



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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August 22, 2007

To: Interested Persons

From: Lane Shetterly, Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130909*

*Claimant: Trimble Land Co.*

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Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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. M130909  
(BALLOT MEASURE 37) OF )  
Trimble Land Co., CLAIMANT )

Claimant: Trimble Land Co. (the Claimant)

Property: Township 11S, Range 38E, Section 26: tax lot 1800  
Township 11S, Range 39E, Section 26: tax lot 300  
Township 12S, Range 38E, Section 17: tax lot 2400  
Baker 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 Manager for the Measure 37 Services Division 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 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

  
\_\_\_\_\_  
Michael Morrissey, Manager  
DLCD, Measure 37 Services Division  
Dated this 22<sup>nd</sup> day of August, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
\_\_\_\_\_  
Janice Dean, SSD Administrator  
DAS, State Services Division  
Dated this 22<sup>nd</sup> day of August, 2007.

**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, 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)

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**  
**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**Final Staff Report and Recommendation**

August 22, 2007

**STATE CLAIM NUMBER:** M130909

**NAME OF CLAIMANT:** Trimble Land Co.

**MAILING ADDRESS:** 23462 Highway 245  
Hereford, Oregon 97837

**PROPERTY IDENTIFICATION:** Township 11S, Range 38E  
Section 26: tax lot 1800

Township 11S, Range 39E  
Section 26: tax lot 300

Township 12S, Range 38E  
Section 17: tax lot 2400

Baker County

**OTHER CONTACT INFORMATION:** Allen Duby  
c/o Trimble Land Co.

**DATE RECEIVED BY DAS:** November 20, 2006

**DEADLINE FOR FINAL ACTION:<sup>1</sup>** May 13, 2008

**I. SUMMARY OF CLAIM**

The claimant, Trimble Land Co., seeks compensation in the amount of \$614,000 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 divide tax lot 1800 into two parcels and to develop a dwelling on each resulting parcel; and to develop a dwelling on each of tax lots 300 and 2400.<sup>2</sup> The subject property is located southwest of the

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<sup>1</sup> ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

<sup>2</sup> The subject property includes three tax lots. Tax lot 300 consists of 5 acres; tax lot 1800 consists of 118 acres; and tax lot 2400 consists of 40 acres.

intersection of Hereford Highway 245 and Highway 7,<sup>3</sup> near Hereford, 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 not valid because the claimant's desired use of the subject property was prohibited under the laws in effect when the claimant acquired the property in 1994. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On May 31, 2007, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, two written comments were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters 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 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.

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<sup>3</sup> Landlocked tax lot 300 is located northwest of Rancheria Creek Road; tax lot 1800 is located along Water Gulch Road; and landlocked tax lot 2400 is located northwest of the intersection of Hereford Highway 245 and Water Gulch Road.

## **Findings of Fact**

This claim was submitted to DAS on November 20, 2006, for processing under OAR 125, division 145. The claim identifies Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands); ORS 215; and OAR 660 divisions 5, 6, and 33, 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, Trimble Land Co.,<sup>4</sup> acquired the subject property on March 17, 1994, as reflected by a bargain and sale deed included with the claim. The Baker County Assessor’s Office confirms the claimant’s current ownership of the subject property.

## **Conclusions**

The claimant, Trimble Land Co., is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of March 17, 1994.<sup>5</sup>

### **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.

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<sup>4</sup> Trimble Land Company, an Oregon corporation, is a domestic business corporation registered with the Oregon Secretary of State.

<sup>5</sup> The claimant asserts it acquired the property from family members who acquired tax lot 1800 in 1884, tax lot 300 in 1971 and tax lot 2400 in 1972, but has not submitted any documentation to evidence such acquisitions. Furthermore, under ORS 197.352(11)(A), legal entities can be “family members” of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, individuals who transferred property to Trimble Land Co. are not considered family members under the definition of family member in ORS 197.352(11)(A).

## Findings of Fact

The claim indicates that the claimant desires to divide tax lot 1800 into two parcels and to develop a dwelling on each resulting parcel; and to develop a dwelling on each of tax lots 300 and 2400, and that current land use regulations prevent the desired use.<sup>6</sup>

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) forest zoning and restrict uses on EFU- and forest-zoned lands.

Tax lot 2400 is zoned EFU by Baker County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because tax lot 2400 is "agricultural land" as defined by Goal 3.<sup>7</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.284 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, establish standards for development of dwellings on existing or proposed parcels on EFU-zoned land.

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 660-033-0130(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.<sup>8</sup>

Tax lots 300 and 1800 are zoned Timber Grazing Use (T/G) by Baker County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because those tax lots are "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use. These tax lots are also subject to a Big Game Habitat Overlay.

Current land use regulations, including ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, generally prohibit the division of forest-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 generally establishes an 80-acre minimum size for the creation of new lots or parcels on forest-zoned land and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.705 to 215.755 establish standards for the creation of new parcels and dwellings allowed in forest zones.

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<sup>6</sup> The claimant summarily lists numerous state land use laws as applicable to this claim, but does not establish how the laws either apply to the claimant's desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimant's property or do not restrict the use of the claimant's property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimant's desired use of the subject property, based on the claimant's description of its desired use.

<sup>7</sup> Tax lot 2400 is "agricultural land" because it contains Natural Resources Conservation Service Class I-VI soils.

<sup>8</sup> The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards for EFU-zoned land.

OAR 660, division 6, became effective on September 1, 1982, to implement Goal 4 and establish standards for divisions and development of land zoned for forest use, and was amended on March 1, 1994, to implement ORS 215.705 to 215.755 and 215.780. OAR 660-006-0025 interprets the goal and statutory standard for uses allowed in forest zones. OAR 660-006-0026 interprets land division requirements in forest zones, and 660-006-0027 and 660-006-0029 interpret the standards for dwellings in forest zones.

Tax lots 300 and 1800 are also subject to the Baker County's Big Game Habitat Overlay zone, which was adopted in 1993 and acknowledged to implement Goal 5. Under Goal 5, as adopted and effective on January 25, 1975, local governments were required to inventory land and adopt programs to protect natural resources and to conserve scenic, historic and open space resources. Prior to the adoption of local government programs, the requirements of Goal 5 were directly applicable to individual properties through the land use application process. Specifically, Goal 5 required applicants to establish how the natural resources, scenic and historic areas and open space resources on individual properties would be protected through the proposed development. Under OAR 660, division 16, requirements and application procedures for complying with Goal 5 became effective on June 29, 1981. OAR 660, division 23, replaced division 16, and established additional procedures and requirements for complying with Goal 5, and became effective on September 1, 1996.

At the time the claimant acquired the property on March 17, 1994, the property was subject to the current laws in effect, as described above.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by Goals 3 and 4, and provisions applicable to land zoned EFU and forest in ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted before Trimble Land Co. acquired the subject property on March 17, 1994. These land use regulations do not allow the claimant's desired use of the subject property. Laws enacted or adopted since the claimant acquired the subject property in 1994 do not restrict the claimant's desired use of the property relative to when the claimant acquired it in 1994.

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

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (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 estimate of \$614,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's assessment of the subject property's value.

## **Conclusions**

As explained in Section V.(1) of this report, Trimble Land Co. is the claimant. It acquired the subject property on March 17, 1994. No state laws enacted or adopted since the claimant acquired the subject property restrict the use of the property relative to the uses allowed in 1994. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Conservation and Development Commission (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 state land use regulations that restrict the use of the subject property, including the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Baker County has implemented through its current EFU and T/G zones. As set forth in Section V.(2) of this report, all of the state land use regulations that restrict the claimant's desired use of the subject property were in effect when the claimant acquired the property in 1994.

### **Conclusions**

All of the state land use regulations that restrict the claimant's desired use of the subject property were in effect when the claimant acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant acquired the subject 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 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 present 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 findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict the claimant's desired use of the subject property relative to what was permitted when the claimant acquired it in 1994 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

## **Conclusions**

Based on the record and the foregoing findings and conclusions, the claimant has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because no state land use regulations restrict the claimant's desired use of the property relative to uses permitted when it acquired the property, with the effect of reducing the property's fair market value. 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 July 20, 2007. 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.