

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

September 19, 2005

**STATE CLAIM NUMBER:** M120266

**NAMES OF CLAIMANTS:** Donald and Glenda Martsolf

**MAILING ADDRESS:** Post Office Box 293  
1905 Southwest Old Sheridan Road.  
McMinnville, Oregon 97218

**IDENTIFICATION OF PROPERTY:** Township 4S, Range 4W, Section 30  
Tax Lot 1100  
Yamhill County

**DATE RECEIVED BY DAS:** March 23, 2005

**180-DAY DEADLINE:** September 19, 2005

**I. CLAIM**

The claimants, Donald and Glenda Martsolf, seek compensation in the amount of \$3,088,000 for 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 subdivide their 32.3 acres into one-acre lots for residential use. The property is located at 1905 Southwest Old Sheridan Road, in 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 this claim is not valid because neither the Land Conservation and Development Commission (Commission) nor the department have enforced laws that restrict the claimants' use of private real property relative to uses permitted at the time the claimants acquired the property in 1974. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS RECEIVED**

On March 31, 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, 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 March 23, 2005, for processing under OAR 125, division 145. The claim identifies “EFU” provisions under ORS 215 and OAR 660, division 33, that restrict the use of the 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 claims has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulation 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**

Donald and Glenda Martsolf acquired the subject property on March 13, 1974. On September 28, 1990, a 58-percent interest in the subject property was conveyed to the Donald Martsolf Revocable Living Trust and a 42-percent interest in the subject property was conveyed to the Glenda Martsolf Revocable Living Trust. The claimants are the trustors and trustees for these revocable trusts. Transfer to a revocable trust does not constitute a change in ownership for purposes of evaluating this Measure 37 claim. The claimants provided a copy of a Warranty Deed and other property records to establish ownership. (See claim file.)

## **Conclusions**

The claimants, Donald and Glenda Martsolf, are “owners” of the subject property as that term is defined by Section 11(C) of Ballot Measure 37, as of March 13, 1974.

## **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 claim indicates that the claimants desire to create 32 one-acre parcels on the property and that these are not allowed by the current “EFU” zoning. The claim is based, in part, on Yamhill 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 Statewide Planning Goal 3 in accord with OAR 660, division 33, because the claimants’ property is “Agricultural Land” as defined by Goal 3.<sup>1</sup> Goal 3 became effective on January 25, 1975, and required Agricultural Land defined by the Goal to be zoned EFU pursuant to ORS 215. Land that is zoned EFU and that is “high-value” farmland under Goal 3, ORS 215.710 and OAR 660, division 33, is subject to restrictions based on certain provisions of ORS 215 and OAR 660, division 33.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780, and OAR 660, division 33, 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 parcels to have farm or non-farm dwellings on them.

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.

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<sup>1</sup> The claimants’ property is “Agricultural Land” because it contains NRCS (Natural Resources Conservation Service) Class I-IV soils.

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 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 claimants acquired the property on March 13, 1974, after the adoption of SB 100 (Chapter 80, Oregon Laws 1973, effective October 5, 1973) but before the adoption of the Statewide Planning Goals, effective January 25, 1975.

During the period between October 5, 1973, when SB 100 became effective, and January 25, 1975, when the Statewide Planning Goals became effective, ORS 197.175(1) and 197.280 (1973 edition) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities (including implementation of their comprehensive plan) in accordance with the “Interim” land use Goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); see also, *Meeker v. Board of Comm’rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the Goals); *State Housing Council v. Lake Oswego*, 48 Or App 525 (1981) (“Land use planning responsibility is not defined in ORS Ch 197. The Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* and partition approvals.” (Emphasis added.)).

The claimants propose to subdivide and develop the subject property for residential use. If the claimants had sought to create that use in 1974 when they acquired the property, as a matter of law the use would have been subject to the Interim Planning Goals at ORS 215.515. (See endnote <sup>1</sup>.) The following Interim Planning Goals are directly applicable to this claim: “To preserve the quality of the air, water and *land* resources of the state,” (emphasis added)... “To conserve prime farm lands for the production of crops,” ... “To provide for the orderly and efficient transition from rural to urban land use,” ... “To protect life and property in areas subject to floods, landslides and other natural disasters,” ... “To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation,” ...and “To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.” (ORS 215.515, 1973 edition.)

One of the Interim Planning Goals was to “conserve prime farm lands for the production of crops...” Soil types are a determinant of prime farm land. The subject 32-acre property is composed of soils rated as “prime” by the Natural Resource Conservation Service (NRCS). According to the Oregon Department of Agriculture, Oregon only has a limited supply of soils rated “prime” (8 percent of all Agricultural Land).

No information has been provided showing that the approval of 32 one-acre lots or parcels for residential use complies with the Interim Planning Goals set forth in ORS 215.515 (1973 edition). In particular, it is not apparent how the division and development of 32 acres of predominantly “prime,” Class 2 high-value farmland would “conserve prime farm lands for the production of crops” as required by the Interim Planning Goals at the time the claimants acquired the property in 1974.

In addition, the subject property is in the “Southwest Neighborhood Activity Center” as proposed in the McMinnville’s Growth Management and Urbanization Plan. The Urban Growth Boundary (UGB) expansion plans are on remand for this area.<sup>2</sup>

### **Conclusions**

Lot size and dwelling standards established by amendments to Statewide Planning Goal 3, amendments to ORS 215, and OAR 660, division 33, adopted since the claimants acquired the property in 1974, clearly do not allow the division of the property into parcels less than 80 acres in size or allow the approval of dwellings. The County’s EFU zone is based on the standards required by Goal 3, ORS 215 and OAR 660, division 33. However, in 1974, the “Interim” Planning Goals set forth in ORS 215.515 required, in part, the conservation of prime farm land for the production of crops. The claimants’ 32-acre property is composed of very limited farm land soils rated as “prime” and Class 2 by NRCS. Based on the facts of this claim, dividing the 32-acre property into one-acre parcels for residential use does not “conserve prime farm land for the production of crops,” “preserve the quality of the ... land resources of the state,” “provide for an orderly and efficient transition from rural to urban land use,” “protect life and property in areas subject to floods,” or provide for “a timely, orderly and efficient arrangement of public facilities and services” as required by ORS 215.515 (1973 edition). Accordingly, the subject property could not be divided for residential use under the “Interim” Planning Goals applicable in 1974 nor can it be divided for residential use based on current law. Thus, the department determines that the current land use regulations applicable to the subject property do not restrict its use relative to the uses allowed when the claimants acquired the property in 1974.

### **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 claim states that the fair market value of the subject property has been reduced by \$3,088,000 as a result of land use laws enacted after it was acquired by the claimants in 1974.

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<sup>2</sup> The City of McMinnville has been in periodic review since 1994, and has submitted an urban growth boundary (UGB) amendment to the Land Conservation and Development Commission for review and acknowledgment. The City’s UGB expansion is currently the subject of a partial remand by the Commission (Commission Order 04-WKTASK-001646), which requires the City to provide additional supporting information for the UGB expansion in the subject area.

The claimants have provided information regarding the value of the property based on what is allowed under current land use regulations as compared with the assumed value if developed into one-acre residential parcels. However, there is no appraisal or other substantiating documentation to substantiate the claimed values either with or without state land use regulations.

### **Conclusions**

As explained in Section V. (2) of this report, current land use regulations do not restrict the use of the subject property relative to the uses allowed when the claimants acquired the property in 1974. Thus, the claimants are not due compensation under Measure 37. The claimants could not divide the subject property when they acquired it in 1974 because dividing the property into 32 one-acre lots for residential use does not “conserve prime farm land for the production of crops” as required by the Interim Planning Goals. Land use regulations enacted by the state since the claimants acquired the property relating to the division of the property or the establishment of additional dwellings do not have “the effect of reducing the fair market value of the property, or any interest therein” relative to the uses allowed in 1974.

### **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 Yamhill County’s EFU zone and the related provisions of state law that have restricted use of the property and reduced its fair market value, including Statewide Planning Goal 3, (Agricultural Lands), and applicable provisions of ORS 215 and OAR 660, division 33. These regulations were enacted after the claimants acquired the property in 1974, with the exception of those provisions of ORS 215 that applied to the property when the Martsofs acquired the property. Otherwise, none of the laws identified in the claim are exempt, under Section 3(E) of Ballot 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 does appear that the general statutory, goal and rule restrictions on residential development and use of farm land apply to the claimants' use of the property, and for the most part these laws are not exempt under Section 3(E) of Measure 37. Provisions of ORS 215 in effect when the claimants acquired the property in 1974 are exempt under Section 3(E) of the Measure.

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. 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 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.

Based on the record, the claimants are not entitled to relief under Ballot Measure 37. Department staff recommends that this claim be denied because neither the Commission nor the department have enforced laws that were enacted after the claimants acquired the property that restrict the claimants' use of the private real property that is the subject of this claim.

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

The department issued its draft staff report on this claim on August 19, 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.

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<sup>i</sup> The "Interim" land use Planning Goals are set forth in ORS 215.515(a) to (j) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state," and (j) "To ensure that development of properties within the state is commensurate with the character and the physical limitations of the land." (ORS 215.515, 1973 edition.)