

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

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

September 1, 2005

**STATE CLAIM NUMBER:** M120041

**NAME OF CLAIMANTS:** Grant Cornelius, Gayle Cornelius,  
And Tim Cornelius

**MAILING ADDRESS:** 3375 Southwest 53<sup>rd</sup> Street  
Corvallis, Oregon 97333

**PROPERTY IDENTIFICATION:** Township 10S, Range 4W, Section 30  
Tax Lots 800 and 803

Township 10S, Range 5W, Section 25  
Tax Lots 100 and 103  
Benton County

**DATE RECEIVED BY DAS:** March 2, 2005

**180-DAY DEADLINE:** August 29, 2005

**I. CLAIM**

The claimants Grant Cornelius, Gayle Cornelius, and Tim Cornelius seek compensation in the amount of \$5,500,000 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 compensation or the right to divide the property to build dwellings on the subject property. The property is located southwest of Tampico Road at Daystar Drive, near the city of Adair Village in Benton 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 certain state laws enforced by the Land Conservation and Development Commission (the Commission) or the department, not apply to the division and residential development of the subject property: Statewide Planning Goal 4 (Forest Lands) and OAR 660, division 6, to the extent necessary to allow claimant Grant Cornelius the use of the property permitted at the time of acquisition on March 10, 1971; claimant Gayle Cornelius the use of the property permitted on February 7, 1986; and claimant Tim Cornelius the use of the property permitted on June 26, 1986. (See the complete recommendation in Section VI of this report.)

### **III. COMMENTS RECEIVED**

On March 16, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS), provided written notice to surrounding property owners. According to DAS, three written comments were received in response to the 10-day notice. Commenters were opposed to development in the area as proposed. (See comment letters in the department's claim file.) The comments do not address whether the claim meets the criteria for relief (compensation or waiver) under Measure 37. Comments concerning the effects a use of the property may have on surrounding areas generally are 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 waiving a state law.

### **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 filed with DAS on March 2, 2005, for processing under OAR 125, division 145. The claim identifies land use regulations that were enacted prior to December 2, 2004, the effective date of Measure 37 as the basis for the claim. (See citations to statutory and rule history in the Oregon Revised Statutes and Administrative Rules.)

#### **Conclusions**

The claim was 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 are therefore timely filed.

## V. ANALYSIS OF CLAIM

### **1. Ownership**

Ballot Measure 37 provides for payment of compensation or relief from specific laws to “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 property subject to this claim was acquired by Grant Cornelius on March 10, 1971, based on a land sale contract signed by Grant Cornelius and obtained by the department. Grant Cornelius deeded the property to Grant and Gayle Cornelius on February 7, 1986. Grant and Gayle Cornelius conveyed a portion of the property to Timothy Cornelius by Deed on June 26, 1986. The Deed reserves a Life Estate to Grant and Gayle Cornelius.

Currently, Grant and Gayle Cornelius own Tax Lot 100. Tim Cornelius, owns Tax Lots 103, 800, and 803, while Grant and Gayle Cornelius continue to maintain an interest in these three Tax Lots.

Information provided by Benton County indicates division of the property, including the conveyance of Tax Lots 103, 800 and 803 to Tim Cornelius, as well as two other conveyances not subject to this claim, was completed without approvals required by Benton County ordinances.

### **Conclusions**

The claimants Grant and Gayle Cornelius have established that they are “owners” of Tax Lot 100 as defined by Section 11(C) of Ballot Measure 37. Claimants Grant, Gayle and Tim Cornelius have established they are “owners” of Tax Lots 103, 800 and 803 as defined by 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**

This claim was received as a one-page letter and generally states that in the mid-1970’s Benton County developed a county comprehensive plan and zoned the property Rural Residential, five-acre minimum (RR-5), and that prior to that point there were no restrictions on the division of the property or the establishment of dwellings. Subsequent information was provided by the claimants on June 28, 2005, including reference to a Benton County “Ordinance Number 6.” No state regulations that reduce the fair market value of the property have been specifically

identified, however, the claimants have made it clear that their claim is based on whatever laws restrict their ability to divide the property and develop it for residential use.

Benton County Ordinance Number 6 was adopted July 3, 1974, and became effective August 2, 1974. According to the Benton County staff report on the local claim, Ordinance 6 included the Benton County Zoning Ordinance and Zoning Map and amended the zoning of the subject property from Suburban Residential Agriculture, one-acre minimum parcel size (RA) to RR-5. In 1979, the County zoning was changed to Forest Conservation (FC).

The cited Benton County regulations implement Statewide Planning Goal 4 (Forest Lands) and statutes applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and provisions of OAR 660, division 6, that restrict the property's zoning, use and division. Goal 4 became effective on January 25, 1975, and required Forest Land, as defined by the goal, to be zoned for forest use. The Goal 4 Administrative Rule OAR 660, division 6, became effective September 1, 1982. ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (chapter 792, Or Laws 1993) and were implemented by OAR 660-006-0026 and 0027 on March 1, 1994. (See citations to rule history under OAR 660-015-0000(4).) ORS 215.730(1)(b) establishes approval standards for dwellings on lands zoned for forest use to protect the public health and safety with regard to fire safety, water supply and development on steep slopes.

Together, ORS 215.705 to 215.755 and 215.780, and OAR 660-006-0026 and -0027 establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone and also establish the standards for dwellings in forest zones.

When Grant Cornelius acquired the subject properties in 1971, general provisions of ORS 215, adopted in 1963 were in effect. None of the other state land use regulations listed above were in effect at that time.

Based on information submitted to the department, the legal status of the subject properties is in doubt, as it was divided by deed (on two occasions) without Benton County approval.<sup>1</sup> Any relief that may be provided by the State to the claimant under Ballot Measure 37 does not legalize any illegal land division or imply that the subject properties are legally created lots. This issue will be addressed when the claimant seeks a building or development permit from the county to carry out a specific use.

## **Conclusions**

The minimum lot size and dwelling standards established by ORS 215.705 to 215.755 and 215.780, Statewide Planning Goal 4, OAR 660-006-0026 and -0027, and Benton County RR-5 and subsequent Forest Conservation zone were all adopted after Grant Cornelius acquired the properties in 1971, and do not allow the division of the properties into parcels less than 80-acres in size or the approval of dwellings on smaller parcels. The current land use regulations, all adopted since 1971, restrict the use of the properties from what could have been done when the properties were acquired by Grant Cornelius in 1971.

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<sup>1</sup> Benton County Board Order-M37: Cornelius (July 5, 2005).

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 the current 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 letter constituting the State claim does not provide an estimated reduction in value, however a claim form submitted to Benton County estimated a reduction in fair market value of \$5,500,000 because the property could have been divided into smaller parcels before it was zoned. (See the Benton County staff report in department's claim file.) Although inconclusive, the claim also includes a realtor-prepared market analysis for comparable properties. Additionally, the claimants' attorney has provided financial assumptions supporting the claim which are based on site preparation and sale of 55 lots at an estimated \$100,000 profit per lot (less infrastructure improvements), for a total of \$5,500,000. No statement has been submitted explaining how current land use laws have reduced the fair market value of the subject property.

#### **Conclusions**

As explained in section V. (1) of this report, the claimants currently own the subject properties. Grant Cornelius acquired the properties on March 10, 1971. Under Ballot Measure 37, the claimants are due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value.

As explained in Section V.2 of this report, certain state land use regulations adopted since 1971, restrict the partition and use of the property from what could have been done when the property was first acquired by Grant Cornelius in 1971.

Without an appraisal based on the value of the property when divided for residential development or another explanation of the reduction in fair market value, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. However, 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 for each of the claimants.

### **4. Exemptions under Section 3 of Measure 37**

Ballot Measure 37 does not apply to certain land use regulations. The type of land use regulations not subject to a claim for compensation under Ballot Measure 37 are set forth in section 3 of the measure.

### **Findings of Fact**

The claim includes specific reference to a Benton County ordinance and general claims based on the regulation that restrict the use of the property relative to what would have been allowed in 1971 when Grant Cornelius acquired the property. Most laws that qualify as “land use regulations” under the measure were adopted after 1971, with the exception of provisions in ORS 215 adopted in 1963. As a result, the laws addressed in section V.2 of this report are not exempt under subsection 3(E) of Measure 37.

While not directly raised by the claimant, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings and for 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...” The department finds that 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 subsection (3) of Measure 37.

### **Conclusions**

Without a specific development proposal or a specific listing of laws that are the basis for the claim, 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 development and use of Forest Land apply to the owners’ anticipated use of the property and for the most part these laws would not come under any of the exemptions in Measure 37.

The siting requirements of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards based on health and safety are exempt and will also continue to apply. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure, because they were not identified in the claim, or because they are laws that are not covered by the Measure to begin with.

Laws in effect when the Grant Cornelius acquired the property in 1971, including provisions of ORS 215 adopted in 1963, are exempt under Section 3(E) of Measure 37, and may 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 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 uses that the claimant have 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 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 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 conclusions set forth in this report, laws enforced by the Commission or the department restrict the division of the subject property into parcels less than 80-acres or the approval of dwellings on multiple parcels and therefore reduce the fair market value of the property. It appears the claim asserts this amount to be \$5,500,000. However, because the claim does not provide a specific explanation for how the specified restrictions reduce the fair market value of the property from what they could have done under the regulations in place at the time the family acquired the property in 1971, a specific amount of compensation cannot be determined. Nevertheless, based on the current record for this claim, the department acknowledges that the laws on which the claim is based likely 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 one or more land use regulations to allow the Cornelius's to use the subject property for a use permitted at the time they acquired the properties. As explained in Section V.1, the applicable dates are March 10, 1971 for claimant Grant Cornelius, February 7, 1986 for Gayle Cornelius, and June 26, 1986 for Tim Cornelius.

### **Conclusions**

Based on the record, the department recommends that the claim be approved, subject to the following terms.

1. In lieu of compensation (and except for ORS 215.730 and those provisions of Goal 4 and its implementing rules (OAR 660, division 6) relating to siting standards for dwellings for the protection of public health and safety) the requirements of the following state laws enforced by the Commission or the department will not apply to Grant Cornelius' use of the property: the minimum lot size and dwelling standards established by ORS 215.705 to 215.755 and 215.780, Statewide Planning Goal 4, and OAR 660-006-0026 and -0027. These laws will not apply to the property to allow the Grant Cornelius to divide the property and establish a dwelling on each lot or parcel as permitted on March 10, 1971 when he acquired the property. The action by the state

of Oregon provides the state's authorization to the claimant to use the property subject to the standards in effect on March 10, 1971. These standards may include provisions of ORS 215 adopted prior to 1971.

2. In lieu of compensation (and except for ORS 215.730 and those provisions of Goal 4 and its implementing rules (OAR 660, division 6) relating to siting standards for dwellings for the protection of public health and safety), the requirements of the state laws cited in paragraph 1 above enacted after February 7, 1986, will not apply to Gayle Cornelius' use of the property. The action by the state of Oregon provides the state's authorization to the claimant to use the property subject to the standards in effect on February 7, 1986. These standards include provisions of ORS 215, Statewide Planning Goal 4 and OAR 660, division 006.

3. In lieu of compensation (and except for ORS 215.730 and those provisions of Goal 4 and its implementing rules (OAR 660, division 6) relating to siting standards for dwellings for the protection of public health and safety) the requirements of the state laws cited in paragraph 1 above enacted after June 26, 1986, will not apply to Tim Cornelius' use of the property. The action by the state of Oregon provides the state's authorization to the claimant to use the property subject to the standards in effect on June 26, 1986. These standards include provisions of ORS 215, Statewide Planning Goal 4 and OAR 660, division 006.

4. 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.

5. 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 paragraphs 1–3 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.

6. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property it may be necessary for one or more claimant to obtain a decision under Measure 37 from a county 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 26, 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.