

**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 Amending Order No. 41-2006 )  
In the Matter of Claim Nos. CL 05-19, CL 05-20, ) Amended Order No. 90-2007  
CL 05-21, and CL 05-22 for Compensation )  
Under Measure 37 Submitted by Fred Luttrell )

WHEREAS, on May 17, 2006, the Board of County Commissioners issued Order No. 41-2006, In the matter of Claim Nos. CL 05-19, CL 05-20, CL 05-21, and CL 05-22 for compensation under Measure 37 submitted by Fred Luttrell, Trustee of the Fred Luttrell Revocable Living Trust; and

WHEREAS, according to the Order, the Board waived Columbia County Zoning Ordinance (CCZO) Sections 210, 300, 302, 303, 304.1, 305.2, and 309, to the extent necessary to allow the Claimant to divide the subject property into one to two acre parcels for residential homesites; and

WHEREAS, according to the Order, the Board waived the above cited regulations as to Fred Luttrell, Trustee of the Fred Luttrell Trust; and

WHEREAS, according to the information provided with the Claim, the Fred Luttrell Trust acquired an interest in the property in 2000, and is therefore not eligible for waiver of regulations adopted prior to 2000; and

WHEREAS, according to the information provided with the Claim, Fred Luttrell, as an individual (hereinafter referred to as the "Claimant") and settlor of the Fred Luttrell Revocable Living Trust, acquired an interest in the property in 1946 for CL 05-19, in 1966 for CL 05-20, and in 1968 for CL 05-21 and CL 05-22, and is therefore eligible from relief under Measure 37 as an individual; 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 1946, 1966, and 1968, the Claimant could have divided the property into 1-2 acre parcels for residential development;

NOW, THEREFORE, it is hereby ordered as follows:

1. The Board of County Commissioners adopts the following findings:
  - A. CCZO Section 300 is the heading for the zone and does not limit or restrict the use of the property. Therefore, the Claimant is not entitled to waiver of Section 300. CCZO Sections 302 and 303 list permitted and conditional uses in the PA-38 zone, and both include dwellings. In the PA-38 Zone, dwellings are either permitted outright under CCZO Section 302 or permitted conditionally under CCZO Section 303. Under Measure 37, the Claimants are entitled to waiver of provisions only to the extent necessary to allow them a use of the property that was allowed on the date of acquisition. Because the current zoning provisions allow dwellings, either permitted outright or conditionally, the County does not need to waive Section 303 in order to allow the placement of dwellings on the subdivided property. During any hearing for a conditionally permitted dwelling, conditions may be imposed that may restrict or prohibit the use of the property. Some of the conditions might be exempt from waiver under Measure 37. The County cannot determine what conditions, if any, are exempt from waiver until they are imposed. However, the County is aware that the Applicant cannot meet the requirements of CCZO Section 303.13(A) and 303.13(D), and that those provisions both restrict the use of the property and reduce its value by prohibiting the development as proposed. Therefore, the Board agrees that Section 303.13(A), and Section 303.13(D), should be waived.
  - B. CCZO Sections 305.2 and 309 impose regulations for the creation of parcels having less than the 38 acre minimum lot size. The Board finds that there was no evidence submitted with the Claim indicating that the Claimants cannot meet the criteria to divide the property into parcels having less than 38 acres. Therefore, these criteria do not restrict the Claimant from his intended use of the property.
  - C. The above findings are consistent with findings made in all other Measure 37 Claims processed in the County. The Board finds that the waiver of CCZO Sections 300, 302, 303 (with the exception of 303.13(A), and (D)), 305.2, and 309 was in error.
2. The County amends Order No. 41-2006 to reflect the above findings, and to revoke the waiver of CCZO Sections 303 (with the exception of 303.13(A), and 303.13(D)), 305.2 and 309.
3. The County further amends Order No. 41-2006, to revoke the waiver as to Fred Luttrell, as Trustee of the Fred Luttrell Revocable Living Trust, and to grant the waiver as to Fred Luttrell, individually.

4. This Order shall be recorded in the Columbia County Deed Records, referencing the legal description which is attached hereto as Attachment 1, and is incorporated herein by this reference, without cost.

Dated this 6<sup>th</sup> day of June, 2007.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hanson  
Assistant County Counsel

By: Rita M. Bernhard  
Rita Bernhard, Chair

By: Anthony Hyde  
Anthony Hyde, Commissioner

By: Joe Corsiglia  
Joe Corsiglia, Commissioner

## LEGAL DESCRIPTION

## PARCEL 1:

The Northwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of Section 25, Township 5 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, lying East of the Easterly right of way line of A.E. Gensman County Road. EXCEPTING THEREFROM all that portion lying in Partition Plat 1996-57 and that portion lying in Partition Plat 1993-05. ALSO EXCEPTING THEREFROM tract conveyed to James D. Cupp et ux by Deed Book 180, page 935. ALSO EXCEPTING THEREFROM any portion lying Southerly of the South line of Dart Creek Road.

ALSO EXCEPTING THEREFROM the following described parcel:  
Beginning at the center of Section 25, Township 5 North, Range 2 West, Willamette Meridian, Columbia County, Oregon; thence South 88°29'46" East, along the East-West centerline of said Section 25 a distance of 320.00 feet; thence South 1°30'14" West, at right angles to said East-West centerline, a distance of 30.00 feet; thence North 88°29'46" West, 30.00 feet Southerly from and parallel to said East-West centerline, a distance of 320.00 feet; thence North 1°30'14" East a distance of 30.00 feet to the point of beginning.

## PARCEL 2:

Beginning at the Northeast corner of Section 36, Township 5 North of Range 2 West of the Willamette Meridian, Columbia County, Oregon; thence West along the North Section line of said Section 36 to the half-section line, through said Section; thence South on said half-section line to the Northwest corner of that tract of land conveyed by grantor herein to Charles L. Howard by deed dated December 26, 1940, and recorded December 28, 1940, in Book 67 at page 352, Deed Records of Columbia County, Oregon; thence East along the North line of said tract of land so conveyed to a point on the East line of said Section 36; thence North along said East line to the point of beginning.

EXCEPTING THEREFROM the following described tract: Beginning at a point 1472.09 feet and West 22.11 feet from the East Quarter corner of Section 36, Township 5 North, Range 2 West, Willamette Meridian, Columbia County, Oregon, said point being on the Westerly right of way line of the Robinette County Road; thence South 89° 42' West a distance of 100.00 feet; thence North 0° 18' West a distance of 100.00 feet; thence North 89° 42' East a distance of 100.00 feet to the Westerly right of way of said Robinette Road; thence South 0° 18' East along said right of way a distance of 100.00 feet to the point of beginning.

Also the East half of the Northwest Quarter and the East half of the East half of the Southwest Quarter of the Northwest Quarter of Section 36, Township 5 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon.

EXCEPTING THEREFROM all of Parcel 2 above the following described tracts:

Tract described in deed to Dennis T. Luttrell et ux, recorded April 12, 1978 in Book 217, page 197, Deed Records of Columbia County, Oregon.

Tract described in deed to Joe A. Luttrell et ux, recorded July 8, 1992 in Fee Number 92-4846, Records of Columbia County, Oregon.

Tract described in deed to Barry L. McGuckin et ux, recorded December 15, 1994 in Fee

Number 94-11792, Records of Columbia County, Oregon.

Tract described in deed to Stephen L. Mod et ux, recorded January 6, 1995 in Fee Number 95-00124, Records of Columbia County, Oregon.

Tract described in deed to Patrick T. LaPointe et ux, recorded April 26, 1995 in Fee Number 95-03496, Records of Columbia County, Oregon.

Tract described in deed to John Harold Upton III et ux, recorded May 3, 1996 in Fee Number 96-04536, Records of Columbia County, Oregon.

Tract described in deed to Dennis M. Olson et al, recorded November 3, 1994 in Fee Number 94-10622, Records of Columbia County, Oregon.

Tract described in deed to Dennis Luttrell et ux, recorded June 27, 1996 in Fee Number 96-06830, Records of Columbia County, Oregon.

Tract described in deed to Daniel Luttrell et ux, recorded June 27, 1996 in Fee Number 96-06832, Records of Columbia County, Oregon.

Tract described in Dedication Deed recorded September 24, 1998 in Fee Number 98-11915, Records of Columbia County, Oregon.

Tract described in deed to Dennis Olson, recorded December 21, 1998 in Fee Number 98-15704, Records of Columbia County, Oregon.

Tract described in deed to Dennis Olson, recorded June 15, 1999 in Fee Number 99-00667, Records of Columbia County, Oregon.

Tract described in deed to Dennis M. Olson, recorded February 2, 1999 in Fee Number 99-01411, Records of Columbia County, Oregon.

Tract described in deed to Andrew D. Niemi et al, recorded April 10, 2000 in Fee Number 00-03514, Records of Columbia County, Oregon.

Tract described in deed to Patrick T. LaPointe et ux, recorded May 12, 2004 in Fee Number 04-06182, Records of Columbia County, Oregon.

PARCEL 3:

The East half of the Southwest quarter of Section 36, Township 5 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, EXCEPTING THEREFROM the South 720 feet of even width and ALSO EXCEPTING the following described tract: Beginning at the Southwest corner of the East half of the Southwest quarter of Section 36, Township 5 North, Range 2 West of the Willamette Meridian, Columbia county, Oregon; thence North 80 rods to the Northwest corner of the Southeast quarter of the Southwest quarter of said Section 36; thence East 27 rods; thence South 80 rods to the South line of Section 36; thence West to the point of beginning.

ALSO EXCEPTING THE FOLLOWING DESCRIBED TRACTS:

That portion lying in Parcel 2 of Partition Plat No. 1992-25 recorded August 24, 1992 in Fee

Number 92-6060, Records of Columbia County, Oregon.

Tract conveyed to Charles Robert Parks et ux by deed recorded April 5, 1993 in Fee Number 93-2710, Records of Columbia County, Oregon.

Tract conveyed to Patrick T. LaPointe et ux by deed recorded April 26, 1995 in Fee Number 95-03496, Records of Columbia County, Oregon.

Tract conveyed to Mark T. Ellett et ux by deed recorded July 12, 1995 in Fee Number 95-05818, Records of Columbia County, Oregon.

Tract conveyed to John Harold Upton III et ux by deed recorded May 3, 1996 in Fee Number 96-04536, Records of Columbia County, Oregon.

Tract conveyed to Max Lieberman et ux by deed recorded October 17, 1997 in Fee Number 97-11337, Records of Columbia County, Oregon.

Tract described in deed to Patrick T. LaPointe et ux, recorded May 12, 2004 in Fee Number 04-06182, Records of Columbia County, Oregon.

PARCEL 4:

Parcel 1 of Partition Plat No. 2004-13, recorded April 15, 2004 in Fee Number 04-04856, Records of Columbia County, Oregon.