

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,  
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF  
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR ) FINAL ORDER  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M129857  
(BALLOT MEASURE 37) OF )  
Eugena B. Mead, CLAIMANT )

Claimant: Eugena B. Mead (the Claimant)

Property: Township 3N, Range 4W, Section 35, Tax lots 5000 and 5003  
Washington County (the Property)

Claim: The demand for compensation and any supporting information received from the  
Claimant by the State of Oregon (the Claim).

Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Eugena Mead's division of tax lot 5000 into five additional parcels and her division of tax lot 5003 into ten additional parcels (beyond the parcels approved in claims M120461 and M120462) or her development of a dwelling on each parcel: applicable provisions of Goals 4 and 14, ORS 215 and OAR 660, division 6, enacted or adopted after the claimant acquired her present interest in the subject property. These laws will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 5003 and the northern 115.56 acres of tax lot 5000 on March 15, 1955; and only to the extent that use was permitted when she acquired the southern 89.31 acres of tax lot 5000 on April 29, 1998. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the southern 89.31 acres of tax lot 5000 in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property the use described in this report, subject to the standards in effect when she

acquired tax lot 5003 and the northern 115.56 acres of tax lot 5000 on March 15, 1955, and subject to the standards in effect when she acquired the southern 89.31 acres of tax lot 5000 on April 29, 1998. On April 29, 1998, the property was subject to applicable provisions of Goal 4, ORS 215, and OAR 660, division 6, currently in effect.

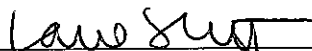
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:



Lane Shetterly, Director  
DLCD

Dated this 6<sup>th</sup> day of February, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator

DAS, State Services Division

Dated this 6<sup>th</sup> day of February, 2007.

## **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

### **FOR INFORMATION ONLY**

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**  
**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**Final Staff Report and Recommendation**

February 6, 2007

**STATE CLAIM NUMBER:** M129857

**NAME OF CLAIMANT:** Eugena B. Mead

**MAILING ADDRESS:** 25795 NW Green Mountain Road  
Banks, Oregon 97106

**PROPERTY IDENTIFICATION:** Township 3N, Range 4W, Section 35  
Tax lots 5000 and 5003  
Washington County

**OTHER CONTACT INFORMATION:** Steve Mead  
25360 NW Pihl Road  
Banks, Oregon 97106

Bruce Vincent  
825 NE 20th Avenue  
Portland, Oregon 97232

**OTHER INTEREST IN PROPERTY:** Stephen James Mead (Tax lot 5000)  
Linda Kay Mead (Tax lot 5003)

**DATE RECEIVED BY DAS:** August 14, 2006

**180-DAY DEADLINE:** February 10, 2007

**I. SUMMARY OF CLAIM**

The claimant, Eugena Mead, seeks compensation in the amount of \$2,437,500<sup>1</sup> 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. The claimant desires compensation or the right to divide the 243.47-acre subject property<sup>2</sup> into an additional 15 parcels and to develop a dwelling on each parcel.<sup>3</sup> The

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<sup>1</sup> The claimant specifically demands compensation of \$812,500 for tax lot 5000 and \$1,625,000 for tax lot 5003.

<sup>2</sup> The subject property consists of two tax lots. Tax lot 5000 includes 204.97 acres and tax lot 5003 includes 38.50 acres.

<sup>3</sup> The claimant was previously granted waivers under ORS 197.352 to allow her to divide and develop the subject property. In M120462, the claimant was granted a waiver to allow her to divide tax lot 5000 into thirty-six parcels: thirty-one 1- to 3-acre parcels for development of residences, one unbuildable parcel and four parcels for timber production. In M120461, the claimant was granted a waiver to allow her to divide tax lot 5003 into fourteen parcels: twelve 1- to 3-acre parcels for residential development and two parcels for timber production. Through this demand,

subject property is located at 25551 and 25795 NW Green Mountain Road, near Banks, in Washington County. (See claim.)

## II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimant to allow Eugena Mead to divide tax lot 5000 into five additional parcels and to divide tax lot 5003 into ten additional parcels (in addition to the waivers granted through M120461 and M120462), and to her development of a dwelling on each parcel: Statewide Planning Goals 4 (Forest Lands) and 14 (Urbanization), applicable provisions of ORS 215 and OAR 660, division 6, enacted after she acquired her present interest in the subject property. These laws will not apply to the claimant only to the extent necessary to allow Eugena Mead to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 5003 and the northern 115.56 acres of tax lot 5000 on March 15, 1955; and only to the extent that use was permitted when she acquired the southern 89.31 acres of tax lot 5000 on April 29, 1998. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the southern 89.31 acres of tax lot 5000 in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On December 19, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment was received in response to the 10-day notice.

The comment is relevant to whether the claimant is an owner and when the claimant became the present owner of the subject property. The comment has been considered by the department in preparing this report.

## 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

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the claimant desires to divide tax lot 5000 into five additional parcels and to divide tax lot 5003 into ten additional parcels, all for residential development.

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 criteria, whichever is later.

**Findings of Fact**

This claim was submitted to DAS on August 14, 2006, for processing under OAR 125, division 145. The claim identifies applicable provisions of ORS 215 and OAR 660, division 6, as restricting the use of the property. 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, Eugena Mead, first acquired the subject property on March 15, 1955, as reflected by a warranty deed included with the claim. On November 6, 1995, Eugena Mead conveyed her entire interest in the southern 89.31 acres of tax lot 5000 to her son, Stephen J. Mead, as reflected by a bargain and sale deed included with the claim. On April 29, 1998, Stephen J. Mead conveyed the southern 89.31-acres of tax lot 5000 back to Eugena Mead, and Eugena Mead then conveyed that portion of the property to herself and Stephen Mead as tenants in common, as reflected by bargain and sale deeds included with the claim.<sup>4</sup>

The Washington County Assessor’s office confirms the claimant’s ownership in the subject property.

**Conclusions**

The claimant, Eugena Mead, is an “owner” of the subject property, as that term is defined by ORS 197.352(11)(C). She has been an owner of tax lot 5003 and the northern 115.56 acres of

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<sup>4</sup> Eugena Mead granted a “life estate joint interest” in tax lot 5003 to Linda K. Mead on December 10, 2002, as reflected by a bargain and sale deed obtained from Washington County. However, while the language is not clear, it appears that this life estate was not exclusive and was intended to reserve in Eugena Mead a continuing present interest in that tax lot.

tax lot 5000 since March 15, 1955, and the southern 89.31 acres of tax lot 5000 since April 29, 1998. All of tax lot 5000 has been owned by a "family member" of the claimant since March 15, 1955.

## **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.

### **Findings of Fact**

The claim indicates that the claimant desires to divide tax lot 5000 into five additional parcels, and to divide tax lot 5003 into ten additional parcels (beyond the parcels approved through claims M120461 and M120462) and to develop a dwelling on each parcel, and that state land use regulations prevent the desired use.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimant's property is zoned by Washington County as Exclusive Forest and Conservation (EFC) as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimant's property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

Goal 14, which also became effective on January 25, 1975, would likely apply to the division of the claimant's property into parcels less than two acres. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses.

The claimant or her family acquired the subject property on March 15, 1955, prior to the establishment of the statewide planning goals and their implementing statutes and rules.

### **Conclusions**

The minimum lot size and dwelling standards established by Goals 4 and 14, OAR 660-006-0026 and -0027 and applicable provisions of ORS 215 were all adopted after the Mead family acquired the subject property in 1955 and do not allow the desired division or development of the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. There may be

other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

### **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."

#### **Findings of Fact**

The claim includes an estimate of \$2,437,500 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's assessment of the property's value.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimant is Eugena Mead who acquired, or whose family acquired, the subject property on March 15, 1955. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant or her family acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$2,437,500.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

### **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.

#### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 4 and 14, ORS 215 and OAR 660, division 6, which Washington County has implemented through its current EFC zone. All of these land use regulations were enacted or adopted after the claimant or her family acquired the subject property.

## **Conclusions**

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimant's family acquired the property in 1955. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimant's family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

## **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 findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's desired use of a portion of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$2,437,500. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of the subject property was allowed under the standards in effect when she acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Eugena Mead to use the subject property for a use permitted at the time she acquired tax lot 5003 and the northern 115.56 acres of tax lot 5000 on March 15, 1955 and the southern 89.31 acres of tax lot 5000 on August 29, 1998.

At the time the claimant acquired the southern 89.31 acres of tax lot 5000 on August 29, 1998, it was subject to Washington County's acknowledged EFC zone and to the current lot size and dwelling standards under Goals 4, ORS 215 and OAR 660, division 6, as described in Section V.(2) of this report.

In addition to the provisions of Goals 4 and 14, ORS 215 and OAR 660, division 6, in effect when the claimant acquired the southern 89.31 acres of tax lot 5000 on August 29, 1998, and other laws in effect when the claimant acquired the remainder of the subject property, there may be other laws that continue to apply to the claimant's use of the property that have not been identified in the claim. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0029, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes..." Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimant's use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information she provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the subject property.

### **Conclusions**

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Eugena Mead's division of tax lot 5000 into five additional parcels and her division of tax lot 5003 into ten additional parcels (beyond the parcels approved in claims M120461 and M120462) or her development of a dwelling on each parcel: applicable provisions of Goals 4 and 14, ORS 215 and OAR 660, division 6, enacted or adopted after the claimant acquired her present interest in the subject property. These laws will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 5003 and the northern 115.56 acres of tax lot 5000 on March 15, 1955; and only to the extent that use was permitted when she acquired the southern 89.31 acres of tax lot 5000 on April 29, 1998. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the southern 89.31 acres of tax lot 5000 in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property the use described in this report, subject to the standards in effect when she acquired tax lot 5003 and the northern 115.56 acres of tax lot 5000 on March 15, 1955, and

subject to the standards in effect when she acquired the southern 89.31 acres of tax lot 5000 on April 29, 1998. On April 29, 1998, the property was subject to applicable provisions of Goal 4, ORS 215, and OAR 660, division 6, currently in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on January 17, 2007. OAR 125-145 0100(3), provided 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.