

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

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

September 2, 2005

**STATE CLAIM NUMBER:** M120131

**NAME OF CLAIMANT:** Nelda Martin

**MAILING ADDRESS:** 240 East Main  
Long Creek, Oregon 97856

**PROPERTY IDENTIFICATION:** Township 10 S, Range 31E,  
Most of Sections 16, 17,  
Portions of Sections 20, 21  
Tax Lot 1700  
Grant County

**OTHER CONTACT INFORMATION:** Dale Martin, Conservator  
240 East Main  
Long Creek, Oregon 97856

**DATE RECEIVED BY DAS:** March 14, 2005

**180-DAY DEADLINE:** September 10, 2005

**I. SUMMARY OF CLAIM**

The claimant, Ms. Nelda Martin, through her court-appointed conservator, Dale Martin, seeks compensation in the amount of \$3,018,340 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 claimant desires compensation or the right to subdivide approximately 1337-acres into thirty-two 20-acre lots and sixty-five 10-acre lots. The property is located at 35513 Kenny Fork Road, Long Creek in Grant 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 Ms. Martin's division of the property into thirty-two 20-acre lots and sixty-five 10-acre lots: Statewide Planning Goals 3 (Agricultural Lands), ORS 215.780, and applicable

provisions of OAR 660, division 33. These laws will not apply to the claimant only to the extent necessary to allow Ms. Martin a use of the property permitted at the time she acquired the property in 1943 and 1952. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On March 18, 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, two written comments, evidence or information were received in response to the 10-day notice.

One comment is indirectly relevant to the claim and notes that water and septic systems, and roads will have to be provided by the potential subdivider before creating new lots on the subject property. The comment has been considered by the department in preparing this report.

### **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 March 14, 2005, for processing under OAR 125, division 145. The claim identifies ORS 215 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, Nelda Martin, first acquired portions of the subject property, which now includes one tax lot, on September 20, 1943, along with her late-husband, Herbert, as reflected by a Warranty Deed included with the claim. The Martins acquired the remaining portion of the property on May 26, 1952. A copy of a consumer information report from Grant County, dated February 1, 2005, indicates that Nelda Martin is the current owner of the subject property.

### **Conclusions**

The claimant, Ms. Nelda Martin, is an “owner” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37, as of September 20, 1943 and May 26, 1952.

### **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 states that ORS 215 has “created restrictions to the property through the creation of zoning rules that limited the size of parcels that could be split from the original parcel.”

The claim is based on Grant County’s current Exclusive Farm Use (EFU) Zone and the applicable provisions of state law that require such zoning. The claimant’s property is zoned EFU as required by Statewide Planning Goal 3 in accord with OAR 660, division 33, and ORS 215 because the claimant’s 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 215.780 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).

The claimant acquired the subject property in 1943 and 1952, prior to the establishment of the Statewide Planning Goals and the implementing statutes and rules.

### **Conclusions**

The zoning requirements and minimum lot size standards established by Statewide Planning Goal 3 (Agricultural Lands) and provisions applicable to land zoned EFU in ORS 215 and OAR 660, division 33, were all enacted after Nelda Martin and her husband acquired the property in 1943 and 1952, and do not allow the division of the property, thereby restricting the use of the property relative to the uses allowed when the property was acquired by the Martins in 1943 and 1952.

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 has identified. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant's 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 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 land use regulation 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 includes an informal estimate of \$3,018,340 as the property's fair market value, in the absence of current regulations. This amount is based on the claimant's estimate of the market value of subdividing approximately 1337-acres into thirty-two 20-acre lots and sixty-five 10-acre lots. The claim also includes a customer information report from Grant County estimating the current assessed value of the subject property to be \$570,580.

### **Conclusions**

As explained in section V. (1) of this report, the current owner is Nelda Martin who acquired the property in 1943 and 1952. Under Ballot Measure 37, Nelda Martin is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V. (2), state land use laws adopted after the claimant acquired the property in 1943 and 1952 restrict the use of the property. The claim asserts the reduction in value to be \$3,018,340. However, without an appraisal or other documentation, 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 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 on state land use regulations that restrict the use of the property relative to what would have been allowed in 1943 and 1952 when the claimant acquired the property, include Statewide Planning Goal 3 (Agricultural Lands), and applicable provisions of ORS 215 and OAR 660, division 33, which Grant County has implemented through its EFU zone. None of these laws are exempt under Section 3(E) of Ballot Measure 37, which exempts laws in effect when the claimant acquired the property.

#### **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 residential development and use of farm land apply to the claimant's use of the property, and are not exempt under Section 3(E) of Measure 37.

Laws in effect when the claimant acquired the property are exempt under Section 3(E) of Measure 37, and will continue to apply to the claimant's use of the property. There may be laws that continue to apply to the claimant's 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 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 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 claimant should be aware that the less information she has provided to the department in her claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her 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 the law in order to allow the present owner to carry out a use of the property permitted at the time the current 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 or lots, and the use of the property for residential purposes. The claim asserts that the laws enforced by the Commission or department reduce the fair market value of the subject property by \$3,018,340. Because the claim does not provide an appraisal or other substantiating documentation 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 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, Ballot Measure 37 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Ms. Nelda Martin to use the subject property for a use permitted at the time she acquired the subject property in 1943 and 1952.

### **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 Ms. Martin's division of the approximately 1337-acre property: applicable provisions of Statewide Planning Goals 3, ORS 215.780 and OAR 660, division 33. These land use laws will not apply to Ms. Martin's use of her property only to the extent necessary to allow the claimant a use permitted at the time she acquired the subject property on September 20, 1943 and May 26, 1952.
2. The action by the State of Oregon provides the state's authorization to the claimant to use her property subject to the standards in effect on September 20, 1943 and May 26, 1952.
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 claimant first obtains 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 claimant 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 claimant 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 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 the property by the claimant.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on August 2, 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.