

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation  
June 29, 2005**

**STATE CLAIM NUMBER:** M119151

**NAME OF CLAIMANT:** Isabel N. Bentley

**MAILING ADDRESS:** PO Box 456  
Toledo, Oregon 97391

**IDENTIFICATION OF PROPERTY:** 4272 Logsdan Road, Siletz, Oregon  
Township 10S, Range 10W, Section 1  
Tax Lot 1100  
Lincoln County

**OTHER CONTACT INFORMATION FOR CLAIMANT:** Richard N. "Rick" Prest  
Power of Attorney  
P.O. Box 456  
Toledo, Oregon 97391

**DATE RECEIVED BY DAS:** January 4, 2005

**180-DAY DEADLINE:** July 3, 2005

**I. CLAIM**

Isabel Bentley, the claimant, seeks compensation in the amount of \$355,000 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 into lots for residential development. (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 by the department, not apply to the claimant to allow her to divide the property into six lots and establish a dwelling on each lot: the applicable provisions of Statewide Planning Goal 3

(Agricultural Lands), OAR 660-015-0000(3), OAR 660-033-0090, OAR 660-033-0100(1), OAR 660-033-0130(3)(a), and ORS 215.780, ORS 215.283, 215.284 and 215.705 to the extent necessary to allow the claimant to use the property as permitted at the time she acquired it. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On February 18, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS), provided written notice to property owners surrounding the property subject to this claim. According to DAS, there were no written comments, evidence or information received by DAS in response to the 10-day notice.

### **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 filed with DAS on January 4, 2005, for processing under OAR 125, Division 145. The claim includes a list of land use regulations that were enacted prior to December 2, 2004, the effective date of Measure 37. (See citations of statutory and administrative rule history of the Oregon Revision 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 in the Measure. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

### **Findings of Fact**

According to documents filed with the claim, Isabel Bentley, the claimant, acquired the property through an inheritance upon the death of her mother, Amanda Bentley, on September 30, 1944. The claim demonstrates ownership by a family member since at least 1917. The claim includes a Chain of Title report demonstrating Ms. Bentley’s ownership since 1944 and illustrates that, as of the date of the report on December 7, 2004, the last deed of record runs to Isabel Bentley.

### **Conclusions**

The claimant is an “owner” under Section 11(C) of Ballot Measure 37 and has had an ownership interest in the property since September 30, 1944. The claim demonstrates family ownership in the property since in 1917.

### **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 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 states that:

“Under the land use regulations in place at the time the owner/claimant acquired the property (1944), the 30.3 acre property could have been subdivided into six lots....Under current land use regulations, the property can not be subdivided or partitioned because of the 80 acre minimum parcel size and no additional residences can be established on the property.”

The claim identifies several state statutes and administrative rules that restrict the use of the property as described. The claim also describes potential additional restricting legislation not specifically identified in the claim and requests that the State identify those regulations in the event the State chooses to “remove, modify or not apply” regulations under Section 8 of the Measure.

Statewide Planning Goal 3, “Agricultural Lands” (OAR 660-015-0000(3)) and the required provisions applicable to land zoned for Exclusive Farm Use (EFU) under ORS 215, specifically ORS 215.780, and OAR 660-033-0090, restrict the zoning, use and partition of the subject property. Goal 3 became effective on January 25, 1975 and required agricultural land as defined by the Goal to be zoned EFU pursuant to ORS 215. (See citations to statutory and rule history under OAR 660-015-0000(3). ORS 215.780, establishing minimum lots sizes in EFU zones, became effective on November 4, 1993 (Chapter 792, Or Laws 1993). The claimant’s property is “agricultural land” as defined by Lincoln County Code and as required under Statewide Planning Goal 3 (OAR 660-033-0030).

OAR 660-033-0100 establishes an 80-acre minimum lot size for the creation of a new parcel in an EFU zone. Other provisions of state law cited in the claim establish the standards for the approval of dwellings on land zoned EFU, including ORS 215.283, 215.284 and 215.705.

### **Conclusions**

The minimum lot size established by ORS 215.780 does not allow the division of the claimant’s property into parcels less than 80 acres in size. The claim does not specifically explain how current laws limit the placement of dwellings on the subject property or, potentially, on additional parcels. However, it is assumed that the minimum parcel size and income requirements for placement of a farm dwelling restrict the property to some extent.

Current land use regulations, all adopted since 1944, restrict the use of the property from that allowed in 1917, when the claimant’s family acquired the property.

### **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.”

### **Findings of Fact**

The claimant desires to subdivide the property into six lots including five, 5-acre vacant parcels and one 5.3 acre parcel with an existing home. The net reduction in value alleged in the claim is \$355,000. The claim includes an analysis from a certified real estate appraiser. (See the report dated December 8, 2004 in the department’s claim file). The appraisal asserts that the value of the 30.3 acres under current land use regulation, including one single-family residence, is approximately \$115,000. Additional comparables included in the claim demonstrate the property value to be worth approximately \$470,000 if subdivided according to the demands of the claim.

### **Conclusions**

As explained in section V. (1) of this report, the current owner is Isabel Bentley who acquired the property in 1944. Family members have owned the property since 1917. Thus, under Ballot

Measure 37, Isabel Bentley is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Ms. Bentley estimates the loss in value at \$355,000.

Ms. Bentley has provided an appraisal of the subject property's fair market value with current land use restrictions. She has also provided comparable sales information to estimate the value of six, approximately 5-acre lots. Without a specific appraisal or other verification of the value of the property when subdivided, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by the Commission or the department.

#### **4. Exemptions under Section 3 of Measure 37**

Ballot Measure 37 does not apply to certain laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from Measure 37.

#### **Findings of Fact**

The claim includes a list of state and county land use regulations, and states that they were enacted subsequent to acquisition of the property in 1944, and restrict the use relative to what would have been allowed in 1944 when the claimant acquired the property.

#### **Conclusions**

Without a specific proposed use it is not possible for the department to determine what laws may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that the general statutory, goal and rule restrictions on dividing the subject property apply to the owner's anticipated use of the property, and for the most part, these laws would not come under any of the exemptions in Measure 37. There may be other specific laws that continue to apply, under one or more of the exemptions in Measure 37 or because they are laws that are not covered by the Measure to begin with.

### **VI. FORM OF RELIEF**

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the department has enacted or enforced a law that restricts 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 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 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 subdivision of, and approval of dwellings on, the subject property, specifically the requirements of Statewide Planning Goal 3 and implementing statutes and regulations. Thus the claimant cannot create and develop the desired six lots on the subject property. The laws enforced by the Commission or department reduce the fair market value of the property to some extent. The claim asserts this amount to be \$355,000. However because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based more likely than not have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of one or more land use regulations to allow Ms. Bentley to use the subject property for a use permitted at the time she acquired the property on September 30, 1944.

## **Conclusion**

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

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to the claimant's division of the property into six lots or to the establishment of a dwelling on each lot created: the applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), (OAR 660-015-0000(3)), OAR 660-033-0090, OAR 660-033-0100(1), OAR 660-033-0130(3)(a), and ORS 215.780, ORS 215.283, 215.284 and 215.705 to the extent necessary to allow the claimant to use the property as permitted at the time she acquired it.
2. The action by the State of Oregon provides the state's authorization to the claimant for her to divide the property into six lots, and to develop a home on each lot, subject to the laws in effect when she acquired the property in 1944 and to any other laws that are exempt under section 3(E) of Measure 37.
3. To the extent that any law, order, deed, agreement or other legally-enforceable public or private requirement provides that the 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 215.412 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property posed by private parties.
4. Any use of the 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 DLCD; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under section (3) of the Measure.

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for her to obtain a decision under Measure 37 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 Measure 37 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

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

The department issued its draft staff report on this claim on June 10, 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.