Oregon
Theodore R. Kulongoski, Governor

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September 27, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M133158

Claimants: Ray Drayton, Vikki Bartels

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Department of Land Conservation and Development's Draft Staff Report and Recommendation.

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than 15 calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the 15th day or actually delivered to DAS by the close of business on the 15th day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Draft Staff Report and Recommendation

September 27, 2007

STATE CLAIM NUMBER:	M133158
NAMES OF CLAIMANTS:	Ray Drayton Vikki Bartels
MAILING ADDRESS:	c/o Russell L. Baldwin, Attorney PO Box 1242 Lincoln City, Oregon 97367
PROPERTY IDENTIFICATION:	Township 6S, Range 10W, Section 33DB Tax lot 300 Lincoln County
DATE RECEIVED BY DAS:	December 1, 2006
DEADLINE FOR FINAL ACTION:[1]	May 24, 2008

I. SUMMARY OF CLAIM

The claimants, Ray Drayton and Vikki Bartels, seek compensation in the amount of $1.7 million under ORS 197.352. The claimants desire compensation but have not identified their desired use of the subject property or how any land use regulations restrict the use of the property with the effect of reducing the property's fair market value. The subject property is located at the geographic coordinates listed above, near Lincoln City, in Lincoln County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that this claim is not valid because the claimants have not (1) established their ownership of the property or when they acquired it; (2) identified their desired use of the subject property or any land use regulations that restrict their desired use of the property; or (3) established that land use regulations enacted or adopted after they acquired the property have the effect of reducing the property's fair market value. (See the complete recommendation in Section VI. of this report.)

[1] ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

III. COMMENTS ON THE CLAIM

Comments Received

Oregon Administrative Rule (OAR) 125-145-0100 provides an opportunity for the claimants or the claimants' authorized agent and any third parties to submit written comments, evidence and information in response to the draft staff report and recommendation. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimants and any third parties. Responses to the draft staff report and recommendation will be considered only as comments related to the claim described in this 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

The claim was submitted to DAS on December 1, 2006, for processing under OAR 125, division 145. The claim does not identify any land use regulations that restrict the claimants' desired use of the property.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004). However, the department cannot determine whether the claim is based on land use regulations enacted or adopted prior to December 2, 2004, and therefore, whether it is 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 claim does not establish when claimants Ray Drayton and Vikki Bartels acquired the subject property and does not include copies of any deeds or otherwise establish that the claimants are current owners of the subject property.[2]

Conclusions

The claimants, Ray Drayton and Vikki Bartels, have not established that they are "owners" of the subject property as that term is defined in ORS 197.352(11)(C).

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 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.

The claim does not indicate the claimants' desired use of the subject property and does not identify any land use regulations as restricting a desired use of the property.

As explained in Section V.(1) above, the claimants, Ray Drayton and Vikki Bartels, have not established that they are "owners" of the subject property as that term is defined in ORS 197.352(11)(c). In addition, the claimants have not identified their desired use of the subject property or any land use regulations that restrict that use. Therefore, it is not possible to determine that any laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimants' desired use of the subject property with the effect of reducing the fair market value of the property.

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."

As explained in Sections V.(1) and (2) of this report, the claimants, Ray Drayton and Vikki Bartels, have not established their ownership of the subject property and have not identified their desired use of the subject property or any land use regulations that restrict a use of the property with the effect of reducing the property's fair market value. Therefore, the department can make no determination on the effect of any land use regulations on the fair market value of the subject property.

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[2] On February 9, 2007, department staff sent two letters to the claimants' attorney requesting the claimants' intended use of the property, proof of ownership documentation and a list of land use regulations for which the claim is based. The claimants' attorney responded by letter dated February 28, 2007, but did not include any documentation. The requested documentation has not been received to date.

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.

As explained in Sections V.(1) and (2) of this report, the claimants, Ray Drayton and Vikki Bartels, have not established that they are "owners" of the subject property as that term is defined in ORS 197.352(11)(C) and have not identified a use of the subject property or any land use regulations that restrict a use of the property with the effect of reducing the property's fair market value. Therefore, the department can make no determination as to whether any land use laws are exempt from ORS 197.352.

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 one or more laws that restrict 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 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 record, the department finds that the claim is not valid because the claimants have not (1) established their ownership of the property or when they acquired it; (2) identified their desired use of the subject property or any land use regulations that restrict their desired use of the property; or (3) established that land use regulations enacted or adopted after they acquired the property have the effect of reducing the property's fair market value.

Conclusions

Based on the record before the department, the claimants, Ray Drayton and Vikki Bartels, have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied.

VII. NOTICE OF OPPORTUNITY TO COMMENT

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides 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. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimants and any third parties. Responses to the draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon

Department of Administrative Services (DAS), Measure 37 Unit, Risk Management–State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the 15th day, or actually delivered to DAS by the close of business on the 15th day. Note: Please reference the claim number, claimants name and clearly mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.