

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 Claim Nos. CL 07-89, CL 07-90, )  
CL 07-91, and CL 07-92 Submitted by Bitte Timber )  
Development Co. for Compensation Under ) Order No. 97-2007  
Measure 37 )

WHEREAS, on December 1, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from the Bitte Timber Development Co., (the "Claimant"), related to 4 parcels of property located near Columbia City, Oregon, having tax account numbers 5120-000-00200, 5121-000-00300, 5128-000-00400, and 5129-000-00200; and

WHEREAS, according to the information presented with the Claim, the Claimant acquired an interest in the property in 1976; and

WHEREAS, the County zoned the property Forest District (F), in 1973, prior to the acquisition by the Claimant; 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 \$4,153,000; and

WHEREAS, the Claimant desires to subdivide the property into five acre minimum lot size parcels, or smaller lots adjacent to the City of Columbia City; 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 1976, the Claimant could have divided the property into 5 acre minimum lot size parcels, or smaller parcels adjacent to the City of Columbia City; and

WHEREAS, in 1976, the Claimant could not have sited non-resource dwellings on the property;

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 07-89, CL 07-90, CL 07-91, and CL 07-92, dated April 11, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-89, CL 07-90, CL 07-91, and CL 07-92. In lieu of compensation, the County waives CCZO Section 506.1 to the extent necessary to allow the Claimant to subdivide the property into five acre minimum lot size parcels, or smaller parcels adjacent to the City of Columbia City.
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, 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 25<sup>th</sup> day of April, 2007.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hausen  
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 NUMBERS:** CL 07-89, 90, 91, 92

**CLAIMANTS/OWNERS:** Bitte Timber Development Co.  
9700 SW Capitol Hwy, Ste. 130  
Portland OR 97219

**CLAIMANT'S  
REPRESENTATIVE:** David Brian Williamson, Esq.  
P.O. Box 656  
St. Helens, OR 9051

### SUBJECT PROPERTY

**PROPERTY LOCATION:** Columbia City, Oregon

**TAX ACCOUNT NUMBERS:** 5120-000-00200, 5121-000-00300, 5128-020-00400, 5129-000-00200

**ZONING:** Primary Forest-76 (PF-76)

**SIZE:** 495.32 acres

**REQUEST:** To divide the property into five-acre parcels, except for the portion abutting the city limits of Columbia County which may be divided into smaller lots. Intended use is single family dwelling or other dwelling, or use which was lawful when the property was acquired.

**CLAIM RECEIVED:** December 1, 2006

**180 DAY DEADLINE:** May 30, 2007

**NOTICE:** April 2, 2007.  
One comment was received on April 16, 2007. The City of Columbia City, through John A. Rankin, LLC, states that the subject property could not have been developed, as proposed, at the time of Applicant's December, 1976 acquisition because although the County's comprehensive plan had not yet been adopted, cities and counties were required under Senate Bill 100 to exercise planning and zoning in accordance with state wide planning goals and guidelines in effect. Columbia City argues that all state wide planning goals were adopted in January, 1975, including Planning Goal 4 - Forest Lands, and that Claimant would not have been permitted to subdivide forest land into five acre parcels at that time. Columbia City urges that Columbia County should determine that this claim is invalid.

**I. BACKGROUND:**

The subject property includes 495.32 acres of property zoned Primary Forest-76. The Claimant lists its intended use of the property as division of the property into five acre parcels, with smaller parcels abutting city limits, and placement of non-resource single family or other dwellings on each parcel.

**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:** The property is titled in the name of Bitte Timber Development Co.

2. **Date of Acquisition:** Family ownership dates back to 1958 when Margaret G. Bitte and Fred Bitte purchased the property (Deed recorded at Book 135, page 219, of the Columbia County Deed Records). The current owner, Bitte Timber Development Co., acquired it December 28, 1976, which is its acquisition date for purposes of Measure 37. Deed recorded at Book 209, page 467. Margaret Bitte, and Fred Bitte, are not "family members" of the corporation, as defined in Measure 37.

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

The subject property was zoned Forest District (F) at the time of Claimant's acquisition. The Forest District in its stated purpose(Section 1001) " is not intended to be used as a residential area". Single family residential uses are limited to "owners, operators, or help required to carry out a forestry use"(Section 1002-2). Surface mining was allowed as a permitted use(Section 1002-6). No minimum lot sizes were prescribed by the Forest District(F) zone.

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

Claimant cites the following specific regulations in its addendum that are alleged to have reduced value in the subject properties. These include:

**Columbia County Comprehensive Plan:**

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

PROVISION	DESCRIPTION
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

**Columbia County Zoning Ordinance:**

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

LAND USE CRITERION	DESCRIPTION
CCZO 100	Definitions. Does not contain regulations
CCZO 200	Section Heading. Does not contain regulations
CCZO 201	Requires compliance with the Zoning Ordinance
CCZO 202	Sets forth the Zoning Districts and Minimum Lot Sizes
CCZO 203	General sections referring to the Zoning Map
CCZO 209	Requires that all requests for dwellings on resource land shall be reviewed in accordance with the provisions established in each district.
CCZO 210	Restricts the partition or subdivision of land into parcels smaller than the parcel size established in the zoning district.
CCZO 213, 215, 219	General setbacks, ingress and egress, building conversion provisions, and fencing/planting applicable to all zoning districts.
CCZO 501	Provides that the purpose of the PF Zone is to retain forest land for forest use, and allows dwellings only under certain conditions
CCZO 502	Sets forth the permitted uses in the PF zone
CCZO 503 and 504	Conditional Uses and requirements for Conditional Uses in the PF zone
CCZO 505	Sets forth requirements for Residential Structures in the PF zone
CCZO 506	Sets forth the minimum lot sizes, setbacks and building heights in the PF zone

CCZO 507	Sets forth requirements for approval of a lot or parcel division for a principal dwelling on the effective date of the zoning ordinance
CCZO 508	Discusses non-forest use that are unintentionally destroyed
CCZO 509	Relates to notification of state agencies for certain uses

**Columbia County Subdivision Ordinance**

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

**Surface Mining Ordinance**

The Claimants cite the 1972 Columbia County Surface Mining Ordinance and its amendments through 2001 as restricting their use of the property for mining. The 1972 Ordinance was repealed and a new Surface Mining Ordinance was adopted in 1990. The current 1990 ordinance as amended contains rules under which mines may be totally or limited exempt from Surface Mining operating requirements and permit procedures and requirements as well as operating standards and requirements for surface mines.

#### D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property before the 1984 Comprehensive Plan and Zoning Ordinance, the 1990 Subdivision Ordinance and the 1990 Columbia County Surface Mining Ordinance were enacted therefore Claimant may be eligible for compensation and/or waiver of qualifying regulations under Measure 37.

#### E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant alleges that the subject property's fair market value has been reduced by Primary Forest(PF-76) zoning provisions that restrict minimum parcel size to 76 acres and do not allow non-resource dwelling, other dwellings or uses which were lawful when the Claimant acquired the property in 1976. Claimant does not address how the Columbia County Subdivision and Partitioning Ordinance, the Columbia County Surface Mining Ordinance, or the Columbia County Comprehensive Plan restrict Claimant's intended use. Staff reviews each of Claimant's cited regulations below:

##### Columbia County Comprehensive Plan

Parts I, II, IV, IX, XVI of the Columbia County Comprehensive Plan. The 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 on the Comprehensive Plan Map. However, if the County waives the minimum lot size for the Zone, the Comprehensive Plan Map has no effect on development. Therefore, the Comprehensive Plan does not restrict or prohibit the use of the property or reduce the value the property.

##### Columbia County Zoning Ordinance (CCZO)

###### Article I - General Definitions

Section 100 - definitions. The definition section does not restrict use of the property.

###### Article II- General Provisions

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, which does not in and of itself change the minimum lot size of the zone. Section 204 sets forth 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.

#### Article III- Resource Districts, Sections 500-509.

Section 500 sets forth the zoning regulations for PF-76 zoned property. However, with the exception of Section 506.1, imposing the 76 acre minimum lot size, the regulations don't restrict the use of the property for residential development. Section 501 describes the general purpose of the PF-76 zone and does not restrict or prohibit the use of the property.

Sections 502 and 503 describe the permitted and conditional uses in the PF-76 zone. These provisions do not restrict or prohibit the proposed subdivision for single family dwellings because non-resource dwellings are allowed in the PF-76 zone as a conditional use and other types of dwellings are allowed as permitted uses. Furthermore, the Claimant was subject to Forest District Zoning, which prohibited non-resource related dwellings, when it acquired the property. Non-resource related dwellings are allowed as conditional uses under the 1984 zoning regulations. Therefore, 1984 regulations do not restrict the use of the property or reduce its value.

CCZO Section 506.1 prohibits a division of land in the PF-76 zone below 76 acres. Staff finds that this minimum lot size regulation restricts and prohibits the use of the property. However, Sections 504, 505 and the remainder of Section 506 do not restrict or prohibit the proposed subdivision for development of single family dwellings because single family dwellings are allowed as conditional uses. Non-resource related single family dwellings were not allowed under the Forest District regulations in effect when the Claimant acquired the property.

To the extent that any of the 1984 zoning regulations are actually more restrictive than the Forest District regulations, they would become known during the hearing process at which time 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. The County does not have any information that the remaining standards set forth in Section 504, 505, and 506 cannot be met and thereby restrict the use of the property.

Section 508 allows replacement of a non-resource dwelling destroyed by fire or other casualty and does not restrict the use of the property or reduce its value.

Section 509 relates to notification of state agencies for certain uses. Staff finds this is a procedural requirement, does not restrict use and generally involves health and safety regulations administered by the State.

#### Columbia County Subdivision and Partitioning Ordinance

The Subdivision and Partitioning Ordinance does not restrict the use of the property, once the minimum lot size has been waived. The Ordinance merely sets forth the process to partition or subdivide property. Standards will be imposed during the process. 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 he 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.

#### Columbia County Surface Mining Ordinance (CCSMO)

The Columbia County Zoning Ordinance is not a "land use regulation" as defined by Measure 37. However, even if it was a land use regulation under the Measure, staff finds that the regulations are not subject to waiver. Claimant alleges that the 1972 Surface Mining Ordinance and its amendments through 2001 have restricted use of the property for surface mining. When the Claimant acquired the property in 1976, surface mining was subject to the 1972 Surface Mining Ordinance and zoning regulations under the 1973 Zoning Ordinance, Forest District (F) zoning permitted mining. The 1972 Surface Mining Ordinance was repealed in 1990 and replaced with a new Surface Mining Ordinance. Amendments of the 1990 Surface Mining Ordinance through 2001 have all been incorporated into the current version of CCSMO. 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 unless or until this process results in denial or a conditional approval that restricts use. 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. Staff finds that a stated finding of the Board of Commissioners in adopting the regulations contained in the current 1990 Surface Mining Ordinance as amended (Section 1.2(3)) states "... proper surface mining and the reclamation of surface mined lands is necessary to prevent the undesirable land, air and water conditions that would be detrimental to the general health, safety, welfare and property rights of the landowners and citizens of this country" Staff, therefore finds that the Surface Mining Ordinance regulations are generally exempt under Measure 37 as health and safety related.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The real market value of the subject land, according to the county assessor's records, and according to an appraisal of real property, as of 10/20/06, prepared by Baldwin Associates, Inc. ("Claimant's Appraisal"), is as follows:

	Appraiser	Claimant's Appraisal
- tax lot 5120-000-00200:	\$1,627,50	\$785,000
- tax lot 5121-000-00300:	\$ 592,400	\$200,000
- tax lot 5128-020-00400:	\$ 440,000	\$165,000
- tax lot 5129-000-00200:	\$ 1,594,100	\$588,000

2. Value of Property Not Subject To Cited Regulations.

According to Claimant's Appraisal, the value of each parcel not subject to the cited regulations and divided to a five acre density is:

- tax lot 5120-000-00200: \$2,600,000 at a five acre density less exclusion of 25 acres for power transmission line and road development
- tax lot 5121-000-00300: \$ 658,000
- tax lot 5128-020-00400: \$ 532,000 after excluding five acres for road development
- tax lot 5129-000-00200: \$2,100,000 after excluding 5 acres each for power transmission line easement and road development

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

According to Claimant's Appraisal the loss of value due to current zoning and land use restrictions for the parcels are:

- tax lot 5120-000-00200: \$1,815,000
- tax lot 5121-000-00300: \$ 458,000
- tax lot 5128-020-00400: \$ 367,000
- tax lot 5129-000-00200: \$1,512,000

Using the county assessor's values, the loss of value would be somewhat less. However, staff concedes that it is more likely than not that the property would have a higher value if divided into multiple parcels than as four resource parcels.

G. COMPENSATION DEMANDED

\$4,153,000, per the sum of the claim amounts on page 1 of Claimant's Measure 37 Claim forms.

**(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 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 the provisions of CCZO 202, 210, and 506.1 to allow 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 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 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 Claimant has met the threshold requirements for proving a Measure 37 claim.

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 100	Definitions. Does not contain regulations	No	No	No
CCZO 200	Section Heading. Does not contain regulations	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	Yes	Yes	No
CCZO 203	General sections referring to the Zoning Map	No	No	No
CCZO 209	Requires that all requests for dwellings on resource land shall be reviewed in accordance with the provisions established 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.	Yes	Yes	No
CCZO 213	Building setback exceptions. provisions applicable to all zoning districts.	No	No	Yes
CCZO 215	Standards for ingress and egress onto streets..	No	No	Yes
CCZO 219	If sight obscuring fencing or screening required by other provisions, prescribes timing for installation.	No	No	No

CCZO 501	Provides that the purpose of the PF Zone is to retain forest land for forest use, and allows dwellings only under certain conditions	No	No	No
CCZO 502	Sets forth the permitted uses in the PF zone	No	No	No

CCZO 503	Conditional Uses in the PF zone	No	No	No
CCZO 504.1	Use consistent with forest and farm uses and Forest Practices Act	No	No	No
CCZO 504.2	Use will not significantly increase cost, nor interfere with accepted forest management practices or farm uses on adjacent or nearby forest or farm uses.	No	No	No
CCZO 504.3	Limit site to no larger than necessary to accommodate activity. Won't materially alter stability of land use pattern, limit or impair surrounding permitted uses. If necessary measures will be taken to minimize negative effects on adjacent forest lands.	No	No	No
CCZO 504.4	Use does not constitute an unnecessary fire hazard; provides for safety measures in planning, design, construction, and operation.	No	No	Yes
CCZO 504.5	Public utilities develop or utilize ROWs that have least adverse effect on forest resources. Use existing ROWs where possible.	No	No	No
CCZO 504.6	Development within major or peripheral big game ranges shall be sited to minimize impact on big game habitat.	No	No	No
CCZO 505.1	Nonresource-related structures shall be placed only on land that is generally unsuitable for commercial forestry or agricultural use considering terrain, adverse soil or land conditions, drainage, and flooding, vegetation, location, and size of the tract.	No	No	No
CCZO 505.2	Provision be made for fire safety measures consistent with NIFPG publication "Fire Safety Considerations for Development in Forest Areas"	No	No	Yes
CCZO 505.3	Dwelling owner/occupant assume responsibility for wildlife damage.	No	No	No

CCZO 505.4	Use does not impose limitation on operation of primary wood processing facility.	No	No	No
CCZO 505.5	Forest management impact statement may be required showing relationship between the proposed residential use and surrounding resource uses, including setbacks for any dwellings from forest or farm uses to assure above conditions met.	No	No	No
CCZO 506.1	Minimum parcel size for new land divisions is 76 acres.	Yes	Yes	No
CCZO 508	Non-forest use unintentionally destroyed by fire, etc., may be reestablished if it meets other building, plumbing, sanitation and other codes, ordinances, or permit requirements	No	No	Yes
CCZO 509	Relates to notification of state agencies for certain uses	No	No	Yes
CCS&PO	Land Division Procedures and Standards	No	No	Yes
CCSMO	Columbia County Surface Mining Ordinance (Not a Land Use Regulation)	No	No	Yes
Comp. Plan	Comprehensive Plan	No	No	N/A

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 waive CCZO 202, 210, and 506.1.

Staff notes that waiver of these provisions back to 1976 will not allow Claimant to develop the property for Claimant's stated purpose of placing dwellings on the property. Staff further notes regarding the comments of Columbia City that although state wide planning goals in effect at the time Claimant acquired the property may have been an additional ground (in addition to local zoning regulations) which would have prevented Claimant from placing dwellings on the property, the county does not address or waive state regulations in its Measure 37 decisions, other than to note that waivers from the state will also be necessary. Comments regarding state regulations may filed in accordance with Claimant's required state claim.

ATTACHMENT 2

**Bitte**

**Claim # CL07-89**

**5120-000-00200**

**Legal description:**

Warranty Deed - Government Lots 1 and 2 and Southeast Quarter of Section 20, Township 5 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon.