

AFTER RECORDING, RETURN TO:

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

**BEFORE THE LAND DEVELOPMENT SERVICES DEPARTMENT
FOR COLUMBIA COUNTY, OREGON**

In the Matter of Claim No. CL 07-78 Submitted by)
Mildred Probst for Compensation Under Measure 37) Order No.86-2007

WHEREAS, on November 30, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Mildred Probst related to a parcel of property located near Miloris Way in Columbia City, Oregon, having tax account number 5128-000-00300; and

WHEREAS, according to the information presented with the Claim, the property is currently owned by the Voris D. And Mildred C. Probst Revocable Living Trust, which acquired an interest in the property in 2004; and

WHEREAS, Mildred Probst acquired an interest in the property in 1976; and

WHEREAS, in 1976, the property was subject to the 1973 South County Zoning Ordinance which established a 2 acre minimum parcel size; and

WHEREAS, the County zoned the subject property as Primary Forest (PF-76) in 1984, after the acquisition by Mildred Probst, but prior to the acquisition by the trust; 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 \$4,431,500; and

WHEREAS, the Claimant desires to subdivide the property into two acre 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 owner acquired the property; and

WHEREAS, in 1976, Mildred Probst could have divided the property into 2 acre minimum lot size parcels; and

WHEREAS, in 2004, the trust could not have divided the property into 2 acre minimum lot size 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 Number CL 07-78, dated April 11, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County denies the Claim as to Mildred Probst as trustee of the Voris D. and Mildred C Revocable Living Trust.
3. The County approves the Claim as to Mildred Probst, individually (hereinafter referred to as the "Claimant"). In lieu of compensation, the County waives CCZO Section 506.1 to the extent necessary to allow the Claimant to subdivide the property into 2 acre minimum lot size parcels.
4. 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, Mildred Probst, 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 Claimant's 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.
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 19th day of April, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hanson
Assistant County Counsel

By: Todd Dugdale
Todd Dugdale, Director
Land Development Services

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
MEASURE 37 CLAIM
STAFF REPORT

DATE: April 11, 2007

FILE NUMBER(s): CL 07-78

CLAIMANT: Mildred Probst,
P.O. Box 275; St. Helens, OR 97051

PROPERTY LOCATION: Near Miloris Way; Columbia City, OR 97018

TAX ACCOUNT NUMBER: 5128-000-00300

ZONING: Primary Forest - 76 (PF-76)

SIZE: Approximately 60.2 acres

REQUEST: To divide property into 2-acre residential parcels.

CLAIM RECEIVED: November 30, 2006

REVISED 180 DAY DEADLINE: May 29, 2007

RECEIPT OF CLAIM NOTICE: Claim notices were mailed on March 26, 2007. The comment period ended on April 9, 2007. No requests for hearing were received.

Kristine and Burke Wood, neighboring property owners, submitted a comment on April 6, 2007. Mr. and Mrs. Wood expressed concerns regarding the proposed level of development due to the property's topography, and the negative impacts of adding more wells and septic systems on the hillside upon groundwater, streams, risk of erosion and landslides. Mr. and Mrs. Wood also stated the opinion that the potential land value stated by the Claimant is excessive.

Lisa Smith, a planner with Columbia City, submitted a written comment on April 9, 2007. Ms. Smith made several arguments regarding the validity of the claim, which are briefly summarized here. First, she argues that the proposed subdivision would not have been permitted at the time the Claimant acquired the property because such land use would not have been consistent with statewide planning goals and guidelines, which Columbia County was required to comply with, including Goal 4, governing Forest Lands. Second, Ms. Smith pointed out several issues regarding the ownership of the subject property, and asserts that the acquisition date by the current owner was either the date when the subject property became trust property, or the date a deed was recorded to correct the legal description of the property. Finally, Ms. Smith expressed concerns regarding the suitability of the property for subdivision, namely geologic stability and the adequacy of the private water system.

Robert Jackson, a neighboring property owner submitted a written

comment on April 9, 2007. Mr. Jackson expressed concern regarding the drilling of additional wells, which could negatively impact existing wells in the area. Mr. Jackson also noted that all of the property owners along Miloris Way, including the Probsts, signed an agreement that a maximum of eleven homes could be served by the street.

I. BACKGROUND:

The subject property is undeveloped timberland. Access is provided by Smith Road and Miloris Way. Voris and Mildred Probst acquired the property in November of 1976. At that time the property was approximately 96.51 acres. Since then they have conveyed several parcels to third parties, and lot line adjustments have been made. The property was partitioned in 2001, as shown on Parcel Plat No. 2001-28, and in 2005, as shown on Partition Plat No. 2005-1. The size of the property was reduced to approximately 60.2 acres. There are a number of easements on the property, as well as road maintenance agreements pertaining to Miloris Way.

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 Claimant, as Trustee for the Voris D. and Mildred C. Probst Revocable Living Trust.
2. **Date of Acquisition:** The property was acquired by the Voris and Mildred Probst in November of 1976. The Probsts transferred their interest in the property to the Voris D. and Mildred C. Probst Revocable Living Trust by a deed recorded on May 25, 2004, and executed a deed on July 6, 2006 to correct the legal description in the earlier deed. Mr. Probst subsequently died, leaving the Claimant as the sole Trustee of the trust. The date of acquisition for the trust is May 25, 2004. However, because Mildred Probst is a settlor of the Voris D. and Mildred Probst Revocable Living Trust, she has retained an interest in the property despite conveying it to the Trust. Mildred Probst's date of acquisition is the date she first acquired it in November, 1976..

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

The property was zoned Rural Residential (RR-2) under the 1973 South County Zoning regulations when it was acquired by the Claimant in 1976. Section 255-1 of the 1973 ordinance set a 2-acre minimum

lot/parcel size for properties within the Rural Residential zone. The current Columbia County Zoning Ordinance became effective on August 1, 1984. Under the current ordinance, the property is zoned Primary Forest (PF-76) and is subject to the 76-acre minimum lot/parcel size requirement of the PF-76 zone.

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

The Claimant cites the current Columbia County Zoning Ordinance, Sections 500 and 506.1, as regulations that have reduced the fair market value of the property. This specific claim is to divide PF-76 zoned property into lots/parcels 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 restricts the minimum lot or parcel size to 76 acres in the PF-76 zone. This regulation became effective on August 1, 1984.

The Claimant has also submitted a Measure 37 claim to the state regarding state laws which place restrictions on the intended use of the property. Staff has not made any findings regarding the applicability of state planning goals and statutes, as the state Measure 37 claim process is the appropriate means for resolving issues involving state land use laws and policies which may apply to the subject property.

Based on the claim, it appears that the County regulation that clearly prevents the Claimant 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.

The Claimant is not eligible for waiver of the 1973 zoning regulations which applied to the property at the time it was acquired by the Claimant. Therefore, the Claimant must comply with the 2-acre minimum lot/parcel size requirement in place at the time of acquisition.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that the current Columbia County Zoning regulations prevent the property from being divided and developed due to the 76-acre minimum lot size of the PF-76 zone. 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.

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 \$378,500.
2. **Value of property not subject to cited regulations:** Claimant alleges that the value of the property not subject to the cited regulations would be \$4,800,000. Claimant submitted a printout of comparables in the area. Based on the information provided, the average price of a 2-3 acre parcel is \$130,000. If the property were divided into thirty 2-acre parcels as requested, this would suggest a value of \$3,900,000. Staff notes that the property value stated by the Claimant does not appear to be supported by the information provided.

3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$4,431,500.

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: \$4,431,500.

(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 506.1 does 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 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(s) 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/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 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 has 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 506.1	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 506.1 to allow the Claimant to divide the property into parcels having not less than 2 acres for residential development.

ATTACHMENT 2

LEGAL DESCRIPTION

Parcel 2 of Partition Plat No. 2005-1, recorded January 14, 2005, Fee No. 2005-000615, in Columbia County, Oregon.