

**BALLOT MEASURE 37 (CHAPTER 1, OREGON LAW 2005)  
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

July 8, 2005

**STATE CLAIM NUMBER:** M119305

**NAME OF CLAIMANT:** Terry Frick

**MAILING ADDRESS:** 21721 Northeast Butler Market Road  
Bend, Oregon 97701

**IDENTIFICATION OF PROPERTY:** Township 17S, Range 12E, Section 24  
Tax Lot 301  
Deschutes County

**OTHER CONTACT INFORMATION:** Edward P. Fitch  
Bryant, Emerson and Fitch, LLP  
P.O. Box 457  
Redmond, OR 97756

**DATE RECEIVED BY DAS:** January 13, 2005

**180-DAY DEADLINE:** July 12, 2005

**I. CLAIM**

Terry Frick, the Claimant, seeks compensation in the amount of \$300,000 for the reduction in fair market value as a result of certain 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 property into four lots for residential development. (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 by the department, not apply to the claimant to allow Terry Frick to divide the property into four lots and establish a dwelling on each lot: the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660, Divisions 15 and 33, to the extent necessary to allow the claimant to use the property as permitted at the time she acquired it on June 26, 1972. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On February 22, 2005, 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, there were no written comments, evidence or information received by DAS in response to the 10-day notice.

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

Ballot Measure 37, Section 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 the measure (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 the measure (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**

The claim was submitted to the DAS on January 13, 2005, for processing under ORS 125, Division 145. The claim identifies “Statutes and Administrative Regulations affecting Exclusive Farm Use (EFU) Lands” and “1973 et seq. ORS 203.215 and Administrative Rules under LCDC.” Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37 are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

#### **Conclusions**

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

## V. ANALYSIS OF CLAIM

### **1. Ownership**

Ballot Measure 37 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in the Measure Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

Terry A. Frick purchased the subject parcel under a land sale contract dated June 26, 1972.

The claim does not substantiate current ownership of the subject parcel. However, information provided by the Deschutes County Assessor’s office indicates that, as of June 15, 2005, Terry Frick is the current owner of property described in the claim.

### **Conclusions**

Terry A. Frick is the current “owner” of the subject property as that term is defined by Section 11(C) of Ballot Measure 37 and has owned the property since June 26, 1972.

### **2. The Laws that are the Basis for this Claim**

In order to establish a valid claim, Section 1 of Ballot Measure 37 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 states that the claimant is “unable to divide into four acre parcels.” In a follow-up conversation, Terry Frick indicates that the preceding phrase should read, “unable to divide into four one-plus-acre parcels.” Further clarification from the claimant’s attorney indicates the claimant’s desire to develop one residential dwelling on each of the four parcels.

The claim cites ORS 203.215 as the restricting regulations preventing the property from division into four-acre parcels.<sup>1</sup> ORS 203.215 does not pertain to land use and is not considered a restricting land use regulation. The department concludes, rather, that the claimant seeks relief from ORS 215.203, which pertains to land use regulations.

Statewide Planning Goal 3, Agricultural Lands (OAR 660-015-0000(3)) and the required provisions applicable to land zoned for exclusive farm use (EFU) under ORS 215 and OAR 660-033-0090, including ORS 215.780, restrict the zoning, use and partitioning of the subject

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<sup>1</sup> ORS 203 establishes governance structures and establishes governing authorities for cities and counties in Oregon. ORS 203.215 is not an actively published statute in the 2003 Oregon Revised Statutes (as provided by the Oregon Office of Legislative Counsel).

property. Goal 3 became effective on January 25, 1975, and required agricultural land as defined by the Goal to be zoned EFU pursuant to ORS 215 (see citations to statutory and rule history under OAR 660-015-0000(3).) ORS 216.780 became effective on November 4, 1993 (Chapter 792, Or Laws 1993). OAR 660-033-0100 establishes an 80-acre minimum lot size for the creation of a new parcel in an EFU zone. OAR 660-033-0135 establishes the standards for siting dwellings on farm land.

### **Conclusions**

The minimum lot size and dwelling standards established by Statewide Planning Goal 3 and OAR 660, Division 33, and by applicable provision of ORS 215, were all adopted after the claimant acquired the property on June 26, 1972, restrict the use of the property relative to the uses allowed when the property was acquired in 1972.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any laws 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 a comparative market analysis prepared by a real estate broker, whose estimate indicates that the property is valued at approximately \$385,000 to \$460,000 under current regulations.

The broker also indicates that the property would be valued at approximately \$150,000 - \$170,000 per lot if divided into four one-acre-plus lots. Using the broker’s estimates, the property could be valued as high as \$680,000 without current regulations. Subtracting the estimated current value, leaves a price reduction of approximately \$140,000 to \$300,000.

The stated reduction in value includes claimant estimates based on the value of similar one-acre lots in Deschutes County. It is not clear whether the claimant’s estimates include the cost of servicing proposed lots. The claim does not include a formal appraisal or other detailed analyses of the reduction in value as a result of restricting land use regulations.

### **Conclusions**

As explained in section V. (1) of this report, the current owner is Terry Frick who acquired the property in 1972. Thus, under Ballot Measure 37, Terry Frick is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Ms. Frick estimates the loss in value to be \$300,000.

Without an appraisal or other substantiating documentation, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. However, staff concludes that the subject property would likely be worth more with four lots for residential development than it is with one single-family home site. Therefore, based on the submitted information, the

department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of laws enforced by the Commission or the department.

#### **4. Exemptions under Section 3 of Measure 37**

Ballot Measure 37 does not apply to certain laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

#### **Findings of Fact**

The claim generally identifies state and county land use regulations, enacted subsequent to acquisition of the property in 1972, which allegedly restrict the use of the parcel relative to what would have been allowed when the claimant acquired the property. Laws enacted subsequent to the claimant's acquisition of the property that restrict partitioning and placement of dwellings on property zoned for EFU are not exempt under Ballot Measure 37.

#### **Conclusions**

It appears that the general statutory, goal and rule restrictions on dividing the subject property apply to the owner's anticipated use of the property, and for the most part, these laws would not come under any of the exemptions in Measure 37. There may be other specific laws that continue to apply, under one or more of the exemptions in Measure 37 or because they are laws that are not covered by the Measure to begin with.

### **VI. FORM OF RELIEF**

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the Commission or the department has enforced a law that restricts 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 to allow the present owner to carry out a use of the property allowed at the time the present owner acquired the property. The Commission has by rule directed that if the department determines a claim is valid, the Director 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 preclude the claimant from dividing the property into four parcels for residential development. The laws enforced by the Commission or the department reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$300,000, an amount substantiated by a realtor's report and based on a comparison of similar properties. The department acknowledges that the laws on which the claim is based have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Measure 37 authorizes the department to modify, remove or not apply all or parts

of certain land use regulations to allow Terry A. Frick to use the subject property for a use permitted at the time she acquired the parcel on June 26, 1972.

### **Conclusion**

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

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to the claimant's division of the property into four lots or to the establishment of a dwelling on each lot created: the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660, Divisions 15 and 33, to the extent necessary to allow the claimant to use the property as permitted at the time she acquired it.
2. The action by the State of Oregon provides the state's authorization to the claimant for her to divide the property into four lots and to develop a home on each lot, subject to the laws in effect when she acquired the property in 1972, and to any other laws that are exempt under section 3(E) of Measure 37.
3. To the extent that any law, order, deed, agreement or other legally-enforceable public or private requirement provides that the 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 215.412 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property posed by private parties.
4. Any use of the 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 DLCD; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under section (3) of the Measure.
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for her to obtain a decision under Measure 37 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 Measure 37 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

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

The department issued its draft staff report on this claim on June 20, 2005. 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. Comments received have been taken into account by the department in the issuance of this final report.