





4. This Order shall be recorded in the Columbia County Deed Records, referencing the legal description which is attached hereto as Attachment 2, and is incorporated herein by this reference, without cost.

Dated this 11<sup>th</sup> day of October, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hanson  
Assistant County Counsel

By: Joe Corsiglia  
Joe Corsiglia, Chair

By: Rita M. Bernhard  
Rita Bernhard, Commissioner

By: Anthony Hyde  
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**

ATTACHMENT 1

**Measure 37 Claim**

**Staff Report**

**DATE:** September 8, 2006  
**FILE NUMBERS:** CL 06-17  
**CLAIMANTS/OWNERS:** Franciene Urban  
c/o Rosemary Lohrke Conservator  
56679 Mollenhour Road  
Scappoose, OR 97056

**SUBJECT PROPERTY**

**PROPERTY LOCATION:** Tracts 7 & 21 Koehler Acres,  
Located east of Chapman Grange Road  
Scappoose, OR 97056

**TAX ACCOUNT NUMBERS:** 4219-000-00100

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

**SIZE:** 66.59 acres

**REQUEST:** To subdivide the parcel into 10 five to six acre lots

**CLAIM RECEIVED:** April 12, 2006

**180 DAY DEADLINE:** October 11, 2006

**NOTICE OF RECEIPT OF CLAIM:** Notice of the receipt of claim was mailed to neighboring property owners. No responses have been received.

**I. BACKGROUND:**

The subject property includes 66.59 acres and is undeveloped. Claimant seeks to subdivide the property into five to six acre lots. If the lots include six acres, 11 lots could be created. The property was acquired by Ms. Urban in 1959 from her parents Anton Urban and Cicilija Urban, who acquired their interest in the property in 1929. The two tracts were created by subdivision recorded on May 3, 1929.

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

**MEASURE 37**

**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:** Claimant submitted a title report issued by Ticor Title on March 3, 2006 for the subject property identified by Tax Acct. No. 01-09-2-4219-000-00100, with legal description attached.

Vested In: Franciene Urban, a Protected Person, an estate in fee simple

2. **Date of Acquisition:** The claim includes a copy of a bargain and sale deed dated April 15, 1959 from Tony Urban and Cicilija Urban, conveying the subject property to Franciene Urban. That documents is recorded in Book 139, page 240 Columbia County Deed Records. For the purposes of this staff report, the date of acquisition is April 15, 1959.

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

The property was unzoned at the time of acquisition. The parcel subject to the claims was zoned PF-76 in August 1984, and that zoning has remained on the property to date.

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

The claimant alleges that the county's PF-76 zoning regulations prevent the claimant from subdividing the property.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The claimant alleges that the general zoning provisions that prevent uses of land not permitted by the zoning ordinance and the PF-76 zoning prevents the claimant from subdividing the property. The PF-76 zoning designation was applied to the subject property in 1984.

To the extent claimant alleges a valid claim, it appears that the county standards that clearly prevents the claimant from developing the property as desired are:

CCZO 506.1 Limiting substandard parcel divisions to uses that do not include non-forest dwellings

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant acquired an interest in the property before CCZO Section 500 et. seq., (PF-76 zoning provisions) became effective and therefore the Claimant may be eligible for compensation and/or waiver of the cited regulations which restrict use and reduce property value under Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The claimant submitted a copy of an assessor's record that estimates the current value of the property as 184,200.

Value of Property Not Subject To Cited Regulations.

Claimant alleges that if the property is subdivided, the property would be worth 1,784,200 (\$184,200 plus claim value of \$1,600,000). The claim includes a series of excerpts from a multiple real estate listing service. The excerpts list properties ranging from 3.25 to 90 acres in size, located in rural residential and resource zones. The properties have been sold or offered at between \$105,000 (\$7,777/acre) and \$1,900,000 (\$26,771/acre). The claim estimates that the value of the subject property if subdivided as proposed would be \$26,793 per acre.

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

The Claimant states that she cannot subdivide her property as proposed due to the county's 76-acre minimum parcel size standard. Staff concedes that CCZO 506.1 can be read and applied to "restrict" the use of claimant's property within the meaning of Measure 37. Columbia County Zoning Ordinance(CCZO) Section 503.9 requires that a conditional use permit be obtained before development of a non resource-related single family residential structure in the PF-76 zone. Section 504 contains criteria that all conditional uses in the PF-76 zone must meet. Section 505 contains criteria that residential structures must meet. These requirements have not been enforced on the applicants property under terms of Measure 37 and therefore cannot be the basis for a valid claim until or unless an application for a conditional use permit has been denied or condition has been imposed that restricts use. Staff finds that CCZO Sections 503.9, 504 and 505 have not restricted the use of the Claimant's property.

Staff notes that this value appears to assume 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 and a recent circuit court decision conclude that while the claimant may avail him or herself 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.

While staff does not agree that the information provided by the claimant 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 as a rural subdivision than as a 66.59-acre resource parcel.

G. COMPENSATION DEMANDED

\$1,600,000 per page one of the Measure 37 claim.

**(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 506.1 does 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 Claimant has 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 Section 506.1.

**(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 provisions of the PF-76 zoning regulations, which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on April 12, 2006, 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 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.

### **III. STAFF RECOMMENDATION:**

The following table summarizes staff findings concerning the land use regulations cited by the Claimant as a basis for the 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 valid Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 503	Conditional Uses in the PF-76 zone	Not until or unless an application for a conditional use permit has been denied or condition has been imposed that restricts use and reduces value.		Unknown
CCZO 506.1	Land division requirements for non-forest 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 Claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 506.1.



ATTACHMENT 2

Koehler Acres, Tracts 7 and 21, Scappoose, Oregon.