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<br>COMPENSATION UNDER ORS 197.352<br>(BALLOT MEASURE 37) OF<br>Marjorie Kolski Trust, CLAIMANT | )<br>)<br>)<br>) | FINAL ORDER<br>CLAIM NO. M 122697 |

Claimant: Marjorie Kolski Trust (the Claimant)

Property: Township 7S, Range 5W, Section 16, Tax lot 600, Polk 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 Deputy 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

Cora R Parker

Cora R. Parker, Deputy Director
DLCD
Dated this 15th day of August, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:

Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 15th day of August, 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.

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

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

August 15, 2006

| | |
|---|---|
| **STATE CLAIM NUMBER:** | M122697 |
| **NAME OF CLAIMANT:** | Marjorie Kolski Trust |
| **MAILING ADDRESS:** | 255 Culver Lane S.<br>Salem, Oregon 97302 |
| **PROPERTY IDENTIFICATION:** | Township 7S, Range 5W, Section 16<br>Tax lot 600<br>Polk County |
| **OTHER CONTACT INFORMATION:** | Mark Irick<br>PO Box 105<br>Dallas, Oregon 97338 |
| **OTHER INTEREST IN PROPERTY:** | Dragull Living Trust<br>1365 Perrydale Road<br>Dallas, Oregon 97338 |
| **DATE RECEIVED BY DAS:** | October 7, 2005 |
| **180-DAY DEADLINE:** | August 22, 2006[1] |

## I. SUMMARY OF CLAIM

The claimant, the Marjorie Kolski Trust, seeks compensation in the amount of $132,000 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 divide the 48-acre property into three parcels and to develop a dwelling on each parcel. The subject property is located at 1365 Perrydale Road, near Dallas, in Polk 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 this claim is not valid because the claimant

[1] This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Srvcs.*, 340 Or 117 (2006).

has not established its ownership of the subject property. (See the complete recommendation in Section VI of this report.)

## III. COMMENTS ON THE CLAIM

**Comments Received**

On June 6, 2006, 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. 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 October 7, 2005, for processing under OAR 125, division 145. The claim identifies ORS 215.263, 215.284 and 215.780, OAR 660 and Goals 3 and 4 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**

It is stated in the claim that the claimant, the Marjorie Kolski Trust, acquired the subject property on March 30, 1964, and now has an interest in the property as "seller under land contract." According to the information provided in the claim, the claimant sold the subject property to the Dragull Living Trust by a land sales contract on March 20, 1997. An amended August 30, 2005, title report from Ticor Title submitted with the claim establishes the Dragull Living Trust's current ownership of the subject property as of March 20, 1997. The claimant, the Marjorie Kolski Trust, no longer owns the subject property.[2]

**Conclusions**

The claimant, the Marjorie Kolski Trust, has not established that it is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C).

**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.

As explained in Section V.(1), the claimant, the Marjorie Kolski Trust, is not an "owner" 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 claimant's use of private real property with the effect of reducing its fair market value.

**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."

As explained in Section V.(1) of this report, the claimant, the Marjorie Kolski Trust, is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict its use of the subject property with the effect of reducing its fair market value.

**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.

---

[2] As a seller under a land sale contract, the claimant has retained a personal property interest in receiving payments under the contract but does not have any right to use the property it sold and does not have a real property interest that can be restricted and reduced in value by any land use regulation.

As explained in Section V.(1) of this report, the claimant, the Marjorie Kolski Trust, is not an "owner" 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 claimant is not an owner of the subject property.

### Conclusions

Based on the record before the department, the claimant, the Marjorie Kolski Trust, has not established that it is 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 August 1, 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.