

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

June 28, 2005

**STATE CLAIM NUMBER:** M119147

**NAME OF CLAIMANTS:** E.J. and Gertrude Leason

**MAILING ADDRESS:** 69401 Goodrich Road  
Sisters, OR 97759

**IDENTIFICATION OF PROPERTY:** Township 14S, Range 11E, Section 31  
Tax Lots 4800, 5300, 5400, and 5500

Township 14S, Range 11E, Section 32  
Tax Lot 600

Deschutes County

**OTHER CONTACT INFO:** Edward P. Fitch (Attorney)  
Bryant, Edwards & Fitch  
888 West Evergreen Avenue  
Redmond, OR 97756

**OTHER INTERESTS IN PROPERTY:** Pine Ridge Ranch Company (owner)  
69401 Goodrich Road  
Sisters, OR 97759

Victoria M. Leason (shareholder)  
Catherine Leason-Behan (shareholder)

**DATE RECEIVED BY DAS:** January 3, 2005

**180-DAY DEADLINE:** July 2, 2005

**I. CLAIM**

E.J. and Gertrude Leason, the claimants, seek compensation in the amount of \$3.5 to \$5.5 million 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 divide and develop the property as a planned unit community, including approximately 400 homes with a golf course and other services and amenities. (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 have enforced laws that restrict the claimants use of private real property. Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim. (See the complete recommendation in Section VI. of this report.)

## **III. COMPLETENESS**

### **Comments Received**

On February 18, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS), provided written notice to property owners surrounding the property subject to this claim. 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**

Edward P. Fitch, attorney for the claimants, filed a claim on behalf of E.J. and Gertrude Leason with DAS on February 1, 2005, for processing under OAR 125, Division 145. The claim generally identifies Exclusive Farm Use (EFU) zoning as restricting the use of the property. 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.)

## **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**

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**

E.J. Leason and Gertrude Leason acquired the subject property on October 26, 1971. (See Real Estate Contract included in the department’s claim file.)

On April 25, 1995, the Leasons transferred fee title to the property by Bargain and Sale Deed to a privately held corporation, Pine Ridge Ranch Company. The deed transferring the property to the corporation does not document any reservation of any ownership interest by the Leasons. The corporation remains an active corporation and is the current owner of the subject property.

Although the corporation owns the property, the Leasons have continued to live on the property (see May 24, 2005 letter from Edward Fitch to Larry Shaw, Deschutes County, in the department’s claim file). In supplemental materials filed subsequent to the claim, the claimants’ attorney asserts that the claimants’ possession of the property constitutes an ownership interest in it for purposes of Measure 37. No documentation that the claimants hold or have reserved any right to possession or other interest in the property (as opposed to the corporation), was provided.

## **Conclusions**

The claimants, E.J. Leason and Gertrude Leason (“family members”), have not owned the property since 1995. The current owner, Pine Ridge Ranch Company, a privately held corporation, acquired the property from Mr. and Mrs. Leason on April 25, 1995.

### **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 claim materials cite “All EFU regulations” as regulations restricting use of the subject property. The claim does not include an explanation of the specific land use restrictions imposed by EFU zoning.<sup>1</sup>

To the extent that the claimants own a legal right to possess the property, and such a right constitutes an ownership interest in the property under Measure 37, the claimants have not identified any land use regulations that restrict the exercise of that right. In fact, none of the regulations that are alleged to restrict the claimants’ use of the property, restrict their possession of it.

## **Conclusions**

None of the laws cited in the claim restrict who may possess the property. As a result, the claimants have not identified a land use regulation that restricts their interest, if any, in the property.

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

In order to establish a valid claim, Section 1 of Ballot Measure 37, requires that any laws 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 claimants have not demonstrated that any state land use regulation restricts their use of private real property.

## **Conclusions**

The claimants have not demonstrated that laws restrict their use of private real property and thus, have not demonstrated that those laws reduce the fair market value of the subject property, or specifically, their interest in the property.

### **4. Exemptions under section 3 of Measure 37**

Ballot Measure 37 (2004) does not apply to certain land use regulations. The type of land use regulations not subject to a claim for compensation under Ballot Measure 37, are set forth in section 3 of the measure.

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<sup>1</sup> The subject parcels are zoned EFUSC (Exclusive Farm Use – Sisters Cloverdale District) by Deschutes County. Statewide Planning Goal 3 (Agricultural Lands) and OAR 660, Division 33, and statutory requirements in ORS 215.283-284 and ORS 215.780, describe allowed uses and standards for dwellings and land divisions on property zoned EFU.

Not applicable. (See section V.2, above.)

## **VI. FORM OF RELIEF**

Based on the record, the claimants are not entitled to relief under Ballot Measure 37. Department staff recommend that this claim be denied because neither the Commission nor the department have enforced laws that restrict the claimants' interest (if any) in the private real property that is the subject of this claim. Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim.

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

The department issued its draft staff report on this claim on June 10, 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.