

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. M129700  
(BALLOT MEASURE 37) OF )  
Dean and Valerine Reed and )  
Dean-Val Reed Properties, LLC, CLAIMANTS ).

Claimants: Dean and Valerine Reed and Dean-Val Reed Properties, LLC  
(the Claimants)

Property: Township 3S, Range 2E, Section 12D, Tax lot 103, Clackamas County  
(the property)

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

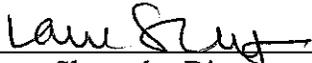
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein,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

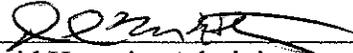
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 Administrator 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  
DLCD  
Dated this 9<sup>th</sup> day of January, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 9<sup>th</sup> day of January, 2007.

**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**

January 9, 2007

**STATE CLAIM NUMBER:** M129700

**NAMES OF CLAIMANTS:** Dean and Valerine Reed  
Dean-Val Reed Properties, LLC

**MAILING ADDRESS:** 19508 S Henrici Road  
Oregon City, Oregon 97045

**PROPERTY IDENTIFICATION:** Township 3S, Range 2E, Section 12D  
Tax lot 103  
Clackamas County

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

**180-DAY DEADLINE:** January 14, 2007

**I. SUMMARY OF CLAIM**

The claimants, Dean and Valerine Reed and Dean-Val Reed Properties, LLC, seek compensation in the amount of \$249,825 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 claimants desire compensation or the right to divide the 19.55-acre subject property into six parcels and develop a dwelling on each new parcel. The subject property is located at 19692 S Henrici Road, near Oregon City, 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 not valid as to Dean and Valerine Reed because they have not established their ownership of the subject property; and is not valid as to Dean and Val Reed Properties, LLC because the desired use of the subject property was prohibited under the laws in effect when it acquired the property in 2000. (See the complete recommendation in Section VI. of this report.)

**III. COMMENTS ON THE CLAIM**

**Comments Received**

On November 13, 2006, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of

surrounding properties. According to DAS, one written comment was received in response to the 10-day notice.

The comment is relevant to whether the claimants are owners and when the claimants became the present owners of the subject property. The comment has been considered by the department in preparing this report. (See the comment letter 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 July 18, 2006, for processing under OAR 125, division 145. The claim identifies Clackamas County's zoning 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**

Claimant Valerie Reed originally acquired the subject property on January 27, 1994, as trustee of her parents' trust, as reflected by a warranty deed included with the claim. On September 23, 1998, Valerie Reed conveyed the subject property to the Dean and Valerie Reed Trust, a revocable living trust with the claimants as trustees, as reflected by a warranty deed included

with the claim. On May 11, 2000, as trustees of the Trust, the claimants transferred the subject property to Dean-Val Reed Properties, LLC, an Oregon limited liability company, as reflected by a warranty deed included with the claim.

The Clackamas County Assessor's Office confirms claimant Dean-Val Reed Properties, LLC's current ownership of the subject property. Claimants Dean and Valerine Reed do not own the subject property.

### **Conclusions**

Claimant Dean-Val Reed Properties, LLC is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of May 11, 2000.<sup>1</sup> Claimants Dean and Valerine Reed are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C).

### **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 claimants' 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 claimants or a family member acquired the property.

### **Findings of Fact**

The claim indicates that the claimants desire to divide the 19.55-acre subject property into six parcels and to develop a dwelling on each new parcel, and that the current zoning prohibits the desired use.

The claim is based on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned by Clackamas County as Ag/Forest (AG/F) as required by Statewide Planning Goal 4 (Forest Lands), in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" as defined by 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.

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<sup>1</sup> Under the terms of ORS 197.352(11)(A), legal entities can be "family members" of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, individuals who transferred property to the LLC are not considered family members under the definition of family member in ORS 197.352(11)(A).

At the time claimant Dean-Val Reed Properties, LLC acquired the subject property on May 11, 2000, the property was subject to the current laws in effect as described above.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned AG/F in ORS 215 and OAR 660, division 6, were all enacted or adopted before Dean-Val Reed Properties, LLC acquired the subject property on May 11, 2000. These land use regulations do not allow the division of AG/F-zoned land into parcels less than 80 acres in size. Laws enacted or adopted since 2000 do not restrict the claimants' desired use of the property relative to that date.

As explained in Section V.(1), claimants Dean and Valerie Reed are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict their use of private real property in a manner that reduces the fair market value of the 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 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 \$249,825 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' assessment of the subject property's value.

### **Conclusions**

As explained in Section V.(1) of this report, Dean-Val Properties, LLC acquired the subject property on May 11, 2000. No state laws enacted or adopted since that claimant acquired the subject property restrict the use of the property relative to the uses allowed in 2000. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Commission or the department.

As further explained in Section V.(1) of this report, claimants Dean and Valerie Reed are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict their use of the subject property in a manner that reduces 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.

### **Findings of Fact**

The claim is based on the 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 AG/F zone. All of these land use regulations were in effect when Dean-Val Properties, LLC acquired the subject property on May 11, 2000.

### **Conclusions**

All of the state land use regulations that restrict Dean-Val Reed Properties, LLC's desired use of the subject property were in effect when it acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when Dean-Val Reed Properties, LLC acquired the subject property.

As explained in Section V.(1) of this report, Dean and Valerine Reed are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant as to them.

## **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 do not restrict Dean-Val Reed Properties, LLC's desired use of the subject property relative to what was permitted when it acquired the property in 2000 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E). The department further finds that the claim is not valid as to Dean and Valerine Reed because they are not owners of the subject property.

### **Conclusions**

Based on the record and the foregoing findings and conclusions, Dean-Val Reed Properties, LLC has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because (1) that claimant's desired use of the subject property was prohibited under the laws in effect when it acquired the property and (2) no laws enacted or adopted after that claimant acquired the property restrict that claimant's desired use of the property with the effect of reducing its fair market value relative to uses allowed when it acquired the property. The department further finds that claimants Dean and Valerine Reed have not established that they are entitled to relief under ORS 197.352(1) as a

result of land use regulations enforced by the Commission or the department because they are not owners 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 December 18, 2006. 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.