

extent necessary to allow the Claimant, to divide the property into no more than 2 parcels with a minimum lot size of 1 acre.

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 Claimant. If it is later determined that Claimant is 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, Claimant is 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 Claimant, Donna Cooke, as an individual, 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, Claimant does so at her 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.

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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 4th day of April, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Rita M. Bernhard

Rita Bernhard, Chair

By: Sarah Hanson

County Counsel

By: [Signature]

Anthony Hyde, Commissioner

By: not present

Joe Corsiglia, Commissioner

**COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
MEASURE 37 CLAIM
STAFF REPORT**

DATE: February 26, 2007

FILE NUMBER(s): CL 07-44

CLAIMANT: Donna Kyllonen; 29254 Barker Road; Rainier, OR 97048

PROPERTY LOCATION: 29254 Barker Road; Rainier, OR 97048
Section 8, T6N, R2W

TAX ACCOUNT NUMBER: 6208-000-00801

ZONING: Primary Forest - 76 (PF-76)

SIZE: 6.74 acres

REQUEST: To divide property into 1- 5 acre lots/parcels.

CLAIM RECEIVED: November 22, 2006

180-DAY DEADLINE: May 22, 2007

RECEIPT OF CLAIM NOTICE: February 14, 2007
As of the date of this Staff Report, no request for hearing has been received

I. BACKGROUND:

The subject property is developed with two existing single family dwellings. Access to the site is by Barker Road. Claimant appears to have acquired the property on October 21, 1975. It does not appear that the size and shape of the site has changed since then. Ms. Cooke desires to divide the property in half to provide legal lots for the two existing dwellings on the subject parcel.

II. APPLICABLE CRITERIA & 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 & OWNERSHIP INTERESTS

Current ownership: Based on the information provided, it appears the subject property is owned by the Claimant.

2. **Date of Acquisition:** The property was acquired by the Claimant October 21, 1975, as indicated by a Warranty Deed recorded in Book 202, Page 997 of Columbia County records on that date.

B. LAND USE REGULATION(S) IN EFFECT AT THE TIME OF ACQUISITION

The County did not have a Zoning Ordinance which applied to the subject property until August 1, 1984. The property was not subject to County zoning regulations when it was acquired by Claimant in 1975.

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

The Claimant cites both Oregon Revised Statutes and Oregon Administrative Rules, alleging they have resulted in a reduction of the property's fair market value. Generally, those State regulations cited pertain to land divisions and dwellings on forest zoned land. This specific claim is to divide PF-76 zoned property into two lots/parcels having less than the 76 acre minimum. As such, the most applicable County Regulation is Section 506.1 of the County's current Zoning Ordinance which became effective August 1, 1984. Section 506.1 restricts the minimum lot or parcel size to 76 acres in the PF-76 zone.

Based on the claim, it appears that the County regulation that clearly prevents the Claimant(s) from developing the property as desired is:

CCZO 506.1 Establishing the 76-acre minimum lot/parcel size in the PF-76 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The Claimant acquired an interest in the property before the minimum lot/parcel size standards of the PF-76 zone became effective. Therefore, the Claimant may be eligible for compensation and/or waiver of CCZO 506.1 under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant specified several County regulations as restricting the use of the property, including the following: CCZO 200, 201-222, 210, 300, 302-305, 309, 400-412, 501-510, and 1030.

Section 201 requires compliance with the Zoning Ordinance. Staff finds that with the exception of provisions that are subject to waiver, the Claimant must comply with the zoning ordinance and there is no basis for waiver of this Section.

Section 202 sets for the zoning districts and minimum lot size. While this is merely a general provision, further regulated under the relevant zoning section (Section 500), this provision could be read to restrict the use of the subject property.

Sections 203 through 209 are not relevant to this Claim to divide the property in half based on the information provided with the Claim.

Section 210 prohibits new lot divisions smaller than the lot required in the zoning district. While this provision is merely a general provision, further regulated under the relevant zoning district (Section 500), this provision could be read to restrict the use of the subject property.

Sections 211 through 222 are not relevant to this Claim to divide the property in half based on the information provided with the Claim.

Section 300 et seq applies to land zoned for Primary Agriculture (PA -38) and is not applicable to this Claim to divide this PF-76 zoned land.

Sections 400 through 412 apply to land zoned for Forest Agriculture (FA-19) and are not applicable to this Claim to divide this PF-76 zoned land.

CCZO Section 500 does apply to Primary Forest (PF-76) zoned land. However, only Section 506.1 prohibits the desired partition, by prohibiting the creation of new lots of less than 76 acres. 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.

Section 1030 applies to surface mining overlays and is not relevant to this Claim to divide the property in half based on the information provided with the Claim.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. **Value of property as regulated:** Based on County Assessor data the property's real market value for the land itself is \$87,900. The RMV of the land and the improvements is \$220,000.
2. **Value of property not subject to cited regulations:** Claimant submitted real-estate listings for other properties for sale in the County and reported that the estimated appraised value of the land itself is estimated to be \$76,000, as of October 2006.
3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$214,000.00, based on an appraised land value of the 6.47 acres at \$290,000.00 if it could be divided into 1 – 5 acre lots minus the current appraised value of the land at \$76,000 for a reduction in value of \$214,000.00

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 regulation(s). Staff concedes, however, that it is more likely than not that the property would have a higher value if it could be divided for residential development as proposed.

G. COMPENSATION DEMANDED

As noted on page 1 of the Measure 37 Claim Form: \$214,000.00

(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 202, 210, and 506.1 do not qualify for any exclusions listed.

Staff notes that other standards including but not limited to fire suppression/protection, access, adequacy of domestic water, subsurface sewage, erosion control and stormwater requirements 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 Claimant(s) has/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(s) or in lieu of compensation, modify, remove, or not apply CCZO Section(s) 202, 210 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 claim arises from the minimum lot/parcel size of the PF-76 zone which was enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on November 22, 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 Claimant(s) has/have demonstrated a 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 regulation(s) or in lieu of compensation, modify, remove, or not apply said regulations.

III. STAFF RECOMMENDATION:

The following table summarizes staff findings concerning the land use regulation(s) 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 regulations identified in this table have been found to apply to this Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 202	Provides a PF-76 zoning district with a minimum lot size of 76 acres	Yes	Yes	No
CCZO 210	Prohibits a partition or subdivision of land into parcels smaller than the lot size required in the zoning district	Yes	Yes	No
CCZO506.1	Minimum 76 acre lot/parcel size	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(s) 202, 210 and 506.1.

ATTACHMENT 2

EXHIBIT A

LEGAL DESCRIPTION

A portion of Tract 133, BEAVER HOMES, Columbia County, Oregon, more particularly described as follows:

BEGINNING at the corner common to Tracts, 133, 134 and 135, BEAVER HOMES in Section 8, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon;

Thence North $21^{\circ} 28'$ East, along the Westerly line of said Tract 133, a distance of 1302.91 feet to the corner common to Tracts 132, 133 and 134 in said Beaver Homes;

Thence South $68^{\circ} 32'$ East, a distance of 249.15 feet;

Thence South $21^{\circ} 28'$ West, a distance of 1016.60 feet;

Thence South $83^{\circ} 37'$ West, a distance of 208.71 feet;

Thence South $40^{\circ} 22'$ West, a distance of 199.55 feet to the POINT OF BEGINNING.