

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. M124461 (Report A)
(BALLOT MEASURE 37) OF)
Howard Winters, CLAIMANT)

Claimant: Howard Winters (the Claimant)

Property: Township 1N, Range 4E, Section 31C, Tax lots 800 and 900

Township 1N, Range 4E, Section 31DC, Tax lot 400

Township 1S, Range 4E, Section 6B, Tax lots 100 and 200

Township 1S, Range 4E, Section 6A, Tax lot 300, Multnomah 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 Howard Winter's division of the 138.37-acre property into five-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject properties for the use described in this report, and only to the extent that use was permitted when he acquired the properties on October 1, 1951, October 31, 1945, and March 5, 1953.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject properties for the use described in this report, subject to the standards in effect on October 31, 1945, October 1, 1951, and March 5, 1953. Goal 7 will continue to apply to the claimant's use of the property.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject properties may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the properties 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 properties imposed by private parties.

4. Any use of the subject properties 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 subject properties, 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 properties. 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 properties by the claimant.

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
DLCD
Dated this 8th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 8th day of September, 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.”

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. M124461
(BALLOT MEASURE 37) OF) (Report B)
Howard Winters, CLAIMANT)

Claimant: Howard Winters (the Claimant)

Property: Township 1N, Range 4E, Section 31A, Tax lots 900 and 1000
Multnomah County (the property)

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

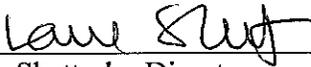
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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) for the reasons set forth in the DLCD Report.

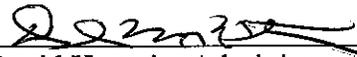
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

FOR DLCDD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:


Lane Shetterly, Director
DLCDD

Dated this 8th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 8th day of September, 2006.

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)

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. M124461
(BALLOT MEASURE 37) OF)	(Report C)
Howard Winters, CLAIMANT)	

Claimant: Howard Winters (the Claimant)

Property: Township 1N, Range 4E, Section 31B, Tax lot 200, Multnomah County
(the property)

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

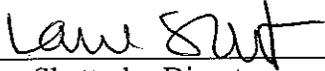
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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) for the reasons set forth in the DLCD Report.

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 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
DLCD
Dated this 8th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 8th day of September, 2006.

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

September 8, 2006

STATE CLAIM NUMBER: M124461 (Report A)¹

NAME OF CLAIMANT: Howard Winters

MAILING ADDRESS: (none available)

PROPERTY IDENTIFICATION: Township 1N, Range 4E, Section 31C
Tax lots 800 and 900
Multnomah County

Township 1N, Range 4E, Section 31DC
Tax lot 400
Multnomah County

Township 1S, Range 4E, Section 6B
Tax lots 100 and 200
Multnomah County

Township 1S, Range 4E, Section 6A
Tax lot 300
Multnomah County

OTHER CONTACT INFORMATION: Donald Joe Willis
Schwabe, Williamson, and Wyatt
PacWest Center
1211 SW 5th Ave., Suite 1900
Portland, Oregon 97204

DATE RECEIVED BY DAS: March 17, 2006

180-DAY DEADLINE: September 13, 2006

¹ The claim involves multiple properties, three different desired uses, and multiple acquisition dates. The three uses that the claimant alleges have been restricted by state land use regulations are: to establish a rock quarry on one tax lot - T1NR4E section 31A tax lot 200; to establish one residence on each of two tax lots - T1NR4E section 31A tax lots 900 and 1000; and to divide six tax lots into five-acre parcels with a residence on each tax lot - T1NR4E sections 31C (tax lots 800 and 900) and 31DC, and T1SR4E sections 6A (tax lot 300) and 6B (tax lots 100 and 200). A table summarizing the properties, desired uses, acquisition dates, and present zoning is provided at the end of this report. The three desired uses are addressed in three separate reports (A - the five-acre parcels with a residence on each; B - the two dwellings; and C - the rock quarry).

I. SUMMARY OF CLAIM

The claimant, Howard Winters, seeks compensation in the amount of \$3,000,000² 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 properties. The claimant desires compensation or the right to divide the six contiguous tax lots listed above (containing a total of approximately 157.77 acres) into five-acre parcels and to develop a dwelling on each parcel.³ The subject property is located immediately north and east of the Historic Columbia River Highway near the City of Troutdale, in Multnomah 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. 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 claimant Howard Winter's division of the 157.77-acre property into five-acre parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. These laws will not apply to the claimant's use of the property only to the extent necessary to allow him to use the property for the use described in this report, and only to the extent that use was permitted when he acquired the properties on the acquisition dates shown on the table at the end of this report. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

Pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. Written comments were received in response to the 10-day notice. The comments are relevant to whether a state law restricts the claimant's desired use of the subject property and whether the restriction of the claimant's use reduces the fair market value of the property, as well as whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comments have been considered by the department in preparing this report.

² The \$3,000,000 claim for compensation includes the entirety of the claim, not just the portion addressed in this report.

³ The acreage of each tax lot is shown in the table at the end of this report.

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the properties 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 March 17, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS 92, 197, 215, and 268, and OAR 660 as the bases 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 properties, or any interest therein.”

Findings of Fact

The claimant, Howard Winters, acquired the subject properties as follows:

- Tax lot 400, Township 1N, Range 4E, Section 31DC, and tax lot 300, Township 1S, Range 4E, Section 6A: October 31, 1945;
- Tax lot 900, Township 1N, Range 4E, Section 31C: October 1, 1951;
- Tax lot 800, Township 1N, Range 4E, Section 31C: April 5, 1947;
- Tax lot 200, Township 1S, Range 4E, Section 6B: March 5, 1953; and
- Tax lot 100, Township 1S, Range 4E, Section 6B: June 23, 1943.

These dates are from deeds included with the claim, and verified through title information obtained by the Department of Administrative Services (DAS). Title information from First American Title provided with the claim establishes the claimant's current ownership of the properties.

Conclusions

The claimant, Howard Winters is an "owner" of the subject properties as that term is defined by ORS 197.352(11)(C), as of the dates stated above.

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 properties relative to how the properties could have been used at the time the claimant or a family member acquired the properties.

Findings of Fact

The claim indicates that the claimant desires to divide the subject properties into five-acre parcels and to develop a dwelling on each parcel. The claim specifically identifies ORS 215.213 and 215.263 as preventing the claimant from doing so. ORS 215.213 does not apply to these properties because Multnomah County is not a marginal lands county. In addition, the claimant's representative furnished a list of other Oregon land use regulations currently in effect that the claimant alleges restrict his desired use of the properties. The state land use regulations identified include other provisions of ORS 215, and specific statutes in ORS chapters 92, 197, 268, and OAR 660.

The claimant has not described or otherwise established how the statutes and rules listed in the claim restrict his desired use of the properties, except to state that ORS 215.213 and ORS 215.263 restrict the desired rural residential development. Absent any evidence or further explanation by the claimant as to how the listed statutes and rules restrict the desired use of the properties, this report address only those statutes and rules that the department is certain apply to the claimant's desired use.

For tax lots 100, 200, 300, 400 and 800, which are zoned Exclusive Farm Use (EFU), the claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. These properties are zoned EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because they are "agricultural land" as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the goal be zoned EFU pursuant to ORS 215.

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, prohibit the division of EFU-zoned land into

⁴ Tax lots 100, 200, 300, 400 and 800 are "agricultural land" because they contain Natural Resources Conservation Service Class I-IV soils.

parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

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.)

For tax lot 900, the claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. This tax lot is zoned Commercial Forest Use (CFU-4) as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimant's property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

The claimant acquired the subject properties prior to the adoption of the statewide planning goals and their implementing statutes and regulations (see Section V.(1) for dates of acquisition).

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33, were all enacted or adopted after the claimant acquired the subject properties, and do not allow the desired division or residential development of the properties. These laws restrict the use of the subject properties relative to the uses allowed when the claimant acquired the properties.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject properties 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 properties, and that may continue to apply to the claimant's use of the properties, 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 subject properties 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 properties, or any interest therein.”

Findings of Fact

The claim includes an estimate of \$3,000,000 as the reduction in the subject properties’ fair market value due to the regulation(s). This amount is based on an estimate of the reduction in fair market value as a result of enactment or enforcement of state land use regulations. One comment on the claim asserts that there has been no effect on the fair market value of the property because the desired use was not feasible when the claimant acquired the properties. While the value of the desired use may have been significantly lower when the claimant acquired the property, based on the current record for this claim, the department finds that the desired use was technically and legally feasible when the properties were acquired. No specific evidence rebutting the claimant’s estimate and showing that the fair market value of the property has not been reduced by state land use regulations has been provided.

Conclusions

As explained in Section V.(1) of this report, the claimant is Howard Winters who acquired the subject properties prior to the enactment of state land use regulations. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject properties 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 properties restrict the claimant’s desired use of the properties. The claimant estimates that the effect of the regulation(s) on the fair market value of the properties is a reduction of \$3,000,000.

Without an appraisal or additional evidence, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the properties. Nevertheless, based on the evidence in record for this claim, the department determines that the fair market value of the subject properties 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 properties, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which

Multnomah County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimant acquired the subject properties. One comment letter identifies regulations governing development on steep slopes. To the extent that such regulations apply and they implement Goal 7, the department specifically notes that Goal 7 is not waived as it was adopted to protect public health and safety.

Conclusions

Without a specific development proposal for the subject properties, it is not possible for the department to determine all the laws that may apply to a particular use of the properties, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development of the claimant's properties were in effect when the claimant acquired it in 1945, 1951, and 1953. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimant acquired the subject properties are exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the properties. Statewide Planning Goal 7 (Natural Hazards) applies to portions of the parcel because of the slope hazard overlay zone that Multnomah County has adopted to protect public safety through regulation of development on and around steep, potentially unstable slopes. There may be other laws that continue to apply to the claimant's use of the subject properties 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 subject properties 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). ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...." Accordingly, the Goal 7 Natural Hazards standards for the slope hazard area are exempt under ORS 197.352(3)(B).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject properties based on the uses 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 subject properties.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real properties if the Commission or the department has enforced laws that restrict the use of the subject properties in a manner that reduces their 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 subject properties permitted at the time the present owner acquired the properties. 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 restrict the claimant's desired use of the subject properties. The claim asserts that existing land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject properties by \$3,000,000. 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 properties, 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 subject properties was allowed under the standards in effect when he acquired the properties. 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 subject properties 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 Howard Winters to use the subject properties for a use permitted at the time he acquired the properties on October 31, 1945, for tax lots 300 and 400; October 1, 1951, for tax lot 800; and March 5, 1953, for tax lots 100 and 200.

Conclusions

Based on the record, the department recommends that the claim be approved, 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 Howard Winter's division of the 138.37-acre property into five-acre parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject properties for the use described in this report, and only to the extent that use was permitted when he acquired the properties on October 1, 1951, October 31, 1945, and March 5, 1953.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject properties for the use described in this report, subject to the standards in effect on October 31, 1945, October 1, 1951, and March 5, 1953. Goal 7 will continue to apply to the claimant's use of the property.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject properties may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the properties 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 properties imposed by private parties.

4. Any use of the subject properties 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 subject properties, 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 properties. 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 properties by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 23, 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. Multnomah County submitted comments on the draft staff report addressing, among other things, whether restrictions on the claimants' right to divide the property have had the effect of reducing its fair market value. The county's comments have been considered, but do not contain any evidence concerning the effects of state land use regulations on the fair market value of the properties. Other comments received also have been taken into account by the department in the issuance of this final report.

Summary Table for Claim 124461

Township and Range	Section	Tax Lot	Acreage	Desired Use	Acquisition Date	Current Zoning	CRG Scenic Area?
1S4E	6A	300	21.66	5-acre lots and residence	10/31/1945	EFU	No
1S4E	6B	100	34.93	5-acre lots and residence	6/23/1943	EFU	No
1S4E	6B	200	47.76	5-acre lots and residence	3/5/1953	EFU	No
1N4E	31C	800	5.11	5-acre lots and residence	4/5/1947	EFU	No
1N4E	31C	900	19.40	5-acre lots and residence	10/1/1951	CFU-4	No
1N4E	31DC	400	28.91	5-acre lots and residence	10/31/1945	EFU	No
1N4E	31B	200	53.75	Rock quarry	2/9/1955	GGA-40	Yes - All
1N4E	31B	900	13.0	1 residence	12/31/1986	GGA-40	Yes - All
1N4E	31A	1000	9.43	1 residence	12/31/1986	GGA-40	Yes - All

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

September 8, 2006

STATE CLAIM NUMBER: M124461 (Report B)¹

NAME OF CLAIMANT: Howard Winters

MAILING ADDRESS: (none available)

PROPERTY IDENTIFICATION: Township 1N, Range 4E, Section 31A
Tax lots 900 and 1000
Multnomah County

OTHER CONTACT INFORMATION: Donald Joe Willis
Schwabe, Williamson, and Wyatt
Pacwest Center
1211 SW 5th Ave., Suite 1900
Portland, Oregon 97204

DATE RECEIVED BY DAS: March 17, 2006

180-DAY DEADLINE: September 13, 2006

I. SUMMARY OF CLAIM

The claimant, Howard Winters, seeks compensation in the amount of \$3,000,000² 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 each parcel. The property consists of two tax lots, one of approximately 13 acres (tax lot 900), and the other of approximately 9.43 acres (tax lot 1000). The tax lots are east of NE Seidl Road, near the City of Troutdale, in Multnomah County. The property is located entirely within the Columbia River Gorge National Scenic Area (See claim.)

¹ The claim involves multiple properties, three different desired uses, and multiple acquisition dates. The three uses that the claimant alleges have been restricted by state land use regulations are: to establish a rock quarry on one tax lot - T1NR4E section 31A tax lot 200; to establish one residence on each of two tax lots - T1NR4E section 31A tax lots 900 and 1000; and to divide six tax lots into five-acre parcels with a residence on each tax lot - T1NR4E sections 31C (tax lots 800 and 900) and 31DC, and T1SR4E sections 6A (tax lot 300) and 6B (tax lots 100 and 200). A table summarizing the properties, desired uses, acquisition dates, and present zoning is provided at the end of this report. The three desired uses are addressed in three separate reports (A - the five-acre parcels with a residence on each; B - the two dwellings; and C - the rock quarry).

² The \$3,000,000 claim for compensation includes the entirety of the claim, not just the portion addressed in this report.

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 because the use the claimant desires to carry out is not restricted by the state land use regulations identified in the claim, and because the use is prohibited by land use regulations of Multnomah County and the Columbia River Gorge Commission. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

Pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. Written comments were received in response to the 10-day notice. The comments are relevant to whether a state law restricts the claimant's desired use of the subject property and whether the restriction of the claimant's use reduces the fair market value of the property, as well as whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comments have been considered by the department in preparing this report.

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on March 17, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS 92, 197, 215, 268, and OAR 660 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, Howard Winters, acquired the subject properties on December 31, 1986, as reflected by a deed included with the claim. An October 24, 2005, title report submitted with the claim establishes the claimant’s current ownership.

Conclusions

The claimant, Howard Winters, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of December 31, 1986.

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 each of tax lots 900 and 1000, and is prevented from doing so by the current zoning and land use regulations identified in the claim that restrict or prohibit the desired use. The current plan and zoning designations for the property are A-1(40) and GGA-40 (Gorge General Scenic Area 40 acre), respectively.³ Under the county’s zoning ordinance, which has been approved by the Columbia River Gorge Commission as implementing the Gorge Commission’s Management Plan, it appears that the claimant’s desired use of the property is not allowed (there is already a home on tax lot 31B200).

³ The subject property is located in the Columbia River Gorge National Scenic Area. The federal Columbia River Gorge National Scenic Area Act (Public Law 99-663) was passed by the United States Congress in 1986, and signed into law by President Reagan on November 17, 1986. The first Columbia River Gorge National Scenic Area Management Plan was adopted by the Columbia River Gorge Commission on October 15, 1991, and concurred with by the U.S. Secretary of Agriculture on February 13, 1992. The GGA-40 zoning was adopted by Multnomah County as part of the county’s plan and zoning to comply with the federally approved management plan for the scenic area.

Multnomah County Code sections 38.2215-2230. Further, Goal 3 and the statutory and rule provisions implementing that goal do not apply to or restrict the claimant's desired use of the property as a result of ORS 196.105 to 196.155, which provide that the Management Plan and implementing ordinances act in place of the statewide planning goals. As a result, the department has no authority to approve the claim for this desired use of this property.

Conclusions

The current plan and zoning provisions of Multnomah County and the Columbia Gorge Commission prohibit the claimant's desired use of this property. The state land use regulations identified in the claim do not apply to the claimant's desired use of the property, and do not restrict that use (both because they do not apply and, because even if they did apply, the use is prohibited by county and Gorge Commission laws).⁴ As a result, the department recommends that the claim be denied as to this property.

3. Effect of Regulations on Fair Market Value

As the department has determined that state land use regulations do not apply to or restrict the claimant's desired use of the property, the department does not address whether state land use regulations have had an effect on the fair market value of the subject property.

4. Exemptions Under ORS 197.352(3)

As the department has determined that state land use regulations do not apply to or restrict the claimant's desired use of the property, the department does not address whether state land use regulations may be exempt under ORS 197.352(3).

VI. FORM OF RELIEF

Based on the foregoing findings and conclusions, the department recommends that the claim be denied as to the claimant's desired use of T1N, R4E, Section 31A, tax lots 900 and 1000.

VII. COMMENTS ON THE DRAFT STAFF REPORT

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

⁴ The claim also lists certain statutes in ORS chapter 268, but does not establish how these statutes restrict the claimant's desired use - to establish a residence on each tax lot.

Summary Table for Claim 124461

Township and Range	Section	Tax Lot	Acreage	Desired Use	Acquisition Date	Current Zoning	CRG Scenic Area?
1S4E	6A	300	21.66	5-acre lots and residence	10/31/1945	EFU	No
1S4E	6B	100	34.93	5-acre lots and residence	6/23/1943	EFU	No
1S4E	6B	200	47.76	5-acre lots and residence	3/5/1953	EFU	No
1N4E	31C	800	5.11	5-acre lots and residence	4/5/1947	EFU	No
1N4E	31C	900	19.40	5-acre lots and residence	10/1/1951	CFU-4	No
1N4E	31DC	400	28.91	5-acre lots and residence	10/31/1945	EFU	No
1N4E	31B	200	53.75	Rock quarry	2/9/1955	GGA-40	Yes - All
1N4E	31B	900	13.0	1 residence	12/31/1986	GGA-40	Yes - All
1N4E	31A	1000	9.43	1 residence	12/31/1986	GGA-40	Yes - All

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

September 8, 2006

STATE CLAIM NUMBER: M124461 (Report C)¹

NAME OF CLAIMANT: Howard Winters

MAILING ADDRESS: (none available)

PROPERTY IDENTIFICATION: Township 1N, Range 4E, Section 31B
Tax lot 200
Multnomah County

OTHER CONTACT INFORMATION: Donald Joe Willis
Schwabe, Williamson, and Wyatt
Pacwest Center
1211 SW 5th Ave., Suite 1900
Portland, Oregon 97204

DATE RECEIVED BY DAS: March 17, 2006

180-DAY DEADLINE: September 13, 2006

I. SUMMARY OF CLAIM

The claimant, Howard Winters, seeks compensation in the amount of \$3,000,000² 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 an aggregate (rock) quarry on the subject property. The property contains approximately 53.75 acres, and is located at 705 NE Seidl Road, near the City of Troutdale, in Multnomah County. The property is located entirely within the Columbia River Gorge National Scenic Area (See claim.)

¹ The claim involves multiple properties, three different desired uses, and multiple acquisition dates. The three uses that the claimant alleges have been restricted by state land use regulations are: to establish a rock quarry on one tax lot - T1NR4E section 31A tax lot 200; to establish one residence on each of two tax lots - T1NR4E section 31A tax lots 900 and 1000; and to divide six tax lots into five-acre parcels with a residence on each tax lot - T1NR4E sections 31C (tax lots 800 and 900) and 31DC, and T1SR4E sections 6A (tax lot 300) and 6B (tax lots 100 and 200). A table summarizing the properties, desired uses, acquisition dates, and present zoning is provided at the end of this report. The three desired uses are addressed in three separate reports (A - the five-acre parcels with a residence on each; B - the two dwellings; and C - the rock quarry).

² The \$3,000,000 claim for compensation includes the entirety of the claim, not just the portion addressed in this report.

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 because the use the claimant desires to carry out is not restricted by the state land use regulations identified in the claim, and because the use is prohibited by land use regulations of Multnomah County and the Columbia River Gorge Commission. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

Pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. Written comments were received in response to the 10-day notice.

The comments are relevant to whether a state law restricts the claimant's desired use of the subject property and whether the restriction of the claimant's use reduces the fair market value of the property, as well as whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comments have been considered by the department in preparing this report.

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on March 17, 2006, for processing under OAR 125, division 145. The claim identifies provisions of ORS 92, 197, 215, 268, and OAR 660 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, Howard Winters, acquired the subject property on February 9, 1955, as reflected by a deed included with the claim. An October 24, 2005, title report submitted with the claim establishes the claimant’s current ownership.

Conclusions

The claimant, first Howard Winters, is an “owner” of the subject property as that term is defined in ORS 197.352(11)(C), as of February 9, 1955.

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 rock quarry on the subject parcel and is prevented from doing so by the current zoning and land use regulations identified in the claim. The current plan and zoning designations for the property are A-1(40) and GGA-40 (Gorge General Scenic Area 40 acre), respectively. ³ Under the county’s zoning ordinance, which has been approved by the Columbia River Gorge Commission as implementing the Gorge Commission’s Management Plan, the claimant’s desired use of the property is not allowed. Multnomah County Code sections 38.2215-2230. Further, Goal 3 and the statutory and rule

³ The subject property is located in the Columbia River Gorge National Scenic Area. The federal Columbia River Gorge National Scenic Area Act (Public Law 99-663) was passed by the United States Congress in 1986, and signed into law by President Reagan on November 17, 1986. The first Columbia River Gorge National Scenic Area Management Plan was adopted by the Columbia River Gorge Commission on October 15, 1991, and concurred with by the U.S. Secretary of Agriculture on February 13, 1992. The GGA-40 zoning was adopted by Multnomah County as part of the county’s plan and zoning to comply with the federally approved management plan for the scenic area.

provisions implementing that goal do not apply to or restrict the claimant's desired use of the property as a result of ORS 196.105 to 196.155, which provide that the Management Plan and implementing ordinances act in place of the statewide planning goals. As a result, the department has no authority to approve the claim for this desired use of this property.

Conclusions

The current plan and zoning provisions of Multnomah County and the Columbia Gorge Commission prohibit the claimant's desired use of this property. The state land use regulations identified in the claim do not apply to the claimant's desired use of the property, and do not restrict that use (both because they do not apply and, because even if they did apply, the use is prohibited by county and Gorge Commission laws). As a result, the department recommends that the claim be denied as to this property.⁴

3. Effect of Regulations on Fair Market Value

As the department has determined that state land use regulations do not apply to or restrict the claimant's desired use of the property, the department does not address whether state land use regulations have had an effect on the fair market value of the subject property.

4. Exemptions Under ORS 197.352(3)

As the department has determined that state land use regulations do not apply to or restrict the claimant's desired use of the property, the department does not address whether state land use regulations may be exempt under ORS 197.352(3).

VI. FORM OF RELIEF

Based on the foregoing findings and conclusions, the department recommends that the claim be denied as to the claimant's desired use of T1N, R4E, Section 31B, Tax lot 200.

VII. COMMENTS ON THE DRAFT STAFF REPORT

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

⁴ The claim also lists certain statutes in ORS chapter 268, but does not establish how these statutes restrict the claimant's desired use - to establish a rock quarry on the tax lot.

Summary Table for Claim 124461

Township and Range	Section	Tax Lot	Acreage	Desired Use	Acquisition Date	Current Zoning	CRG Scenic Area?
1S4E	6A	300	21.66	5-acre lots and residence	10/31/1945	EFU	No
1S4E	6B	100	34.93	5-acre lots and residence	6/23/1943	EFU	No
1S4E	6B	200	47.76	5-acre lots and residence	3/5/1953	EFU	No
1N4E	31C	800	5.11	5-acre lots and residence	4/5/1947	EFU	No
1N4E	31C	900	19.40	5-acre lots and residence	10/1/1951	CFU-4	No
1N4E	31DC	400	28.91	5-acre lots and residence	10/31/1945	EFU	No
1N4E	31B	200	53.75	Rock quarry	2/9/1955	GGA-40	Yes - All
1N4E	31B	900	13.0	1 residence	12/31/1986	GGA-40	Yes - All
1N4E	31A	1000	9.43	1 residence	12/31/1986	GGA-40	Yes - All

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. M124461
(BALLOT MEASURE 37) OF) (Report C)
Howard Winters, CLAIMANT)

Claimant: Howard Winters (the Claimant)

Property: Township 1N, Range 4E, Section 31B, Tax lot 200, Multnomah 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) for the reasons set forth in the DLCD Report.

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 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
DLCD
Dated this 7th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 7th day of September, 2006.

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)