Union County Board of Commissioners
March 5, 2008

Present: Commissioner R. Nellie Bogue Hibbert
Commissioner Colleen MacLeod
Commissioner Steve McClure

Call to Order
Chairman Hibbert called the meeting to order at 9:00 a.m. with all three commission members present.

Major Partition Plat
Rick Robinson, Bagett, Griffith & Blackman, presented a plat for a partition in Cove. The Commissioners signatures are needed because there is a road dedication. Haefer Lane was originally created through a road petition process and they are rededicating the rights of way with a plat as they come through. It also creates access to the rear parcel that is being done through a performance bond. The property is located ½ mile east of Cove. All other needed approvals and signatures have been obtained.
Commissioner MacLeod moved approval of the major partition plat as presented. Commissioner McClure seconded. Motion carried unanimously.

Tree Removal Proposals
Dennis Spray, Director of General Services, reported that during the last major wind storm the county became very concerned about the health of some of the trees around the county buildings. Therefore, they had a tree expert from the City of La Grande come up and do an evaluation of the trees on the two surrounding blocks. She has developed a plan to remove trees as well as a replanting plan.

Commissioner Hibbert stated that the project has come about as a result of the Commissioners' concern for the safety of county employees as well as the buildings in the county complex. During the last wind storm the City of La Grande lost a tree a couple of blocks away from the county buildings and it was very fortunate that it did not fall on a house, a car, or a person. She stated that Commissioner McClure was standing watching the trees bending at a huge angle wondering if the county would have to remove trees from a building or perhaps worry about someone getting hurt. That prompted the county to take a look at what trees are around the county complex and what needs to be removed. Because the county does not have tree experts, Teresa Gustafson, City of La Grande Arborist, was asked to provide a recommendation based on her expertise. The county has not only taken a look at those trees that need to be removed based on her appraisal, but have also taken a look at enhancing the county campus and will be putting in almost a two to one ratio of trees that will be removed. It is felt that not only is the safety being increased, but the aesthetics of the area are also being enhanced.

Calvin Trapp, Facilities Maintenance, reported that a list of trees was developed that represent the City of La Grande right-of-way trees and the trees on the county property. There are a total of 29 trees planned for removal. Bids were received from four different tree removal contractors. The low bid is from Miller Tree Service in the amount of $7,375 for tree removal and stump grinding.

Commissioner MacLeod asked if there had been any discussion about the worth of the wood offsetting the cost of removal. Calvin stated that in general they would have value

as chips. There was a contact to be made yet with the possibility of selling them so there could be an offset that is not known at this time.

Teresa Gustafson, City of La Grande, presented an illustration of the trees to be removed and the design for replanting. She reported that she was initially contacted because of concerns about trees surrounding Union County buildings. She reviewed the diagram and explained the reason for selection of certain trees. Smaller trees are recommended in areas that are under transmission lines. A total of 55 trees are recommended at an estimated cost of $2,265. This is a joint project between the city and the county so 29 of the trees in the right-of-way will be part of the street tree planting program so will be available at $30 per tree. Those not in the right-of-way have been estimated at the current nursery price.

Commissioner McClure asked Teresa to comment on the condition of the Spruce trees. He asked if the county is at risk with those trees. Teresa stated that the Spruce trees near the Sheriff's Office are declining. If you look up at the top you can see they are dying from the top down. The two at the main entry way to the Joseph Building are in better condition. The big concern with those is safety because they are very large trees right at a main entry way. Spruce trees tend to be a little bit shallow rooted which would be her concern. Also, one of them has a co-dominant top which is sometimes a problem because they split out.

Commissioner McClure stated that he has some real concern about the safety of the trees.

Dennis stated that the plan presented really makes sense for the future. It will take care of safety and make the whole campus more attractive.

Commissioner MacLeod stated she would like to have information on value of the trees. Dennis stated that for chip value, by the time they are taken down and transported to a mill, not much profit will be realized. It will not affect the total cost by more than a couple of hundred dollars. The trees will be sold if possible.

Commissioner McClure moved approval of the proposed tree removal and replanting scheme as presented by the City of La Grande staff. Commissioner MacLeod seconded. Motion carried unanimously.

Sheriff Department Computer Purchase

Cathie Falck of the Union County Sheriff's Office requested permission to purchase a computer off of the bid done by Computer Services Manager Kathie Powell recently. The specifications would be identical and would replace an older machine that is not working properly. The bids were secured less than 30 days ago and they are good for 30 days. **Commissioner MacLeod moved approval of the computer purchase for the Sheriff's Office as requested. Commissioner McClure seconded. Motion carried unanimously.**

Mt. Emily Recreation Ballot Referral

Commissioner Hibbert reported that at the last commission meeting it was suggested that the county refer the question of whether the county should purchase the Mt. Emily Recreation Area to the voters of Union County. Because of that, and advice from the Secretary of State's Office to check with legal counsel to see if that was appropriate, it

was turned over to attorney Brandon Eyre. Brandon submitted a memo of opinion to the Commissioners dated February 26, 2008.

Brandon Eyre, Mautz Baum & O'Hanlon, reported that he began with an opinion letter written by Attorney Wes Williams who he understands represents a group of concerned citizens. It was a lengthy, in depth, detailed memorandum. His conclusions were that the county has the right to go out for referendum on legislative issues. Brandon completely agrees with that opinion. The final conclusion in his opinion letter was that the purchase of the Mt. Emily Recreation Area would be a legislative decision because it involved the creation of a management board which would be a legislative decision. Brandon's only disagreement with the opinion letter is that if you are simply talking about the purchase of the land he does not believe that is a legislative issue. It is an administrative decision, implementing already existing law allowing the county to purchase and manage real property. It would be the creation of the management board that would be the legislative act which the county could easily fold into the purchase of the property.

Brandon stated that in addition to Mr. Williams' opinion, he believes the Commissioners have the authority to go out for advisory opinions. The Oregon Constitution grants the Legislature all ability to control elections without qualifications. The Legislature has passed ORS 250 which allows for bodies such as the County Commission to go out for measures and referendums. Under the definition of measure in ORS 250 it specifically states that a measure includes advisory opinions. Even though it comes from different Constitutional authority, the Commissioners have the option to go out for either a legislative decision or an advisory opinion on this issue. In his letter he included some concerns about taking the legislative action. Because ballot measures have such restrictive requirements on them such as only so many words in the title and descriptions, you cannot always implement the detail with the clarity you want in a ballot measure that you can through the normal legislative process. His advice is that if the Commissioners decide to take the legislative route, the ballot title be very carefully crafted so as not to result in any intentional or unintentional side effects that would limit the Commissioners' ability to get the best bargain for what they are trying to accomplish.

Commissioner Hibbert stated she liked the sentence in Brandon's memo that stated, "it would allow the county to determine the public consent or opposition to the proposal". She believes that is the public concern that has been expressed. They desire the ability to speak on this matter.

Commissioner McClure stated that if the public says no, they don't want the purchase; he probably would not support doing so. Brandon stated that is the ultimate political affect. Even if it is just an advisory referendum, it is unlikely the Commissioners would go against that opinion.

Commissioner Hibbert offered the opportunity for brief comments on the matter limited to one minute per person.

Steve Donnell, 2505 East L Avenue, La Grande stated that he is neither for nor against the proposal but has talked to many people about it. There is a lack of knowledge about what is exactly involved. He showed a large document which he stated was a copy of the proposal that came off the Internet. His recommendation to the County Commission is that in conjunction with the newspaper links be put on the county web site so anybody

in the area who wants to can log in on the Internet and download the documents and read them for themselves. He also has one concern on the Mt. Emily Recreation Area feasibility situation. On Page 13 of that document there is a statement that says hunting is a very popular sport in the Mt. Emily Recreation Area. Hunting in the area is in accordance with those requirements stipulated in the Oregon Department of Fish & Wildlife hunting synopsis. Hunting in the area is expected to continue to be popular. That does not state that hunting will continue because in the proposal there are also safety zones. The question he believes that needs to be clarified is what are the safety zones going to be around the hiking trails and ATV trails. If they follow the ODFW guidelines and hunting is not allowed in the safety zone and since there will be 60 miles of trail on approximately 1600 acres that is a tremendous amount that will have to be closed to hunting. He feels that needs to be clarified.

Scott Miller, East Arch Road, Union, stated he was present on behalf of the Union County Cattleman's Association. They are generally opposed to the whole idea. They think it is adverse to timber and ag interests in the county. However, they do support a vote and if the public votes for it and it is established so be it. As citizens of the county they are concerned about the county supporting the whole measure in a financial means. They believe it is unrealistic to expect timber harvest to pay off any loans or notes in regard to short term or long term financing of the whole program. If a measure or ballot should be crafted they hope that it will include language that specifically informs the public what is fact in regard to the financing of the short and long term solutions for the whole program, and what is speculation. He feels it is really important that it be made clear so that all the voters have a clear idea of what the county would be getting in to.

Commissioner Hibbert stated that a ballot measure must be factual and non partisan. Mr. Miller stated he understands that. He is concerned about all of the disagreement about what has been presented as fact and how things will proceed as to how they most likely will realistically proceed.

Bart Barlow, Mt. Emily Recreation Coalition, thanked the Commissioners and coalition members for sticking with the project for three years. There is no hurdle too tall for them. They know the vote is important to the Commissioners and it appears it is important to a lot of people in the community. They are confident that they will prevail and will do their best. He stated he wanted to thank some people but by doing so does not want to indicate in any way they are in favor of the proposal. He stated he went to the Union County Cattleman's Association on Monday. He felt the meeting was very productive. Sharon Beck, Bill White, and Lee Insko did an extremely good job of keeping the meeting real by asking real probing questions. Those are the type of meetings that are needed. They have had an open public process with two meetings. They now hold two records for public attendance at any meetings held in Union County. They have over 400 written responses with way over 90 percent in support. The Observer has done a good job of informing the public with front page articles. They have been in the Oregonian and the radio station has done a nice job. They have set up a web page and are responding to every letter to the editor in writing as well as the letters submitted to the Commissioners. They are doing their best to communicate. They have raised over $20,000 since 2007 out of their own pockets. They will raise another $20,000 this year for an appraisal. They are proud of that and believe it shows how much support there is for the project. He stated that many benefit from this proposal. Agriculture is a huge beneficiary of the project. Fifteen new lots on the

property with fifteen new water supplies will drain the aquifer. There are already eleven dry wells on Mt. Glen Road where he lives with the watershed in the Mt. Emily area. Motorized use is being prohibited on the face in the winter time. The desire is to keep deer and elk up there. Those are win wins for agriculture. The livestock industry will benefit. They intend to graze cows up there. They plan to demonstrate sustainable grazing management. The revenue is needed from livestock grazing. The timber industry will benefit. For timber dependent community families, they will take almost 4,000 acres and keep it in productive timberland. It will not be ranchettes or clear cut one year and 65 years later another tree cut on it. It will be sustainably managed. There will be trees removed. Wildlife will benefit. Family home sites break up wildlife habitat and that is not a good thing. Residents of Union County, berry pickers, ATVers, mountain bikers, etc., will benefit. He stated they need to consider what happened to Deal Canyon, Morgan Lake property, and Rooster Peak. Those are properties that in 1979 you could hike, bike or horseback ride on. Now they are private property and locked up, as is the owners' right. Mt. Emily is next so the vision toward the future is needed. This is a project for now and into the future. A public hearing is needed soon.

Linda Carter, Owsley Canyon Road resident and Coalition member stated that last night she spoke with a PEO group and none of them had been to the public meeting. She feels it is a great opportunity to have a vote and educate people.

Karen Antell, representing the EOU science programs, stated they have been quiet in the background but she has been attending all the Mt. Emily Coalition meetings in the past year. At EOU they offer courses in natural resource management, biology and agriculture. They are really hoping to see an area where they can have sustained outdoor education opportunities for their students. The ideal thing about Mt. Emily is the year around access. They have a research forest on Glass Hill Road which is only accessible six months of the year because of snow pack. They are really excited about having the opportunity to have an area where they can have their students learning resource management. They see the Mt. Emily property as the ideal situation for them. She and the EOU science programs are hoping they will have that opportunity. She stated they would like to be involved when management of the area begins.

Kathleen Hibbert, 65126 Hunter Road, stated they were unable to make the first meeting held because they were snowed in. She feels that should be taken into consideration so that another hearing can be held. They have lots of questions that need to be answered. She wants to request a meeting where they can have more information out to them. She has questions about neighboring properties and impact. They adjoin Forest Capital so have many concerns. Some of those are whether the area would be open during the wet season and fire season. They have seen what has been done on the neighboring property during the wet season and it is a shame. They also have concerns about law enforcement.

Commissioner Hibbert stated the Commissioners have before them the question of whether to put the matter out on the ballot either in legislative form or for an advisory opinion, or not at all.

Commissioner MacLeod moved to approve Resolution 2008-03, In the Matter of a Resolution Placing a Question on the Ballot for Voters of Union County, specifically an advisory opinion regarding purchase option of the Mt. Emily

Recreation area to be on the ballot for the May 20 primary election. Commissioner McClure seconded. Motion carried unanimously.

Commissioner McClure stated that he feels the county should develop a public input process and publish that as soon as possible. He wants to make a real effort to get information out so citizens can make an educated decision. He would suggest a forum that allows people to ask questions and make comments. He stated that when the process was started, Forest Capital did not want to negotiate the price in public so that was done in accordance with their wishes. However, at every meeting he stated that a public process would be held. He believes the Commissioners owe it to the citizen of Union County to have a public process on this very major issue. Commissioner Hibbert stated she agreed and has talked with many people and also indicated it was her intent that there be more public forums. Commissioner MacLeod agreed.

Microenterprise Assistance Program Resolution

Lisa Dawson, Northeast Oregon Economic Development District Executive Director, asked the Commissioners to consider adopting a resolution that indicates that Union County would participate in a microenterprise Community Development Block Grant with Junction City. She stated it is a rather unusual configuration. Last year she sought approval for the same sort of thing with the City of Veneta. She explained that a lead entity, in this case Junction City, applies to the CDBG program for support for micro entrepreneurs then the city subcontracts with Lane Microbusiness. Lane Microbusiness then does some subcontracting with the NEOEDD to provide services and classes to micro entrepreneurs in Union County. It does not count as a block grant to Union County so won't affect the county's ability to apply for other block grants. This process helps their staff learn from Lane Microbusiness on better ways to support micro entrepreneurs. Offering classes to them is a fairly new activity for NEOEDD but allows them to provide assistance that is needed for individuals who qualify for the individual account program to get the classroom training they need to be successful.
Commissioner MacLeod moved approval of Resolution 2008-02, In the Matter of a Resolution Supporting Participation in a Regional Microenterprise Assistance Program with Junction City as Lead Applicant. Commissioner McClure seconded. Motion carried unanimously.

Consent Agenda

The February 20 Board of Commissioners Minutes, February 21 claims journal and February 20 public works claims journal were approved as presented on the consent agenda.

Appointment to Northeast Oregon Economic Development District

Court Order 2008-12, In the Matter of Appointment to the Northeast Oregon Economic Development District Board of Directors, was presented for consideration. The order appoints Robert Strope to serve as the City of La Grande representative at their request. **Commissioner McClure moved approval of Court Order 2008-12. Commissioner MacLeod seconded. Motion carried unanimously.**

Appointment to NEOEDD Budget Committee

Appointment of members to the NEOEDD Budget Committee was tabled until a future meeting.

Appointment to the Union County Weed Advisory Committee
Court Order 2008-14, In the Matter of Appointment to the Union County Weed Control Advisory Committee, was presented for consideration. The order reappoints Ed Hoofnagle for a term to expire December 31, 2011. **Commissioner MacLeod moved approval of Court Order 2008-14. Commissioner McClure seconded. Motion carried unanimously.**

Appointment to Union County Airport Advisory Committee
Court Order 2008-15, In the Matter of Appointment to the Union County Airport Advisory Committee, was presented for consideration. The order appoints Dan Pokorney as a City of La Grande representative at their request. **Commissioner McClure moved approval of Court Order 2008-15. Commissioner MacLeod seconded. Motion carried unanimously.**

Eastern Oregon Visitors Association Grant (Fiscal Agent Request)
Commissioner McClure explained that he received a request from the Eastern Oregon Visitors Association that Union County serve as the fiscal agent for a grant from the Federal Highway Administration. The Association can not receive the grant directly. Baker County is acting as their fiscal agent on a current grant. The way it would work is that EOVA would provide the required grant match. Union County would receive the grant funds and then pay them to the contract agency. EOVA will write the grant and fulfill the requirements. **Commissioner MacLeod moved to serve as the fiscal agent for the EOVA grant from the Federal Highway Administration. Commissioner McClure seconded. Motion carried unanimously.**

Road Hazard Hearing – Rasmussen
Brandon Eyre, Attorney, reported that Commissioner McClure had asked him to present information on where procedurally the county is at on this matter and what they would need to determine today. There were allegations that water was shooting off a pivot gun into the road. A notice of abatement was served. The hazard was not abated within the time frames called for in the notice. Then a notice of hearing was sent out which brings them to the hearing today. The Commissioners' responsibility is to make several determinations based on the record. First of all, whether or not there was water going into the road in violation of ORS 368.256. He summarized the statue by stating that if any water goes into the road you are in violation of statute except there is a caveat in (2) that says you are not in violation if there is no reasonable method for the person to control, stop, or remove the cause of the violation. Brandon explained the second determination is who is responsible if there is a violation. And third, based on the exemption of (2), can the water be reasonably abated and how long will the county allow for the abatement to be made. Statute requires that they be given at least ten days after this hearing. At that point if the Commissioners find there is a hazard and all the criteria have been met, an order for abatement will be issued and they will have the specified amount of time to abate. If they do not abate within that time frame, then county personnel are automatically authorized to go in and take whatever reasonable steps are necessary to abate the nuisance and under statute whatever steps they take will be exempt from liability. If it does go that far there is another set of processes the county can follow which will allow them to recoup the costs expended.

Commissioner Hibbert then opened the hearing for comments.

Colton Rasmussen, 2405 East O Avenue, La Grande, stated that he is the general manager for Terra Magic, Inc., otherwise known as the Rasmussen property. He stated he would first like to clarify exactly what abatement means.

Brandon Eyre stated that abatement means ceasing the violation which in this case is water on the road. There can't be any water on the road that can be reasonably stopped.

Mr. Rasmussen stated that, as both Mr. Kelly and Commissioner McClure know, they have been dealing with this problem which has come about explicitly due to Mr. Wilkinson. His issue is that Mr. Wilkinson drove up and down the road for twenty-five years and they never had a problem or complaint. Now all of a sudden there is a problem. Over the last two or three years since this issue has come up there have been numerous times when Mr. Wilkinson has made reports that they were getting water on the roadway, when in fact they could not have been possibly getting water on the roadway. A couple of times Commissioner McClure or someone from public works came out and saw where the pivots were, and based on the timers and hours per revolution saw they could not have gotten water on the roadway. There have been false accusations. In the mean time what they have done is he has personally gone out and tried to do everything he can to keep water off the road. He has gone up onto the pivots and impact sprinklers and put screens on them because they were told that if it was screened, misting going across it was not a violation. With prevailing winds out there in the summer and spring out of the south and the north, there will always be misting on the roadway for that 40 or 60 feet of the road. It will always be black. He has gone to the effort of having those pivots timing all of the irrigation cycles so they come around in the middle of the night, 3:00 a.m. That way if anybody happens to be driving home intoxicated, they don't encounter problems. He has tried everything he can think of to try and clear up the problem. Regardless of his efforts, Mr. Wilkinson still ensues with harassing them and Commissioner McClure. At this point he honestly does not know what else they can physically do to abate the problem. He has lost acres on the outside perimeter of their circles because once the impacts are screened there are no devices to automatically take the screens down and allow the arc to continue once it is past that 40 or 60 foot strip. Last year they did have a problem with an end gun that was in fact shooting across the road. It was a mechanical failure. They got that fixed. In the mean time he personally watched the pivot go up to the edge of the road and they stayed away from the part of the pie on the circle that could even get touched by the end gun until they got the piece to repair the equipment. Mechanical failures will happen because the equipment is electronic.

Commissioner Hibbert asked if the complaint that came in was a result of the mechanical failure. Mr. Rasmussen stated that several of the times, probably three or four, it was the result of the mechanical failure. He also admitted that last year they had some hand lines parallel to Market Lane of which Commissioner McClure had a picture. They lay them to try and water the pivot corners. There were thirty-one heads, almost one quarter mile, of which four were touching into the road maybe one or two feet. Humans can only be so perfect. Those kinds of things he can't guarantee won't ever happen. Out of so many lines that are laid out there will be some water that will be carried. He can't screen hand line nozzles without losing significant acres. They normally run the sets that are parallel to the road during the night because there is no wind, so they don't usually have that problem. Occasionally there is a wind that comes up in the middle of the night and gets the pavement black. Mr. Wilkinson drives by

every morning at 5:00 a.m. going to the golf course. If he encounters black pavement he takes a photo and reports Mr. Rasmussen. They really feel they are a scapegoat in the whole matter. He can go three quarters of a mile in either direction and encounter end guns deliberately shooting across the road. There is no attempt to shut them off, but no one is complaining about them. He will not become an advocate to go turn everyone else in because in farming it is tough to keep water off the road, but he does have a scrapbook of over 200 photos that shows these occurrences. His problem is that he farms along the lane of choice for Mr. Wilkinson. The only other way they could try to abate this according to PGG is to go out and make a large capital cost of $15,000 to retrofit their panels on the pivots with flow restrictors on the ends that control the individual impact sprinklers to shut off the last three impact sprinklers when they get to that point. That is the one thing he has not done at this point because it is expensive and ag has not been all that profitable in the last few years. This year it was quite a bit better, so this is the only thing that he can do to possibly abate this problem but it will not solve the potential of water going onto the road because of wind or other things that are out of his control.

Commissioner Hibbert asked Mr. Rasmussen to clarify that he only sets them to run at night so there will not be any drift during the day. Mr. Rasmussen stated that was correct. There would be no drift unless the wind blows and they happen to have hand lines along the road. The two circles on the north side of Market Lane are set every time to hit the area around 3:00 to 3:30 a.m. If he goes to the expense and effort to try and remedy the problem and the wind still blows, he asked how the county will view that in the future. He asked if he will be faced with the same problem over and over again.

Commissioner McClure stated that Mr. Rasmussen does have some knocker heads that go across the road. He stated that he stood with him and watched them do that. Mr. Rasmussen stated that was correct. He stated that the third impact knocker head was not screened at that time. He has gone ahead and screened that since that time. That can be visually verified. He also tried to arc the end gun in as far as possible to try and cover the lack of coverage on the last 80 feet because of the screen.

Commissioner McClure stated that he believes the question of the mist is covered under the statute. There is no reasonable way to avoid that.

Mr. Rasmussen stated that another thing that upsets him and the owners of the property is that they have been accused for two or three years of this problem, but yet the accuser has never come forth and faced them by any means. He is not even present at the hearing today, so how harmed is the individual?

Commissioner Hibbert stated she appreciates what Commissioner McClure just pointed out in ORS 268.256(2) which states there is not a violation of the section if there is no reasonable method for a person to control, stop, or remove the cause of the violation. Also in referring to Brandon Eyre's memo which states that it is his opinion in this case, that if the landowner were to implement screens and those screens in conjunction with the shut off of the pivot gun as it passes near the road, eliminates direct spray off the road minimal incidental mist coming across the road due to wind conditions would not constitute a violation. She asked Mr. Rasmussen if in his mind he has taken care of screening to make sure there isn't anything except mist.

Mr. Rasmussen stated there is no longer any direct stream that will touch the pavement on the road.

Commissioner MacLeod stated that she drives home along agricultural roads every day and she thinks the Commissioners need to be careful what precedent will be set because agricultural water does get on the road. The county has always been incredibly supportive of the agricultural community and they face enough from all sides trying to put together a business to support them without the county setting a precedent that anybody who gets water on the road will be drug before the Court to be chided or fined. Mr. Rasmussen obviously has taken steps to correct this and she is not in favor of punishing him any further.

Commissioner McClure stated that he concurs. What the county wants is compliance to keep water off the roads. He asked Assistant Public Works Director Bob Kelly to address how the county deals with that situation on a case by case basis.

Bob Kelly reported that the department runs into this issue every spring when the farmers start irrigating. The big gun sprinklers definitely cause a problem to the roads. They saturate the base, the trucks pound it, and then they have ruts in the road. Mr. Rasmussen is not the only one. They make a lot of calls in the spring to contact people. There have been a lot of mechanical errors especially in the older pivots that don't have the actuators which are computerized to shut those off. As soon as they get a complaint, or if county personnel observe a problem, they call the people to try and get the water off the road. There is a lot of wind in the valley which can result in spray and mist. They don't bother landowners with complaints about that. Big guns are definitely a problem. Hand pats and wheel lines are not as much of a problem. The big guns are a hazard. They are dangerous when they are on the road. It is a lot of water pounding the road, and when a car goes by it is similar to being in a heavy storm or tornado. They do try and keep those off the road. They were out to Mr. Rasmussen's several times when they got the calls. There had been water across the road. They have talked to Mr. Rasmussen and he tried to fix the problem. There were a lot of times when they went out with a complaint and it was mist. He stated that after the county started the legal process, Mr. Rasmussen and his father tried to rectify the problems. He told Mr. Rasmussen that he feels they need to be aware and very careful in trying to keep the water off the road because it is a hazard and could cause a wreck besides damaging the road.

Commissioner Hibbert asked Mr. Rasmussen if the mechanical malfunction could not be remedied right away because of the need to order parts. Mr. Rasmussen stated in that particular incident early last summer or late spring, a mechanical rectifier that shuts off the flow of water to the large valve went off. When he noticed the problem he physically managed that site until the parts could come in to repair the automatic system.

Commissioner Hibbert asked if the parts malfunction on an annual basis. Mr. Rasmussen stated that it depends. Electronics can last for five years or for five minutes. He has had all of the circles out there since 2004 and last year he had four of those particular items that went out. The PGG representative suggested that he go out and replace them every couple of years to be on the safe side. He stated that he does now have the parts on hand to make repairs.

Mr. Rasmussen stated that he concurs with Bob Kelly with regard to the big guns being dangerous. They own some acres along Hunter Road which to him is a freeway. They watch those big guns very carefully because one of his largest concerns in that area is the guns ever touching Hunter Road. They do watch all of the big guns continually to make sure they don't touch the road, but if a mechanical failure does happen, it happens. They rectified the problem and now keep the parts on hand. He stated that he thinks replacement of those parts will become a yearly routine for them. They are not expensive, only $15 to $20 each, which is small in comparison with spending time dealing with complaints.

Mr. Rasmussen stated that they have screened impact sprinklers on the ends of their wheel lines across the river. When they get out 30 to 35 feet away he will pull the screen down to try and water that part of the field they are missing because they are losing acres. He does not go out on the hand lines with transits. They eyeball it and try to make sure they are keeping them far enough away from the road, but when they are manually laid out you can get one that is 5 feet closer by accident and that is the way it goes. They are trying to do everything they can but he can't guarantee there will never be a human error with a hand line parallel to Market Lane.

Commissioner McClure asked Mr. Rasmussen if he could control the impact sprinklers on the ends of the pivots. Mr. Rasmussen stated the only way he can do that without losing about 40 acres on the outside perimeter of the circle, is to do a retrofit and go from a standard panel up to a pro panel. That is what they opted to put on their pivots along Hunter Road because of the liability issue they are concerned with there. They wanted absolute control on those, but even those aren't perfect. You can have the best panel in the world, but electronics may malfunction. They haven't had real problems with those at this point, but every spring they flush them to keep them clean and keep them going. The only way they can control impacts almost perfectly and not lose a lot of acres is to upgrade the panels and go out and put flow restrictor valves on each on of them that can potentially reach the road during the 60 foot stretch. It is costly because every time you add a pressure regulator you can add $800 because you have to run wires back to the panel for it and the panels have to become a super upgraded panel to accommodate that.

Commissioner McClure asked why the panels were designed with the knocker heads so close to the road. He said it would be normal to stay back with the knocker heads, and have the end gun take care of the last piece. The ones under discussion have knocker heads close enough to the road to have impacts. Mr. Rasmussen stated the end knocker head on the valleys are about 12 feet in from the end of the overhang that protrudes out from the end tower. The only explanation he can think of is that maybe most people don't have a lot of roads on the outside perimeters of their fields. You are trying to get every acre of water that you can underneath those circles. If you look to where the end gun has to shut off, there is a big gap that never gets any water because of the arc from the end gun shooting out 150 feet. If it gets shut off, the impacts only shoot out about 30 feet from the very end. That is why they have to lay hand lines way past where the end guns shut off to try and catch it which turns out to be an acre and a half or two acres of cropland that is missed on those arcs.

Commissioner McClure asked if you shut off the knocker heads wouldn't the end gun pick up the area the rest of the way around the circle. Mr. Rasmussen stated that the end gun could not because of the arc the end gun has to swing on. There is no way to

correct that unless you go out and set the end gun pattern in a specific direction that is not functional for the rest of the field.

Bob Kelly commented that the county right of way is 60 feet. If you take 30 feet from the center line (12 feet payment, 18 feet shoulder and ditch line), there is margin for error without impacts. He asked Mr. Rasmussen to be careful and understands that they can't always be perfectly straight but there is some room for error without impacts. He stated they don't mind a wet shoulder as much as the pavement. They are asking everyone to watch more carefully. If there are problems with hand lines, they are asking that they be shut down and straightened or realigned.

Commissioner MacLeod stated that given the county road department budget is getting smaller and smaller each year, it is necessary to be more concerned about damage. It may seem like a small thing now, but if a road is permanently damaged or a surface lost, there is no funding to replace it.

Brandon Eyre suggested that the file be accepted by the Commissioners as part of the record on this proceeding so that if it is reviewed, there is a record. The Commissioners agreed to accept the file as part of the official record as well as some digital photographs earlier mentioned.

The hearing was then closed.

Commissioner MacLeod stated that she appreciates the work done by Mr. Rasmussen to try and alleviate problems.

Commissioner Hibbert stated that it appears to her there has been an effort to provide due diligence to make sure there are no streams of water going across the road. According to the information provided, mist is not a violation. She agrees with Bob Kelly's remarks and urged Mr. Rasmussen to try and prevent water however possible. She stated she believes Mr. Rasmussen has good intentions and appreciates his participation in this proceeding.

Commissioner MacLeod moved to find that Mr. Rasmussen has taken steps to correct the water issue.

Mr. Rasmussen asked what the county's position would be on future complaints, if the owners decide to go to the effort and spend money to put on new panels and regulators. He stated that if he does that and everything works fine, he believes the county will still get photos and phone calls from the complainant. He asked if their liability is absolved if it can clearly be shown that it is just misting from screens or wind. Commissioner McClure stated that from the definition provided by the attorney the answer would be yes.

Commissioner McClure stated he would like to encourage Mr. Rasmussen to take the next step and take care of the knocker heads. He agrees the county will get photos of those knocker heads going across the road. He stated he believes the major issue is the last two or three knocker heads. He stated that he stood out there with Mr. Rasmussen and they go way past the center line. Mr. Rasmussen concurred that was the case with the blue line. He stated he did take the drops off the blue lines. He stated that may be one other way he can look to resolve the problem. He might put drops on

the ends. The reason he got away from the drops on the others is because with their irrigation system they pump directly out of the river. They decided to go with impacts because when pumping out of the river you must have sand filters. When they did their $1.5 million expansion, sand filters alone were in excess of $250,000. If he can put external filters above the drop nozzles, that might be a solution. He will work on that with PGG. If it is possible he can hang the drops at a level that is just above the crop but below the gravel shoulder of the road. That way if there was any water that would hit, it would hit the shoulder and roll down unless wind carries it. Then if there was a complaint the drops could be measured to demonstrate that any water would only be due to wind. He stated that might be a cheaper and more immediate solution he can offer.

Commissioner McClure seconded the motion. Motion carried unanimously.

2009-2011 Mental Health And Alcohol & Drug Plan
Dwight Dill, CHD, Inc., 1100 L Avenue, La Grande, reviewed the proposed 2009-2011 Mental Health and Alcohol & Drug Plan. He explained the first part of the plan discusses the open public process they used in developing the plan. Two years ago they held a series of public hearings visiting each community in Union County. They had attendance at only Union and La Grande so this year opted to hold one public hearing with the Drug and Alcohol and Mental Health Advisory Committee. They also discussed the draft plan with community partners such as Commission on Children & Families, Child Welfare, etc.

The plan then moves into the linkages with the state hospital and community partners. Those are mostly what they were two years ago with the exception that Blue Mountain Recovery Center which used to be Eastern Oregon Psychiatric Center is closing as an acute care facility. They will no longer have access to beds there for acute care mental health needs. That will be an issue for Union County. Currently they must send most acute care needs to St. Charles Medical Center in the Bend area. That is a long distance to transport someone in a mental health crisis. They are hoping to have something more local such as a regional program to be established in Umatilla. It is hoped that will be up and running in the next few months. They are also looking at trying to develop a couple of residential respite beds in La Grande that would serve some of the sub-acute needs.

The plan then goes on into the mental health and alcohol and drug priority needs. The first one identified for mental health is local residential and short term respite beds. They are hoping to address that need this biennium. They need a local psychiatric hold room. That has been an ongoing need noted in plans for many years which is very difficult to achieve. Another need is for supported employment. Historically there was a large vocational program with the mental health program. In 2003, when the major budget cuts happened at the state level, they lost all of the funding the state provided for supported employment. Many of the vocational services were ended at that time. That funding has not been returned but it is still identified as a need. He is hoping that within the next year they will have supported employment back up and running. They have a new grant from the state to help address mental health needs of adolescents and young adults who are experiencing symptoms or a first mental health break. Part of that grant requires supported employment. Other identified needs are peer support activities, continued education with the community, coordination with mental health and physical health services, and funding for school based mental health services for

children and adolescents. He feels the school needs will be a huge issue in the coming years with OHSU closing down the rural health network. He is very concerned about how those needs will be served and hopes to have future discussions with the Commissioners, the schools, and the community. Other needs include therapeutic foster care for children as an alternative to out of county. Drug and alcohol priority needs are continuation of integrated approach on alcohol and drug and mental health, medical detox services, funding options for individuals who do not meet current priority populations for funding, and public education regarding alcohol and drugs in schools and the community.

Commissioner MacLeod moved approval of the 2009-2011 Mental Health and Alcohol & Drug Plan as presented. Commissioner McClure seconded. Motion carried unanimously.

Second Reading Ordinance 2008-01 Fire Siting Standards
Hanley Jenkins, II, Planning Director, reported that an amendment is proposed to the Union County Zoning Partition and Subdivision Ordinance and Fire Siting Standards within Union County. Generally the revisions provide for clarification and more specific details on requirements. The proposed changes are the result of a fire siting evaluation done by Emergency Services Officer Dara Salmon before she left Union County. A public hearing was held about a month ago at which time the first reading of the ordinance was approved. **Commissioner McClure moved approval of Ordinance 2008-01. Commissioner MacLeod seconded. Motion carried unanimously.**

Vesting Determination – Cochran Measure 37
Commissioner Hibbert stated that the Commissioners would consider a vesting determination for the Cochran Measure 37 claim. She clarified that the hearing is on vesting, not on a land use decision.

Hanley Jenkins reported that a staff report has been provided as part of the record. The applicants submitted Measure 37 claims to both Union County and the State, both of which were approved. The applicants were authorized to set aside the current minimum lot size and apply the minimum lot size at the date of property acquisition. The approvals also allowed them to establish dwellings on the lots they proposed to create. The subject is a 12 lot subdivision. Six of the lots have dwellings on them and the county has recognized that those lots are either completed through the Measure 37 process or have gone through a process the county identified as substantial construction. The issue before the Board today is how to treat the remaining six lots that have not been built on. The applicants' position is that the subdivision is vested under the common law vesting requirements as well as under statutory vesting.

Hanley stated that as part of his staff comments he would address a distinction between the subdivision being vested, and the lots being vested. First, he provided background information stating that the applicant received Measure 37 approval. On December 6, 2007, Measure 49 became effective and Measure 37 claims were no longer valid. Section 5 of Measure 49 allows Measure 37 claimants three opportunities to pursue Measure 49. One of those is to pursue common law vesting. That is what the applicant is proceeding under and the process the county is being asked to follow at this time. The procedures for common law vesting are not land use proceedings, however the county is processing the matter like a land use application by holding a hearing,

accepting evidence and testimony, and allowing for rebuttal. The final decision can be appealed to Circuit Court rather than LUBA.

The Department of Justice and the Department of Land Conservation and Development have decided that counties are authorized to make vesting decisions. There was considerable discussion back in November and December regarding who would make vesting determinations. The final outcome of those discussions is that the county will make final determinations on vesting. The State will make the final determinations on the expedited review process and the conditional review process under Measure 49.

The consideration today is not quasi judicial or legislative. The public hearing procedure will allow the opportunity for new evidence and testimony. The record includes the applicants' materials including the February 29 letter and attachments, the county staff report, and notices sent to adjacent landowners and to the applicant. The record also includes a map illustrating the current evaluation of ownership. It identifies where dwellings are currently built and owners of the properties. It also shows the six lots that are not built on and still owned by Phillip and Kathryn Cochran.

Hanley then reviewed the staff report, which discussed the location of the property and the Measure 37 approval that was given in 2005. The applicants proceeded through the land use process to create a 12 lot subdivision. They received tentative approval of the subdivision plat from the county Planning Commission on September 26, 2005. The county does include in its zoning, partition and subdivision ordinance a definition of substantial construction. That definition calls for a completed building foundation. The county developed a process, as part of reviewing Measure 37 claims; to allow an applicant to come in and pursue a determination of substantial construction on a parcel or lot in relationship to the transferability issue associated with Measure 37. The claimants did pursue that process and got a determination from the county prior to December 6 that four of the lots that were being built on did meet the definition of substantial construction. Two additional lots had already been built on. Those were administrative decisions made by the Planning Director. Staff does not argue that those six lots are either built or meet the definition of substantial construction as of December 6, 2007.

One issue that has been raised by the applicant is whether or not the county has changed the goal post. That reference is to whether the county has changed the law as a result of the Measure 37 process and the evaluation of the Measure 37 claims. Hanley stated that he feels the county is being consistent in the interpretation of the term substantial construction under Measure 37 and the opportunity to transfer the right to build on a property. The county evaluated the parcels through the process set up with the building department and found that the four lots being built on met the definition of substantial construction, so could be sold to someone other than the Measure 37 claimants and those new buyers could complete the construction of the residences on those lots. He believes the county applied that definition under Ballot Measure 37 and is being consistent in applying it under Measure 49 in requiring that each lot meet the substantial construction requirement. The goal post that changed was the change from Measure 37 to Measure 49, which was a state action of the voters and the Legislature. The county did not do that and did not change the goal post.

Hanley stated that his position is that the applicants did meet the substantial construction requirement and do today need to meet the substantial construction

requirement on the remaining 6 lots before the county can find those lots to be vested. He came at that from two different directions. One is that the applicants came to the county and the state to pursue a waiver of the current land use regulations. The property is in an A-1 Exclusive Farm Use Zone. What was waived was not the ability to subdivide the property; it was the minimum lot size from the current 160 back to the 10 which was in effect at their time of acquisition. What was also waived was the current requirement to review the development of a dwelling on each lot. The current law would require submission of a farm related dwelling or a nonfarm dwelling application for each lot. They asked to waive those requirements and allow a dwelling outright, which would have been allowed at the time of acquisition. What they got from the state and the county was authorization to create what are now substandard parcels and the right to automatically build on each one of those lots. They did not request a waiver of subdivision or partition requirements. They proceeded under today's current law to subdivide the property. He believes that is the only way they could have proceeded in order to have the subdivision recorded in the Clerk's office, which is necessary for the lots to be effective and recognized as legally created lots. Since that process was completed prior to December 6 he agrees the creation of the lots is vested but not the right to build on those lots.

Hanley stated that Measure 37 and Measure 49 focus on use, not on the ability to divide property. The issue here is the ability to establish dwellings on the lots which he believes were legally created through the planning process and are of record. The county has found that the lots are legal, but the dwellings need to go through the substantial construction evaluation for each lot or they need to come back through the current law and pursue nonfarm dwelling applications. He believes there are advantages to pursing the nonfarm dwelling applications. The advantage is that once you establish the dwelling as a nonfarm dwelling under current law, it becomes recognized as an authorized use under the current law and not as a nonconforming use as would be the case if it was vested. This could be an advantage in the event of destruction by fire or securing financing from lending institutions.

Commissioner McClure asked Hanley why he made the statement that the goal posts have been changed but the county did not make the change. Hanley stated that the applicants' attorney is arguing that statutory provisions don't allow local governments to change the goal posts on a decision that has already been made. He stated that his argument is to make the distinction between the law changing at the state level versus at the local level. He feels the county set up a process for Measure 37 claims to make them transferable. The county has found that four of the six built lots met the definition of substantial construction before December 6, so what he is saying is that position has not changed as a result of the county's application of Measure 49. The county still requires that each lot meet the substantial construction requirement.

Commissioner McClure asked if the change is in state law, why the county is making the vesting decision. Hanley responded that the state did an evaluation of the common law vesting process and made the decision that local governments would make the vesting determinations primarily because of the process associated with who makes the decision. If the state government makes the decision on vesting, then it is subject to a different process than the local process.

Commissioner Hibbert noted that on the third page of Mr. Trompke's letter he states that "governments are not allowed to move the goal posts once the action has begun". She

asked Hanley if the reference to governments does not apply to counties. Hanley stated that in the actual arguments presented by Mr. Trompke in the vesting documents his interpretation is that the county is prohibited from changing but that the Legislature is not prohibited from doing so.

Commissioner MacLeod asked if there is any other opportunity under Measure 49 for the applicants to finish this development. Hanley stated there are not. Section 5 of Measure 49 offers three opportunities. The expedited review process allows creation of up to three parcels with three dwellings. That has already been exceeded since six dwellings are completed. The other option is the conditional opportunity on non high value farm and forest land soils. This property has predominantly high value soils so that route is not available to them.

Commissioner Hibbert stated there is a method of remedying the situation if the county determines that the lots that are not developed are not vested. Hanley stated that under current law if the lots are legally created either the claimants or subsequent purchasers can pursue non farm dwellings on each of the lots.

Commissioner MacLeod asked if the applicants have done everything necessary to legally create the lots. Hanley stated he believes because the final plat was recorded January 3, 2007, the lots were created and there is nothing to prevent the subdivision from being recognized as valid.

Commissioner Hibbert then opened the hearing for public testimony.

Edward Trompke, Attorney, stated there are no easy answers with Measure 49 or Measure 37. He stated he would first like to address the question about whether or not the lots are legal. He stated there are many people who take the position that they are not legal lots. That causes him concern and he would ask the Commissioners not to count on the answer coming back that they are legal lots, and rather consider the vesting issues in the matter. A final decision on whether they are legal lots will probably take several years for a couple of cases to go up through the Supreme Court.

Mr. Trompke stated that the plat was recorded more than a year ago on January 3, 2007 showing that the Cochrans did move forward with all deliberate speed to get it taken care of in a businesslike way under Oregon's land use system. There are six factors that Courts look at in common law vesting: 1) a substantial amount of funds must have been expended; 2) the good faith of the owner; 3) was the owner on notice of a change of the law; 4) was the development adaptable to a permitted current use; 5) the nature, cost and location of the development; and 6) whether mere preparation was involved or whether actual work was completed. He believes the materials submitted demonstrate that the Cochrans have satisfied all of those factors even though it was not necessary to satisfy all of them. They are only factors that the Courts look at and weighs and balances. Vesting is a fairness doctrine and comes out of ancient equity and somewhat out of constitutional law and statutory law. The County is in the position of having to balance the equities. They must look at what is fair to the Cochrans and what is fair to the community in terms of how much the Cochrans and other folks involved have expended and relied on the law that existed when they did what they did. The goal posts did change significantly, not because the county did anything, but the county has been put in the enforcer role by DLCD and the State Attorney General's Office.

Commissioner Hibbert stated that Union County has an ordinance in effect that has been in effect for a number of years regarding substantial construction that applies to this and has to be considered. She asked Mr. Trompke if the county changes what has been in place, won't they be changing the goal post in that regard.

Mr. Trompke stated that he was not saying the goal post rule applies to the substantial completion. He agrees that the definition of substantial completion has been what it is. It is really the Measure 49 application and interpretation that has changed from Measure 37 rules. He wants to leave the substantial construction rule in place and sees it as working just fine. What did change is how the lots are treated. He referred to the map and stated that lots 1, 2 and 3 have substantial construction. Lot 4 is a 10 acre parcel that does not. Lot 5 is constructed. That raises the question about the 10 acre parcel and whether it is buildable and is a legal lot or does it somehow have to be attached to one of the adjacent lots for purposes of land use planning even though it is in separate ownership. It is common in DLCD rules under EFU zones to attach parcels that are contiguous but never if they are in different ownership, so that appears to be a legal lot by itself. Then between lots 6 and 7 are two lots next to each other that are either two ten acre lots or one twenty acre lot. The question is do the goal post rule and the subdivision laws in Chapter 92 require that they continue to be recognized as two separate buildable lots, or are they treated as one bigger lot. There are also lots 9, 10 and 11, about 30 acres, that are not built upon and do not have substantial construction. Are they three lots that can be built upon or are they one big lot? That is the big issue. Is it vested or is it a non conforming subdivision? Was the subdivision for residential purposes which would then say it is vested or it is a nonconforming subdivision that allows the residential uses which should be allowed to continue and be completed.

Mr. Trompke stated that ORS 215.427 says that whatever law applied at the time the application was submitted or made complete is the law that governs from that point forward. Chapter 92 goes on to say that once the preliminary conditions of approval on the subdivision are made then the county can't add further conditions afterward. None of that was addressed in any of the discussions on Measure 49. The goal post rule is another way of looking at the common law vesting that Measure 49 does address that says if you have gone a certain amount then there is a fairness decision that you are protected. Most landowners who filed Measure 37 claims did not do anything. Only about 10 percent of those who had claims went forward. The people who went forward and put money into it and relied on it are the ones who were affected by the land use laws who really wanted to do something to protect their investments from years ago. So, the two are parallel fairness doctrines that work together. That argument has not been made too many times before. He stated that he did make it to a Clackamas County hearings officer who accepted and adopted it. The Commissioners don't agree with that but won't appeal it so it stands that someone agrees that is the law. He believes the real issue is what is fair and whether the statutes apply on an equal basis with Measure 49.

He believes the statutory vested rights stand separate from the common law vested rights. Looking at the common law vested rights, virtually the same factors apply to a constitutional vested rights theory and he would like that on the record. The factors are the amount of money that was spent. One hundred percent of the subdivision funding was spent. You have to look at what is vested. Is it the subdivision itself or the houses that were built on the subdivision. If it is just the subdivision, then 100 percent is spent

and it should be not only vested but a non conforming use because it exists. It is there and there is no denying that. If you are talking about the cost of the dwellings then $570,000 has been expended, not all by the Cochrans, some by people who bought lots. The $570,000 does not include the purchase price of the land, which the Courts have said should not be looked at. The $570,000 is the cost of the improvements, the driveways, the footings, foundations and dwellings on top of them and any other improvements. That is a very significant amount. The Courts have said that seven percent or 1/14 of the cost of the final build out is enough to find there is a vested right. In this case there is about thirty-five percent spent estimating the total build out cost. In one Court of Appeals case they said that $155,000 was a substantial enough amount to count. In a second case they said that $1 million was enough. In this case it is $570,000 which is well over the amount found to be substantial in the past. They feel whichever rule you take, the percent or ratio test or plain dollar test, the Cochrans and their buyers have satisfied it. Mr. Trompke stated that the factors listed were developed in very specific cases that dealt with single lots. They are hard to transfer into multiple lot subdivisions like this where there may be more than one owner. But, the Courts have said in several of the cases that other factors may be important in specific cases. In this case one of the other factors is what the other people have done. Banks have relied on this as being a legitimate subdivision as have buyers of the lots. There is a lot of injury to occur on the first six lots, if the subdivision is not upheld to be valid. He stated that the materials presented do argue that the first six lots are also vested.

Mr. Trompke stated that the next issue is the good faith of the owner. The Cochrans went forward in good faith after Measure 37 was adopted. They put in an application with the county and the state and once final approval was received, they proceeded to move forward with the subdivision, weather permitting. They did so in a business like fashion. He feels they satisfied that. They were not in a rush to sneak under the wire and do all the work in the last month before the law changed between November and December of 2007. They worked on it and proceeded in good faith all through the process.

Commissioner Hibbert asked if there was ever constructive or actual notice given that substantial construction needed to be completed by December 6. Mr. Trompke stated that at some point the Cochrans did come in and talk to the staff about when they needed to have the substantial completion for some of the lots. They did ask the question and moved forward to satisfy it.

Commissioner Hibbert commented that there was knowledge that it needed to be done. Mr. Trompke stated that in his view there was knowledge and that would be the third factor, the notice of change in law. The second and third factors overlap. The notice is a big factor in the good faith of the owner. They did know about it but it was probably not until September or so when that question was asked.

Another good faith issue is whether the subdivision is consistent with pre-Measure 49 laws. They believe it is and they acted in good faith and proceeded expeditiously in a businesslike way. It also would not be bad faith for them to have hurried up a bit at the end to protect the several hundred thousand dollars of investment they had already made. Even if you took that out they had spent well over $400,000 by September in building the houses and foundations that were completed by that time. At the time the subdivision was recorded, January 2007, there was no hint there would be a change in the law. At that point it was a matter of getting people interested in buying the lots

before they would put footings and foundations in because of the substantial expense. It would be unfair to require that ordinary people become large subdividers and home builders to satisfy vesting requirements.

The fourth factor is whether the subdivision can be adapted to a use allowed by Measure 49. There are six lots built upon already which violates Measure 49. It would be illegal and the lots can only be two acre maximums under Measure 49. If the state or county told them to tear down a couple of the houses, they would have to replat the subdivision in order to create two acre lots. The two acre lots would have to be located so as to maximize the ability to farm the rest of the property. He expects to see much litigation about that rule. Of the remaining six lots, one is 10 acres, and two others are in a 20 acre block and three others are in a 30 acre block. None are viable to farm separately as an EFU lot so it does not make sense to say the subdivision could be adapted to some other lawful use. It does make sense to proceed and allow it to be built out.

Finally, the fifth factor is whether the actions were mere preparation. That is not the case. The plat was recorded more than a year ago, houses have been built, lots were sold in reliance on the existing law, and the numbers of people who have relied upon the existing law including the lenders is substantial. It would be a substantial imposition and unfairness to a lot of people to try and unwind the actions. Those factors apply to common law and constitutional vesting.

Mr. Trompke stated that it is his belief that the entire subdivision as a residential subdivision is a nonconforming use and should be allowed to be built out with the ten lots. It is there, and the only piece of the county ordinance that really applies is Article 22 which says nonconforming uses can't be altered or extended except by a finding of the Planning Commission by a two-thirds vote. He stated that it is difficult to say if construction of houses in an existing nonconforming subdivision is an extension. He would find it difficult to define as an expansion.

Mr. Trompke concluded by stating they are asking that the Commissioners to determine that the entire subdivision is a nonconforming residential use and that it be allowed to proceed with planning staff approving each dwelling that would be constructed under today's rules, with the exception for the rules which were waived. The important one being waived is the requirement of lot size and specifically the ability to establish a dwelling on each lot. If you now say you can't establish a dwelling on each lot that does change the goal post. The Measure 37 approvals specifically allowed establishment of a dwelling on each lot and he does not believe that rule can now be changed and that is why he believes it is firmly statutorily vested.

Commissioner McClure asked Mr. Trompke if he feels the subdivision is a nonconforming use now. Mr. Trompke stated that was correct.

Commissioner McClure asked if when they did the plat after Measure 37 and before Measure 49, it was nonconforming at that time. Mr. Trompke stated that it is his position that it was nonconforming the entire time.

Commissioner McClure stated that in his view the argument is that Mr. Trompke feels the entire subdivision is vested, and Hanley feels it must be vested lot by lot. Hanley stated that he agrees the subdivision and creation of the lots is vested. The issue in his

mind is not the division but the use of the parcels and the process for using the remaining six parcels. Hanley stated that he recognizes the plat as a legal document and the lots as platted. The validity of the subdivision is not being challenged by the county.

Mr. Trompke asked if the county position is that none of the unbuilt upon lots are eligible to be built upon. Hanley stated that it is his opinion that the six remaining lots can be built upon under current law, but are not vested under Measure 49 because of the county's consistent application of substantial construction.

Mr. Trompke asked if someone could buy Lot 4 after there is a substantial construction on it and continue to construct a home. Hanley stated that as in Lot 3, there was a foundation built on it, it was signed off on by the building department, and the county gave a substantial construction evaluation prior to December 6.

Mr. Trompke asked if that could be done in this coming June on Lot 4. Hanley stated he believes a new owner would have to go under the current law by making an application for a nonfarm dwelling and be successful and complete substantial construction. They could then sell it with a substantial construction with the ability for completion of the home.

Mr. Trompke stated that really refines the differences as to whether a potential purchaser would have to go through a non farm dwelling process with all the uncertainties and the potential of ending up with no ability to build. The Cochrans then don't have a vested right to use the property in a residential fashion. That is really the main issue.

Commissioner Hibbert asked what risk there is that it would not be approved for a nonfarm dwelling since the county recognizes the plat as recorded. Hanley stated that there are four specific criteria for a nonfarm dwelling outlined in state statute. In Eastern Oregon you must demonstrate that the site of the dwelling is generally unsuitable for agricultural practices.

Commissioner MacLeod stated that the county has been told you cannot find high value farmland as unsuitable. Hanley stated that each nonfarm dwelling application is evaluated separately and he could not recall if any had been denied.

Commissioner MacLeod asked if looking at this as a whole there has not been more investment in this than any other Measure 37 claim. Isn't their substantially more effort and investment in this than any other? Hanley stated there are similar subdivisions in the same kind of situation where they haven't built out all of the lots. Not many because Union County did not have many that tried to meet the transferability requirement under Measure 37. There were 58 claims and 56 of those were valid claims and a small percentage of those pursued transferability.

Commissioner McClure asked if the transferability issue was every completely adjudicated under Measure 37. Hanley stated there were Circuit Court decisions but no Court of Appeals or Supreme Court decisions.

Commissioner McClure commented that Union County implemented the substantial construction process to be comfortable in addressing the transferability, not because it

was required by any other body. Hanley stated it was implemented because the Circuit Court decisions said they were not transferable, so the county created a process to make them transferable.

Commissioner MacLeod stated that the applicants have been consistently taking the steps necessary within the system to complete their development within the opportunities available. She believes the applicants have been working in good faith.

Mr. Trompke stated that on the criteria for building on a site, Eastern Oregon is different than Western Oregon where there are lots of LUBA and Court of Appeals cases that don't allow building on parcels that can be farmed. There are a couple of cases that disallow sites on a parcel and because the decisions have been remanded it is unclear if they have found solutions on all of them. It is possible some lots will become unbuildable if vesting is denied and that would result in a serious harm.

Phil Berling stated he has a vested interest in the matter. He has tried to help the Cochrans get through the process quickly. He feels they have acted in good faith and tried to be expedient in doing everything they were instructed to do, always with the intention of building out the entire subdivision. In that good faith and fairness he feels it should be allowed.

Bart Cochran, son of Mr. & Mrs. Cochran, stated that much of this land is marshy and not really farmable. As they are broken up it would be very difficult to farm. DEQ has approved all the lots for building. The boundaries are set and it would be very difficult to say it would be good for the farming industry to try and farm the parcels. Much of it is under water a great deal of the time.

John Collins stated that he has been involved with Mr. Berling on the applications for the Cochrans. He feels that Mr. and Mrs. Cochran did everything feasible under the law when Measure 37 was available to them. They created the lots, and part of them were sold. The law did somewhat change with Measure 49. The lots were legally created through the process and now Measure 49 has come back and says they are not legally created. If you take away the ability to put residences on the lots, they become worthless in his mind. The Commissioners have the ability to make the decision locally and allow the Cochrans to finish out the subdivision on property they have owned since the 1960s. They are only asking to complete something that should have been allowed through the Measure 37 process and not altered by Measure 49. He asked the Commissioners to react positively and keep it locally.

Phil Berling stated that building out the subdivision is also beneficial to the county because the result will be tax revenue from twelve residences. The property is currently taxed as agricultural land at a substantially lower value.

Stewart Sholund stated that he is a neighbor to the Cochran property and as a farmer it makes no sense to farm those broken up parcels, so it seems in the interest of fairness and practicality they should go ahead with the development. What he thinks is a crime is to take good farmland and develop residences, but that is not the case with this property. It is mostly rocks where you can do some grazing and maybe raise some alfalfa but no tillable crops. It seems practical to him to take this instead of good farm ground.

With no further testimony the hearing was closed.

Commissioner MacLeod moved to instruct staff to find this as a valid vested claim with findings that the legal requirements have been met. It has had a regular and steady investment of efforts to work through the system that has been changing. Existing conditions do not make it farmable and trying to find the best and greatest use of the land and find this as a vested piece of property. Motion died for lack of a second.

Commissioner McClure stated that he did not necessarily disagree but would like to have time to review the record in detail before making a final decision.

The matter was scheduled for further consideration on March 19 at 10:00 with no additional testimony to be accepted.

Adjournment
The meeting was then adjourned at 12:37 a.m.

Respectfully submitted,

Shelley Burgess
Executive Secretary