

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Nos. CL 05-11, CL 05-13, CL 05-14 )  
CL 05-15, CL 05-16, and CL 05-17 Submitted by Jeff Yarbor ) Order No. 47 -2005  
for Compensation Under Measure 37 )

WHEREAS, on January 5, 2005, Columbia County received seven claims under Measure 37 and Order No. 84-2004 from Jeff Yarbor related to 7 illegally created pieces of property on Pittsburg Road having Tax Account Numbers 5230-000-00400, 5230-0000-00405, 5230-000-00406, 5230-000-00407, 5230-000-00600, 5230-000-00604, and 5230-000-00605, as described in Book 114, Pages 397-398 of the Columbia County Deed Records; and

WHEREAS, the Board of County Commissioners approved Claim Number CL 05-12 (Tax Account Number 5230-000-00405) on June 29, 2005; and

WHEREAS, according to the information presented with the claim, Jeff Yarbor became the sole fee owner (or represents the owner) of each of the other pieces of property as follows:

- 5230-000-00400- To Jeff Yarbor from the Estate of Irene Yarbor by Personal Representative's Deed dated June 11, 2004;
- 5230-000-00406- To the Trustee of the John and Irene Yarbor Living Trust from John and Irene Yarbor by Bargain and Sale Deed in 1991
- 5230-000-00407- To Jeff Yarbor from John R. Yarbor by Warranty Deed in 2004;
- 5230-000-00600- To Jeff Yarbor from John R. Yarbor by Warranty Deed in 2004;
- 5230-000-00604- To Jeff Yarbor from the John and Irene Living Trust by Warranty Deed in 2004;
- 5230-000-00605- To Jeff Yarbor from the Estate of Irene Yarbor by Personal Representative's Deed dated May 12, 2004; and

WHEREAS, after 1984, Columbia County has regulated minimum lot sizes for the division of Primary Forest (PF-76) land; and

WHEREAS, the above listed parcels are currently zoned Primary Forest (PF-76) pursuant to the Columbia County Comprehensive Plan; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 506.1, the minimum lot or parcel size for new land divisions in the PF-76 Zone is 76 acres; and

WHEREAS, Mr. Yarbor claims that the minimum lot size requirement for new land divisions has restricted the use of the property and has reduced the value of the property, but has not submitted sufficient evidence to establish a reduction in value of any of the illegally created parcels of property; and

WHEREAS, pursuant to Measure 37, in lieu of compensation the Board may opt to not apply (hereinafter referred to as "waive" or "waiver") any land use regulation that restricts the use of the Claimant's property and reduces

the fair market value of the property to allow a use which was allowed at the time the Claimant acquired the property;  
d

WHEREAS, the Claimant has not established that there has been a reduction in value of the property, and is, therefore, not entitled to compensation under Measure 37; and

WHEREAS, even if there is a reduction in the value of the property, the Claimant is only entitled to waiver of 506.1 to the extent necessary to allow a use of the property which was allowed in 1991 for Tax Account Number 5230-000-00406, and in 2004 for the remaining parcels; and

WHEREAS, in 1991 and 2004, the division of any of the cited parcels into parcels having a minimum lot size of 76 acres was allowed, but the division of the cited parcels into parcels having less than 76 acres was not allowed;

NOW, THEREFORE, it is hereby ordered as follows:

1. The Board of County Commissioners adopts the findings of fact set forth in the Staff Reports for Claim Numbers CL05-11, CL 05-13, CL 05-14; CL 05-15, CL 105-16, and CL 05-17, dated May 28, 2005, which are attached hereto as Attachments 1 through 6, respectively, and are incorporated herein by this reference.
2. The Board of County Commissioners finds that the Claimant is neither entitled to compensation under Measure 37 for Claim Numbers CL05-11, CL 05-13, CL 05-14, CL 05-15, CL 05-16, and CL 05-17, nor waiver of County regulations in lieu thereof to allow the use of the such property for 76 acre minimum lots.

The Board of County Commissioners denies CL05-11, CL 05-13, CL 05-14, CL 05-15, CL 05-16, and CL 05-17.

Dated this 29th day of June, 2005

Approved as to form

By: Sarah Tsou  
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: [Signature]  
Anthony Hyde, Chair

By: [Signature]  
Joe Corsiglia, Commissioner

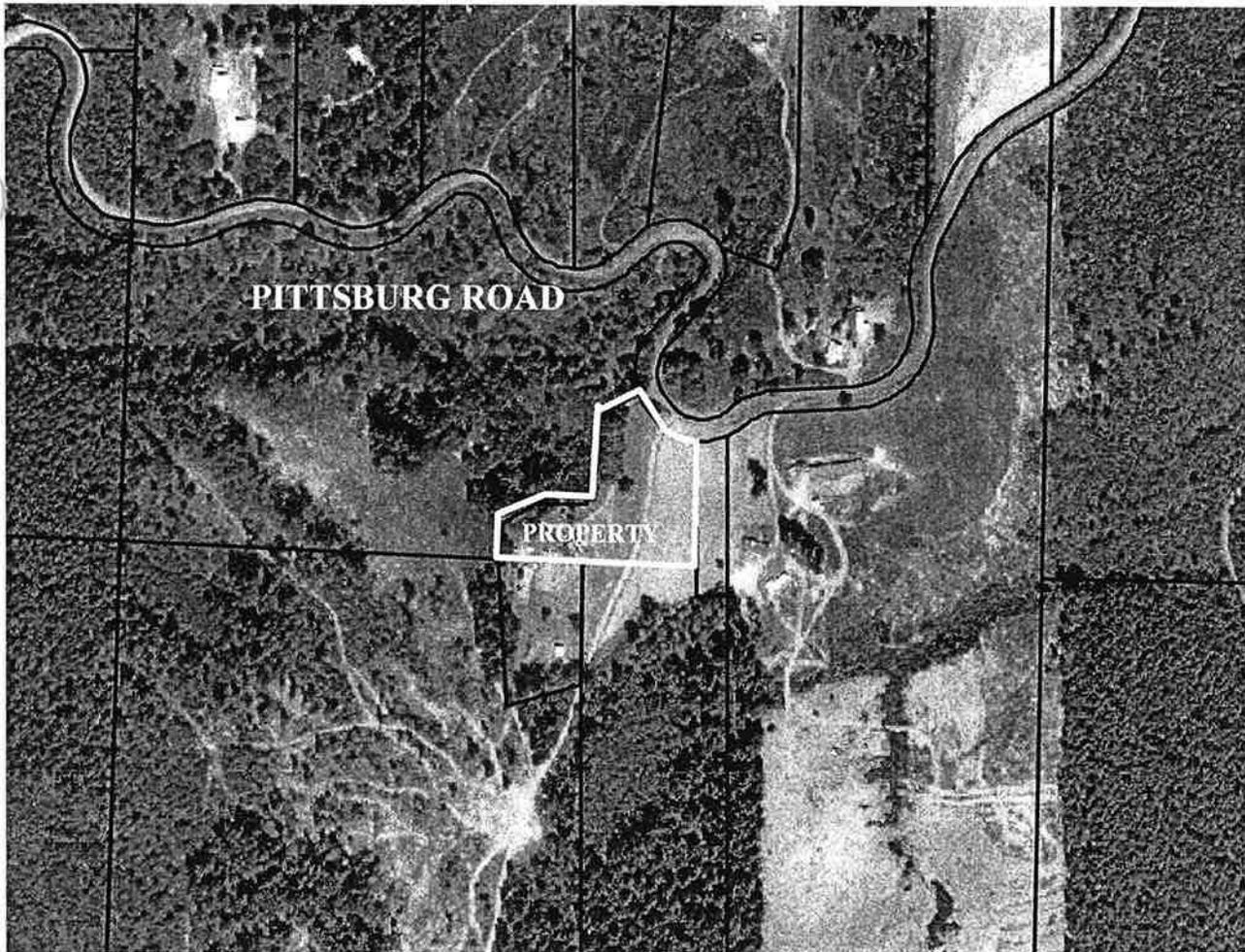
By: [Signature]  
Rita Bernhard, Commissioner

**COLUMBIA COUNTY  
LAND DEVELOPMENT SERVICES**

**Measure 37 Claim**

**Staff Report**

**DATE:** May 28, 2005  
**FILE NUMBER:** CL 05-11  
**CLAIMANT/OWNER:** Jeff Yarbor  
P.O. Box 686  
St. Helens, Oregon  
**PROPERTY LOCATION:** 28162 Pittsburg Road  
St. Helens, Oregon 97051



**ACCOUNT NUMBER:** 5230-000-00400

**TAX**

**ZONING:** Primary Forest(PF-76)  
**SIZE:** 3.32 Acres  
**REQUEST:** To sell/develop the non-conforming PF-76 property for residential development.  
**CLAIM RECEIVED:** 1/5/05      **180 DAY DEADLINE:** 7/04/05

**I. BACKGROUND:** Jeff Yarbor filed a claim under Measure 37 on January 5, 2005. The amount of the claim is \$43,160. The claim is based upon the premise that the lot cannot be lawfully created under current PF-76, Primary Forest, zoning minimum lot size regulations and that the full value of the parcel has been lost. The Claimant submitted a Comparative Market Analysis prepared by the Claimant listing values of comparably sized rural residential, forest and farm-forest zoned parcels. Claimant states his desire to lawfully create the subject parcel and sell/develop it for residential use.

## **II. CLAIM SUMMARY:**

### **A. PROPERTY OWNER AND OWNERSHIP INTERESTS:**

1. **Current Ownership:** The claimant submitted a Title Report issued by Ticor Title on January 12, 2005 which shows:  
Vested In: Jeffery R. Yarbor, an estate in fee simple  
Subject to: Right of way easement in favor of PGE; a mineral rights reservation, an easement for ingress and egress above and below the surface implied by a mineral rights reservation in favor of Wallace and Darlene Wodecki; right of way easement in favor of Western Oregon Electric and a Deed of Trust, given to secure indebtedness.
2. **Date of Acquisition:** Claimants submitted deeds by which claimant's mother, Irene Yarbor, acquired the property in 1952(Warranty Deed recorded at Book 115; Pages 397-398). A Personal Representative's Deed issued by Ticor Title was submitted indicating that Jeff Yarbor, personal representative for his mother Irene Yarbor's estate conveyed the subject parcel from the estate to himself on June 11, 2004.

### **B. APPLICANT/RELATIONSHIP TO OWNER**

The Claimant, Jeff Yarbor is the current owner of the property who has signed the claim for compensation.

### **C. FAMILY MEMBER STATUS**

The property was originally acquired by Irene Yarbor, Claimants mother, in 1952. Claimant Jeff Yarbor acquired an interest in the property by personal representative's deed in 2004.

### **D. LAND USE REGULATIONS IN EFFECT AT TIME OF ACQUISITION**

The property was unzoned when the Claimant's mother acquired the property in 1952. Primary Forest(PF-76) regulations establishing a minimum lot size of 76 acres were enacted in 1984 and were in effect when the claimant acquired the property in 2004.

CCZO Section 506.1

New land divisions must be a minimum of 76 acres(State Law 80 acres)

Effective Date: July 1984.

**F. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE**

Claimant states that "this property could be sold as a small parcel". He states that the PF-76 zoning district standards restrict him from selling the parcel. It may be inferred that the claimant is citing the minimum lot size restriction in CCZO Section 506.1 of 76 acres which prevents him from making the subject property a lawful parcel that may be sold.

**G. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED**

**1. Value of Property As Regulated:**

The claimant has submitted a Comparative Market analysis, dated 12/14/2004, prepared by himself which lists some prices for comparably sized residential properties. He states "as is" fair market value of the subject property is \$180,000 but provides no explanation as to how he arrived at that number. Department records indicate that the property has a single family home on it. An assessment record was submitted indicating the real market value of improvements value to be \$50,800 and a real market value of land to be \$76,500 for a total real market value of 127,300. Staff understands the claimant to be saying that the property cannot be legally parceled off and sold, so that all of its potential value of \$180,000 has been lost.

**2. Value of Property Not Subject to Cited Regulations and Developed As Proposed.**

A Comparative Market Analysis submitted lists some comparably sized properties and concludes that the average fair market value is \$120,230. The claim is for \$43,160.

**H. COMPENSATION DEMANDED**

\$43,160.

**DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:**

Claimants family(mother) acquired the property in 1952 before the cited land use regulation became effective. Claimant acquired the property from his mother's estate and therefore meets the threshold criterion for compensation under Measure 37. Claimant acquired the property in 2004, after the cited land use regulations became effective and therefore does not qualify for waiver of the cited regulations under Measure 37.

**CRITERIA FOR REVIEW**

**COLUMBIA COUNTY ORDINANCE 84-2004**

**Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37**

- III. PRE-APPLICATION CONFERENCE. Before submitting a Claim, owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

**Finding 1:** The applicant attended a pre-application conference with staff to obtain information concerning Measure 37 and the County claims process.

- IV. APPLICATION FEE. The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

**Finding 2:** The applicant submitted an \$800.00 filing fee for claims on seven separate but contiguous parcels. The fee was determined by the Board of Commissioners in response to a request by the claimant for a multiple parcel waiver.

V. CLAIM FILING PROCEDURES.

- A. An Owner Seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is subject to the claim at the time the claim is submitted. The claim shall be filed with the Land Development Services Department.

**Finding 3:** The claim was filed with Land Development Services on January 5, 2004. According a title report prepared by Ticor Title, dated January 12, 2005, Jeff Yarbor is current owner of an estate in fee simple.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners.

**Finding 4:** The applicant submitted the Claim for Compensation under Measure 37 on the claim form approved by the Board of County Commissioners.

- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Claimant establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.

**Finding 5:**

A. Claim Form

The Claimant has submitted a Claim under Measure 37 on the appropriate form(Attachment 1).

B. Compensation Documentation

The Claimant has requested compensation in the amount of \$43,160. The applicant has provided justification for this amount of compensation in the form of a Comparative Market Analysis which lists the prices of some comparably sized residential properties. He states that the value of the property is \$180,000 but does not explain how the documentation is related to that amount. He submitted a County tax assessment print out which indicates a current land and improvements real market value for the property of \$127,300. His claim is for \$43,160.

The Comparative Market analysis listed properties that were generally comparatively sized, but lacked many other important common characteristics needed to determine fair market value. These characteristics include availability of services, existing improvements, costs of development and location in/out of the Urban Growth Boundary. The analysis shows the average price of listed properties to be between \$110,000 and \$120,000.

Staff finds the documentation of reduced fair market value due to the cited regulation is inadequate to determine the specific amount of compensation due under Measure 37.

#### C. Eligibility Under Cited Regulations

The family(mother) acquired the property in 1952 before the cited PF-76 minimum lot size regulations were enacted(1984). The claimant acquired the property in 2004 from his mother's estate after the enactment of the cited regulation. Under Measure 37, the County may provide compensation based on the acquisition date fo a family member. In lieu of compensation, the Board may decide not to apply an offending regulation, but only to the extent that the offending regulation was enacted after the current owner of the property acquired the property. Therefore, because the current owner acquired the property after PF-76 regulations were enacted, the County may not waive the regulations.

### MEASURE 37

**(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.**

**(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.**

#### **Finding 6:**

##### A. Restrictions on Use

The parcel is not a lawfully created parcel. Claimants allege that CCZO Section 506.1, minimum lot size regulations in the PF-76 zoning district restrict the lawful creation a parcel and sale of the subject property. The cited regulation limits newly created parcels to a minimum of 76 acres. The subject parcel is 3.32 acres. Therefore staff finds that the cited regulation does restrict the proposed lawful parcel division and separate development of the parcel for residential use.

##### B. Reduction in Fair Market Value Due to Cited Regulations

As noted in Finding 5, Staff finds that the documentation submitted is not adequate to demonstrate the specific amount of the reduction in fair market value of the subject property and therefore the specific amount of compensation due under Measure 37. However, the property could have been divided as currently configured on the family acquisition date in 1952 and it is reasonable to assume that since the property cannot be lawfully divided due to the cited regulation, some amount of reduction of fair market value of the property has occurred as a result

**(3) Subsection (1) of this act shall not apply to land use regulations:**

**(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;**

**(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;**

**(C) To the extent the land use regulation is required to comply with federal law;**

**(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or**

**(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.**

**Finding 7:** Staff finds that none of the cited regulations identified by the claimant qualify for any of the exemptions listed.

**(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.**

**Finding 8:** Should the Board determine that the that the claimant has demonstrated a specific reduction in fair market value of the property due to the cited regulation(s), the Board may pay compensation in the amount of the reduction in fair market value caused by said regulations or in lieu of compensation, modify, remove, or not apply the land use regulations enacted or enforced which restrict the use allowed at the time the Claimant acquired the property in 2004.

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

**Finding 9:** The subject claim arises from CCZO Section 506.1, PF-76 minimum lot size regulations enacted in 1984 prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on January 5, 2005 which is within two years of the effective date of Measure 37.

**(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of**

**this act, in 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 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.**

**Finding 10:** As noted in Findings 6 and 7 above, Staff finds that the 1984 enactment of PF-76 minimum lot size regulations(CCZO Section 506.1) restricts the use of the property so as to possibly reduce the fair market value of the property. Therefore, if the Board finds that the cited regulations have reduced the value of the property, the Board should authorize payment of just compensation in the amount of the reduction in fair market value. Or, in lieu of such compensation, the Board should waive only regulations necessary to allow a use of the property which was allowed at the time of acquisition by the Claimant in 2004. In this case it is not necessary to waive any regulations to allow a use of the property that was allowed in 2004.

**STAFF RECOMMENDATION**

Based on the above findings, it is Staff's opinion that the claimant has met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimants as a basis for their claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulations below have been found to meet these requirements of a valid Measure 37 claim

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 506.1	Minimum parcel size for new land divisions is 76 acres. New land divisions of less than 76 acres shall be allow only for specified permitted and conditionally permit uses in the PF-76 zone, excluding nonresource related dwellings.	Yes	Possibly	No

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulations reduced the value of the claimant's property, and deny the claim because the restricting regulations were enacted prior to the claimant's acquisition in 2004.

Columbia County

COLUMBIA COUNTY



OREGON

### Measure 37 Claim

**Fee: \$500.00** (Required with application)  
Land Development Services - Planning Division  
Columbia County Courthouse  
230 Strand, St. Helens, OR 97051 (503) 397-1501

#### Claimant Information (attach additional pages for multiple Claimants):

Jeffery R. YARBOR

Name(s) of Claimant(s):

P.O. Box 686

Mailing address for Claimant(s)

Mailing address for Claimant(s)

503-3960121

Daytime phone #

St Helens Oregon 97051

City, State, Zip

City, State, Zip

#### Property Information:

28162 Pittsburg Rd St Helens Oregon 97051

Property location/address

02-19-2-5230-000-00400

Property tax account #

#### Claim Information:

1) Amount of claim: \$ 43,160

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:

This property could be sold as a small parcel

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

P.E 76

4) Have you applied for land use approval for your intended use of the property? No

If so, when? NO

If so, what did you apply for? \_\_\_\_\_

If so, what was the file number? \_\_\_\_\_

5) When did you acquire the property: June 8 2004

6) Ownership of property:  Sole  Joint  Other (please list): \_\_\_\_\_

7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:  
\_\_\_\_\_

8) Did you acquire the property from a family member? (Family member includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandchild, the estate of any of the family members listed, or a legal entity owned by any one or a combination of such family members) Yes

If so, from who? Irene M. YARBOR

If so, what is the family relationship to you? Mother

If so, when did you acquire the property? June 8 2004

If so, when did your family member acquire the property? 1951

9) List all documentation that you have to establish that the fair market value of the property has been reduced by the land use regulation(s) listed. Attach any such documentation, including appraisals, to this Claim Form: Attached to the Back

**SIGNATURES**

I/we certify that the information contained in and attached to this claim form is accurate and complete.

Jeff Yarbor  
Claimant

12/20/2004  
Date

Claimant

Date

Claimant

Date

Claimant

Date

**FOR OFFICIAL USE ONLY**

Date Received \_\_\_\_\_ Receipt # \_\_\_\_\_ Received By: \_\_\_\_\_

Tax Lot 400  
3.32  
Zoned PF76

as is cannot be sold

Fair market Value.           \$180,000

Loss of                               180,000

Zoning prevents this Tax Lot  
to be sold as is

# COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

## Measure 37 Claim

### Staff Report

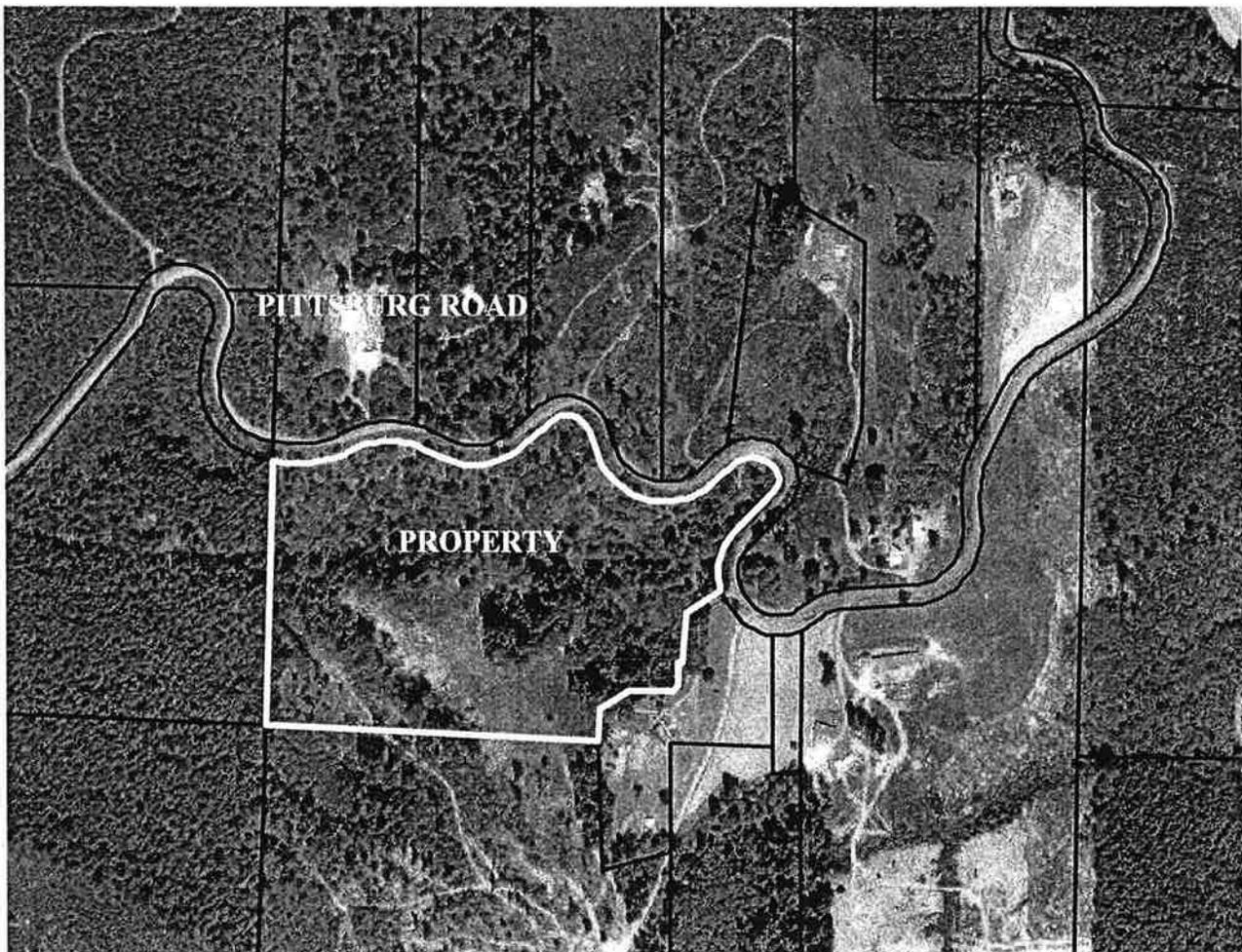
**DATE:** May 28, 2005

**FILE NUMBER:** CL 05-13

**CLAIMANT** Jeff Yarbor

**OWNER:** John V. Yarbor and Irene M. Yarbor, Trustee(s) of the  
John V. Yarbor and Irene M. Yarbor Living Trust.  
P.O. Box 686  
St. Helens, Oregon

**PROPERTY LOCATION:** 28162 Pittsburg Road  
St. Helens, Oregon 97051



**TAX ACCOUNT NUMBER:** 5230-000-00406  
**ZONING:** Primary Forest(PF-76)  
**SIZE:** 27.23 Acres  
**REQUEST:** To divide PF-76 property for residential development.  
**CLAIM RECEIVED:** 1/5/05      **180 DAY DEADLINE:** 7/04/05

**I. BACKGROUND:** Jeff Yarbor filed a claim under Measure 37 on behalf of the owner, the John V. Yarbor and Irene M. Yarbor Living Trust(Trust) on January 5, 2005. The amount of the claim on the claim form is \$270,000. However, other claim documents indicate the loss in value is \$243,070. It is understood that the correct claim amount is \$243,070 from the context of the submitted documents. The claim is based upon the premise that the lot cannot be further divided under current PF-76, Primary Forest, zoning minimum lot size regulations. Furthermore, the claimant has not submitted documentation that he is the current owner or may legally represent the Trust. The claimant submitted a Comparative Market Analysis prepared by the Claimant listing values of various rural residential, forest and farm-forest zoned parcels. Claimant states his desire to further divide the subject property for residential use.

## **II. CLAIM SUMMARY:**

### **A. PROPERTY OWNER AND OWNERSHIP INTERESTS:**

1. **Current Ownership:** The claimant submitted a Title Report issued by Ticor Title on January 12, 2005 which shows:  
Vested In: John V. Yarbor and Irene M. Yarbor, Trustee(s) of the  
John V. Yarbor and Irene M. Yarbor Living Trust.  
There is no documentation that claimant, Jeff Yarbor owns the property.  
Subject to: Right of way easement in favor of PGE; a mineral rights reservation, an easement for ingress and egress above and below the surface implied by a mineral rights reservation in favor of Wallace and Darlene Wodecki; right of way easement in favor of Western Oregon Electric and a Deed of Trust, given to secure indebtedness.
2. **Date of Acquisition:** Claimants submitted deeds by which claimant's mother, Irene Yarbor, acquired the property in 1952(Warranty Deed recorded at Book 113; Pages 397-398). The property was conveyed by John and Irene Yarbor to the John V. Yarbor and Irene M. Yarbor Living Trust in 1991(Bargain and Sale Deed, Instrument # 91-0995). There is no documentation showing claimant Jeff Yarbor as a property owner. Evidence is required that claimant Jeff Yarbor has acquired a property interest or legally represents the Trust.

### **B. APPLICANT/RELATIONSHIP TO OWNER**

The Claimant, Jeff Yarbor indicates he is the owner as of 1991 but no evidence has been submitted to verify that he is the current owner of the property. Jeff Yarbor has signed the claim for compensation.

### **C. FAMILY MEMBER STATUS**

The property was originally acquired by Irene Yarbor, Claimants mother, in 1952. The property was conveyed by John and Irene to a Living Trust in their names in 1991. Claimant Jeff Yarbor states in the claim that he acquired the property in 1991 but there is no documentation of such acquisition. If such documentation is provided, there appears to be family succession of property ownership interest since 1952.

#### D. LAND USE REGULATIONS IN EFFECT AT TIME OF ACQUISITION

The property was unzoned when the Claimant's mother acquired the property in 1952. Primary Forest(PF-76) regulations establishing a minimum lot size of 76 acres were enacted in 1984 and were in effect when the claimant alleges that he acquired the property in 1991.

#### E. LAND USE REGULATION(S) APPLICABLE TO SUBJECT PROPERTY ALLEGED TO HAVE REDUCED FAIR MARKET VALUE/EFFECTIVE DATES/CLAIMANT ELIGIBILITY

CCZO Section 506.1

New land divisions must be a minimum of 76 acres(State Law 80 acres)

Effective Date: July 1984.

#### F. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant states that "this property could be divided into smaller portions" . However, he does not indicate lots sizes for the intended property division. He states that the PF-76 zoning district standards restrict him from dividing the property. It may be inferred that the claimant is citing the minimum lot size restriction in CCZO Section 506.1 of 76 acres which prevents him from dividing the property into smaller lots.

#### G. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

##### 1. Value of Property As Regulated:

The claimant has submitted a Comparative Market analysis, dated 12/14/2004, prepared by the claimant which lists some prices for various farm-forest and residential properties. He states "as is" fair market value of the subject property is \$27,230 based on his assumption that the property is only worth the value of timber on the property and that Longview Fibre will only pay up to \$1000 per acre for it. Department records indicate that the property is undeveloped. An assessment record was submitted indicating the real market value of the property to be \$111,000.

##### 2. Value of Property Not Subject to Cited Regulations and Developed As Proposed.

A Comparative Market Analysis submitted lists some variably sized farm-forest and residential properties and concludes that the fair market value is \$270,300 but provides no explanation as to how he arrived at that number .

#### H. COMPENSATION DEMANDED

The claim is for \$243,070(\$270,300 - \$27,230).

#### **DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:**

Claimants family(mother) acquired the property in 1952 before the cited land use regulation became effective. The claimant states that he acquired the property in 1991 but provided no documentation of the acquisition date. Claimant has not established his acquisition date and that he is the current owner of the property or legally represents the Trust in order qualify under Measure 37 for filing a claim for compensation either on behalf of the trust or personally.

## CRITERIA FOR REVIEW

### COLUMBIA COUNTY ORDINANCE 84-2004

#### Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37

- III. PRE-APPLICATION CONFERENCE. Before submitting a Claim, owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

**Finding 1:** The claimant attended a pre-application conference with staff to obtain information concerning Measure 37 and the County claims process.

- IV. APPLICATION FEE. The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

**Finding 2:** The claimant submitted an \$800.00 filing fee for claims on seven separate but contiguous parcels including the subject property. The fee was determined by the Board of Commissioners in response to a request by the claimant for a multiple parcel waiver.

- V. CLAIM FILING PROCEDURES.

- A. An Owner Seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is subject to the claim at the time the claim is submitted. The claim shall be filed with the Land Development Services Department.

**Finding 3:** The claim was filed with Land Development Services on January 5, 2004. According a title report prepared by Ticor Title, dated January 12, 2005, the property is owned by the John and Irene Yarbor Living Trust. Claimant, Jeff Yarbor must provide documentation that he has an ownership interest in the property or legally represents the Trust in order to file a Measure 37 claim.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners.

**Finding 4:** The applicant submitted the Claim for Compensation under Measure 37 on the claim form approved by the Board of County Commissioners.

- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Claimant establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.

**Finding 5:**

**A. Claim Form**

The Claimant has submitted a Claim under Measure 37 on the appropriate form(Attachment 1).

**B. Compensation Documentation**

The applicant has provided justification for this amount of compensation in the form of a Comparative Market Analysis which lists the prices of various farm-forest and residential properties. He states that the "as is" fair market value of the subject property is \$27,230 based on his assumption that the property is only worth the value of timber on the property and that Longview Fibre will only pay up to \$1000 per acre for it. The "as dividable" fair market value is \$270,300 but provides no explanation as to how he arrived at this amount. Department records indicate that the property is undeveloped. An assessment record was submitted indicating the real market value of the property to be \$111,000. The claim is for \$243,070(\$270,300 - \$27,230).

Staff finds the documentation of reduced fair market value due to the cited regulation is inadequate to determine the specific amount of compensation due under Measure 37.

**C. Eligibility Under Cited Regulations**

The family(mother) acquired the property in 1952 before the cited PF-76 minimum lot size regulations were enacted(1984). The claimant states that he acquired the property in 1991 from his parents living trust after the enactment of the cited regulation. Since no documentation has been provided showing the claimant as owner of the property, the claimant is not eligible for compensation under Measure 37. Should the claimant provide this documentation, he would be eligible based on his family succession of interest in the property.

**MEASURE 37**

**(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.**

**(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.**

**Finding 6:**

**A. Restrictions on Use**

Claimant alleges that CCZO Section 506.1, minimum lot size regulations in the PF-76 zoning district restrict the lawful creation of a parcel and sale of the subject property. The cited regulation limits newly created parcels to a minimum of 76 acres. The subject parcel is 27.23 acres. Therefore staff finds that the cited regulation does restrict the proposed division of the property into smaller parcels. However, the minimum lot size regulation does not restrict the sale of the property.

## B. Reduction in Fair Market Value Due to Cited Regulations

As noted in Finding 5, Staff finds that the documentation submitted is not adequate to demonstrate the specific amount of the reduction in fair market value of the subject property and therefore the specific amount of compensation due under Measure 37. However, the property could have been divided as currently configured on the family acquisition date in 1952 and it is reasonable to assume that since the property cannot be lawfully divided due to the cited regulation, some amount of reduction of fair market value of the property has occurred as a result

### **(3) Subsection (1) of this act shall not apply to land use regulations:**

**(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;**

**(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;**

**(C) To the extent the land use regulation is required to comply with federal law;**

**(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or**

**(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.**

**Finding 7:** Staff finds that none of the cited regulations identified by the claimant qualify for any of the exemptions listed.

**(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.**

**Finding 8:** Depending on satisfactory documentation of ownership and date of acquisition by the claimant, should the Board determine that the that the claimant has demonstrated a specific reduction in fair market value of the property due to the cited regulation(s), the Board may pay compensation in the amount of the reduction in fair market value caused by said regulations or in lieu of compensation, modify, remove, or not apply the land use regulations enacted or enforced which restrict a use allowed at the time the Claimant acquired the property.

**(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the**

**enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.**

**Finding 9:** The subject claim arises from CCZO Section 506.1, PF-76 minimum lot size regulations enacted in 1984 prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on January 5, 2005 which is within two years of the effective date of Measure 37.

**(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in 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 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.**

**Finding 10:** As noted in Findings 6 and 7 above, Staff finds that the 1984 enactment of PF-76 minimum lot size regulations(CCZO Section 506.1) restricts the use of the property so as to probably reduce the fair market value of the property. Therefore, if the claimant provides adequate documentation that he is the current owner of the property and his date of acquisition and if the Board finds that the cited regulations have reduced the value of the property, the Board should authorize payment of just compensation in the amount of the reduction in fair market value. Or, in lieu of such compensation, the Board should waive only regulations necessary to allow use of the property which was allowed at the time of acquisition.

### **STAFF RECOMMENDATION**

Based on the above findings, including that the claimant has not provided proof of his acquisition date, that he legally represents the Trust, nor shown an unbroken family ownership, it is Staff's opinion that the claimant has not met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimants as a basis for their claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulations below have been found to meet these requirements of a valid Measure 37 claim

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 506.1	Minimum parcel size for new land divisions is 76 acres. New land divisions of less than 76 acres shall be allow only for specified permitted and conditionally permit uses in the PF-76 zone, excluding nonresource related dwellings.	Yes	Probably	No

Staff recommends that the Board of County Commissioners deny the claim.

*Columbia County*

COLUMBIA COUNTY



OREGON

# Measure 37 Claim

Fee: \$500.00 (Required with application)

Land Development Services - Planning Division  
Columbia County Courthouse

230 Strand, St. Helens, OR 97051 (503) 397-1501

## Claimant Information (attach additional pages for multiple Claimants):

Jeffery R YARBOR  
Name(s) of Claimant(s):

503 396 0121  
Daytime phone #

P.O. Box 686  
Mailing address for Claimant(s)

St Helens Oregon 97051  
City, State, Zip

\_\_\_\_\_  
Mailing address for Claimant(s)

\_\_\_\_\_  
City, State, Zip

### Property Information:

28162 Pittsburg Rd St Helens Ore 97051  
Property location/address

02-19-2-5320-000-00406  
Property tax account #

### Claim Information:

1) Amount of claim: \$ 270,000

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:

This property could be divided into smaller portions

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

P.F. 7.6

4) Have you applied for land use approval for your intended use of the property? NO

If so, when? \_\_\_\_\_

If so, what did you apply for? \_\_\_\_\_

If so, what was the file number? \_\_\_\_\_

5) When did you acquire the property: Feb 20, 1991  
6) Ownership of property:  Sole  Joint  Other (please list): \_\_\_\_\_

7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:  
No

8) Did you acquire the property from a family member? (Family member includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandchild, the estate of any of the family members listed, or a legal entity owned by any one or a combination of such family members) Yes

If so, from who? John & Irene M YARBOR

If so, what is the family relationship to you? Mother & Father

If so, when did you acquire the property? Feb 20 1991

If so, when did your family member acquire the property? 1951

9) List all documentation that you have to establish that the fair market value of the property has been reduced by the land use regulation(s) listed. Attach any such documentation, including appraisals, to this Claim Form: \_\_\_\_\_

**SIGNATURES**

I/we certify that the information contained in and attached to this claim form is accurate and complete.

Jeff Yulem  
Claimant

12/20/2004  
Date

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Date

**FOR OFFICIAL USE ONLY**

Date Received \_\_\_\_\_ Receipt # \_\_\_\_\_ Received By: \_\_\_\_\_

Tax Lot 406  
27.23 acres  
Zoned PF 76

As is	# 27,230
Fair Market Value	# 270,300
Loss of	# 243,070

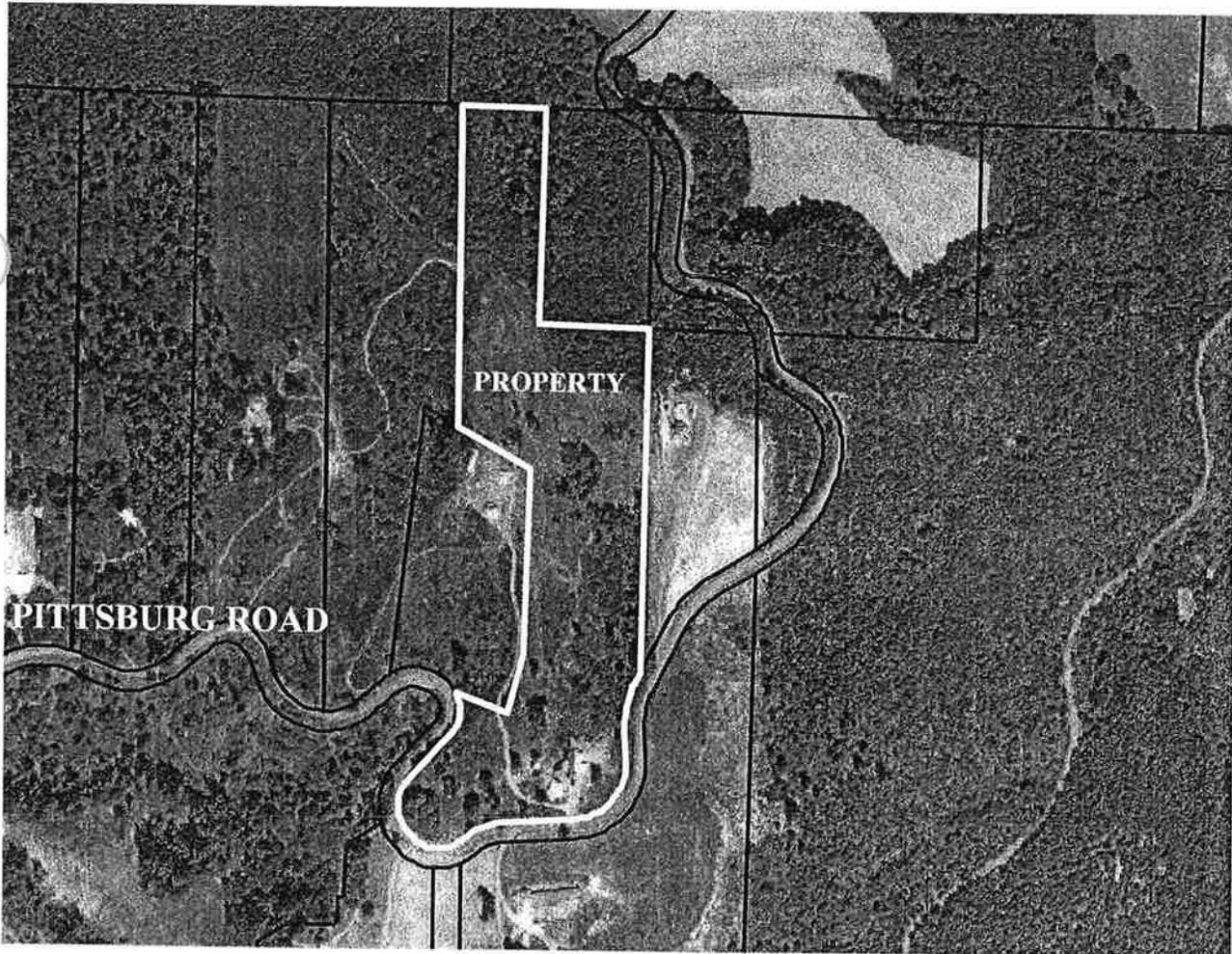
Because of zoning this property  
can not be sold for what it is worth  
Longview fiber will only pay <sup>upto \$</sup> 1,000  
per acre for reforested property

**COLUMBIA COUNTY  
LAND DEVELOPMENT SERVICES**

Measure 37 Claim

**Staff Report**

**DATE:** May 28, 2005  
**FILE NUMBER:** CL 05-14  
**CLAIMANT/OWNER:** Jeff Yarbor  
P.O. Box 686  
St. Helens, Oregon  
**PROPERTY LOCATION:** 28203 Pittsburg Road  
St. Helens, Oregon 97051



**TAX ACCOUNT NUMBER:** 5230-000-00407  
**ZONING:** Primary Forest(PF-76)

**SIZE:** 19.53 Acres

**REQUEST:** To divide PF-76 property for residential development.

**CLAIM RECEIVED:** 1/5/05      **180 DAY DEADLINE:** 7/04/05

**I. BACKGROUND:** Jeff Yarbor filed a claim under Measure 37 on January 5, 2005. The claim form indicates the amount of the claim is \$253,500. However, other information submitted with the claim indicates a loss in fair market value of \$103,500. The claim is based on an alleged loss of fair market value of \$103,500. The claim is based upon the premise that the lot cannot be further divided under current PF-76, Primary Forest, zoning minimum lot size regulation. The claimant submitted a Comparative Market Analysis prepared by the claimant listing values of various farm-forest and residential properties. Claimant states his desire to further divide the subject property for residential use.

## **II. CLAIM SUMMARY:**

### A. PROPERTY OWNER AND OWNERSHIP INTERESTS:

1. **Current Ownership:** The claimant submitted a Title Report issued by Ticor Title on January 12, 2005 which shows that the property is:  
Vested In: Jeffery R. Yarbor, an estate in fee simple  
Subject to: Right of way easement in favor of PGE; a mineral rights reservation, an easement for ingress and egress above and below the surface implied by a mineral rights reservation in favor of Wallace and Darlene Wodecki; right of way easement in favor of Western Oregon Electric and a Deed of Trust, given to secure indebtedness.
2. **Date of Acquisition:** Claimants submitted deeds by which claimant's mother, Irene Yarbor, acquired the property in 1952(Warranty Deed recorded at Book 113; Pages 397-398). In 2004, the property was conveyed to claimant, Jeffrey R. Yarbor from his brother John R. Yarbor(Warranty Deed; 2004-012953). Chain of title from Irene Yarbor to claimant Jeff Yarbor was not provided and is required to establish family succession of ownership and family acquisition date.

### B. APPLICANT/RELATIONSHIP TO OWNER

The Claimant, Jeff Yarbor is the current owner of the property who has signed the claim for compensation.

### C. FAMILY MEMBER STATUS

The property was originally acquired by Irene Yarbor, Claimants mother, in 1952. Claimant Jeff Yarbor acquired the property in 2004.

### D. LAND USE REGULATIONS IN EFFECT AT TIME OF ACQUISITION

The property was unzoned when the Claimant's mother acquired the property in 1952. However the property was zoned PF-76 in 2004 when the claimant acquired the property. Primary Forest(PF-76) regulations establishing a minimum lot size of 76 acres were enacted in 1984.

### E. LAND USE REGULATION(S) APPLICABLE TO SUBJECT PROPERTY ALLEGED TO HAVE

## REDUCED FAIR MARKET VALUE/EFFECTIVE DATES/CLAIMANT ELIGIBILITY

CCZO Section 506.1

New land divisions must be a minimum of 76 acres(State Law 80 acres)

Effective Date: July 1984.

## F. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant states that "this property can be divide into smaller parcels". Staff infers that the claimant is citing the minimum lot size restriction in CCZO Section 506.1 of 76 acres as preventing him from dividing the subject property into smaller parcels.

## G. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

### 1. Value of Property As Regulated:

The claimant has submitted a Comparative Market Analysis, dated 12/14/2004, prepared by himself which lists some prices for various farm-forest and residential properties. He states "as is" fair market value of the subject property is \$150,000 but provides no explanation as to how he arrived at that number. An assessment record was submitted indicating the 2004 real market value of the property is \$102,100.

### 2. Value of Property Not Subject to Cited Regulations and Developed As Proposed.

A Comparative Market Analysis submitted lists various farm-forest and residential properties. The claimant concludes that fair market value of the property if not subject to the cited regulation is \$270,300, but provides no explanation as to how he arrived at that number.

## H. COMPENSATION DEMANDED

The claim form indicates the claim is for \$253,500 but elsewhere in the claim documents the claimant states that the loss of fair market value is \$103,500. Staff infers that the correct claim amount to be \$103,500.

## **DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:**

Claimants family(mother) acquired the property in 1952 before the cited land use regulation became effective. Claimant acquired the property from his brother. A chain of title documents was not provided between acquisition by claimants mother and acquisition of the property by claimant from his brother. Claimant acquired the property in 2004, after the cited land use regulations became effective and therefore would not qualify for waiver of the cited regulations under Measure 37.

## **CRITERIA FOR REVIEW**

### COLUMBIA COUNTY ORDINANCE 84-2004

### Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37

- III. PRE-APPLICATION CONFERENCE. Before submitting a Claim, owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

**Finding 1:** The claimant attended a pre-application conference with staff to obtain information concerning Measure 37 and the County claims process.

- IV. APPLICATION FEE. The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

**Finding 2:** The claimant submitted an \$800.00 filing fee for claims on seven separate but contiguous parcels including the subject property. The fee was determined by the Board of Commissioners in response to a request by the claimant for a multiple parcel waiver.

V. CLAIM FILING PROCEDURES.

- A. An Owner Seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is subject to the claim at the time the claim is submitted. The claim shall be filed with the Land Development Services Department.

**Finding 3:** The claim was filed with Land Development Services on January 5, 2004. According a title report prepared by Ticor Title, dated January 12, 2005, Jeff Yarbor is current owner of an estate in fee simple.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners.

**Finding 4:** The applicant submitted the Claim for Compensation under Measure 37 on the claim form approved by the Board of County Commissioners.

- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Claimant establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.

**Finding 5:**

A. Claim Form

The Claimant has submitted a Claim under Measure 37 on the appropriate form(Attachment 1). However the claim is seriously lacking including a chain of title.

B. Compensation Documentation

The claimant has provided justification for this amount of compensation in the form of a Comparative Market Analysis which lists the prices of some comparably sized residential properties. He states that the "as is" value of the property is \$150,000 but does not explain how the documentation is related to that amount. He states that the "as dividable" value of the property is \$270,300 but does not explain how the documentation is related to that amount. He submitted a County tax assessment print out which indicates a current land and improvements real market value for the property of \$102,100. The Claimant has requested compensation in the amount of \$103,500.(\$270,300 - \$150,000 is \$120,300.

- The claimant states the difference is \$103,500)

Staff finds the documentation of reduced fair market value due to the cited regulation is inadequate to determine the specific amount of compensation due under Measure 37.

### C. Eligibility Under Cited Regulations

The family(mother) acquired the property in 1952 before the cited PF-76 minimum lot size regulations were enacted(1984). The claimant acquired the property in 2004 from his brother. A chain of title documents was not provided between acquisition by claimants mother and acquisition of the property by claimant from his brother. Claimant acquired the property in 2004, after the cited land use regulations became effective and therefore would not qualify for waiver of the cited regulations under Measure 37.

Therefore, if a chain of title is provided showing unbroken family ownership to 1952, staff finds that the claimant may be eligible for compensation based on the family acquisition date but is not eligible for modification or waiver of the cited regulation.

## MEASURE 37

**(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.**

**(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.**

### Finding 6:

#### A. Restrictions on Use

Claimants allege that CCZO Section 506.1, minimum lot size regulations in the PF-76 zoning district restrict the division of the property into smaller parcels. The cited regulation limits newly created parcels to a minimum of 76 acres. The subject parcel is 19.53 acres. Therefore staff finds that the cited regulation does restrict the proposed division of the property into smaller parcels.

#### B. Reduction in Fair Market Value Due to Cited Regulations

As noted in Finding 5, Staff finds that the documentation submitted is not adequate to demonstrate the specific amount of the reduction in fair market value of the subject property and therefore the specific amount of compensation due under Measure 37. However, the property could have been divided as currently configured on the family acquisition date in 1952 and it is reasonable to assume that since the property cannot be lawfully divided due to the cited regulation, some amount of reduction of fair market value of the property has occurred as a result

**(3) Subsection (1) of this act shall not apply to land use regulations:**

**(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a**

finding of compensation under this act;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(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.

**Finding 7:** Staff finds that none of the cited regulations enacted identified by the claimant qualify for any of the exemptions listed.

**(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.**

**Finding 8:** Should the Board determine that the claimant has demonstrated a specific reduction in fair market value of the property due to the cited regulation(s), the Board may pay compensation in the amount of the reduction in fair market value caused by said regulations or in lieu of compensation, modify, remove, or not apply the land use regulations enacted or enforced which restrict a use allowed at the time the Claimant acquired the property in 2004.

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

**Finding 9:** The claim arises from CCZO Section 506.1, PF-76 minimum lot size regulations enacted in 1984 prior to the effective date of Measure 37 on December 2, 2004. The claim was filed on January 5, 2005 which is within two years of the effective date of Measure 37.

**(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not 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.

**Finding 10:** As noted in Findings 6 and 7 above, Staff finds that the 1984 enactment of PF-76 minimum lot size regulations(CCZO Section 506.1) restricts the use of the property so as to probably reduce the fair market value of the property. Therefore, if the Board finds that the cited regulation has reduced the value of the property, the Board should authorize payment of just compensation in the amount of the reduction in fair market value. Or, in lieu of such compensation, the Board should waive only regulations necessary to allow a use of the property which was allowed at the time of acquisition by the Claimant in 2004. In this case, it is not necessary to waive any regulations or to allow a use of the property of the property that was allowed in 2004.

### STAFF RECOMMENDATION

Based on the above findings, it is Staff's opinion that the claimant has met the threshold requirements for proving a Measure 37 claim if a chain of title is provided establishing unbroken family ownership from 1952.

The following table summarizes staff findings concerning the land use regulations cited by the claimants as a basis for their claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulations below have been found to meet these requirements of a valid Measure 37 claim

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 506.1	Minimum parcel size for new land divisions is 76 acres. New land divisions of less than 76 acres shall be allow only for specified permitted and conditionally permit uses in the PF-76 zone, excluding nonresource related dwellings.	Yes	Yes	No

If a chain of title establishing unbroken family ownership since 1952 is provided, Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulations reduced the value of the claimant's property, and deny the claim because the restricting regulation was enacted prior to the claimant's acquisition in 2004.



OREGON

# Measure 37 Claim

**Fee: \$500.00** (Required with application)

Land Development Services - Planning Division

Columbia County Courthouse

230 Strand, St. Helens, OR 97051 (503) 397-1501

## Claimant Information (attach additional pages for multiple Claimants):

Jeffery R YARBOR

Name(s) of Claimant(s):

P.O. Box 686

Mailing address for Claimant(s)

Mailing address for Claimant(s)

503 396 0121

Daytime phone #

St Helens Ore 97051

City, State, Zip

City, State, Zip

## Property Information:

28203 Pittsburg Rd St Helens Ore 97051

Property location/address

02-19-2-<sup>5230</sup>5320-000-00407

Property tax account #

## Claim Information:

1) Amount of claim: \$ 253,500

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:

This property can be divide into smaller parcels

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

P.F. 76

4) Have you applied for land use approval for your intended use of the property? NO

If so, when? \_\_\_\_\_

If so, what did you apply for? \_\_\_\_\_

If so, what was the file number? \_\_\_\_\_

5) When did you acquire the property: Aug 1996 + Oct 2004  
6) Ownership of property:  Sole  Joint  Other (please list): \_\_\_\_\_

7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:  
NO

8) Did you acquire the property from a family member? (Family member includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandchild, the estate of any of the family members listed, or a legal entity owned by any one or a combination of such family members) Yes  
If so, from who? John + Irene M YARBOR also Jeannette Johnson + John R YARBOR  
If so, what is the family relationship to you? Parents Sister + Brother  
If so, when did you acquire the property? Aug 1996 and Oct 2004  
If so, when did your family member acquire the property?

9) List all documentation that you have to establish that the fair market value of the property has been reduced by the land use regulation(s) listed. Attach any such documentation, including appraisals, to this Claim Form: \_\_\_\_\_

**SIGNATURES**

I/we certify that the information contained in and attached to this claim form is accurate and complete.

Jeff Yarbore  
Claimant

12/20/2004  
Date

Claimant

Date

Claimant

Date

Claimant

Date

<b>FOR OFFICIAL USE ONLY</b>		
Date Received _____	Receipt # _____	Received By: _____

Tax Lot 407  
19.53 acres  
Zoned PF 76

As is	\$150,000
Fair Market Value	\$270,300
Loss of	\$103,500

Because of Zoning this land cannot  
be sold for what it is worth

# COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

## Measure 37 Claim

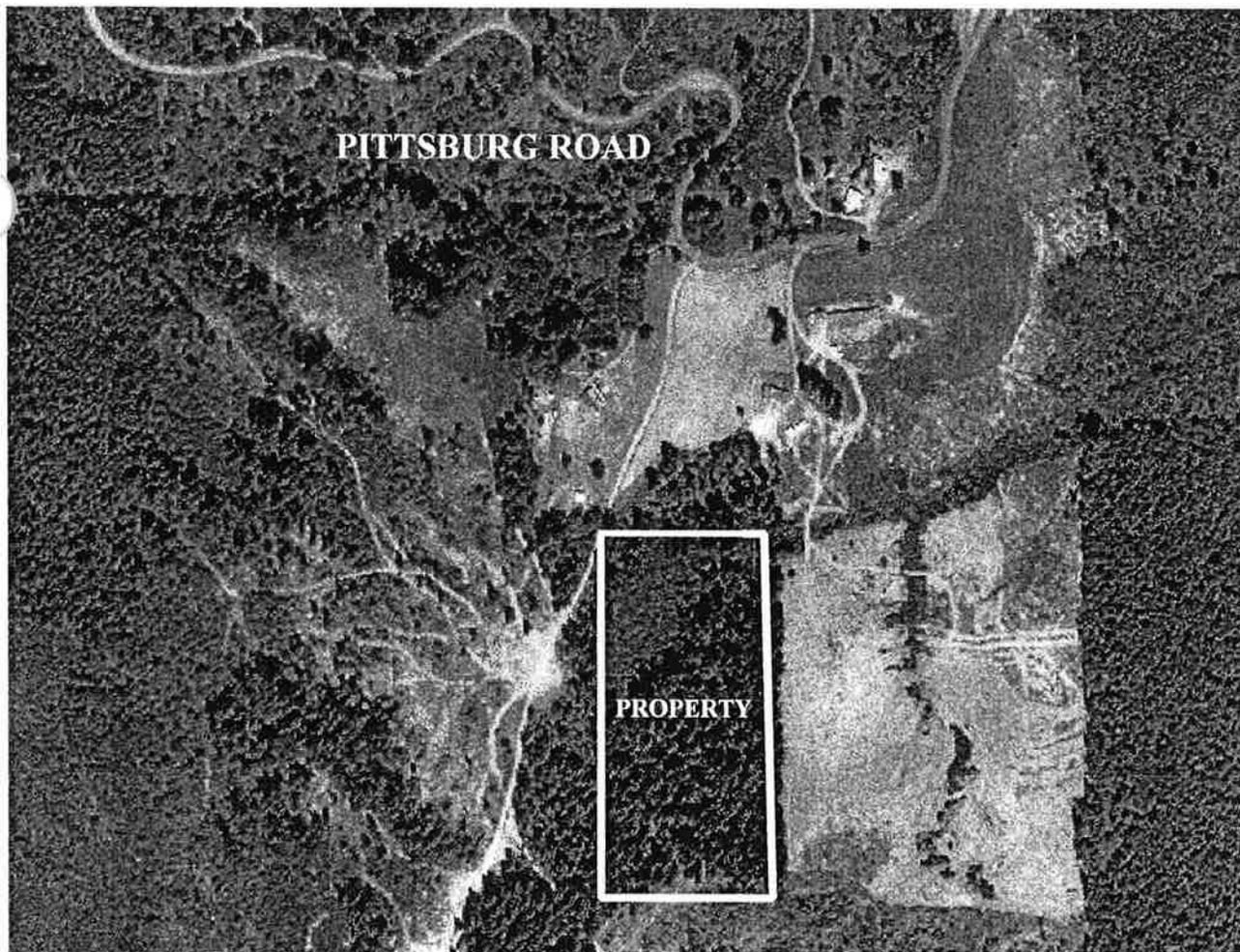
### Staff Report

**DATE:** May 28, 2005

**FILE NUMBER:** CL 05-15

**CLAIMANT/OWNER:** Jeff Yarbor  
P.O. Box 686  
St. Helens, Oregon

**PROPERTY LOCATION:** 28162 Pittsburg Road  
St. Helens, Oregon 97051



**ACCOUNT NUMBER:** 5230-000-00600

**TAX**

**ZONING:** Primary Forest(PF-76)  
**SIZE:** 12.12 Acres  
**REQUEST:** To divide PF-76 property for residential development.  
**CLAIM RECEIVED:** 1/5/05      **180 DAY DEADLINE:** 7/04/05

**I. BACKGROUND:** Jeff Yarbor filed a claim under Measure 37 on January 5, 2005. The claim form indicates the amount of the claim is \$121,200. However, other information submitted with the claim indicates a loss in fair market value of \$109,080. The claim is based on an alleged loss of fair market value of \$109,080. The claim is based upon the premise that the lot cannot be further divided under current PF-76, Primary Forest, zoning minimum lot size regulations. The claimant submitted a Comparative Market Analysis prepared by the claimant listing values of variously sized farm-forest and residential properties. Claimant states his desire to further divide the subject property for residential use.

## **II. CLAIM SUMMARY:**

### **A. PROPERTY OWNER AND OWNERSHIP INTERESTS:**

1. **Current Ownership:** The claimant submitted a Title Report issued by Ticor Title on January 12, 2005 which shows:  
Vested In: Jeffery R. Yarbor, an estate in fee simple  
Subject to: Right of way easement in favor of PGE; a mineral rights reservation, an easement for ingress and egress above and below the surface implied by a mineral rights reservation in favor of Wallace and Darlene Wodecki; right of way easement in favor of Western Oregon Electric and a Deed of Trust, given to secure indebtedness.
2. **Date of Acquisition:** Claimant submitted deeds by which claimant's mother and father, John and Irene Yarbor, acquired the property in 1959(Warranty Deed; Deed Book 142; Pages 832-3). In 2004, the property was conveyed from John R. Yarbor, claimant's brother to Jeffrey R. Yarbor(Warranty Deed; 2004-012953). A chain of title was not established between 1959 and 2004.

### **B. APPLICANT/RELATIONSHIP TO OWNER**

The Claimant, Jeff Yarbor is the current owner of the property who has signed the claim for compensation.

### **C. FAMILY MEMBER STATUS**

The property was originally acquired by John and Irene Yarbor, claimants mother and father, in 1959. Claimant Jeff Yarbor acquired the property in 2004 from his brother. Chain of title would be required between 1959 and 2004 to establish family succession in ownership.

### **D. LAND USE REGULATIONS IN EFFECT AT TIME OF ACQUISITION**

The property was unzoned when the Claimant's mother and father acquired the property in 1959. Primary Forest(PF-76) regulations establishing a minimum lot size of 76 acres were enacted in 1984 and were in effect when the claimant acquired the property in 2004.

E. LAND USE REGULATION(S) APPLICABLE TO SUBJECT PROPERTY ALLEGED TO HAVE REDUCED FAIR MARKET VALUE/EFFECTIVE DATES/CLAIMANT ELIGIBILITY

CCZO Section 506.1

New land divisions must be a minimum of 76 acres(State Law 80 acres)

Effective Date: July 1984.

F. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant states that "this property could be divided into smaller parcels". It may be inferred that the claimant is citing the minimum lot size restriction in CCZO Section 506.1 of 76 acres which prevents him from dividing the subject property into smaller parcels. However, the claimant does not indicate lot sizes for the proposed property division.

G. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

1. Value of Property As Regulated:

The claimant has submitted a Comparative Market Analysis, dated 12/14/2004, prepared by the claimant which lists some prices for various farm-forest and residential properties. He states "as is" fair market value of the subject property is \$12,120 based on his assumption that the property is only worth the value of the timber on it and that Longview Fibre will only pay up to \$1,000 per acre. An assessment record was submitted indicating the 2004 real market value of the property was \$40,700.

2. Value of Property Not Subject to Cited Regulations and Developed As Proposed.

A Comparative Market Analysis submitted lists variously sized farm-forest and residential properties. The claimant concludes that fair market value of the property not subject to the cited regulation is \$121,200, but provides no explanation as to how he arrived at that number.

H. COMPENSATION DEMANDED

The claim form indicates the claim is for \$121,200 but elsewhere in the claim documents the claimant states that the loss of fair market value is \$109,080. Staff understands the correct claim amount to be \$109,080.

**DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:**

Claimants family(mother and father) acquired the property in 1959 before the cited land use regulation became effective. A chain of title is required to show family succession of property interest between 1959 and 2004. Claimant acquired the property in 2004 from his brother after the cited land use regulations became effective and therefore does not qualify for waiver of the cited regulation under Measure 37.

**CRITERIA FOR REVIEW**

COLUMBIA COUNTY ORDINANCE 84-2004

Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37

- III. PRE-APPLICATION CONFERENCE. Before submitting a Claim, owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

**Finding 1:** The claimant attended a pre-application conference with staff to obtain information

concerning Measure 37 and the County claims process.

- IV. APPLICATION FEE. The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

**Finding 2:** The claimant submitted an \$800.00 filing fee for claims on seven separate but contiguous parcels including the subject property. The fee was determined by the Board of Commissioners in response to a request by the claimant for a multiple parcel waiver.

V. CLAIM FILING PROCEDURES.

- A. An Owner Seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is subject to the claim at the time the claim is submitted. The claim shall be filed with the Land Development Services Department.

**Finding 3:** The claim was filed with Land Development Services on January 5, 2004. According to a title report prepared by Ticor Title, dated January 12, 2005, Jeff Yarbor is current owner of an estate in fee simple.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners.

**Finding 4:** The applicant submitted the Claim for Compensation under Measure 37 on the claim form approved by the Board of County Commissioners.

- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Claimant establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.

**Finding 5:**

A. Claim Form

The Claimant has submitted a Claim under Measure 37 on the appropriate form(Attachment 1).

B. Compensation Documentation

The claimant has provided justification for this amount of compensation in the form of a Comparative Market Analysis which lists the prices of variably sized residential properties. He states that the "as is" value of the property is \$12,120 based on his assumption that the property is only worth the value of the timber on it and that Longview Fibre will only pay up to \$1,000 per acre. He states that the "as dividable" value of the property is \$121,200 but does not explain how the documentation is related to

that amount. He submitted a County tax assessment print out which indicates a current land and improvements real market value for the property of \$40,700. The Claimant has requested compensation in the amount of \$109,080.(\$121,200 - \$12,120)

Staff finds the documentation of reduced fair market value due to the cited regulation is inadequate to determine the specific amount of compensation due under Measure 37 or to otherwise establish a claim under Measure 37.

### C. Eligibility Under Cited Regulations

The family(mother and father) acquired the property in 1959 before the cited PF-76 minimum lot size regulations were enacted(1984). The claimant acquired the property in 2004 from his brother after the enactment of the cited regulation but is not eligible for modification or waiver of the cited regulation based on his acquisition date. Based on the information submitted with the claim, staff finds that the claimant is not eligible for modification or waiver of the minimum lot size. Furthermore, the claimant has not established that there.

## MEASURE 37

**(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.**

**(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.**

### **Finding 6:**

#### A. Restrictions on Use

Claimant alleges that CCZO Section 506.1, minimum lot size regulations in the PF-76 zoning district restrict the division of the property into smaller parcels. The cited regulation limits newly created parcels to a minimum of 76 acres. The subject parcel is 12.12 acres. Therefore staff finds that the cited regulation does restrict the proposed division of the property into smaller parcels.

#### B. Reduction in Fair Market Value Due to Cited Regulations

As noted in Finding 5, Staff finds that the documentation submitted is not adequate to demonstrate a reduction in fair market value of the subject property and therefore the specific amount of compensation allowed under Measure 37. However, the property could have been divided as currently configured on the family acquisition date in 1959 and it is reasonable to assume that since the property cannot be lawfully divided due to the cited regulation, there is some reduction of fair market value of the property.

**(3) Subsection (1) of this act shall not apply to land use regulations:**

**(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;**

- (B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;**
- (C) To the extent the land use regulation is required to comply with federal law;**
- (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or**
- (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.**

**Finding 7:** Staff finds that none of the cited regulations identified by the claimant qualify for any of the exemptions listed.

**(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.**

**Finding 8:** Should the Board determine that the that the claimant has demonstrated a specific reduction in fair market value of the property and otherwise qualifies(family succession) due to the cited regulation(s), the Board may pay compensation in the amount of the reduction in fair market value caused by said regulations or in lieu of compensation, modify, remove, or not apply the land use regulations enacted or enforced which restrict the use to allow such uses as were permitted at the time the Claimant acquired the property.

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

**Finding 9:** The subject claim arises from CCZO Section 506.1, PF-76 minimum lot size regulations enacted in 1984 prior to the effective date of Measure 37. The subject claim was filed on January 5, 2005 which is within two years of the effective date of Measure 37.

**(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in 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 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.**

**Finding 10:** As noted in Findings 6 and 7 above, Staff finds that the 1984 enactment of PF-76 minimum lot size regulations(CCZO Section 506.1) restricts the use of the property so as to probably reduce the fair market value of the property. Therefore, if the Board finds that the cited regulation has reduced the value of the property and there is uninterrupted family succession, the Board may authorize payment of just compensation in the amount of the reduction in fair market value. The Claimant is not eligible for the waiver sought from CCZO Section 506.1 due to the claimant acquisition date of 2004.

**STAFF RECOMMENDATION**

Based on the above findings, it is Staff’s opinion that the claimant has not met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimant as a basis for his claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulations below have been found to meet these requirements of a valid Measure 37 claim

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 506.1	Minimum parcel size for new land divisions is 76 acres. New land divisions of less than 76 acres shall be allow only for specified permitted and conditionally permit uses in the PF-76 zone, excluding nonresource related dwellings.	Yes	Probably	No

Claimant has not demonstrated family succession necessary for compensation under Measure 37 and waiver of the restricting regulation cannot be made due to the fact that it was enacted prior to the claimant’s acquisition of the property in 2004. Staff recommends denial of the claim.

*Corbin*

COLUMBIA COUNTY



OREGON

### Measure 37 Claim

Fee: \$500.00 (Required with application)

Land Development Services - Planning Division

Columbia County Courthouse

230 Strand, St. Helens, OR 97051 (503) 397-1501

#### Claimant Information (attach additional pages for multiple Claimants):

Jeffery R. YARBOR  
Name(s) of Claimant(s):

503 396 0121  
Daytime phone #

P.O. Box 1686  
Mailing address for Claimant(s)

St Helens, Oregon 97051  
City, State, Zip

\_\_\_\_\_  
Mailing address for Claimant(s)

\_\_\_\_\_  
City, State, Zip

#### Property Information:

28162 Pittsburg Rd St Helens Me 97051  
Property location/address

02-79-2-5320-000-00600  
Property tax account #

#### Claim Information:

1) Amount of claim: \$ 121,200

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:

This property could be divided into smaller parcels

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

P.F. 76

4) Have you applied for land use approval for your intended use of the property? No  
If so, when? \_\_\_\_\_

If so, what did you apply for? \_\_\_\_\_

If so, what was the file number? \_\_\_\_\_

- 5) When did you acquire the property: 1 Oct 2004
- 6) Ownership of property:  Sole  Joint  Other (please list): \_\_\_\_\_
- 7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:  
NO
- 8) Did you acquire the property from a family member? (Family member includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandchild, the estate of any of the family members listed, or a legal entity owned by any one or a combination of such family members) Yes  
 If so, from who? John R YARBOR  
 If so, what is the family relationship to you? Bother  
 If so, when did you acquire the property? Oct 2004  
 If so, when did your family member acquire the property? 1959
- 9) List all documentation that you have to establish that the fair market value of the property has been reduced by the land use regulation(s) listed. Attach any such documentation, including appraisals, to this Claim Form: \_\_\_\_\_

**SIGNATURES**

I/we certify that the information contained in and attached to this claim form is accurate and complete.

<u>Jeff YARBOR</u> Claimant	<u>12/20/2004</u> Date
_____ Claimant	_____ Date
_____ Claimant	_____ Date
_____ Claimant	_____ Date

**FOR OFFICIAL USE ONLY**

Date Received \_\_\_\_\_ Receipt # \_\_\_\_\_ Received By: \_\_\_\_\_

Tax Lot 600  
12.12. acres  
Zoned PF 76

As is \$12,120

Fair Market Value \$121,200

Loss of \$109,080

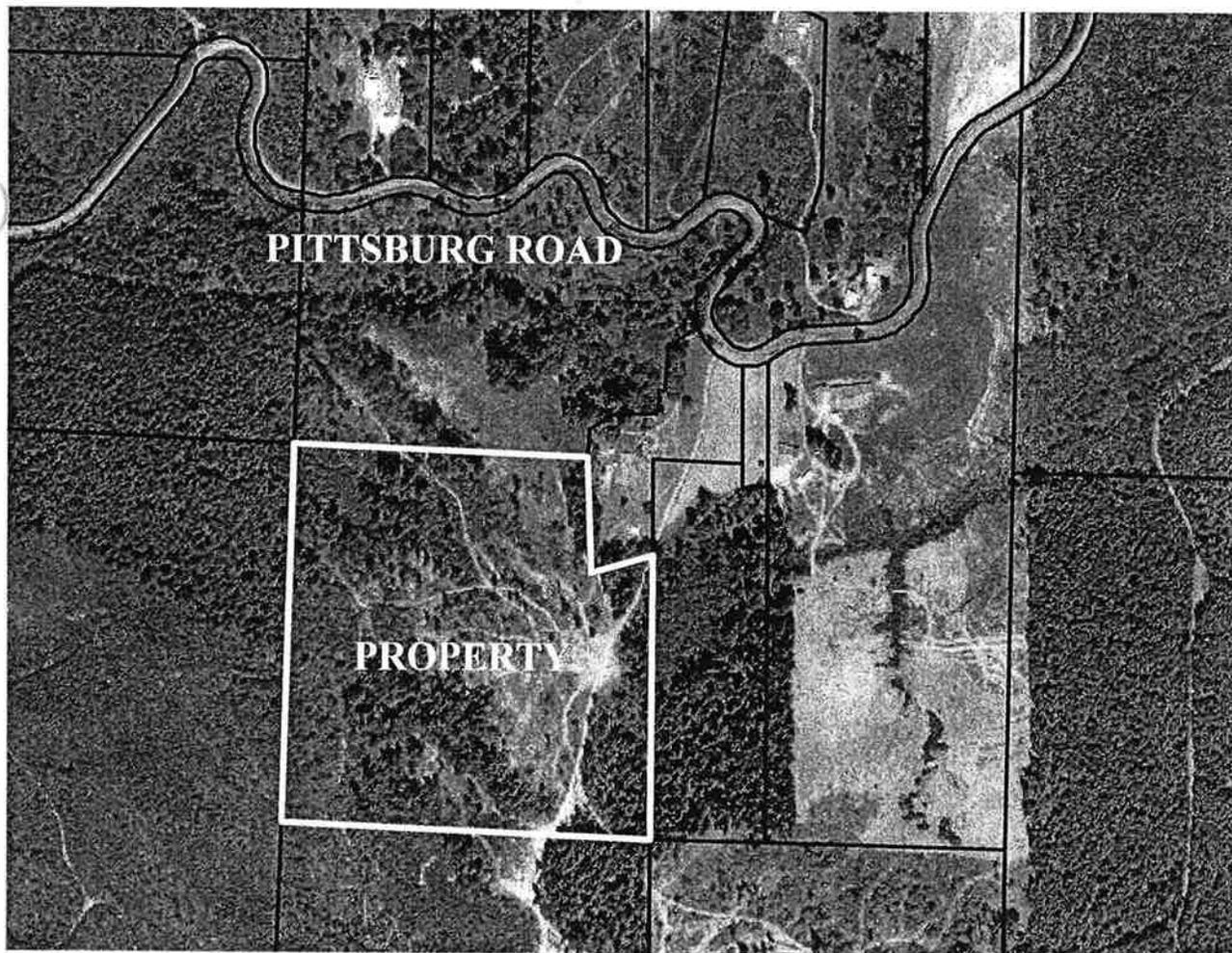
Zoning prevents this property to  
be sold as home site. Longview Fiber  
only pays \$1,000 per acre for reforested  
property in this area

**COLUMBIA COUNTY  
LAND DEVELOPMENT SERVICES**

Measure 37 Claim

**Staff Report**

**DATE:** May 28, 2005  
**FILE NUMBER:** CL 05-16  
**CLAIMANT/OWNER:** Jeff Yarbor  
P.O. Box 686  
St. Helens, Oregon  
**PROPERTY LOCATION:** 28162 Pittsburg Road  
St. Helens, Oregon 97051



**ACCOUNT NUMBER:** 5230-000-00604

**TAX**

**ZONING:** Primary Forest(PF-76)  
**SIZE:** 36.28 Acres  
**REQUEST:** To divide PF-76 property for residential development.  
**CLAIM RECEIVED:** 1/5/05      **180 DAY DEADLINE:** 7/04/05

**I. BACKGROUND:** Jeff Yarbor filed a claim under Measure 37 on January 5, 2005. The claim form indicates the amount of the claim is \$362,800. However, other information submitted with the claim indicates a loss in fair market value of \$326,520. The claim is based on an alleged loss of fair market value of \$326,520 assuming that the lot cannot be further divided under current PF-76, Primary Forest, zoning minimum lot size regulations. The claimant submitted a Comparative Market Analysis prepared by the claimant listing values of various farm-forest and residential properties. Claimant states his desire to further divide the subject property for residential use.

## **II. CLAIM SUMMARY:**

### **A. PROPERTY OWNER AND OWNERSHIP INTERESTS:**

- 1. Current Ownership:** The claimant submitted a Title Report issued by Ticor Title on January 12, 2005 which shows:  
Vested In: Jeffery R. Yarbor, an estate in fee simple  
Subject to: Right of way easement in favor of PGE; a mineral rights reservation, an easement for ingress and egress above and below the surface implied by a mineral rights reservation in favor of Wallace and Darlene Wodecki; right of way easement in favor of Western Oregon Electric and a Deed of Trust, given to secure indebtedness.
- 2. Date of Acquisition:** Claimant submitted deeds in which claimant's mother and father, John and Irene Yarbor, acquired the property in 1959(Warranty Deed; Deed Book 142; Pages 832-3). In 1991 the property was conveyed by John V. and Irene Yarbor to a Living Trust(Bargain and Sale Deed, Instrument No. 91-1000.) In 2004, the property was conveyed from the John V. Yarbor and Irene M. Yarbor Living Trust to Jeffrey R. Yarbor(Warranty Deed; 2004-012953).

### **B. APPLICANT/RELATIONSHIP TO OWNER**

The Claimant, Jeff Yarbor is the current owner of the property who has signed the claim for compensation.

### **C. FAMILY MEMBER STATUS**

The property was originally acquired by John and Irene Yarbor, claimants mother and father, in 1959. Claimant, Jeff Yarbor, acquired the property in 2004 from his parents Living Trust. A chain of title was not provided to show family succession.

### **D. LAND USE REGULATIONS IN EFFECT AT TIME OF ACQUISITION**

The property was unzoned when the Claimant's mother and father acquired the property in 1959. Primary Forest(PF-76) regulations establishing a minimum lot size of 76 acres were enacted in 1984 and were in effect when the claimant acquired the property in 2004.

**E. LAND USE REGULATION(S) APPLICABLE TO SUBJECT PROPERTY ALLEGED TO HAVE REDUCED FAIR MARKET VALUE/EFFECTIVE DATES/CLAIMANT ELIGIBILITY**

CCZO Section 506.1

New land divisions must be a minimum of 76 acres(State Law 80 acres)

Effective Date: July 1984.

**F. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE**

Claimant states that "this property could be divided into smaller parcels". It may be inferred that the claimant is citing the minimum lot size restriction in CCZO Section 506.1 of 76 acres which restricts the use of the property

**G. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED**

**1. Value of Property As Regulated:**

The claimant has submitted a Comparative Market analysis, dated 12/14/2004, prepared by the claimant which lists some prices for variably sized farm-forest and residential properties. He states "as is" fair market value of the subject property is \$36,280 based on his assumption that the property is only worth the value of the timber on it and that Longview Fibre will only pay up to \$1,000 per acre. An assessment record was submitted indicating the 2004 real market value of the property was \$106,800.

**2. Value of Property Not Subject to Cited Regulations and Developed As Proposed.**

A Comparative Market Analysis submitted lists various farm-forest and residential properties. The claimant concludes that fair market value of the property not subject to the cited regulation is \$362,800, but provides no explanation as to how he arrived at that number.

**H. COMPENSATION DEMANDED**

The claim form indicates the claim is for \$362,800 but elsewhere in the claim documents the claimant states that the loss of fair market value is \$326,520. Staff understands the correct claim amount to be \$326,520.

**DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:**

Claimants family(mother and father) acquired the property in 1959 before CCZO 506.1 became effective. Claimant acquired the property in 2004 from his mother and father's Living Trust after the cited land use regulations became effective and therefore does not qualify for waiver of the cited regulation under Measure 37.

**CRITERIA FOR REVIEW**

**COLUMBIA COUNTY ORDINANCE 84-2004**

**Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37**

- III. **PRE-APPLICATION CONFERENCE.** Before submitting a Claim, owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

**Finding 1:** The claimant attended a pre-application conference with staff to obtain information concerning Measure 37 and the County claims process.

- IV. APPLICATION FEE. The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

**Finding 2:** The claimant submitted an \$800.00 filing fee for claims on seven separate but contiguous parcels including the subject property. The fee was determined by the Board of Commissioners in response to a request by the claimant for a multiple parcel waiver.

V. CLAIM FILING PROCEDURES.

- A. An Owner Seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is subject to the claim at the time the claim is submitted. The claim shall be filed with the Land Development Services Department.

**Finding 3:** The claim was filed with Land Development Services on January 5, 2004. According a title report prepared by Ticor Title, dated January 12, 2005, Jeff Yarbor is current owner of an estate in fee simple.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners.

**Finding 4:** The claimant submitted the claim for compensation under Measure 37 on the claim form approved by the Board of County Commissioners.

- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Claimant establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.

**Finding 5:**

A. Claim Form

The Claimant has submitted a Claim under Measure 37 on the appropriate form(Attachment 1).

B. Compensation Documentation

The claimant has provided justification for this amount of compensation in the form of a Comparative Market Analysis which lists the prices of some comparably sized residential properties. He states that the "as is" value of the property is \$36,280 based on his assumption that the property is only worth the value of the timber on it and that Longview Fibre will only pay up to \$1,000 per acre. He states that the "as dividable" value of the property is \$362,800 but does not explain how the documentation is related to that amount. He submitted a County tax assessment print out which indicates a current

real market value for the property of \$106,800. The claimant has requested compensation in the amount of \$326,520(\$362,800 - \$36,280)

Staff finds the documentation of reduced fair market value due to the cited regulation is inadequate to determine the specific amount of compensation due under Measure 37.

#### C. Eligibility Under Cited Regulations

The family(mother and father) acquired the property in 1959 before the CCZO Section 506.1 was enacted. The claimant acquired the property in 2004 from his parents Living Trust after the enactment of the cited regulation. Staff finds that the claimant failed to show family succession as a necessary for eligibility for compensation and is not eligible for modification or waiver of the cited regulation based on his acquisition date.

### MEASURE 37

**(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.**

**(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.**

#### Finding 6:

##### A. Restrictions on Use

Claimant alleges that CCZO Section 506.1, minimum lot size regulations in the PF-76 zoning district restrict the division of the property into smaller parcels. The cited regulation limits newly created parcels to a minimum of 76 acres. The subject parcel is 36.28 acres. Therefore staff finds that the cited regulation does restrict the proposed division of the property into smaller parcels.

##### B. Reduction in Fair Market Value Due to Cited Regulations

As noted in Finding 5, Staff finds that the documentation submitted is not adequate to demonstrate a reduction in fair market value of the subject property and therefore the specific amount of compensation allowed under Measure 37. However, the property could have been divided as currently configured on the family acquisition date in 1959 and it is reasonable to assume that since the property cannot be lawfully divided due to the cited regulation, there is some reduction of fair market value of the property.

**(3) Subsection (1) of this act shall not apply to land use regulations:**

**(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;**

**(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;**

- (C) To the extent the land use regulation is required to comply with federal law;
- (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or
- (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.

**Finding 7:** Staff finds that none of the cited regulations identified by the claimant does not qualify for any of the exemptions listed.

**(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.**

**Finding 8:** Should the Board determine that the that the claimant has demonstrated a specific reduction in fair market value of the property due to the cited regulation(s), the Board may pay compensation in the amount of the reduction in fair market value caused by said regulations or in lieu of compensation, modify, remove, or not apply the land use regulations to allow a use permitted at the time the Claimant acquired the property in 2004.

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

**Finding 9:** The subject claim arises from CCZO Section 506.1, PF-76 minimum lot size regulations enacted in 1984 prior to the effective date of Measure 37. The claim was filed on January 5, 2005 which is within two years of the effective date of Measure 37.

**(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in 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 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.**

**Finding 10:** As noted in Findings 6 and 7 above, Staff finds that the 1984 enactment of PF-76 minimum lot size regulations(CCZO Section 506.1) restricts the use of the property so as to likely

reduce the fair market value of the property. Therefore, if the Board finds that the cited regulation has reduced the value of the property, the Board may authorize payment of just compensation in the amount of the reduction in fair market value. Or, in lieu of such compensation, the Board may waive regulations to allow a use of the property which was allowed at the time of acquisition by the Claimant in 2004. The claimant is not eligible waiver from CCZO Section 506.1 due to the claimant acquisition date of 2004.

**STAFF RECOMMENDATION**

Based on the above findings, it is Staff's opinion that the claimant has not met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimant as a basis for his claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulations below have been found to meet these requirements of a valid Measure 37 claim

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 506.1	Minimum parcel size for new land divisions is 76 acres. New land divisions of less than 76 acres shall be allow only for specified permitted and conditionally permit uses in the PF-76 zone, excluding nonresource related dwellings.	Yes	Yes	No

Claimant has not demonstrated family succession necessary for compensation under Measure 37 and waiver of the restricting regulation cannot be made due to the fact that it was enacted prior to the claimant's acquisition of the property in 2004. Staff recommends denial of the claim.

County

COLUMBIA COUNTY



OREGON

FILE NO. \_\_\_\_\_

### Measure 37 Claim

Fee: \$500.00 (Required with application)  
Land Development Services - Planning Division  
Columbia County Courthouse  
230 Strand, St. Helens, OR 97051 (503) 397-1501

#### Claimant Information (attach additional pages for multiple Claimants):

Jeffery R YARBOR

Name(s) of Claimant(s):

503 396 0121

Daytime phone #

P.O. Box 686

Mailing address for Claimant(s)

St Helens Ore 97051

City, State, Zip

\_\_\_\_\_  
Mailing address for Claimant(s)

\_\_\_\_\_  
City, State, Zip

#### Property Information:

28162 Pittsburg Rd. St Helens Ore 97051

Property location/address

02-19-2-5320-000-00 604

Property tax account #

#### Claim Information:

1) Amount of claim: \$ 362,800

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:

This property could be split into smaller parcels

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

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4) Have you applied for land use approval for your intended use of the property? NO  
If so, when? \_\_\_\_\_

If so, what did you apply for? \_\_\_\_\_

If so, what was the file number? \_\_\_\_\_

5) When did you acquire the property: Feb 1991  
6) Ownership of property:  Sole  Joint  Other (please list): \_\_\_\_\_

7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:  
NO

8) Did you acquire the property from a family member? (Family member includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandchild, the estate of any of the family members listed, or a legal entity owned by any one or a combination of such family members) Yes  
If so, from who? John V + Irene M. YARBOR + John R YARBOR  
If so, what is the family relationship to you? Parents + Brother  
If so, when did you acquire the property? Feb 1991 + Oct 2004  
If so, when did your family member acquire the property? 1959

9) List all documentation that you have to establish that the fair market value of the property has been reduced by the land use regulation(s) listed. Attach any such documentation, including appraisals, to this Claim Form: \_\_\_\_\_

**SIGNATURES**

I/we certify that the information contained in and attached to this claim form is accurate and complete.

Jeff Yarbon  
Claimant

12/20/2004  
Date

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Date

<b>FOR OFFICIAL USE ONLY</b>		
Date Received _____	Receipt # _____	Received By: _____

Tax Lot 604  
36.28 acres  
Zoned PF 76

As is	\$ 36,280
Fair Market Value	\$ 362,800
Loss of	\$ 326,520

Longview Fiber only pays upto \$1,000  
per acre for reforested land in  
this zoning

# COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

## Measure 37 Claim

### Staff Report

**DATE:** May 28, 2005

**FILE NUMBER:** CL 05-17

**CLAIMANT/OWNER:** Jeff Yarbor  
P.O. Box 686  
St. Helens, Oregon

**PROPERTY LOCATION:** 28162 Pittsburg Road  
St. Helens, Oregon 97051



**TAX ACCOUNT NUMBER:** 5230-000-00605

**ZONING:** Primary Forest(PF-76)

**SIZE:** 4.62 Acres

**REQUEST:** To divide PF-76 property for residential development.

**CLAIM RECEIVED:** 1/5/05      **180 DAY DEADLINE:** 7/04/05

**I. BACKGROUND:** Jeff Yarbor filed a claim under Measure 37 on January 5, 2005. The claim form indicates the amount of the claim is \$46,200. However, other information submitted with the claim indicates a loss in fair market value of \$41,580. The claim is based on an alleged loss of fair market value of \$41,580. The claim is based upon the premise that the lot cannot be further divided under current PF-76, Primary Forest, zoning minimum lot size regulations. The claimant submitted a Comparative Market Analysis prepared by the claimant listing values of variably sized farm-forest and residential properties. Claimant states his desire to further divide the subject property for residential use.

## **II. CLAIM SUMMARY:**

### **A. PROPERTY OWNER AND OWNERSHIP INTERESTS:**

1. **Current Ownership:** The claimant submitted a Title Report issued by Ticor Title on January 12, 2005 which shows that the property is:  
Vested In: Jeffery R. Yarbor, an estate in fee simple  
Subject to: Right of way easement in favor of PGE; a mineral rights reservation, an easement for ingress and egress above and below the surface implied by a mineral rights reservation in favor of Wallace and Darlene Wodecki; right of way easement in favor of Western Oregon Electric and a Deed of Trust, given to secure indebtedness.
2. **Date of Acquisition:** Claimant submitted a deed by which claimant's mother and father, John and Irene Yarbor, acquired the property in 1959(Warranty Deed; Deed Book 142; Pages 832-3). A Personal Representative's Deed issued by Ticor Title was submitted indicating that Jeff Yarbor, personal representative for his mother Irene Yarbor's estate conveyed the subject parcel from the estate to himself on May12, 2004(Instrument No. 2004-006242).

### **B. APPLICANT/RELATIONSHIP TO OWNER**

The Claimant, Jeff Yarbor is the current owner of the property who has signed the claim for compensation.

### **C. FAMILY MEMBER STATUS**

The property was originally acquired by John and Irene Yarbor, claimants mother and father, in 1959. Claimant Jeff Yarbor acquired the property in 2004 from his mother's estate.

### **D. LAND USE REGULATIONS IN EFFECT AT TIME OF ACQUISITION**

The property was unzoned when the Claimant's mother and father acquired the property in 1959. Primary Forest(PF-76) regulations establishing a minimum lot size of 76 acres were enacted. However, the property was zoned PF-76 in 2004 when the claimant acquired the property.

### **E. LAND USE REGULATION(S) APPLICABLE TO SUBJECT PROPERTY ALLEGED TO HAVE**

## REDUCED FAIR MARKET VALUE/EFFECTIVE DATES/CLAIMANT ELIGIBILITY

CCZO Section 506.1

New land divisions must be a minimum of 76 acres(State Law 80 acres)

Effective Date: July 1984.

### F. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant did not indicate how the regulations restrict the use of the parcel. It may be inferred that the claimant is citing the minimum lot size restriction in CCZO Section 506.1 of 76 acres which prevents him from dividing the subject property into smaller parcels.

### G. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

#### 1. Value of Property As Regulated:

The claimant has submitted a Comparative Market Analysis, dated 12/14/2004, prepared by the claimant which lists some prices for variably sized farm-forest and residential properties. He states "as is" fair market value of the subject property is \$4,620 based on his assumption that the property is only worth the value of the timber on it and that Longview Fibre will only pay up to \$1,000 per acre. An assessment record was submitted indicating the 2004 real market value of the property is \$17,400.

#### 2. Value of Property Not Subject to Cited Regulations and Developed As Proposed.

A Comparative Market Analysis submitted lists variably sized farm-forest and residential properties. The claimant concludes that fair market value of the property if not subject to the cited regulation is \$46,200, but provides no explanation as to how he arrived at that number.

### H. COMPENSATION DEMANDED

The claim form indicates the claim is for \$46,200 but elsewhere in the claim documents the claimant states that the loss of fair market value is \$41,580. Staff infers that the correct claim amount to be \$41,580.

### **DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:**

Claimant's family(mother and father) acquired the property in 1959 before the cited land use regulation became effective. Claimant acquired the property in 2004 from his mother's estate after land use regulations became effective and therefore does not qualify for waiver of the cited regulation under Measure 37.

## **CRITERIA FOR REVIEW**

### **COLUMBIA COUNTY ORDINANCE 84-2004**

### **Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37**

- III. PRE-APPLICATION CONFERENCE. Before submitting a Claim, owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

**Finding 1:** The claimant attended a pre-application conference with staff to obtain information concerning Measure 37 and the County claims process.

- IV. APPLICATION FEE. The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

**Finding 2:** The claimant submitted an \$800.00 filing fee for claims on seven separate but contiguous parcels including the subject property. The fee was determined by the Board of Commissioners in response to a request by the claimant for a multiple parcel waiver.

V. CLAIM FILING PROCEDURES.

- A. An Owner Seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is subject to the claim at the time the claim is submitted. The claim shall be filed with the Land Development Services Department.

**Finding 3:** The claim was filed with Land Development Services on January 5, 2004. According to a title report prepared by Ticor Title, dated January 12, 2005, Jeff Yarbor is current owner of an estate in fee simple.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners.

**Finding 4:** The applicant submitted the Claim for Compensation under Measure 37 on the claim form approved by the Board of County Commissioners.

- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Claimant establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.

**Finding 5:**

A. Claim Form

The Claimant has submitted a Claim under Measure 37 on the appropriate form(Attachment 1). However, the claim form is not accompanied by all necessary information and materials sufficient to demonstrate a claim under Measure 37.

B. Compensation Documentation

The claimant has provided justification for this amount of compensation in the form of a Comparative Market Analysis which lists the prices of some comparably sized residential properties. He states that the "as is" value of the property is \$4,620 based on his assumption that the property is only worth the value of the timber on it and that Longview Fibre will only pay up to \$1,000 per acre. He states that the "as dividable" value of the property is \$46,200 but does not explain how the documentation is

related to that amount. He submitted a County tax assessment print out which indicates a current real market value for the property of \$17,400. The claimant has requested compensation in the amount of \$41,580(\$46,200 - \$4,620 )

Staff finds the documentation of reduced fair market value due to the cited regulation is inadequate to determine the specific amount of compensation due under Measure 37.

### C. Eligibility Under Cited Regulations

The family(mother and father) acquired the property in 1959 before the cited PF-76 minimum lot size regulations were enacted(1984). The claimant acquired the property in 2004 from his mother's estate after the enactment of the cited regulation. Staff finds that the claimant may be eligible for compensation based on the family acquisition date but is not eligible for modification or waiver of the cited regulation based on his acquisition date.

## MEASURE 37

**(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.**

**(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.**

### Finding 6:

#### A. Restrictions on Use

Claimant alleges that CCZO Section 506.1, minimum lot size regulations in the PF-76 zoning district restrict the division of the property into smaller parcels. The cited regulation limits newly created parcels to a minimum of 76 acres. The subject parcel is 4.62 acres. Therefore staff finds that the cited regulation does restrict the proposed division of the property into smaller parcels.

#### B. Reduction in Fair Market Value Due to Cited Regulations

As noted in Finding 5, Staff finds that the documentation submitted is not adequate to demonstrate the specific amount of the reduction in fair market value of the subject property and therefore the specific amount of compensation due under Measure 37. However, the property could have been divided as currently configured on the family acquisition date in 1959 and it is reasonable to assume that since the property cannot be lawfully divided due to the cited regulation, some amount of reduction of fair market value of the property has occurred as a result

**(3) Subsection (1) of this act shall not apply to land use regulations:**

**(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;**

**(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste**

regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(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.

**Finding 7:** Staff finds that none of the cited regulations identified by the claimant qualify for any of the exemptions listed.

**(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.**

**Finding 8:** Should the Board determine that the that the claimant has demonstrated a specific reduction in fair market value of the property due to the cited regulation(s), the Board may pay compensation in the amount of the reduction in fair market value caused by said regulations or in lieu of compensation, modify, remove, or not apply the land use regulations enacted or enforced which restrict the use allowed at the time the Claimant acquired the property in 2004.

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

**Finding 9:** The claim arises from CCZO Section 506.1, PF-76 minimum lot size regulations enacted in 1984 prior to the effective date of Measure 37 on December 2, 2004. The claim was filed on January 5, 2005, which is within two years of the effective date of Measure 37.

**(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not 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.**

**Finding 10:** As noted in Findings 6 and 7 above, Staff finds that the 1984 enactment of PF-76

minimum lot size regulations(CCZO Section 506.1) restricts the use of the property so as likely to reduce the fair market value of the property. Therefore, if the Board finds that the cited regulation has reduced the value of the property, the Board should authorize payment of just compensation in the amount of the reduction in fair market value. Or, in lieu of such compensation, the Board should waive only regulations necessary to allow use of the property which was allowed at the time of acquisition by the Claimant in 2004. In this case it is not necessary to waive any regulations to allow a use of the property that was allowed in 2004.

**STAFF RECOMMENDATION**

Based on the above findings, it is Staff’s opinion that the claimant has met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimant as a basis for his claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulations below have been found to meet these requirements of a valid Measure 37 claim

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 506.1	Minimum parcel size for new land divisions is 76 acres. New land divisions of less than 76 acres shall be allow only for specified permitted and conditionally permit uses in the PF-76 zone, excluding nonresource related dwellings.	Yes	Possibly	No

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulations reduced the value of the claimant's property, and deny the claim because the cited regulation was enacted prior to the claimant's acquisition in 2004.

County

COLUMBIA COUNTY



OREGON

### Measure 37 Claim

Fee: \$500.00 (Required with application)

Land Development Services - Planning Division

Columbia County Courthouse

230 Strand, St. Helens, OR 97051 (503) 397-1501

#### Claimant Information (attach additional pages for multiple Claimants):

Jeffery R YARBOP

Name(s) of Claimant(s):

503-396-0121

Daytime phone #

P.O. Box 686

Mailing address for Claimant(s)

St Helens Ore 97051

City, State, Zip

Mailing address for Claimant(s)

City, State, Zip

#### Property Information:

28162 Pittsburg Rd St Helens Ore 97051

Property location/address

02-19-2-5320-000-00605

Property tax account #

#### Claim Information:

1) Amount of claim: \$ 46,200

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

P.F. 76  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4) Have you applied for land use approval for your intended use of the property? NO

If so, when? \_\_\_\_\_

If so, what did you apply for? \_\_\_\_\_

If so, what was the file number? \_\_\_\_\_

5) When did you acquire the property: May 2004  
6) Ownership of property:  Sole  Joint  Other (please list): \_\_\_\_\_

7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:  
NO

8) Did you acquire the property from a family member? (Family member includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandchild, the estate of any of the family members listed, or a legal entity owned by any one or a combination of such family members) Yes  
If so, from who? Irene M. YARBOR  
If so, what is the family relationship to you? Mother  
If so, when did you acquire the property? May 2004  
If so, when did your family member acquire the property? 1959

9) List all documentation that you have to establish that the fair market value of the property has been reduced by the land use regulation(s) listed. Attach any such documentation, including appraisals, to this Claim Form: \_\_\_\_\_

**SIGNATURES**

I/we certify that the information contained in and attached to this claim form is accurate and complete.

Jeff Yarbork  
Claimant  
\_\_\_\_\_  
Claimant  
\_\_\_\_\_  
Claimant  
\_\_\_\_\_  
Claimant

12/20/2004  
Date  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Date

**FOR OFFICIAL USE ONLY**

Date Received \_\_\_\_\_ Receipt # \_\_\_\_\_ Received By: \_\_\_\_\_

Tax Lot 605  
4.62 acres  
Zoned. PF 76

As is

\$4,620

Fair Market Value

\$46,200

Loss of

41,580

Zoning Prevents this tax Lot  
to be sold as and Longview  
Fiber only allows up to a \$1,000  
per acre to be payed for reforested  
land