

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

July 28, 2005

**STATE CLAIM NUMBER:** M119631

**NAME OF CLAIMANTS:** Ted and Susan Luther

**MAILING ADDRESS:** 108328 Northwest Jackson Quarry Road  
Hillsboro, Oregon 97124

**IDENTIFICATION OF PROPERTY:** Township 1N, Range 2, Section 4  
Tax Lot 900  
Washington County

**OTHER INTEREST IN PROPERTY:** A non-exclusive easement in common with  
other users over the northernmost 15 feet of  
the subject property.<sup>1</sup>

**DATE RECEIVED BY DAS:** February 7, 2005

**180-DAY DEADLINE:** August 6, 2005

**I. CLAIM**

Ted and Susan Luther, the claimants, seek compensation in the amount of \$200,000 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 claimants desire compensation or the right to develop their property with a single-family farm dwelling. The property is located on the east side of Northwest Jackson Quarry Road, Hillsboro in Washington 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. Laws enforced by the Land Conservation and Development Commission (the Commission) or the department do not 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

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<sup>1</sup> Property owners holding this easement in common are: Ted and Susan Luther, claimants; Scott and Robin Olsen, 11000 NW Jackson Quarry Road, and Rudolph and Nancy Meyer, 10980 Northwest Jackson Quarry Road.

acquired the property on June 9, 1995. The department staff recommends denial of the claim. (See the complete recommendation in Section VI. of this report.)

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

On February 24, 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, no written comments, evidence, or information were received 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 criterion 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 criterion, whichever is later.

#### **Findings of Fact**

This claim was submitted to DAS on February 7, 2005 for processing under OAR 125, division 145. The claim identifies the designation of the subject property as Exclusive Farm Use, high value farmland subject to OAR 660-033-0135(7) as the restriction on the use of the property that is the basis for the claim. Only laws that were enacted prior to December 2, 2004, the effective date of 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 was 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 to “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**

The claimants, Ted and Susan Luther, acquired the subject property on June 9, 1995, by warranty deed. Based on a certified copy of the Washington County Assessor’s Office Property Data Sheet, the Luthers are the present owners of the subject property.

### **Conclusions**

The claimants, Ted and Susan Luther, are “owners” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37.

### **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 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 claimants state that OAR 660-033-0135(7), the “\$80,000 rule” prevents them from constructing a single-family farm dwelling on the subject property. OAR 660-033-0135(7) was adopted by the Commission and became effective March 1, 1994, before the claimants acquired the property on June 9, 1995.<sup>2</sup>

### **Conclusions**

OAR 660-033-0135(7) applies to the property and restricts the construction of a single-family farm dwelling. However, this administrative rule was effective March 1, 1994, fifteen months before the claimants acquired the property on June 9, 1995, and does not restrict the claimants’ use of the 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.

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<sup>2</sup> On December 6, 1995, the Washington County hearings officer denied an application submitted by the claimants for a farm dwelling on December 6, 1995, based on the application of OAR 660-033-0135(7) to the subject property. (See the department’s claim file.)

### **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**

According to the claimants the effect of the application of OAR 660-033-0135(7) is to reduce the fair market value of the subject property by \$200,000. No appraisal or any other documentation of this reduction in value has been submitted with the claim. (See the claim.)

#### **Conclusions**

As explained in section V. (1) of this report, the current owners are Ted and Susan Luther, who acquired the property on June 9, 1995, subsequent to the effective date of OAR 660-033-0135(7). The claim does not demonstrate that laws described in section V.(2) 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.

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

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

#### **Findings of Fact**

Section 3 (E) of Ballot Measure 37 exempts laws “enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.” The Luther’s acquired the property June 9, 1995, 15 months after OAR 660-033-0135(7) became effective on March 1, 1994.

#### **Conclusions**

OAR 660-033-0135(7) became effective March 1, 1994, fifteen months prior to the Luthers’ acquisition of the subject property on June 9, 1995. Therefore, OAR 660-033-0135(7) is exempt under the provisions of Section 3 (E) of Ballot Measure 37.

## **VI. FORM OF RELIEF**

Section 1 of Measure 37 requires payment of compensation to an owner of private real property if the Commission or the department has 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 conclusion set forth in this report, laws enforced by the Commission or the department restrict the construction of a single-family farm dwelling on the subject property. However, OAR 660-033-0135(7) was adopted and became effective fifteen months prior to the claimants' acquisition of the property. Ballot Measure 37 provides relief only from land use regulations enacted or enforced after the claimant acquired the property. Section 3(E) of Ballot Measure 37 specifically exempts land use laws enacted prior acquisition of the subject property by the claimant or the claimant's family.

### **Conclusions**

Based on the record, the department finds that Measure 37 does not authorize any relief to the claimants, and recommends that the claim be denied.

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

The department issued its draft staff report on this claim on July 7, 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.