

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

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

December 19, 2006

**STATE CLAIM NUMBER:** M129515

**NAME OF CLAIMANT:** Cathy Millis

**MAILING ADDRESS:** 18600 NW Sellers Road  
Banks, Oregon 97106

**PROPERTY IDENTIFICATION:** Township 4S, Range 2W, Section 6  
Tax lot 100

Township 3S, Range 2W, Section 31  
Tax lots 800 and 1000

Marion County

**OTHER CONTACT INFORMATION:** Michael G. Gunn, Attorney  
PO Box 1046  
Newberg, Oregon 97132

**DATE RECEIVED BY DAS:** June 15, 2006

**180-DAY DEADLINE:** December 12, 2006

**I. SUMMARY OF CLAIM**

The claimant, Cathy Millis, seeks compensation in the amount of \$13,550,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 200.16-acre subject property into two-acre parcels and to develop a dwelling on each parcel.<sup>1</sup> The subject property is located at the 3700 block of Ray Bell Road, near St. Paul, in Marion 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 not valid because the claimant's

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<sup>1</sup> The subject property includes three tax lots. Tax lot 100 consists of 80.16 acres, tax lot 800 consists of 40 acres, and tax lot 1000 consists of 80 acres.

desired use of the subject property was prohibited under the laws in effect when the claimant acquired the property in 2005. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On October 16, 2006, pursuant to Oregon Administrative Rule (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 were received in response to the 10-day notice.

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

ORS 197.352(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 Measure 37 (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 Measure 37 (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 June 15, 2006, for processing under OAR 125, division 145. The claim identifies Marion County's comprehensive plan and zoning ordinances; ORS 215; Goals 3 and 4; and provisions of OAR 660, division 4, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

#### **Conclusions**

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

### **V. ANALYSIS OF CLAIM**

#### **1. Ownership**

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

## **Findings of Fact**

The claimant, Cathy Millis, acquired the subject property on May 18, 2005, as reflected by a resignation of trustee dated May 18, 2005, and a certification of successor trustee dated June 14, 2006, both included with the claim.<sup>2</sup> The claimant is the successor trustee under the Robert C. Niehus Trust and the Viola M. Niehus Trust, both established on November 6, 2000.<sup>3</sup> The Marion County Assessor's Office confirms the claimant's current ownership of the subject property.

## **Conclusions**

The claimant, Cathy Millis, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of May 18, 2005.

## **2. The Laws That are the Basis for This Claim**

In order to establish a valid claim, ORS 197.352(1) 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 indicates that the claimant desires to divide the 200.16-acre subject property into two-acre parcels and to develop a dwelling on each parcel, and that the desired use is not allowed under current land use regulations.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimant's property is zoned EFU by Marion County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's property is "agricultural land" as defined by Goal 3.<sup>4</sup> Goal 3

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<sup>2</sup> As stated on the claim form signed and filed by Cathy Millis on June 14, 2006, the claimant is "Cathy Millis, Trustee of the Robert H. Niehus Trust dated November 6, 2000" and "Cathy Millis, Trustee of the Viola Niehus Trust dated November 6, 2000." The claim does not discuss family ownership and does not assert or establish a family ownership between Cathy Millis and Robert or Viola Niehus. In response to the draft staff report, on November 22, 2006, the claimant's attorney objected to the analysis in the report, asserting that Ms. Millis is not the claimant but rather that the two trusts of which she is trustee are the claimants. The attorney asserts the claims must be evaluated based on the date Robert Niehus and Viola Niehus acquired the property in 1961 and 1978. According to the attorney, Robert Niehus is deceased and Viola Niehus is still living. A trust document cannot own real property. Ms. Millis acquired an interest in the trust property when she became successor trustee of both trusts in 2005. While Ms. Niehus still has an ownership interest in the property of the revocable trust over which she is grantor, she is not listed as a claimant on this claim for compensation and the claim does not otherwise assert that she is a claimant. If Ms. Niehus wishes to make a claim under ORS 197.352, she may do so. However, the department cannot amend a claim at this stage to add a claimant who was not listed in the original claim.

<sup>3</sup> The claimant has not asserted that she acquired the property from a family member or provided documentation to establish a family relationship. Absent evidence to establish that the claimant acquired the property from a family member, the department cannot evaluate the claim for compensation based on family ownership.

<sup>4</sup> The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

