



Oregon

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September 26, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



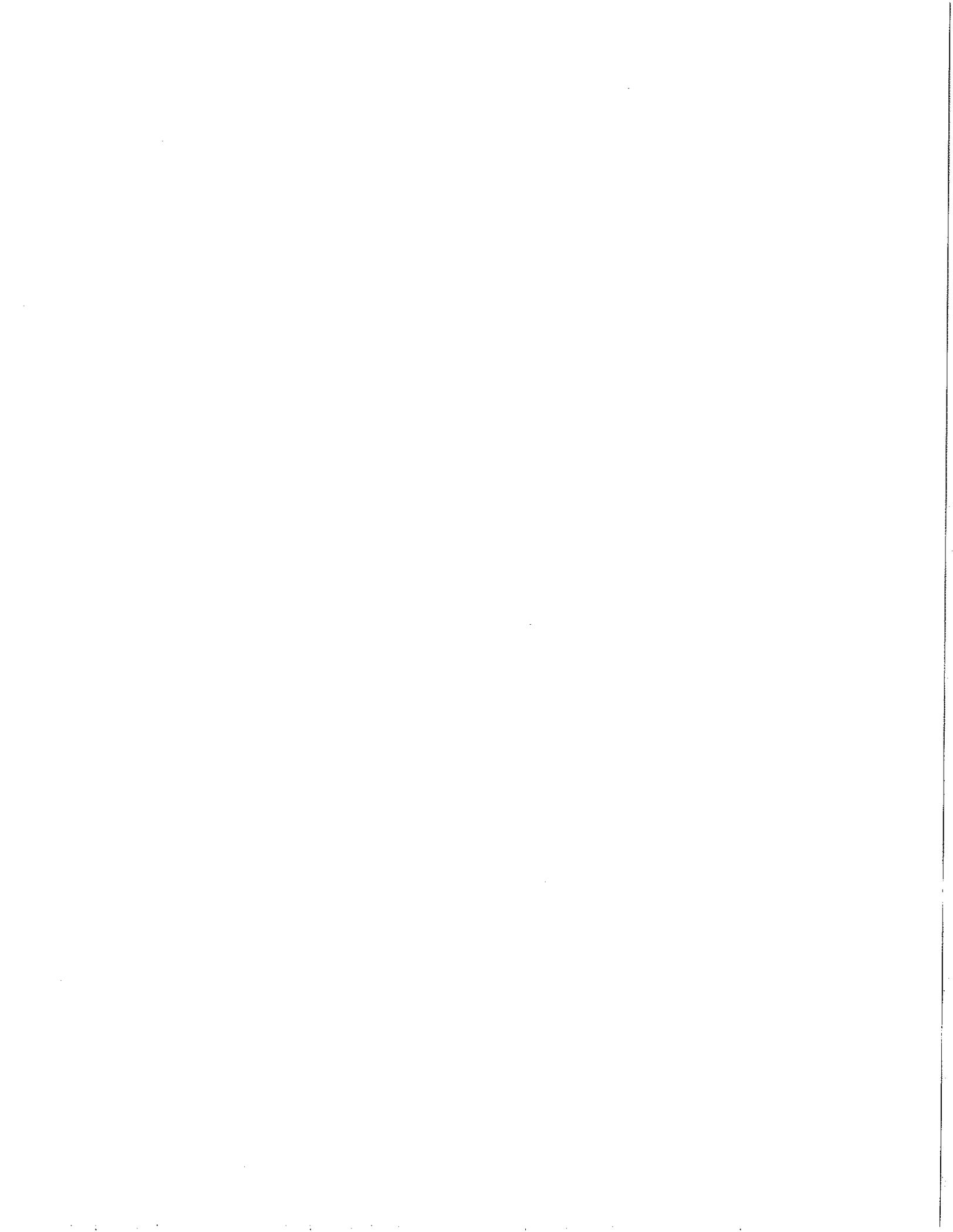
Re: Ballot Measure 37 (ORS 197.352) Claim Number M131256

Claimant: Fay L. Ross

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Department of Land Conservation and Development's Draft Staff Report and Recommendation.

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than 15 calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the 15th day or actually delivered to DAS by the close of business on the 15th day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.



ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Draft Staff Report and Recommendation**

September 26, 2007

STATE CLAIM NUMBER: M131256

NAME OF CLAIMANT: Fay L. Ross

MAILING ADDRESS: PO Box 11
Unity, Oregon 97884

PROPERTY IDENTIFICATION: Township 13S, Range 37E
Tax lot 100 in Section 16B
Tax lot 100 in Section 16BC
Tax lot 200 in Sections 16B and 17
Tax lot 1800 in Sections 16, 17, 20 and 21
Tax lot 2700 in Sections 21, 28, 29, 32, 33
and 34
Tax lots 3000 and 3200 in Section 21
Tax lot 3500 in Sections 22 and 27

Township 14S, Range 37E
Tax lot 900 in Sections 3, 4, 5 and 8
Baker County

DATE RECEIVED BY DAS: November 24, 2006

DEADLINE FOR FINAL ACTION:¹ May 17, 2008

I. SUMMARY OF CLAIM

The claimant, Fay Ross, seeks compensation in an unspecified amount for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property.² The claimant desires a waiver of “all land use regulations dating back to the date of ownership,” but “intend[s] to continue using this land for agricultural purposes for the

¹ ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

² The claimant does not demand a specific amount in compensation, but rather asserts that the “land would be more valuable without restrictions.”

fore-seeable future.” The subject property³ is located at 28384 Job Creek Road, near Unity, in Baker County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that this claim is not valid because the claimant is not an owner of the subject property.⁴ (See the complete recommendation in Section VI of this report).

III. COMMENTS ON THE CLAIM

Comments Received

On July 11, 2007, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 15-day notice.

IV. TIMELINESS OF CLAIM

Requirement

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

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

Findings of Fact

This claim was submitted to DAS on November 24, 2006, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goals 3 (Agricultural Lands) and 4

³ The 4,270.46-acre subject property includes nine tax lots in multiple sections and ranges. Tax lot 100 (Section 16B) consists of 125.40 acres; tax lot 100 (Section 16BC) consists of 1.53 acres; tax lot 200 consists of 0.27 acre; tax lot 900 consists of 1,071.04 acres; tax lot 1800 consists of 705.42 acres; tax lot 2700 consists of 2,259.33 acres; tax lot 3000 consists of 37.47 acres; tax lot 3200 consists of 40 acres; and tax lot 3500 consists of 480 acres.

⁴ Even if the claimant was an owner of the subject property, the claim does not establish that the claimant's intended agricultural use of the property is in any way restricted by current land use regulations. Therefore, the claim does not establish that the claimant would be entitled to compensation under ORS 197.352 as a result of land use regulations that restrict desired use of the property with the effect of reducing the property's fair market value.

(Forest Lands), ORS 215 and OAR 660, divisions 5, and 6, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

The claimant, Fay Ross, states in the claim that he acquired all of the subject property on May 4, 1973, except tax lot 100 which he asserts he acquired on March 15, 1977. However, according to the information provided in the claim, on December 22, 1997, the claimant transferred all of the subject property to FLR Limited Partnership, a domestic limited partnership registered with the Oregon Secretary of State, as reflected by a recorded bargain and sale deed included with the claim.⁵ The claimant may be a member of the Limited Partnership. However, as an individual, the claimant no longer has an ownership interest in the property.

The Baker County Assessor’s Office confirms FLR Limited Partnership’s current ownership of the subject property. The claimant, Fay Ross, is not an owner of the subject property.

Conclusions

The claimant, Fay Ross, has not established that he is an “owner” of the subject property as that term is defined in ORS 197.352(11)(C).

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant’s use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

⁵ Under ORS 197.352(11)(A), legal entities can be “family members” of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, individuals who transferred property to the limited partnership are not considered family members under the definition of family member in ORS 197.352(11)(A).

As explained in Section V.(1), the claimant, Fay Ross, is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimant's use of the subject real property with the effect of reducing the fair market value of the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

As explained in Section V.(1) of this report, the claimant, Fay Ross, is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict the claimant's use of the subject property with the effect of reducing the fair market value of the subject property.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

As explained in Section V.(1) of this report, the claimant, Fay Ross, is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to this claim.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the record, the department finds that the claim is not valid because the claimant is not an owner of the subject property.

Conclusions

Based on the record before the department, the claimant, Fay Ross, has not established that he is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the claimant is not an owner of the subject property. Therefore, the department recommends that this claim be denied.

VII. NOTICE OF OPPORTUNITY TO COMMENT

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimant and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management-State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the 15th day, or actually delivered to DAS by the close of business on the 15th day. Note: Please reference the claim number, claimant name and clearly mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.

