

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

IN THE MATTER OF THE CLAIM) FINAL ORDER
FOR COMPENSATION UNDER) CLAIM NO. M 118339
BALLOT MEASURE 37 (CHAPTER 1,)
OREGON LAWS 2005) OF)
S. Fred Hall, Jr., CLAIMANT)

Claimant: S. Fred Hall, Jr. (the Claimant)

Property: Tax Lot 100, T 2N, R 2W, S 10; Tax Lot 600, T 2N, R 2W, S 10A; Tax Lot 1100,
T 2N, R 2W, S 3, Multnomah 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 Ballot Measure 37 (2004) (Oregon
Laws 2005, Chapter 1) (hereafter, Measure 37). 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 Measure 37, the State of Oregon will not apply the following
laws to S. Fred Hall, Jr.'s establishment of a single-family dwelling on tax lot 600: the
applicable provisions of Statewide Planning Goals 4 and 5 and their implementing rules, and
ORS 215 that took effect after August 1, 1971. In lieu of compensation under Measure 37, the
State of Oregon will not apply the following laws to S. Fred Hall, Jr.'s establishment of a single-
family dwelling on tax lot 1100: the applicable provisions of Statewide Planning Goals 4 and 5
and their implementing rules, and ORS 215 that took effect after December 5, 1991. In lieu of
compensation under Measure 37, the State of Oregon will not apply the following laws to S. Fred
Hall, Jr.'s division of tax lot 100 into 70 to 75 two-acre lots and his development of a single-
family dwelling on each lot: the applicable provisions of Statewide Planning Goals 4, 5, and 14,
and ORS 215 that took effect after August 1, 1971. These land use regulations will not apply to
S. Fred Hall, Jr.'s use of his property only to the extent necessary to allow the claimant a use
permitted at the time he acquired tax lots 100 and 600 on August 1, 1971, and tax lot 1100 on

December 5, 1991. Provisions of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards that relate to wild fires, and Goal 7, are based on public health and safety are exempt under Section (3) (B) of the Measure and will continue to apply to the property. Provisions of Goal 5 and its implementing rules that were in effect on or before December 5, 1991 will continue to apply to tax lot 1100 to the extent that they would have applied to a use on that date.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 100 and 600 subject to the standards in effect on August 1, 1971, and tax lot 1100 subject to the standards in effect on December 5, 1991. On December 5, 1991, tax lot 1100 was subject to applicable provisions of Statewide Planning Goals 4 and 5 and their implementing rules, Goal 7, and any applicable provisions of ORS 215.

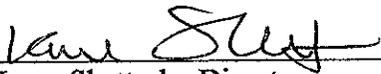
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first 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 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed 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 the Commission or the department; 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 him to obtain a decision under Measure 37 from Multnomah County or other jurisdiction 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.

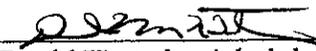
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under Measure 37, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under Measure 37, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION
AND DEVELOPMENT COMMISSION:


Lane Shetterly, Director
DLCD

Dated this 18th day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE
SERVICES:


David Hartwig, Administrator
DAS, State Services Division

Dated this 18th day of October, 2005.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 293.316: Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. 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 and the Circuit Court in the county in which you reside.
3. A cause of action under Oregon Laws 2005, chapter 1 (Measure 37 (2004)): A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(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.”

FOR INFORMATION ONLY

The Marion County Circuit Court has issued an opinion declaring that 2004 Oregon Ballot Measure 37 (2005 Or Laws chapter 1) is invalid. As of the date of this order, the court has not entered a judgment that gives legal effect to the court's opinion. Once a judgment is entered by the court, any rights granted by this order may be void or voidable.

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

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

October 19, 2005

STATE CLAIM NUMBER: M118339

NAME OF CLAIMANT: S. Fred Hall, Jr.¹

MAILING ADDRESS: 23421 NW Moreland Road
North Plains, Oregon 97133

PROPERTY IDENTIFICATION: Township 2N, Range 2W, Section 10
Tax Lot 100

Township 2N, Range 2W, Section 10A
Tax Lot 600

Township 2N, Range 2W, Section 3
Tax Lot 1100

Multnomah County

OTHER INTEREST IN PROPERTY: Judy Corinne Hall (joint ownership of tax
lot 1100);

United States (Bonneville Power
Administration transmission line and access
road easement on tax lot 100);
30-foot roadway easement.

DATE RECEIVED BY DAS: April 21, 2005

180-DAY DEADLINE: October 18, 2005

I. SUMMARY OF CLAIM

The claimant, S. Fred Hall, Jr., seeks compensation in the amount of \$6,775,000 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 develop three contiguous tax lots in the following manner: (a) to divide tax lot 100 (153.29

¹ Also known as Fred Hall.

acres) into 70 to 75 two-acre lots and to develop a single-family dwelling on each lot; (b) to develop one dwelling on tax lot 600 (2.12 acres); and (c) to develop one dwelling on tax lot 1100 (90.33 acres). The properties are located west of the intersection of Moreland Road and Skyline Boulevard, in the West Hills area, of Multnomah 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 S. Fred Hall Jr.'s use of the properties as described in the preceding paragraph: the applicable provisions of Statewide Planning Goals 4 (Forest Lands), 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) ORS 215, and OAR 660 division 6. These laws will not apply to the claimant's use of the property only to the extent necessary to allow S. Fred Hall Jr. a use of tax lots 100 and 600 permitted at the time he acquired them in 1971, and a use of tax lot 1100 permitted at the time he acquired it in 1991. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 2, 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, no written comments were received 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 criterion 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 criterion, whichever is later.

Findings of Fact

This claim was submitted to DAS on April 21, 2005, for processing under OAR 125, division 145. The claim is based on Multnomah County's current Commercial Forest Use (CFU) zoning and state laws that require such zoning. 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. Ballot Measure 37, Section 11(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

Tax Lots 100 and 600

The claim states that claimant S. Fred Hall, Jr. has owned tax lots 100 and 600 since August 1, 1971. A July 12, 1993 Deed submitted with the claim grants title to S. Fred Hall, Jr. subject to easements and restrictions of record as of August 1, 1971. Multnomah County Assessor records show S. Fred Hall, Jr. as the current owner. There have been trust deeds granted to secure loans made to Mr. and Mrs. Hall, but the information in the department's files indicates that S. Fred Hall has owned an interest in these tax lots since August 1, 1971.

Tax lot 1100

The claim states that claimant, S. Fred Hall, Jr., has owned tax lot 1100 since September 1991. The record shows that claimant and his wife, Judy Corinne Hall, acquired the 90.33-acre tax lot 1100 by Deed on December 5, 1991. Multnomah County Assessor records show S. Fred Hall, Jr., and Judy C. Hall as the current owners.

Conclusions

The claimant, S. Fred Hall, Jr., is an "owner" of tax lots 100 and 600 as that term is defined by Section 11(C) of Ballot Measure 37, as of August 1, 1971; and an "owner" of tax lot 1100 as that term is defined by Section 11(C) of Ballot Measure 37, as of December 5, 1991. Judy Corinne

Hall is an “owner” of tax lot 1100 as of December 5, 1991. Judy Corinne Hall is not a claimant for purposes of this Measure 37 claim.

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

For tax lots 100 and 600, the claim states:

“This property has been owned by me [Fred Hall] since August 1, 1971.” The zoning at that time was F-2 meaning 2 acres to build a home and farm building.

For tax lot 1100, the claim states:

“This property has been owned by Fred Hall since Sept. 1991. The zoning at that time was CFU-80 meaning 80 acres to build a home, farm building. Since that time Multnomah County has re-zoned this property from 80 acre to the present zoning of 160 acres with a conditional use permit required. The present zoning doesn’t allow a home on this 90.33 acres.”

The claim is based on Multnomah County’s current zoning of the subject property as Commercial Forest Use - West Hills Rural Plan Area with Significant Environmental Concern with a Wildlife Habitat overlay (CFU-1/SEC-H), and the applicable state law that requires such zoning or otherwise restricts the uses of the property described in the claim. The state land use regulations include provisions of Statewide Planning Goal 4 (Forest Lands), Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), and Goal 7 (Areas Subject to Natural Hazards), ORS 215, and OAR 660 division 6.

Statewide Planning Goal 4 and laws applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and OAR 660, division 6, restrict the right of the claimant to divide the property and to develop it for residential use. Goal 4 became effective on January 25, 1975 and required Forest Land, as defined by the goal, to be zoned for forest use. (See citations to statutory and rule history under OAR 660-015-0000(4). The Forest Land administrative rule, OAR 660, division 6, became effective September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). These statutory changes were incorporated into OAR 660-006-0026 and --0027 on March 1, 1994. (See citations to rule history under OAR 660-015-0000(4). Together, ORS 215.705 to 215.755 and 215.780, Goal 4, and OAR 660-006 establish minimum lot sizes for the creation of a new parcel or lot in a forest zone, and also establish standards for dwellings in forest zones.

Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and its implementing rules (OAR 660, divisions 16 and 23) require the County to inventory Goal 5 resources and to develop a program to protect those resources inventoried as significant. The County adopted an overlay zone covering this property in 1995 in order to protect wildlife habitat inventoried as significant under Goal 5.² Goal 5 and its implementing rules were not in effect in 1971 when the claimant acquired Tax Lots 100 and 600. However, Goal 5 and its implementing rules were in effect in 1991 when the claimant acquired Tax Lot 1100, and, as a result, to the extent that the use claimant desires would have been subject to Goal 5 at the time the claimant acquired the property, Goal 5 will continue to apply to the claimant's use of Tax Lot 1100.

Statewide Planning Goal 7 (Areas Subject to Natural Hazards) requires the County to inventory natural hazards and to adopt comprehensive plan policies and implementing measures to reduce risk to people and property from those natural hazards. The County adopted an overlay zone for this property in 1990 in order "to promote the public health, safety and welfare and minimize public and private losses due to earth movement hazards in specified areas and minimize erosion and related environmental damage."³ Goal 7 was not in effect in 1971 when the claimant acquired Tax Lots 100 and 600, however, Goal 7 does restrict or prohibit activities to protect public health and safety and, as a result it is exempt under section 3(B) of Measure 37, as described in more detail below. In addition, Goal 7 was in effect in 1991 when the claimant acquired Tax Lot 1100, and, as a result, it is exempt with respect to that tax lot as well. The claimant's use of all of three tax lots will continue to be subject to Goal 7.

Tax lots 100 and 600

The claimant acquired tax lots 100 and 600 on August 1, 1971, prior to the adoption of Senate Bill 100 (effective October 5, 1973) and the establishment of the Statewide Planning Goals (effective January 25, 1975). Some provisions of ORS 215 were in effect when the claimant acquired tax lots 100 and 600 in 1971, but those provisions do not appear to have applied to the use of tax lots 100 and 600 at that time, unless the Agriculture District (F-2) zoning that was in effect at that time was a qualified farm use zone.

When the claimant acquired tax lots 100 and 600 in 1971, they were zoned by the County as F-2. This zone was described in Multnomah County zoning ordinance as "Agriculture, grazing and horticulture and timber growing district, with a minimum lot size of two (2) acres." The only dwellings permitted in that zone were dwellings for the owner, operator, or employees of commercial farm or forest operations.⁴

Tax lot 1100

² See Multnomah County Code, Zoning Ordinance, Sections 33.4500 and 33.4570.

³ See Multnomah County Code, Zoning Ordinance, Section 33.5500, and October 7, 2005 letter from County staff to the department (in the department claim file).

⁴ See historical Multnomah County zoning maps and zoning ordinances from the County web site, copies in the department's claim file.

The use described in the claim for tax lot 1100 is to develop one dwelling on the property. The claimant acquired tax lot 1100 on December 5, 1991, after establishment of the Statewide Planning Goals (effective January 25, 1975), and after acknowledgment of Multnomah County's comprehensive plan and land use regulations, but before the adoption of the standards in ORS ch. 215 for dwellings on forest lands. Many of the forest dwelling standards in OAR 660-006 were in effect in 1991, although the standards were amended after that date to incorporate the statutory changes in ORS 215 in 1993.

When the claimant acquired tax lot 1100 in 1991, it was zoned by Multnomah County as Commercial Forest Use District (CFU-80). In this zone, a non-farm or non-forest single-family dwelling on a lot 80 acres or larger was a permitted use so long as it met fire safety development standards.⁵

Conclusions

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 4 (Forest Lands) and Goal 5 (Natural Resources) and their implementing rules, and ORS 215 were all adopted after S. Fred Hall, Jr. acquired ownership of tax lots 100 and 600 in August 1971. These current state laws do not allow division of tax lots 100 and 600 into lots or parcels smaller than 80 acres in size, do not allow the approval of dwellings on two-acre lots, and may prohibit or restrict development of dwellings to the extent that it conflicts with a significant Goal 5 resource.

In 1991, when S. Fred Hall, Jr. acquired ownership of tax lot 1100, Goal 4 and its implementing rules required that any dwelling on forest lands be "necessary and accessory" to a forest use of the property, or meet standards for "dwellings not related to forest management." OAR 660-06-027 and 660-06-028, respectively. Similarly, Goal 5 and its implementing rules, to the extent that they applied to the development of a dwelling on the property, required that any residential development of the property preserve significant resource sites. Similarly, Goal 7, to the extent that it applied to the development of a dwelling on the property, required that any residential development of the property avoid natural hazard areas. Since 1991 additional standards for forest dwelling have been adopted in ORS 215, and incorporated in the Goal 4 implementing rules in OAR 660-006.

Multnomah County law in 1991 would have permitted a non-forest dwelling on tax lot 1100 because the CFU zone permitted a single-family dwelling on a lot or parcel 80 acres or larger. Current provisions of ORS 215 (including ORS 215.705, 215.720, 215.740, 215.750, and 215.755) and OAR 660, division 6 permit non-forest dwellings on Forest Land only if: (1) the site is not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road, or (2) the site has at least 160 contiguous acres. Tax

⁵ See historical Multnomah County zoning maps and zoning ordinances from the County web site, copies in the department's claim file.

lot 1100 does meet these requirements.⁶ Therefore, the subject property does not qualify for a non-forest single-family dwelling under current state law, and current state laws restrict use of the property relative to what was permitted when the claimant acquired tax lot 1100 in 1991.

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, Section 1 of Ballot Measure 37 requires that any land use regulation 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 estimates \$6,775,000 as the reduction in the property's fair market value due to current regulations: \$5,625,000 for tax lot 100, \$750,000 for tax lot 600, and \$400,000 for tax lot 1100. The claim alleges that current market values are \$250,000 for tax lot 100, \$50,000 for tax lot 600, and \$138,000 for tax lot 1100, which totals \$438,000.⁷

For tax lot 100, the claim states: "The present zoning doesn't allow a home on this 153.29 acres. The present value with no home is \$250,000. With 2 acre buildable lots in this area they would sell from \$75,000 to \$150,000. Seventy (70) to Seventy Five (75) 2 acre lots could be created from this 153.29 acres under the 1971 zoning. I probably will not build over 3 to 5 additional homes on this acreage, I reserve the right to increase threes lots if we find it doable. Accordingly, these ordinances have caused the fair market value of this property described above to decrease approximately \$5,625,000."

For tax lot 600, the claim states: "The present zoning doesn't allow the home to be rebuilt on this 2.12 acres. The present value with no home is \$50,000. This two acre buildable property under the 1971 zoning will sell for more than \$755,000 along with the right to have a dirt fill. Accordingly, these ordinances have caused the fair market value of this property described above to decrease approximately \$750,000."

⁶ Tax lot 1100 is 90.33 acres and therefore is smaller than 160 acres. The soils on the subject property are suited to Douglas Fir and are capable of producing from 9,440 to 10,720 cubic feet from a fully-stocked stand of 70-year old trees. (See Soil Survey of Multnomah County, Oregon, USDA Soil Conservation Service, August 1983, sheet #2 and pp. 24-27, 38-39, 90-91.)

⁷ Multnomah County Assessor records show the following current real market values: \$39,260 for tax lot 100, \$137,620 for tax lot 600, and \$82,890 for tax lot 100, for a total of \$259,770. See the department's claim file.

For tax lot 1100, the claim states: "The present zoning doesn't allow a home on this 90.33 acres. The present value with no home is \$138,000. This 90.33 acre buildable property will sell for more than \$538,000. Accordingly, these ordinances have caused the fair market value of this property described above to decrease approximately \$400,000."

The claim does not include an appraisal to substantiate any of these amounts.

Conclusions

As explained in Section V.(1) of this report, the claimant is a current owner of tax lots 100 and 600. The claimant acquired these tax lots on August 1, 1971. The claimant is a current owner of tax lot 1100, and acquired that tax lot on December 5, 1991. Under Ballot Measure 37, S. Fred Hall, Jr. is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings in Section V.(2) of this report, land use laws adopted since S. Fred Hall, Jr. acquired the property in 1971 and 1991 restrict his ability to develop the property. The claim estimates the reduction in property value due to land use restrictions to be \$6,775,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, 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 land use regulations enacted or enforced by the Commission or the department.

4. Exemptions under Section 3 of Measure 37

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

Findings of Fact

The state laws that restrict the uses of the claimant's property include applicable provisions of Statewide Planning Goal 4 (Forest Lands) and Goal 5 (Natural Resources) and their implementing rules, Goal 7 (Areas Subject to Natural Hazards), and ORS 215. Provisions of applicable sections of ORS 215 adopted prior to 1971 are exempt under Section 3(E) of Measure 37 as to tax lots 100 and 600. Provisions of Goals 4 and 5 and their implementing rules, Goal 7, and ORS 215 that took effect prior to 1991 are exempt under Section 3(E) as to tax lot 1100.

While not directly raised by the claimant, the department notes that ORS 215.730 and OAR 660, division 6 include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings and for surrounding Forest Lands. Section 3(B) of Measure 37 specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes..." The department finds that siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, division 6) are exempt under Section (3) (B) of Measure 37. Similarly, Statewide Land Use Planning Goal 7 is "to protect people and property from natural hazards." Goal 7

requires local governments to adopt measures to reduce risk to people and property from natural hazards, which are defined as floods, earthquakes, tsunamis, coastal erosion, and wildfires. Goal 7 was enacted to protect public safety and, as a result, to the extent that it restricts the use of property it is exempt under section 3(B) of Measure 37.

Conclusions

Without a specific development proposal for the property, it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimant's use of the property.

Laws in effect when the claimant acquired the property are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimant's use of the property as described in the above findings. 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 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. And, in some cases, some of these laws may be exempt under subsections 3(A) to 3(D) of Measure 37.

In addition, the siting requirements of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards based on public health and safety are exempt under Section 3(B) and will also continue to apply. Similarly, Goal 7 was adopted to protect public health and safety and it also will continue to apply to the claimant's use 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. Similarly, this report only addresses the exemptions provided for under Section (3) of Measure 37 that are clearly applicable given the information provided to the department in the claim. The claimant should be aware that the less information he has provided to the department in his claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the property.

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 in order to allow the present owner to carry out a use of the property permitted at the time the current owner acquired the property. The Commission, by rule, has 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 restrict the division of the subject property into parcels or lots, and the use of the property for residential purposes. The claimant cannot develop tax lots 600 and 1100 with a single-family dwelling on each lot because of laws regulating non-forest dwellings on Forest Land that were enacted after the claimant acquired tax lot 600 in 1971 and tax lot 1100 in 1991. The claimant cannot create the desired 70 to 75 two-acre lots out of tax lot 100 and develop each such lot with a single-family dwelling, because laws enacted after the claimant acquired the property prohibit lot sizes that small. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$6,775,000. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely 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, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow S. Fred Hall, Jr. to use tax lots 100 and 600 for a use permitted at the time he acquired them on August 1, 1971, and to allow S. Fred Hall, Jr. to use tax lot 1100 for a use permitted at the time he acquired it on December 5, 1991.

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 S. Fred Hall, Jr.'s establishment of a single-family dwelling on tax lot 600: the applicable provisions of Statewide Planning Goals 4 and 5 and their implementing rules, and ORS 215 that took effect after August 1, 1971. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to S. Fred Hall, Jr.'s establishment of a single-family dwelling on tax lot 1100: the applicable provisions of Statewide Planning Goals 4 and 5 and their implementing rules, and ORS 215 that took effect after December 5, 1991. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to S. Fred Hall, Jr.'s division of tax lot 100 into 70 to 75 two-acre lots and his development of a single-family dwelling on each lot: the applicable provisions of Statewide Planning Goals 4, 5, and 14, and ORS 215 that took effect after August 1, 1971. These land use regulations will not apply to S. Fred Hall, Jr.'s use of his property only to the extent necessary to allow the claimant a use permitted at the time he acquired tax lots 100 and 600 on August 1, 1971, and tax lot 1100 on December 5, 1991. Provisions of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards that relate to wild fires, and Goal 7, are based on public health and safety are exempt under Section (3) (B) of the Measure and will continue to apply to the property. Provisions of Goal 5 and its implementing rules that were in effect on or before

December 5, 1991 will continue to apply to tax lot 1100 to the extent that they would have applied to a use on that date.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 100 and 600 subject to the standards in effect on August 1, 1971, and tax lot 1100 subject to the standards in effect on December 5, 1991. On December 5, 1991, tax lot 1100 was subject to applicable provisions of Statewide Planning Goals 4 and 5 and their implementing rules, Goal 7, and any applicable provisions of ORS 215.
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 215.402 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed 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 the Commission or the department; 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 him to obtain a decision under Measure 37 from Multnomah County or other jurisdiction 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 September 27, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.