BALLOT MEASURE 37 (Chapter 1, Oregon Laws 2005)
CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation
June 28, 2005

STATE CLAIM NUMBER:	M119149
NAME OF CLAIMANT:	James Dinkel
MAILING ADDRESS:	9228 SW Culver Highway Culver, Oregon 97734
IDENTIFICATION OF PROPERTY:	Township 12S, Range 13E, Section 19 Tax lot 1500 Jefferson County Township 12S, Range 13E, Section 20 Tax lot 900 Jefferson County Township 12S, Range 13E, Section 29 Tax lots 200 and 700 Jefferson County
OTHER CONTACT INFO:	Edward P. Fitch P.O. Box 457 Redmond, Oregon 97756
DATE RECEIVED BY DAS:	January 3, 2005
180-DAY DEADLINE:	July 2, 2005

I. CLAIM

James Dinkel, the claimant, seeks compensation in the amount of $286,000 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. Based on the claim currently before the Department of Land Conservation and Development (the department), the claimant desires compensation or the right to build a house on each of four parcels located in Jefferson County.

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. The Department staff recommends that, in lieu of compensation, the requirements of certain applicable state laws enforced by the Land Conservation and Development Commission (the Commission), or the department, specifically the provisions of ORS 215, Statewide Planning Goal 3, and OAR 660, Division 33, that restrict the establishment of a dwelling on each existing lot or parcel within the property, not apply to the subject properties to allow the claimant to establish a dwelling on each lot or parcel to the extent those uses were permitted at the time he acquired the property. As a result, Mr. Dinkel's use of tax lots 200 and 900 will be subject to those specified laws in effect on January 15, 1971, when he acquired those properties; his use of tax lot 700 will be subject to those specified laws in effect on January 10, 1980, when he acquired that property; and his use of tax lot 1500 will be subject to those specified laws in effect on November 21, 1996, when he acquired that property. (See the complete recommendation in Section VI. of this report).

III. COMMENTS ON THE CLAIM

Comments Received

On March 10, 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, there were no written comments, evidence or information 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

The claim was submitted to DAS on January 3, 2005, for processing under OAR 125, Division 145. The claim identifies "all ordinances, rules and regulations regarding Exclusive Farm Use since 1973." 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. Measure 37, Section 11(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

Edward Fitch, the claimant's attorney, provided the following information relating to the four Jefferson County parcels that are the subject of the claim:

Property Identification (Township, Range and Section)	Acreage	Ownership Data
T12S-R13E-S19, tax lot 1500	45	Teresa Dinkel acquired on October 14, 1977 and transferred to James Dinkel on November 21, 1996 (Deed).
T12S-R13E-S29, tax lot 700	52.6	James Dinkel acquired on January 10, 1980 (Deed).
T12S-R13E-S29, tax lot 200	38.3	James Dinkel acquired on January 15, 1971 (Deed).
T12S-R13E-S20, tax lot 900	40.7	James Dinkel acquired on January 15, 1971 (Deed).

Current ownership of these properties is reflected in the 2004 - 2005 Real Property Tax Statements for Jefferson County in the name of James A. Dinkel.

The claimant, James Dinkel, acquired tax lot 1500 from Teresa Dinkel, his wife, on November 21, 1996. The claimant, James Dinkel, acquired tax lot 700 on January 10, 1980. The claimant, James Dinkel, acquired tax lot 200 and tax lot 900 in one transaction on January 15, 1971.

Conclusions

The claimant, James A. Dinkel is an "owner" of the four parcels described above, as that term is defined by Section 11(C) of Ballot Measure 37. Theresa Dinkel, James' wife, is a "family member" as that term is defined by Section 11(A) of the Measure, with respect to tax lot 1500.

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 identifies "All ordinances, rules and regulations regarding Exclusive Farm Use since 1973" that "restrict the ability of the owners to divide this property into four or more parcels." In a clarifying letter dated April 19, 2005, Attorney Fitch states that claimant desires to put a "home" on each of the existing individual parcels. The local regulation on which this claim is based is Jefferson County's Exclusive Farm Use (EFU) A-1 zone. This zone implements Statewide Planning Goal 3 (Agricultural Lands) and OAR 660 Division 33.[1] Under the current law, specifically OAR 660-033-0135 (1994) and ORS 215.283(1)(f), the claimant cannot establish a dwelling on any of these four individual parcels.

OAR 660, Division 33, establishes current standards for the approval of farm and non-farm dwellings. Specifically, OAR 660-033-0135 (1994) requires that, for the approval of a dwelling "customarily provided in conjunction with farm use," the owner must demonstrate, in part, that the owner's farm operation produces a certain gross farm annual income from the sale of farm products in the last two or three of the last five years. OAR 660-033-0135 became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an exclusive farm use zone under ORS 215.283(1)(f). Non-farm dwellings are authorized under ORS 215.284 and the applicable provisions of OAR 660-033-0130.

The claimant, or the claimant's family in the case of Tax Lot 1500, acquired the subject properties over time, in 1971, 1977 and 1980. For tax lots 200 and 900, which the claimant purchased in 1971, the County zoning designation that applied between 1964 and 1973 was A-1 Agricultural District. The A-1 zone was a qualified farm use zone under ORS 215 and required a one-acre minimum lot size and single-family dwellings were permitted on new and existing parcels. The applicable statutory standards for the approval of a dwelling on land zoned for farm use in 1971 are found in ORS 215.213(6)(1969). That statute authorized counties to permit the

[1] The EFU A-1 zone was enacted in 1981. It requires an 80-acre minimum lot size, and imposes income requirements for farm dwellings. Non-farm dwellings are not allowed in this zone.

establishment of certain uses "* * * in any area zoned * * * for farm use: * * * [t]he dwellings and other buildings customarily provided in conjunction with farm use, referred to in paragraph (a) of subsection (2) of ORS 215.203." Statewide Planning Goal 3 was not adopted until 1975 and did not apply when the claimant acquired tax lots 200 and 900.

Theresa Dinkel purchased tax lot 1500 in 1977. James Dinkel purchased tax lot 700 in 1980. At that time the County's zoning designation was A-1 Exclusive Farm Use, with a minimum lot size of 40 acres. Dwellings in conjunction with farm use and nonfarm dwellings were allowable under county zoning, subject to standards set forth in ORS 215. However, at the time tax lots 1500 and 700 were purchased, the County's land use regulations had not been acknowledged by the Commission, and, therefore, were not the controlling regulations with regard to the subject properties. Statewide Planning Goal 3 (OAR 660-15-0000) was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgement of Jefferson County's EFU zones on September 12, 1985. [2]

Conclusions

Tax lots 200 and 900. The current standards for a farm or non-farm dwelling established by Statewide Goal 3, and OAR 660, Division 33, were all adopted after the claimant acquired tax lots 200 and 900 on January 15, 1971, and do not allow the approval of a dwelling on each parcel. The County zoning in place in 1971 authorized a one-acre minimum lot size and the placement of dwellings on the properties. However, ORS 215.213, which also applied directly to the use of the property in 1971, further limits when dwellings may be established on land zoned for farm use. As the current state laws are more restrictive than those in place in 1971, land use regulations enforced by the Commission or the department restrict the use of these parcels relative to the uses allowed when tax lots 200 and 900 were acquired in 1971.

Tax Lots 700 and 1500. Mr. Dinkel's claim for tax lot 1500, acquired by his wife Teresa in 1977, and tax lot 700, which he acquired in 1980, is based on the assumption that the County's A-1 Farm Use Zone was the governing land use regulation, when the properties were first acquired. However, because the County's A-1 Farm Use Zone had not been acknowledged by the Commission at the time the claimant or claimant's family acquired these tax lots, the Goal 3 standards for farm and non-farm parcels applied to the property rather than the requirements of the unacknowledged A-1 zone. The A-1 zone allowed farm and non-farm dwellings, subject to standards set forth in ORS 215. (See additional conclusions regarding tax lot 1500 in Section VI, Form of Relief.)

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[2] Statewide Planning Goal 3 became effective on January 25, 1975, and was applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgement of Jefferson County's EFU zones on September 12, 1985. See *Sunnyside Neighborhood Assn. V. Clackamas County*, 280 OR 569 (1977), *1000 Friends of Oregon v. Benton county*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979) and *Alexanderson v. Polk County*, 289 Or 427, *rev. denied*, 290 Or 137 (1980)). After the County's plan and land use regulations were acknowledged by LCDC, the Statewide Planning Goals and implementing rules no longer directly applied to such local land use decisions (*Byrd v. Stringer*, 295 Or 311 (1983)). However, state statutes apply directly to the use of the property and, insofar as the state and local provisions are materially the same in substance, the applicable local laws must be interpreted and applied by the county in a manner that is consistent with the state laws when the county makes its decision. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

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 a fair market value reduction of $286,000 for the properties. It is assumed that this figure is the total reduction in value for all four tax lots.

A letter from Mayfield Realty, dated March 4, 2005, and submitted to supplement Mr. Dinkel's claim, reviews comparables in the area to the claimant's parcels. It concludes that unbuildable 40-acre parcels in the region, with irrigation, should be valued at approximately $80,000. A buildable parcel's real market value is estimated be in the $275,000-$300,000 range. If this analysis is correct, the total aggregate reduction in fair market value for the four parcels would be in the neighborhood of $1,000,000.

Conclusions

As explained in section V.(1) of this report, the current owner is James Dinkel. Mr. Dinkel, or his family, acquired the properties between 1971 and 1980 . Under Ballot Measure 37, that Mr. Dinkel is due compensation for land use laws that restrict the use of the subject properties in a manner that reduces their fair market value.

Without an appraisal based on the value of the dwellings on the four lots, 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 properties 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 provisions of ORS 215 and Goal 3 relating to agricultural lands in place in 1971, 1977 and 1980 are exempt from this claim, to the extent that they were in effect prior to the purchase of each parcel designated in the claim.

Conclusions

The versions of ORS 215, including the standards for dwellings in ORS 215.213, that were in effect on the dates each of the respective tax lots was acquired in 1971, 1977 and 1980, are exempt from this claim. The versions of Goal 3 and relevant sections of OAR 660, relating to agricultural lands, in effect on the dates the claimant or claimant's family acquired tax lot 1500 in 1977, and tax lot 700 in 1980, are exempt from this claim. Other provisions of ORS 215, Goal 3 and OAR 660, Division 033, that apply to the establishment of a dwelling do not appear to be exempt under Section 3 of Ballot Measure 37. There may be other state laws that continue to apply under one or more of the exceptions 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 Commission or 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 allowed at the time the present owner acquired the property. The Commission, has by rule, 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 James Dinkel from building dwellings on the four parcels that are the subject of this claim. The laws enforced by the Commission or department reduce the fair market value of the four subject properties to some extent. The claim asserts this amount to be $286,000. 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, the department acknowledges that the laws on which the claim is based 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, Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow James Dinkel to use the subject property for a use permitted at the time he acquired the properties on January 15, 1971 (tax lots 200 and 900), January 10, 1980 (tax lot 700) and November 21, 1996 (tax lot 1500).

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 establishment of a dwelling on each of the four individual parcels, as follows:

Tax Lots 200 and 900: the standards for farm and non-farm dwellings established in ORS 215, Goal 3 and OAR 660, Division 33, adopted after the claimant acquired the property in 1971;

Tax Lot 700: the standards for farm and non-farm dwellings established in ORS 215, Goal 3 and OAR 660, Division 33, adopted after the claimant acquired the property in 1980;

Tax Lot 1500: the standards for farm and non-farm dwellings established in ORS 215, Goal 3 and OAR 660, Division 33, adopted after the claimant acquired the property in 1996.

2. The action by the State of Oregon provides the state's authorization to the claimant to establish a dwelling on each of the four parcels, subject to those standards in effect on the dates the claimant acquired each parcel:

Tax lots 200 and 900 – In 1971 the property was subject to ORS 215.213.

Tax lot 700 – In 1980 the property was subject to the direct application of Statewide Planning Goal 3 and ORS 215.213.

Tax lot 1500 – In 1996 the property was subject to Statewide Planning Goal 3, ORS 215.780 and OAR 660, Division 33.

The department acknowledges that the standards in effect on the dates the properties were acquired may not allow the claimant to establish a dwelling on each parcel, and that the relief recommended with regard to Tax lot 1500 will not allow the claimant to use that tax lot in the manner set forth in his claim.

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 any of the properties until the claimant first obtains that permit, license, or other form of authorization nor 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 properties imposed by private parties.

4. Any use of any of the properties 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 DLCD; and (c) those laws not subject to Measure 37, including, without limitation, those laws exempted under section (3) of Measure 37.

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use any of the properties, it may be necessary for him 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 properties. 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 any of the properties 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.