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 Annabelle A. Forster, CLAIMANT	))))	FINAL ORDER A CLAIM NO. M129824

Claimant: Annabelle A. Forster (the Claimant)

Property: Township 12S, Range 4W, Section 12, Tax lot 800, 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 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 Annabelle Forster's division of the 53.11-acre subject property into up to 150 parcels or to her development of a dwelling on each parcel: applicable provisions of Goals 3 and 14 and OAR 660, division 33. These land use regulations will not apply to Annabelle Forster only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on January 14, 1947.

2. The action by the State of Oregon provides the state's authorization to Annabelle Forster to use the subject property for the use described in this report, subject to the standards in effect on January 14, 1947.

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 Annabelle Forster 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 Annabelle Forster 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 Annabelle Forster to use the subject property, it may be necessary for her 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 Annabelle Forster 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 her use of the subject property.

This Order is entered by the Manager for the Measure 37 Services Division 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

Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 31st day of January, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 31st day of January, 2007.

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."

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 Monte Forster and Terry Cochrane, CLAIMANTS	))))	FINAL ORDER B CLAIM NO. M129824

Claimants: Monte Forster and Terry Cochrane (the Claimants)

Property: Township 12S, Range 4W, Section 12, Tax lot 800, Linn County (the property)

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

Claimants 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) for the reasons set forth in the DLCD Report.

This Order is entered by the Manager for the Measure 37 Services Division 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 chapter 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 chapter 125, division 145, and ORS chapter 293.

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

Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 31st day of January, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 31st day of January, 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)

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

January 31, 2007

STATE CLAIM NUMBER:	M129824
NAMES OF CLAIMANTS:	Annabelle A. Forster Monte Forster Terry Cochrane
MAILING ADDRESS:	33300 McFarland Road Tangent, Oregon 97389
PROPERTY IDENTIFICATION:	Township 12S, Range 4W, Section 12 Tax lot 800 Linn County
OTHER CONTACT INFORMATION:	Primelan Properties, Inc. 13535 SW 72nd Street, Suite 155 Tigard, Oregon 97223 Jordan Schrader, PC Attn: Edward Trompke PO Box 230669 Portland, Oregon 97281
DATE RECEIVED BY DAS:	August 2, 2006
180-DAY DEADLINE:	February 4, 2007

I. SUMMARY OF CLAIM

The claimants, Annabelle Forster, Terry Cochrane and Monte Forster, seek compensation in the amount of $100,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict their use of certain private real property. The claimants desire compensation or the right to divide the 53.11-acre subject property into approximately 150 parcels and to develop a dwelling on each parcel.[1] The subject property is located at the

[1] The claim also indicates that the claimants desire to transfer the newly created parcels for development. In effect, the claimants request 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."

geographic coordinates listed above, at the northwest corner of Lake Creek Road and McFarland Road, in the City of Tangent, 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 as to claimant Annabelle Forster. 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 Annabelle Forster's division of the 53.11-acre subject property into a maximum of 150 parcels and to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization) and Oregon Administrative Rules (OAR) 660, division 33. These laws will not apply to Annabelle Forster only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on January 14, 1947. (See the complete recommendation in Section VI. of this report.).

Department staff further determined that the claim is not valid as to Monte Forster and Terry Cochrane because these claimants did not have the right to carry out their desired use of the property when they acquired an interest in it on March 31, 2004. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On November 22, 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, no written comments were received in response to the 10-day notice.

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 August 2, 2006, for processing under OAR 125, division 145. The claim lists the following state land use regulations as restricting the claimants' desired use of the property: ORS 92, 94, 197, 215, 536, 541 and 561; the statewide planning goals; and OAR 660, divisions 4, 6, and 33. 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

Claimant Annabelle Forster acquired the subject property on January 14, 1947, as reflected by a warranty deed included with the claim. On March 31, 2004, Annabelle Forster conveyed an interest in the subject property to her daughter, Terry Cochrane, and to her son, Monte Forster, as evidenced by a bargain and sale deed included with the claim.[2] The Linn County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Annabelle Forster, Terry Cochrane and Monte Forster, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Annabelle Forster has been an owner since January 14, 1947. Terry Cochrane and Monte Forster have been owners since March 31, 2004. Annabelle Forster is a "family member" of Terry Cochrane and Monte Forster as that term is defined by ORS 197.352(11)(A).

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

[2] The claimants assert in their claim that Terry Cochrane and Monte Forster acquired the subject property on February 14, 1997. The claimants have not provided documentation of their acquisition of the property on that date. Absent documentation from the claimants to establish an earlier acquisition date, the department must rely on the available documentation to establish the date of acquisition.

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 indicates that the claimants desire to divide the 53.11-acre subject property into approximately 150 parcels and to develop a dwelling on each parcel, and that the desired use is not allowed under current state land use regulations.[3]

The subject property is currently zoned by the City of Tangent as "City." The "City" zoning district is an Exclusive Farm Use (EFU) zone with a minimum lot size of 40 acres. The subject property is not located within the Urban Growth Boundary (UGB), but it is located within the City of Tangent's city limits.[4] Because the property is located outside of the city's urban growth boundary and is "agricultural land," Goal 3 applies to the claimants' desired use of the property, along with the Goal 3 implementing rules at OAR 660, division 33.

ORS 215 does not apply to the claimants' desired use of the subject property because the property is located within the City of Tangent and ORS 215 generally does not apply within the boundaries of an incorporated city.

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The claimants' property is zoned "City," an EFU zone, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3. 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 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.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994. OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended on March 1, 1994. The Commission subsequently adopted amendments, which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

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[3] The claim lists ORS 92, 94, 197, 215, 536, 541 and 561 as restricting the claimants' desired use by establishing farm and forest zone-permitted uses and minimum acreage and restricting residential subdivision. With the exception of applicable portions of ORS 215, which are addressed in this report, the claim fails to establish how any of the listed statutes applies to or restricts the claimants' desired use of the property or reduces its fair market value. On their face, the listed statutes either do not apply to the claimants' desired use of the property or do not restrict the use of the claimants' desired use of the property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' asserted desired use.

[4] City of Tangent Land Use, page 8, Policy 1. "Place all agricultural lands which are within the City limits and needed for uses with the planning period outside the UGB." Policy 2. Agricultural lands as defined by Goal 3 that are within the city limits but outside the UGB shall be protected by EFU planning and zoning, consistent with ORS 215.

Goal 14 generally prohibits urban uses outside of an acknowledged UGB. The claimants' desired use of 150 parcels and homes on 53 acres is urban in nature, and would be prohibited by Goal 14.

Claimant Annabelle Forster acquired the subject property on January 14, 1947, prior to the adoption of the statewide planning goals and their implementing regulations. Claimants Terry Cochrane and Monte Forster acquired an interest in the property on March 31, 2004, after these state land use regulations were adopted.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 14 and OAR 660, division 33, were all adopted after Annabelle Forster acquired the subject property in 1947 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 Annabelle Forster acquired the property. Claimants Terry Cochrane and Monte Forster acquired an interest in the property on March 31, 2004, after these state land use regulations were adopted. As a result, these claimants have not established how these state land use regulations restrict their use of the subject property relative to the uses allowed when they acquired an interest in it.

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 claimants have identified. There may be other laws that currently apply to the claimants' desired use of the subject property, and that may continue to apply to the claimants' 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 Annabelle Forster 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

According to the claim, state land use regulations have had the effect of reducing the fair market value of the property by an amount in excess of $100,000. This amount is based on the claimants' estimate.

Conclusions

Under ORS 197.352, Annabelle Forster is due compensation for land use regulations that have the effect of reducing the fair market value of the property. Based on the findings and conclusions in Section V.(2) of this report, state land use regulations adopted since Annabelle Forster acquired the subject property restrict her desired use of the property. The claimants

estimate that the effect of the regulations on the fair market value of the property is a reduction of at least $100,000.

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)

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 and 14 and OAR 660, division 33, which the City of Tangent has implemented through its current "City" zone. All of these land use regulations were enacted or adopted after Annabelle Forster 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 Goal 3-related restrictions on division and development of the claimants' property were in effect when Annabelle Forster acquired it in 1947. As a result, these laws are not exempt under ORS 197.352(3)(E). Goal 3 and its implementing rules were in effect when claimants Terry Cochrane and Monte Forster acquired an interest in the property on March 31, 2004.

Laws in effect when the claimants acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' 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 Annabelle Forster 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 claimants have 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 claimants should be aware that the less information they have 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 Annabelle Forster's use of the subject property.

As explained in Section V.(2) of this report, claimants Terry Cochrane and Monte Forster have not established that any state land use regulations restrict their use of the subject property relative

to the uses allowed when they acquired an interest in the property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to their claim.

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 and Conclusions

Based on the record for this claim and the foregoing findings, only Annabelle Forster has established that state land use regulations enforced by the Commission or the department restrict her use of the subject property, and have the effect of reducing the fair market value of the subject property. 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 Annabelle Forster to use the subject property for a use permitted at the time she acquired the property on January 14, 1947. The department recommends that the claim be approved as to Annabelle Forster and denied as to Terry Cochrane and Monte Forster, 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 Annabelle Forster's division of the 53.11-acre subject property into up to 150 parcels or to her development of a dwelling on each parcel: applicable provisions of Goals 3 and 14 and OAR 660, division 33. These land use regulations will not apply to Annabelle Forster only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on January 14, 1947.

2. The action by the State of Oregon provides the state's authorization to Annabelle Forster to use the subject property for the use described in this report, subject to the standards in effect on January 14, 1947.

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 Annabelle Forster 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 Annabelle Forster 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 Annabelle Forster to use the subject property, it may be necessary for her 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 Annabelle Forster 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 her use of the subject property.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on January 11, 2007. 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.