

**BALLOT MEASURE 37 (CHAPTER 1, OREGON LAWS 2005)
CLAIM FOR COMPENSATION**

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

June 8, 2005

STATE CLAIM NUMBER: M118962

NAME OF CLAIMANT: BLM of Hood River, Inc.¹

MAILING ADDRESS: 1450 Nunamaker Road
Hood River, Oregon 97031

IDENTIFICATION OF PROPERTY: Township 2N, Range 10E, Section 2DD
Tax lots 2200 and 2400
Hood River County

Township 2N, Range 10E, Section 11A
Tax lots 200, 400 and 500
Hood River County

Township 2N, Range 10E, Section 11C
Tax lots 101, 1100 and 1200
Hood River County

Township 2N, Range 10E, Section 15
Tax lots 900 and 1100
Hood River County

OTHER CONTACT INFORMATION: John Benton at the same address

OTHER INTEREST IN PROPERTY: Shareholders of BLM, Inc.

DATE RECEIVED BY DAS: December 13, 2004

180-DAY DEADLINE: June 11, 2005

I. CLAIM

BLM of Hood River, Inc., the claimant, seeks compensation in the amount of

¹This claim was submitted in the name of BLM, Inc., an Oregon corporation. Based on the department's review of the claim, including the deed records for the subject properties, it has been determined that the true name and identity of the claimant is BLM of Hood River, Inc.

\$33,071,770 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the property for sale and residential use. The claim is for ten properties owned by the claimant located in Hood River County, Oregon. (See claim for specific property locations.)

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 and finds the claimant is not entitled to relief under Ballot Measure 37. Based on the advice of counsel, department staff recommends that this claim be denied based on the lack of legal authority of the claimant, under the laws governing Oregon business corporations, to file and pursue the claim. Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim.

III. COMMENTS ON THE CLAIM

Comments Received

On March 14, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS), provided written notice to owners of surrounding properties. According to DAS, five (5) written comments have been received in response to the 10-day notice. None of the comments were specific to the criteria required under Measure 37 to be used in the department's review of this claim.

IV. TIMELINESS OF CLAIM

Requirement

Ballot Measure 37, Section 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 the measure (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 the measure (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

The claim was submitted to DAS on December 13, 2004 and identifies the County's current exclusive farm use zone, which does not allow for division of the subject property into rural residential quarter acre parcels with dwellings as the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of the Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37 based on land use regulations adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

Ballot Measure 37 provides for payment of compensation or relief from specific laws for "owners" as that term is defined by the Measure. Ballot Measure 37, Section 11(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

The claim includes ten parcels conveyed to the claimant, BLM of Hood River, Inc., by warranty deeds, all dated January 3, 1983 (recorded on June 12, 1986). Thereafter, on September 4, 1997, the claimant was administratively dissolved by the Oregon Secretary of State, Corporation Division (ORS 60.647 – 60.657) and remains administratively dissolved as of the date of this report.² The department has no information about whether the claimant has further conveyed its interest in the subject properties.

Conclusions

The claimant is the owner of the subject properties. The fact that the claimant was administratively dissolved in 1997 does not affect the claimant's title to the properties. ORS 60.657(2) provides that the "Dissolution of a corporation does not: (a) Transfer title to the corporation's property." However, the fact that the claimant corporation was dissolved limits its authority to act as an owner with regard to its property. ORS 60.651(3) provides:

"A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under ORS 60.637, and notify claimants under ORS 60.641 and 60.644."

² ORS 60.654 allows for the reinstatement of administratively dissolved corporations within five years after the date of dissolution. The Corporation Division has no record that any effort was made within that five-year period, or since, to reinstate the claimant corporation.

Based on the advice of counsel, the department finds that the filing and pursuit of this claim for compensation under Measure 37 is not within the scope of activities in which the claimant, as an administratively dissolved corporation, is permitted to engage. ORS 60.651(3) provides that an administratively dissolved corporation may only carry on those activities listed in ORS 60.637 that are "necessary" to wind up and liquidate its business and affairs. The filing of this claim under Measure 37, eight years after the corporation was administratively dissolved, is not "necessary" to the winding up of the corporation's business and affairs. Such activity is in the nature of ongoing business activity, and is not the limited type of activity in which an administratively dissolved corporation is authorized to engage for the purpose of winding up and liquidating its business and affairs.

2. The Laws that are the Basis for the Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 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.

Not Applicable. (See Section V.1, above.)

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any laws 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."

Not Applicable. (See Section V.1, above.)

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.

Not Applicable. (See Section V.1, above.)

VI. FORM OF RELIEF

The claimant is not entitled to relief under Ballot Measure 37. Department staff recommends that this claim must be denied based on the lack of legal authority of the claimant, under the laws governing Oregon business corporations, to file and pursue the claim. Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on May 19, 2005. 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.