

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

IN THE MATTER OF THE CLAIM FOR )            FINAL ORDER  
COMPENSATION UNDER ORS 197.352 )            CLAIM NO. M 122871  
(BALLOT MEASURE 37) OF )  
Lane Plywood, Inc.<sup>1</sup>, CLAIMANT )

Claimant:     Lane Plywood, Inc. (the Claimant)

Property:     Lots 1–3, 5, 10, 12, 15–23 and 26–33 of the Plat of Pioneer Resources  
                  Business Park, City of Eugene (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) and the Oregon Department of Transportation (ODOT 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.

The Claim is denied as to laws administered by ODOT for the reasons set forth in the ODOT 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, by the ODOT, and by the Director for the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

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<sup>1</sup> Lane Plywood, Inc. is a domestic business corporation registered with the Oregon Secretary of State.

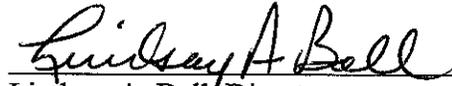
FOR DLCD AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:  
Lane Shetterly, Director



Cora R. Parker, Deputy Director  
DLCD

Dated this 1<sup>st</sup> day of September, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:



Lindsay A. Ball, Director  
DAS

Dated this 1<sup>st</sup> day of September, 2006.

FOR OREGON DEPARTMENT OF  
TRANSPORTATION



Richard Dunlap  
Right of Way Acting Manager  
Department of Transportation

Dated this 1<sup>st</sup> 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<sup>2</sup>, 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)

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<sup>2</sup> 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**

September 1, 2006

**STATE CLAIM NUMBER:** M122871

**NAME OF CLAIMANT:** Lane Plywood, Inc.<sup>1</sup>

**MAILING ADDRESS:** PO Box 23110  
Eugene, Oregon 97402-0425

**PROPERTY IDENTIFICATION:** Lots 1–3, 5, 10, 12, 15–23 and 26–33 of the  
Plat of Pioneer Resources Business Park  
City of Eugene

**OTHER CONTACT INFORMATION:** Donald Joe Willis  
1211 Southwest Fifth Avenue, Suite 1900  
Portland, Oregon 97204-3719

**DATE RECEIVED BY DAS:** October 20, 2005

**180-DAY DEADLINE:** September 4, 2006<sup>2</sup>

**I. SUMMARY OF CLAIM**

The claimant, Lane Plywood, Inc., seeks compensation in the amount of \$5 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to commercially develop the subject property and place billboards on it. The subject property consists of the lots identified above and is located in the Pioneer Resources Business Park in the City of Eugene. (See claim.)

By a letter dated March 17, 2006, the claimant's attorney requested to amend the claim to add three lots, delete one lot and change the nature of the use that the claimant desires to carry out (and believes is restricted by state land use regulations). The department recommends that the request to amend the claim be denied without prejudice. The claimant may file additional claims to address other property or uses.

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<sup>1</sup> Lane Plywood, Inc. is a domestic business corporation registered with the Oregon Secretary of State.

<sup>2</sup> 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. Svcs.*, 340 Or 117 (2006).

## **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 enforced laws that restrict the claimant's desired uses of the private real property. (See the complete recommendation in Section VI. of this report.)

## **III. COMMENTS ON THE CLAIM**

### **Comments Received**

On July 12, 2006, 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, no written comments were received in response to the 10-day notice.

## **IV. TIMELINESS OF CLAIM**

### **Requirement**

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

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

### **Findings of Fact**

This claim was submitted to DAS on October 20, 2005, for processing under OAR 125, division 145. The claim identifies ORS 227 and 377 and a number of other state land use laws 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

All of the lots encompassed in this claim are part of the Plat of Pioneer Resources Business Park. The ownership of the lots included in this claim is as follows, based on a “consumer information report” provided with the claim and certain “recorded document guarantees” provided by the claimant on May 8, 2006.<sup>3</sup>

Lot	Acreage	Present Owner	Zoning	Date(s) Acquired by Lane Plywood	Date Conveyed by Lane Plywood
1	1.63	Lane Plywood, Inc.	I-2	7/30/1970 and 4/13/2005	3/19/2002
2	1.63	Lane Plywood, Inc.	I-2	7/30/1970 and 4/13/2005	3/19/2002
3	3.01	Lane Plywood, Inc.	I-2	7/30/1970 and 4/13/2005	3/19/2002
5		Unknown			
10	2.10	Passe-Eugene, LLC	I-2	7/30/1970	12/18/2002
12	10.71	Lane Plywood, Inc.	I-2, I-3	7/30/1970 and 4/13/2005	3/19/2002
15	2.75	Lane Plywood, Inc.	I-3/WP	5/8/1975	NA
16	3.43	Lane Plywood, Inc.	I-3/WP	5/8/1975	NA
17	2.19	Lane Plywood, Inc.	I-3/WP	7/1/1978 <sup>4</sup>	NA
18	1.95	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA
19	2.20	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA
20	1.85	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA
21	0.99	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA
22	1.06	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA
23	1.05	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA
26	2.67	Lane Plywood, Inc.	I-3	10/8/1964	NA
27	0.98	Lane Plywood, Inc.	I-3	7/1/1978 <sup>5</sup>	NA
28	0.98	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA

<sup>3</sup> The department notes that there appear to be numerous internal inconsistencies and errors in the recorded document guarantees provided on May 8, 2006.

<sup>4</sup> Lot 17 appears twice in the recorded document guarantee provided by the claimant: once in connection with a deed recorded on November 19, 1980 (executed on July 1, 1978) and once in connection with a deed recorded on May 30, 1975. The department has used the later-recorded document.

<sup>5</sup> Lot 27 appears twice in the recorded document guarantee provided by the claimant: once in connection with a deed recorded on March 17, 1970, and once in connection with a deed recorded on November 18, 1980 (executed on July 1, 1978). The department has used the later-recorded document.

Lot	Acreage	Present Owner	Zoning	Date(s) Acquired by Lane Plywood	Date Conveyed by Lane Plywood
29	0.98	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA
30	1.00	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA
31	1.00	Lane Plywood, Inc.	I-3/WP	7/1/1978 <sup>6</sup>	NA
32	0.98	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA
33	0.98	Lane Plywood, Inc.	I-3/WP	7/1/1978	NA

Property reports from Lane County and a chain of title report submitted with the claim establish the claimant's current ownership of all of the lots except for lots 5 and 10.

### **Conclusions**

The claimant, Lane Plywood, Inc., is an "owner" of lots 1-3, 12, 15-23 and 26-33 of the Plat of Pioneer Resources Business Park. It acquired the lots at various times, as shown in the table 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 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 states that the claimant intends to use the subject lots for commercial development and for billboards, and that certain laws including ORS 227 and 377 restrict both commercial uses and the placement of billboards on these lots.<sup>7</sup>

The subject property is currently zoned Industrial (I-3 and I-2) by the City of Eugene. The I-3 and I-2 districts are industrial zones that allow a range of manufacturing uses. More importantly,

<sup>6</sup> Lots 31, 32 and 33 appear twice in the recorded document guarantees provided by claimant: once in connection with a deed recorded on May 8, 1978, and once in connection with a deed recorded on November 18, 1980 (executed on July 1, 1978). The department has used the later-recorded document.

<sup>7</sup> The claimant summarily lists many statutes and rules and all of the statewide planning goals (OAR 660, division 15). These include provisions of ORS 92, 184, 197, 227, 290, 366, 373 and 377; provisions of OAR 660, divisions 1, 2, 8, 9, 11, 12, 15, 16, 18, 23 and 45; and provisions of OAR 731, divisions 15, and 51. On their face, most of these regulations either do not apply to the claimant's desired use of the subject property, are not enforced by the Commission or department or do not restrict the use of the property in a manner that reduces the fair market value of the property. ORS 92 establishes procedures for subdivisions and partitions. ORS 197 establishes procedures for coordination of comprehensive plans, and ORS 227 establishes procedures for city comprehensive plans. Except for the regulations laws addressed in the body of this report, absent an explanation by the claimant as to how the land use regulations restrict the use of the claimant's property in a manner that reduces its fair market value, these regulations are not addressed further. This report addresses only those laws that are administered by the department. The Oregon Department of Transportation (ODOT) will issue a separate report addressing laws that are administered by ODOT.

nothing in ORS 227 requires the City of Eugene to adopt particular zoning for the subject property. Statewide Planning Goal 9 (Economic Development) and its implementing rules encourage the development of lands that have been zoned for industrial use. None of these laws restrict industrial uses or the placement of billboards—the uses the claimant desires to carry out.

The subject property is within the City of Eugene’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 claimant has not alleged how a 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.

In comments on the draft staff report, the claimant has provided some additional argument concerning other state land use regulations. For example, with regard to OAR 660-009, the claimant argues that “[t]his rule creates land use restrictions on commercial and industrial lands, the result of which is that the proposed mixture of uses is not an allowed use for the property.” In addition to being conclusory, the problem with this argument is that the claim does not identify *what* mixture of uses the claimant desires. As a result it is impossible for the department to determine whether the listed rules apply to or restrict whatever it is that the claimant desires to do. Similarly, with regard to OAR 660-011 and 660-012, the claim does not include any information concerning public services or transportation facilities or access. Without a more specific description of what desired use has been restricted by state land use regulations, the department is unable to determine whether OAR 660-009, 660-011 or 660.012 (or any of the other state land use regulations listed in the claim) apply to or restrict the claimant’s desired use, whatever that may be.

Based on the information in the claim, the department has not identified any state laws administered by the department that restrict the claimant’s desired uses of the subject property.

### **Conclusions**

The claim does not establish that any state land use regulations administered by the department restrict the claimant’s desired uses of the subject property. Because the subject property is located within the City of Eugene’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 claimant’s desired uses of the subject property.

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

In order to establish a valid claim, ORS 197.352 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.(2) of this report, the claimant, Lane Plywood, Inc., has not established that any state laws administered by the department restrict the desired uses of the subject property. The claim includes as an assertion by the claimant's attorney that the identified laws have had the effect of reducing the fair market value of the subject property, but because no other evidence has been provided and given that the statement is premised on the assumption that state land use regulations restrict the claimant's desired uses, there is no substantial evidence in the record to establish that the state land use regulations have had the effect of reducing the fair market value of the 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 claimant, Lane Plywood Inc., has not established that any state land use regulations administered by the department restrict the claimant's desired uses of the subject property. Some of the laws identified by the claimant were enacted or adopted after the claimant acquired one or more of the lots that make up the property. These laws will be exempt under ORS 197.353(3). Other laws may be exempt for other reasons, but given the failure of the claimant to establish either a restriction on the use of the subject property or a reduction in value, the department will not attempt to make a full determination as to how the exemptions may 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 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 for this claim, the claimant has not established that any state laws administered by the Commission or the department restrict the desired uses of the subject property or have the effect of reducing the fair market value of the property.

#### **Conclusions**

Based on the record before the department, the claimant, Lane Plywood, Inc., has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations administered 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 14, 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.

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

**OREGON DEPARTMENT OF TRANSPORTATION**

**Staff Report and Recommendation**  
August 28, 2006

**STATE CLAIM NUMBER:** M122871

**NAME OF CLAIMANT:** Lane Plywood Inc.<sup>1</sup>

**IDENTIFICATION OF PROPERTY:** Lots 1, 2, 3, 5, 10, 12, 15-23, and 26-33  
of the Plat of Pioneer Resources Business  
Park,  
City of Eugene

**OTHER CONTACT INFO:** Donald Joe Willis  
Schwabe, Williamson & Wyatt, PC  
1211 SW 5<sup>th</sup> Avenue, Ste 1900  
Portland, OR 97204

**DATE RECEIVED BY DAS:** October 20, 2005

**180-DAY DEADLINE:** September 4, 2006<sup>2</sup>

**I. CLAIM**

See Department of Land Conservation and Development (DLCD) Staff Report.

**II. SUMMARY OF STAFF RECOMMENDATION**

Based on the findings and conclusions set forth below, the Department of Transportation (the department) has determined that the claim is not valid. The department has determined that the claim does not identify a non-exempt state land use regulation that the department has enforced since December 2, 2004, in a manner that restricts the claimant's right to develop the property including the placement of billboards or that has the effect of reducing the fair market value of the claimant's property.

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<sup>1</sup> Lane Plywood, Inc. is a Domestic Business Corporation registered with the Oregon Secretary of State.

<sup>2</sup> 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. Svcs.*, 340 Or 117 (2006).

### III. COMMENTS ON THE CLAIM

See Department of Land Conservation and Development (DLCD) Staff Report.

### IV. TIMELINESS OF CLAIM

#### Requirement

See Department of Land Conservation and Development (DLCD) Staff Report.

#### Findings of Fact

Exhibit B to the claim received October 20, 2005, lists a number of statutes and rules administered by the Oregon Department of Transportation. There is no description in the claim concerning how the listed statutes and rules have been enforced since December 2, 2004, or how they restrict the uses of the property that the claimant wishes to carry out (to use the property for commercial development and for the placement of billboards). The state "land use regulations" identified in the claim include: particular statutes in Oregon Revised Statute chapter 184; particular statutes in ORS chapter 366; all of ORS chapter 373; particular statutes in ORS 377; all of division 15 in Oregon Administrative Rules chapter 731; all of divisions 059 and 060 in OAR chapter 734<sup>3</sup>. It appears that the claim concerns only laws that were enacted prior to December 2, 2004, the effective date of Measure 37. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

#### Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on regulations 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."

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<sup>3</sup> Claimant's Exhibits B to its original claim letter refers to OAR Chapter 734. It appears that Claimant made a typographical error while referencing Division 59 (Signs – General Provisions) by listing "734-051," which is a different Division. In addition to addressing Division 59, the Department will briefly address Division 51 since it has been listed.

## **Findings of Fact**

The findings of the Staff Report of the Department of Land Conservation and Development on this claim regarding ownership are incorporated into this report by this reference.

## **Conclusions**

The conclusions of the Staff Report of the Department of Land Conservation and Development on this claim regarding ownership are incorporated into this report by this reference.

## **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 “state land use regulation” 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 claimants or a family member acquired the property.

## **Findings of Fact**

The claim states in relevant part: “Lane Plywood, Inc. intends to use the lots for commercial development and for the placement of billboards.” October 19, 2005 letter. The claimant also submitted a letter dated March 17, 2006 asking to amend the claim to add certain property, delete certain property, alter the use that the claimant desires to carry out, and to alter the state land use regulations that claimant asserts restrict that use. The request to amend the claim is denied without prejudice. The claimant may submit a separate claim for the additional properties and/or the additional use claimant seeks to carry out.

The claim further states:

“The state did not have land use regulations in effect at acquisition or upon annexation that restricted the proposed uses of this property to the degree that current regulations do.”

In the claim submitted to DAS, the claimant cites several sections of Oregon Administrative Rules and Oregon Revised Statutes particular to the Department, including the following:

Particular statutes in ORS chapter 184  
Particular statutes in ORS chapter 366  
ORS chapter 373  
Particular statutes in ORS chapter 377  
Division 15 in Oregon Administrative Rules chapter 731  
Divisions 051, 059 and 060 in OAR chapter 734<sup>4</sup>

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<sup>4</sup> Regarding the inclusion of Division 51, see Footnote 2.

In order for a claimant to establish an entitlement to relief under ORS 197.352, there must be a showing of at least the following:

- The claimant's desired use of the property is restricted by a state "land use regulation";
- There has been some action, taken after December 2, 2004, to enforce the land use regulation;
- The land use regulation has the effect of reducing the fair market value of the property in question; and
- The law is not one that was adopted to protect public health and safety, or that is otherwise exempt under ORS 197.352(3).

Of the administrative rules cited by the claimant, none of them are "land use regulations." That term is defined in subsection ORS 197.352(11)(B). The only state administrative rules that are "land use regulations" are rules of the Land Conservation and Development Commission, and administrative rules regulating farming and forest practices. None of the state administrative rules listed in the claim that are and addressed in this report are rules of LCDC or regulate farm or forest practices.<sup>5</sup>

Under ORS 197.352(11)(B), state *statutes* regulating the use of land are "land use regulations," however, the claimant has not described how any of the listed statutes restrict the development of the property. Of those cited, the only statutes that could be considered "land use regulations" are some of those under ORS 377, and part of ORS 366.455, regulating the placement of signs on private property where they are visible to a state highway.

The department has taken no action since the effective date of ORS 197.352 with respect to claimant's use of the property concerning the provisions of ORS chapter 377 or 366.455, all of which were enacted prior to the effective date of ORS 197.352. Until the claimant applies for and is denied permission to erect a sign under the pertinent provision of chapter 377, or until the department takes enforcement action against claimant for a violation of ORS chapter 377 (or 366.445), the department will not have enforced a land use regulation as described in ORS 197.352(1).<sup>6</sup> The department has taken no action since the effective date of ORS 197.352 to enforce any of the other listed laws or rules with respect to claimant's use of property or proposed development.<sup>7</sup>

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<sup>5</sup> The claim does list certain LCDC rules. However, those rules are addressed in a separate report on this claim being issued by the Department of Land Conservation and Development (DLCD).

<sup>6</sup> Under the recent Oregon Supreme Court opinion in *Outdoor Media Dimensions v. ODOT*, 340 Or 275 (2006), the statutory requirement that an off-premise sign must have a permit was determined to be unconstitutional. However, the other requirements of the OMIA were not invalidated by the Court.

<sup>7</sup> In the claim letter received October 20, 2005, claimant asserts, "[w]e understand from conversations with city staff that under current rules, commercial use and billboard placement are restricted." Claimant does not claim that it was denied a permit or had enforcement taken against it. Rather, the claim is merely that a city staffer made a statement that regulations exist. Claimant's assertion does not provide enough specificity to even know if claimant asserts the city staffer was referring to state or local laws.

## **Conclusions**

The Department concludes that all of the administrative rules listed in the claim, and most of the statutes, that are administered by the Department are not state "land use regulations." The only exceptions are some of the statutes under ORS 377, and ORS 366.455. Claimant has not established that any "land use regulation" administered by the Department has been enforced to restrict the claimant's use of the property since the effective date of ORS 197.352. As a result, the claimant has failed to identify a state land use regulation that has been enforced as to the claimant's use of its property in a manner that restricts its use. Since December 2, 2004, the department has not taken action to enforce a land use regulation that restricts the development or placement of signs as described in a general way in the claim.

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

In order to establish a valid claim, 197.352(1) requires that any laws described in Section V.2 of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

### **Findings of Fact**

The claim asserts a reduction of \$5,000,000 in the property's fair market value due to state land use regulations, but does not provide an appraisal, documentation, or calculations to demonstrate the reduction in the fair market value of the property.

The claim does not establish what portion, if any, of the alleged reduction in value is attributed to the Department's statutes or rules as opposed to land use regulations of other state agencies or local governments. (The claim packet included information about the Measure 37 claim made to the City of Eugene, in which claimant asserted a five million dollar loss due to local regulations. It is unclear whether this is the same five million dollars alleged in the state claim, or an additional amount.)

### **Conclusions**

To state a claim under ORS 197.352(1), claimant must allege some reduction in fair market value of its property caused by a land use regulation which restricts the use of the property. Based on the record currently before the department, the department concludes that there are no land use regulations identified in the claim and enforced by the department since December 2, 2004, that restrict the use of the subject property or that have the effect of reducing the fair market value of the 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.

## Findings of Fact

As explained in Section V.(2) and (3) of this report, the claimant, Lane Plywood, Inc., has not established that any state laws have been enforced since December 2, 2004, to restrict the use of the subject property in a manner that reduces the fair market value of the property.

The statutes codified at ORS 377 (and the rules implemented thereunder) were enacted for the purpose of protecting public safety.<sup>8</sup> The federal law that required the enactment of Oregon's sign control law also declares that its purpose is, *inter alia*, to promote safety.<sup>9</sup> As a result, these state land use regulations are exempt under ORS 197.352(3)(B), as they were adopted to protect public health and safety.

ORS chapter 377 also is exempt under ORS 197.352(3)(C). Subsection 3(C) exempts laws "to the extent [they are] required to comply with federal law." The statutes codified at chapter 377, and their implementing rules, were enacted to comply with the federal Highway Beautification Act. "The legislature enacted the Oregon Motorist Information Act (OMIA) in 1971. Or Laws 1971, ch 770. The OMIA was Oregon's effort to comply with the federal Highway Beautification Act of 1965 (HBA), 23 USC § 131." *Outdoor Media Dimensions Inc. v. State*, 331 Or 634 (2001). As a result, the laws codified at ORS chapter 377 are exempt under subsection 3(C) of Measure 37.

The statutes administered by the department and that are potentially land use regulations (portions of ORS chapter 377, and ORS 366.455) were enacted in the following years:

1939: 366.455

1971: 377.700; 377.705; 377.710; 377.715; 377.720; 377.725; 377.730 – 377.750;  
377.765; 377.770; 377.775; 377.780; 377.992

1974: 377.727; 377.773

1975: 377.767

1977: 377.712; 377.726

1979: 377.768

1981: 377.723

1985: 377.729

1987: 377.756 – 377.758

2001: 377.777

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<sup>8</sup> "To promote the public safety; to preserve the recreational value of public travel on the state's highways; to preserve the natural beauty and aesthetic features of such highways and adjacent areas; to provide information about and direct travelers to public accommodations, services of the traveling public, campgrounds, parks, recreational areas, and points of scenic, historic, cultural and educational interest, it is the policy of this state and the purpose of ORS 377.700 to 377.840 and 377.992: \*\*\* to prohibit the indiscriminate use of other outdoor advertising. \*\*\*" ORS 377.705.

<sup>9</sup> "The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty." 23 U.S.C. 131(a).

The enactment of many of these laws predates the claimant's date of acquisition of particular portions of the properties included with the claim. The dates of acquisition for particular lots included within the claim are shown in the table include in the report of DLCD on this claim, which is incorporated herein by this reference.

### **Conclusions**

The Department concludes that based on the information in its record, the claimant has failed to identify a state law that restricts the use of its property, has the effect of reducing the fair market value of the property, and that is not exempt under ORS 197.352. The statutes regulating signs on private property that are visible to state highways were passed for purposes of protecting public safety and therefore are exempt under ORS 197.352(3)(B). They were also passed to comply with federal law and therefore also are exempt under ORS 197.352(3)(C). Due to claimant's acquisition of the property after the enactment of many of the listed laws, the following statutes are also exempt under ORS 197.352(E) as to the referenced Lots:

Lots 1-3, 12: All statutes exempt.

Lot 5: Claimant has not established ownership.

Lot 10: Lot not owned by claimant.

Lots 15-16: 366.455, 377.700, 377.705, 377.710, 377.715, 377.720, 377.725, 377.730 – 377.750, 377.765, 377.770, 377.775, 377.780, 377.992, 377.727, and 377.773.

Lots 17-23, and 27-33: 366.455, 377.700, 377.705, 377.710, 377.715, 377.720, 377.725, 377.730 – 377.750, 377.765, 377.770, 377.775, 377.780, 377.992, 377.727, 377.773, 377.767, 377.712, and 377.726.

Lot 26: 366.455.

As a result, the claim must be denied as to laws administered by the Oregon Department of Transportation.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the department has enacted or enforced a law that restricts 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 to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property.

### **Findings of Fact**

Based on the findings and conclusions set forth in this report, no state land use regulations administered by the department restrict the claimant's desired use of the property in a manner that reduces the fair market value of the property and that involve a law that is not exempt.

## **Conclusion**

Based on the foregoing findings and conclusions, the claimant has not established entitlement to relief under ORS 197.352, as to laws administered by the Department of Transportation. As a result, the department recommends that the claim be DENIED.

## **VII. NOTICE OF OPPORTUNITY TO COMMENT**

The department issued its draft staff report on this claim on August 14, 2006. 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. Neither the department nor DAS received any Comments.