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

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Charles D. Peoples, CLAIMANT	))))	FINAL ORDER CLAIM NO. M129326

Claimant: Charles D. Peoples (the Claimant)

Property: Township 11S, Range 1W, Section 11, Tax lot 104, Linn 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) attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) as to the 55.42-acre portion of tax lot 104 for the reasons set forth in the DLCD Report.

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) as to the 75.40-acre portion of tax lot 104 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 Charles Peoples' development of a dwelling on the 75.40-acre portion of the subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after June 28, 1989. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the 75.40-acre portion for the use described in this report, and only to the extent that use was permitted when he acquired it on June 28, 1989.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the 75.40-acre portion of the subject property for the use described in this report, subject to the standards in effect on June 28, 1989. On that date, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Linn County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect.

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 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 75.40-acre portion of the subject property, it may be necessary for him 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 his use of the 75.40-acre portion.

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.

FOR DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:
Lane Shetterly, Director

Cora R. Parker, Deputy Director
DLCD
Dated this 1st day of November, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 1st day of November, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

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

November 1, 2006

STATE CLAIM NUMBER:	M129326
NAME OF CLAIMANT:	Charles D. Peoples
MAILING ADDRESS:	40895 Fish Hatchery Drive Scio, Oregon 97374
PROPERTY IDENTIFICATION:	Township 11S, Range 1W, Section 11 Tax lot 104 Linn County
DATE RECEIVED BY DAS:	May 12, 2006
180-DAY DEADLINE:	November 8, 2006

I. SUMMARY OF CLAIM

The claimant, Charles Peoples, seeks compensation in the amount of $90,000 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 develop a dwelling on the 130.82-acre subject property. The subject property is located at 40895 Fish Hatchery Drive, near Scio, in Linn 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 in part. 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 Charles Peoples' development of a dwelling on a 75.40-acre portion of the subject property: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after June 28, 1989. These laws will not apply to the claimant only to the extent necessary to allow him to use the 75.40-acre portion for the use described in this report, and only to the extent that use was permitted when he acquired it on June 28, 1989.

Based on the preliminary findings and conclusions set forth below, the department has determined that the claim is not valid as to the remaining 55.42-acre portion of the subject property because the claimant's desired use of the property was prohibited under the laws in

effect when the claimant acquired the 55.42-acre portion in 1997 and 2004. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 24, 2006, 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, evidence or information 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.

Findings of Fact

This claim was submitted to DAS on May 12, 2006, for processing under OAR 125, division 145. The claim identifies House Bill 3661 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

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, Charles Peoples, acquired a 75.40-acre portion of the subject property, then composed of tax lots 104 and 701, on June 28, 1989 (thereafter identified as tax lot 104), as reflected by a warranty deed included with the claim. On July 24, 1997, the claimant acquired a 34.73-acre portion of the subject property (formerly known as tax lot 100).[1] On February 4, 2004, Linn County's approval of property line adjustment file #PD04-0022 added 20.69 acres to the subject property. The Linn County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Charles Peoples, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of June 28, 1989, for the 75.40-acre portion; July 24, 1997, for the 34.73-acre portion; and February 4, 2004, for the 20.69-acre portion.

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 develop a dwelling on the 130.82-acre subject property, and that the use is not allowed under current land use regulations.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimant's property is zoned EFU by Linn County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's 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 Goal 3 be zoned EFU pursuant to ORS 215.

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[1] Tax lot 100 was consolidated with tax lot 104 through Linn County's partition plat 2000-35 on July 17, 2000.

[2] The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I–IV soils.

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, establish standards for development of dwellings on existing or proposed parcels on EFU-zoned land.

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.)

At the time the claimant acquired the 75.40-acre portion of the subject property on June 28, 1989, it was subject to Linn County's acknowledged EFU zone, which allowed dwellings subject to a conditional use permit.[3] When the claimant acquired that the 75.40-acre portion, the claimant's desired use of the property would have been governed by the county's acknowledged EFU zone and the applicable provisions of ORS 215 then in effect.[4] In June 1989, ORS 215.283(1)(f) (1987 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish whether or to what extent the claimant's desired development of the 75.40-acre portion of the subject property was allowed under the standards in effect when he acquired this portion on June 28, 1989.

When the claimant acquired the 34.73-acre portion of the property on July 24, 1997, and the 20.69-acre portion of the property on February 4, 2004, they were subject to the county's acknowledged EFU zone and laws currently in effect, as described above.

Conclusions

The current zoning requirements and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant acquired a 75.40-acre portion of subject property in 1989 and do not allow the claimant's desired development of the property. However, the claim does not establish whether or to what extent the claimant's desired use of the 75.40-acre portion complies with the standards for land development under Linn County's EFU zone and comprehensive plan in effect when the claimant acquired the property on June 28, 1989.

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[3] Linn County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on July 18, 1985.

[4] After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

The current zoning requirements and dwelling standards were all enacted or adopted before the claimant acquired the 34.73-acre and 20.93-acre portions of the subject property in 1997 and 2004. Laws enacted or adopted since the claimants acquired those portions do not restrict the claimant's desired use of the property relative to when the claimant acquired the property in 1997 and 2004.

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 use 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 for the 75.40-acre portion of the property, 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 $90,000 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 difference between the property's current value and a real estate professional's assessment of the property's developed value.

Conclusions

As explained in Section V.(1) of this report, the claimant is Charles Peoples who acquired the subject property, as follows: a 75.40-acre portion on June 28, 1989, a 34.73-acre portion on July 24, 1997, and a 20.69-acre portion on February 4, 2004. No state laws enacted or adopted since the claimant acquired the 34.73-acre portion and the 20.69-acre portion restrict the use of the property relative to the uses allowed in 1997 and 2004, and therefore, the claimant is not due compensation under ORS 197.352 as to these portions of the property. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the 75.40-acre portion 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 75.40-acre portion of 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 subject property is a reduction of $90,000.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimant's desired use of the 75.40-acre portion of the subject property was allowed under the standards in effect when he acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the 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 since the claimant acquired the 75.40-acre portion.

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 Goal 3, ORS 215 and OAR 660, division 33, which Linn County has implemented through its current EFU zone. With the exception of amendments enacted or adopted after June 28, 1989, Goal 3, ORS 215 and OAR 660 were in effect when the claimant acquired the 75.40-acre portion of the subject property. The claim does not identify any state land use regulations enacted or adopted since the claimant acquired the 34.73-acre portion and the 20.69-acre portion that restrict the use of the property relative to what would have been allowed when he acquired these portions on July 24, 1997, and February 4, 2004.

Conclusions

Without a specific development proposal for the 75.40-acre portion of 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 the general statutory, goal and rule restrictions on development of the 75.40-acre portion are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after the claimant acquired the property on June 28, 1989. Provisions of Goal 3, ORS 215 and OAR 660 in effect when the claimant acquired the 75.40-acre portion in 1989 are exempt under ORS 197.352(3)(E) and will continue to apply to the property. All of the state land use regulations that restrict the claimant's desired use of the 34.73-acre portion and the 20.69-acre portion were in effect when the claimant acquired these portions. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant acquired the property.

Other laws in effect when the claimant acquired the 75.40-acre portion of the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant's use of the 75.40-acre portion 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 75.40-acre portion of the subject property, based on the use 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 he 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 his use of the 75.40-acre portion.

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 findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict the claimant's desired use of the 34.73-acre and 20.69-acre portions of the property that the claimant acquired in 1997 and 2004 relative to uses permitted at the time the claimant acquired these portions of the property.

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 75.40-acre portion 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 $90,000. 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 the 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 75.40-acre portion of the subject property was allowed under the standards in effect when he 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 75.40-acre portion 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 Charles Peoples to use the 75.40-acre portion of the subject property for a use permitted at the time he acquired the property on June 28, 1989.

Conclusions

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict the claimant's desired use of the 34.73-acre portion and the 20.69-acre portion of the subject property relative to what was permitted when the claimant acquired these portions in 1997 and 2004 and do not reduce the fair market value. The laws that restrict the claimant's desired use of those portions of the property are exempt under ORS

197.352(3)(E). Therefore, the department recommends that this claim be denied as the 55.42-acre portion of the subject property.

Based on the record, the department otherwise recommends that the claim be approved as to the 75.40-acre portion of the subject property, 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 Charles Peoples' development of a dwelling on the 75.40-acre portion of the subject property: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after June 28, 1989. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the 75.40-acre portion for the use described in this report, and only to the extent that use was permitted when he acquired it on June 28, 1989.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the 75.40-acre portion of the subject property for the use described in this report, subject to the standards in effect on June 28, 1989. On that date, the property was subject to compliance with Goal 3 and OAR 660, division 5, as implemented by Linn County's acknowledged EFU zone, and the applicable provisions ORS 215 then in effect.

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 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 75.40-acre portion of the subject property, it may be necessary for him 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 his use of the 75.40-acre portion.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 11, 2006. 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.