

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

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Final Staff Report and Recommendation**

July 14, 2005

**STATE CLAIM NUMBER:** M119412

**NAME OF CLAIMANTS:** Glen L. and Marlene K. Hald  
**MAILING ADDRESS:** 62351 Dart Creek Road  
St, Helens, Oregon 97051-9029

**IDENTIFICATION OF PROPERTY:** Township 5N, Range 2W, Section 24  
Tax Lot 700  
Columbia County

**OTHER INTEREST IN PROPERTY:** 20 foot easement along east boundary

**DATE RECEIVED BY DAS:** January 21, 2005

**180-DAY DEADLINE:** July 20, 2005

**I. CLAIM**

Glen L. and Marlene K. Hald, the claimants, seek compensation in the amount of \$300,000 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 construct two additional residences on lands designated exclusively for forest use. (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, Statewide Planning Goal 4 (Forest Lands), ORS 215, and OAR 660, division 6, not apply to the subject property to the extent necessary to allow Glen and Marlene Hald a use of the property permitted at the time they acquired it. As a result, the Halds' use of the property will be subject to those specified laws in effect on January 9, 1969. (See the complete recommendation in Section VI. of this report.)

### **III. COMMENTS RECEIVED**

On February 23, 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, no written comments 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 for processing under OAR 125, division 145, on January 21, 2005. The claim describes land use regulations related to Columbia County's forest zoning that restrict the use of the property as the basis for this 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. Section 11 (C) defines "owner" as "the present owner of the property, or any interest therein."

## **Findings of Fact**

The claimants, Glen L. and Marlene K. Hald, acquired the subject property on January 9, 1969 (see Bargain and Sale Deed included in claim). A title report included in the claim indicates that the claimants remain owners of the property as of January 7, 2005 (see Sort Report prepared by Ticor Title on January 14, 2005).

The claim also states that the Hald obtained ownership through a contract of sale in 1962. However, claim materials do not include documentation to verify that statement.

## **Conclusions**

The claimants, Glen L. and Marlene K. Hald are “owners”, as that term is defined by Section 11(C) of the Measure, of 19.5 acres described as Tax Lot 700 of Tax Map 5N-2W-24 in Columbia County. The Halds have owned the property since January 9, 1969.

## **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 claimants’ 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 claimants or a family member acquired the property.

## **Findings of Fact**

The claim states, “the Halds lost the right to sell an additional parcel, and the right to build an additional home” due to the restrictions of Columbia County PF-76 zoning (see letter from Karen Gordon dated January 9, 2005 included in the claim). The claim identifies Columbia County PF-76 zoning as the restrictive regulation causing a reduction in value. The claim also states that current land use regulations cause the Halds to “lose” what was originally allowed on the property.

No state regulations were in place in 1969 to restrict the parcel size or the number of dwelling units on the parcel. All regulations restricting parcel size and land use regulations were adopted after January 9, 1969.

The County’s PF-76 zoning regulates the division of lands and the placement of dwellings on forest lands in Columbia County. County PF-76 zoning is required by Statewide Planning Goal 4 (Forest Lands), OAR 660-015-0000(4) and the required provisions applicable to land zoned for forest use under ORS 215, including ORS 215.705 to 215.755 and 215.780, and OAR 660, division 6, restrict the zoning, use and partition of the subject property. Goal 4 became effective on January 25, 1975, and required forest land as defined by the Goal to be zoned for forest use. (See citations to statutory and rule history under OAR 660-015-0000(4).)

The Forest Lands administrative rule (OAR 660, division 6) became effective September 1, 1982 and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (chapter 792, Or Laws 1993) and were adopted into OAR 660-006-0026 and 0027 on March 1, 1994. (See citations to rule history under OAR 660-015-0000(4).) Together, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 27 establish an 80-acre minimum lot size for the creation of a new parcel in a forest zone and also establish the standards for dwellings in forest zones under Statewide Planning Goal 4.

The Columbia County (PF-76) Primary Forest Zone is based on the standards contained in Goal 4 and OAR 660, division 6. The Commission officially acknowledged Columbia County's comprehensive plan and land use regulations to be in compliance with the Statewide Planning Goals on July 25, 1985. The Columbia County comprehensive plan designates the subject property as forest land in compliance with Statewide Planning Goal 4.<sup>1</sup>

### **Conclusions**

The minimum lot size and dwelling standards established by Goal 4, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 27 and the Columbia County PF-76 Primary Forest Zone were all adopted after the owners acquired the property in 1969. The regulations do not allow division of the property into parcels less than 80-acres in size and do not permit additional dwellings on the parcel. Land use laws, adopted since 1969, restrict the use of the property relative to the uses allowed when the property was acquired in 1969.

### **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 does not include a formal estimate of current fair market value. The claim also does not include a formal estimate of the value of the property under a land use proposed by the claimants. The claim asserts a reduction in fair market value of \$300,000 due to restrictions placed on the property by Columbia County's PF-76 zoning.

The claim includes current listings and recent sales from the Portland Regional Multiple Listings Service (RMLS) as evidence of the potential value of their property. The claim is not accompanied by a formal appraisal nor by an explanation of the estimated reduction in value due to state land use regulations.

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<sup>1</sup> The property is “forest land” as defined under statewide goal 4 because it is predominantly composed of Natural Resource Conservation Service (NRCS) soils which are suitable for commercial forest uses (see soils map and soil descriptions for property from the “Soil Survey of Columbia County Area, Oregon, Sheet # 16” United States Department of Agriculture – Natural Resources Conservation Service).

## **Conclusions**

As explained in section V. (1) of this report, the current owners are Glen and Marlene Hald, who acquired the property on January 9, 1969. Thus, under Ballot Measure 37, Glen and Marlene Hald are due compensation for land use regulations enacted after that date that restrict the use of the subject property in a manner that reduces its fair market value. The claim identifies a reduction in fair market value of \$300,000.

Without an appraisal based on the value of the property or other explanation, 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 laws 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 ORS 215.700-705 and OAR 660, division 6, as restricting the use of the subject property relative to what would have been allowed in 1969 when the property was acquired. The provisions in Columbia County's PF-76 zone implement OAR 660, division 6, and related provisions of state statutes and Goal 4 (Forest Lands). These laws were enacted after the Halds acquired the property in 1969. Current state laws that restrict the use of the property that were enacted prior to January 21, 1969, are exempt under section (3) (E) of Measure 37.

While not directly raised by the claimants, the department notes that ORS 215.730 and OAR 660, division 6, includes standards for siting dwellings in forest zones. This provision includes 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..." The department finds that siting standards for dwellings in forest zones in ORS 215.730 and in Goal 4 and its implementing rules (OAR 660, division 6) are exempt under Section (3) of Measure 37.

## **Conclusions**

Without a specific proposed use or a specific listing of laws that are the basis for the claim, it is impossible 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 forest land apply to the owners' anticipated use of the property, and for the most part these laws would not come under any of the exemptions in Measure 37.

The siting requirements of ORS 215.730, Goal 4 and its implementing rules related to dwelling siting standards based on public health and safety will also continue to apply. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure, because they were not identified in the claim or because they are laws that are not covered by the Measure.

## **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 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 has by rule 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, forest zoning required by Goal 4, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, restricts the partition and placement of dwellings on the subject property. The claimants cannot create the desired 2 to 3 parcels from a 19.5-acre parcel, thereby reducing the fair market value of the property. The claim estimates the reduction in value at \$300,000 dollars. However, because the claim does not provide a specific explanation for how restrictions reduce the fair market value of the property, a specific amount of compensation cannot be determined. Nevertheless, the department finds that the land use regulations 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 Glen and Marlene Hald to use the subject property for a use allowed at the time they acquired the property on January 9, 1969.

### **Conclusions**

Based on the record before the department, the department recommends that the Claim be approved, subject to the following terms:

1. In lieu of paying compensation under Measure 37, the State of Oregon will not apply the following laws to Glen and Marlene Hald's division of the property into additional lots or the construction of one single-family home on each parcel: the minimum lot sizes and dwelling standards established by Statewide Planning Goals 4 and 14, and ORS 215.705 to 215.755 and 215.780, except ORS 215.730 and those provisions of Goal 4 relating to siting standards for dwellings for the protection of public health and safety.

2. Glen and Marlene Hald may use the property based on the order only for a use permitted at the time they acquired an interest in the property. The use of the property permitted in 1969 was governed by laws that include, but are not limited to, the provisions of ORS 92 and ORS 215 that existed at that time.

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, this order does 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 215.412 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 the claimants under the terms of the order remains subject to the following laws: (a) those laws not specified in (1) and (2), 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 the claimants to use the property, it may be necessary for the claimants 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 June 27, 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.