

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

August 2, 2005

**STATE CLAIM NUMBER:** M119708

**NAME OF CLAIMANT:** James Ray

**MAILING ADDRESS:** 70898 Walker Road  
Rainier, Oregon 97048

**IDENTIFICATION OF PROPERTY:** Township 6N, Range 2W, Section 9  
Tax Lot 200  
Columbia County

**OTHER CONTACT INFORMATION:** Douglas Ray (son)  
70898 B Walker Road  
Rainier, Oregon 97048

Rhonda Lee Benson (daughter)  
Power of attorney as of March 31, 2003

**DATE RECEIVED BY DAS:** February 10, 2005

**180-DAY DEADLINE:** August 9, 2005

**I. CLAIM**

James Ray, the claimant, seeks compensation in the amount of \$58,750 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 9.05-acre property. The property is located at 70898 Walker Road, Rainier, Oregon in Columbia 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 and Department staff recommends that, in lieu of compensation, the requirements of the following certain applicable state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimant to allow the division of the subject property:

Statewide Planning Goal 4 (Forest Lands) 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 Mr. Ray a use of the property permitted at the time he acquired it on September 14, 1970. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On February 28, 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, evidence or information 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 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**

This claim was submitted to DAS on February 10, 2005 for processing under OAR 125, division 145. The claim identifies PF 76 (now PF 80) zoning as not allowing the claimant to "sub-divide," as the basis for the claim. Only laws that were enforced 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 enforced 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**

The claimant, James Ray and his wife, Deanna L. Ray (deceased), acquired the subject property, by contract, on September 14, 1970. (See contract and fulfillment deed, dated December 24, 1979, in department claim file.) A copy of the Real Property Tax Statement from Columbia County for the period from July 1, 2004, to June 30, 2005, shows that the claimant is the listed owner of the subject property. A preliminary title report dated January 27, 2005, submitted with the claim also identifies James Ray as the fee simple owner of the subject property.

### **Conclusions**

The claimant, James Ray, is an “owner” of the subject property as of September 14, 1970.

### **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 Fact**

The claim states that Columbia County’s Primary Forest zoning PF 76 prevents the claimant from subdividing his property.

The property is currently zoned PF-80 (formerly PF-76), in accord with Statewide Planning Goal 4, (Forest Lands) and laws applicable to land zoned for forest use under ORS 215, including ORS 215.780, and OAR 660, division 6. 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 215.780 became effective on November 4, 1993 (chapter 792, Or Laws 1993) and was adopted into OAR 660-006-0026 on March 1, 1994. (See citations to rule history under OAR 660-015-0000(4).)

Together, ORS 215.780 and OAR 660-006-0026, in accord with Goal 4, and as implemented through the county's PF-80 zone, establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone.

When the claimant acquired the property in 1970, these state land use laws were not in effect.

### **Conclusions**

The minimum lot size standards established by Statewide Planning Goal 4 and OAR 660-006-0026, and by ORS 215.780, were all adopted after the claimant acquired his property in 1970, and do not allow the division of the property into parcels less than 80-acres in size. Land use laws, adopted since 1970, restrict the use of the property relative to the uses allowed when the property was acquired in 1970.

### **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(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**

Based on a January 12, 2005 preliminary comparative market analysis included with the claim and the 2004 Columbia County Tax Statement, the claimant asserts that the fair market value of the subject property has been reduced and that the just compensation due is \$58,750. The 2004 Tax Statement from Columbia County shows that the property with one existing structure is worth \$107,690. (See also realtor's comparative market analysis submitted with the claim.)

### **Conclusions**

As explained in section V. (1) of this report, the current owner is James Ray, who acquired the property on September 14, 1970. Thus, under Ballot Measure 37, James Ray is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. The 2004 Tax Statement from Columbia County shows that the current value of the 9.05-acre property and the existing structure is \$107,690.

Without an appraisal 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 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 is based on Columbia County PF-76 Primary Forest Zone (now PF-80 zone) as required by Statewide Planning Goal 4 (Forest Lands), and applicable provisions of ORS 215 and OAR 660, division 6. These specified laws that currently restrict the division of the property were enacted after the claimant acquired the property.

### **Conclusions**

The laws specified above that restrict the claimant's division of his property, all enacted after he acquired the property on September 14, 1970, generally do not appear to be exempt under Measure 37, Section 3. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure, or because they are laws that are not covered by the Measure.

## **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 a law 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 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 conclusion set forth in this report, laws or enforced by the Commission or the department restrict the division of the subject property into parcels or lots. The laws enforced by the Commission or department reduce the fair market value of the 9.05acre property to some extent. The claim asserts this amount to be \$58,750. However, without an appraisal or other substantiating documentation, 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 one or more land use regulations to allow Mr. Ray to use the subject property for a use allowed at the time he acquired the property on September 14, 1970.

### **Conclusions**

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 Mr. Ray's division of his property: applicable provisions of Statewide Planning Goal 4, OAR 660, division 6, and ORS 215.780. These land use regulations will not apply to Mr. Ray's use of his property only to the extent necessary to allow the claimant to a use permitted at the time he acquired it on September 14, 1970.
2. The action by the State of Oregon provides the state's authorization to the claimant to use his property subject to the standards in effect on September 14, 1970.
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 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 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 July 8, 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.