

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

July 25, 2005

**STATE CLAIM NUMBER:** M119660

**NAME OF CLAIMANTS:** William M. and Ann L. Deets

**MAILING ADDRESS:** P.O. Box 546  
Blodgett, Oregon 97326

**IDENTIFICATION OF PROPERTY:** Township 11S, Range 7W, Section 14  
Tax Lot 1101  
Benton County

**OTHER CONTACT INFORMATION:** George B. Heilig

**DATE RECEIVED BY DAS:** February 8, 2005

**180-DAY DEADLINE:** August 7, 2005

**I. CLAIM**

The claimants, William M. and Ann L. Deets, seek compensation in the amount of \$67,000 for a 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 a single-family dwelling on the 12.26 acre subject property, located in Benton 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 this claim is valid. Department staff recommends, in lieu of just compensation, that the requirements of the following laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to the claimants to allow them to develop a single-family residence their property: Statewide Planning Goal 3 and ORS 215.263, 215.284 and 215.780, and applicable provisions of OAR 660, Division 33. These laws will not apply to the claimants only to the extent necessary to allow the claimants a use of the subject property permitted at the time they acquired it on November 20, 1987. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS RECEIVED**

On February 24, 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, 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 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**

This claim was submitted to DAS on February 8, 2005, for processing under OAR 125, division 145. The claim identifies Benton County's Exclusive Farm Use (EFU) zoning and State laws that restrict the use of the property as 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 has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulation 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 of 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**

The claimants, William M. and Ann L. Deets, acquired the property through a land sale contract on November 20, 1987.<sup>1</sup> (See Land Sale Contract and Fulfillment Deed, dated July 25, 1994, in department claim file.) A January 3, 2005 title search included in the claim shows the claimants, William M. Deets and Ann Lorraine Deets, as the current owners of the subject property.

### **Conclusions**

The claimants, William M. and Ann L. Deets, are “owners” of the subject property as that term is defined in Section 11 of Ballot Measure 37, as of November 20, 1987.

### **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.

### **Findings of Fact**

The claim states:

“The claimant has reviewed OAR 660 division 15 – Statewide Planning Goal 3, ‘Agricultural Lands,’ ORS 215, ‘County Planning; Zoning; Housing Codes,’ and OAR 660, division 33, ‘Agricultural Lands,’ and has identified the regulations listed below as potentially restricting the use of the property. The claimant believes these provisions, or portions thereof, must be modified, removed, not applied or interpreted to not apply to the property in order to establish one single-family dwelling and other uses normally accessory to residential use on the property.”

“ORS 215.283(1-3), ORS 215.284(1-7), ORS 215.700, ORS 215.705(1-7), and OAR 660-033-0090.”

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<sup>1</sup> The claimants originally acquired the property jointly with William N. and Frances Deets. In 2000, William N. and Frances Deets transferred their interest in the property to the claimants.

The claim is based, in part, on Benton 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 accord with OAR 660, Division 33 and ORS 215 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 215.263, 215.284, 215.780 and OAR 660, Division 33, as applied by Goal 3, do not allow the subject property to be divided and establish standards for allowing the existing or any proposed parcel(s) to have farm or non farm dwellings on them.<sup>3</sup>

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. Subsequent amendments to comply with HB 3326, (chapter 704, Oregon Laws 2001, and effective January 1, 2002) were adopted by the Commission and became effective on May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

At the time the claimants acquired the property on November 20, 1987, Benton County's acknowledged EFU Zone and the applicable provisions of ORS 215 (1987 edition) applied directly to the subject property for the approval of new dwellings on existing parcels.<sup>4</sup>

## **Conclusions**

Dwelling standards established by amendments to Statewide Planning Goal 3, amendments to ORS 215, and applicable provisions of OAR 660, Division 33, adopted since the claimants acquired the property in 1987, do not allow the approval of a dwelling as may have been possible in 1987. Benton County's EFU zone is based on the standards required by Goal 3, ORS 215 and OAR 660, Division 33. Land use laws adopted since 1987 restrict the use of the property from what could have been done when the property was acquired by the claimants in 1987.

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<sup>2</sup> The claimants' property is "Agricultural Land" because it contains NRCS (Natural Resources Conservation Service) Class II and III Soils, including High-Value, (Soil Survey of Benton County Area, 1969, property located on Sheet 14 and composed on Nehalem, Brenner and Winchuck soils, pp. 17, 34 and 43).

<sup>3</sup> ORS 215.283(1) through (3) establish uses permitted in EFU zones in non-marginal lands counties. ORS 215.700 was repealed in 1963 (Oregon Laws 1963, chapter 619, Section 16.) The claim cites these statutes as applicable, but does not establish how they restrict the uses of the property for purposes of relief under Measure 37.

<sup>4</sup> Benton County's EFU zone was acknowledged by the Land Conservation and Development Commission as complying with Goal 3 on December 16, 1983 (LCDC Order #83-ACK-032, February 22, 1984).

### **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 claim states that the fair market value of the subject property has been reduced by \$67,000 as a result of land use laws enacted after they acquired the property in 1987.

The claimants have provided information regarding the value of the property based on what is allowed under current land use regulations as compared with the assumed value if developed with a dwelling. To substantiate the reduction in fair market value a market analysis was prepared and included in the claim comparing the claimants’ property to similar properties that have been sold and currently on the market.

#### **Conclusions**

As explained in section V. (1) of this report, William M. and Ann L. Deets are the current owners of the subject property as of November 20, 1987. Thus, under Ballot Measure 37, the claimants are due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in section V. (2) of this report, laws adopted since the claimants acquired the property restrict the establishment of a single-family dwelling on the subject property. The claim asserts the reduction in value due to the restrictions to be \$67,000. However, without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimants demand 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 land use regulations. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

#### **Findings of Fact**

The claim is based on Benton County’s EFU zone and the related provisions of state law that have restricted use of the property and reduced its fair market value. These are Statewide Planning Goal 3, “Agricultural Lands,” and applicable provisions of ORS 215 and OAR 660, division 33. Some of the specific state land use regulations that restrict the use of the property were enacted after the claimants acquired the property in 1987. With the exception of provisions of Statewide Planning Goal 3, ORS 215 and OAR 660, Division 5 in effect when the claimants

acquired the property, none of the laws identified in the claim appear to be exempt under Section 3(E) of Ballot Measure 37.

### **Conclusions**

It appears that the general statutory, goal and rule restrictions on residential development on Agricultural Land apply to the claimants' use of the property, and for the most part these laws would not come under any of the exemptions in Measure 37. The provisions of Statewide Planning Goal 3, ORS 215, and OAR 660 Division 5 in effect when the claimants acquired the property, are exempt under section 3(E) of the measure, and will continue to apply to the property. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure, 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 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 conclusions in this report, laws enforced by the Commission or the department, prohibit the establishment of a single-family residence on the subject 12.26-acre property. These restrictions reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$67,000, but does not include an appraisal or other documentation to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, the department acknowledges that state land use laws 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 just compensation, Measure 37 authorizes the department to modify, remove, or not apply all or parts of certain state land use regulations to allow the Deets to use the subject property for a use permitted at the time they acquired the property on November 20, 1987.

### **Conclusions**

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 Deets' establishment of a single family dwelling on the subject property: applicable

provisions of Statewide Planning Goal 3, ORS 215.263, 215.284 and 215.780 and OAR 660, Division 033, enacted after November 20, 1987. These land use laws will not apply to the Deets' use of their property only to the extent necessary to allow the claimants a use permitted at the time they acquired the property.

2. The action by the State of Oregon provides the state's authorization to the claimants to use their property subject to the standards in effect on November 20, 1987. On that date, the property was subject to Statewide Goal 3, and applicable provisions of ORS 215 (1987 edition), and OAR 660, Division 5.

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 claimants first obtain 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 imposed by private parties.

4. Any use of the property by the claimants 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 the Commission or the department; 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 claimants to use the property, it may be necessary for them 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 claimants 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 claimants.

## **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.