

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. M118403
(BALLOT MEASURE 37) OF	)	
Michael and Ann Trindle, CLAIMANTS	)	

Claimants: Michael and Ann Trindle (the Claimants)

Property: Tax Lot 500, T 8S, R 40E, S 26 (the Property)

Claim: The demand for compensation and any supporting information received from the Claimants by the State of Oregon (the Claim).

Claimants 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 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:

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Michael and Ann Trindles' development of a single-family residential dwelling on the 58.95-acre property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215, and OAR 660 division 33 enacted after April 22, 1993. These land use regulations will not apply to Mr. and Ms. Trindle's use of the property only to the extent necessary to allow them to use the property for the use described in this report, to the extent that use was permitted at the time they acquired the property on April 22, 1993.
2. The action by the State of Oregon provides the state's authorization to the claimants to use their property for the use described in this report, subject to the standards in effect on April 22, 1993. On that date, the property was subject to applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660 division 5 then in effect.

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 claimants first obtain 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 claimants 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 ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under ORS 197.352, from a city and/or county and/or metropolitan service district that enforce land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

This Order is entered by the 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 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 125, division 145, and ORS 293.

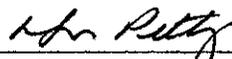
FOR DLCD AND THE LAND CONSERVATION  
AND DEVELOPMENT COMMISSION:



Lane Shetterly, Director  
DLCD

Dated this 17th day of March, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:



Dugan Petty, Deputy Administrator  
DAS, State Services Division

Dated this 17th day of March, 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 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 ORS 197.352):** 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.”

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

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

March 17, 2006

**STATE CLAIM NUMBER:** M118403

**NAMES OF CLAIMANTS:** Michael and Ann Trindle

**MAILING ADDRESS:** 20859 Sunset Lane  
Baker City, Oregon 97814

**PROPERTY IDENTIFICATION:** Township 8S, Range 40E, Section 26  
Tax lot 500  
Baker County

**DATE RECEIVED BY DAS:** May 9, 2005

**180-DAY DEADLINE:** March 24, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimants, Michael and Ann Trindle, seek compensation in the amount of \$78,000 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 claimants desire compensation or the right to develop a single-family residential dwelling on the 58.95-acre property. The property is located on the north side of South Airport Lane, near Baker City, in Baker 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 Michael and Ann Trindles' development of one single-family residential dwelling on the subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660 division 33 enacted after April 22, 1993. These laws will not apply to the claimants only to the extent necessary to allow Mr. and Ms. Trindle to use the property for the use described in this report, to the extent that use was permitted at the time they

---

<sup>1</sup> This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Measure 37 was suspended during the pendency of the appeal of Macpherson v. Dep't of Admin. Servs., 340 Or \_\_\_, 2006 Ore. LEXIS 104 (February 21, 2006).

acquired the property on April 22, 1993. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On June 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, one written comment, evidence or information were received in response to the 10-day notice.<sup>2</sup>

The comment is relevant to whether the restriction of the claimants' use of the property reduces the fair market value of the property. The comment has been considered by the department in preparing this report. (See the comment letter in the department's claim file.)

### **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 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 May 9, 2005, for processing under OAR 125 division 145. The claim identifies OAR 660-033-0135 as the law that restricts the use of the property as the basis for the claim. 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.)

---

<sup>2</sup> The 10-day notice period was suspended for 139 days during the pendency of the *Macpherson v. Dep't of Admin. Servs.*, 340 Or \_\_, 2006 Ore. LEXIS 104 (February 21, 2006), which suspended all Measure 37 deadlines.

## **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**

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 claimants, Michael and Ann Trindle, acquired the subject property on April 22, 1993, as reflected by a Land Sale Contract included with the claim. Information provided by the Baker County Assessor confirms that Michael and Ann Trindle are the current owners of the property as of September 8, 2005.

### **Conclusions**

The claimants, Michael and Ann Trindle, are “owners” of the subject property, as that term is defined by ORS 197.352(11)(C), as of April 22, 1993.

### **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 claimants’ 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 claimants or a family member acquired the property.

### **Findings of Fact**

The claim states that OAR 660-033-0135 “(d)oes not allow a single dwelling” as may have been permitted at the time the claimants acquired the property in 1993. The claim cites OAR 660-033-0135 as the regulation that restricts the use of the property.

The claim is based on Baker County’s current Exclusive Farm Use (EFU) Zone and the applicable provisions of state law that require such zoning. The County’s EFU zone establishes criteria for the placement of dwellings on lands zoned EFU, including a 160-acre minimum parcel size for the establishment of any dwellings. The claimants’ property is zoned EFU as required by Statewide Planning Goal 3, in accord with OAR 660 division 33 and ORS 215

because the claimants' property is "agricultural land" as defined by Goal 3.<sup>3</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal are zoned EFU pursuant to ORS 215.

Current land use regulations, particularly provisions of ORS 215.263 and 215.284 and OAR 660 division 33, as applied by Goal 3, do not allow the development of a single-family residential dwelling on the subject property.

Specifically, ORS 215.263 (2003 edition) establishes standards for the creation of dwellings in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0135 requires for the approval of a dwelling "customarily provided in conjunction with farm use" on non high-value farmland that the owner demonstrate, in part, that the owner's farm operation produced at least \$80,000 in gross annual income from the sale of farm products in the last two or three of the last five years.

OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. Subsequent amendments to comply with HB 3326 (Chapter 704, Oregon Laws 2001, and effective January 1, 2002,) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

The claimants acquired the subject property on April 22, 1993, prior to the establishment of current standards for the placement of dwellings in EFU zones. No evidence has been submitted to demonstrate that a home could have been placed on the property in 1993, under the state standards then in effect, as asserted by the claimants.

The applicable statutory and administrative rule standards for the approval of a farm dwelling in effect on the date the claimants acquired the property are found in ORS 215.283(1)(f) (1991 edition) and OAR 660 division 5 (1986 edition, repealed August 7, 1993). Specifically, ORS 215.283(1)(f) provided standards for a "dwelling customarily provided in conjunction with farm use." OAR 660-05-030 further required that such a dwelling: (1) be located on a parcel large enough to satisfy the Goal 3 minimum lot size standard, i.e. "appropriate for the continuation of the existing Commercial Agricultural Enterprise within the area" as explained in OAR 660-05-0015; and (2) be situated on a parcel currently employed for farm use as explained in OAR 660-05-030(4). (See OAR 660, division 5, 1986 edition.)

---

<sup>3</sup> The claimants' property is "agricultural land" because the property is comprised predominantly of Burkemont silty clay loam (0 to 2% slopes), a Type Iw soil suitable for Commercial Agricultural production, and Wingdale silt loam (0-2% slopes), a Type IIIw soil, also suitable for Commercial Agricultural production.

## **Conclusions**

Current zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned EFU in ORS 215 and OAR 660 division 33 were enacted after Michael and Ann Trindle acquired the subject property in April 1993, and do not allow the development of a single-family residential dwelling on the subject property, as may have been allowed when the claimants acquired the property in April 1993. In 1993, the property was subject to the requirements of Baker County's EFU zone, which were adopted pursuant to provisions of Goal 3, ORS 215, and OAR 660 division 5 then in effect. It is not clear whether the claimants could have constructed a dwelling on the subject property under the standards in effect when they acquired it on April 22, 1993.

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 claimants have identified. There may be other laws that currently apply to the claimants' use of the property, and that may continue to apply to the claimants' 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 claimants seek 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, 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."

### **Findings of Fact**

The claim includes an informal estimate of \$78,000 as the reduction in fair market value due to current land use regulations. The claim does not include an appraisal or other documentation to support this estimate.

### **Conclusions**

As explained in section V.(1) of this report, the current owners are Michael and Ann Trindle who acquired the property on April 22, 1993. Under ORS 197.352, Mr. and Ms. Trindle are 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 and conclusions in section V.(2) of this report, laws adopted since the claimants acquired the property restrict the placement of a dwelling on the subject property. The claimants estimate the reduction in value due to the restrictions to be \$78,000.

Without an appraisal or other documentation, and without verification that the requested use would have been permitted when the claimants acquired the property in 1993, it is not possible to substantiate the specific dollar amount the claimants demand 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 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.

#### **Findings of Fact**

The claim is based on land use regulations that restrict the use of the property relative to what would have been allowed in April 1993, when Michael and Ann Trindle acquired the property. These provisions include Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660 division 33 which Baker County has implemented through its EFU zone. These laws are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimants acquired the property in April 1993. Laws enacted or adopted before April 22, 1993, are exempt under ORS 197.352(3)(E) which exempts land use regulations in effect before the claimants acquired the property.

#### **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 ORS 197.352. It does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimants' use of the property, and these laws are not exempt under ORS 197.352(3)(E), to the extent they were enacted or adopted after the claimants acquired the subject property in April, 1993. Provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and applicable provisions of OAR 660 division 5 in effect when the claimants acquired the property in April 1993 are exempt under ORS 197.352(3)(E) asure and will continue to apply to the property.

Other laws in effect when the claimants acquired the property are also exempt under ORS 197.352(3)(E), and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' 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 claimants seek 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 ORS 197.352(3)(A) to (D).

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 claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater

the possibility that there may be additional laws that will later be determined to continue to apply to their use of the property.

## **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 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 claimants' ability to establish a dwelling on the subject property. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$78,000. 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, and without verification that the requested use would have been permitted in April 1993, 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, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Michael and Ann Trindle to use the subject property for a use permitted at the time they acquired the property on April 22, 1993.

### **Conclusion**

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Michael and Ann Trindles' development of a single-family residential dwelling on the 58.95-acre property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215, and OAR 660 division 33 enacted after April 22, 1993. These land use regulations will not apply to Mr. and Ms. Trindle's use of the property only to the extent necessary to allow them to use the property for the use described in this report, to the extent that use was permitted at the time they acquired the property on April 22, 1993.
2. The action by the State of Oregon provides the state's authorization to the claimants to use their property for the use described in this report, subject to the standards in effect on April 22,

1993. On that date, the property was subject to applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and OAR 660 division 5 then in effect.

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 claimants first obtain 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 claimants 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 ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under ORS 197.352, from a city and/or county and/or metropolitan service district that enforce land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352, from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

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

The department issued its draft staff report on this claim on October 11, 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.