

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

June 16, 2005

**STATE CLAIM NUMBER:** M119038

**NAME OF CLAIMANT:** Marcel Van Der Sluys

**MAILING ADDRESS:** 7533 McConnell Ave.  
Westchester, CA 90045

**IDENTIFICATION OF PROPERTY:** Township 3S, Range 5W, Section 23  
Tax lot 900, Yamhill County

**OTHER CONTACT INFORMATION  
FOR CLAIMANT:** Arthur E. Coyne  
Powers, McCulloch & Bennett, LLP  
1300 SW Fifth Ave., Suite 3000  
Portland, Oregon 97201

**DATE RECEIVED BY DAS:** December 21, 2004

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

**I. CLAIM**

Mr. Van Der Sluys, the claimant, seeks compensation for an unspecified amount 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 requests compensation or the right to site a dwelling on the subject property. The property is located at T3S, R5W, S23, tax lot 900 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 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, specifically the provisions applicable to property in Agriculture/Forest zones under OAR 660-006-050, not apply to the subject property to the extent necessary to allow Mr. Van Der Sluys to apply to the county to establish a

dwelling on the property under the standards that were in effect when he acquired the property on December 30, 1986. (See the complete recommendation in Section VI. of this report.)

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

#### **Comments Received**

On February 15, 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 by DAS 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**

The claim was filed with DAS on December 21, 2004 for processing under OAR 125, Division 145. The claim identifies Yamhill County provisions that implement the requirements of Statewide Goal 4 and OAR 660, Divisions 6 with respect to the approval dwellings on lands zoned for mixed agriculture/forest uses. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37 are the basis for this 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 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**

Mr. Marcel Van Der Sluys submitted a deed showing his acquisition of the subject property on December 30, 1986. A tax statement from Yamhill County shows that Mr. Van Der Sluys is still an owner of the property.

### **Conclusions**

Mr. Marcel Van Der Sluys is an “owner” of the property located at T3S, R5W, S23, tax lot 900 in Yamhill County as that term is 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**

The claim seeks relief from a provision of the Yamhill County Agriculture/Forest (AF) District (Section 403.02(K)). That code section is a local law rather than a state law that the department may address. However, that code section implements the statutory “lot-of-record” law under ORS 215.705. This statute allows, in part, a dwelling on a parcel lawfully created and acquired by the owner prior to January 1, 1985. Mr. Van Der Sluys acquired the subject parcel in 1986 and, as a result, that statute does not apply to his use of the subject property. However, more generally Yamhill County’s AF zone provisions in Section 403 were adopted to implement Statewide Planning Goal 4 (Forest Lands), and the provisions in OAR 660-006-0050 (effective February 5, 1990) and subsequently amended on March 1, 1994 to comply with the provisions of HB 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Statewide Goals 3 and 4 are allowed except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993. No information has been provided about the predominant use of the tract on January 1, 1993. Thus, depending upon what the predominant use of the property was on January 1, 1993, under OAR 660-006-0050,

the property would be subject to either the requirements for dwellings applicable under exclusive farm use zoning or forest zoning including the cited provisions under ORS 215.705 and Statewide Goals 3 or 4 and OAR 660, Divisions 6 or 33. These laws do not allow the approval of a farm or forest dwelling on the subject property, as requested by the claimant.

The claimant acquired the subject property on December 30, 1986. According to Yamhill County, on that date the subject property was zoned AF-20, an acknowledged zone under Statewide Goals 3 and 4, and both farm and forest dwellings were permissible under that zoning district.<sup>1</sup>

### **Conclusions**

Some of the current laws restricting the establishment of a dwelling on the property were adopted after December 30, 1986, when Mr. Van Der Sluys acquired the property. These laws applicable to lands zoned Agricultural/Forest use under OAR 660-006-050 relating to dwelling standards restrict the use of the property relative to uses allowed when Mr. Van Der Sluys acquired it. As a result, the department determines that there are land use regulations that restrict the use of the property.

### **3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any law(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 claim states that the fair market value of the subject property has been reduced by \$81,000 due to the claimant being unable to qualify for the approval of a dwelling under OAR 660, Division 6. The claim does not specify how this amount was determined.

### **Conclusions**

As explained in Section V.(1) of this report, the current owner is Marcel Van Der Sluys, who acquired the property on December 30, 1986. Mr. Van Der Sluys is due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value.

Without an appraisal based on the value of a dwelling on the site or other explanation of the reduction in fair market value, it is not possible to substantiate the amount of reduction in fair market value that has occurred as a result of the laws specified in the claim. Furthermore, without a final determination of what use of the property was permitted on December 30, 1986, the extent to which the use of the property has been

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<sup>1</sup> The Yamhill County AF-20 zone was acknowledged by the Land Conservation Commission on June 5, 1980 (Acknowledgement Order and findings dated June 12, 1980 in department files).

restricted cannot be determined. Nevertheless, based on the submitted information, the department determines that it is more likely than not that there has been some restriction of the use of the property and 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 laws. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

#### **Findings of Fact**

The claim identifies Yamhill County's Agriculture/Forest District zone, as restricting the use of the property relative to what would have been allowed in 1986 when the property was acquired. The provisions in the County's zone implement OAR 660, Division 6 and related provisions of state statutes and Goals 3 (Agricultural Lands) and 4 (Forest Lands). Some of these laws were enacted after Mr. Van Der Sluys acquired the property in 1986. However, Goals 3 and 4 were enacted prior to 1986. Current state laws that restrict the use of the property that were enacted prior to December 30, 1986 (which laws include Goals 3 and 4) are exempt under section (3)(E) of Measure 37.

#### **Conclusions**

Without additional information concerning the predominant use of the property in 1993 and concerning the use the claimant desires to carry out, the department is unable to determine what laws restrict the use of the property, or whether those laws may fall under one or more of the exemptions under Measure 37. It does appear that some of the general statutory and goal restrictions on placing a dwelling on the subject property are exempt under section (3)(E) of Measure 37. There may be other specific laws that are exempt and continue to apply under one of more of the exemptions in the Measure, because they were not raised in this claim, or because they are laws that are not covered by the Measure to begin with.

While not directly raised by the claimants, the department notes that ORS 215.730 and OAR 660, Division 6 include standards for siting dwellings in forest zones. These 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..." To the extent they may be applicable under OAR 660-006-0050, the department finds that siting standards for dwellings in forest zones under ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, Division 6) are exempt under subsection (3) of Measure 37.

## **VI. FORM OF RELIEF**

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if 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.

### **Findings of Fact**

Based on the findings and conclusion set forth in this report, laws enforced by the Commission or the department restrict the placement of a dwelling on the subject property. The laws enforced by the department reduce the fair market value of the subject property to some extent. Because the claim does not include a specific explanation for how all the restrictions on the approval of a dwelling reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, the department acknowledges that the laws on which the claim is based 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 the extent necessary to allow the claimant a use of the property permitted at the time he acquired it on December 30, 1986.

### **Conclusions**

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 Mr. Van Der Sluys' establishment of a dwelling on the property: OAR 660-006-0050.
2. The action by the State of Oregon provides the state's authorization to the claimant to establish a dwelling on the property, subject to those standards in effect on December 30, 1986. Those standards include the provisions of ORS 92, ORS 215 and Goal 3 and Goal 4 as reflected in the acknowledged Yamhill County AF-20 zone that were in effect on that date. In addition, ORS 215.730 and those current provisions of Goal 4 relating to siting standards for dwellings for the protection of public health and safety also are exempt under subsection (3) of Measure 37 and will continue to apply to Mr. Van Der Sluy's use of the property.

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 Mr. Van Der Sluys 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 215.412 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.

4. Any use of the Property by Mr. Van Der Sluys 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 DLCD; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under section (3) of Measure 37.

5. Without limiting the generality of the foregoing terms and conditions, in order for Mr. Van Der Sluys to use the Property, it may be necessary for him 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 Mr. Van Der Sluys 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 Mr. Van Der Sluys.

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

The department issued its draft staff report on this claim on May 27, 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.