



3. This waiver is subject to the following limitations:

A. This waiver does not affect any land use regulations promulgated by 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.

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

Dated this 7<sup>th</sup> day of March, 2007.

Approved as to form

By: Sarah Hanson  
County Counsel

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard  
Rita Bernhard, Chair

By: not present  
Anthony Hyde, Commissioner

By: Joe Corsiglia  
Joe Corsiglia, Commissioner

**COLUMBIA COUNTY  
LAND DEVELOPMENT SERVICES**

**Measure 37 Claim**

**Staff Report**

**DATE:** March 5, 2007  
**FILE NUMBER:** CL 07 - 17, CL 07- 18, CL 07- 19, CL 07-20 & CL 07-21  
**CLAIMANT:** Ross and Patricia Winans  
67993 Nicolai Road  
Rainier, OR 97048

**SUBJECT PROPERTY**

**PROPERTY LOCATION:** These 5 properties are located in the Shiloh Basin area off Nicolai Road in Sections 21 and 28 of Township 6 North Range 2 West of the Willamette Meridian.

**TAX ACCOUNT NUMBERS:  
(CURRENT ZONING)** 6221-010-00600 (FA-19)  
6221-000-00600 (PF-76)  
6221-000-00400 (PF-76)  
6221-000-00700 (PF-76)  
6228-000-00800 (PF-76)

**ZONING:** Forest Agriculture (FA -19) & Primary Forest-76 (PF-76)

**SIZE:** 18.17 acres of FA -19  
298.72 acres of PF-76  
Total acreage: 316.89 acres

**REQUEST:** To subdivide their 316.89 acres into 5 acre lots for residential development

**CLAIM RECEIVED:** November 14, 2006

**REVISED 180 DAY DEADLINE:** May 15, 2007

**NOTICE OF RECEIPT OF CLAIM:** Mailed December 22, 2006 As of January 5, 2007, the following request for hearing has been filed:

Shawn & Dana Kottmeier  
67775 Andy Thomas Road  
Rainier, OR 97048

**I. BACKGROUND:**

The Claimants have submitted 5 separate Claims, 4 of which are currently zoned as Primary Forest (PF-76) while the remaining Claim is zoned for Forest-Agriculture (FA-19). There are 3 existing single-family dwellings on these 5 properties, addressed at 67090, 67991 and 67993 Nicolai Road. These residences were built in 1928, 1915, and 1920, respectively, before Columbia County regulated the division and development of land. These 5 properties were also acquired by the Claimants through 4 separate land transactions: one occurred in 1965, two simultaneously in 1973, one in 1976, and one in 1979. Although none of these properties were zoned when the Claimants acquired them, all 5 properties were initially zoned either for PF-76 or FA-19, as mentioned above, in August 1984 and have maintained this zoning to date.

Douglas W. Christophersen submitted written testimony in opposition to these claims, arguing that the area is not suited for this level of residential development due to potential negative impacts on ground water. Shawn and Diana Kottmeir have requested a hearing in order to oppose the granting of the Measure 37 Claim.

**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:** According to information supplied by the claimant, the properties are owned by the Claimants, Ross and Patricia Winans.

2. **Date of Acquisition:** These subject properties were acquired by the Claimants in 4 separate transactions, the first of which took place in 1965. These 4 transactions can be broken down as follows:

<b>Tax Account #</b>	<b>Date of Acquisition</b>	<b>Document</b>
6221-010-00600	June 24, 1976	Sales Contract
6221-000-00600	February 119, 1965	Agreement
6221-000-00400	May 2, 1973	Warranty Deed
6221-000-00700	May 2, 1973	Warranty Deed
6228-000-00800	February 6, 1979	Real Estate Contract

These land transactions were all recorded in the deed records of the Columbia County Clerk as noted above. The Claimants have also provided documentation verifying the Chains of all of their 5 Titles have not been disrupted since these dates of original conveyance. Accordingly, staff concludes Ross and Patricia Winans are the fee owners of the subject properties, and that their interest dates back to 1965, 1973, 1976, and 1979.

3. **Acquisition by Predecessor in Interest:** The claim is not based on acquisition by a predecessor in interest.

**3. LAND USE REGULATIONS IN EFFECT AT THE TIME OF ACQUISITION**

The properties were all unzoned in 1965, 1973, 1976 and 1979 when the Claimants first acquired interest in them. In August 1984, four of the parcels subject to the claims were zoned PF-76 while the 5<sup>th</sup> parcel was zoned for FA-19. Both zoning designations have remained on the properties to date.

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

The claimants allege that the zoning ordinance's FA-19 and PF-76 zoning prevents the claimants from subdividing their property into 5-acre lots. The FA-19 and PF-76 zoning designations were applied to the subject property in August 1984.

To the extent Claimants allege a valid claim, it appears that the county standards that clearly prevent the claimants from developing their single FA-19 zoned property as well as their four PF-76 zoned properties as desired are:

- CCZO 407.1 Limiting new land divisions to FA-19 zoned properties to a minimum lot size of 19 acres.
- CCZO 506.1 Limiting new land divisions of PF-76 zoned properties to a minimum lot size of 76 acres

**D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW**

Claimant acquired an interest in the property before CCZO Section 407.1 for their FA-19 zoned property and Section 506.1 for their PF-76 zone properties became effective in August 1984, 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**

The Claimants state that they cannot subdivide their land into 5-acre properties due to the county's 19-acre and 76-acre minimum parcel size standard. Staff concedes that CCZO 407.1 and 506.1 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**

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

The claimant's representative submitted copies of assessor's tax records showing that the properties have estimated fair market value as follows. These values do not include the value of the improvements and existing timber on these 5 properties.:

<b>Property(Zone)</b>	<b>Fair Market Value as of October 27, 2006</b>
6221-010-00600 (FA-19)	\$ 36,400
6221-000-00600 (PF-76)	\$354,200
6221-000-00400 (PF-76)	\$152,000
6221-000-00700 (PF-76)	\$ 87,000
6228-000-00800 (PF-76)	\$ 56,860
<b>Total:</b>	<b>\$ 686,460</b>

**2. Value of Property Not Subject To Cited Regulations.**

Claimants allege that if the property is subdivided, the developed properties would be worth more. If the Claimants' 5 properties were subdivided into 5-acre lots and each 5-acre lot could be sold for \$150,000, the Claimants' allege the following resulting property values:

<b>Property(Zone)</b>	<b>Acres</b>	<b># 5-acre lots</b>	<b>Property Value</b>
6221-010-00600 (FA-19)	18.17	3	\$ 450,000
6221-000-00600 (PF-76)	123.5	24	\$3,600,000
6221-000-00400 (PF-76)	80	16	\$2,400,000
6221-000-00700 (PF-76)	28	5	\$ 750,000
6228-000-00800 (PF-76)	67.22	13	\$1,950,000
<b>Total</b>	<b>316.89</b>	<b>61</b>	<b>\$9,150,000</b>

To summarize, and based on the information submitted, it appears that the claimants allege that if their 5 properties were subdivided into approximately 61 5-acre lots, their 5 properties are worth \$9,150,000.

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

The claimants' representative asserts the difference in value between the value of the property with the FA-19 and PF-76 zoning, and the value as subdivision lots is \$ 8,463,540.

Staff notes that this value assumes that the resulting lots will be developed with dwellings prior to sale to third parties. If the subject properties are merely subdivided and then sold as undeveloped lots, there is a significantly lower value, as the attorney general opinion concludes that while the claimants 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.

While staff does not agree that the information provided by the claimants are adequate to fully establish the current value of the property or the value of the property if it was not subject to the cited regulation, staff concedes that it is more likely than not that the property would have a higher value if subdivided for residential development.

**G. COMPENSATION DEMANDED**

Claimant claims the following compensation, per page 1 of the Measure 37 claim form: \$ 8,463,540

**(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 407.1 and 506.1 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 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 407.1 and 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 claims arise from the minimum lot size provisions of the single FA-19 zoned property, tax account number 6221-010-00600 and of the 4 remaining PF-76 zoned properties, tax account numbers 6221-000-00600, 6221-000-00400, 6221-000-00700 and 6228-000-00800, and the zoning regulations, which were enacted prior to the effective date of Measure 37 on December 2, 2004. The 5 subject claims were filed on November 30, 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 or, in lieu of compensation, modify, remove, or not apply CCZO Section 407.1 to tax account number 6221-010-00600 and Section 506.1 to tax account numbers 6221-000-600, 6221-000-00400, 6221-000-00700, and 6228-000-00800.

**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 Claimants 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 a valid Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 407.1	Land division requirements for non-farm or forest parcel for the property with this tax account number: 6221-010-00600	Yes	Yes	No
CCZO 506.1	Land division requirements for non-forest parcels for the remaining 4 properties with these tax account numbers: 6221-000-00600 6221-000-00400 6221-000-00700 and 6228-000-00800	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' properties, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Sections 407.1 and 506.1.



RECEIVED

JAN 05 2007

LAND DEVELOPMENT SERVICES

1/3/07

Todd Dugdale,  
Columbia County  
Land Development Services  
Columbia County Courthouse  
230 Strand Street  
St. Helens, Oregon 97051

RE: Measure 37 claim by Ross and Pat Winans, 67993 Nicolai Rd., Rainier, Oregon.

Dear Sirs:

For the past 40 years my family has owned 122 acres that borders the property owned by Ross and Pat Winans. Like most property owners in this area, we have used the property for farming and forestry.

I am opposed to any of the property in this area being divided into five acre lots for housing development. Doing so would ruin the quality of life my family and I have enjoyed for 40 years. Additionally, I am concerned about the stress housing developments would put on the water table that is currently sufficient for the number of homes and farms present. In the past when the Winans family operated a dairy, their well would run short of water. They put in a second well but they still had problems attaining enough water for their dairy operation. Approving concentrated housing may deplete the ground water necessary for already existing homes in this area.

To my knowledge, the property in question has always been used for farming and forestry and taxed accordingly. To change the use of said property to residential development is a drastic change. I don't believe that is the purpose of our land use laws in the state of Oregon. I see family farms near larger towns and cities being lost. We need to protect our family farms in areas like this that are far removed from larger towns and cities. Our family hopes to pass our farm on to the next generation and preserve the way of life of family owned farms.

Thank you for your time in considering these comments.

Respectfully,



Douglas W. Christophersen  
67979 Nicolai Rd.  
Rainier, Oregon 97048

Dear Sirs;

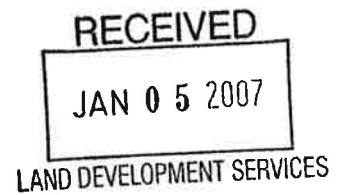
We would like to request a hearing in order to oppose the granting of the measure 37 claimed filed for the property at 67993 Nicolai Rd, Rainier, OR 97048. We oppose the division of farm and or forest land in order to put in multiple houses.

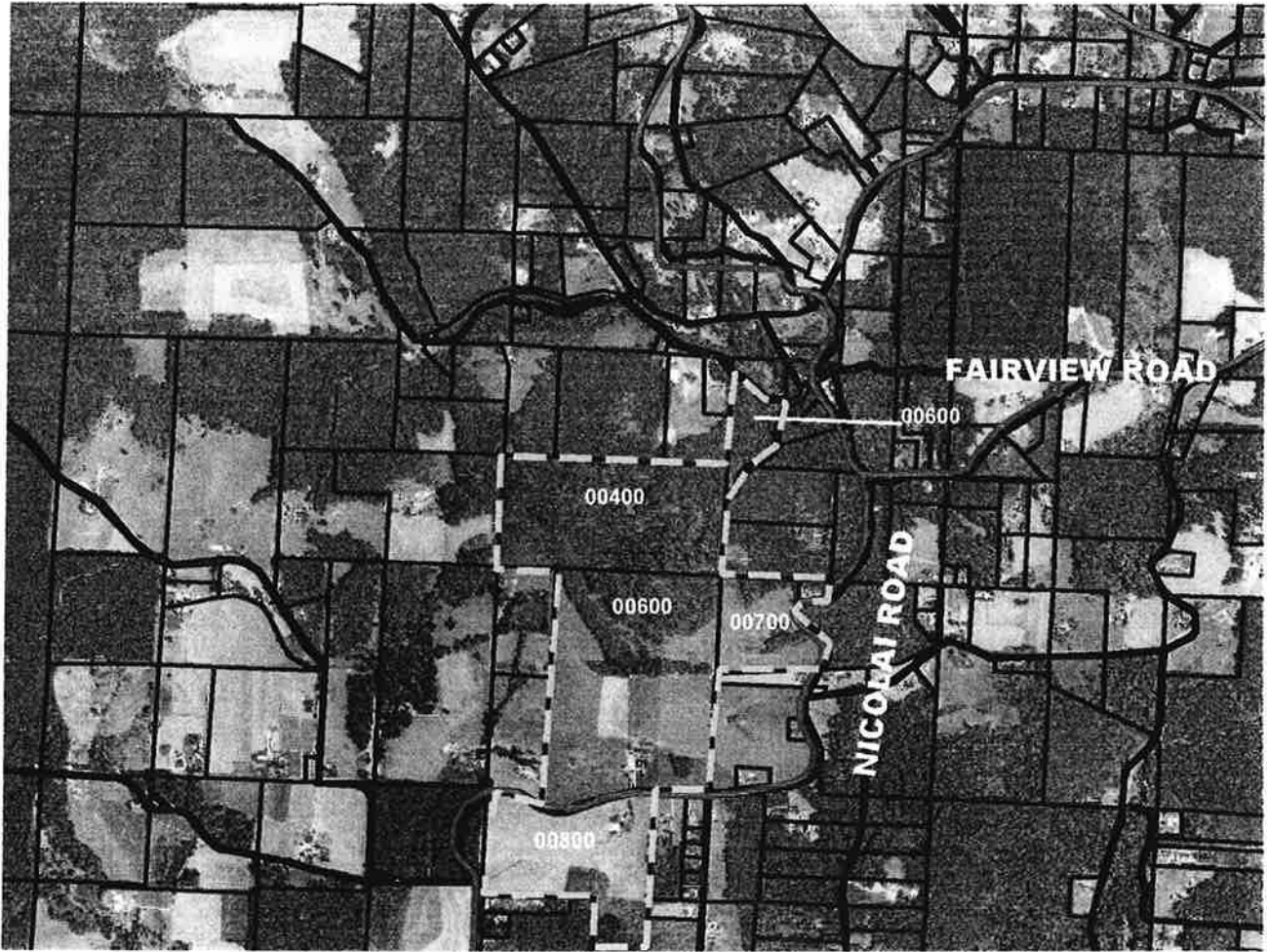
We feel it would greatly impact the area and put a severe strain on the roads, water and utility services in our area.

Sincerely



hawn & Diana Kottmeier  
67775 Andy Thomas Rd.  
Rainier, OR 97048  
503-556-1041





**WINANS MEASURE 37 CLAIM**  
**CL 07-17 thru CL 07-21**

LEGAL DESCRIPTION

6224-000-00600

PARCEL 1:

All that portion of the East half of the Northeast quarter of the Northwest quarter lying North of the Nicolai-Tide Creek County Road, all being in Section 28, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon.

PARCEL 2:

The East half of the Southwest quarter; and the East half of the West half of the Southwest quarter of Section 21, Township 6 North, Rang 2 West of the Willamette Meridian, Columbia County, Oregon; also that portion of the West half of the Northeast quarter of the Northwest quarter and the East half of the West half of the Northwest quarter of Section 28, Township 6 North, Range 2 West of the Willamette Meridian, lying North of Nicolai-Tide Creek County Road, Columbia County, Oregon.



2534 Sykes Rd., Suite C  
PO Box 1271  
St. Helens, OR 97051-8271  
Phone: (503) 397-3537  
(800) 243-2304  
Fax: (503) 397-0104

Jody Blackburn  
68005 Nicolai Rd.  
Rainier, OR 97048

November 8, 2006  
Buyer/Borrower: Winans

Re: WINANS CHAIN OF TITLE

Report No: 07-57582  
Property:

SERVICE FOR:  
Chain of Title Report: \$50.00

6224-010-00600

A. Tract 11, in BEAVER HOMES, Columbia County, Oregon. EXCEPTING that portion conveyed to James Edward Hajeck et ux, recorded July 30, 1975 in Book 202, page 24, Deed Records of Columbia County, Oregon.

B. Ticor Title certifies that a search of the public records of Columbia County, Oregon discloses the following deeds, contracts, leases and/or memoranda thereof, described the Subject Property, recorded during the period from January 14, 1976 and ending with November 1, 2006.

C.

1. Warranty Deed, including the terms and provisions thereof,  
Grantor: Fergus Baird and Annabelle Baird, husband and wife  
Grantee: Lynn B. Maxwell and Betty J. Maxwell, husband and wife  
Recorded: January 14, 1976  
Book: 204 Page: 171  
Records of Columbia County, Oregon.

**LEGAL DESCRIPTION**

6221-000-00400

**PARCEL 1:**

South half of the Northwest quarter and that part of the Northwest quarter of the Southeast quarter of Section 21, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, lying West of the F.B. Holbrook County Road, known as the Red Town Road and North of the right of way of the logging railroad of Clark & Wilson Lumber Company, all in Columbia County, Oregon.

EXCEPTING THEREFROM tract of land conveyed by B.S. Golden and Nela Golden to R.W. Hargitt and Lillie Hargitt by deed record June 1, 1938 in Book 62, page 496, Deed Records of Columbia County, Oregon.

ALSO EXCEPTING THEREFROM a tract of land in the Northwest quarter of the Southeast quarter of Section 21, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon and being a parcel lying 50 feet on each side of a center line described as follows: Beginning at a point on the North and South half section line that is North 171 feet from the Southwest corner of the Northwest quarter of the Southeast quarter of said Section 21, and running thence Northeasterly to a point on the East boundary line of said Northwest quarter of the Southeast quarter of said Section 21 that is North 271 feet from the Southeast corner of said Northwest quarter of the Southeast quarter of said Section 21, being the old Clark and Wilson railroad right of way.

**PARCEL 2:**

A tract of land in the Northwest quarter of the Southeast quarter of Section 21, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon and being a parcel lying 50 feet on each side of a center line described as follows: Beginning at a point on the North and South half section line that is North 171 feet from the Southwest corner of the Northwest quarter of the Southeast quarter of said Section 21, and running thence Northeasterly to a point on the East boundary line of said Northwest quarter of the Southeast quarter of said Section 21 that is North 271 feet from the Southeast corner of said Northwest quarter of the Southeast quarter of said Section 21, being the old Clark and Wilson railroad right of way.

## LEGAL DESCRIPTION

6221-000-00700

### PARCEL 1:

South half of the Northwest quarter and that part of the Northwest quarter of the Southeast quarter of Section 21, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, lying West of the F.B. Holbrook County Road, known as the Red Town Road and North of the right of way of the logging railroad of Clark & Wilson Lumber Company, all in Columbia County, Oregon.

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Jody Blackburn  
68005 Nicolai Rd.  
Rainier, OR 97048

November 8, 2006  
Buyer/Borrower: Winans, Jr.

Re: WINANS CHAIN OF TITLE

Report No: 07-57583  
Property: 97048

SERVICE FOR:  
Chain of Title Report: \$50.00

6228-000-00800

A.

All of the West half of the Northeast quarter of the Northwest quarter of Section 28, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, lying South of Nicolai-Tide Creek County Road; all that part of the Northwest quarter of the Northwest quarter of said Section 28 lying South of County Road and all that part of the West half of the Southeast quarter of the Northwest quarter of said Section 28. EXCEPTING the South rectangular 132 feet of the West half of the Southeast quarter of the Northwest quarter.

B.

Ticor Title certifies that a search of the public records of Columbia County, Oregon discloses the following deeds, contracts, leases and/or memoranda thereof, described the Subject Property, recorded during the period from January 6, 1979 and ending with November 1, 2006.

C.

1. Contract, including the terms and provisions thereof,  
Grantor: Grace Meissner  
Grantee: Ross Winans, Jr and Patricia L. Winans, husband and wife  
Recorded: February 6, 1979  
Book: 222 Page: 178  
Records of Columbia County, Oregon.