



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>

April 24, 2007

To: Interested Persons

From: Lane Shetterly, Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130455*

*Claimant: Coquille Canoe Club, an Oregon Corporation (a.k.a. Kokeel Kanu Klub)*

---

On April 20, 2007 the Department of Land Conservation and Development issued a Final Order and Final Staff Report and Recommendation on the above claim number. That Final Order and Final Report was issued in error and should have included a report from the Department of Forestry.

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is a Final Staff Report and Recommendation of the Department of Land Conservation and Development, a Final Staff Report and Recommendation of the Department of Forestry and a Revised Final Order. The attached Final Staff Reports and Revised Final Order replace the Final Staff Report and Final Order that was mailed on April 20, 2007 on the above-referenced Ballot Measure 37 claim.

This Final Staff Report and Recommendations and the Revised Final Order constitute the final decision on this claim. No further action will be taken on this matter.

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,  
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, AND  
THE BOARD AND DEPARTMENT OF FORESTRY  
OF THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR	)	REVISED FINAL ORDER
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M130455
(BALLOT MEASURE 37) OF	)	
Coquille Canoe Club Corporation, Also	)	
known as Kokeel Kanu Klub, CLAIMANT	)	

Claimant: Coquille Canoe Club Corporation also known as Kokeel Kanu Klub (the Claimant)

Property: Township 28S, Range 10W, Section 6, Tax lot 1200, Coos County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimant by the State of Oregon (the Claim).

Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report), and the Oregon Department of Forestry (the ODF Report), attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by the Oregon Department of Forestry or the Oregon Board of Forestry, for the reasons set forth in the ODF Report.

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Coquille Canoe Club Corporation's division of the 148.22-acre subject property into 18 parcels of 0.1 to 5 acres each and to its development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the subject property on May 13, 1913, August 14, 1925, and September 6, 1961.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on May 13, 1913, August 14, 1925, and September 6, 1961.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject 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 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject 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 ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

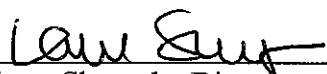
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for it to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

6. Nothing in this report constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.


This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

This Order is entered by the Oregon Board and Department of Forestry as a final order of the Board under ORS 197.352, OAR 629-001-0057, and OAR Chapter 125, division 145.

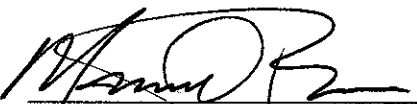
FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:

  
\_\_\_\_\_  
Lane Shetterly, Director  
DLCD  
Dated this 24<sup>th</sup> day of April, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
\_\_\_\_\_  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 24<sup>th</sup> day of April, 2007.

FOR THE OREGON BOARD OF  
FORESTRY AND THE OREGON  
DEPARTMENT OF FORESTRY:

  
\_\_\_\_\_  
Marvin Brown, State Forester  
ODF  
Dated this 24<sup>th</sup> day of April, 2007

## **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

### **FOR INFORMATION ONLY**

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**  
**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**Final Staff Report and Recommendation**

April 20, 2007

**STATE CLAIM NUMBER:** M130455

**NAME OF CLAIMANT:** Coquille Canoe Club Corporation  
*Also known as Kokeel Kanu Klub*

**MAILING ADDRESS:** c/o Maureen Bergman  
PO Box 461  
Myrtle Point, Oregon 97458

**PROPERTY IDENTIFICATION:** Township 28S, Range 10W, Section 6  
Tax lot 1200  
Coos County

**DATE RECEIVED BY DAS:** October 27, 2006

**180-DAY DEADLINE:** April 25, 2007

**I. SUMMARY OF CLAIM**

The claimant, Coquille Canoe Club Corporation, seeks compensation in the amount of \$1,220,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 148.22-acre subject property into as many as 18 additional parcels of 0.1 to 5 acres and to develop a dwelling on each parcel. The development would include construction of a bridge across the East Fork of the Coquille River.<sup>1</sup> The subject property is located at 16219 Sitkum Lane, near Myrtle Point, in Coos 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 Coquille Canoe Club Corporation's division of the 148.22-acre subject property into

---

<sup>1</sup> The claim includes an "alternative" desired use to develop a destination resort instead of, or along with, the residential development on the subject property. ORS 197.352 allows the state to compensate or not apply (waive) land use regulations in order to allow "a use" that was permitted at the time the claimant acquired the property. Given the restrictions contained in ORS 197.352, in general, multiple alternative requests cannot be evaluated within a single claim.

18 parcels of 0.1 to 5 acres each and to its development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), 4 (Forest Lands) and 14 (Urbanization); ORS 215; and Oregon Administrative Rules (OAR) 660, divisions 6, and division 33. These laws will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the subject property on May 13, 1913, August 14, 1925, and September 6, 1961.<sup>2</sup> (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On March 12, 2007, 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, one written comment was received in response to the 10-day notice.

The comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally 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 waive a state law. (See the comment letter in the department's claim file.)

### **IV. TIMELINESS OF CLAIM**

#### **Requirement**

ORS 197.352(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 Measure 37 (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 Measure 37 (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.

---

<sup>2</sup> The claim also indicates that the claimant desires to sell or transfer the newly created parcels for development. In effect, the claimant requests that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost."

## **Findings of Fact**

This claim was submitted to DAS on October 27, 2006, for processing under OAR 125, division 145. The claim identifies ORS 527.676 and 527.724; OAR 610, 625, 630, 635, 640 and 665; and Coos County Zoning and Land Use Development Ordinance Forest Zone and other applicable development ordinances, as the basis for the claim.<sup>3</sup> Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

## **Conclusions**

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

## **V. ANALYSIS OF CLAIM**

### **1. Ownership**

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

## **Findings of Fact**

The claimant, Coquille Canoe Club Corporation, acquired the northeast portion of the subject property north of the East Fork of the Coquille River on May 13, 1913, as reflected by a bargain and sale deed included with the claim. The claimant acquired the western portion of the subject property west of the East Fork of the Coquille River on August 14, 1925, also as reflected by a bargain and sale deed included with the claim. The claimant acquired the southeast portion of the property south of the East Fork of the Coquille River, known as Parcel 1 (63.3 acres), and the northeast portion of the subject property, known as Parcel 2 (23.33), on September 6, 1961, as evidenced by a bargain and sale deed included with the claim. The Coos County Assessor’s Office confirms the claimant’s current ownership of the subject property.

## **Conclusions**

The claimant, Coquille Canoe Club Corporation, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of May 13, 1913, for the northeast portion of the subject property north of the East Fork of the Coquille River; as of August 14, 1925, for the western portion of the subject property west of the East Fork of the Coquille River; and as of September 6, 1961, for the southeast portion of the property south of the East Fork of the Coquille River, known as Parcel 1 (63.3 acres), and the northeast portion of the subject property, known as Parcel 2 (23.33).

---

<sup>3</sup> This report addresses only those state statutes and rules administered by the department. Statutes and rules administered by the Oregon Department of Forestry are addressed in a report by that agency.

## **2. The Laws That are the Basis for This Claim**

In order to establish a valid claim, ORS 197.352(1) 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 claimant desires to divide the 148.22-acre subject property into as many as 18 additional parcels and to develop a dwelling on each parcel, with construction of a bridge across the East Fork of the Coquille River, and that the current land use regulations prohibit the desired use.

The claim is based on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land, and on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land.

A portion of the claimant's property is zoned Forest (F) by Coos County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because a portion of the claimant's property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

The remainder of the claimant's property is zoned EFU by Coos County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because that portion of the claimant's property is "agricultural land" as defined by Goal 3.<sup>4</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS

---

<sup>4</sup> A portion of the claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

215.263 (2005 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. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Goal 14, which also became effective on January 25, 1975, would likely apply to the division of the claimant's property into parcels less than two acres. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses.

The claimant acquired the subject property in 1913, 1925 and 1961, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3, 4 and 14; ORS 215; and OAR 660, divisions 6, and 33, were all enacted or adopted after the claimant acquired the subject property in 1913, 1925 and 1961 and do not allow the desired division or residential development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimant acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject 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 subject 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 which laws apply to a use of the subject 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, ORS 197.352(1) requires that the land use regulation(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 includes an estimate of \$1,220,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's assessment of the property's value.

## **Conclusions**

As explained in Section V.(1) of this report, the claimant is the Coquille Canoe Club Corporation, which acquired the subject property on May 13, 1913, August 14, 1925, and September 6, 1961. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the property is a reduction of \$1,220,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

### **4. Exemptions Under ORS 197.352(3)**

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3, 4 and 14; ORS 215; and OAR 660, divisions 6, and 33, which Coos County has implemented through its current Forest and EFU zones. All of these land use regulations were enacted or adopted after the claimant acquired the subject property.

## **Conclusions**

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development of the claimant's property were in effect when the claimant acquired it in 1913, 1925 and 1961. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. In addition, Coos County has designated a portion of the parcel as a hazard area.<sup>5</sup> ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety. . . ." To the extent the county's hazard's regulations are based on state law, these regulations would be exempt under ORS 197.352(3)(B). The department also notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0029, include standards for siting dwellings in forest zones. These provisions include fire protection standards for dwellings and

---

<sup>5</sup> Natural Hazards Policy 5.11 of Volume I, Appendix 1 of the CCZLDO.

for surrounding forest lands. ORS 197.352(3)(B) specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . .” Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimant’s use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject 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. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information it has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to its use of the subject property.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced laws that restrict the use of the subject 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 subject 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 of the department 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 claimant’s desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$1,220,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant’s desired use of the subject property was allowed under the standards in effect when it acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or

parts of certain land use regulations to allow Coquille Canoe Club Corporation to use the subject property for a use permitted at the time it acquired the property on May 13, 1913, August 14, 1925, and September 6, 1961.

### **Conclusions**

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

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Coquille Canoe Club Corporation's division of the 148.22-acre subject property into 18 parcels of 0.1 to 5 acres each and to its development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the subject property on May 13, 1913, August 14, 1925, and September 6, 1961.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on May 13, 1913, August 14, 1925, and September 6, 1961.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject 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 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject 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 ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for it to obtain a decision under ORS 197.352 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 ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.
6. Nothing in this report constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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

The department issued its draft staff report on this claim on April 4, 2007. 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.

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF FORESTRY**

**Final Staff Report and Recommendation**

April 24, 2007

**STATE CLAIM NUMBER:** M130455

**NAME OF CLAIMANT:** Coquille Canoe Club, an Oregon Corporation (a.k.a. Kokeel Kanu Klub)

**MAILING ADDRESS:** c/o Maureen Bergman  
P.O. Box 461  
Myrtle Point, Oregon 97458

**PROPERTY IDENTIFICATION:** Township 28 S, Range 10W, Section 6  
Tax lot 1200  
Coos County

**DATE RECEIVED BY DAS:** October 27, 2006

**180-DAY DEADLINE:** April 25, 2007

**I. SUMMARY OF CLAIM**

See Department of Land Conservation and Development (DLCD) Final Staff Report.

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Forestry (ODF) has determined the claim is not valid as to land use regulations administered by ODF or the Oregon Board of Forestry (Board) because none of the laws identified in the claim and administered by the Board or ODF restrict the claimant's right to divide the 148.82-acre property into as many as 18 additional rural residential lots of 0.10 to 5+ acres each and to construct a bridge across the East Fork Coquille River, or to develop a destination resort in addition to, or instead of, residential lot development. ORS 527.730 provides that "[n]othing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use." The claimant's desired use of the property is a conversion. To the extent that the claimant may intend to carry out a "forest operation" (a commercial activity relating to the establishment, management or harvest of forest tree species) in conjunction with its development, claimant has not submitted a written notification as required by law. Without a notification ODF is unable to determine whether the laws listed in the claim apply to or restrict the claimant's use of the property in a manner that reduces the fair market value. As a result, ODF has not enforced an existing state land use regulation with respect to the claimant's use of the property. (See the complete recommendation in Section VI. of this report.)

### III. COMMENTS ON THE CLAIM

#### Comments Received

See DLCD Final Staff Report.

### IV. TIMELINESS OF CLAIM

#### Requirement

ORS 197.352(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 Measure 37 (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 Measure 37 (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 October 27, 2006, for processing under OAR 125, division 145. The claim identifies a list of statutes and rules, which includes ORS 526 and 527, and OAR 629, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

#### Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

### V. ANALYSIS OF CLAIM

#### 1. Ownership

ODF adopts the findings of fact and conclusions of law regarding ownership contained in the DLCD Final Staff Report for this claim.

#### 2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a state land use regulation must restrict the claimant's desired use of private real property, and that the enactment

or enforcement of the regulation has had the effect of reducing the fair market value of the property.

### **Findings of Fact**

The claimant desires compensation of \$1,220,000 or to subdivide the 148.82 acre property and “develop it into as many as 18 additional rural residential lots of 0.10 to 5+ acres each. Such development would include constructing a bridge across the East Fork Coquille River. . .[M]ay elect to develop the property as a destination resort in addition to, or instead of, residential lot development.” The property already contains six or more dwellings. The claim lists the following state statutes and rules administered by ODF or the Board<sup>1</sup> as laws that restrict the use of the property as the basis for the claim: ORS 527.676 and 527.724; and OAR 629-610, 629-625, 629-630, 629-637, 629-640, and 629-665. The claim states that the regulations inhibit ability to harvest timber and/or develop home sites.

The property is zoned for forest use. Nothing in ORS chapter 527 or OAR chapter 629 relates to the division of land, or to the development of residential uses. The state laws listed in the claim that are administered by ODF only apply to forest operations.

ORS 527.730, Conversion of forestland to other uses, states, “Nothing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use.” No laws enforced by the Board or ODF restrict the division of property or the establishment of dwellings.

Certain uses of property are forest “operations” that are regulated under the Forest Practices Act. If trees are harvested for commercial use, some laws listed in the claim will apply to the operation. A notification of intent to conduct a forest operation is required in order for ODF to determine whether laws it or the Board may enforce apply to the claimant’s intended use of the subject property in a way that restricts the use of the subject property, and reduces its fair market value. No notification has been made.

### **Conclusions**

ODF is unable to determine, based on the information in this claim, that a state “land use regulation” administered by ODF or the Board applies to or restricts the claimant’s desired use of the property. ODF has not enforced any existing “land use regulation” with regard to the claimant’s use of the property since the effective date of Measure 37. As a result, ODF has no basis upon which it may determine that the claimant is entitled to relief under ORS 197.352.

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

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (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.”

---

<sup>1</sup> This report addresses only state land use regulations administered by ODF or the Board of Forestry. The state land use regulations listed in the claim include statutes administered by the Oregon Department of Land Conservation and Development (DLCD). These statutes and rules are addressed in a separate report for this claim, by DLCD.

### **Findings of Fact**

The claimant provided an estimated amount of loss in fair market value of \$1,220,000. The estimate is based on the value of proposed residential development of the subject property. The claimant has not demonstrated that any land use regulations administered by ODF or the Board have restricted its use of the subject property or have had the effect of reducing its fair market value. The information in the claim regarding loss of market value is based on laws not administered by ODF or the Board. As a result, there is no relevant evidence in the record for this claim relating to the effect of laws administered by ODF or the Board on the fair market value of the subject property.

### **Conclusions**

The claimant has not demonstrated that laws enforced or administered by ODF or the Board restrict its desired use of this property or affect its fair market value.

### **4. Exemptions Under ORS 197.352(3)**

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

### **Findings of Fact**

ORS 197.352(3) exempts laws that were enacted before a claimant acquired its interest in the property. Based on the findings and conclusions in the DLCD report on this claim, Claimant acquired the subject property in three separate transactions dated May 13, 1913, August 13, 1925, and September 6, 1961.

The FPA was first enacted in 1971 and the first forest practice rules to administer the FPA became effective on July 1, 1972. Some forest practice regulations date back to 1941 in the form of the Oregon Forest Conservation Act (FCA) and related rules. The FPA and rules have been amended at various times since then.

Some FPA regulations were enacted to control water pollution resulting from forest operations. One of the stated purposes of OAR 629-625 and 629-630 is to protect water quality. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety..., including pollution control." Such regulations may apply to the property, depending upon the activities the claimant may wish to undertake.

Other FPA regulations listed in the claim may be exempt under 197.352(3).

### **Conclusions**

ODF concludes that some of the listed land use regulations are likely exempt under ORS 197.352(3). Until there is a notification of an operation, however, a final determination of the applicability of the listed laws to a particular forest operation on the property cannot be made.

The Oregon FCA and related rules in effect as of September 6, 1961, when claimant acquired portions of the subject property, are exempt under ORS 197.352(3)(E), and will continue to apply to the claimant's use of that portion of the property acquired on September 6, 1961. There may be other laws that continue to apply to the claimant's use of the subject property that have not been identified in the claim. When the claimant submits future notifications, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (3)(D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information it has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to its use of the subject property.

## **VI. FORM OF RELIEF**

Based on the current record, the claimant is not entitled to relief under ORS 197.352 from ODF or the Board. ODF denies any relief for this claim because neither the Board nor ODF has enforced laws that restrict the division of the subject property into parcels or lots, the use of the property for residential purposes. ODF also denies any relief for this claim because neither the Board nor ODF has enforced any laws relating to commercial forest activities on the subject property.

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

ODF issued its draft staff report on this claim on April 4, 2007. OAR 125-145-0100(3), provides 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.