BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING AN ORDER RELATING TO THE DARRIN BLACK CLAIM FOR COMPENSATION UNDER ORS 197.352 (MEASURE 37)	)))))	Resolution No. 06-3700A Introduced by Chief Operating Officer Michael Jordan with the concurrence of Council President David Bragdon

WHEREAS, Darrin Black filed a claim for compensation under ORS 197.352 (Measure 37) and Chapter 2.21 of the Metro Code contending that Metro regulations had reduced the fair market value of property he owns in the city of Damascus; and

WHEREAS, the Chief Operating Officer reviewed the claim and submitted a report to the Metro Council, pursuant to section 2.21.040 of the Metro Code, recommending denial of the claim for the reason that the Metro regulation that is the basis for the claim has not reduced the fair market value of the claimant's property; and

WHEREAS, the Metro Council held a public hearing on the claim on June 1, 2006, and considered information presented at the hearing; now, therefore

BE IT RESOLVED that the Metro Council:

1. Enters Order 06-001, attached to this resolution as Exhibit A, which denies the claim for compensation.

2. Directs the Chief Operating Officer ("COO") to send a copy of Order No. 06-001, with Exhibit A attached, to the claimant, persons who participated in the public hearing on the claim, the city of Damascus and the Oregon Department of Administrative Services. The COO shall also post the order and Exhibit A at the Metro website.

ADOPTED by the Metro Council this 1st day of June, 2006

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 06-3700A

Order No. 06-001

RELATING TO THE DARRIN BLACK CLAIM
FOR COMPENSATION UNDER ORS 197.352 (MEASURE 37)

Claimant: Darrin Black

Property: 21549 SE Tillstrom Road, Damascus, Oregon;
Township 1s, Range 3E, Section 33A, Tax Lot 500 (map attached)

Claim: Temporary 20-acre minimum size for creation of new lots and parcels in Title 11 of the Urban Growth Management Functional Plan has reduced the value of the claimant's land.

Claimant submitted the claim to Metro pursuant to Metro Code Chapter 2.21. This order is based upon materials submitted by the claimant and the report prepared by the Chief Operating Officer ("COO") prepared pursuant to section 2.21.040.

The Metro Council considered the claim at a public hearing on June 1, 2006.

IT IS ORDERED THAT:

The claim of Darrin Black for compensation be denied because the Council found that the regulation did not reduce the fair market value of the property.

ENTERED this 1st day of June, 2006.

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING AN ORDER RELATING TO THE DARRIN BLACK CLAIM FOR COMPENSATION UNDER ORS 197.352 (MEASURE 37)	)))))	Resolution No. 06-3700 Introduced by Chief Operating Officer Michael Jordan with the concurrence of Council President David Bragdon

WHEREAS, Darrin Black filed a claim for compensation under ORS 197.352 (Measure 37) and Chapter 2.21 of the Metro Code contending that Metro regulations had reduced the fair market value of property he owns in the city of Damascus; and

WHEREAS, the Chief Operating Officer reviewed the claim and submitted a report to the Metro Council, pursuant to section 2.21.040 of the Metro Code, recommending denial of the claim for the reason that the Metro regulation that is the basis for the claim has not reduced the fair market value of the claimant's property; and

WHEREAS, the Metro Council held a public hearing on the claim on June 1, 2006, and considered information presented at the hearing; now, therefore

BE IT RESOLVED that the Metro Council:

1. Enters Order 06-001, attached to this resolution as Exhibit A, which denies the claim for compensation.

2. Directs the Chief Operating Officer ("COO") to send a copy of Order No. 06-001, with Exhibit A attached, to the claimant, persons who participated in the public hearing on the claim, the city of Damascus and the Oregon Department of Administrative Services. The COO shall also post the order and Exhibit A at the Metro website.

ADOPTED by the Metro Council this 1st day of June, 2006

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 06-3700

Order No. 06-001

RELATING TO THE DARRIN BLACK CLAIM
FOR COMPENSATION UNDER ORS 197.352 (MEASURE 37)

Claimant: Darrin Black

Property: 21549 SE Tillstrom Road, Damascus, Oregon;
Township 1s, Range 3E, Section 33A, Tax Lot 500 (map attached)

Claim: Temporary 20-acre minimum size for creation of new lots and parcels in Title 11 of the Urban Growth Management Functional Plan has reduced the value of the claimant's land.

Claimant submitted the claim to Metro pursuant to Metro Code Chapter 2.21. This order is based upon materials submitted by the claimant and the report prepared by the Chief Operating Officer ("COO") prepared pursuant to section 2.21.040.

The Metro Council considered the claim at a public hearing on June 1, 2006.

IT IS ORDERED THAT:

The claim of Darrin Black for compensation be denied because it does not qualify for Compensation for reasons set forth in the report of the COO.

ENTERED this 1st day of June, 2006.

____
David Bragdon, Council President

Approved as to form:

____
Daniel B. Cooper, Metro Attorney

CLAIM FOR COMPENSATION
UNDER BALLOT MEASURE 37
AND METRO CODE CHAPTER 2.21

REPORT OF THE METRO CHIEF OPERATING OFFICER

In Consideration of Council Order No. 06-001
For the Purpose of Entering an Order
Relating to the Measure 37 Claim of Darrin Black

May 4, 2006

METRO CLAIM NUMBER:	Council Order No. 06-001
NAME OF CLAIMANT:	Darrin Black
MAILING ADDRESS:	c/o Michael Hammons, Agent Prudential Northwest Properties—Damascus 20320 SE Highway 212 Clackamas, OR 97015
PROPERTY LOCATION:	21549 SE Tillstrom Road Gresham, OR 97080 Damascus, Clackamas County, OR 97080
LEGAL DESCRIPTION:	T1S R3E Section 33A Tax Lot 500
DATE OF CLAIM:	August 26, 2005
180-DAY PROCESSING DEADLINE:	February 17, 2006

I. CLAIM

Claimant Darrin Black seeks compensation in the amount of $1,580,000 for a reduction in fair market value of property owned by the claimant as a result of enforcement of Metro Code Section 3.07.1110 C of Title 11. In lieu of compensation, claimant seeks a waiver of that regulation so claimant can apply to the City of Damascus to divide the 12.78-acre subject property into a maximum of 12 lots and develop a single family dwelling on each lot that does not already contain a dwelling.

The Chief Operating Officer (COO) sent notice of date, time and location of the public hearing on this claim before the Metro Council on May 5, 2006. The notice indicated that a copy of this report is available upon request and that the report is posted on Metro's website.

II. SUMMARY OF COO RECOMMENDATION

The COO recommends that the Metro Council deny the claim for the reasons explained in section IV of this report. The facts and analysis indicate that Metro's action to bring claimant's land into the UGB, designate it Inner Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the fair market value of claimant's property.

III. TIMELINESS OF CLAIM

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from a land use regulation enacted *prior* to the effective date of Measure 37 (December 2, 2004), within two years of that date, or of the date a public entity applies the regulation to the property as an approval criterion in response to an application submitted by the owner, whichever is later; or

2. For claims arising from a land use regulation enacted *after* the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the regulation, or of the date the owner of the property submits a land use application for the property in which the regulation is an approval criterion, whichever is later.

<u>Findings of Fact</u>
The claimant submitted this claim on August 26, 2005. The claim identifies Metro Code section 3.07.1110 C as the basis of the claim. The Metro Council added the regulation that gives rise to this claim on September 10th, 1998 by Ordinance 98-772B, prior to the effective date of Measure 37 (December 2, 2004).

<u>Conclusions of Law</u>
Metro adopted the regulation that gives rise to this claim prior to the effective date of Measure 37. The claim, therefore, is timely.

IV. ANALYSIS OF CLAIM

<u>1. *Ownership*</u>
Metro Code section 2.22.020(c) defines "owner" to mean the owner of the property or any interest therein. "Owner" includes all persons or entities who share ownership of a property.

<u>Findings of Fact</u>
The claimant acquired an ownership interest in the subject property on June 20, 1979, and has had a continuous ownership interest since that date. Attachment 1 is a site map of the subject property showing the location of the existing residence, Rock Creek, topography, and the location of a possible wetland (ATTACHMENT 1).

Conclusions of Law
The claimant, Darrin Black, is an owner of the subject property as defined in the Metro Code.

2. Zoning History

Findings of Fact
The first zoning of the property was Rural (Agricultural) Single Family Residential District (RA-1), applied on September 8, 1964. The property was rezoned Transitional Timber District (TT-20) on June 19, 1980. The property was rezoned Timber (TBR) on July 20, 1994. The TBR zone includes a minimum lot size of 80 acres for almost all new lots and stringent standards controlling development of single-family dwellings. Following incorporation of the City of Damascus in November 2004, the city signed an Intergovernmental Agreement with the county calling on the county to provide planning services and apply county zoning until the city adopts its own comprehensive plan. Under the current TBR zone, division of the property is prohibited, except for certain types of conditional uses specified in the Damascus Zoning and Development Ordinance (ZDO 406.05, 406.08, 406.10). Additional primary dwellings are also prohibited.

3. *Applicability of a Metro Functional Plan Requirement*

Findings of Fact
In 2002, Metro Council expanded the urban growth boundary by adopting Ordinance No. 02-969B to add 12,200 acres in the Damascus area. The subject property is located within the Damascus urban growth boundary expansion area.

Section 3.07.1110 C of Metro's Code prohibits any division of land into lots or parcels smaller than 20 acres, except for public schools or other urban services, pending adoption of urban comprehensive plan designations and zoning.

The City of Damascus adopted Resolution No. 05-67 on December 19th 2005 waiving certain of the City's land use regulations, allowing the claimant to apply to divide his property into one-acre lots, consistent with Rural (Agricultural) Single Family Residential District (RA-1). The City's Resolution and Order do not waive or otherwise affect lot size or other regulations to the property adopted by Metro.

Conclusions of Law
Section 3.07.1110 C of the Metro Code applies to the subject property and became applicable after the claimant acquired the property. Thus, the section did not apply to the subject property at the time claimant acquired it. The section does not allow the claimant to partition or subdivide his 12.78-acre property. The claimant would have been able to apply to Clackamas County to create 12 one-acre parcels and develop a single family dwelling on each lot (that did not already contain a dwelling) when he/she acquired the property in 1979.

4. Effect of Functional Plan Requirement on Fair Market Value

Findings of Fact

Section 2.21.040(d)(5) requires the Chief Operating Officer (COO) to determine whether the temporary 20-acre minimum size for the creation of new lots or parcels applicable to territory newly added to the UGB has reduced the value of claimant's land. The COO's conclusion is based upon the analysis of the effect of Metro's action contained in ATTACHMENT 2 (Metro Memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel dated April 28, 2006 (Conder Memo)).

The claimant has submitted comparable sales data to support his assertion that the temporary 20-acre minimum size has reduced the value of his property by $1,580,000. From a comparable sales analysis, claimant asserts that the property's current fair market value (FMV), with the temporary 20-acre minimum size in place, is worth $935,000. From a separate comparable sales analysis, claimant asserts that a one-acre parcel for a homesite has a current FMV of $235,000. Because county zoning at the time claimant purchased the land allowed creation of one-acre homesites, claimant then multiplies $235,000 times the number of one-acre homesites he could have created (11 homesites, with one lot remaining under the existing dwelling), giving a value of $2,585,000. To this value claimant adds $350,000 for the value of the current house; from it claimant subtracts $420,000 for development costs of the subdivision. These adjustments yield a net FMV of $2,515,000. Finally, claimant subtracts the $935,000 FMV of the *regulated* property from the $2,515,000 net FMV of the *unregulated* property to derive the asserted net reduction in FMV of $1,580,000.

The Conder Memo analyzes the claimant's information and applies two different methods for determining the effect of Metro's action on the value of claimant's property.

1. "Comparable Sales" Method

This method compares the value of the property in its current regulatory setting with its value today as though Metro's action had not happened. The current regulatory setting is as follows: by Ordinance No: 02-969B, Metro (1) added the property to the UGB; (b) designated the property with the "Inner Neighborhood" 2040 Growth Concept design type designation; and (3) applied a temporary 20-acre minimum lot size to preserve the status quo while the city of Damascus completes the comprehensive planning necessary to allow urbanization of the previously rural (outside the UGB) land. Had Metro's action not happened, the property – given the waiver by the city of Damascus – would be outside the UGB under Clackamas County zoning of RA-1 (Residential-Agriculture, one-acre minimum lot size) (zoning on date of claimant's purchase of property, 1979).

The comparable sales that claimant provides, for reasons explained in the Conder Memo, do not accurately reflect the values with or without Metro's regulatory action. For example, in his valuation, the claimant relies on the assumption that the increase in value associated with being included within the UGB can also be used to assert a loss resulting from being included in the UGB. Data generated by Metro's Data Resource Center and analyzed in the Conder Memo provide an accurate assessment of values. Attachment 3 is a map showing the sample area of 2004-2005 sales data used by Metro Data Resources Center in its analysis.

Table 4 of the Conder Memo compares today's values of the property with and without Metro's action, adjusting in all cases for costs of development and limitations on development of the site that a prudent investor would take into account. The comparison offers a range of lots and lot sizes to reflect the lack of precise information about site limitations. The table shows that the most conservative assumptions about value under the Inner Neighborhood designation inside the UGB is virtually equivalent to the highest value under RA-1 zoning outside the UGB. With less conservative assumptions, the value under the Inner Neighborhood designation greatly exceeds the value under RA-1 zoning.

2. The Plantinga/Jaeger Method

This method assumes that claimant's purchase price in 1979 accurately reflected the development opportunities allowed by the RA-1 zoning that then applied. The method "indexes" that value to the present and compares the indexed value with today's value with the regulation in question. If the indexed value of the purchase price exceeds the value of the property in today's regulatory setting, the regulation has reduced the value of a claimant's property.

The Conder Memo applies this method using the claimant's purchase price of $34,950. The memo uses four different indices to measure the increase in the value of the property over time. Table 3 shows that, regardless of the index chosen, the value of claimant's property under today's regulations exceeds the indexed value.

Conclusions of Law

The facts and analysis indicate that Metro's action to bring claimant's land into the UGB, designate it Inner Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the fair market value of claimant's property.

5. Exemptions under ORS 197.352(3)

Findings of Fact

Section 3.07.1110 C of the Metro Code does not restrict or prohibit a public nuisance, the selling of pornography or nude dancing, is not intended to protect public health or safety, and is not required to comply with federal law.

Conclusions of Law

Section 3.07.1110 C of the Metro Code is not exempt from Measure 37 under ORS 197.352(3).

6. Relief for Claimant

Findings of Fact

The Metro Council has appropriated no funds for compensation of claims under Measure 37. Waiver of Metro Code Section 3.07.1110 C to the subject property will allow the claimant to apply to the City of Damascus to divide the subject property into 12 parcels and to develop a single family dwelling on each lot that does not already contain a dwelling. The effect of development as proposed by the claimant will be to reduce the residential capacity of the City of Damascus and of the UGB. It would also make provision of urban services less efficient and more complicated.

Conclusions of Law

Based on the record, the claimant has not established that he is entitled to relief in the form of compensation or waiver of the interim 20-acre minimum lot size requirement under Metro Code Section 3.07.1110 C.

ATTACHMENTS TO THE REPORT OF THE CHIEF OPERATING OFFICER

Attachment 1: Site Map of Darrin Black Property

Attachment 2: Metro Memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel, "Valuation Report on the Darrin Black Measure 37 Claim," dated April 28, 2006

Attachment 3: Sample Area of 2004-2005 Sales Data for Damascus UGB Expansion Area and One Mile Buffer, Clackamas County, OR

CLAIM FOR COMPENSATION
UNDER BALLOT MEASURE 37
AND METRO CODE CHAPTER 2.21

SUPPLEMENTAL REPORT OF THE METRO CHIEF OPERATING OFFICER

In Consideration of Council Order No. 06-001
For the Purpose of Entering an Order
Relating to the Measure 37 Claim of Darrin Black

May 18, 2006

METRO CLAIM NUMBER: Council Order No. 06-001

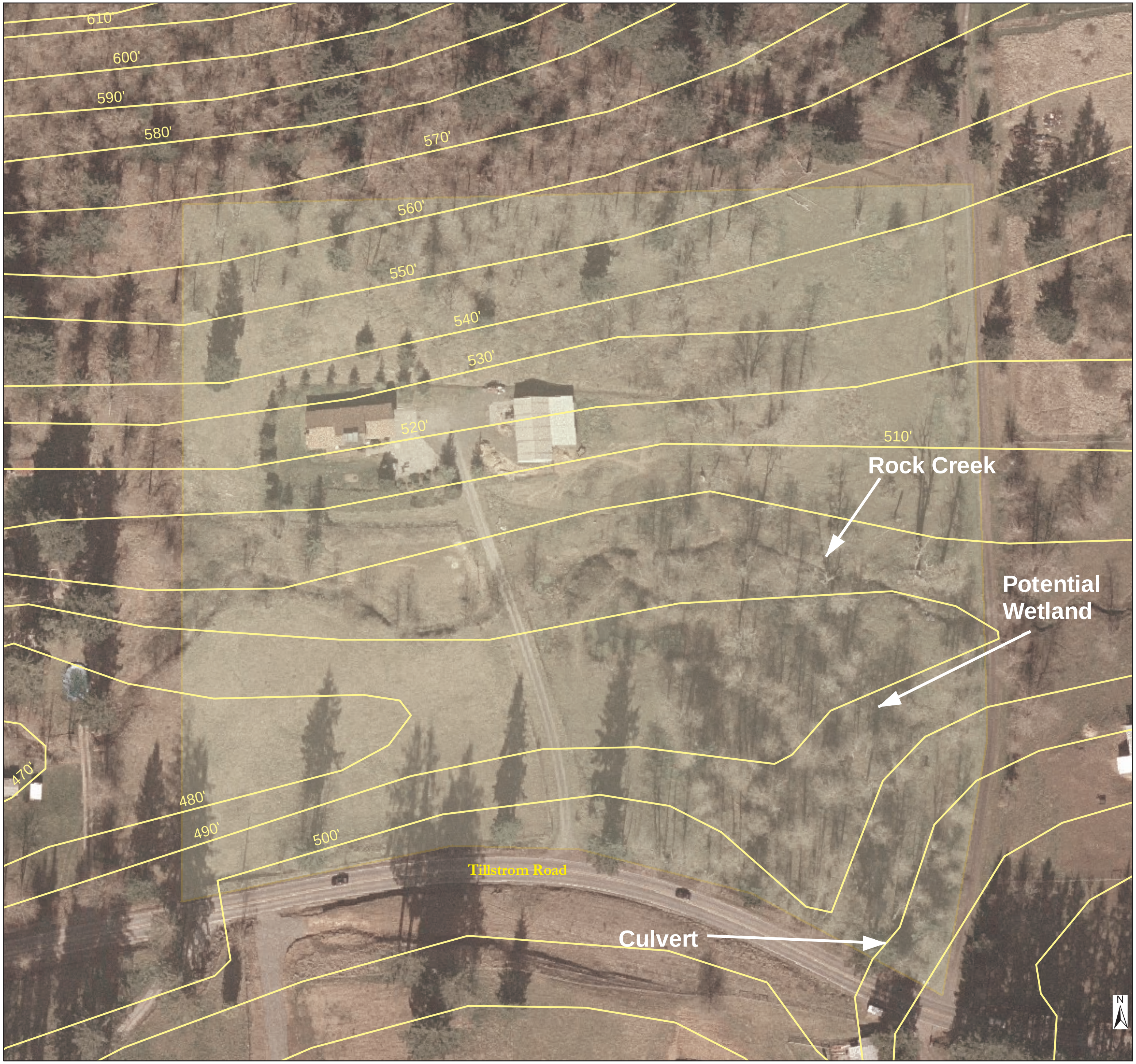
NAME OF CLAIMANT: Darrin Black

This Supplemental Report adds new information and analysis to section IV, Analysis of Claim, of the May 4, 2006, Report of the Chief Operating Officer (COO). This new information and analysis does not change the COO's conclusion that Metro's regulation did not have the effect of reducing the real market value of claimant's property or his recommendation that the Council reject the claim.

<u>4. Effect of Functional Plan Requirement on Fair Market Value</u>
As noted in the May 4 Report, at the time claimant acquired the subject property (1979), Clackamas County zoned the property RA-1, Rural Agriculture – 1 Acre. The claimant asserts that he could have divided his 12.78-acre parcel into 12 lots under RA-1 zoning, and bases the valuation of his property on this assumption. This assumption, however, is incorrect

The statewide planning goals were adopted by the Land Conservation and Development Commission (LCDC) and became effective on January 25, 1975. As of the time claimant acquired the subject property in 1979, LCDC had not yet acknowledged the Clackamas County Comprehensive Plan or zoning ordinances. Thus, the goals applied directly to claimant's property when he bought it. Given the soils on the property, it was subject to Goal 3 (Agricultural Lands) and 4 (Forest Land), among other goals.

In order to bring its plan and zoning ordinances into compliance with the goals, Clackamas County rezoned claimant's property to the county's TT-20, Transitional Timber – 20-Acre zone, on June 19, 1980. LCDC later found this zone to comply with Goal 4. Goal 4, applicable to the property when claimant acquired it, would not have allowed creation of any new lots or parcels. The value of claimant's property at the time of acquisition must reflect these limitations on use and division of the property.



R L I S

REGIONAL LAND INFORMATION SYSTEM

Resolution No. 06-3700
Attachment 1 COO Report

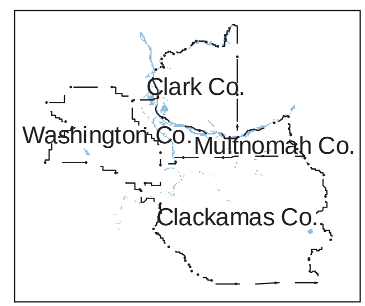
Site Map
Black
Measure 37 Claim

Subject Property

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

1 inch equals 0.02 miles

Feet
0 50 100



Location Map

METRO

METRO DATA RESOURCE CENTER
600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232-2736
TEL (503) 797-1742 | FAX (503) 797-1909
drc@metro.dst.or.us | www.metro-region.org

Project Date: Apr 26, 2006 Plot time: May 19, 2006 J:\hohndel\06099_M37Black_Maps\SiteMap.mxd

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M E M O R A N D U M

METRO

April 28, 2006

To: Paul Ketcham, Principal Regional Planner
Richard Benner, Senior Attorney

From: Sonny Conder, Principal Regional Planner
Karen Hohndel, Associate GIS Specialist

Subject: Valuation Report on the Darrin Black Measure 37 Claim

Conclusion:

Per your request we have conducted a valuation analysis of the Darrin Black Measure 37 Claim. We conclude that the Metro action of including the property inside the UGB, designating it "Inner Neighborhood" and imposing a temporary 20 acre minimum lot size for development has not produced a material loss of value for the subject property[1]. On the contrary, compared to development in a rural residential setting on 1 acre lots, the action is more likely to have resulted in a material gain in property value.

Conceptual Understanding for Basis of Property Value Analysis:

We understand the present Measure 37 valuation problem to consist of making two property value estimates. These are:

1. Estimate the current market value of the property subject to the regulation which the claimant contends has reduced the value of his property.
2. Estimate the current market value of the property in the absence of that regulation, and with the zoning that applies following the waiver granted by the City of Damascus.

Metro Ordinance No. 02-969B applied a set of new regulations to the claimant's property. First the ordinance brought claimant's property into the region's urban growth boundary, making the property eligible for urban high-density development rather than rural low-density development. Second, the ordinance designated the property "Inner Neighborhood", the

[1] We use the term "material" in the accounting/auditing sense that given the statistical variability inherent in the data there is no difference between two measurements of land value.

higher density residential designation in Metro's 2040 Growth Concept. Third the ordinance applied a temporary 20-acre minimum lot size to protect the status quo while local governments complete amendments to comprehensive plans to allow urban development. Within this overall framework any particular property may have a substantial range of housing types and lot sizes. Implicit in this design designation is the availability of urban level capital facilities including sanitary sewers, storm water retention and management, water distribution, streets, roads, parks and other infrastructure and services associated with urban living. All development is assumed to occur in compliance with all health and safety regulations.

The default land use is the Clackamas County designation of RA-1. This land use designation is a rural designation allowing one dwelling unit per acre. All development under RA-1 must conform to applicable health and safety regulations. Most significant is that the reference default land use must be outside the present UGB in a rural setting. While seeming to be a subtle distinction, the requirement of a rural setting outside the UGB is conceptually pivotal to the valuation. To use RA-1 or equivalent land inside the UGB as a basis for valuation includes the property value increasing amenity effects of urban services and infrastructure. It is logically contradictory to argue that inclusion inside the UGB and designation of the land for urban purposes has reduced a property's value but to include those very effects in the estimate of the property value without the subject action.

Alternative Method of Computing Property Value Loss Resulting From Regulation

Estimating loss of property value using the usual appraisal method of "comparative sales" has been the subject of substantial criticism. Andrew Plantinga and William Jaeger[2], economists as OSU, have written papers pointing out that using the method of comparative sales does not compute the loss due to regulation. Rather the estimated "value loss" is actually the gain resulting from obtaining an exemption to the general rule. To better understand their arguments, we may think of the comparative sales method of determining an economic loss as equivalent to determining the value of issuing someone a special license or franchise to carry out an economically valuable function that others may not do. For instance, licenses to operate taxi cabs in New York are seldom issued and in great demand. As a result the license itself has acquired substantial economic value. An example closer to home is the value of an Oregon Liquor License prior to more liberal issuing standards in the 80's. In the 1950's through roughly the 70's, an Oregon Liquor License for a restaurant or bar vastly increased the property value of the establishment that had one. Plantinga and Jaeger argue that the

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[2] Andrew Plantinga, *Measuring Compensation Under Measure 37: An Economist's Perspective,* Dec. 2004, 15 pages. (Available at OSU Department of Agricultural and Resource Economics, URL: plantinga@oregonstate.edu).
William K. Jaeger, *The Effects of Land Use Regulations of Land Prices,* Oct. 2005, 38 pages. (Available at OSU Department of Agricultural and Resource Economics, URL: wjaeger@oregonstate.edu).
Also: William K Jaeger, *The Effects of Land-Use Regulations on Property Values,* **Environmental Law,** Vol. 36:105, pp. 105 – 127, Andrew J. Plantinga, *et. al., The effects of potential land development on agricultural land prices,* **Journal of Urban Economics,** 52, (2002), pp. 561 – 581. and Sonny Conder and Karen Hohndel, *Measure 37: Compensating wipeouts or insuring windfalls?,* **Oregon Planners' Journal,**
Vol. 23, No 1. Dec. – Jan 2005. pp. 6 – 9.

value of the property hinges on scarcity resulting from regulation. If everyone had a taxi cab or liquor license, they would have no value. From an economic perspective, using a method that really measures value gained from regulation is not the same as determining economic loss resulting from regulation.

Plantinga and Jaeger go on to suggest an economically appropriate measure of loss resulting from subsequent land use regulation. Their method is grounded in the well established and tested Theory of Land Rent. Simplified a bit the Theory of Land Rent holds that the value of land at any particular time is the future net profit from the land used in its most efficient allowable use. The market also adjusts (discount factor) this value to account for time and uncertainty as to future uses. What this means is that the original sales price incorporates future expectations about how the land might be used. If we take the original sales price and bring it up to the current date by using an appropriate price index, we are able to measure in today's prices what the land was worth when it was purchased under the original regulatory requirements.

The above procedure yields an estimate of the original value of the property in today's dollars. We can then compare that estimate to the market worth of the property with the new regulation. If the adjusted original estimate exceeds the present market value, then the owner has experienced a loss. If the adjusted original estimate is equal to or lower than the property value under the new regulation, then the owner has experienced no loss.

This method allows a consistent computation of property loss due to subsequent regulatory changes. At the same time it avoids awarding particular property owners a bonus that was not anticipated in the original purchase price. Owners are compensated for what they lost; but they are not awarded an extra benefit owing to unanticipated growth, infrastructure investment or regulatory changes.

Since the Plantinga-Jaeger approach represents a consistent and fair method of evaluating economic loss to property resulting from regulation, we are also valuing property claims according to their suggested method.

Property Valuation Analysis Procedure:

Our property valuation analysis procedure consists of the following steps.

- Briefly describe the property and make a prudent assessment of development limitations to establish a likely range of residential capacity under both "Inner Neighborhood" and RA-1 designations assuming health and safety regulations are enforced.
- Based on recent sales (2005) of lots and existing properties inside the Damascus expansion area determine the current (2006) value of the property with a reasonable range of "Inner Neighborhood" development configurations including a 10 year discount factor for lag time in service provision.

- Based on recent sales (2005) of property in a buffer zone extending 1 mile outside the present UGB within Clackamas County determine the value of residential property on lots of .5 to 1.5 acres in size. This procedure establishes a reasonable range of values for residential properties of RA-1 configuration in a rural setting.
- Provide an alternative valuation of the Darrin Black property based on an adjustment to original sales value that has been advocated by OSU Economists Andrew Plantinga and William Jaeger.
- Evaluate the lot value and home value comparables submitted as evidence with the Darrin Black Measure – 37 claim. Comment on whether those estimates are logically relevant to establish a Measure –37 property value loss assertion.
- Provide and compare estimates of the value of the subject property as of 2006 with Metro's "Inner Neighborhood" designation versus Clackamas County's RA-1 designation.

Darrin Black Property Description:

The subject property consists of 12.8 acres immediately north of Telford Road at approximately the 215th block in the community of Damascus. Clackamas County Assessor data show it as a 12.8 acre parcel with a residential structure. Assessor appraised value as of 2005 is $577,000 with the land accounting for $206,000 and the improvements for $371,000. Assessor data show the home being constructed in 1980. Data submitted with the claim indicate the property was purchased in 1979 for $34,950. We presume that the current residence was constructed after the land purchase date.

Visual inspection from Tillstrom Road and air photo inspection as well as relevant GIS data indicate that the property poses substantial limitations to development; the full extent of which would require sanitation, geotechnical and civil engineering professionals to fully delimit and elucidate. The salient limiting feature for development on the property is the stream and possible associated wetland that flows through the middle of the property. Two streams; one flowing directly from the east and the other from the south emerging from a road culvert converge on the southeast quadrant of the property and flow westward. Congruent with the stream is a slope that extends downward from Tillstrom Road to the stream and then upward in a northerly direction toward the top of the Butte. The north west portion immediately behind the house appears fairly steep and may limit development particularly road building of any type without substantial engineering mitigation. The northeast and southwest quadrants of the property appear more easily developed though the presence of the stream, possible wetlands and slope may substantially restrict the use of drain fields for septic tank dependent development.

Again, it is not in our professional capacity to assert with authority any definitive estimate of what the site limitations are; but rather to reflect what any prudent property investor must consider when pricing raw land. This holds true for both Metro's "Inner Neighborhood" and the default use of RA-1.

Dwelling Unit Capacity Estimates:

To simplify our capacity estimates we assume that the existing residential structure is retained on the property. Accordingly, we reduce the property available for development from 12.8 to 11 acres. Should the property be developed in a configuration consistent with Metro's Inner Neighborhood designation we estimate that anywhere from 5 acres (46%) to 7 acres (64%) of the 11 acres would be useable. Under RA-1 zoning it may be conceivable (septic tank and road restrictions not withstanding) to use 6 – 8 acres for development. In all cases we assume the stream area, the possible associated wetland in the southeast quadrant and the steepest slopes in the northwest corner would not be available.

Based on similar terrain and developments in the UGB expansion area within the City of Happy Valley we calculate that with "Inner Neighborhood" given a range of lot sizes of 5,000 – 12,000 sq. ft., 5 lots per acre could be constructed on the buildable acreage. This assumes urban level infrastructure and design flexibility in lot shape and structure placement on the lot.

For the RA-1 designation we assume by definition 1 unit per buildable acre.
In sum we expect the property with Metro's Inner Neighborhood designation to yield 25 (5 times 5 acres) to 35 (7 times 5 acres) residential lots ranging from 5,000 to 12,000 sq. ft. in size. The RA-1 designation yields 6 – 8 buildable rural lots of 1 acre in size.

Current Value Estimate of "Inner Neighborhood" Buildable Lots in Damascus Expansion Area:

In order to establish a reasonable range of lot values for developing urban areas with infrastructure and nearby urban services, we evaluated all recent sales (year 2005) of land and lots within the Damascus UGB expansion area. As detailed in relevant data file and confirmed by the Clackamas County Assessor's office, one area is under development. It consists of 38 acres that was included in the expansion area and annexed to Happy Valley. Data indicate that 152 lots of 7000 – 10000 sq. ft. have been sold for $22.6 million for an average of $149,000 per lot. The lot price range was from $127,000 to $175,000. The lots in question are ready to build lots with complete urban services inside the City of Happy Valley. They were also designated "Inner Neighborhood" when included within the UGB and subsequently zoned to R10 by the City of Happy Valley.

Since these lots were located in the urbanized, extreme western portion of the expansion area, we also examined 97 SFR year 2005 sales of properties designated Inner Neighborhood within the entire expansion area. Many of these sales occurred on properties that remain substantially rural in character without full urban services. Relevant summary results are in Table 1 below.

Table 1: Summary Property Value Data – Damascus Area Residential Sales

Average Lot Size:	1.02 acres
Median Lot Size:	0.95 acres
Average Lot Value:	$119,000
Median Lot Value:	$124,000
Average Total Prop.	$300,000

Median Total Prop.	$288,000
Average House Size:	2,450 Sq. Ft.
Median House Size:	2,350 Sq. Ft.

In addition we analyzed how lot values changes as a function of their size. Those data are depicted in Figure A attached in the Appendix.

When we adjust for lot size and the availability of full urban services, the data support a lot value range of $100,000 to $130,000 per buildable lot in 2005 dollars for "Inner Neighborhood" type development on the subject property. This value range encompasses a range of housing types and neighborhood conditions.

Current Value Estimate of "RA-1 Buildable Lots" in the 1 Mile Buffer Area Outside the UGB:

To establish the value range for "RA-1" size lots within the Clackamas rural area we selected all residential properties that sold in 2004 and 2005 within the 1 mile buffer zone with a lot size of .5 to 1.5 acres. These comprised 165 properties and their summary statistics are included below in Table 2.

Table 2: Summary Property Value Data – Clackamas Rural Residential ("RA-1")

Average Lot Size:	0.93 acres
Median Lot Size:	0.96 acres
Average Lot Value:	$145,000
Median Lot Value:	$120,000
Average Total Prop.	$347,000
Median Total Prop.	$285,000
Average House Size:	2,550 Sq. Ft.
Median House Size:	2,400 Sq. Ft

For purposes of valuation we are assuming a range of $120,000 to $145,000 per buildable 1 acre lot for RA-1 rural locations.

Alternative Valuation of Darrin Black Property Using Method Suggested by Plantinga and Jaeger.

OSU economists Andrew Plantinga and William Jaeger have challenged the "comparable sales" approach of traditional appraisal methods. They have pointed out that it really measures the value obtained by an exception to the current rule; rather than a measure of economic loss suffered as a result of government land use regulation. As an alternative test they propose indexing the price that the property was purchased for to the present time using an appropriate index of property value, investment or consumer price change. Explicit to this suggestion is the Theory of Land Rent which holds that the price paid for land capitalizes reasonable expectations about its future use. If the initial purchase price anticipated a more intense future use, the indexed price should exceed the current market price under the revised land use regulations. If the revised land use regulations are consistent with or exceed the expectations contained in the original purchase price, then the current market price will equal or exceed the indexed price.

Accordingly, we have computed from published sources four value change indices for the period 1979 through 2005. We have also converted the 1979 Black property purchase price of $34,950 to value per acre. This allows us to look at the value of the raw land alone and not add in the complication of the existing residential structure. In 1979 the value of the 12.8 acres of raw land amounted to $2,730 per acre. Table 3 below converts that value per acre to current 2005 dollars using 4 different value change indices.

Table 3: Darrin Black Property Value per Acre Given Market Expectations of Purchase Price (Plantinga-Jaeger Method)

Index[3]	79 Value	2005 Value	Ratio	Value Per Acre 2005 $
Port/Van CPI	77.0	197.7	2.57	$7,016
House Value Index	59.9	241.5	4.03	$11,002
Lot Value Index	17.3	120.0	6.94	$18,946
S&P500 Stock Idx	99.7	1181.4	11.85	$32,349

All indices except the S & P 500 stock price index are for the Portland Vancouver area. The lot price index uses East Portland values for 1979 and Damascus/Happy Valley values for year 2005. The S & P index is the raw price index; not the real price index which is adjusted for inflation.

Depending on one's philosophy of an appropriate rate of investment return the Black Property raw land value per acre should vary between $7,000 and $32,000.

Evaluation of Darrin Black Claim of Comparable Properties

The basis for the Black property value loss claim rests on a market value estimate of $235,000 per developed, ready to build lot assuming 11 buildable lots are available on the property. To support the estimate of $235,000 per buildable lot, 12 properties are submitted as comparable. Of the 12, 11 of these properties are located inside of the Urban Growth Boundary. 10 are located within either Happy Valley or Gresham and all occupy prestige neighborhood locations with hilltop views or sweeping vistas. Examination of the Black property reveals the view is limited and the surrounding neighborhood can hardly be regarded as prestige either as measured in home value or design features. Whether the area evolves into a prestige urban neighborhood with full amenities remains problematic. As the data in Table 1 underscore, lot values are presently well below the $235,000 per lot level. Indeed when we

[3] The Portland – Vancouver Consumer Price Index is for all urban consumers from the Metro Regional Data Book, p. 73. The House Value Index is from the Metro Regional Data Book, p. 95. The Lot Value Index is taken from The Real Estate Report of Metropolitan Portland, Vol. 69, (Autumn 1989) and from Metro RLIS data on taxlots. The S&P 500 Stock Index is from Microsoft Internet Explorer, Wikipedia, the free encyclopedia, S&P500 URL: http://en.wikipedia.org

consider both the assessor appraised value of the lot and the improvement, total property values average about $300,000.

The comparable sales data also include 7 built properties (lots with homes on them). Their sales value averages $597,000 with a maximum listed price of $805,000. The recommended completed home sales price for the Black property is then given at $935,000. We did not evaluate those “comparables” further since the recommended sales price of $935,000 exceeded the average and the sales price of any one of the “comparable” homes. We do note that industry standards usually maintain a ratio of 4:1 to 3:1 between home sales price and lot price. In this instance the ratio is 3.98.

Significant in the valuation of the Black property is the assumption that one may count the increase in value associated with being included within the UGB to assert a loss resulting from being included within the UGB.

Darrin Black Property Values Compared

Given the data developed in the previous Tables we may now summarize our estimates of the value per acre in 2006 for the Black property in its present location. To do so we have followed the procedure below.

1. Simplify the calculation by subtracting out the existing dwelling unit and 1.8 acres it occupies so we have 11 acres of raw land without services.
2. Assume a cost of providing water, sanitary sewer, drainage, streets and other on site utilities plus SDC’s of $50,000 per buildable lot for both Inner Neighborhood and RA-1.
3. Account for the value of time until the property could actually be developed. In the case of Inner Neighborhood we assume 10 years before development; so we discounted the value at 6.5% per year for 10 years. For RA-1 we assume development within 2 years; so we discounted the value at 6.5% per year for 2 years.
4. Convert the resultant values into the estimate of what a prudent investor would pay in 2006 per acre for the raw land.

Table 4 below depicts the results for low and high range assumptions for both Inner Neighborhood and RA-1.

Table 4: Comparison of Estimated Market Value of Raw Land for Inner Neighborhood and RA-1 Land Uses

Inner Neighborhood	
Low Yield:	25 DU
Low Range Lot Value:	$100,000
Development Cost per Lot:	$50,000
Net Raw Land per Lot:	$50,000
Total Raw Land Value (25x50,000):	$1,250,000
Current Market Value per acre for 11 acres	

Discounted 10 years:	$60,500
High Yield:	35 DU
High Range Lot Value:	$125,000
Development Cost per Lot:	$50,000
Net Raw Land per Lot:	$75,000
Total Raw Land Value (35x75,000):	$2,625,000
Current Market Value per acre for 11 acres	
Discounted 10 years:	$127,100
RA-1	
Low Yield:	6 DU
Low Range Lot Value:	$120,000
Development Cost per Lot:	$50,000
Net Raw Land per Lot:	$70,000
Total Raw Land Value (6x70,000):	$420,000
Current Market Value per acre for 11 acres	
Discounted 2 years:	$33,700
High Yield:	8 DU
High Range Lot Value:	$145,000
Development Cost per Lot:	$50,000
Net Raw Land per Lot:	$95,000
Total Raw Land Value (8x95,000):	$760,000
Current Market Value per acre for 11 acres	
Discounted 2 years:	$60,900

Figure B attached depicts the calculations in Table 4. We estimate the current raw land value of the Black property with Inner Neighborhood designation to range from $60,500 per acre to $127,100 per acre. The same property used as RA-1 in a rural setting would yield $33,700 to $60,900 per acre. In other words the most optimistic RA-1 valuation just equals the most pessimistic Inner Neighborhood valuation. Given these results we would conclude that the Inner Neighborhood designation has not reduced the value of the property; quite the contrary it has most likely increased the value.

Moreover, in terms of establishing economic loss the land values per acre established using the Plantinga-Jaeger method range from $7,000 to $32,300 per acre. The highest Plantinga – Jaeger estimate is below the lowest “comparative sales” estimate of RA-1 per acre. Clearly, under no circumstances has any regulatory change to the Black property reduced its value. Again, the contrary is the case. Growth, infrastructure investment and regulation necessary to orderly growth have produced increases in property values well in excess of any alternative investment for the Black property.

Figure A: Price per Sq. Ft. and Size in Acres Inner Neigbhorhood - Damascus Sales Prices 2005

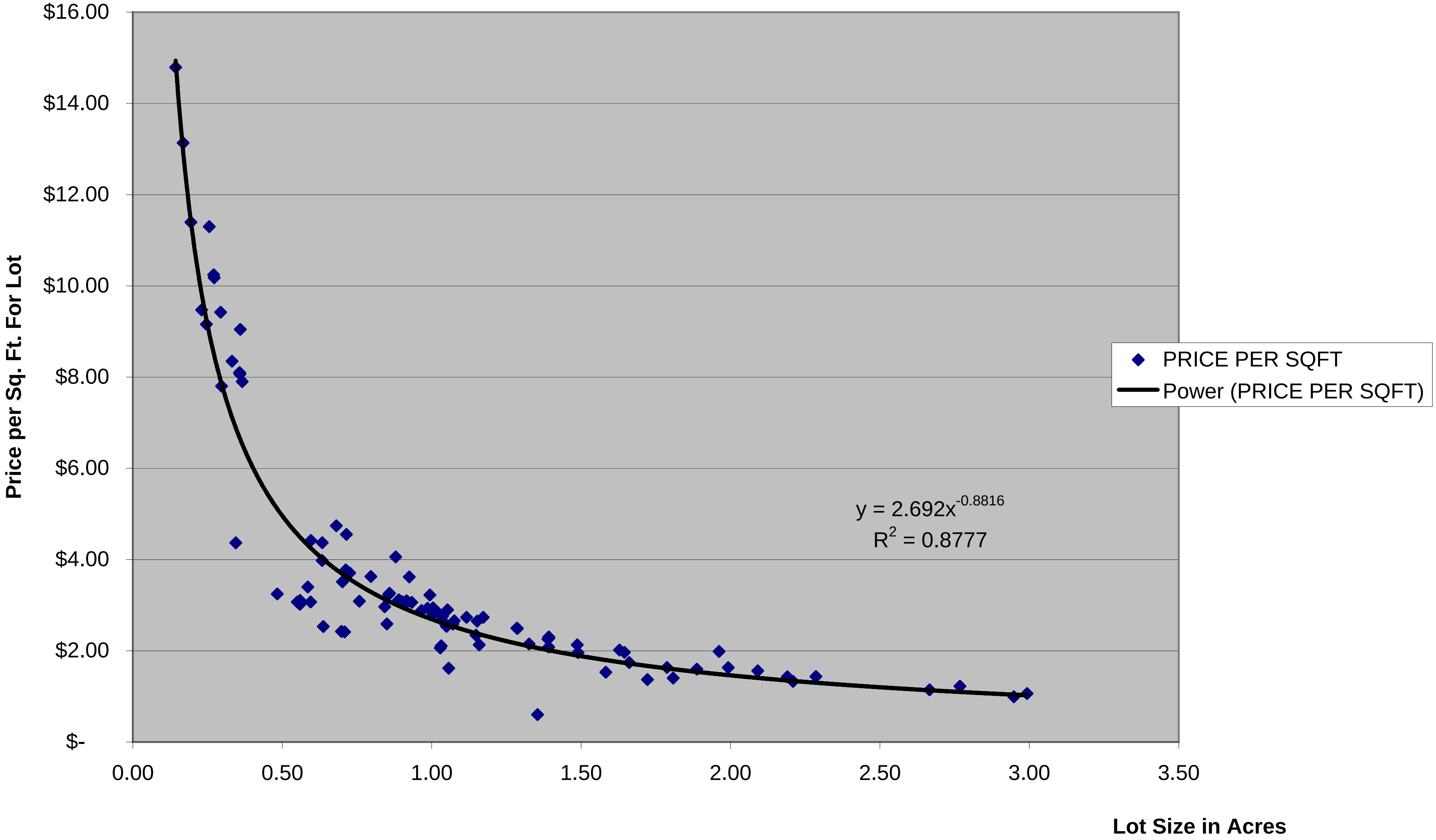
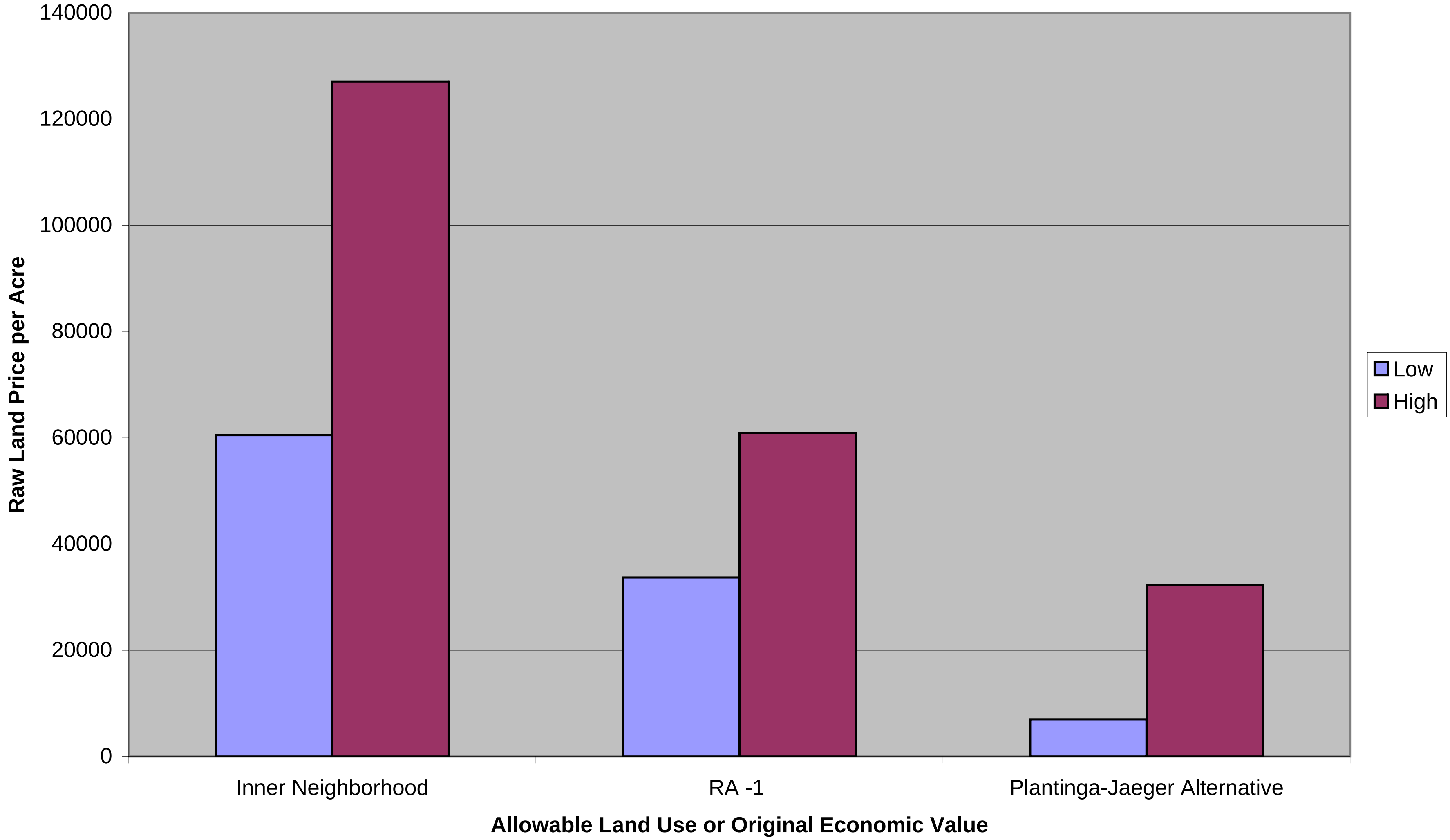
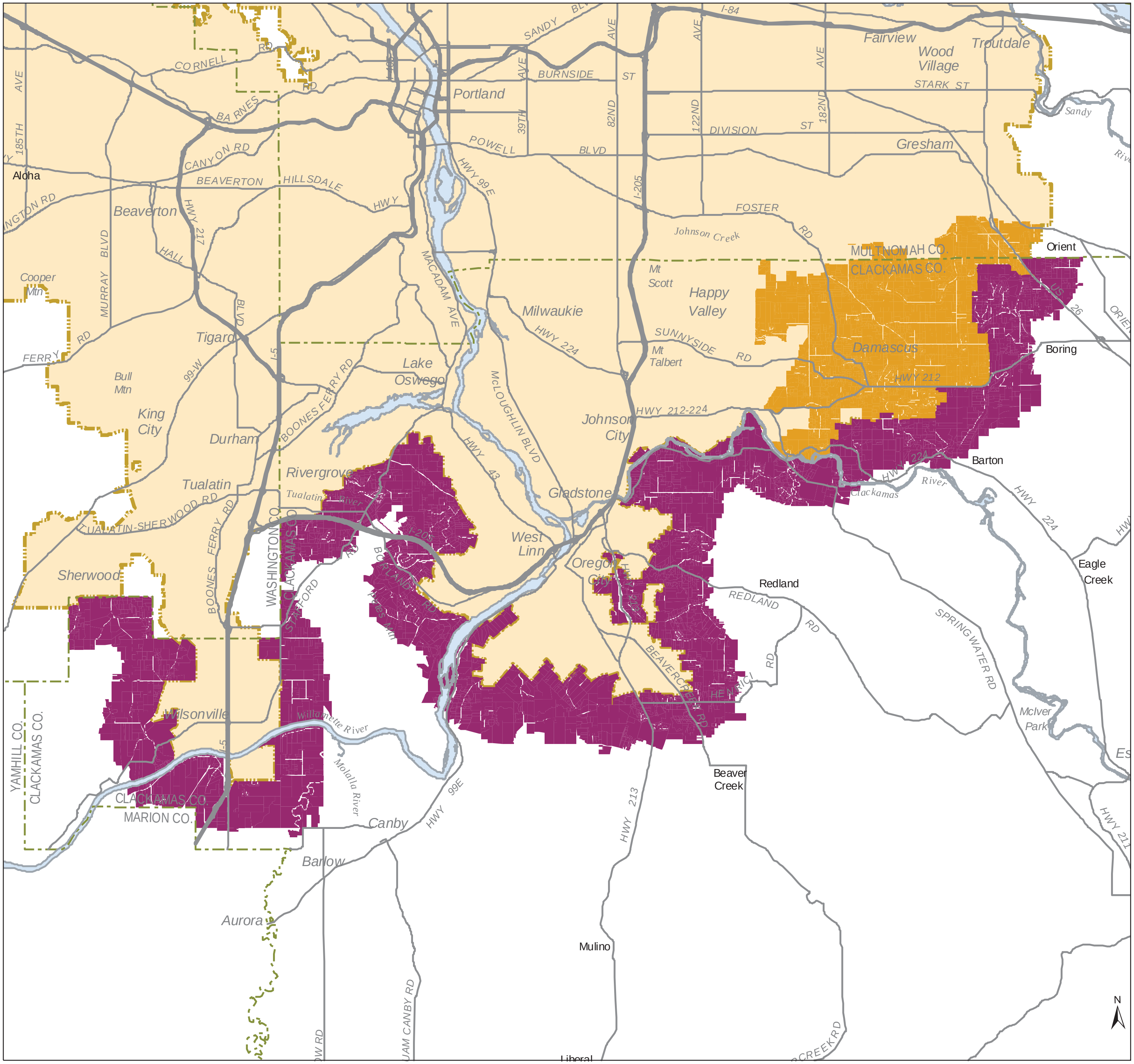


Figure B: Value of Property Raw Land per Acre in Inner Neighborhood, RA-1 and Original Economic Value Method





R L I S

REGIONAL LAND INFORMATION SYSTEM

Resolution No. 06-3700
Attachment 3 COO Report

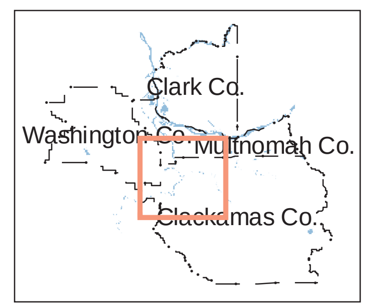
Sample Area of 2004-2005 Sales Data for Damascus UGB Expansion Area and One Mile Buffer, Clackamas County, OR

Damascus UGB Expansion Area
One Mile Buffer
County Line
Inside Metro UGB

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

1 inch equals 3.31 miles

0 1 2 Miles



Location Map

METRO

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