

**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 BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 07-128 Submitted by )  
Marc and Shirley Crull for Compensation Under ) Order No. 91-2007  
Measure 37 )

WHEREAS, on November 28, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Marc and Shirley Crull, (the "Claimants"), related to a parcel of property located on Fern Hill Road in Rainier, Oregon, having tax account number 6301-000-00500; and

WHEREAS, according to the information presented with the Claim, the Claimants acquired an interest in the property in 1975; and

WHEREAS, the County zoned the subject property as Primary Forest (PF-76) in 1984, after the acquisition by the Claimants; 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 Claimants claim 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 \$500,000; and

WHEREAS, the Claimants desire to subdivide the property into five 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 Claimants acquired the property; and

WHEREAS, in 1975, the Claimants could have divided the property into 5 acre minimum lot size 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 07-128, dated April 5, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-128. In lieu of compensation, the County waives CCZO Section 506.1 to the extent necessary to allow the Claimants to subdivide the property into five 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 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 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.

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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 23<sup>d</sup> day of April, 2007.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Todd Dugdale  
Todd Dugdale, Director  
Land Development Services

By: Sarah Hanson  
Assistant County Counsel

# COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

## Measure 37 Claim

### Staff Report

DATE: April 5, 2007  
FILE NUMBERS: CL 07-128  
CLAIMANTS/OWNERS: Marc and Shirley Crull  
PO Box 996  
Rainier, OR 97048  
CLAIMANT'S REPRESENTATIVE: NA

### SUBJECT PROPERTY

PROPERTY LOCATION: 71658 Fern Hill Rd., Rainier, Oregon  
TAX ACCOUNT NUMBER: 6301-000-00500  
ZONING: Primary Forest-76 (PF-76)  
SIZE: 38.81 acres  
REQUEST: To create five acre single family home sites  
CLAIM RECEIVED: November 28, 2006  
180 DAY DEADLINE: May 26, 2007  
NOTICE SENT: March 22, 2007.  
Within the comment period, none were received. One late-filed comment was received.

#### I. BACKGROUND:

The subject property includes 38.81 acres. The property is developed with a single family home. Claimants acquired the subject property in 1975.

#### 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:** A Sort Report issued by Tigor Title reflects that as of April 13, 2007, the subject property is vested in Mark J. Crull and Shirley J. Crull as tenants by the entireties.

2. **Date of Acquisition:** Claimants entered into a Real Estate Contract to purchase the subject property from Harold L. and Marie E. Fredrickson on January 13, 1975. (Contract recorded at Book 199, page 263). Claimants' fulfillment deed is dated January 13, 1975. (Deed recorded at 89-0806). Claimants acquired the property on January 13, 1975.

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

The subject property was not zoned at the time of Claimants' acquisition of the property in 1975.

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

Claimants allege that the subject property's fair market value has been reduced by the Primary Forest zoning ordinances. Staff infers that Claimants are referring to CCZO Section 506.1, which provides that the minimum lot size for land divisions in the PF zone is 76 acres.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before CCZO Section 506.1 became effective and therefore Claimants may be eligible for compensation and/or waiver of the cited regulation under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimants would like to divide the property into 5 acre home sites, and state that they cannot divide the property as proposed due to the county's 76-acre minimum parcel size standard.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

According to the county assessor's records, the real market value of the subject land is \$169,500.

2. Value of Property Not Subject To Cited Regulations.

Claimant submitted sale prices of 8 parcels in Rainier of between 2.63 and 6.49 acres, and averaging 4.76 acres. The average price for a 4.56 acre parcel was \$127,063. If Claimant's property were divided, at this value, it could be worth between approximately \$1,020,000.

3. Loss of value indicated in the submitted documents is:

The difference between the possible sale price if divided into 5 acre parcels and the Assessor's land value is \$852,500.

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 CCZO sections 506.1, Staff concedes that it is more likely than not that the property would have a higher value if divided into five acre parcels than as a single 79-acre resource parcel developed with a single dwelling.

G. COMPENSATION DEMANDED

\$500,000, per page 1 of claimant's 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 challenged regulations do not qualify for any of the above exemptions.

Staff notes that other standards, including conditional use criteria and forest-related dwelling standards in effect in July 1984, 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 the provisions of CCZO Section 506.1 that prohibit land divisions that result in parcels of less than 76 acres.

**(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 November 28, 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 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 the regulations cited below.

**III. STAFF RECOMMENDATION:**

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

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 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	Establishes a 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 to allow division of the property into five acre parcels.

ATTACHMENT 2

6-3-1-72500

89-806

STATUTORY WARRANTY DEED

THE Grantor HAROLD L. FREDERICKSON and MARIE E. FREDERICKSON, husband and wife, for and in consideration of Ten Dollars and other valuable consideration in hand paid, conveys and warrants to MARC J. CRULL and SHIRLEY J. CRULL, husband and wife, the following described real estate, situated in the County of Columbia, State of Oregon:

Beginning at a point on the North line of and 330 feet East of the Northwest corner of the Southwest quarter of the Northeast quarter of Section 1, Township 6 North, Range 3 West of the Willamette Meridian, Columbia County, Oregon; thence East along said North line of Southwest quarter of Northeast quarter to the Northeast corner of said Southwest quarter of Northeast quarter; thence South on the East line of said Southwest quarter of Northeast quarter to the Southeast corner of said Southwest quarter of Northeast quarter; thence West along the South line of said Southwest quarter of Northeast quarter and the South line of the Southeast quarter of Northwest quarter to the Easterly right-of-way line of the County Road; thence Northeasterly along the Easterly right-of-way line of said County Road to a point that is 60 feet South of and at right angles to the North line of the South half of the Southeast quarter of Northwest quarter; thence East parallel to the North line of said South half of the Southeast quarter of Northwest quarter to a point that is 330 feet East of the West line of the Southwest quarter of Northeast quarter; thence North parallel to the West line of said Southwest quarter of Northeast quarter 720 feet, more or less to the point of beginning.

This Deed is given in fulfillment of that certain real estate contract between the parties hereto, dated January 13, 1975, and conditioned for the conveyance of the above described property, and the covenants of warranty herein contained shall not apply to any title, interest or encumbrance arising by, through or under the Purchaser in said contract, and shall not apply to any taxes, assessments or other charges levied, assessed or becoming due subsequent to the date of said contract.

DATED this 13<sup>th</sup> day of January, 1975.

*Harold L. Frederickson*  
HAROLD L. FREDERICKSON

*Marie E. Frederickson*  
MARIE E. FREDERICKSON

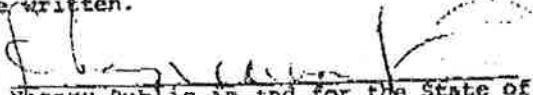
STATE OF WASHINGTON )  
                          ) ss.  
County of Cowlitz     )

On this 13<sup>th</sup> day of January, 1975, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned



and sworn, personally appeared HAROLD L. FREDERICKSON and MARIE E. FREDERICKSON, husband and wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

  
Notary Public in and for the State of  
Washington, residing at Longview.

I hereby certify that the within  
instrument was received for record  
and recorded in the County of  
Columbia, State of Oregon. P4:41

Instrument # 89-0806  
Pages 2

ELIZABETH E. MOSES

RETA C. KERRY, County Clerk

By:  Deputy

Receipt # 90067 Fee \$ 30.00

*After recording return to:*

*Mark Ouell  
P.O. Box 996  
Rainier, OR 97048*