

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Nos. CL 05-19, )  
CL 05-20, CL 05-21 and CL 05-22 )  
for Compensation under Measure 37 ) Order No. 41-2006  
submitted by Fred Luttrell. )

WHEREAS, on May 27, 2005, Columbia County received claims under Measure 37 and Order No. 84-2004 from Fred Luttrell, for property having Tax Account Numbers 5225-000-01600, 5236-000-00200, 5236-030-00100, and 5236-030-00203; and

WHEREAS, on October 15, 2005, the Circuit Court for Marion County declared Measure 37 unconstitutional in a decision entitled *McPherson v. State of Oregon*; and

WHEREAS, in light of the Marion County decision, the County and Claimants entered into a stipulated agreement on November 15, 2005 to toll the 180-day claim period pending review of the Marion County decision by the Oregon Supreme Court; and

WHEREAS, on March 7, 2006, the Oregon Supreme Court entered a judgment overturning the Marion County Circuit Court decision, and declaring Measure 37 constitutional; and

WHEREAS, pursuant to the November 15, 2005 stipulation and extensions thereto, the deadline for a County decision on the claims is now May 29, 2006; and

WHEREAS, according to the information presented with the Claim, Mr. Luttrell has continuously owned an interest in tax lot 1600 in 1946, in tax lot 200 (majority) in 1966, in tax lot 100 in 1967, and tax lot 203 in 1964, and is currently the trustee of a revocable trust that includes the property as an asset of the trust; and

WHEREAS, after the date of acquisition, Columbia County zoned the subject property Primary Agriculture (PA-38) which allowed land divisions for parcels with a minimum parcel size of 38 acres and imposed siting restrictions for dwellings; and

WHEREAS, the subject parcel is zoned Primary Agriculture (PA-38) pursuant to the Columbia County Zoning Map; and

WHEREAS, Mr. Luttrell claims that the minimum lot size requirement and dwelling siting standards have restricted the use of the property and has filed four claims totaling \$6,550,000; and

WHEREAS, Mr. Luttrell desires to subdivide the property subject to the claims into one-two-acre lots; 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 Claimants' property and reduces the fair market value of the property to allow a use which was allowed at the time the Claimants acquired the property;

NOW, THEREFORE, it is hereby ordered as follows:

1. The Board of County Commissioners adopts the findings of fact set forth in the Staff Report for Claim Numbers CL 05-19, CL 05-20, CL 05-21 and CL 05-22, dated May 8, 2006, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. In lieu of compensation, the County waives CCZO 210, 300, 302, 303, 304.1, 305.2 and 309 to the extent necessary to allow the Claimants to divide and develop the subject property as proposed. This waiver does not address any wildlife or public health and safety regulations.
3. This waiver is subject to the following limitations:
  - A. This waiver does not affect any land use regulations of the State of Oregon. If the use allowed herein remains prohibited by a State of Oregon land use regulation, the County will not approve an application for land division, other required land use permits or building permits for development of the property until the State has modified, amended or agreed not to apply any prohibitive regulation, or the prohibitive regulations are otherwise deemed not to apply pursuant to the provisions of Measure 37.
  - B. In approving this waiver, the County is relying on the accuracy, veracity, and completeness of information provided by the Claimants. If it is later determined that Claimants are not entitled to relief under Measure 37 due to the presentation of inaccurate information, or the omission of relevant information, the County may revoke this waiver.
  - C. Except as expressly waived herein, Claimants are required to meet all local laws, rules and regulations, including but not limited to laws, rules and regulations related to subdivision and partitioning, dwellings in the forest zone, and the building code.
  - D. This waiver is personal to the Claimants, does not run with the land, and is not transferable except as may otherwise be required by law.

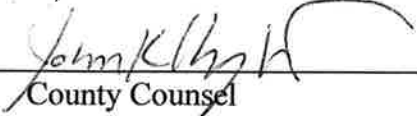
E. By developing the parcel in reliance on this waiver, Claimants do so at their own risk and expense. The County makes no representations about the legal effect of this waiver on the sale of lots resulting from any land division, on the rights of future land owners, or on any other person or property of any sort. By accepting this waiver, and developing the property in reliance thereof, Claimants agree to indemnify and hold the County harmless from and against any claims arising out of the division of property, the sale or development thereof, or any other claim arising from or related to this waiver.

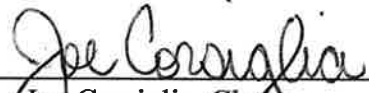
4. This Order shall be recorded in the Columbia County Deed Records, referencing Tax Parcel Nos. 5236-000-00200; 5236-030-00100; 5236-030-00203 and 5225-000-01600 without cost.

Dated this 17<sup>th</sup> day of May, 2006.

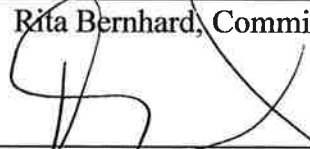
BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By:   
County Counsel

By:   
Joe Corsiglia, Chair

By:   
Rita Bernhard, Commissioner

By:   
Anthony Hyde, Commissioner

After recording please return to:  
Board of County Commissioners  
230 Strand, Room 331  
St. Helens, Oregon 97051

# COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

## Measure 37 Claim

### Staff Report

**DATE:** May 8, 2006

**FILE NUMBERS:** CL 05-19, CL 05-20, CL 05-21 and CL 05-22

**CLAIMANTS/OWNERS:** Fred Luttrell, Trustee  
Fred Luttrell Trust, UID March 27, 2000  
61271 Dart Creek Road  
St. Helens, OR 97051

### SUBJECT PROPERTY

**PROPERTY LOCATIONS:** See below

**TAX ACCOUNT NUMBERS:  
AND PARCEL SIZES**

CL 05-19	5225-000-01600 (tax lot 1600)	33.99 acres
CL 05-20	5236-000-00200 (tax lot 200)	51.30 acres
CL 05-21	5236-030-00100 (tax lot 100)	28.39 acres
CL 05-22	5236-030-00203 (tax lot 203)	10.85 acres

**ZONING:** Primary Agriculture (PA-38)

**REQUEST:** To subdivide the property into one to two acre lots

**CLAIM RECEIVED:** May 27, 2005; Claim Stayed per Agreement dated November 18, 2005 and extended by agreement to May 29, 2006

**REVISED 180 DAY DEADLINE:** May 29, 2006

**NOTICE OF RECEIPT OF CLAIM:** Mailed September 27, 2005.  
A request for hearing has been received from:

Leslie Upton  
60473 Robinette Road  
St. Helens, OR 97051

Additional correspondence/testimony was received from:

Ann Mathers  
60460 Robinette Road  
St. Helens, OR 97051

Dean and Suzanne Lemire  
33596 Elladonah Lane  
St. Helens, OR 97051

Jim and Cindy Cox  
60475 Robinette Road  
St. Helens, OR 97051

Michael and Curry  
Yankton, OR

Robert and Gloria Rice  
61789 Dart Creek Road  
St. Helens, OR 97051

Leslie and John Upton  
60473 Robinette Road  
St. Helens, OR 97051

HEARING DATE: May 10, 2006

**I. BACKGROUND:**

Mr. Luttrell owned and operated a large farm in the St. Helens area for many years. In the past 15 years, Mr. Luttrell has ceased farming operations and has divided his property into residential home sites. The properties at issue in these claims tend to be remainder resource parcels that are interspersed among non-farm residential parcels created by the prior land conveyances. CL 05-19 involves approximately 34 acres located northeast of the intersection of Gensman Road and Dart Creek Road. The 34 acres is developed with a dwelling and outbuildings.

Three of the four claims (CL 05-20, CL 05-21 and CL 05-22) involve three adjoining parcels located in Section 36, Township 5 West, Range 2 North, W.M., east of Pittsburg Road. The latter parcels encompass approximately 90.54 acres in total.

Notice of claim was sent as prescribed in Order 84-2004. Testimony in response to the notice indicated that neighbors are concerned about substantially denser residential development than is prevalent in the area; traffic impacts, and higher density residential development's impact on wildlife, particularly elk habitat. Many of the persons submitting testimony acquired their property from the Luttrell family, based in part on assurances by the Luttrells that the area would remain rural, with larger residential parcel sizes. Some persons commented that they believe one-two acre lots to be urban rather than rural parcel sizes. They expressed concern that dense residential development could adversely affect water quality, as more septic systems are installed to accommodate residential development. While staff recognizes and echoes their concerns, those concerns may be addressed only in the context of whether to impose public health and safety regulations, and may not be considered in evaluating whether the PA-38 zoning decreases property value, as alleged by the claimant.

**II. APPLICABLE CRITERIA AND STAFF FINDINGS:**

**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.**

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

**1. Current Ownership:**

**CL 05-19:** According to information filed by the claimant, Fred Luttrell acquired tax lot 1600 as part of a larger conveyance in 1946 via a bargain and sale deed from the Oregon State Land Board. Mr. Luttrell conveyed his interest in the properties to a revocable trust in 2000. According to the information provided by the claimant, the trust holds fee title to the properties.

**L 05-20:** According to information filed by the claimant, Fred Luttrell and Elladonah Luttrell acquired the portion of tax lot 200 lying in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  as part of a larger conveyance on October 6, 1966 as tenants by the entireties. The portion of tax lot 200 lying south of the NW $\frac{1}{4}$  NW $\frac{1}{4}$  line of tax lot 200 was acquired by Fred

Luttrell and Elladonah Luttrell as part of a larger conveyance by warranty deed on December 30, 1966. It is not clear when the portion of tax lot 200 lying east of the NW¼ of section 36 was acquired. Elladonah Luttrell died on July 1, 1968, and by operation of law, Fred Luttrell acquired fee title to tax lot 200. Mr. Luttrell conveyed his interest in the properties to a revocable trust in 2000. According to the information provided by the claimant, the trust holds fee title to the properties.

**CL 05-21:** According to the information filed by the claimant, Fred Luttrell and Elladonah Luttrell acquired tax lot 100 as part of a larger conveyance in 1967 by warranty deed as tenants by the entireties. Elladonah Luttrell died on July 1, 1968, and by operation of law, Fred Luttrell acquired fee title to tax lot 100. Mr. Luttrell conveyed his interest in the properties to a revocable trust in 2000. According to the information provided by the claimant, the trust holds fee title to the properties.

**CL 05-22:** According to the information filed by the claimant, Fred Luttrell and Elladonah Luttrell acquired tax lot 203 as part of a larger conveyance in 1964 by bargain and sale deed as tenants by the entireties. Elladonah Luttrell died on July 1, 1968, and by operation of law, Fred Luttrell acquired fee title to tax lot 100. Mr. Luttrell conveyed his interest in the properties to a revocable trust in 2000. According to the information provided by the claimant, the trust holds fee title to the properties.

2. **Date of Acquisition:** Based on an advisory opinion by the Oregon Attorney General, which was endorsed by Columbia County Assistant County Counsel Sarah Hanson on September 7, 2005, if a property is conveyed by a grantor into a revocable living trust, the date of acquisition for the purposes of Measure 37 is the date the trustor acquired the property. In this case, the evidence shows that Fred Luttrell conveyed the subject property into a revocable trust in 2000 and therefore, staff uses the date Mr. Luttrell acquired the properties as the date of acquisition for the purposes of evaluating his claims. Mr. Luttrell acquired an interest in tax lot 1600 in 1946, in tax lot 200 (majority) in 1966, in tax lot 100 in 1967, and tax lot 203 in 1964. All of the acquisitions predated the imposition of county zoning and development restrictions in 1973 and later.

### B. LAND USE REGULATIONS IN EFFECT AT THE TIME OF ACQUISITION

The property was not zoned when the claimant acquired the parcels subject to the claims, and was therefore not subject to any minimum parcel size requirements or dwelling siting standards set out in the county zoning ordinance. Tax lots 200, 100 and 203 are subject to subdivision regulations established by state statute in 1955.

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

County zoning was first adopted in 1973, and property zoned Primary Agriculture (A-1) had a minimum parcel size of 40 acres. However, it is not clear whether the A-1 zoning designation applied to the subject property. In 1980, the county adopted Ordinance 80-7, which required an evaluation of agricultural land divisions under Statewide Land Use Goal 3. Mr. Luttrell does not assert that zoning adopted prior to 1984 would have applied to the property, nor has Mr. Luttrell asserted that those standards would have required more strict application than the 1984 zoning standards. Therefore, staff has not evaluated those prior ordinances.

The PA-38 zoning designation was applied to the subject property in 1984, many years after claimant acquired the property subject to these claims. The claimants allege that the PA-38 zoning designation prevents the claimants from dividing their property and constructing dwellings on them. Accordingly, based on the claim, it appears that the county standards that clearly prevent the claimants from developing their property as desired are:

- CCZO 210 Prohibits land divisions into smaller than the minimum parcel sizes allowed in zones
- CCZO 300 Restricts development of small parcels in the PA-38 zone, and permits only specified uses
- CCZO 302 Permits dwellings only on parcels of 38 or more acres and for farm use only
- CCZO 303 Conditional use requirements to site dwellings on agricultural land
- CCZO 304.1 Minimum parcel sizes and setback standards

- CCZO 305.2 Land division requirements for substandard nonfarm parcels
- CCZO 309 Land division requirements for substandard farm parcels

Staff notes that claimant does *not* allege that the portions of his properties that are subject to a Wildlife Protection overlay have development restrictions as a result of that overlay.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property identified above before the adoption of county zoning ordinances and therefore the Claimants may be eligible for compensation and/or waiver of the cited regulations under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant states that he cannot divide his property as proposed due to the county's PA-38 zoning regulations. Staff concedes that CCZO 210, 300, 302, 303, 304.1, 305.2 and 309 can be read and applied to "restrict" the use of claimants' property within the meaning of Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

The applicant submitted property appraisals by Bonnie A. Baldwin, Jonathan J. Deskin PC for each of the tax lots. The appraisals include a current market value, and estimate the market value of the property if developed by the claimant as proposed. The appraisals do not consider the cost of improving the property or constructing roads, water or sewer systems to facilitate residential use.

1. Value of the Property As Regulated.

- Tax lot 1600: \$272,000. Estimate excludes value of existing dwelling, outbuildings and the three acres those structures are located on.
- Tax lot 200: \$506,000
- Tax lot 100: \$275,000
- Tax lot 203: \$135,000

2. Value of Property Not Subject To Cited Regulations.

- Tax lot 1600: \$1,600,000, if developed as proposed by claimant. Estimate excludes value of existing dwelling, outbuildings and the three acres those structures are located on.
- Tax lot 200: \$3,500,000, if developed as proposed by claimant.
- Tax lot 100: \$1,900,000, if developed as proposed by claimant.
- Tax lot 203: \$738,000, if developed as proposed by claimant.

3. Loss of value indicated in the submitted documents is:

- Tax lot 1600: \$1,328,000
- Tax lot 200: \$2,994,000
- Tax lot 100: \$1,625,000
- Tax lot 203: \$603,000

While staff does not agree that the information provided by the claimants is adequate to fully establish the current value of the property or the value of the property if it was not subject to the cited regulations, staff concedes that it is more likely than not that the property would have a higher value if subdivided into one-two acre lots developed with single family dwellings than four resource parcels, with one developed with one single family dwelling.

Staff notes that this value does not account for development costs and assumes that the resulting lots will be developed with dwellings prior to sale to third parties. If the subject property is merely subdivided and then sold as undeveloped lots, there is a significantly lower value, as the attorney general opinion concludes that while the claimants themselves may avail themselves of the benefits of Measure 37 and develop the property according to the regulations in place at the time of acquisition, that benefit is not transferable.

In addition, as the neighbors' commented, the claim does not request waiver of wildlife protections, nor does the claim adequately address or consider whether additional road improvements will be necessary in order to assure safe vehicular access to the properties.

#### G. COMPENSATION DEMANDED

Tax lot 1600: \$1,328,000

Tax lot 200: \$2,994,000

Tax lot 100: \$1,625,000

Tax lot 203: \$603,000

Per page 1 of claimant's Measure 37 Claim forms.

**(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.**

CCZO Sections 210, 301, 302, 303, 304.1, 305.2 and 309 do not qualify for any of the exclusions listed.

Staff notes that other siting standards, including fire suppression requirements, access requirements and requirements for adequate domestic water and subsurface sewage, continue to apply as they are exempt from compensation or waiver under Subsection 3(B), above.

**(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.**

Should the Board determine that the that the Claimants have demonstrated a reduction in fair market value of the property due to the cited regulations, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation or in lieu of compensation, modify, remove, or not apply CCZO Sections 210, 301, 302, 303, 304.1, 305.2 and 309.

**(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.

The subject claim arises from the minimum lot size and dwelling siting provisions of the PA-38 zoning regulations which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claims were filed on May 27, 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.**

Should the Board determine that the that the Claimants have demonstrated a reduction in fair market value of the property due to the cited regulations, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation or in lieu of compensation, modify, remove, or not apply CCZO Sections 210, 301, 302, 303, 304.1, 305.2 and 309.

**III. STAFF RECOMMENDATION:**

Based on the above findings, staff concludes that the claimants have 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 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 regulation below has been found to meet these requirements of a valid Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 210	Prohibits land divisions into smaller than the minimum parcel sizes allowed in zones	Yes	Yes	No
CCZO 300	Restricts development of small parcels in the PA-38 zone, and permits only specified uses	Yes	Yes	No
CCZO 302	Permits dwellings only on parcels of 38 or more acres and for farm use only	Yes	Yes	No

CCZO 303	Conditional use requirements to site dwellings on agricultural land	Yes	Yes	No
CCZO 304.1	Minimum parcel sizes and setback standards	Yes	Yes	No
CCZO 305.2	Land division requirements for substandard nonfarm parcels	Yes	Yes	No
CCZO 309	Land division requirements for substandard farm parcels	Yes	Yes	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 Claimants' property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Sections 303, 304.1, 305.2 and 309.