

AFTER RECORDING, RETURN TO:

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

BEFORE THE COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES DEPARTMENT

In the Matter of Claim Nos. CL 07-85, CL 07-86,)
CL 07-87, and CL 07-88 Submitted by Loren) Order No. 92-2007
Ellis Jr. & Sons, a Partnership, for Compensation)
Under Measure 37)

WHEREAS, on December 1, 2006, Columbia County received 4 claims for compensation under Measure 37 and Order No. 34-2007 from Loren Ellis Jr. & Sons, a partnership, (the "Claimant"), related to four parcels of property located on Ellis Farm Road in Scappoose, Oregon, having tax account numbers 4128-000-00500, 4133-000-00300, 4127-000-00500, and 4134-000-00500; and

WHEREAS, according to the information presented with the Claim, the Claimant acquired an interest in the property in January, 1978; and

WHEREAS, the County zoned the subject property as A-1 in 1973, prior to the acquisition by the Claimant; and

WHEREAS, the County zoned the property as Primary Agriculture (PA-38) in 1984, after the acquisition by the Claimant; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 303.13(D), non-resource related parcels may not be built on land that is generally suitable for farm use; and

WHEREAS, the Claimant claims that CCZO 303.13(D) has restricted the use of the property and has reduced the value of the property by \$3,153,000; and

WHEREAS, the Claimant desires to subdivide the property into 40 acre minimum lot size parcels for residential development; 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 1978, the Claimant could have sited non-resource related dwellings on land that is generally suited for farm use;

NOW, THEREFORE, it is hereby ordered as follows:

1. The County adopts the findings of fact set forth in the Staff Report for Claim Numbers CL 07-85, CL 07-86, CL 07-87, and CL 07-88, dated April 13, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-85, CL 07-86, CL 07-87, and CL 07-88. In lieu of compensation, the County waives CCZO Section 303.13(D) to the extent necessary to allow the Claimant to site non-resource related dwellings on land that is generally suited for farm use.
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, Loren Ellis Jr. & Sons, as a partnership, 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 its 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.

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^d 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

ATTACHMENT 1

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
MEASURE 37 CLAIM
STAFF REPORT

DATE: April 13, 2007

FILE NUMBER(s): CL 07-85, 86, 87 & 88

CLAIMANT: Loren Ellis, Jr. & Sons, a partnership; 37037 Ellis Farm Road; Scappoose, OR 97056

CLAIMANT'S REPRESENTATIVE: David Brian Williamson, Attorney At Law; P.O. Box 656; St. Helens, OR 97051

PROPERTY LOCATION: CL 07-85, 86, 87 & 88: 37027 Ellis Farm Road; Scappoose, OR 97056

TAX ACCOUNT NUMBERS: CL 07-85: 4128-000-00500
CL 07-86: 4133-000-00300
CL 07-87: 4127-000-00500
CL 07-88: 4134-000-00500

ZONING: Primary Agriculture (PA-38)

SIZE: 4128-000-00500: Approximately 391.39 acres
4133-000-00300: Approximately 289.70 acres
4127-000-00500: Approximately 51.81 acres
4134-000-00500: Approximately 23.98 acres

TOTAL: 756.88 acres

REQUEST: To "partition the property into 40-acre parcels, each with a non-resource single family dwelling, or other non-farm use which was not prohibited, restricted, or conditional on January 6, 1978."

CLAIM RECEIVED: December 1, 2006

REVISED 180 DAY DEADLINE: May 30, 2007

RECEIPT OF CLAIM NOTICE: Claim notices were mailed on March 29, 2007. The comment period ended on April 12, 2007.

Karen Vaughan of the Scappoose Drainage Improvement Company submitted a comment on April 6, 2007, which stated that SDIC had no objection to the claim provided that the "change would not cause an increase of water quantity or a degradation of the water quality" within the District.

No request for hearing has been received.

I. BACKGROUND:

The subject property is made up of four contiguous pieces of farmland. There appears to be a dwelling on Tax Lot 4128-000-00500. It appears there are three dwellings and farm-related structures located on Tax Lot 4133-

000-00300. Access is provided by Ellis Farm Road and Honeyman Road. The property is bordered on the east by the Multnomah Channel. The Claimant has operated a dairy farm on the property for years, but it is uncertain whether the property is still used for that purpose. The Claimant appears to have acquired the property in January of 1978.

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, Loren Ellis, Jr. & Sons, a partnership of Loren Ellis, Jr., Gloria Ellis, Terry Ellis, Craig Ellis, and Scott Ellis.
2. **Date of Acquisition:** The Claimant entered into a real estate contract to purchase the subject property on January 6, 1978. A memorandum of this contract was recorded in Book 215, Page 647 of the Columbia County deed records on January 10, 1978. A deed to the property was executed on January 6, 1978, and recorded in Book 250, Page 94 of the Columbia County deed records on December 12, 1983. In June of 1984, Stephen Ellis quitclaimed his partnership interest in the property to the partnership.

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

The property was zoned A-1(40 acre minimum lot size) under the 1973 South County Zoning Ordinance effective on August 29, 1973 when it was acquired by the Claimant in 1978. The A-1 district allows as an outright permitted use, a dwelling for owner, operator, and or/help required to carry out agriculture(Section 152-2). The A-1 zone allow a variety of conditional uses including kennel, private school or college, mining and quarrying and airport landing field among others(Section 154).

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

The Claimant cites the following provisions of the Columbia County Comprehensive Plan (CCCP) as restricting its use of the property:

PROVISION	DESCRIPTION
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Part I	Provides for administrative procedures including implementation and compliance
Part II	Provides for public involvement in the use of Claimant's property
Part IV	Provides for the designation of Claimant's land as primary forest land and limits its uses
Part IX	Limits development and location of housing to designated areas
Part XVI	Prevents or limits development of land to provide public with open space, big game habitat, fish habitat, other wildlife habitat, wetlands, riparian areas, cultural areas, and scenic resources

The Claimant cites the following provisions of the Columbia County Zoning Ordinance, effective August 1, 1984, as restricting its use of the property:

PROVISION	DESCRIPTION
100	Definitions
201	Requires compliance with the Zoning Ordinance
202	Sets forth the Zoning Districts and Minimum Lot Sizes
203-208	General sections referring to the Zoning Map, amendments to the Zoning Map, boundaries of zones, building in hazard areas, condominiums, and redevelopment plans.
209	Requires that all requests for dwellings on resource land shall be reviewed in accordance with the provisions established in each district.
210	Prohibits new lots smaller than minimum designated lot size in zoning district
213-18	General setbacks, pending building permits, ingress and egress, unsafe building, and basement dwelling and building conversion provisions applicable to all zoning districts.
219	Prescribes timing of installation of screening if required by other provisions of the zoning code.
300	Section heading
302	Uses permitted outright in the PA-38 zone.
303.13 (D)	Restricts non-resource related dwellings to land generally unsuitable for farm use
Remainder of 303	Conditional Uses and Standards for review for non-farm uses in PA-38 zone.

304.1	Establishes a minimum lot size in the PA-38 zone of 38 acres.
Remainder of 304, 305, & 309	Standards for PA-38 uses; Standards for partitions; Standards for land divisions for farm parcels.

The Claimant cites the following provisions of the Columbia County Subdivision and Partition Ordinance, adopted May 23, 1990, as restricting its use of the property:

SECTION	DESCRIPTION
104	Adopts the Comprehensive Plan and its designations
201	Requires compliance with ORS 92.010 and 92.190
205	Requires submission of a sketch and discussion of various matters, including compliance with the Comprehensive Plan. Also requires compliance with other county ordinances, including the zoning ordinance.
206	Requires compliance with conditions laid down by the County
210	Restricts variances, including a provision that they shall not vary the provisions of the zoning ordinances and Comprehensive Plan
211	Allows for enforcement
213	Provides for notice to people who do not own Claimant's land
1001	Sets requirements and standards of the subdivision and partition ordinance as the minimum standard
1002	Requires that the "intent and design" of the proposed subdivision conform to and be in harmony with the Comprehensive Plan and zoning ordinance.
1003	Places restrictions on lots
1005	Places restrictions on streets and roadways
1011	Authorizes the County to require pedestrian walkways
1012	Authorizes the County to require and regulate drainage
1015	Authorizes the County to impose other requirements

The Claimants cite the 1972 Columbia County Surface Mining Ordinance and its amendments through 2001 as restricting their use of the property for mining.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property before the 1984 Comprehensive Plan and Zoning Ordinance

including the PA-38 zoning regulations were enacted. Therefore, the Claimant may be eligible for compensation and/or waiver of any such regulations that restrict intended uses and reduce the fair market value of the property under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The regulations cited by the Claimant as restricting use and reducing value listed above are discussed below:

Columbia County Comprehensive Plan

The Columbia County Comprehensive Plan is implemented through the Columbia County Zoning Ordinance and is not in and of itself applicable in a conditional use, subdivision or partition process other than the minimum lot size for the zone established in the Comprehensive Plan Map. Therefore, Staff finds that the Comprehensive Plan Map and Text does not restrict or prohibit the use of the property or reduce the value the property if the 38 acre minimum lot size is complied with.

Columbia County Zoning Ordinance

Section 100 includes definitions for the Zoning Ordinance terms. Staff finds that provisions in this section do not in and of themselves restrict use or reduce value.

Section 201 requires compliance with the zoning ordinance provisions within the zoning districts. Staff finds that with exception of provisions that are subject to waiver, the Claimant must comply with the zoning ordinance and there is no basis for waiver of this general section.

Section 202 sets forth the Zoning Districts and Minimum Lot Sizes. While this is merely a general provision, further regulated under the relevant zoning district applied to the subject property, this provision could be read to restrict the use of the subject property only if the Claimant was proposing to divide the property below the 38 acre minimum lot sizes. The use proposed in the claim is to divide the property into 40 acre parcels.

Sections 203-208 contain general sections referring to the Zoning Map, amendments to the Zoning Map, boundaries of zones, building in hazard areas, condominiums, and redevelopment plans., and a requirement for dwellings to be reviewed in accordance with provisions in each district. Staff finds that these provisions are not relevant to the claim and do not restrict uses intended by the Claimant. Section 203 incorporates the zoning map into the zoning ordinance. However, the zoning does not limit the property to 40 acre parcels, as proposed. Section 204 sets for the process for amending the zoning map which has nothing to do with the use of the property. Section 205 describes the zone boundaries and has nothing to do with the use of the property. Section 206 imposes special building code provisions in hazard areas. According to information provided with the Claim, staff has no basis to believe that the subject property is in a hazard area. However, even if it was, extra safety precautions for building in a hazard area does not restrict the residential use of the property. It only makes the residential use safer. Furthermore, following special safety requirements would make the property more valuable. Finally, these restrictions would be exempt from waiver under Measure 37 for safety reasons. Section 207 applies to condominiums and is not applicable to this proposal for single family dwellings. Regardless, the section does not limit condominiums, only setting forth a process for them. Section 208, describes redevelopment plans and is not applicable outside of the UGB and therefore does not restrict the use of this property. Section 209 requires development in accordance with the provisions established for the zoning

district, and does not in and of itself restrict the use of the property. Rather, the specific provisions of the zoning district might restrict the use of the property (See discussion below).

Section 209 requires that all requests for dwellings on resource land shall be reviewed in accordance with the provisions established in each district. Staff finds that such a review requirement does not restrict the use of the property, or reduce its use. Review is merely a process. One or more conditions may be imposed during the review process that may restrict use and reduce the property value. However, one cannot assume such an outcome.

Section 210 restricts the partition or subdivision of land into parcels smaller than the parcel size established in the zoning district. While this section is general in nature, this provision could be read to restrict the use of the subject property only if the Claimant was proposing to divide the property below the 38 acre minimum lot sizes. The use proposed in the claim is to divide the property into 40 acre parcels.

Section 213-218 prescribe general setbacks, address how pending building permits are to be processed, prescribe ingress and egress requirements, restoration of unsafe buildings, basement used for dwellings and building conversion provisions applicable to all zoning districts. Based on the information provided in the Claim, the County has no knowledge that any building to be built on the property cannot meet setbacks, ingress and egress, and building requirements. In addition, these requirements are a matter of public safety and are therefore exempt from waiver under Measure 37.

Section 219 requires that, if sight obscuring fencing or planting is required, it be done before commencement of the use. Staff finds that this does not impose the fencing screening requirement but merely prescribes timing and therefore does not restrict use or reduce value.

Section 300 sets forth the zoning regulations for PA-38 zoned property. However, with the exception of Section 303.13D limiting non-farm dwellings to land unsuitable for agriculture, the regulations don't restrict the use of the property for non-farm resource residential development.

Section 301 describes the general purpose of the PA-38 zone and does not restrict or prohibit the use of the property. Sections 302 and 303 describe the permitted and conditional uses in the PA-38 zone. With the exception of Section 303.13D limiting placement of a non-resource dwelling to land which is generally unsuitable for crops and livestock (Class VI and above soils), these provisions do not restrict or prohibit the proposed subdivision for single family dwellings because non-resource dwellings are allowed in the PA-38 zone as a conditional use and other types of dwellings are allowed as permitted uses. Section 303.13D, a criterion applied to non-resource dwelling review, restricts use in this case because the soils on the property are within agricultural capability Classes II and III which the County Comprehensive Plan describes as soils suitable for agriculture and therefore this criterion could not be met. Staff finds that this section restricts and prohibits use of the property. Otherwise, CCZO Sections 303, 304 and 305 do not restrict or prohibit the proposed subdivision for development of single family dwellings on 40 acre parcels because single family dwellings are allowed either outright or conditionally. During the hearing process on the proposed conditional use dwellings, conditions may be imposed that may restrict or prohibit the use. Some of those conditions may be exempt from waiver under Measure 37. However, the County cannot determine whether conditions will qualify for waiver under Measure 37 until the County knows what they are. CCZO Section 304.1 prohibits a division of land in the PA-38 zone below 38 acres. The Claimant intends to divide the property into 40 acre parcels. Therefore, Staff finds that the Claimant can divide the property as he intends under current County ordinances and a waiver of minimum lot size provisions at the County level is not necessary. Current State law imposes an 80 acre minimum lot size, but a claim must be filed with the State to address that restriction. The County does not have any information that the remaining standards set forth in Section 304, 305 and 309 cannot be met and thereby

restrict the use of the property.

Columbia County Subdivision and Partitioning Ordinance

The Subdivision and Partitioning Ordinance does not restrict the use of the property. The Ordinance merely sets forth the process to partition or subdivide the property. The County has no information to suggest that the Claimant cannot meet the subdivision standards. The Commission may impose reasonable conditions to approval of a partition or subdivision. However, without knowing what the conditions will be the County cannot make a determination that they restrict the use of the property, reduce the value of the property and are not exempt. The Claimant has not provided any information about what specific provisions it believes are subject to waiver under the Measure. Moreover, the Claimant fails to address how a properly subdivided property could possibly be worth less than property that does not go through a recognized subdivision process. Staff doubts that any financing would be available for such a development due to the uncertainty surrounding it. Furthermore, staff presumes that a potential buyer would pay more for a lot that can be shown to have been legally created than for a lot that cannot be shown to have been legally created. Finally, the 1975 Subdivision Ordinance was in effect when the Claimant acquired the property in 1978.

Columbia County Surface Mining Ordinance

When the Claimant acquired the property in 1978, the property was zoned A-1 under the 1973 Zoning Ordinance. The A-1 zone allowed Surface Mining as a conditional use. Current PA-38 zoning regulations also allow mining as a conditional use(Section 303.2).

Claimant alleges that the 1972 Surface Mining Ordinance and its amendments through 2001 have restricted use of the property for surface mining. The 1972 ordinance was repealed in 1990 and replaced with a new Surface Mining Ordinance. Staff finds that the current Surface Mining regulations allow mining by conditional use permit and do not, therefore, restrict use of the property for mining. Further, if the Claimant seeks to engage in surface mining on the subject property, the Surface Mining Ordinance cannot be waived to the extent that it protects public health and safety.

This claim is to divide the PA-38 zoned property into 40 acre parcels for non-farm single family dwelling or other non-farm use which was not prohibited, restricted or conditional upon acquisition by the Claimant in 1978. Based on the claim, it appears that the County regulation that clearly prevents the Claimant from developing the property as desired is CCZO 303.13(D)(Restricts non-resource related dwellings to land generally unsuitable for farm use).

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. **Value of property as regulated:** The Claimant submitted a Land Appraisal Report for each property, showing the following market values:

Tax Lot 4128-000-00500: \$1,364,000
Tax Lot 4133-000-00300: \$1,010,000
Tax Lot 4127-000-00500: \$218,000
Tax Lot 4134-000-00500: \$0

The appraiser concluded that Tax Lot 4134-000-00500 had no market value because due to the small parcel size, "under the current zoning the only value would be as excess land to an adjacent property owner."

According to the Columbia County Tax Assessor, the market values for the land itself for the subject properties are:

Tax Lot 4128-000-00500: \$1,497,900
Tax Lot 4133-000-00300: \$1,597,100
Tax Lot 4127-000-00500: \$223,700
Tax Lot 4134-000-00500: \$103,400

2. **Value of property not subject to cited regulations:** The appraiser concluded that the value of the subject properties if they could be redeveloped to a 40-acre density would be as follows:

Tax Lot 4128-000-00500: \$2,340,000
Tax Lot 4133-000-00300: \$1,600,000
Tax Lot 4127-000-00500: \$284,000
Tax Lot 4134-000-00500: \$0

The appraiser also estimated the value of the subject properties if they could be redeveloped to a 5-acre density. The values listed below do not appear to be relevant to the claim, as the request is to divide the property into 40-acre parcels.

Tax Lot 4128-000-00500: \$11,100,000
Tax Lot 4133-000-00300: \$7,500,000
Tax Lot 4127-000-00500: \$1,366,000
Tax Lot 4134-000-00500: \$376,000

3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$3,153,000.

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 finds that since the property can be divided into 40 acre parcels for residential use under current County regulations, no loss of value has been shown.

G. COMPENSATION DEMANDED

As noted on page 1 of the Measure 37 Claim Forms:

Tax Lot 4128-000-00500: \$2,340,000
Tax Lot 4133-000-00300: \$590,000
Tax Lot 4127-000-00500: \$66,000
Tax Lot 4134-000-00500: \$157,000

Total: \$3,153,000

(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 202, 210, 303.13 (D) & 304.1 do 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.

Staff also notes that the property may be subject to federal and/or state fish and wildlife regulations. Federal regulations would continue to apply as they are exempt from compensation or waiver under Subsection 3(C), above. To the extent that state regulations apply to the subject property, Claimant must check with state authorities regarding compliance and/or waiver of applicable regulations.

(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 303.13 (D).

(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 and non-resource dwelling siting restrictions of the PA-38 zone which was enacted prior to the effective date of Measure 37 on December 2, 2004. The

subject claim was filed on December 1, 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.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 100	Definitions	No	No	No
CCZO 201	Requires compliance with the Zoning Ordinance	No	No	No
CCZO 202	Sets forth the Zoning Districts and Minimum Lot Sizes	No	No	No
CCZO 203-209	General sections referring to the Zoning Map, amendments to the Zoning Map, boundaries of zones, building in hazard areas, condominiums, and redevelopment plans., requirement for dwellings to be reviewed in accordance with provisions in each district.	No	No	No
CCZO 210	Restricts the partition or subdivision of land into parcels smaller than the parcel size established in the zoning district.	No	No	No
CCZO 213-18	General setbacks, pending building permits, ingress and egress, unsafe building, and basement dwelling and building conversion provisions applicable to all zoning districts.	No	No	Yes

CCZO 219	Prescribes timing of installation of screening if required by other provisions of the Zoning Ordinance	No	No	No
CCZO 300	Section heading	No	No	No
CCZO 302	Uses permitted outright in the PA-38 zone.	No	No	No
CCZO 303.13 (D)	Restricts non-resource related dwellings to land generally unsuitable for farm use	Yes	Yes	No
CCZO Remainder of 303	Conditional Uses and Standards for review for non-farm uses in PA-38 zone.	No	No	No
CCZO 304.1	Establishes a minimum lot size in the PA-38 zone of 38 acres.	No	No	No
CCZO Remainder of 304, 305, & 309	Standards for PA-38 uses; Standards for partitions; Standards for land divisions for farm parcels.	No	No	No
Comp. Plan	Comprehensive Plan	No	No	No
CCS&PO	Land Division Procedures and Standards	No	No	Yes
Surface Mining Ordinance	Regulations governing surface mining	No	No	Yes

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 303.13(D).

ATTACHMENT 2

LEGAL DESCRIPTION

Parcel 1: Commencing at a point in the middle or center of Santosh Creek and 2 chains West of the quarter section corner between Sections 28 and 29 in Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon; running thence East 2 chains to the quarter section corner between Sections 28 and 29; thence North 18.40 chains to middle of Santosh Creek; thence Southerly with the meanderings of center of Santosh Creek to the place of beginning, the same being and lying in Section 29, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon.

Also, Lot One of Section 33, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon.

Also, All that portion of land lying in Lot 5 of Section 28 and the North half of the Northeast quarter of Section 33, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon, within the meander line of the Sturgeon Lake.

Also, Beginning at a point on the United States meander line 69.00 chains East of the Northwest corner of Section 33, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon; thence South 53°30' West 19 chains to Northern end of island to post set for initial point of survey; thence South 48° West 11.70 chains; thence North 54° West 1.30 chains; thence North 36° East 6.00 chains; thence North 61° East 3.00 chains; thence North 78°30' East 3.68 chains to the place of beginning.

Also, Beginning at a point on the United States meander line 69.00 chains East of the Northwest corner of Section 33, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon; thence South 21°30' West 9.32 chains to the lower point of island to a post set for initial point of survey; thence South 45°30' East, .70 chains to a point on Eastern shore of island; thence South 20°30' West 8.00 chains; thence South 41°30' West 7.50 chains; thence South 56°30' West 7.50 chains; thence South 45°30' West 10.50 chains; thence South 57°30' West 7.50 chains; thence North 56°30' West 1.00 chains along Northern end of island; thence North 50°30' East 4.50 chains along Western shore; thence North 46° East 8.50 chains; thence North 41°45' East 2.50 chains; thence North 34° East 14.00 chains; thence North 70° East 4.50 chains; thence North 45°30' East 7.76 chains to the place of beginning.

Also, Beginning at a cedar post set on the East line of Section 33, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon and South from the Northeast corner of said Section 33, 19.94 chains or 20.00 chains according to the Government measurement, said post being set for the Southeast corner of Lot 8 of said Section 33, from thence (Variation 21° East) West 10.55 chains to the United States meander line on the Eastern shore of Lake Sturgeon where is set a post; thence following line of said lake South 20° East 2.90 chains to a point; thence South 13° West 4.25 chains to an old fence; thence following the line of said fence South 64°30' East 8.75 chains to the left bank of the Willamette Slough; thence down the bank of said slough North 30°45' East 3.10 chains to a post set on the East line of said Section 33; thence North 8.40 chains to the place of beginning. (Being a part of Lot 7)

Also, the Northwest quarter of the Southeast quarter, the Northeast quarter of the Southwest quarter and Lots numbered 1, 2, and 3 of Section 28, Lots 1 and 2 of Section 27, Lots 4 and 5 of said Section 28; Lot 8 of Section 33 and Lot 1 of Section 34, all in Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon. EXCEPTING FROM Lot 1, in Section 28, that part thereof conveyed to Joseph Copeland by deed recorded March 29, 1884 in Book H, page 545, Deed Records of Columbia County, Oregon. ALSO EXCEPTING that part thereof conveyed to Scappoose Drainage District by deed recorded April 23, 1976 in Book 205, pages 480 and 482, Deed Records of Columbia County, Oregon.

Parcel 2: Lots 4, 5, 6 and 7 in Section 33, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon. EXCEPTING that part of said Lot 7 conveyed to Christine

Salene by deed recorded March 27, 1891 in Book L, page 376, Deed Records of Columbia County, Oregon. EXCEPT from Lots 4 and 5, tract as conveyed to Elaine F. Gunderson recorded May 9, 1952 in Book 114, page 552, Deed Records of Columbia County, Oregon.

Also, Beginning at a point on the United States meander line 69 chains East of the Northwest corner of Section 33, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon; thence South $11^{\circ}30'$ West 27.76 chains to a post set for initial point of survey on the Northern point of island; thence (variation North $21^{\circ}30'$ East) South $11^{\circ}45'$ West 3.50 chains; thence South 46° West 3.80 chains; thence North 52° West 1.50 chains; thence North 37° East 5 chains; thence North $55^{\circ}30'$ East 2 chains to place of beginning.

ALSO, Beginning at a point on the United States meander line 69 chains East of the Northwest corner of said Section 33; and running South $11^{\circ}30'$ West 25 chains to a point; thence South $33^{\circ}30'$ West 25.50 chains to a point on the Northern end of island to post set for initial point of survey; thence South 24° West 4.50 chains; thence South $43^{\circ}45'$ West 3.50 chains; thence North $18^{\circ}30'$ West 1.90 chains; thence North 45° East 6.85 chains to place of beginning.

ALSO, all that part of the following described tract lying East of the Honeyman Road, to-wit: That certain lake situated in Section 33, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon and heretofore, to wit: on the 20th day of February, 1892, deeded by the State of Oregon to P.A. Frakes and H.C. Lamberson and described as follows, to-wit: Beginning at the meander corner between Sections 32 and 33 in Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon, on margin of Sturgeon Lake; thence by the meander of said lake as follows: South 69° East 3 chains; South 1° West 3.50 chains; South 35° East 2 chains; North 36° East 5.50 chains; North 66° East 5 chains; North 53° East 3.80 chains; North 12° East 1.50 chains; South 69° West 4.40 chains; South 45° West 2 chains; South 84° West 2.50 chains; North 5° West 7 chains; North 53° West 2.60 chains; North 15° East 2.20 chains; thence North 56° East 18.50 chains; North 15° East 3 chains; thence North 44° East 5.50 chains; North 34° East 5 chains; North 4 chains; North 49° East 4.50 chains; South 84° East 3.50 chains; South 15° East 9 chains; North 65° East 1 chain; North 4° West 5 chains; North 33° West 2 chains; North 37° East 3.50 chains; North 50° East 8.13 chains to a point 20 chains South of the North boundary of Section 33 above named; thence East 29.04 chains to the North boundary of Lot 7 in said Section 33; thence along the meander of said Sturgeon Lake on the East side thereof as follows: South 15° West 1.80 chains; South 10° East 2.50 chains; South 16° West 4 chains; South 33° West 19 chains; South 25° West 28.30 chains; South 41° West 13.80 chains to the meander corner between Section 4, Township 3 North, Range 1 West of the Willamette Meridian and Sections 33, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon; thence West 9.70 chains to another corner between said Sections 4 and 33; thence North 27° West 4.20 chains; thence South 85° West 5.60 chains; thence North 8.50 chains; South 47° West 4.80 chains; thence South 2.50 chains; South 32° West 5 chains; South 63° West 4.13 chains to another meander corner between said Sections 4 and 33; thence South 68° West 6 chains; thence South 30° West 2 chains; South 23° West 7 chains; South 52° West 1.23 chains to the meander corner between Sections 4 and 5 in Township 3 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon; thence North 22.45 chains to the place of beginning. EXCEPT that portion conveyed to Elaine F. Gunderson recorded May 9, 1952 in Book 114, page 552, Deed Records of Columbia County, Oregon.

Parcel 3: The Southwest quarter of Southeast quarter; Southeast quarter of Southwest quarter; West half of Southwest quarter, all in Section 28, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon. EXCEPTING THEREFROM the following: Beginning at a point common to Sections 28, 29, 32 and 33, Township 4 North, Range 1 West, Willamette Meridian, in center of county road; thence North along common boundary of Sections 28 and 29 a distance of 448 feet; thence at right angles East 209 feet; thence at right angles South 448

feet; thence at right angles West along center of county road to the place of beginning.

EXCEPTING THEREFROM from all of the above, that tract conveyed to Scappoose Drainage District, Columbia County, Oregon, a municipal corporation by deed recorded October 9, 1978 in Book 220, page 322, Deed Records of Columbia County, Oregon.