Oregon
Theodore R. Kulongoski, Governor

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August 28, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130763

Claimants: Bruce M. Propst, Eldon L. Propst

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. M130763
(BALLOT MEASURE 37) OF	)	
Bruce M. Propst and Eldon L. Propst, CLAIMANTS	)	

Claimants: Bruce M. Propst and Eldon L. Propst (the Claimants)

Property: Township 11S, Range 3W, Section 11, Tax lot 300
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 28th day of August, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Janice Dean, SSD Administrator
DAS, State Services Division
Dated this 28th day of August, 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

August 28, 2007

STATE CLAIM NUMBER:	M130763
NAMES OF CLAIMANTS:	Bruce M. Propst Eldon L. Propst
MAILING ADDRESSES:	Bruce M. Propst 3512 Chicago Street SE Albany, Oregon 97322 Eldon L. Propst 3121 North Shore Drive SE Albany, Oregon 97322
PROPERTY IDENTIFICATION:	Township 11S, Range 3W, Section 11 Tax lot 300 Linn County
OTHER CONTACT INFORMATION:	Joel D. Kalberer, Attorney PO Box 667 Albany, Oregon 97321
DATE RECEIVED BY DAS:	November 15, 2006
DEADLINE FOR FINAL ACTION:[1]	May 8, 2008

I. SUMMARY OF CLAIM

The claimants, Bruce and Eldon Propst, seek compensation in the amount of $2,040,120 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 claimants desire compensation or the right to divide the 128.49-acre subject property into 20 parcels and to develop a dwelling on each parcel. The subject property is located at 34449 Santiam Highway NE, near Albany, in Linn County. (See claim.)

[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.

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 this claim is not valid because the claimants are not owners of the subject property. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 22, 2007, pursuant to Oregon Administrative Rule (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 criterion, whichever is later.

Findings of Fact

This claim was submitted to DAS on November 15, 2006, for processing under OAR 125, division 145. The claim identifies Linn County's Exclusive Farm Use (EFU) zone, Statewide Planning Goal 3 (Agricultural Lands) and provisions of ORS 215 and OAR 660, division 33, 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 claimants, Bruce and Eldon Propst, originally acquired an interest in the subject property as trustees of their parents trust on December 31, 1979, as reflected by a trust agreement included with the claim. After the death of their parents, the claimants conveyed a one-fifth interest in the subject property to themselves and their siblings Wilma L. Fryer, Wanita Haugen and Allen Propst, as reflected by a bargain and sale deed included with the claim. Subsequently on October 25, 1991, the claimants and their siblings conveyed the subject property to Propst Farm, a partnership, as reflected by a bargain and sale deed provided by Linn County's Planning and Building Department. The claimants, Bruce and Eldon Propst, no longer own the subject property.

Conclusions

The claimants, Bruce and Eldon Propst, are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C).[2]

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.

As explained in Section V.(1), the claimants, Bruce and Eldon Propst, are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Land Conservation and Development Commission (the Commission) or the department restrict the claimants' use of private real 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."

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[2] The department acknowledges receipt of the claimants' agent's correspondence dated July 25, 2007, relative to the department's finding as to the claimants' ownership of the subject property. The department has considered the comment and finds that the record before the department supports the department's initial determination that the claimants' do not have an ownership interest in the subject property.

As explained in Section V.(1) of this report, the claimants, Bruce and Eldon Propst, are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict the claimants' use of the subject property with the effect of reducing the fair market value of the subject property.

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 Section V.(1) of this report, the claimants, Bruce and Eldon Propst, are not "owners" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant.

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 are not owners of the subject property.

Conclusions

Based on the record before the department, the claimants, Bruce and Eldon Propst, 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. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 23, 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.