

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

July 26, 2006

**STATE CLAIM NUMBER:** M122611

**NAMES OF CLAIMANTS:** James and Jan Mattes

**MAILING ADDRESS:** 2001 Highland Drive  
La Grande, Oregon 97850

**PROPERTY IDENTIFICATION:** Township 7S, Range 38E, Section 3  
Tax lot 300  
Baker County

**DATE RECEIVED BY DAS:** October 3, 2005

**180-DAY DEADLINE:** August 18, 2006<sup>1</sup>

**I. SUMMARY OF CLAIM**

The claimants, James and Jan Mattes, seek compensation in the amount of \$37,200 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 develop a dwelling on the 40-acre subject property. The subject property is located at the geographic coordinates listed above in Baker 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 James and Jan Mattes' development of a dwelling on the 40-acre subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after November 7, 1983. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on November 7, 1983. (See the complete recommendation in Section VI. of this report.)

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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).

### III. COMMENTS ON THE CLAIM

#### Comments Received

On May 25, 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 October 3, 2005, for processing under OAR 125, division 145. The claim identifies Goal 3 and OAR 660-035-0135 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 claimants, James and Jan Mattes, acquired the subject property on November 7, 1983, as reflected by a warranty deed included with the claim. The Baker County Assessor's Office confirms the claimants' current ownership of the subject property.

## **Conclusions**

The claimants, James and Jan Mattes, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of November 7, 1983.

## **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 acquired the property.

## **Findings of Fact**

The claim indicates that the claimants desire to develop a dwelling on the 40-acre subject property and that Goal 3 and OAR 660-035-0135 prohibit that desired use.

The claim is based generally on Baker County's current Exclusive Farm Use (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 claimants' property is "agricultural land" as defined by Goal 3.<sup>2</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.

Current land use regulations, particularly ORS 215.284 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, establish standards for the development of dwellings on existing or proposed parcels on EFU-zoned land.

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 claimants acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Baker County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because

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<sup>2</sup> The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

