

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

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

August 12, 2005

STATE CLAIM NUMBER: M119872

NAME OF CLAIMANTS: Alice L. Shelton, as Trustee of the
Alice L. Shelton Living Trust
Jeffrey Shelton, as Trustee of the
Alice L. Shelton Living Trust

MAILING ADDRESS: 1563 Cypresspoint Drive
Medford, Oregon 97504

IDENTIFICATION OF PROPERTY: Township 13 S, Range 2W, Section 7,
TL 100 (300.18 acres); Township 13 S,
Range 2W Section 8, TL 300 (145.42 acres);
Township 13S Range 2W Section 17,
TL 200 (100 acres); Township 13 S,
Range 3W, Section 12, TL 100 (23.02 acres)
Linn County

DATE RECEIVED BY DAS: February 22, 2005

180-DAY DEADLINE: August 21, 2005

I. CLAIM

The claimants, Alice Shelton and Jeffrey Shelton, Trustees of the Alice Shelton Living Trust, seek compensation in the amount of \$430,640¹ 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 divide and develop the 568.62 acre subject property² into two to ten acre parcels with a dwelling on each parcel. The property is located at 29720 Brownsville Road, near Brownsville, Oregon, Linn County. (See claim.)

¹ This claim asserts that the reduction in fair market value caused by state land use regulations is \$430,640. This is different than the claim made to Linn County which alleged that the current value of the property is \$430,640 and the value of the property if county land use regulations do not apply is \$16,750,000.

² The Claim submitted to the state did not include the size of the subject property. This size of the property was given by the Linn County Assessor's office. This size of the subject property is slightly smaller than the Measure 37 Claim submitted to Linn 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 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 divide the subject property into two to ten acre parcels and to establish a dwelling on each parcel: Statewide Planning Goal 3 (Agricultural Lands), ORS 215.263, ORS 215.284, 215.780, and OAR 660, division 33, in effect when the claimants each acquired the property. These laws will not apply to Alice Shelton only to the extent necessary to allow her a use of the subject property permitted at the time she acquired it on March 18, 1950. These laws will not apply to Jeffrey Shelton only to the extent necessary to allow him a use of the subject property permitted at the time he acquired it on April 20, 2001.

The department acknowledges that the relief recommended in this report will not allow Jeffrey Shelton to use the property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS RECEIVED

Comments Received

On February 16, 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 one written comment evidence or information was received in response to the 10-day notice. The comment did not address whether the claim meets the criteria for relief (compensation or waiver) under Measure 37. Comments concerning the effects a use of property may have on surrounding areas generally are not something that the department is able to consider in determining whether to waive a state statute. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waiving a state law. (See comment letter in the department's 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 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 February 22, 2005 for processing under OAR 125, division 145. The claim identifies EFU zoning and state land use regulations adopted since 1950 that restrict the use of 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 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, Alice Shelton, acquired an ownership interest in the subject property on March 18, 1950. The revocable Alice Lillian Shelton Living Trust was created December 4, 1995, and title to the property was transferred to the trust. (See the department’s claim file for a copy of trust documents.) On April 20, 2001, the trust was amended to add Jeff Shelton as a trustee of the trust, in addition to Alice Shelton. Transfer of the subject property to the trust did not alter Alice Shelton’s holding an ownership interest in the property. Jeffrey Shelton, as trustee of the trust, acquired an ownership interest in the property on the date the trust was amended, on April 20, 2001. According to the Linn County assessor’s office the present owner of the subject property is identified as the Alice Lillian Shelton Living Trust.

Conclusions

Alice Shelton and Jeffrey Shelton, each as trustees of the Alice Lillian Shelton Living Trust are “owners” of the subject property as that term is defined in Section 11 (C) of Ballot Measure 37. For purposes of this Measure 37 claim, Ms. Alice Shelton has maintained an ownership interest in the subject property since March 18, 1950. Mr. Jeffrey Shelton, as one of the trustees of the Alice Shelton Living Trust, acquired an ownership interest in the property on April 20, 2001.

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 claimants’ 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 claimants or a family member acquired the property.

Findings of Fact

The claim states that there is a “limitation size parcel” and “limitation on dwellings.”

The claim is based, in part, on Linn County’s current Exclusive Farm Use (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 and establish standards for allowing the existing or any proposed parcel(s) to have farm or non farm dwellings on them.

ORS 215.780 establishes an 80-acre minimum size for the creation of new parcels or lots 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.

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 effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130 and 0135.)

The claimant, Ms. Shelton acquired her interest in the subject property on March 18, 1950 prior to the establishment of the Statewide Planning Goals or ORS 215 or the Commissions' rules. The claimant, Mr. Jeffrey Shelton, acquired his interest in the subject property as one of the trustees of the Alice Shelton Living Trust on April 20, 2001. At that time, most of the current provisions of the Statewide Planning Goals, ORS 215, and OAR 660-033 were in effect. However, there have been some new provisions of those laws that have taken effect since that time.

Conclusions

Subdivision and dwelling standards established by Statewide Planning Goal 3, ORS 215, and OAR 660-033 adopted since Alice Shelton acquired her interest in the property in 1950 do not allow the division of the property into parcels less than 80-acres in size or the approval of dwellings on two to ten acre parcels. The 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 March 18, 1950 restrict the use of the property from what could have been done when the property was acquired by the claimant, Ms. Shelton in 1950. Some of the current provisions of ORS 215, and OAR 660-033 have taken effect since Mr. Shelton acquired his interest in the property as a trustee of the Alice Shelton trust. As a result, both claimants' use of the property has been restricted by state land use regulations.

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 the claimants have identified. There may be other laws that currently apply to the claimants' use of the property, and 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 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 claimants state that the fair market value of the subject property has been reduced by \$430,640 as a result of land use laws enacted after Alice Shelton acquired an interest in the property in 1950. The claim filed with Linn County states that the current value of the property is \$430,640, and that the value of the property without the land use regulations is \$16,750,000. The claimants have not explained why they believe the reduction in fair market value resulting from county land use regulations is substantially more than the reduction resulting from state land use regulations. Nevertheless, the information provided by the owners of the property provides some evidence that state land use regulations have been enforced so as to reduce the fair

market value of the property to some degree. The department has no evidence to the contrary at this time.

Conclusions

Based on the record currently before the department, there is some evidence that state land use regulations have been enforced in a manner that reduces the fair market value of the property. The department has no evidence to the contrary, and determines that it is more likely than not that there has been some reduction in the fair market value of the property as a result of the enforcement of state land use regulations. The claim asserts the reduction in value due to the restriction to be \$430,640. 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 in part on laws related to Statewide Planning Goal 3 (Agricultural Lands) and applicable provisions of ORS 215 and OAR 660, division 33, that reduce the fair market value of the subject property. These specific state land use regulations were enacted after Alice Shelton acquired the property in 1950, and do restrict the use of the property in a manner that likely reduces its fair market value. None of these specific laws appear to be exempt, under Section 3(E) of Ballot Measure 37 as to Alice Shelton's use of the property. Jeffrey Shelton acquired his interest in the property in 2001. State land use regulations that took effect before Mr. Shelton acquired his interest are exempt under subsection 3(E) 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 appears that the general statutory, goal and rule restrictions on the division, residential development and use of Agricultural Land apply to the claimants' use of the property, and for the most part these laws are not exempt as to Alice Shelton as she acquired her interest in the property in 1950. Many of these laws are exempt as to Jeffrey Shelton's use of the property, as he acquired his interest in 2001.

Laws in effect when the claimants acquired their interests in the property are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimants' use of 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 claimant seeks a building or development permit to carry out a specific use, it may become evident what 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 that the claimants have identified. Similarly, the 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. 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, 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 in this report, laws enforced by the Commission or the department prohibit the division of the subject property into two to ten acre parcels or lots with a dwelling on each parcel or lot created. The claim asserts that these restrictions reduce the fair market value of the subject property by \$430,640. Although the claim provides an explanation about how the specified restrictions reduce the fair market value of the property, no appraisal or other documentation was submitted to substantiate the reduction in value and based upon the information submitted, land it is not possible 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 claimant, Alice Shelton, to use the subject property for a use permitted at the time she acquired an interest in the property in 1950 and to allow the claimant, Jeffrey Shelton, to use the subject property for a use permitted at the time he acquired an interest in the property in 2001. In general, at the time Mr. Shelton acquired an interest in the property, the property was subject to the EFU regulations currently in effect.

Conclusions

Based on the current 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 claimants:

A. For Alice Shelton's (as trustee of the Alice Shelton Trust) division of the property into two to five acre parcels or to the establishment of dwellings on each parcel: applicable provisions of Statewide Planning Goal 3, ORS 215.263, 215.284, 215.780, and OAR 660-033 enacted after March 18, 1950. These land use regulations will not apply to Ms. Shelton's use of the property only to the extent necessary to allow the claimant Ms. Alice Shelton to a use permitted at the time she acquired her interest in the property.

B. For Jeffrey Shelton's (as trustee of the Alice Shelton Trust) division of the property into two to five acre parcels or to the establishment of dwellings on each parcel: applicable provisions of Statewide Planning Goal 3, ORS 215.263, 215.284, 215.780, and OAR 660-033 enacted after April 20, 2001. These land use regulations will not apply to Mr. Shelton's use of the property only to the extent necessary to allow the claimant Mr. Jeffrey Shelton to a use permitted at the time he acquired his interest in the property. The department acknowledges that the relief recommended in this report will not allow the claimant, Jeffrey Shelton, to use the property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the property subject to the standards in effect on March 18, 1950 as to Alice Shelton, and April 20, 2001 as to Jeffrey Shelton.

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 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 25, 2005. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' 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.