

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation  
June 16, 2005**

**STATE CLAIM NUMBERS:** M119031, M 119033 and M119037

**NAME OF CLAIMANT:** Jeffery R. Yarbor

**MAILING ADDRESS:** P.O. Box 686  
St. Helens, Oregon 97051

**IDENTIFICATION OF PROPERTY:** 28162 Pittsburg Road  
Township 5N, Range 2W, Section 30  
Tax lots 400, 600 and 605  
Columbia County

**DATE RECEIVED BY DAS:** December 21, 2004

**180-DAY DEADLINE:** June 19, 2005

**I. CLAIM**

Jeffery R. Yarbor, the claimant, seeks compensation for the reduction in fair market value of three tax lots in the amounts of \$180,000 (tax lot 400), \$109,080 (tax lot 600) and \$41,580 (tax lot 605) as a result of certain land use regulations that are alleged to restrict the use of those private real properties. The claimant desires compensation or the right to divide the properties and presumably build dwellings on the subject properties. The three properties are located at 28162 Pittsburg Road, Oregon, in Columbia County. These three claims are consolidated for evaluation in this report because the ownership, restrictive land use laws and recommended relief are the same.

**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 claims are valid. Department staff recommends that, in lieu of compensation, the requirements of certain state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, specifically any provisions of Statewide Planning Goal 4 (Forest Lands) and OAR 660, Division 6 enacted since July 21, 2003, not apply to the subject properties to the extent necessary to allow Mr. Yarbor a use of the properties permitted at the time he acquired them on that date. As a result, Mr. Yarbor's use of the properties will be subject to those laws in effect on July 21, 2003. The department

acknowledges that the relief recommended in this report will not allow the claimant to use the properties in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS RECEIVED**

On February 14, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS), provided written notice to surrounding property owners. According to DAS, there were no written comments, evidence or information 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 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 claims were filed with DAS on December 21, 2004 for processing under OAR 125, Division 145. The claims identify land use regulations that were enacted prior to December 2, 2004, the effective date of Measure 37 as the basis for the claims. (See citations to statutory and rule history in the Oregon Revised Statutes and Administrative Rules.)

#### **Conclusions**

The claims were 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 are therefore timely filed.

## V. ANALYSIS OF CLAIM

### **1. Ownership**

Ballot Measure 37 provides for payment of compensation or relief from specific laws to “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**

The three tax lots subject to these claims were first acquired, in part, by Irene Yarbor on July 3, 1952 and by John and Irene Yarbor on January 29, 1959. (See the department’s claim files.) The three tax lots were transferred from the estate of Irene M Yarbor on July 21, 2003 and now are in the ownership of the claimant, Jeffery R.C. Yarbor. For purposes of reviewing these claims, the ownership interest in the properties transferred to the claimant on July 21, 2003, the date of Mrs. Yarbor’s death, rather than on the 2004 dates when the deeds were signed.<sup>1</sup>

### **Conclusions**

John and Irene Yarbor are “family members” as defined by Section 11(A) of Ballot Measure 37 and the claimant Jeffery R.C. Yarbor is the “owner” of the subject properties as defined by Section 11(C) of Ballot Measure 37.

### **2. The Laws that are the Basis for the 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 claims state that under current land use regulations “the property can only be used for forest land (growing trees),” for “reforestation” or for “growing forest trees.” The claims identify the Columbia County comprehensive plan and PF-76 (Primary Forest) zoning as the land use regulations that restrict the use of the properties. The claimant does not explain what was allowed in 2003 when he acquired the properties.

The cited County regulations implement Statewide Planning Goal 4 (Forest Lands) (OAR 660-015-0000(4)) and statutes applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and those provisions of OAR 660, Division 6 that restrict the properties’ zoning, use and division. The subject

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<sup>1</sup> Personal Representative’s Deeds (Jeffery R.C. Yarbor, Personal Representative for the Estate of Irene M Yarbor, Grantor) two dated May 12, 2004 and one dated June 11, 2004 are included with the claims

properties are composed primarily of Bacona Silt Loam soils (NRCS Capability Class VI) with a forest cubic foot site class of 2. (See Soil Survey of Columbia County, Oregon, pp. 18-19 and map sheet # 30, published in 1986 based on fieldwork completed in 1982.) Statewide Planning Goal 4 became effective on January 25, 1975, and required forestland 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. ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Or Laws 1993) and were implemented by OAR 660-006-0026 and 0027, which became effective March 1, 1994. (See citations to rule history under OAR 660-006-0026 and 0027.) ORS 215.730(1)(b) establishes approval standards for dwellings on lands zoned for forest use to protect the public health and safety with regard to fire safety, water supply and development on steep slopes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 0027 establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone and also establish the standards for dwellings in forest zones.

**Conclusions**

The minimum lot size and dwelling standards established by ORS 215.705 to 215.755 and 215.780, Statewide Planning Goal 4 and OAR 660-006-0026 and 0027 were all adopted after the Yarbor family acquired the properties in 1952 and 1959 and do not allow the division of the properties into parcels less than 80 acres in size or the approval of dwellings on smaller parcels. The current land use regulations, all adopted since 1952 and 1959, restrict the use of the properties from what could have been done when the properties were acquired by the Yarbor family in 1952 and 1959.

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

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any law 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 claims submitted by the claimant for the three tax lots do not specify an overall dollar amount for a reduction in the fair market value for the subject properties. However, they do specify a loss per acre of \$12,000 per acre for tax lot 400 and of \$9,000 per acre for tax lots 600 and 605. The claim forms submitted to Columbia County indicate the following amounts for the “Amount of Claim:” (See the department’s claim file for copies of the claims submitted to Columbia County.)

	<b>Tax Lot 400</b>	<b>Tax Lot 600</b>	<b>Tax Lot 605</b>
Amount of Claim	\$43,160	\$46,200	\$121,200

Each claim also includes the following regarding the reduction in fair market value of the subject tax lots:

<b>Values</b>	<b>Tax Lot 400</b>	<b>Tax Lot 600</b>	<b>Tax Lot 605</b>
As Is	“cannot be sold”	\$12,120	\$ 4,620
Fair Market Value	\$180,000	\$121,200	\$46,200
Loss of	\$180,000	\$109,080	\$41,580

Each claim also includes a “Comparative Market Analysis” for the properties regarding real estate sales in Columbia County. Each claim also states: “Longview Fiber will only pay up to \$1000 per reforested acre.” The current tax statements submitted with the claims indicate that each property has a total real market value of:

	<b>Tax Lot 400</b>	<b>Tax Lot 600</b>	<b>Tax Lot 605</b>
Real Market Value	\$127,300	\$40,700	\$17,400

No explanation explaining how current land use laws have reduced the fair market value of the subject properties has been submitted.

**Conclusions**

As explained in Section V.(2) of this report, the current land use regulations, all adopted since 1952 and 1959, restrict the partition and use of the properties from what could have been done when the properties were first acquired by the Yarbor family in 1952 and 1959.

Without an appraisal based on the value of the properties when divided for residential development or another explanation of the reduction in fair market value, it is not possible to substantiate the specific dollar amounts 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 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 claims include specific reference to County ordinances and general claims based on state land use regulations that restrict the use of the properties relative to what would have been allowed in 1952 and 1959 when the Yarbor family acquired the properties. Most laws that qualify as “land use regulations” under the Measure were adopted after 1959.

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. This provision includes 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 subsection (3) of Measure 37.

### **Conclusions**

Without a specific proposed use or a specific listing of laws that are the basis for the claims, it is not possible for the department to determine what laws may apply to a particular use of the properties, 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 forest land apply to the owner’s anticipated use of the properties and for the most part these laws would not come under any of the exemptions in Measure 37.

The siting requirements of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards based on health and safety will also continue to apply. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure, because they were not identified in the claims, 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 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 permitted at the time the 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**

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 properties into parcels less than 80 acres or the approval of dwellings on smaller parcels and therefore reduce the fair market value of the properties. The claims provide several dollar amounts for how much the properties have been reduced in value as a result of current land use laws. However, because the claims do not provide a specific explanation for how the specified restrictions reduce the fair market value of the properties from what he could have done

under the regulations in place at the time the family acquired the properties in 1952 and 1959, a specific amount of compensation cannot be determined. Nevertheless, based on the record for these claims, the department acknowledges that the laws on which the claims are based likely have reduced the fair market value of the properties 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 one or more land use regulations to allow Mr. Yarbor to use the subject properties for a use permitted at the time he acquired the properties on July 21, 2003.

### **Conclusions**

Based on the record before the department, Mr. Yarbor has established that he is entitled to relief. Therefore, department staff recommends that, in lieu of compensation (and except for ORS 215.730 and those provisions of Goal 4 and its implementing rules (OAR 660, Division 6) relating to siting standards for dwellings for the protection of public health and safety) the requirements of the following state laws enforced by the Commission or the department not apply to Mr. Yarbor's use of the properties: The minimum lot size and dwelling standards established by ORS 215.705 to 215.755 and 215.780, Statewide Planning Goal 4 and OAR 660-006-0026 and 0027. These laws will not apply to the properties to the extent necessary to allow Mr. Yarbor to divide the property and place dwellings on it as permitted on July 21, 2003, the date on which he acquired the properties that are the subject of these claims. The department acknowledges that the relief recommended in this report will not allow the claimant to use the properties in the manner set forth in the claims.

Any use of the properties by the claimant remains subject to the following laws: (a) those laws not specified in the claims to the State of Oregon, dated December 21, 2004 or identified in this report; (b) any laws enacted or enforced by a public entity other than the Commission or department; and (c) those laws not subject to Measure 37 including without limitation, those laws exempt under Section (3) of the Measure.

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

The department issued its draft staff report on this claim on May 27, 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.