

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

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

August 23, 2005

**STATE CLAIM NUMBER:** M119958

**NAME OF CLAIMANTS:** Coy and Jolene Roberts, Trustees of the  
Roberts Family Revocable Trust

**MAILING ADDRESS:** 5725 Southeast Booth Bend Road  
McMinnville, Oregon 97128

**PROPERTY IDENTIFICATION:** Township 4S, Range 4W, Section 27  
Tax Lot 1400  
Yamhill County

**DATE RECEIVED BY DAS:** February 28, 2005

**180-DAY DEADLINE:** August 27, 2005

**I. CLAIM**

Coy and Jolene Roberts, the claimants, seek compensation in the amount of \$50,000 to \$100,000 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 the right to divide the property into two parcels, each containing an existing residence. The claim is for a 1.55-acre property located at 5725 Southeast Booth Bend Road (near the City of McMinnville). The property is designated as Tax Lot 4427-1400 by Yamhill 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 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 Coy H. and Jolene D. Roberts, as Trustees of the Roberts Family Revocable Trust to allow them to divide the property into two parcels: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215.263, 215.780, and OAR 660, division 33, that took effect after June 23, 1967. These laws will not apply to the subject property only to the extent necessary to allow the claimants to divide the property as permitted at the time they acquired the property on June 23, 1967. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On March 3, 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 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 28, 2005 for processing under OAR 125, division 145. The claim includes a list of land use regulations (see claim) all of which were enacted prior to December 2, 2004, the effective date of Measure 37. (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 claim consists of one property, Assessor’s parcel 4427-1400. The claimants, Coy and Jolene Roberts, acquired an interest in the property on June 23, 1967. Copies of deeds pertaining to the property have been included in the claim. A copy of the Real Property Tax Statements from Yamhill County for the time period July 1, 2004 to June 30, 2005 lists the claimants as trustees of The Roberts Family Revocable Trust as the current owner of Yamhill County Tax Lot 4427-1400. Transfer of the subject property into a revocable trust does not result in a break in the Roberts’ ownership of the property for the purpose of this Measure 37 claim.

### **Conclusions**

The claimants, Coy and Jolene Roberts as Trustees of the Roberts Family Revocable Trust, are “owners” of the property as that term is defined under 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 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 properties are currently zoned Exclusive Farm-80 (EF-80) by Yamhill County (see claim). The claimant applied to the County for permission to partition the property into two lots of one-half-acre plus to accommodate two existing dwellings. The claimant was informed by a letter from Michael Brandt, Yamhill County Planning Director (February 4, 2005), that current County zoning did not allow the proposed land division. In the letter, Mr. Brandt explained that the County’s EF-80 zone establishes a minimum lot size of 80-acres.

The claim is based, in part, on Yamhill 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. 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 into parcels less than 80-acres.

ORS 215.780 established an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective November 4, 1993 (chapter 792, Oregon Laws 1993). ORS 215.263 (2003 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

The claimants acquired the subject property on June 23, 1967. At that time, the state land use planning laws and implementing regulations, with the exception of provisions of ORS 215, adopted in 1963, were not in effect.

### **Conclusion**

The zoning requirements, minimum lot size and dwelling standards established by Statewide Planning Goal 3, and ORS 215, including ORS 215.780, and OAR 660-033-0100, were all adopted after the claimants acquired the property that is the subject of this claim, and restrict the use of the subject property. The land use laws identified above were adopted since 1967, and restrict the division and use of the property relative to the uses allowed when the property was acquired.

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 claimants have identified. There may be other laws that currently apply to the claimants' use of the property, and that may continue to apply to the claimants' 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 claimants seek 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 law(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 claimants state that the fair market value of the subject property has been reduced and the compensation due is \$50,000 to \$100,000. The claimants apparently based their estimate on local property sales information but no documentation for the estimate is included in the claim.

### **Conclusions**

As explained in section V.(1) of this report, the current owners of the subject property is the Roberts Family Revocable Trust. The trustees, Coy and Jolene Roberts acquired the property

in 1967. Thus, under Ballot Measure 37, Coy and Jolene Roberts are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. The claim states that the reduction in value is \$50,000 to \$100,000.

Without an appraisal or other explanation, 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 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 laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

#### **Findings of Fact**

The laws which restrict the claimants' desired use of this property were adopted after the claimants acquired an interest in the property in 1967, with the exception of some provisions of ORS 215.

#### **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 the division of the property into two parcels are not exempt under subsection 3(E) of Measure 37. State laws in effect when the claimants acquired the property in 1967 are exempt under subsection 3 (E) of the measure and will continue to apply to the property.

There may be other laws that continue to apply to the claimants' 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 claimants seek 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 subsections 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 use(s) 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 claimants should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their 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 a 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, that 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 enacted or enforced by the Commission or the department, specifically Goal 3 and ORS 215, restrict the partition of the subject property and thus, the claimant cannot divide the property into one-half-acre parcels, each with dwellings. The laws enforced by the Commission or department reduce the fair market value of the property to some extent. The claim asserts this amount to be \$50,000 to \$100,000. However, 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, based on the record for this claim, the department acknowledges that the laws on which the claim is based more likely than not 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 the claimants, Coy and Jolene Roberts to divide the subject property as use permitted at the time they acquired the property in 1967.

### **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 Coy and Jolene Roberts, as trustees of the Roberts Family Trust, to allow them to divide the property into two parcels, each containing one of the existing dwellings on the property: applicable provisions of Statewide Planning Goal 3, ORS 215.263 and 215.780 and OAR 660, division 33, that took effect after June 23, 1967. These land use regulations will not apply to the Roberts' use of the property only to the extent necessary to allow the claimants a use permitted at the time they acquired the property on June 23, 1967.
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 June 23, 1967. On that date, the property was subject to applicable provisions of ORS 215 then in effect.

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 215.402 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 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 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 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 22, 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.