



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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March 23, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130146

Claimant: Victor Renaghan

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

This Final Staff Report and Recommendation and the 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 OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M130146
(BALLOT MEASURE 37) OF)	
Victor Renaghan, CLAIMANT)	

Claimant: Victor Renaghan (the Claimant)

Property: Township 16S, Range 12W, Section 15, Tax Lots 300, 304, 305, 306,
308, 309, 310, 311, 312 and 313, Lane 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 the sale of existing tax lots comprising the subject property, as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is denied, as to the portion of the property in the Destination Resort (DR) zone, as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved, as to the portion of the property in the Natural Resource (NR) zone, 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 Victor Renaghan's development of two caretaker dwellings on the NR-zoned portion of the subject property: applicable provisions of Goal 5 and OAR 660, divisions 16, and 23, or adopted after December 14, 1980. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the NR-zoned portion of subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on December 14, 1980. The department acknowledges that the relief to which the

claimant is entitled under ORS 197.352 may not allow the claimant to use the NR-zoned portion of subject property in a manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the NR-zoned portion of subject property for the use described in this report, subject to the standards in effect on December 14, 1980. On that date, the NR-zoned portion of the property was subject to applicable provisions of Goal 5 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 subject 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 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).

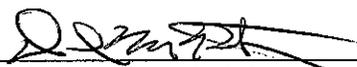
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 a use of the subject property by the claimant.

This Order is entered by the Deputy Director of the DLCDC as a final order of DLCDC 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 DLCDC AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Lane Shetterly, Director


Cora R. Parker, Deputy Director
DLCDC
Dated this 26th day of March, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 26th day of March, 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."

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

March 26, 2007

STATE CLAIM NUMBER: M130146

NAME OF CLAIMANT: Victor Renaghan

MAILING ADDRESS: 160 Skylark Drive, Apt. 15
Larkspur, CA 94939

PROPERTY IDENTIFICATION: Township 16S, Range 12W, Section 15
Tax Lots 300, 304, 305, 306,
308, 309, 310, 311, 312 and 313
Lane County

OTHER CONTACT INFORMATION: Michael Farthing
767 Willamette Street, Suite 203
Eugene, OR 97401

DATE RECEIVED BY DAS: September 29, 2006

180-DAY DEADLINE: March 28, 2007

I. SUMMARY OF CLAIM

The claimant, Victor Renaghan, seeks compensation in the amount of \$4.8 million 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 build two caretaker dwellings on the 186.09-acre subject property¹ and to sell the existing tax lots.² The

¹ The subject property includes the following 10 tax lots: 300 (111.89 acres), 304 (9.37 acres), 305 (4.85 acres), 306 (8.12 acres), 308 (7.19 acres), 309 (19.01 acres), 310 (7.87 acres), 311 (13.36 acres), 312 (3.1 acres) and 313 (1.33 acres). The claimant has also included tax lots 400 and 1400 (Township 16S, Range 12W, Sections 14 and 15) in this claim. However, according to the Lane County Assessor's Office, those tax lots no longer exist. Tax lot 400 has been incorporated into the current tax lot 300, and tax lot 1400 has been incorporated into the current tax lot 310. The county has also noted that it is processing lot line adjustments for the subject property, and therefore, the resulting lot line configurations may differ from existing tax lot maps..

² The claim indicates that the claimant desires to sell 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."

subject property is located on US Highway 101 and Big Creek Road, in Lane 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 not valid as to the sale of existing tax lots comprising the subject property because neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict that use of the private real property. (See the complete recommendation in Section VI. of this report.)

The department has further determined that the claim is not valid as to the portion of the property in the Destination Resort (DR) zone because the claimant has not established that either the Commission or the department has enforced laws that restrict the claimant's desired use of the DR-zoned portion of the private real property and have the effect of reducing the fair market value of the DR-zoned portion of the property. (See the complete recommendation in Section VI. of this report.)

The department has further determined that the claim is valid as to the portion of the property in the Natural Resource (NR) zone. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Commission or the department not apply to Victor Renaghan's development of two caretaker dwellings on the NR-zoned portion of the subject property: applicable provisions of Statewide Planning Goal 5 (Natural Resources) and OAR 660, divisions 16, and 23, adopted after December 14, 1980. These laws will not apply to the claimant only to the extent necessary to allow him to use the NR-zoned portion of the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property in 1980. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow the claimant to use the NR-zoned portion of subject property in a manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On January 24, 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, 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 September 29, 2006, for processing under OAR 125, division 145. The claim identifies Lane Co. Ordinance 884, "Forest Land Administrative Rules effective September 1, 1982" and ORS 215.705 to 215.755 and 215.780 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, Victor Renaghan, acquired the subject property on December 14, 1980, as reflected by a warranty deed included with the claim. The Lane County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Victor Renaghan, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of December 14, 1980.

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 two caretaker dwellings on the 186.09-acre subject property and to sell the existing tax lots, and that current zoning prohibits the desired use.³

The subject property is currently zoned DR and NR by Lane County. Approximately 26 acres of the subject property are zoned DR, and approximately 140 acres are zoned NR.

Lane County's DR zone is authorized under Goal 8 (Recreational Needs), effective on January 25, 1975, and ORS 197.435 to 197.467 (the destination resort statutes) adopted in 1987. The DR zone allows dwellings under specified conditions.

Lane County's NR zone was adopted by Lane County to implement Goal 5.⁴ Under Goal 5, as adopted and effective on January 25, 1975, local governments were required to inventory land and adopt programs to protect natural resources and to conserve scenic, historic and open space resources. Prior to adoption of local government inventories and programs, the requirements of Goal 5 were directly applicable to individual properties through the land use application process. Specifically, Goal 5 required applicants to establish how the natural resources, scenic and historic areas and open space resources on individual properties would be protected through the proposed development. Under OAR 660, division 16, requirements and application procedures for complying with Goal 5 became effective on June 29, 1981. OAR 660, division 23, established additional procedures and requirements for complying with Goal 5, and became effective on September 1, 1996.

The claim does not establish whether or the extent to which the claimant's desired development of the NR-zoned portion of the subject property complies with the standards of Goal 5 in effect when he acquired the property in 1980. The claim also does not establish the extent to which Goal 5 restrictions or procedures implemented after the claimant acquired the property restrict the claimant's desired development of the NR-zoned portion of the property.

The claim also does not establish that the destination resort statutes restrict the claimant's desired use of the DR-zoned portion of the subject property.

Conclusions

The current zoning requirements established by Goal 5 and OAR 660, divisions 16, and 23, were adopted after the claimant acquired the subject property in 1980 and do not allow outright the desired development of the NR-zoned portion of the subject property. However, the claim does not establish whether or to what extent the claimant's desired use of that portion of the subject property complies with the standards for development under Goal 5 applicable and in effect

³ The claimant summarily cites numerous state land use laws as applicable to this claim, but does not establish how the laws either apply to the claimant's desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of these regulations either do not apply to the claimant's property or do not restrict the claimant's desired use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimant's desired use of the subject property, based on the claimant's description of that desired use.

⁴ Lane County applied the NR zone to the subject property in 1984.

when the claimant acquired the property on December 14, 1980. Nor does the claim establish whether or the extent to which the requirements or procedures of Goal 5 adopted after the claimant acquired the property restrict the claimant's desired use of the NR-zoned portion of the subject property.

For the DR-zoned portion of the property, the claimant has not established that specific state land use regulations restrict the claimant's desired use of this portion and have the effect of reducing the fair market value of that real property relative to uses allowed on December 14, 1980. Based on the information in the claim, the department has not identified any state laws that restrict the claimant's desired use of the DR-zoned portion of the subject property.

With respect to the claimant's desired sale of the existing tax lots, the department has not identified any state laws that restrict this use of the subject 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 \$4.8 million 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 a real estate broker's opinion included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimant is Victor Renaghan, who acquired the subject property on December 14, 1980. 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 may restrict his desired use of the NR-zoned portion 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 \$4.8 million.

As explained in Section V.(2) of this report, the claimant has not established how current state land use regulations applicable to the DR-zoned portion of the property restrict the claimant's desired use of this portion of the property with the effect of reducing its fair market value relative to the uses allowed when the claimant acquired the property in 1980.

As explained in Section V.(2) of this report, with respect to the claimant's desired sale of the existing tax lots, the department has not identified any state laws that restrict this use of the subject property.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimant's desired use of the property would have satisfied the Goal 5 requirements 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 NR-zoned portion of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that, for the NR-zoned portion of the subject property, 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 Goal 5 and OAR 660, divisions 16, and 23, which Lane County has implemented through NR zone. With the exception of provisions of Goal 5 in effect on December 14, 1980, these laws were 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 the statutory, goal and rule restrictions on residential development of the NR-zoned portion of the subject property are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimant acquired this portion on December 14, 1980. Provisions of Goal 5 in effect when the claimant acquired the subject property in 1980 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to his use of the property. There may be other laws that 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 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).

The claimant has not established how state land use regulations restrict his desired use of the DR-zoned portion of the property or his desire to sell the existing tax lots. Therefore, the issue

of whether any state land use laws are exempt under ORS 197.352(3) is not relevant to those aspects of the claim.

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. 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 their 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 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 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 as the claimant's desired use of the DR-zoned portion of the property or to the claimant's desire to sell the existing tax lots because the claimant has not identified any state land use regulations that restrict these desired uses. The department further finds that laws enforced by the Commission or the department restrict the claimant's desired use of the NR-zoned 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 \$4.8 million. 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 NR-zoned portion of the subject property was allowed under the standards in effect when he acquired it. 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 NR-zoned 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 Victor Renaghan to use the NR-zoned portion of the subject property for a use permitted at the time he acquired this portion on December 14, 1980.

Conclusions

Based on the record, the department recommends that the claim be denied as to DR-zoned portion of the subject property and to the sale of existing tax lots because the claimant has not established that he is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department.

The department further recommends that the claim be approved as to the NR-zoned 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 Victor Renaghan's development of two caretaker dwellings on the NR-zoned portion of the subject property: applicable provisions of Goal 5 and OAR 660, divisions 16, and 23, or adopted after December 14, 1980. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the NR-zoned portion of subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on December 14, 1980. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow the claimant to use the NR-zoned portion of subject property in a manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the NR-zoned portion of subject property for the use described in this report, subject to the standards in effect on December 14, 1980. On that date, the NR-zoned portion of the property was subject to applicable provisions of Goal 5 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 subject 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 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 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 a use of the subject property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 2, 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.