

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

IN THE MATTER OF THE CLAIM FOR ) FINAL ORDER  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M129548  
(BALLOT MEASURE 37) OF )  
Avison Lumber Co., an Oregon corporation, CLAIMANT )

Claimant: Avison Lumber Co., an Oregon corporation (the Claimant)

Property: Township 4S, Range 2E, Section 25, Tax lots 200, 290 and 700

Township 4S, Range 2E, Section 26, Tax lot 4300

Township 4S, Range 2E, Section 36, Tax lot 600

Township 4S, Range 3E, Section 30, Tax lots 200, 290, 700, 900, 1000 and 1090

Clackamas 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), and the Oregon Department of Forestry (the ODF Report), attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by the Oregon Department of Forestry or the Oregon Board of Forestry, for the reasons set forth in the ODF Report.

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 ORS 197.352, the State of Oregon will not apply the following laws to Avison Lumber Co.'s clearing of the land for residential development, extension of the existing adjacent county roads into and through the property, division of the 765-acre property in phases into 250 parcels ranging in size from 2 to 10 acres and development of a single-family dwelling and accessory structures on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These land use regulations will not apply to the claimant only to the extent

necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on the following dates:

Acquisition Date	Tax Lot
July 1, 1972	600, 700 (Section 25) and 4300
May 7, 1973	200 (Section 30) and 290 (Section 30)
July 1, 1973	1000 and 1090
August 7, 1973	200 (Section 25), 290 (Section 25), 700 (Section 30) and 900

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on the dates listed in the above table.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject 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 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

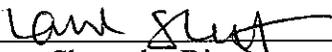
4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for it to obtain a decision under ORS 197.352 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 ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

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 125, division 145, and by the Director of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

This Order is entered by the Oregon Board and Department of Forestry as a final order of the Board under ORS 197.352, OAR 629-001-0057, and OAR Chapter 125, division 145.

FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:

  
Lane Shetterly, Director  
DLCD  
Dated this 15<sup>th</sup> day of December, 2006.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 15<sup>th</sup> day of December, 2006.

FOR THE OREGON BOARD OF  
FORESTRY AND THE OREGON  
DEPARTMENT OF FORESTRY:

  
Marvin Brown, State Forester  
ODF  
Dated this 15<sup>th</sup> day of December, 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)

**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."

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

December 15, 2006

**STATE CLAIM NUMBER:** M129548

**NAME OF CLAIMANT:** Avison Lumber Co., an Oregon corporation

**MAILING ADDRESS:** PO Box 419  
Molalla, Oregon 97038

**PROPERTY IDENTIFICATION:** Township 4S, Range 2E  
Section 25: tax lots 200, 290 and 700  
Section 26: tax lot 4300  
Section 36: tax lot 600

Township 4S, Range 3E  
Section 30: tax lots 200, 290, 700, 900  
and 1000  
Section 31: tax lot 1090  
Clackamas County

**OTHER CONTACT INFORMATION:** Donald Joe Willis  
Schwabe, Williamson & Wyatt  
1211 SW 5th Avenue, Suite 1900  
Portland, Oregon 97204

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

**180-DAY DEADLINE:** December 17, 2006

**I. SUMMARY OF CLAIM**

The claimant, Avison Lumber Co., an Oregon corporation, seeks compensation in the amount of \$20 million 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 clear the land for residential development, to extend the existing adjacent county roads into and through the property, to divide the 765-acre property in phases into 250 parcels ranging in size from 2 to 10 acres and to develop a single-family dwelling and accessory structures on each parcel. The subject property is located at the geographical coordinates listed above, in Clackamas 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 Avison Lumber Co.'s clearing of the land for residential development, extension of the existing adjacent county roads into and through the property, division of the 765-acre property in phases into 250 parcels ranging in size from 2 to 10 acres and development of a single-family dwelling and accessory structures on each parcel: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6. These laws will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the following tax lots on the following dates. (See the complete recommendation in Section VI. of this report.)

Acquisition Date	Tax Lot
July 1, 1972	600, 700 (Section 25) and 4300
May 7, 1973	200 (Section 30) and 290 (Section 30)
July 1, 1973	1000 and 1090
August 7, 1973	200 (Section 25), 290 (Section 25), 700 (Section 30) and 900

## III. COMMENTS ON THE CLAIM

### Comments Received

On October 16, 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, three 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.

### **Findings of Fact**

This claim was submitted to DAS on June 20, 2006, for processing under OAR 125, division 145. The claim identifies an extensive list of statutes and rules 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, Avison Lumber Co., acquired the tax lots listed in Section II of this report on the specified dates, as reflected by several deeds included with the claim. A March 28, 2006, title report submitted with the claim establishes the claimant’s current ownership of the subject property.

### **Conclusions**

The claimant, Avison Lumber Co., is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of the dates specified in Section II of this report.

### **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 lists many statutes in ORS 92, 197, 215, 526 and 527, along with ORS 209.250(4), but contains no description or documentation that these statutes apply to or restrict the claimant's desired use of the property.<sup>1</sup> Similarly, the claim lists many rules in OAR 629 (ODF), 125 to 145 (DAS) and 660. Again, the claim includes nothing concerning how these land use regulations apply to or restrict the claimant's desired use. As a result, this report addresses only those state land use regulations administered by the department or Commission that the department is able to determine apply to the claimant's desired use.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimant's property is zoned by Clackamas County as Timber District (TBR) as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimant's property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

The claimant acquired the subject property on dates between July 1, 1972 and August 7, 1973, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

## **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted after the claimant acquired the subject property in 1972 and 1973 and do not allow the desired division or development of the property. These laws restrict the use of the property relative to the uses allowed when the claimant's acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject 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 subject 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 which laws apply to a use of the subject 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.

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<sup>1</sup> This report addresses only state land use regulations administered by the Commission or the department. The state land use regulations listed in the claim include statutes administered by the Oregon Department of Forestry (ODF). Those statutes and rules are addressed in a separate report by ODF for this claim.

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

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) 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 \$20 million 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 not substantiated with any information but is an estimate made by the claimant. The claimant will provide an appraisal if the State decides to compensate rather than waive regulations.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimant is Avison Lumber Co. which acquired the subject property on the dates listed in Section II of this report. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired the subject property restrict the claimant’s desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$20 million.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by 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 applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Clackamas County has implemented through its current TBR zone. All of these land use regulations were enacted or adopted after the claimant acquired the subject property.

#### **Conclusions**

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on residential division and

development of the subject property were in effect when the claimant acquired the property on the dates listed in Section II of this report. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimant's use of the property. In addition, 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. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...." Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimant's use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject 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. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information it has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to its use of 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 restrict the claimant's desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$20 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a

specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of the subject property was allowed under the standards in effect when it acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Avison Lumber Co. to use the subject property for a use permitted at the time it acquired the property on the dates listed in Sections II and VI of this report.

### Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Avison Lumber Co.'s clearing of the land for residential development, extension of the existing adjacent county roads into and through the property, division of the 765-acre property in phases into 250 parcels ranging in size from 2 to 10 acres and development of a single-family dwelling and accessory structures on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These land use regulations will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on the following dates:

Acquisition Date	Tax Lot
July 1, 1972	600, 700 (Section 25) and 4300
May 7, 1973	200 (Section 30) and 290 (Section 30)
July 1, 1973	1000 and 1090
August 7, 1973	200 (Section 25), 290 (Section 25), 700 (Section 30) and 900

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on the dates listed in the above table.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject 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 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject 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 ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for it to obtain a decision under ORS 197.352 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 ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

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

The department issued its draft staff report on this claim on November 28, 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.

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF FORESTRY**

**Final Staff Report and Recommendation**

December 15, 2006

**STATE CLAIM NUMBER:** M129548

**NAMES OF CLAIMANT:** Avison Lumber Co., an Oregon corporation

**MAILING ADDRESS:** PO Box 419  
Molalla, Oregon 97038

**PROPERTY IDENTIFICATION:** Township 4S, Range 2E, Section 25  
Tax lots 200, 290, and 700  
Township 4S, Range 2E, Section 26  
Tax lot 4300  
Township 4S, Range 2E, Section 36  
Tax lot 600

Township 4S, Range 3E, Section 30  
Tax lots 200, 290, 700, 900, 1000  
Township 4S, Range 3E, Section 31  
Tax lot 1090  
Clackamas County

**OTHER CONTACT INFORMATION:** Donald Joe Willis  
Schwabe, Williamson & Wyatt  
1211 SW 5<sup>th</sup> Ave, Suite 1900  
Portland, Oregon 97204

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

**180-DAY DEADLINE:** December 17, 2006

**I. SUMMARY OF CLAIM**

See Department of Land Conservation and Development (DLCD) Final Staff Report.

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Forestry (ODF) has determined the claim is not valid as to land use regulations administered by ODF or the Oregon Board of Forestry (Board) because claimant has not demonstrated how any of the state land use regulations identified in the claim and administered by the Board or ODF restrict the claimant's clearing the land for residential development, extension of the existing adjacent county roads into and through the property, and division of the 765-acre property in phases into 250 parcels

ranging in size from 2 to 10 acres and development of a single-family dwelling and accessory structures on each parcel. ORS 527.730 provides that “[n]othing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use.” The claimant’s desired use of the property is a conversion. Since the FPA cannot restrict a change in land use, and since all evidence of value presented in the claim is based on the land use change, claimant has offered no relevant information on how enforcement of forest practice statutes or rules has restricted its desired use or had the effect of reducing the fair market value of the subject properties. To the extent that the claimant intends to carry out a “forest operation” (a commercial activity relating to the establishment, management or harvest of forest tree species) in conjunction with its residential development, claimant has not submitted a written notification with sufficient detail for ODF to be able to determine whether the statutes or rules listed in the claim apply to or restrict the claimant’s desired use of the property. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

See DLCD Final Staff Report.

### **IV. TIMELINESS OF CLAIM**

#### **Findings of Fact**

This claim was submitted to DAS on June 20, 2006, for processing under OAR 125, division 145. The claim identifies a list of statutes and rules, which includes ORS 526 and 527, and OAR 629, 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**

ODF adopts the findings of fact and conclusions of law regarding ownership contained in the DLCD Final Staff Report for this claim.

## **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 state land use regulation must restrict the claimant's desired use of private real property, and that the enactment or enforcement of the regulation has had the effect of reducing the fair market value of the property.

### **Findings of Fact**

The claimant desires compensation or to clear the land for residential development, extend the existing adjacent county roads into and through the property, and divide the 765-acre property in phases into 250 parcels ranging in size from 2 to 10 acres and develop a single-family dwelling and accessory structures on each parcel. The claim lists the following state statutes and rules administered by ODF or the Board<sup>1</sup> as laws that restrict the use of the property as the basis for the claim: ORS 526.016; 526.031, 526.166, 526.168, 526.194, 526.305 to 370, 526.425, 526.490, 526.500 to 515, 526.900, 526.905, 527.610 et seq., 527.665, 527.680 to 687, 527.690, 527.721 and 722, 527.730, 527.245, 527.760, 527.990 and 527.992. The claim also lists the following rules of the Board: OAR 629-001-0000 to 0057, 629-020, 629-020-0010, 629-620-0020-0000 to 0070, 629-045-0005 to 0010, 629-605-0100 to 0500, 629-610-0000 to 0090, 629-630-0000 to 0800 and 629-680-0000 to 0430. The claim states, "Currently, the State land use regulations in OAR 660, ORS 92, ORS 197, ORS 215, ORS 526 and ORS 527 restrict clearing of the land for development, extension of roads into the property, and both the division of the property and the construction of single family dwellings on the existing and new lots."

Many of the listed statutes and rules, including those in ORS 526 and OAR 629-001, and 629-020 are not land use regulations, as defined by ORS 197.352(11). Others, such as ORS 527.610, 527.665, 527.680, 527.721, 527.722, 527.730, 527.990, and 527.992, either do not apply at this time to the claimant's desired use, or do not restrict the claimant's desired use of the property.

The properties are planned and zoned for forest use. Nothing in ORS chapters 526 or 527, or OAR chapter 629 relates to the division of land, or to the development of residential uses. The state laws listed in the claim that are administered by ODF only apply to forest operations, which is not the desired use the claimant has described in its claim.

One of the cited laws, ORS 527.730, Conversion of forestland to other uses, states, "Nothing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use." No laws enforced by the Board or ODF restrict the division of property or the establishment of dwellings.

The subject property does include trees and claimant has indicated its intent to clear portions of the land for development. Claimant has submitted a notification of intent to conduct harvest activities and build roads (Notification No. 06-47522). However, the notification and map of "concept plan" filed with the department are too vague for ODF to be able to determine whether statutes or rules it or the Board may enforce apply to the claimant's intended use of the subject property in a way that restricts the use of the subject property, and reduces its fair market value.

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<sup>1</sup> This report addresses only state land use regulations administered by ODF or the Board of Forestry. The state land use regulations listed in the claim include statutes administered by the Oregon Department of Land Conservation and Development (DLCD). These statutes and rules are addressed in a separate report for this claim, by DLCD.

## **Conclusions**

Nothing in the laws that are listed in the claim and enforced or administered by ODF or the Board applies to or restricts the use of the property described in the claim. As a result, ODF has no basis upon which it may determine that the claimant is entitled to relief under ORS 197.352.

### **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 claimant provided an estimated amount of loss in fair market value of \$20,000,000. The estimate is based only on the value of proposed residential development of the subject properties. The claimant has not demonstrated that any land use regulations administered by ODF or the Board restrict its use of the subject property or have the effect of reducing its fair market value. The information in the claim is based on laws not administered by ODF or the Board. As a result, there is no relevant evidence in the record for this claim relating to the effect of laws administered by ODF or the Board on the fair market value of the subject property.

## **Conclusions**

The claimant has not demonstrated that laws enforced or administered by ODF or the Board restrict its desired use of this property or affect its fair market value.

### **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**

ORS 197.352(3) exempts laws that were enacted before a claimant acquired its interest in the property. Based on the findings and conclusions in the DLCD report on this claim, Claimant acquired the properties on the following dates:

**On July 1, 1972:** Tax lot 700 in Township 4S, Range 2E, Section 25; Tax lot 4300 in Township 4S, Range 2E, Section 26 and Tax lot 600 in Township 4S, Range 2E, Section 36;

**On May 7, 1973:** Tax lots 200 & 290 in Township 4S, Range 3E, Section 30;

**On July 1, 1973:** Tax lot 1000 in Township 4S, Range 3E, Section 30 and Tax lot 1090 in Township 4S, Range 3E, Section 31;

**On August 7, 1973:** Tax lots 200 & 290 in Township 4S, Range 2E, Section 25 and Tax lots 700 & 900 in Township 4S, Range 3E, Section 30.

The FPA was first enacted in 1971 and the first forest practice rules to administer the FPA became effective on July 1, 1972. The FPA and rules have been amended at various times since then. ODF is unable to determine whether 197.352(3)(E) or other exemptions in 197.352(3) may apply because the claimant has not proposed a use that is subject to these laws.

Some FPA regulations, like many in OAR 629-630 *et seq.* were enacted to control water pollution resulting from forest operations. ORS 197.352(3)(B) specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety..., including pollution control.” Such regulations may apply to the property, depending upon the activities the claimant may wish to undertake.

Other FPA regulations cited by the claimant may be exempted under 197.352(3).

### **Conclusions**

ODF concludes that some of the listed land use regulations are likely exempt under ORS 197.352(3). Until there is a notification of a specific operation, however, a final determination of the applicability of the listed laws to a particular forest operation on the property cannot be made.

Laws in effect when the claimant acquired the subject properties are exempt under ORS 197.352(3)(E), and will continue to apply to the claimant’s use of the property. There may be other laws that continue to apply to the claimant’s use of the subject property that have not been identified in the claim. When the claimant submits an acceptable notification, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (3)(D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject properties based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information it has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to its use of the subject property.

## **VI. FORM OF RELIEF**

Based on the current record, the claimants are not entitled to relief under ORS 197.352 from ODF or the Board. ODF denies any relief for this claim because neither the Board nor ODF has enforced laws that restrict the division of the subject property into parcels or lots, or the use of the property for residential purposes.

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

ODF issued its draft staff report on this claim on November 28, 2006. OAR 125-145-0100(3), provides 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.