

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

July 18, 2006

**STATE CLAIM NUMBER:** M122450

**NAME OF CLAIMANT:** Earl L. Hays

**MAILING ADDRESS:** 10201 NW Groveland  
Hillsboro, OR 97124

**PROPERTY IDENTIFICATION:** Township 1N, Range 2W, Section 9  
Tax lot 00710  
Washington County

**OTHER CONTACT INFORMATION:** Tweena Casey  
1300 NE 48th Avenue, Suite 500  
Hillsboro, OR 97124

**DATE RECEIVED BY DAS:** September 23, 2005

**180-DAY DEADLINE:** August 8, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimant, Earl Hays, seeks compensation in the amount of \$3 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 develop a dwelling on each of the eight existing parcels.<sup>2</sup> The subject property is located at along NW Groveland Road, near Hillsboro, in Washington County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the preliminary 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 Earl Hays' development of a dwelling on each of the eight

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<sup>1</sup> This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

<sup>2</sup> The subject property is composed of eight lots that were platted in 1910 as part of the Groveland Acres Subdivision.

existing parcels: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after January 2, 1982. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on January 2, 1982. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On October 11, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, two written comments were received in response to the 10-day notice.

The comments are relevant to whether a state law restricts the claimant's use of the subject property, whether the restriction of the claimant's use of the property reduces the fair market value of the property and whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comments have been considered by the department in preparing this report. (See the comment letters in the department's 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 September 23, 2005, for processing under OAR 125, division 145. The claim identifies Washington County's Exclusive Farm Use (EFU) 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**

The claimant, Earl Hays, acquired the subject property on January 2, 1982, as reflected by a bargain and sale deed included with the claim. The Washington County Assessor’s Office confirms the claimant’s current ownership of the subject property.

### **Conclusions**

The claimant, Earl Hays, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of January 2, 1982.

### **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 acquired the property.

### **Findings of Fact**

The claim indicates that the claimant desires to develop a dwelling on each of the eight existing parcels, which is not allowed under the county’s current dwelling standards.

The claim is based generally on Washington County’s current EFU zone and the applicable provisions of state law that require such zoning. The claimants’ property is zoned EFU 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 the Goal be zoned EFU pursuant to ORS 215.

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<sup>3</sup> The claimants’ property is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils and is “high-value farm land” as defined in ORS 215.710.

