

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. M124988  
(BALLOT MEASURE 37) OF )  
Ethel Rose, CLAIMANT )

Claimant:      Ethel Rose (the Claimant)

Property:      Township 26S, Range 4W, Section 14, Tax lot 200  
                 Douglas County (the property)

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

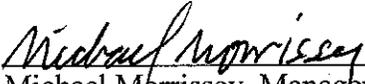
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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

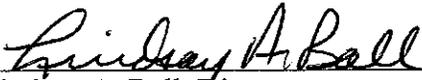
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the 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 chapter 125, division 145, and by the Director 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 10<sup>th</sup> day of October, 2006.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Lindsay A. Ball, Director  
DAS, State Services Division  
Dated this 10<sup>th</sup> day of October, 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 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**

October 10, 2006

**STATE CLAIM NUMBER:** M124988

**NAME OF CLAIMANT:** Ethel Rose

**MAILING ADDRESS:** 16118 North Bank Road  
Roseburg, Oregon 97470

**PROPERTY IDENTIFICATION:** Township 26S, Range 4W, Section 14  
Tax lot 200  
Douglas County

**OTHER CONTACT INFORMATION:** James Rose  
16118 North Bank Road  
Roseburg, Oregon 97470

**DATE RECEIVED BY DAS:** April 18, 2006

**180-DAY DEADLINE:** October 15, 2006

**I. SUMMARY OF CLAIM**

The claimant, Ethel Rose, seeks compensation in the amount of \$250,000 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 use the 86.58-acre subject property for livestock grazing and hay production.<sup>1</sup> The subject property is located at 16117 North Bank Road, near Roseburg, in Douglas 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 neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict the claimant's desired use of the private real property. (See the complete recommendation in Section VI. of this report.)

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<sup>1</sup> In response to the draft staff report dated September 22, 2006, pursuant to OAR 125-145-0080, the claimant and the claimant's agent submitted a letter, dated September 25, 2006, requesting to change the intended use of the property. The department cannot accept substantive amendments to previously filed claims. If the claimant desires a different use than what was addressed in this report, she may file a claim for relief based upon that specified use.

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

#### **Comments Received**

On August 8, 2006, 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 were received in response to the 10-day notice.

### **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.

#### **Findings of Fact**

This claim was submitted to DAS on April 18, 2006, for processing under OAR 125, division 145. The claim identifies Douglas County land use regulations 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, Ethel Rose, first acquired the subject property on July 15, 1969, with her husband Raymond Rose and Gilbert and Mary Santos, as reflected by a memorandum of contract included with the claim. On January 16, 1974, Raymond and Ethel Rose and Gilbert and Mary Santos conveyed the subject property to Santos and Rose and Sons, Inc., as reflected by a warranty deed included with the claim. On August 1, 1980, Santos and Rose Oregon Ranch, a partnership consisting of Raymond and Ethel Rose and Gilbert and Mary Santos, conveyed the subject property to Raymond Rose, as reflected by a warranty deed included with the claim. Raymond Rose subsequently transferred the property to Ethel Rose on June 8, 1981, as reflected by a deed creating an estate by entirety. The Douglas County Assessor's Office confirms the claimant's current ownership of the subject property.

## **Conclusions**

The claimant, Ethel Rose, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of June 8, 1981. Raymond Rose is a "family member" of Ethel Rose as defined by ORS 197.352(11)(A) and acquired the subject property on August 1, 1980.<sup>2</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.

## **Findings of Fact**

The claim indicates that the claimant desires to use the 86.58-acre subject property for livestock grazing and hay production, and that county land use regulations prevent the desired use.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimant's property is zoned Exclusive Farm Use-Grazing (FG) by Douglas County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's 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 Goal 3 be zoned EFU pursuant to ORS 215.

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<sup>2</sup> Under the terms of ORS 197.352(11)(A), legal entities, including corporations and partnerships, can be considered "family members" of current owners under ORS 197.352(11)(A), but owners that are legal entities cannot have family members that are individuals. In this case, the claimant's ownership terminated when she and her husband conveyed the property to a corporation in 1974. The partnership could be considered a "family member" of the claimant, with family acquisition as of the date the partnership acquired the property. However, the claim does not include any documentation establishing when the partnership acquired the property. Without that documentation, and based on the documentation provided in the claim, for purposes of ORS 197.352(11)(A), the family acquired the property when Raymond Rose acquired it from the partnership in 1980.

<sup>3</sup> The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for the development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed 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 660-033-0130(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. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimant and her family acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Douglas County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when the claimant and her family acquired the property, the statewide planning goals, and Goal 3 in particular, applied directly to the claimant's property.<sup>4</sup>

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. Under the standards of Goal 3 and ORS 215, the claimant's desired use of the 86.58-acre subject property, for livestock grazing and hay production, was unconditionally allowed when she acquired the property and continues to be allowed under the current regulations in effect. No state land use regulations restrict her desired use of real property with the effect of reducing the fair market value of that real property. The department has not identified any state laws that restrict the claimant's desired use of the subject property.

## **Conclusions**

The current minimum zoning requirements, minimum lot size and dwelling standards established by the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant and her family acquired the subject property in 1980. However, none

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<sup>4</sup> The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev. den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

of these regulations restrict the claimant's desired use of the subject property for livestock grazing and hay production. The department has not identified any state laws that restrict the claimant's desired use of the subject property.

### **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."

As explained in Section V.(2) of this report, the claimant, Ethel Rose, has not established that any state laws restrict her desired use of the subject property. Accordingly, the department cannot determine that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the subject property.

### **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.

As explained in Section V.(2) of this report, the claimant, Ethel Rose, has not established that any state laws restrict the desired use of the subject property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to this claim.

## **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 claimant's desired use of the property with the effect of reducing 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 record for this claim, the claimant has not established that any state laws enforced by the Commission or the department restrict her desired use of the subject property, and have the effect of reducing the fair market value of the subject property.

### **Conclusions**

Based on the record before the department, the claimant, Ethel Rose, has not established that she 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 laws restrict her desired use of the subject property. 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 September 22, 2006. 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.