

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES, THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF THE STATE OF OREGON

IN THE MATTER OF THE CLAIM ) FINAL ORDER  
FOR COMPENSATION UNDER ) CLAIM NO. M 120515  
BALLOT MEASURE 37 (CHAPTER 1, )  
OREGON LAWS 2005) OF )  
William J. Wright, CLAIMANT )  
Doreen Mary Wright, CLAIMANT )

Claimant: William J. Wright and Doreen Mary Wright (the Claimants)

Property: Tax Lot 200, T.26S, R.12W, Section 2, W.M., Coos County

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 Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). 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:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to William J. Wright's and Doreen Mary Wright's subdivision of the property into 2 parcels for residential development: Statewide Planning Goal 4 and applicable provisions of ORS 215 and OAR 660, division 6, enacted after the claimants acquired their interest in the property. These laws will not apply to William J. Wright only to the extent necessary to allow him a use of the property permitted at the time he acquired it on October 18, 1976. These laws will not apply to Doreen Mary Wright only to the extent necessary to allow her a use of the property permitted at the time she acquired it on June 22, 1995.
2. The action by the State of Oregon provides the state's authorization to William J. Wright to use his property subject to the standards enacted before October 18, 1976, including Goal 4 and ORS 215. The action by the State of Oregon provides the state's authorization to Doreen M. Wright to use her property subject to the standards in effect on June 22, 1995, including applicable provisions of Goal 4, OAR 660, division 6 and ORS 215.700 through ORS 215.780.

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 215.402 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 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 her 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.

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 Measure 37, 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 Measure 37, OAR 125, division 145 and ORS 293.

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

\_\_\_\_\_  
George Naughton, Deputy Director  
DLCD

Dated this \_\_\_\_ day of \_\_\_\_\_, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:

\_\_\_\_\_  
Dugan Petty, Deputy Administrator  
DAS, State Services Division

Dated this \_\_\_\_ day of \_\_\_\_\_, 2005.

## **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 Oregon Laws 2005, chapter 1 (Measure 37 (2004)): 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 (CHAPTER 1, OREGON LAWS 2005)  
CLAIM FOR COMPENSATION**

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

September 28, 2005

**STATE CLAIM NUMBER:** M120515

**NAMES OF CLAIMANTS:** William J. Wright and  
Doreen Mary Wright

**MAILING ADDRESS:** Post Office Box 1442  
Coos Bay, OR 97420

**PROPERTY IDENTIFICATION:** Township 26S, Range 12W, Section 2,  
Tax Lot 200  
Coos County

**OTHER INTEREST IN PROPERTY:** Wright Loving Trust

**DATE RECEIVED BY DAS:** April 8, 2005

**180-DAY DEADLINE:** October 5, 2005

**I. CLAIM**

The claimants, William J. and Doreen Mary Wright, seek compensation in the amount of \$500,000, 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 divide the 54.5-acre property into two parcels and to develop a residential dwelling on each parcel. The subject property is located in Coos 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 the claimants' division of the property into two parcels and development of those parcels for residential use: Statewide Planning Goal 4 and applicable provisions of ORS 215 and OAR 660, division 6, enacted after the claimants acquired their interest in the property. These laws will not apply to William J. Wright only to the extent necessary to allow him a use of the property permitted at the time he acquired it on October 18, 1976. These laws will not apply to

Doreen Mary Wright only to the extent necessary to allow her a use of the property permitted at the time she acquired it on June 22, 1995. The department acknowledges that the relief, to which Ms. Wright is entitled under Measure 37, will not allow her to use the property in a manner set forth in the claim.

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

#### **Comments Received**

On April 26, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services provided notice to owners of surrounding properties. According to DAS, two written comments, evidence or information were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief (compensation or waiver) under Measure 37. Comments concerning the effects a use of the property may have on surrounding areas generally are 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 claim to pay compensation for instead of waiving a state law. (See comment letters in the department's claim file.)

### **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 April 8, 2005, for processing under OAR 125, division 145. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

## **Conclusions**

The claim was 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 to “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**

William J. Wright acquired the subject property on October 18, 1976, as reflected by a copy of a Warranty Deed included with the claim. The property was placed in the Wright Loving Trust, a revocable living trust established by Mr. Wright, with William J. Wright and Doreen Mary Wright as trustees, on June 22, 1995. The transfer of the property to a revocable living trust does not constitute a change of William Wright’s ownership for the purpose of this Measure 37 claim.

## **Conclusions**

Claimant, William Wright is an “owner” of the subject property as defined by Section 11(C) of Ballot Measure 37, as of October 18, 1976. The claimant, Doreen Wright is an “owner” of the subject property as of June 22, 1995, as defined by Section 11(C) of Ballot Measure 37. Mr. Wright is a “family member” of Ms. Wright under Section 11(A) of Ballot Measure 37.

### **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 the 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 subject property is zoned (F) Forest by the Coos County Zoning and Land Development Ordinance, which precludes the claimants from dividing and developing their 54.5-acre property as requested.<sup>1</sup> The County’s (F) zone is based on Statewide Planning Goal 4, (Forest Lands) and

---

<sup>1</sup> The applicable county zoning ordinance for the division of the property is Section 4.8.800 Land Divisions in a Forest Zone. Other parts of the (F) zoning that would apply to the development of the property are Sections 4.8.525 Forest Dwellings, 4.8.600 Mandatory Siting Standards for Dwellings and Structures in a Forest Zone, and 4.8.750 Development Standards.

laws applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and OAR 660, division 6, which restrict the right of an owner to divide and develop the property.

ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993, (Chapter 792, Or Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994 to reflect those statutes. (See rule history under OAR 660-015-0000(4)).

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 0027 establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone and also establish the standards for dwellings in forest zones under Statewide Planning Goal 4. The Coos County (F) Forest Zone zoning standards are based on the standards contained in Statewide Planning Goal 4 and OAR 660, division 6.

When Mr. Wright acquired the property in 1976, the County's 1A zone applied. However, the County's zoning, including the 1A zone, had not been acknowledged by the Commission under the standards for approval of local comprehensive plans and land use regulations in ORS 197.250 and 197.251. Since the Commission had not acknowledged Coos County's plan when Mr. Wright acquired the property in 1976, Statewide Planning Goal 4 applied directly to the property.

Goal 4 became effective on January 25, 1975, and required forest land, as defined by the Goal, to be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)).<sup>2</sup> In general, Goal 4 required local land use regulations to "conserve forestlands for forest uses." Specifically, Goal 4 only allowed land divisions that would protect commercial forestlands for commercial forest uses. Dwellings in forest zones were required to be "necessary and accessory" to a forest use.<sup>3</sup>

---

<sup>2</sup> Statewide Planning Goal 4 became effective on January 25, 1975, and was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of the County's Goal 3 program (*Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), and *Alexanderson v. Polk County*, 289 Or 427, rev. denied, 290 Or 137 (1980) and *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985). After the local plan and land use regulations are acknowledged by the Commission, the Statewide Planning Goals and implementing rules no longer directly apply to such local land use decisions, *Byrd v. Stringer*, 295 Or 311, (1983). However, insofar as the state and local provisions are materially the same in substance, the applicable statutes and rules must be interpreted and applied by the County in making its decision. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992.)

<sup>3</sup> Goal 4 prohibited uses that were not enumerated by Goal 4 as permissible uses for Forest Lands as well as those that were not necessary and accessory to an enumerated forest use, *Lamb v. Lane County*, 7 Or LUBA 137 (1983). Dwellings in forestlands were required to be "necessary and accessory" to show that such dwellings comply with the Goal 4 requirement that local land use regulations must "conserve forest lands for forest uses *1000 Friends v. LCDC/Curry County*, 301 Or 447 (1986). A dwelling that may "enhance" forest uses is not "necessary and accessory" to a forest use to the extent required by Goal 4, *1000 Friends of Oregon v. LCDC/Lane County*, 305 Or 384 (1988).

The opportunity to divide the property and to place residential dwelling on the property when the claimant acquired it in 1976, was limited to land divisions that were consistent with the provisions of Statewide Planning Goal 4 that were in effect in 1976.<sup>4</sup>

### **Conclusions**

Current land use regulations, particularly lot size and dwelling standards enacted after Mr. Wright acquired the property, restrict the claimants from dividing or developing the property as requested in the claim. However, while land use laws adopted since Mr. Wright acquired the property in 1976 restrict the claimants from dividing or developing the property relative to the uses allowed when Mr. Wright acquired the property; it is unclear whether the claimants' requested level of development complies with the standards in effect when Mr. Wright acquired the property on October 18, 1976.

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, 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**

According to the claimants, the value of the subject property has been reduced \$500,000, as a result of the current regulations. The claimants included copies of real estate sales information for comparable properties to substantiate the base value for the proposed parcels.

### **Conclusions**

As explained in Section V.(1) of this report, the current owners of the subject property are William J. and Doreen Mary Wright. William J. Wright acquired the property in 1976. Thus, under Ballot Measure 37, the Wrights 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 enacted since 1976, restrict Mr. and

---

<sup>4</sup> For guidance, the Goal 4 provisions were interpreted under OAR 660, division 6, effective September 1, 1982, and in *Lamb v. Lane County*, 7 Or LUBA 137 (1983), *1000 Friends v. LCDC/Curry County*, 301 Or 447 (1986), and *1000 Friends of Oregon v. LCDC/Lane County*, 305 Or 384 (1988).

Ms. Wrights' ability to divide the property. The claim states that the reduction in value is \$500,000.

Without an appraisal other documentation, 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 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 Statewide Planning Goal 4 (Forest Lands) and laws applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and OAR 660, division 6, which restrict the claimants' right to divide and develop the subject property. With the exception of provisions of Goal 4 and ORS 215 in effect when Mr. Wright acquired the property in 1980, these laws are not exempt under Section 3(E) of Ballot Measure 37, which exempts laws in effect when the claimant or claimants' family acquired the property.

While not directly raised by the claimants, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings and for surrounding forest lands. Section 3(B) of Measure 37 specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...." The department finds that siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, division 6) are exempt under subsection (3) of Measure 37.

#### **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 claimants' use of the property, and for the most part these laws are not exempt under Section 3(E) of Measure 37. Provisions of Goal 4 and ORS 215 in effect when Mr. Wright acquired the property in 1976, are exempt under Section 3(E) of the Measure and will continue to apply to the property. In addition, the restrictions in ORS 215.730 and provisions of OAR 660, division 6, that establishes fire protection standards for dwellings in forest zones are exempt under section 3(B) of the measure and will continue to apply to the subject property.

Other laws in effect when the claimants acquired the property are also exempt under Section 3(E) of Measure 37, 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 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 claimants have 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 claimants 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 department 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 to allow the owner to carry out a use of the property permitted at the time the 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 conclusion set forth in this report, laws enforced by the Commission or the department, restrict the division of the subject property into two parcels for residential development. The claim asserts that laws enforced by the Commission or department reduce the fair market value of the subject property by \$500,000. Because the claim does not provide an appraisal or other specific documentation to establish how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, the department acknowledges that the laws on which the claim is based may 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 one or more land use regulations to the extent necessary to allow the William J. Wright to use the subject property for a use permitted at the time he acquired it on October 18, 1976, and to allow Doreen M. Wright to use the subject property for a use permitted at the time she acquired her interest in it on June 22, 1995. When Ms. Wright acquired the property, the laws that currently apply to the subject property, were in effect. (See Section V.(2) of this report for a description of the laws that apply.)

## 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 the claimants' division of the property into two parcels and development of the parcels for residential use: those provisions of Statewide Planning Goal 4, OAR 660, division 6, and ORS 215.700 through 215.780, enacted after the claimants acquired their interest in the property. These laws will not apply to Mr. Wright's use of the property, only to the extent necessary to allow him a use permitted at the time he acquired the property on October 18, 1976. These laws will not apply to Ms. Wright's use of the property, only to the extent necessary to allow her a use permitted at the time she acquired the property on June 22, 1995. The department acknowledges that the relief to which Ms. Wright is entitled under Measure 37 will not allow her to use the property in a manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to William J. Wright to use his property subject to the standards enacted before October 18, 1976, including Goal 4 and ORS 215. The action by the State of Oregon provides the state's authorization to Doreen M. Wright to use her property subject to the standards in effect on June 22, 1995, including applicable provisions of Goal 4, OAR 660, division 6 and ORS 215.700 through ORS 215.780.
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 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 claimants to use the property, it may be necessary for them 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 claimants 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 claimants.

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

The department issued its draft staff report on this claim on September 14, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.