

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

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

September 12, 2005

STATE CLAIM NUMBER: M120242

NAMES OF CLAIMANTS: Eileen M. and Ladd Martinson

MAILING ADDRESS: 1940 Cadle Road
Rickreall, Oregon 97371

PROPERTY IDENTIFICATION: Township 7S, Range 5W, Section 25,
Tax Lot 700
Polk County

OTHER INTEREST IN PROPERTY: Sarah Beeler, LLC; Emma Brown, LLC;
Albert Ross, LLC; and William Henry, LLC
(each with 2/3 interests in portions of
property)

DATE RECEIVED BY DAS: March 21, 2005

180-DAY DEADLINE: September 17, 2005

I. SUMMARY OF CLAIM

The claimants, Eileen M. and Ladd Martinson, seek compensation 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 subdivide and develop the 142.41-acre property for residential or commercial use. The property is located at 10445 Rickreall Road, generally between Oregon Highway 223 to the south and Oregon Highway 22 to the north, approximately one-mile west of the highway's intersection with Oregon Highway 99W in Polk 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 the claimants' development of the property for residential or commercial use: provisions of Statewide Planning Goals 3 (Agricultural Lands), Goal 14 (Urbanization), ORS chapter 215, and OAR 660, division 33, enacted after each claimant acquired the property. These laws will not apply to Eileen Martinson only to the extent necessary to allow her a use of the property permitted at the time she acquired her interest in it in 1959. These laws will not apply to Ladd Martinson only to the extent necessary to allow him a use of the property permitted at the time he acquired his interest in it on February 3, 1997. The department acknowledges that the relief to which Mr. Martinson is entitled under Measure 37 will not allow Mr. Martinson to use the property in a manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 25, 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, three comment letters were received in response to the 10-day notice.

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. (See comment letters 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

This claim was submitted to DAS on March 21, 2005, for processing under OAR 125, division 145. The claim indirectly identifies Exclusive Farm Used (EFU) zoning, as laws that restrict the use of the property and are 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, Eileen M. (Cadle) Martinson, acquired the subject property on August 21, 1959, upon her grandfather’s death, as reflected by a final estate decree included with the claim (Polk County Book of Record 37, Page 514). Information provided in the claim indicates that Ms. Martinson’s family, (the Cadles), have owned the subject property since August 12, 1920 (Polk County Book of Record 71). The claimant, Ladd Martinson, acquired an interest in the subject property on February 3, 1997 when Ms. Martinson deeded an interest in the property to him, as reflected in the Warranty Deed included with the claim (Polk County Book of Record 329, Page 1574).

The current owners of the subject property are the claimants, Eileen M. and Ladd Martinson, with interest in portions of the subject property also owned by William Henry, LLC, Albert Ross, LLC, Sarah Beeler, LLC, and Emma Brown, LLC.¹

¹ Based on the record before the department, none of the holders of the other interests in the subject property is a claimant for purposes of this Measure 37 claim.

The following table shows the current owners and acquisition dates of the four parcels that make up the subject property (tax lot 700):

Parcels Within Tax Lot 700	Current Owners	Acquisition Dates	Polk County Records
Portion NE of Hwy 22	Eileen and Ladd Martinson (1/3 interest) William Henry, LLC (2/3 interest)	Eileen (8/21/59), Ladd (2/3/97), and Henry, LLC (3/21/05)	37, Page 514 329, Page 1574 2005-004080
Northern portion – 83.84-acres	Eileen and Ladd (1/3 interest) Albert Ross, LLC (2/3 interest)	Eileen (8/21/59), Ladd (2/3/97), and Ross, LLC (2/17/05)	37, Page 514 329, Page 1574 2005-002415
Southwest portion – 41.66-acres	Eileen and Ladd (1/3 interest) Sarah Beeler, LLC (2/3 interest)	Eileen (8/21/59), Ladd (2/3/97), and Beeler, LLC (2/17/05)	37, Page 514 329, Page 1574 2005-002414
Southeast portion – 30.11-acre	Eileen and Ladd (1/3 interest) Emma Brown, LLC (2/3 interest)	Eileen (8/21/59), Ladd (2/3/97), and Brown, LLC (3/26/05)	37, Page 514 329, Page 1574 2005-006498

Information included in the claim and obtained from the Polk County indicates that the claimants, Eileen M. and Ladd Martinson, along with the four limited liability companies listed above, are the current owners of the subject property, and that Ms. Martinson has continuously owned the subject property since August 21, 1959 (See Claim and the Polk County Decision on Measure 37 Claim, Order No. 05-24, included in the department’s file).

Conclusions

The claimants, Eileen M. and Ladd Martinson, and William Henry, LLC, Albert Ross, LLC, Sarah Beeler, LLC and Emma Brown, LLC, are the “owners” of the subject property, as that term is defined by Section 11(C) of Ballot Measure 37. Ms. Martinson acquired interest in the subject property on August 21, 1959. Mr. Martinson acquired interest in the property on February 3, 1997. The four limited liability companies acquired their interest in various portions of the subject property in 2005. The limited liability companies are not claimants for purposes of this Measure 37 claim.

The Martinson family has had an interest in the subject property since August 12, 1920

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 EFU zoning effective in 1973 “restricts building residential or commercial.”

The claim is based, in part, on Polk 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 and ORS 215 because the claimants’ property is “Agricultural Land” as defined by Goal 3.² 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 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.

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.)

Statewide Planning Goal 14 would apply to Ladd Martinson’s desire to develop the property for commercial use and would likely apply to the division of the property into lots one-acre or less in size. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses and also became effective on January 25, 1975.

The Martinson family acquired the subject property in 1920. At that time (and in 1959 when Ms. Martinson acquired it), the subject property was not zoned by Polk County (Polk County Order

² The claimants’ property is “Agricultural Land” because it contains NRCS (Natural Resources Conservation Service) Capability Class II, III and IV soils. Property located on Sheet #23. Soil map units 18 (Coburg), 21 and 22 (Cove) and 67D (Steiwier) are found on pages 30 through 32, 81 and 82, Soil Survey of Polk County, Oregon October 1982.

No. 05-024) and is prior to the establishment of the Statewide Planning Goals and their implementing statutes and rules.

Conclusions

The zoning requirements, minimum lot size and dwelling 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 the claimants' family acquired the subject property in 1920, and do not allow the development of the property for residential, thereby restricting the use of the property relative to the uses allowed when the property was acquired. In 1920, the property was not subject to the Statewide Planning Goals or the provisions of ORS 215.

The limitation on commercial uses and certain residential uses outside urban growth boundaries established by Statewide Planning Goal 14 (Urbanization) was enacted after the claimants' family acquired interest in the subject property in 1920, and does not allow the development of the property for commercial use and certain residential uses, thereby restricting the use of the property relative to uses allowed when the family acquired interest in it in 1920.

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 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 between \$6,000,000 to \$60,000,000 as the reduction in the property's fair market value, as a result of regulations enacted after the claimants' family acquired the property. This range is based on the claimants' estimate of the market value of "142-acres X \$1.00 per sq. ft. to \$8.50 per sq. ft." According to a Measure 37 claim filed by the claimants with Polk County, an asserted reduction in fair market value of \$6,185,520 is based on "1/8 the price per square foot Wal-Mart paid in Dallas" (Polk County Order No. 05-24).

No appraisal or other substantiating documentation was provided to substantiate the dollar amount the claimants' desire for compensation.

Conclusions

As explained in Section V. (1) of this report, Eileen M. and Ladd Martinson, are current owners of the subject property. The Martinson family acquired the property in 1920. Under Ballot Measure 37, the Martinsons are 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) of this report, laws adopted since the claimants' family acquired the property in 1920, restrict the claimants' ability to divide the property and develop it for residential or commercial use.

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 enacted or 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 includes a general reference to state land use regulations that restrict the use of the property relative to what would have been allowed in 1920 when interest in the property was acquired by Ms. Martinson's family. These provisions include Statewide Planning Goal 3 (Agricultural Lands), Goal 14 (Urbanization), and applicable provisions of ORS 215 and OAR 660, division 33, which Polk County has implemented through its EFU zone. All of these laws were enacted after the claimants' family acquired the property and therefore are not exempt under Section 3(E) of Ballot Measure 37, which exempts laws enacted before the claimants' family 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 and commercial development and use of farm land apply to the claimants' use of the property, and these laws are not exempt under Section 3(E) of Measure 37.

Laws in effect when the claimants' family acquired 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 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 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 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 development of the subject property for residential and commercial uses. The claim asserts the laws enforced by the Commission or department reduce the fair market value of the subject property between \$6,000,000 and \$60,000,000. However, because the claim does not provide an appraisal or other substantiating documentation to establish 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. Martinson to use the subject property for a use permitted at the time she acquired interest in the property on August 21, 1959 and to allow Mr. Martinson to use the subject property for a use permitted at the time he acquired interest in the property on February 3, 1997.

As stated above, Ms. Martinson acquired the subject property prior to the establishment of the Statewide Planning Goals and their implementing rules. When Mr. Martinson acquired the property on February 3, 1997, it was subject to the County's acknowledged EFU zone and the applicable provisions of Statewide Planning Goals 3 and 14, ORS 215 and OAR 660, division 33 in effect on that date.

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 the claimants' development of the property for residential and commercial uses: Statewide Planning Goals 3 and 14, ORS 215, and OAR 660, division 33 enacted after the claimants each acquired their interest in the property. These land use laws will not apply to Ms. Martinson's use of the property only to the extent necessary to allow her a use permitted at the time she acquired interest in the property on August 21, 1959. These land use laws will not apply to Mr. Martinson's use of the property only to the extent necessary to allow him a use permitted at the time he acquired interest in the property on February 3, 1997. The department acknowledges that the relief to which Mr. Martinson is entitled under Measure 37 will not allow Mr. Martinson to use the property in a manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to Ms. Eileen Martinson to use the property subject to the standards in effect on August 21, 1959. The action by the State of Oregon provides the state's authorization to Mr. Ladd Martinson to use the property subject to the standards in effect on February 3, 1997. On the date, that Mr. Martinson acquired interest in the property, was subject to the County's acknowledged EFU zone, and the applicable provisions of Goals 3 and 14, ORS 215, and OAR 660, division 33, then in effect.
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 215.402 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 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 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 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.