

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 Nos. CL 07-34, CL 07-35 )  
and CL 07-36 Submitted by Alayne Bryan, Arnita ) Order No. 63-2007  
Scheckla and Analene Waterman for Compensation )  
Under Measure 37 )

WHEREAS, on November 21, 2006, Columbia County received three claims for compensation under Measure 37 and Order No. 84-2007 from Alayne Bryan, Arnita Scheckla, and Alalene Waterman (the "Claimants"), related to three parcels of property located on Highway 30 at approximately Nicolai Cutoff Road, having tax account numbers 6224-000-00103 (CL 07-34), 6224-000-00101 (CL 07-35), and 6224-000-00100 (CL 07-36);and

WHEREAS, according to the information presented with the Claims, the Claimants acquired an interest in tax lots 6224-000-00103 and 6224-000-00101 on December 30, 1972; and

WHEREAS, the Arnita A. Scheckla Revocable Living Trust acquired an interest in the property on October 6, 2004; and

WHEREAS, the Claimants have never had an interest in tax lot 6224-000-00100, which is currently owned by Anna Marie Leppin; and

WHEREAS, the County zoned the portion of the parcels located on the east side of the Columbia River Highway as Primary Agriculture (PA-38), and zoned the portion of the parcels located on the west side of the Columbia River Highway as Primary Forest (PF-76) in 1984; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 506.1, the minimum lot or parcel size for new land divisions in the Primary Forest Zone is 76 acres; and

WHEREAS, the Claimants claim that the minimum lot size requirement for new land divisions in the Primary Forest Zone has restricted the use of the property and has

reduced the value of the property by \$5,623,849; and

WHEREAS, the Claimants desire to subdivide the portions of each of the three parcels zoned PF-76, which are located on the west side of the Columbia River Highway into 10 acre parcels, and the portion of tax lot 6224-000-00101 located east of the Columbia River Highway into one 120 acre parcel; 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 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; and

WHEREAS, in 1972, the Claimants could have divided the portions of tax lot 6224-000-00103 and tax lot 6224-000-00101 located on the west side of the Columbia River Highway into 10 acre parcels;

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 07-34, CL 07-35, and CL 07-36, dated March 28, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 034 and CL 07-35. In lieu of compensation, the County waives CCZO Sections 506.1 to the extent necessary to allow the Claimants to subdivide tax lots 6224-000-00103 and 6224-000-00101 into 44 ten (10) acre parcels located on the west side of the Columbia River Highway, and 1 approximately one hundred and twenty (120) acre parcel located on the east side of the Columbia River Highway.
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 parcels 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.
  - F. With respect to Claimant, Arnita Scheckla, this waiver is personal to Arnita Scheckla, as an individual, and is not transferable to the Arnita A. Scheckla Revocable Living Trust, except as may otherwise be required by law.
4. The County denies Claim No. CL 07-36.
5. 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.

Approved as to form

By: Sarah Hanson  
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard  
Rita Bernhard, Chair

By: Anthony Hyde  
Anthony Hyde, Commissioner

By: Joe Corsiglia  
Joe Corsiglia, Commissioner

**COLUMBIA COUNTY**  
**LAND DEVELOPMENT SERVICES**  
**Measure 37 Claims**  
**Staff Report**

**DATE:** March 28, 2007

**FILE NUMBER:** CL 07-34, C L 07-35 & CL 07-36

**CLAIMANT/OWNER:** Alayne Bryan                      Arnita Scheckla  
26290 NW Meek Road                      10520 NW Jackson Quarry Road  
Hillsboro, OR 97124                      Hillsboro, OR 97124

Analene Waterman  
8749 Darley Road SE  
Aumsville, OR 97352

**SUBJECT PROPERTIES**

**PROPERTY LOCATION:** Approximately 600 acres on both sides of the Columbia River Highway and extending approximately 1 mile south of Nicolai Cutoff Road (see enclosed map)

**TAX ACCOUNT NUMBERS:** **C L 07- 34:** # 6224-000-00103 - 79 Acres  
**CL 07 - 35:** # 6224-000-00101 - 486 Acres containing the Columbia Stock Ranch at 68251 Columbia River Highway and a NW Natural Substation at 68344 Columbia River Highway  
**CL 07 - 36:** # 6224-000-00100 - 40 Acres

**ZONING:** **Primary Agriculture (PA -38)** for the portion of tax lot 101 located East of Columbia River Highway  
**Primary Forest (PF -76)** for the remaining portion of tax lot 101 West of Columbia River Highway and for all property within tax lots 100 and 103

**SIZE:** Approximately 600 acres in 3 adjoining parcels.

**REQUEST:** To divide the portions of these adjoining 3 properties currently zoned PF-76 located West of Columbia River Highway into 10-acre lots for residential development.

**CLAIM RECEIVED:** November 21, 2006

**180-DAY DEADLINE:** May 20, 2007

**NOTICE OF RECEIPT OF CLAIM:** February 26, 2007  
As of the date of this report no comments or request for hearing has been received.

I. **BACKGROUND:**

According to copies of recorded Deeds and a November 8, 2006 Title Report submitted with these 3 Claims, the Claimants' parents, Arnold L. and Anna Marie Leppin, first acquired an interest in tax lots # 101 and # 103 on May 13, 1952. Arnold and Anna Marie Leppin first acquired an interest in tax lot # 100 on October 24, 1952.

Beginning on December 30, 1972, Anna Marie Leppin conveyed an undivided 3.6 percent interest of **tax lot 101 (CL 07 - 35)** and **tax lot 103 (CL 07 - 34)** to each of her 3 daughters, Arnita Leppin (Scheckla), Alayne Leppin (Bryan), and Analene Leppin (Waterman). In a separate Bargain & Sale Deed, also recorded on December 30, 1972, Arnold Leppin conveyed an undivided 3.1 percent interest of the same tax lots 101 and 103, to the three daughters.

Over the next 30 years and until 2002, Arnold Leppin continued to regularly convey partial undivided interests in tax lots 101 and 103 equally to all three daughters. The associated Bargain & Sale Deeds were recorded in 1975, 1994, 1996, 1997, 1998, 1999, 2001, and 2002. On April 8, 2006, Arnold Leppin died (Death Certificate attached) and the administration of his estate is pending in the Probate Records of Columbia County, Oregon. One of the Claimants, Arnita (Leppin) Scheckla conveyed on October 6, 2004, all of her interest in these 2 properties to the Arnita A. Scheckla Revocable Living Trust of which she is the trustee.

The Claimants are also requesting to partition the approximate 120 acres of tax lot 101 located East of Columbia River Highway and zoned PA-38 from the remaining portion of tax lot 101, West of Columbia River Highway, that is zoned PF-76. This PA-38 zoned portion of tax lot 101 also contains the Columbia Stock Ranch addressed at 68251 Columbia River Highway and a Northwest Natural Gas metering facility addressed at 68344 Columbia River Highway

Because the Claimants do not wish to include the PA-38 zoned portion of their property, the remainder of this Staff Report will address only the portions of the three adjoining properties that are located West of Columbia River Highway, zoned PF-76.

Staff also found that none of these partial interest conveyances included any conveyances to the Claimants for the 40-acres associated with tax lot # 100 (CL 07-36) which their parents acquired in October 1952, five months after they acquired the other 2 properties associated with CL - 07- 34 and CL 07 - 35. The November 8, 2006, Title Report moreover, identifies that "....as of November 1, 2006... Alayne Bryan, Analene Waterman, and Arnita Scheckla have interest in Parcels 1, 2, 3 and 4 as tenants in common, and Anna Marie Leppin has an estate in fee simple to Parcel 5". Staff's review of the legal descriptions of these Parcels moreover, confirmed that Parcels 1, 2, 3, & 4 describe properties within the boundaries of current tax lot #'s 101 and 103 and that Parcel 5 describes the 40-acre tax lot 100 associated with CL 07- 36.

Consequently, since the Claimants have not acquired an interest in the 40 acres associated with CL 07-36, the Claimants are not eligible for compensation or waiver under Measure 37 for tax lot 100. The remainder of this Report will evaluate the eligibility of the Claimants' Measure 37 Claim for the 2 properties associated with CL 07 - 34 for tax lot # 103 and CL 07 - 35 for tax lot # 101.

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 the evidence provided by the Claimants, Alayne Bryan, Analene Waterman, and the Arnita A. Scheckla Revocable Living Trust are owners as the tenants in common of tax lots 101 and 103. Anna Marie Leppin, their mother, is the fee owner of tax lot 100. From the evidence submitted with the Claim, neither Alayne Bryan, Analene Waterman nor Arnita Scheckla have ever had an interest in tax lot 100. Consequently, the Claimants are not eligible for compensation or waiver under Measure 37 for tax lot 100.
2. **Date of Acquisition:** All three Claimants first acquired a partial undivided interest in tax lots 101 and 103 on December 30, 1972. A series of Bargain & Sale Deeds conveying undivided partial interests of these 2 properties were recorded over the next 30 years. Then in 2004, Arnita Scheckla, conveyed her interest in the same 2 tax lots to the Arnita A. Scheckla Revocable Living Trust. The date of acquisition for the Arnita A. Scheckla Revocable Living Trust is in 2004. However, because Ms. Scheckla is the Settlor of the trust, she has retained an interest in the property despite transfer of her individual interest into trust. Ms. Scheckla's date of acquisition is the date she first acquired an interest in the property, December 30, 1972.

For the purposes of this evaluation, Staff uses December 30, 1972 as the Claimants' date of acquisition of tax lot #'s 101 and 103. The series of recorded Bargain & Sale Deeds as well as the November 2006 Title Report all revealed that only Anna Marie Leppin first acquired her interest in tax lot 100 in October 1952 which she has retained ever since.

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

At the time of acquisition, December 1972, these properties were unzoned. However in 1984 Columbia County zoned the portion of these 3 properties located East of Columbia River Highway for PA-38 uses and zoned the portion West of Columbia River Highway for PF-76 uses. Both of these zoning designations have continued to apply to date.

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

The portions of properties associated with CL 07 - 34 and CL 07 - 35 that are zoned PF-76 have a 76-acre minimum parcel size for newly created lots or parcels. The Claimants cite Section 506 standards, 502.5 thru 502.9, 503.8 and 503.10 as restricting use and reducing value.

Section 506 prescribes a minimum lot size of 76 acres(506.1); lot depth and width minimums(506.2); minimum yard requirements(506.3) and height requirements(506.4). Staff finds that with the exception of 506.1, with 10 acre lots there should be no problem meeting these standards and they therefore, don't restrict the use of the property, or reduce its value.

Sections 502.5 thru 502.9 lists some of the uses permitted by right in the PF-76 zone, including primary wood processing facilities, facilities and test sites for experimental and research activities, forest tree nurseries, rock quarries and helipad and balloon bedding areas for commercial tree management. Staff finds that none of the these cited provisions restrict the division of the property into 10 acre parcels to be used ultimately for residential development.

Section 503.8 and 503.10 refer to uses allowed by conditional use permit including airplane landing strips and storage of construction equipment and materials. Staff finds that neither of these provisions restrict the division of the property into 10 acre parcels to be used ultimately for residential development

The requirement to obtain conditional use permits for a nonresource-related single-family dwelling does not restrict use or reduce value unless and until that process would result in a denial or the imposition of a condition on approval that restricts use and reduces value.

The Claimant does not provide any documentation to support the claim that any of the above referenced regulations restrict use or reduce value except the minimum lot size standard which prevents division of the properties into less than 76 acre parcels(Section 506.1). Accordingly, and based on these 2 Claims, it appears that the county standards that clearly prevent the Claimants from dividing the PF-76 zoned portion of these 2 properties West of Columbia River Highway into ten acre parcels is:

CCZO 506.1      Establishing the 76 acre minimum parcel size standard for newly created properties in the PF-76 Zone

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

Claimants acquired an interest in tax lots 101 and 103 before the current provisions of the PF-76 Zone became effective in 1984. Therefore, the Claimants may be eligible for compensation and/or waiver of the cited regulations under Measure 37 for the portion of these two properties located West of Columbia River Highway and associated with CL 07 -34 and CL 07 - 35.

#### E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state that they cannot divide the property as proposed due to the county's 76-acre minimum parcel size standards for newly created lots in the PF-76 zone. Staff concedes that CCZO 506.1 can be read and applied to "restrict" the use of Claimants' properties associated with CL 07 -34 and CL 07 - 35 zoned PF-76 within the meaning of Measure 37.

#### F. EVIDENCE OF REDUCED FAIR MARKET VALUE

The Claimants submitted copies of County Assessor's records that estimate the 2006 value of tax lots101 and 103 as follows:

1. **Value of property as regulated:** Based on County Assessor data the properties' real market value for land itself on tax lot 103 is \$151,000 and \$1,021,300 for tax lot 101, for a total of value of \$1,172,300. This figure includes the real market value of both portions of tax lot 101 regardless of the PA-38 or PF-76 zoning designation.
2. **Value of property not subject to cited regulations:** Claimants submitted a Competitive Market Analysis, prepared in November 2006 by Prudential Northwest Properties. that estimates 10 acre properties in this area of the County would support prices between \$155,000 - \$170,000 each. The portion of tax lot 101 included in this Measure 37 Claim currently zoned PF-76, is approximately 365 acres and tax lot 103 contains approximately 79 acres. Consequently the value of the PF-76 zoned portions of these properties not subject to CCZO Section 560.1's 76-acre minimum lot size would be 7,040,000 ( \$160,000 x 44) if these approximate 444 acres were redeveloped into ten-acre lots.
3. **Loss of value as indicated in the submitted documents:** The submitted claim alleges a total reduction in Real market Value of at least \$5,623,849.

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 regulation, staff concedes that it is more likely than not that the property would have a higher value if subdivided for residential development.

**(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) 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 Section 506.1 does not qualify for any of the exclusions listed.

Staff notes that other siting standards, including general subdivision standards, 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 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 November 21, 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 PF-76 zoned portion of these 2 properties 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 506.1.

**III. STAFF RECOMMENDATION:**

Based on the above findings, staff concludes that the Claimants have met the threshold requirements for proving a Measure 37 claim for the PF-76 zoned portions of the properties associated with CL 07 - 34 (tax lot 103) and CL 07- 35 (tax lot 101).

The following table summarizes staff findings concerning the land use regulations cited by the Claimants 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 regulations below have been found to meet these requirements of a valid Measure 37 claim:

LAND USE CRITERIA	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 502.5 thru 502.9	Some of the uses permitted by right in the PF-76 zone	No	No	No

CCZO 503.8 and 503.10	Partial listing of uses allowed as conditional uses in the PF-76 zone(Airport landing strips and construction storage	No	No	No
CCZO 506.1	Establishing the 76 acre minimum parcel size standard in the PF-76 zone for the portions of the tax lots 101 and 103 located West of Columbia River Highway only.	Yes	Yes	No
CCZO 506.2	Establishes Lot depth and width minimums at 100 feet.	No	No	No
CCZO 506.3	Establishes minimum front, side and rear yard requirement at 50 feet	No	No	No
CCZO 506.4	Establishes no height restriction	No	No	No

With respect to claims CL 07- 34(Tax Parcel No 6224-000-00103 - 79 Acres) and CL 07 - 35(6224-000-00101-86 acres) 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 Section 506.1

With respect to claim CL 07-36(Tax Parcel No. 6224-000-00100) , Staff recommends denial.

## LEGAL DESCRIPTION

PARCEL 1: All the Donation Land Claim of John H. Jones in Section 19, Township 6 North, Range 1 and Sections 13 and 24, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon. EXCEPTING THEREFROM the rights of way conveyed to Northern Pacific Railroad Company, recorded July 20, 1883, in Book H, page 179, Deeds; ALSO excepting therefrom the tract of land conveyed to Thomas Day and R.C. Bell, recorded January 23, 1901, in Book X, page 345, Deeds.

PARCEL 2: All of the homestead land claim of Abraham Near, which land claim is described as follows: The West half of the Southeast quarter; the Northeast quarter of the Southwest quarter and Lots 4, 5 and 6 in Section 24, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon. EXCEPTING THEREFROM that portion conveyed to Northwest Natural Gas Company by deed recorded October 28, 1965 in Book 160, page 5, Deed Records of Columbia County, Oregon.

PARCEL 3: Also the South half of the Southwest quarter of Section 24, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon.

PARCEL 4: The Northwest quarter of the Northwest quarter of Section 24, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon. (Also known as Government Lot 2)

PARCEL 5: The Northwest quarter of the Southwest quarter of Section 24, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon.