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

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| IN THE MATTER OF THE CLAIM FOR | ) | FINAL ORDER |
| COMPENSATION UNDER ORS 197.352 | ) | CLAIM NO. M 118503 |
| (BALLOT MEASURE 37) OF | ) | |
| Lawrence M. and Lois A. Christensen, CLAIMANTS | ) | |

Claimants: Lawrence M. and Lois A. Christensen (the Claimants)

Property: Tax lot 1400, Township 3S, Range 2W, Section 30
Tax lot 2300, Township 3S, Range 2W, Section 30B
Yamhill 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 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 Deputy 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 3rd day of April, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 3rd day of April, 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[1], 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)

[1] By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

**BALLOT MEASURE 37 (ORS 197.352)**
**CLAIM FOR COMPENSATION**

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

April 3, 2006

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| **STATE CLAIM NUMBER:** | M118503 |
| **NAMES OF CLAIMANTS:** | Lawrence M. and Lois A. Christensen |
| **MAILING ADDRESS:** | P.O. Box 12<br>Newberg, Oregon 97132 |
| **PROPERTY IDENTIFICATION:** | Township 3S, Range 2W, Section 30<br>Tax lot 1400<br>Township 3S, Range 2W, Section 30B<br>Tax lot 2300<br>Yamhill County |
| **OTHER CONTACT INFORMATION:** | Michael Gunn<br>201-B North Meridian Street<br>Newberg, Oregon 97132 |
| **DATE RECEIVED BY DAS:** | May 24, 2005 |
| **180-DAY DEADLINE:** | April 8, 2006[1] |

## I. SUMMARY OF CLAIM

The claimants, Lawrence M. and Lois A. Christensen, seek an unspecified amount of compensation 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 36.5-acre property into 1 to 2-acre lots and to develop a dwelling on each parcel. The subject property is located at the geographic coordinates listed above, near Newberg, in Yamhill 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 because neither the Land Conservation and Development Commission (the Commission) nor the department has

[1] This date reflects 180 days from the date the claim was submitted as extended by the 139 days enforcement of Ballot Measure 37 was suspended during the pendency of the appeal of *MacPherson v. Dep't of Admin. Servs.*, 340 Or __, 2006 Ore. LEXIS 104 (February 21, 2006).

enforced laws that restrict the claimants' use of the private real property. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On July 25, 2005, pursuant to Oregon Administrative Rules (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, two written comments, evidence or information were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352 (Ballot Measure 37). Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters in the department's claim file.)

## IV. TIMELINESS OF CLAIM

### Requirement

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

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

### Findings of Fact

This claim was submitted to DAS on May 24, 2005, for processing under OAR 125, division 145. The claim identifies OAR 660-004-0040 and OAR 660-004-0018 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 Ballot 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 subject property consists of two tax lots. The claimants, Lawrence M. and Lois A. Christensen, acquired tax lot 1400 on February 2, 1969, and tax lot 2300 on July 1, 1970, as reflected by warranty deeds included with the claim. A title report submitted with the claim establishes the claimants' current ownership.

### Conclusions

The claimants, Lawrence M. and Lois A. Christensen, are "owners" of the subject property as that term is defined in ORS 197.352(11)(C), as of February 2, 1969, for tax lot 1400 and as of July 1, 1970, for tax lot 2300.

### 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.

### Findings of Fact

The claim indicates that OAR 660-004-0040 and 660-004-0018 prevent division of the property into parcels less than 10 acres without a Goal 14 exception.

The subject property is located within the City of Newberg's Urban Growth Boundary (UGB). In general, the zoning of a particular property within a UGB is determined by the city or county with land use jurisdiction over the property. In some circumstances, the Commission's rules or state statutes may apply to a local government decision regarding zoning, but usually, within a UGB, state laws require or encourage a higher intensity of development rather than restrict the use of real property. In this case, the subject property is currently zoned Very Low Density Residential (VLDR) by Yamhill County. The VLDR district is a rural residential zone with a five-acre minimum lot size. However, these restrictions are imposed by the county and are not required by state law. Because the subject property is located within the City of Newberg UGB, the provisions of OAR 660 cited by the claimants do not restrict the use of the property, nor have the claimants established how any other specific state land use regulation restricts the use of real property and has the effect of reducing the fair market value of that real property.

Based on the information in the claim, the department has not identified any state laws that restrict the claimants' use of the subject property.

**Conclusions**

The claim does not establish any state laws that currently restrict the use of the claimants' property. Because the subject property is located within the City of Newberg's UGB, neither the Commission nor the department enforces laws that require specific zoning of the property. Based on the record before the department, neither the Commission nor the department enforces any laws that restrict the use of the claimants' real property.

**3. Effect of Regulations on Fair Market Value**

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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."

As explained in Section V.(2) of this report, the claimants, Lawrence M. and Lois A. Christensen, have not established that any state laws restrict the use of the subject property. Accordingly, the department cannot determine that any laws enforced by the Commission or the department have had 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.(2) of this report, the claimants, Lawrence M. and Lois A. Christensen, have not established that any state laws restrict the use of the subject property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to this claim.

## VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the current 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 for this claim, the claimants have not established that any state laws enforced by the Commission or the department restrict the use of the subject property, and have the effect of reducing the fair market value of the subject property. Because the subject property is located within the City of Newberg's UGB, neither the Commission nor the department enforces laws that require specific zoning of the property.

**Conclusions**

Based on the record before the department, the claimants, Lawrence M. and Lois A. Christensen, 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, this claim is denied.

## VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 13, 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.