

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

IN THE MATTER OF THE CLAIM ) FINAL ORDER  
FOR COMPENSATION UNDER ) CLAIM NO. M 118363  
BALLOT MEASURE 37 (CHAPTER 1, )  
OREGON LAWS 2005) OF )  
Anne L. Estes, CLAIMANT )

Claimants: Anne L. Estes (the Claimants)

Property: Tax Lots 1800, 1801 and 1802, T 2S, R 3E, S 13C, Clackamas 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 Ballot Measure 37 (2004) (Oregon Laws 2005, Chapter 1) (hereafter, Measure 37). 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 approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Anne Estes' establishment of three recreational vehicle rental spaces on tax lot 1801, establishment of a single-family dwelling on each of tax lots 1801 and 1802, and establishment of a commercial gazebo on tax lot 1800: applicable provisions of Statewide Planning Goal 4, ORS 215, and OAR 660, division 6. These land use regulations will not apply to Anne Estes' use of her property only to the extent necessary to allow the claimant a use permitted at the time she acquired the property on June 7, 1966.
2. The action by the State of Oregon provides the state's authorization to the claimant to use her property subject to the standards in effect on June 7, 1966.
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 215.402 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 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 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 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.

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

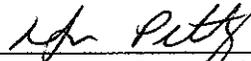
FOR DLCD AND THE LAND CONSERVATION  
AND DEVELOPMENT COMMISSION:



Lane Shetterly, Director  
DLCD

Dated this 24<sup>th</sup> day of October, 2005.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:



Dugan Petty, Deputy Administrator  
DAS, State Services Division

Dated this 24<sup>th</sup> day of October, 2005.

## **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 293.316:** Judicial review under ORS 293.316 may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review under ORS 293.316 is pursuant to the provisions of ORS 183.482 to the Court of Appeals.
2. **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 and the Circuit Court in the county in which you reside.
3. **A cause of action under Oregon Laws 2005, chapter 1 (Measure 37 (2004)):** A present owner of the property, or any interest therein, may file a cause of action in the Circuit Court for the county where the property is located, if a land use regulation continues to apply to the subject property more than 180 days after the present owner made a written demand for compensation.

(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)

### **FOR INFORMATION ONLY**

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

### **FOR INFORMATION ONLY**

The Marion County Circuit Court has issued an opinion declaring that 2004 Oregon Ballot Measure 37 (2005 Or Laws chapter 1) is invalid. As of the date of this order, the court has not entered a judgment that gives legal effect to the court's opinion. Once a judgment is entered by the court, any rights granted by this order may be void or voidable.

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

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

October 24, 2005

**STATE CLAIM NUMBER:** M118363  
**NAME OF CLAIMANT:** Anne L. Estes  
**MAILING ADDRESS:** Post Office Box 1379  
Boring, Oregon 97009  
**PROPERTY IDENTIFICATION:** Township 2S, Range 3E, Section 13C  
Tax Lots 1800, 1801 and 1802  
Clackamas County  
**DATE RECEIVED BY DAS:** April 27, 2005  
**180-DAY DEADLINE:** October 24, 2005

**I. SUMMARY OF CLAIM**

The claimant, Anne L. Estes, seeks compensation 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 place three rental recreational vehicles on the property, to develop a dwelling on each parcel and to construct a gazebo for commercial use. The property is located at 26725 SE Bridgewater Road between Estacada and Boring, in Clackamas County. (See claim.)

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the preliminary 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 the department not apply to Anne Estes' establishment of three recreational vehicle rental spaces on tax lot 1801, establishment of a single-family dwelling on each of tax lots 1801 and 1802 and establishment of a commercial gazebo on tax lot 1800: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215, and OAR 660, division 6. These laws will not apply to the claimant only to the extent necessary to allow Anne Estes a use of the property permitted at the time she acquired it in 1966. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On May 18, 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, one written comment, evidence or information was received in response to the 10-day notice.

The comment is relevant to whether the restriction of the claimant's use of the property reduces the fair market value of the property. The comment has been considered by the department in preparing this report. (See the comment letter in the department claim file.)

### **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 April 27, 2005, for processing under OAR 125, division 145. The claim identifies ORS 215.705 and OAR 660-006-0027(1) as laws that restrict the use of the property and are 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 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**

The claimant, Anne L. Estes, acquired an interest in the subject property on June 7, 1966, as reflected by a land sales contract included with the claim. Information provided by the Clackamas County Assessor indicates that Anne L. Estes is the current owner of the subject property. (See the department’s claim file.)

### **Conclusions**

The claimant, Anne L. Estes, is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of June 7, 1966.

### **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 state land use law “Prevents me from making additional income so I can live and maintain property.” A phone conversation with the claimant on August 25, 2005, clarified the claimant’s intent to use the property by placing three rental recreational vehicles on tax lot 1801, developing a dwelling on both tax lot 1801 and tax lot 1802, and constructing a gazebo on tax lot 1800 in which to conduct wedding ceremonies or other rental uses. Ms. Estes claims that application of ORS 215.705 and OAR 660-006-0027(1) preclude her from doing so.

The subject property is zoned Timber District (TBR) by Clackamas County, as authorized under Statewide Planning Goal 4 (Forest Lands) and OAR 660, division 6. The Clackamas County comprehensive plan designates tax lots 1800, 1801 and 1802 as Forest Land in compliance with Statewide Planning Goal 4 because it is composed of forest soils that are well-suited to the production of harvestable timber.<sup>1</sup>

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<sup>1</sup> The subject property includes a combination of Cottrell silty clay loam, site index 155 to 170 for Douglas-fir (24C - 8 to 15 percent slopes) and Xerochrepts and Haploxerolls, very steep, site index 130 to 155 for Douglas-fir (92F - 20 to 60 percent slope) (1985 Soil Survey of Clackamas County Oregon, Soil map units 24C and 92F).

Statewide Planning Goal 4, (Forest Lands) and laws applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and OAR 660, division 6, restrict the right of an owner to develop the property for commercial or residential use. Goal 4 became effective on January 25, 1975, and required forest land, as defined by the Goal, to be zoned for forest use. (See citations to statutory and rule history under OAR 660-015-0000(4).) The Forest Land Administrative Rule (OAR 660, division 6) became effective September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993) and were adopted into OAR 660-006-0026 and -0027 on March 1, 1994. (See citations to rule history under OAR 660-015-0000(4).)

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and -0027 establish the standards for dwellings in forest zones under Statewide Planning Goal 4.

The claimant acquired the subject property on June 7, 1966, prior to the establishment of the Statewide Planning Goals and their implementing statutes and rules.

### **Conclusions**

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 4 (Forest Lands) and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted after Anne Estes acquired the subject property in 1966, and do not allow the development of the property as proposed in the claim, thereby restricting the use of the property relative to the uses allowed when the property was acquired by Anne Estes in 1966.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any land use regulation 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 does not include an estimate of the reduction in the property's fair market as a result of current regulations. The claimant indicated in a telephone conversation on August 25, 2005, that the ability to rent three recreational vehicle spaces and an existing shop space is worth approximately \$1,450 per month. However, the claimant did not indicate how regulations

enacted after the claimant acquired the property have had the effect of reducing the fair market value of the property, as required by Measure 37.

### **Conclusions**

As explained in Section V.(1) of this report, the current owner is Anne Estes, who acquired the property on June 7, 1966. Under Ballot Measure 37, the claimant is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. The claimant has provided no information regarding the specific dollar amount of the reduction in fair market value as a result of land use laws that reduce development of the property for residential and commercial use. The claim does, however, include a demand for compensation.

Based on the findings and conclusions in Section V.(2) of this report, laws adopted since the claimant acquired the property in 1966 restrict commercial and residential development of the subject property and provided that the claimant provides some evidence of a reduction in value, it appears, that it is more likely than not 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. This conclusion, however, is subject to the claimant providing some indication that the land use laws adopted since she acquired the property in 1966 have reduced the value of her property. This information must be submitted within the 10-day comment period, prior to the issuance of the final report on this claim.

### **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 includes a general reference to any state land use regulations that restrict the use of the property relative to what would have been allowed in 1966 when the property was acquired by Anne Estes. These provisions include Statewide Planning Goal 4 (Forest Lands) and applicable provisions of ORS 215 and OAR 660, division 6 which Clackamas County has implemented through its TBR zone. None of these laws appear to be exempt under Section 3(E) of Ballot Measure 37, which exempts laws in effect when the claimant acquired the property.

The department notes that ORS 215.730 and OAR 660, division 6 include standards for the siting of dwellings in forest zones. This provision includes fire protection standards for dwelling and surrounding forest lands. Section 3(B) of Measure 37 specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...” Siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, division 6) are exempt under Section (3) of Measure 37.

## **Conclusions**

Without a specific development proposal for the property, 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 residential and commercial development and use of forest land apply to the claimant's use of the property, and for the most part these laws are not exempt under Section 3(E) of Measure 37. Standards for siting dwellings in forest zones adopted for public health and safety are exempt under Section 3(B) of Measure 37, and will continue to apply to the property.

Other laws in effect when the claimant acquired the property are exempt under Section 3(E) of Measure 37 and will also continue to apply to the claimant's use of the property. There may also be other laws that continue to apply to the claimant's use of the property that have not been identified in the claim. In some cases it will not be possible to know what laws apply to a use of property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. And, in some cases, some of these laws may be exempt under Sections 3(A) to 3(D) of Measure 37.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under Section 3 of Measure 37 that are clearly applicable given the information provided to the department in the claim. The claimant should be aware that the less information she has provided to the department in her claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the property.

## **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 in order to allow the present owner to carry out a use of the property permitted at the time the current 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 claimant's ability to develop the property for residential and commercial use. These restrictions appear to reduce the fair market value of the subject property to some extent. The claim does not identify a compensation amount and does not provide an appraisal or other documentation of the reduction in fair market value. The department finds that it is more

likely than not 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 compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Anne Estes to use the subject property for a use permitted at the time she acquired the property on June 7, 1966.

### **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 Anne Estes' establishment of three recreational vehicle rental spaces on tax lot 1801, establishment of a single-family dwelling on each of tax lots 1801 and 1802, and establishment of a commercial gazebo on tax lot 1800: applicable provisions of Statewide Planning Goal 4, ORS 215, and OAR 660, division 6. These land use regulations will not apply to Anne Estes' use of her property only to the extent necessary to allow the claimant a use permitted at the time she acquired the property on June 7, 1966.
2. The action by the State of Oregon provides the state's authorization to the claimant to use her property subject to the standards in effect on June 7, 1966.
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 215.402 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 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 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 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 October 3, 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.