

**AFTER RECORDING, RETURN TO:**

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

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BEFORE THE COLUMBIA COUNTY  
LAND DEVELOPMENT SERVICES DEPARTMENT

In the Matter of Claim No. 07-77 Submitted by )  
Auletta A. Christie for Compensation Under ) Order No. 71-2007  
Measure 37 )

WHEREAS, on November 30, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Auletta A. Christie (the "Claimant"), related to a parcel of property located on Tide Creek Road in Deer Island, Oregon, having tax account number 6226-000-00200; and

WHEREAS, according to the information presented with the Claim, the Claimant acquired an interest in the property on September 19, 1969; and

WHEREAS, the County zoned the subject property as Primary Forest (PF-76) in 1984, after the acquisition by the Claimant; and

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

WHEREAS, the Claimant claims that the minimum lot size requirement for new land divisions has restricted the use of the property and has reduced the value of the property by \$400,000; and

WHEREAS, the Claimant desires to partition the property into two 11 acre minimum lot size parcels; 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 Claimant acquired the property; and

WHEREAS, in 1969, the Claimant could have divided the property into two 11 acre parcels;

NOW, THEREFORE, it is hereby ordered as follows:

1. The County adopts the findings of fact set forth in the Staff Report for Claim Number CL 07-77, dated March 16, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-77. In lieu of compensation, the County waives CCZO Sections 506.1 to the extent necessary to allow the Claimant to partition the property into two 11 acre minimum lot size parcels.
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 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, Auletta Christie, 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 16<sup>th</sup> day of April, 2007.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Smalithanson  
Assistant County Counsel

By: Todd Dugdale  
Todd Dugdale, Director  
Land Development Services

**COLUMBIA COUNTY  
LAND DEVELOPMENT SERVICES**

ATTACHMENT

Measure 37 Claim

**Staff Report**

**DATE:**

March 16, 2007

**FILE NUMBERS:**

CL 07-77

**CLAIMANTS/OWNERS:**

Auletta A. Christie  
32829 Tide Creek Rd.  
Deer Island, OR 97054

**CLAIMANTS'  
REPRESENTATIVES:**

None

**PROPERTY LOCATION:**

**SUBJECT PROPERTY**

32829 Tide Creek Rd., Deer Island, Oregon

**TAX ACCOUNT NUMBERS:**

6226-000-00200

**ZONING:**

Primary Forest-76 (PF-76)

**SIZE:**

22.05 acres

**REQUEST:**

To divide the property into two parcels of approximately 11 acres each

**CLAIM RECEIVED:**

November 30, 2006

**REVISED 180 DAY DEADLINE:**

May 30, 2007

**NOTICE:**

March 28, 2007

As of the date of this report, no comments or request for hearing have

**I. BACKGROUND:**

The subject property includes approximately 22.05 acres, and is developed with one dwelling. Claimant acquired the property with her husband on September 19, 1969, at which time the property was not zoned. Claimant's husband died in 1988, and the property is now vested in the name of Claimant only.

**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 a sort report generated by Ticor Title, and dated November 17, 2006, the property is vested in Auletta Ann Christie in fee simple, subject to certain easements for spring rights, a water pipe, for ingress and egress, and power company apparatus; a mineral reservation; and a mortgage.

2. **Date of Acquisition:** According to a chain of title report generated by Ticor Title, and dated November 17, 2006, the subject property was acquired by Homer S. Christie and Auletta Ann Christie on September 16, 1969 (Deed recorded in the Records of Columbia County at Book 174, page 680). A death certificate reflects that Homer Christie died in 1988.

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

The property was not zoned when the Claimant acquired the property in 1969, and was therefore not subject to any minimum parcel size requirements included in the county zoning ordinance.

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

The Claimant alleges that Columbia County Zoning Ordinance section 506.1 (minimum lot size) prevents the owner from dividing the subject property. The PF-76 zoning designation was applied to the subject property in 1984, after Claimant acquired the subject property.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property before CCZO Section 506.1 became effective and therefore the Claimant 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 Claimant states that she cannot divide her property as proposed due to the County's minimum parcel size standard.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

Claimant has not submitted evidence regarding the value of the property as regulated. The assessed real market value of the subject land is \$216,900.

2. Value of Property Not Subject To Cited Regulations.

Claimant alleges that if her property is divided, the developed property would be worth more. However, the market analysis the Comparative Market Analysis prepared by RE/MAX PowerPros (dated November 20, 2006) provides only properties of various sizes improved with homes. It includes no estimate of the value of the property if it is divided into two or three separate parcels.

Loss of value indicated in the submitted documents is:

The Claimant submitted comparative value information for the sale of homes and does not provide information for the comparative values of 11 acre lots or information concerning the current value of the land as regulated. Therefore, it is not possible to infer from the submitted information the amount of the loss in value due to minimum lot size restrictions.

While staff finds that the information provided by the Claimant is not adequate to determine the amount of the loss in value due to the cited regulation, staff concedes that it is more likely than not that the property would have a higher value if divided into two or three parcels than as a single parcel with three dwellings and associated outbuildings developed on it.

#### G. COMPENSATION DEMANDED

\$400,000 per page 1 of claimants' Measure 37 Claim form.

**(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.**

The cited regulation(s) are not regulation(s) restricting public nuisances, protecting public health and safety, required by federal law, or related to the restriction of pornography. Columbia county zoning ordinances were applied to the subject property after the owner acquired it. The regulation(s) are not exempt under the provisions of ORS 197.352(3), above.

Staff notes that other siting 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 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.

**(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 claims were filed on September 29, 2005, 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 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.

**III. STAFF RECOMMENDATION:**

Based on the above findings, staff concludes that the Claimant has met the threshold requirements for proving a Measure 37 claim.

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

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 506.1	Minimum lot size of 76 acres	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.



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PO Box 1271  
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Phone: (503) 397-3537  
(800) 243-2304  
Fax: (503) 397-0104

Auletta Christie  
32829 Tide Creek Rd.  
Deer Island, OR 97054

November 17, 2006  
Buyer/Borrower: Christie  
Re: MEASURE 37

Report No: 07-57749  
Property: 32829 Tide Creek Rd.  
Deer Island, OR 97054

SERVICE FOR:  
Chain of Title Report: \$0.00

**A.**  
All that part of the Northeast quarter of the Southeast quarter, Section 26, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, lying North and East of the S. L. Butler County Road.

**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 September 19, 1969 and ending with November 14, 2006.

**C.**

1. Warranty Deed, including the terms and provisions thereof,  
Grantor: Garnett Massey and Vera Edna Massey  
Grantee: Homer S. Christie and Auletta Ann Christie  
Recorded: September 19, 1969  
Book: 174 Page: 680  
Records of Columbia County, Oregon.