

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,  
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF  
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR ) FINAL ORDER  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M129736 and  
(BALLOT MEASURE 37) OF ) M129737  
Stearns Land Company, Limited Partnership, CLAIMANTS)

Claimants: Stearns Land Company, Limited Partnership (the Claimants)

Property: Township 21S, Range 10E, Section 35, Tax lots 1403, 1415 and 1416  
Township 22S, Range 10E, Section 00, Tax lot 2802  
Township 22S, Range 10E, Section 22, Tax lot 100  
Deschutes County (the property)

Claim: The demand for compensation and any supporting information received  
from the Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

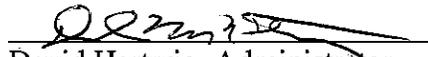
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Manager for the Measure 37 Services Division of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:  
Lane Shetterly, Director

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Michael Morrissey, Manager  
DLCD, Measure 37 Services Division  
Dated this 19<sup>th</sup> day of January, 2007.

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 19<sup>th</sup> day of January, 2007.

### **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Final Staff Report and Recommendation**

January 19, 2006

**STATE CLAIM NUMBERS:** M129736 and M129737<sup>1</sup>

**NAME OF CLAIMANT:** Stearns Land Company, Limited Partnership

**MAILING ADDRESS:** 910 NE Johnson Creek Road  
Prineville, Oregon 97754

**PROPERTY IDENTIFICATION:** Township 21S, Range 10E, Section 35  
Tax lots 1403, 1415 and 1416

Township 22S, Range 10E  
Section 00: tax lot 2802  
Section 22: tax lot 100  
Deschutes County

**OTHER CONTACT INFORMATION:** Jeffrey M. Wilson  
Lynch Austin Wilson Hill, LLP  
446 NW 3rd Street, Suite 230  
Prineville, Oregon 97554

**DATE RECEIVED BY DAS:** July 24, 2006

**180-DAY DEADLINE:** January 20, 2007

**I. SUMMARY OF CLAIM**

The claimant, Stearns Land Company, Limited Partnership, seeks compensation in the amount of \$4,687,300<sup>2</sup> 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 claimant desires compensation or the right to divide the 192.22-acre subject property into five-acre parcels and to develop a dwelling on each parcel. Tax lots 1403, 1415 and 1416 are located on the northern side of Burgess Road, along the Little Deschutes River and the western side of Huntington Road; tax lot 2802 is located at 51255 Huntington Road; and tax lot 100 is located at 51205 Huntington Road. All of the five subject tax lots are located near LaPine, in Deschutes County. (See claims.)

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<sup>1</sup> The claimant submitted separate claims (M129736 and M129737) for relief under ORS 197.352. Those claims were consolidated under this review. Tax lots 1403, 1415 and 1416, subject to claim M129736, consist of 116.49 acres. Tax lots 100 and 2802, subject to claim M129737, consist of 75.73 acres.

<sup>2</sup> This amount represents total compensation sought for all of the tax lots subject to claims M129736 and M129737.

## **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 not valid because the claimant's desired use of the subject property was prohibited under the laws in effect when the claimant acquired the property in 1995. (See the complete recommendation in Section VI. of this report.)

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

### **Comments Received**

On October 26, 2006, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment was received in response to the 10-day notice.

The comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letter in the department's claim files.)

## **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**

The claims were submitted to DAS on July 24, 2006, for processing under OAR 125, division 145. The claims identify Statewide Planning Goals 11, 12 and 14; provisions of ORS 215 and OAR 660; Deschutes County's zoning; and "any other state or local land use limitations" as the basis for the claims. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

## **Conclusions**

The claims have 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 are 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 claimant, Stearns Land Company, Limited Partnership, acquired the subject property on November 15, 1995, as reflected by a warranty deed included with the claims. The Deschutes County Assessor’s Office confirms the claimant’s current ownership of the subject property.

### **Conclusions**

The claimant, Stearns Land Company, Limited Partnership, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of November 15, 1995.

### **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 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 claims indicate that the claimant desires to divide the 192.22-acre subject property into five-acre parcels, and that the use is not allowed under current land use regulations.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) and forest zoning and restrict uses on EFU- and forest-zoned lands. Tax lots 1403, 1415, 1416, 2802 and a portion of tax lot 100 are zoned by Deschutes County as EFU with Landscape Management and Floodplain Overlays, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant’s property is “agricultural land” as defined by Goal 3.<sup>3</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

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<sup>3</sup> These tax lots are “agricultural land” because they contain Natural Resources Conservation Service Class I–VI soils.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

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.)

A portion of tax lot 100 is zoned Forest (F-1) by Deschutes County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because this portion is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted before the claimant acquired the subject property on November 15, 1995. These land use regulations do not allow the claimant's desired use of the property. Laws enacted or adopted since the claimant acquired the subject property in 1995 do not restrict the claimant's desired use of the property relative to when the claimant acquired it in 1995.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (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 claims include an estimate of \$4,687,300 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on appraisal reports included with the claims.

### **Conclusions**

As explained in Section V.(1) of this report, the claimant is Stearns Land Company, Limited Partnership, which acquired the subject property on November 15, 1995. No state laws enacted or adopted since the claimant acquired the subject property restrict the use of the property relative to the uses allowed in 1995. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Use Conservation and Development Commission (the Commission) or the department.

#### **4. Exemptions Under ORS 197.352(3)**

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

### **Findings of Fact**

This claim is based on state land use regulations that restrict the use of the subject property, including Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Deschutes County has implemented through its EFU and F-1 zones. As set forth in Section V.(2) of this report, all of these regulations that restrict the claimant's desired use of the property were in effect when the claimant acquired the property in 1995. The claims do not identify any state land use regulations enacted or adopted since the claimant acquired the subject property that restrict the use of the property relative to what would have been allowed when it acquired the property on November 15, 1995.

### **Conclusions**

All of the state land use regulations that restrict the claimant's desired use of the subject property were in effect when the claimant acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant acquired the subject property.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict 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 in order 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 of the department 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 do not restrict the claimant's desired use of the subject property relative to what was permitted when the claimant acquired it in 1995 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

### **Conclusions**

Based on the record and the foregoing findings and conclusions, the claimant have not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the claimant's desired use of the property was prohibited at the time the claimant acquired the property in 1995. Therefore, the department recommends that this claim be denied.

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

The department issued its draft staff report on this claim on December 26, 2006. 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.