

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. M 121726 |
| (BALLOT MEASURE 37) OF         | ) |                    |
| Shirley Eason, CLAIMANT        | ) |                    |

Claimant: Shirley Eason (the Claimant)

Property: Township 25S, Range 13W, Section 30AA, Tax lot 1800, Coos 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

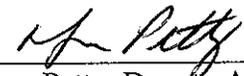
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Deputy 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 chapter 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:  
Lane Shetterly, Director

  
Cora R. Parker, Deputy Director  
DLCD  
Dated this 13<sup>th</sup> day of June, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Dugan Petty, Deputy Administrator  
DAS, State Services Division  
Dated this 13<sup>th</sup> day of June, 2006.

**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 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<sup>1</sup>, 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)

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<sup>1</sup> By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

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

June 13, 2006

**STATE CLAIM NUMBER:** M121726

**NAME OF CLAIMANT:** Shirley Eason

**MAILING ADDRESS:** PO Box 149  
Roseburg, Oregon 97470

**PROPERTY IDENTIFICATION:** Township 25S, Range 13W, Section 30AA  
Tax lot 1800  
Coos County

**OTHER CONTACT INFORMATION:** Mark Eason (agent)  
PO Box 149  
Roseburg, Oregon 97470

**OTHER INTEREST IN PROPERTY:** Mark Eason (trustee)  
Glenn Eason (trustee)

**DATE RECEIVED BY DAS:** August 4, 2005

**180-DAY DEADLINE:** June 19, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimant, Shirley Eason, seeks compensation in the amount of \$20,000 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 build a triplex on the subject property. No address has been provided for the subject property, which is located near Coos Bay, in Coos County, at the geographic coordinates listed above. (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 not valid because neither the Land Conservation and Development Commission (the Commission) nor the department has

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<sup>1</sup> This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

enforced laws that restrict the claimant's use of the private real property. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On September 26, 2005, pursuant to Oregon Administrative Rules (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**

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
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 4, 2005, for processing under OAR 125, division 145. The claim identifies county zoning as the basis for the claim. 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, Shirley Eason, acquired the subject property on July 6, 1966, as reflected by a bargain and sale deed included with the claim. On October 29, 1996, the claimant and her husband, Fred Eason (now deceased), transferred the subject property to the Fred P. and Shirley J. Eason Revocable Living Trust with themselves as trustees. The claimant's sons have since been named trustees.<sup>2</sup> A tax statement for July 1, 2004, to June 30, 2005, submitted with the claim establishes the claimant's current ownership of the subject property.

## **Conclusions**

The claimant, Shirley Eason, as trustor of the Fred P. and Shirley J. Eason Revocable Living Trust, is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C), as of July 6, 1966.

## **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 county zoning prevents the claimant from building a triplex on the subject property.

The subject property is currently zoned UR-2 by Coos County. The UR-2 district is an urban residential zone outside an urban growth boundary that receives urban public services.<sup>3</sup> The subject property is located in an urban unincorporated community. OAR 660, division 22, effective on December 5, 1994, interprets Statewide Planning Goals 11 (Public Facilities and Services) and 14 (Urbanization) concerning urban and rural development outside urban growth boundaries and establishes a statewide policy for the planning and zoning of unincorporated communities in a way intended to expedite the county planning process.

In general, county plans and land use regulations may authorize any residential use and density in unincorporated communities, subject to general requirements in division 22. In some circumstances, the Commission's rules or state statutes may apply directly to a local government decision regarding limitations on land use. However, the development restrictions in Coos County's UR-2 zone are not based on a requirement in a state rule or statute. There is no state rule or statute that mandates a particular minimum lot size in this zone.

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<sup>2</sup> Transfer of property to a revocable trust does not result in a change of ownership for the purposes of ORS 197.352.

<sup>3</sup> The county's UR-2 district allows residential development in areas that receive both public water and public sewer services and requires the following minimum lot sizes: 5,000 square feet for a single-family dwelling; 8,000 square feet for a duplex; and 9,200 square feet for a triplex. The subject property is 0.14 acre, which is approximately 6,098 square feet and does not satisfy the county's minimum lot size requirement for a triplex.

In this case, the claimant has not alleged how a specific state land use regulation restricts the use of real property and has the effect of reducing the fair market value of that real property. Based on the information in the claim, the department has not identified any state laws that restrict the claimant's use of the subject property.

### **Conclusions**

The claim does not establish that there are any state laws that currently restrict the use of the claimant's property. Because the subject property is located in an urban unincorporated community, neither the Commission nor the department enforces laws that require specific zoning of the property or otherwise restrict the use of the claimant's real property.

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

In order to establish a valid claim, ORS 197.352(1) 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."

As explained in Section V.2 of this report, the claimant, Shirley Eason, has not established that any state laws restrict the use of the subject property. Accordingly, the department cannot determine that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the subject property.

### **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.

As explained in Section V.2 of this report, the claimant, Shirley Eason, has not established that any state laws restrict the use of the subject property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to this claim.

## **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 current 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 record for this claim, the claimant has not established that any state laws enforced by the Commission or the department restrict the use of the subject property and have the effect of reducing the fair market value of the subject property. Because the subject property is located

in an urban unincorporated community, neither the Commission nor the department enforces laws that require specific zoning of the property.

### **Conclusions**

Based on the record before the department, the claimant, Shirley Eason, has not established that she is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied.

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

The department issued its draft staff report on this claim on May 25, 2006. 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.