

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

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

September 1, 2005

**STATE CLAIM NUMBER:** M120132

**NAME OF CLAIMANT:** George Prettyman, Sr.

**MAILING ADDRESS:** 3425 Northwest Goodin Creek Road  
Gaston, Oregon 97119

**PROPERTY IDENTIFICATION:** Township 2S, Range 4W, Section 11,  
Tax Lot R2411-1301  
Yamhill County

**OTHER CONTACT INFORMATION:** Kris T. Prettyman  
3425 NW Goodin Creek Road  
Gaston, Oregon 97119

George, Jr. & Melissa L. Prettyman  
3385 NW Goodin Creek Road  
Gaston, Oregon 97119

**OTHER INTEREST IN PROPERTY:** Kris T. Prettyman (wife)  
George Prettyman, Jr. (son)  
Melissa L. Prettyman (daughter-in-law)

**DATE RECEIVED BY DAS:** March 14, 2005

**180-DAY DEADLINE:** September 15, 2005

**I. SUMMARY OF CLAIM**

The claimant, George Prettyman, Sr., seeks compensation in the amount of \$100,000 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 claimant desires compensation or the right to subdivide the approximately 40-acre property into two, 20-acre lots, for two existing dwellings. The approximately 40-acre property is located at 3425 NW Goodin Creek Rd, near Gaston, in Yamhill 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 Mr. Prettyman's division of the property into two lots for two existing dwellings: Statewide Planning Goal 3 (Agricultural Lands) ORS 215.263, 215.284 and 215.780 and applicable provisions of OAR 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow Mr. Prettyman a use of the subject property permitted at the time he acquired the property on September 4, 1992. (See the complete recommendation in Section VI. of this report.)

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

### **Comments Received**

On March 24, 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 March 14, 2005, for processing under OAR 125, division 145. The claim directly identifies Yamhill County's EF-40 zone and indirectly Statewide Planning Goal 3, ORS 215, and OAR 660, division 33, as laws that restrict 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.)

## **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**

The claimant, George Prettyman, Sr., acquired the subject property on September 4, 1992, as reflected by a real estate contract included with the claim.<sup>1</sup>

A copy of a current year tax assessment from Yamhill County indicates that the Prettyman Family Trust, with George W. Prettyman, Sr. and Kris T. Prettyman listed as Trustees, is the current owner of the subject property. No additional information was included regarding the make-up of the trust or when it was formed. However, transfer to a revocable trust does result in a change in ownership for purposes of this Measure 37 claim review.

## **Conclusions**

Based on information included in the state claim file and in the Yamhill County claim decision, the claimant, George Prettyman, Sr., is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of September 4, 1992.

### **2. The Laws that are the Basis for this 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.

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<sup>1</sup>The claimant’s wife, Kris Prettyman, and their son and his wife, George Prettyman, Jr., and Melissa Prettyman also are listed on the state claim form as owners who have an interest in the subject property. However, based on information currently in the claim, it does not appear that owners of the subject property other than George Prettyman, Sr. are claimants for purposes of this Measure 37 claim.

## **Findings of Fact**

The claim states that the current EF-40 zoning “stops us from dividing property into two 20-acre lots for financial and two houses on property.” From information submitted with the claim, it appears that the property is currently developed with two dwellings.

The claim is based, in part, on Yamhill County’s current Exclusive Farm Use (EFU Zone – Chapter 403) and the applicable provisions of state law that require such zoning. The claimant’s property is zoned EFU as required by Statewide Planning Goal 3 in accord with OAR 660, division 33 and ORS chapter 215 because the claimant’s property is “Agricultural Land” as defined by Goal 3.<sup>2</sup> Goal 3 became effective on January 25, 1975, and required that Agricultural Lands as defined by the Goal be zoned EFU pursuant to ORS chapter 215.

Current state land use regulations, particularly ORS 215.263, 215.284, 215.780 and OAR 660 division 33, as applied by Goal 3, do not allow the subject property to be divided into parcels less than 40-acres (as justified in Yamhill County’s acknowledged EF-40 zone under ORS 215.780(2)(a)) and establish standards for allowing the existing or any proposed parcel(s) to have farm or non-farm dwellings on them.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (Chapter 792, Oregon Laws 1993). Yamhill County justified a 40-acre minimum lot size for the EF-40 zone (ORS 215.780(2)(a)) that was subsequently acknowledged by the Commission. ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

Yamhill County’s EFU zone was acknowledged by the Commission on June 12, 1980. The acknowledged Agriculture/Forestry AF-20 zone allowed 20-acre zoning for farm dwellings and parcel size until the passage of HB 3661 in 1993. On September 4, 1992, when the claimant acquired the subject property, division of the property into smaller 20-acre lots and placement of residential farm dwellings would have been governed by the Yamhill County AF-20 zone and statutory provisions then in effect, including the then applicable portions of ORS 215 and 92 (1989 Edition).

## **Conclusions**

Lot size and dwelling standards established by amendments to Statewide Planning Goal 3, amendments to ORS chapter 215, and OAR 660, division 33, adopted since the claimant acquired the property in 1992, do not allow the division of the property into parcels less than 40-acres in size as may have been possible in 1992. The County’s EFU zone is based on the standards required by Goal 3, ORS Chapter 215 and OAR 660, division 33. Land use laws adopted since 1992 restrict the use of the property from what could have been done when the property was acquired by the claimant in 1992. However, it is unclear whether the claimant’s

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<sup>2</sup> The claimant’s property is “Agricultural Land” because it contains NRCS (Natural Resources Conservation Service) Soils, Willakenzie silty clay loam, moderately shallow, 7 – 20% slopes, Class IVe-4; Willakenzie silty clay loam, 20 - 30% slopes, Class IVe-2; and Willakenzie silty clay loam, 12 – 20% slopes, Class IIIe-2.

requested level of development complies with the standards in effect when he acquired the property on September 4, 1992.

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 claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's 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 claimant seeks 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, Section 1 of Ballot Measure 37 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 estimate of \$100,000 as the reduction in the property's fair market value, because of current regulations that prevent division of the property into two lots with an existing dwelling on each lot. This estimate is based on an assessment of sale of properties of similar size with houses in the area. No appraisal has been submitted with the claim.

A recent Yamhill County decision on the Measure 37 claim involving the same property includes a sworn affidavit from the county assessor that the property value arrived, at for purposes of assessing loss of fair market value, is reasonable.

#### **Conclusions**

As explained in section V. (1) of this report, the current owner is George Prettyman, Sr. who acquired the property on September 4, 1992. Under Ballot Measure 37, George Prettyman, Sr. is 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, land use laws adopted since 1992 restrict the use of the subject property.

The claimant estimates the reduction in fair market value due to land use restrictions to be \$100,000. Without a certified appraisal based on the value of the property divided into two 20-acre lots with a residential dwelling on each or other documentation, 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 land use regulations. 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 Yamhill County's EFU (EF-40) zone and the related provisions of state law that have restricted use of the property and reduced its fair market value. These are Statewide Planning Goal 3 (Agricultural Lands), and applicable provisions of ORS 215 and OAR 660, division 33. All of the specific state land use regulations on which the claim is based were enacted after the claimant acquired the property in 1992, and do restrict the use of the property in a manner that likely reduces its fair market value. With the exception of applicable provisions of Goal 3, ORS 215, and OAR chapter 660 in effect when the claimant acquired the property, none of the laws identified in the claim are exempt under Section 3(E) of Ballot Measure 37, which exempts laws in effect when the claimant 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 Measure 37. It does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimant's use of the property, and for the most part these laws are not exempt under Section 3(E) of Measure 37. Provisions of Goal 3, ORS 215 and OAR chapter 660 in effect when the claimant acquired the property in 1992 are exempt under section 3 (E) of the measure and will continue to apply to the property.

There may be other laws that continue to apply to the claimant's 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 claimant seeks 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 subsections 3(A) to 3(D) of Measure 37.

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 claimant has identified. Similarly, this report only addresses the exemptions provided for under section (3) of Measure 37 that are clearly applicable given the information provided to the department in the claim. The claimant should be aware that the less information they have provided to the department in their 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

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 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 division of the subject property into 20-acre lots, for two existing dwellings. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property by \$100,000. 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, 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 certain land use regulations to allow Mr. George Prettyman, Sr. to use the subject property for a use permitted at the time he acquired the property on September 4, 1992.

### **Conclusion**

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. Prettyman's division of the 40-acre property into two 20-acre lots with an existing residential dwelling on each: applicable provisions of Statewide Planning Goals 3, ORS 215.263, 215.284, and 215.780 and applicable provisions of OAR 660, division 33 enacted after September 4, 1992. These laws will not apply to the claimant only to the extent necessary to allow Mr. Prettyman a use of the property permitted at the time he acquired it on September 4, 1992.
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 4, 1992. On that date, the property was subject to applicable provisions of Statewide Planning Goal 3, ORS 215, and ORS chapter 660 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 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 August 3, 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.