for relief under Measure 49, you were required to return the Election Form to the Department within 90 days, electing either the Express (section 6 of Measure 49) or the Conditional (Section 7 of Measure 49) option. Your 90-day election period ended on June 9, 2008. The Department did not receive a completed Election Form from you by that date.

Section 8(3) of Measure 49 states that "[i]f the claimant fails to file the form within 90 days after the date the Department mails the notice, the claimant is not entitled to relief under section 6 or 7 of Measure 49. Because you did not file the required Election Form within 90 days, you are no longer eligible for Measure 49 Express or Conditional relief for Measure 37 Claim Number M130484. The Department will not complete any further review of Measure 37 claim M130484; that claim will be closed without any further action.

Please note that the closure of M130484 does not affect any other Measure 37 claim you may have. If you filed multiple claims, whether for the same or for different property, or if you filed a single claim that was divided by the Department of Administrative Services, or the Department, into two or more claim numbers, you should have already received separate Measure 49 Election Packets for each individual claim number. You have 90 days from the date each Election Packet was mailed to file your Election for the Claim identified on each Election Form.

To access information about property related to claim numbers, see the Final Measure 37 Claims Registry on our website at www.lcd.state.or.us/LCD/MEASURE49. Search by last name, using the Search icon at the top left of your toolbar.

If you believe you have received this letter in error or have any questions, please contact this office at (503) 373-0050 ext. 324, or via e-mail at measure49.info@state.or.us.

Sincerely,

Michael Morrissey, Manager
Measure 49 Development Services Division

Exhibit # 2
Page 1 of 1