

**AFTER RECORDING, RETURN TO:**

Board of County Commissioners  
Columbia County Courthouse  
230 Strand, Room 331  
St. Helens, OR 97051

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 07-70 )  
for Compensation under Measure 37 Submitted ) Order No. 56-2007  
by Mark and Marlene Gift )

WHEREAS, on November 30, 2006, Columbia County received a claim under Measure 37 (codified at ORS 197.352) and Order No. 34-2007 from Mark and Marlene Gift (the "Claimants"), for 44.23 acres of property having Tax Account Number 4235-000-00200 on Dahlgren Road, Scappoose, Oregon; and

WHEREAS, according to the claim, the Claimants desire to subdivide the parcel into 8 parcels of approximately 5 acres; and

WHEREAS, according to the information presented with the Claim, the Claimants have continuously had an interest in the property since 1964; and

WHEREAS, in 1964, the property was unzoned by Columbia County; and

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

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO) Sections 303.13(D) and 304.1, the property cannot be divided into less than 38 acre minimum lot size parcels, and dwellings cannot be placed on land that is generally suitable for farm use; and

WHEREAS, the Claimants claim that CCZO Sections 303.13(D) and 304.1 have restricted the use of the property and have reduced the value of the property by \$1,640,000.00; 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 Number CL 07-70, dated March 13, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. In lieu of compensation, the County waives CCZO Section 303.13(D) and CCZO Section 304.1 to the extent necessary to allow the Claimants to divide the property into 8 parcels having a 5 acre minimum lot size each.
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 as individuals, 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 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 11<sup>th</sup> 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 Hunsicker  
County Counsel

By: Anthony Hyde  
Anthony Hyde, Commissioner

By: Joe Corsiglia  
Joe Corsiglia, Commissioner

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

DATE: March 13, 2007

FILE NUMBER(s): CL 07-70

CLAIMANT: Mark H. & Marlene J. Gift; P.O. Box 448; Scappoose, OR 97056

PROPERTY LOCATION: 54501 Dahlgren Rd. (situs address differs from mailing address)

TAX ACCOUNT NUMBER: 4235-000-00200

ZONING: Primary Agriculture - 38 (PA-38)

SIZE: 44.23 acres.

REQUEST: To divide the 44.23 acre property into eight 5-acre lots/parcels.

CLAIM RECEIVED: November 30, 2006

REVISED 180 DAY DEADLINE: May 29, 2007

RECEIPT OF CLAIM NOTICE:

**I. BACKGROUND:**

The subject property is developed with a single-family dwelling and accessory buildings. Access is provided by Dahlgren Road. Claimants appear to have acquired the property on September 22, 1964. At that time the property was approximately 155 acres. Subsequent to the acquisition date, the Claimants conveyed several parcels to third parties, and the tax lot lines have changed. There are a number of encumbrances on the property, including easements granting rights of way, mineral reservations, an Electrical Line Extension Agreement, and a Road Maintenance Agreement

Whether or not a property is a legally platted lot or parcel created by a Subdivision or Land Partition, respectively, or a legal lot-of-record is not included in the review for a Measure 37 Claim. If the property reviewed by this claim is neither of these, this could impact any subsequent development under this claim.

**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

1. **Current ownership:** Based on the information provided, it appears the subject property is owned by the Claimants.
2. **Date of Acquisition:** The property was acquired by the Claimants on September 22, 1964, as shown by a warranty deed executed on that date. The deed was recorded in Book 156, Page 330 of the Columbia County deed records on October 5, 1964.

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 29, 1973. The property was not subject to County zoning regulations when it was acquired by Claimants on September 22, 1964.

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

The Claimants cite Sections 303.13(D) & 304.1 of Columbia County Zoning Regulations, alleging they have resulted in a reduction of the property's fair market value. This specific claim is to divide PA-38 zoned property into lots/parcels less than the 38 acre minimum. As such, the most applicable County Regulations are Sections 303.13(D) & 304.1 of the County's current Zoning Ordinance which became effective August 1, 1984. Section 303.13(D) is a criterion for conditional uses that restricts non-resource related dwellings to land generally unsuitable for farm use. Section 304.1 restricts the minimum lot or parcel size to 38 acres.

Based on the claim, it appears that the County regulations that clearly prevent the Claimant(s) from developing the property as desired are:

CCZO 303.13(D) Restricts non-resource related dwellings to land generally unsuitable for farm use. Roughly half of the soils on the subject parcel are predominately agricultural soils (Class I - IV soils) and therefore this conditional use permit criterion cannot be met for the intended use of the property.

CCZO 304.1 Establishing the 38-acre minimum lot/parcel size in the PA-38 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before the PA-38 zoning designation was adopted. Therefore, the Claimants may be eligible for compensation and/or waiver of CCZO 303.13(D) & 304.1 under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimants did not specify any County regulations, but Staff understands that the property cannot be divided due to the 38-acre minimum lot size. Further, the criterion that non-resource dwellings may only be sited on land generally unsuitable for farm use restricts the use as intended since the soils on both of the subject tax parcels are predominately agricultural soils (Class I - IV soils). Staff concedes that CCZO 303.13 (D) & 304.1 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 property as regulated:** Based on County Assessor data the property's real market value

for the land itself is \$243,800.

2. **Value of property not subject to cited regulations:** The Claimants submitted a property marketing proposal which estimated the market value of the property as \$1,840,000 if the subject property could be redeveloped to a 5-acre density.
3. **Loss of value as indicated in the submitted documents:** The Claimants allege a total reduction in value of \$1,640,000.

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 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: \$1,640,000.

**(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 303.13(D) & 304.1 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) 303.13(D) & 304.1.

**(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 and non-resource dwelling siting restrictions of the PA-38 zone which was enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was 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 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 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 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 303.13 (D)	Restricts non-resource related dwellings to land generally unsuitable for farm use	Yes	Yes	No
CCZO 304.1	Minimum 38 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 Claimants' property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section(s) 303.13(D) & 304.1.

## LEGAL DESCRIPTION

The Northwest quarter of Northeast quarter and the Southwest quarter of the Northeast quarter of Section 35, Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon.

EXCEPTING THEREFROM that portion conveyed to Fred Bernet et ux by deed recorded on December 1, 1969 in Parcel 1 of Book 175, page 643, Deed Records of Columbia County, Oregon.

ALSO EXCEPTING THEREFROM that deed conveyed to Robin O. Stanley et ux recorded October 10, 1977 in Book 214, page 183, Deed Records of Columbia County, Oregon.

ALSO EXCEPTING THEREFROM that deed conveyed to Randall R. McQuire et ux recorded May 25, 2004 in Fee Number 2004-006866, Records of Columbia County, Oregon.