

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. M129567
(BALLOT MEASURE 37) OF)
May M. Harris, LLC, CLAIMANT)

Claimant: May M. Harris, LLC (the Claimant)

Property: Township 9S Range 3E, Section 30CC, Tax lots 700, 800 and 900
Marion 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

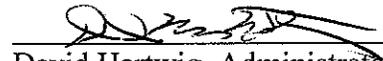
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Manager for the Measure 37 Services Division of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

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

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 15th day of December, 2006.


David Hartwig, Administrator
DAS, State Services Division
Dated this 15th day of December, 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

December 15, 2006

STATE CLAIM NUMBER:	M129567
NAME OF CLAIMANT:	May M. Harris, LLC
MAILING ADDRESS:	PO Box 163 Mill City, Oregon, 97360
PROPERTY IDENTIFICATION:	Township 9S Range 3E, Section 30CC Tax lots 700, 800 and 900 Marion County
OTHER CONTACT INFORMATION:	Wallace W. Lien, P.C. 1775 32nd Place NE, Suite A Salem, Oregon 97301
DATE RECEIVED BY DAS:	June 23, 2006
180-DAY DEADLINE:	December 20, 2006

I. SUMMARY OF CLAIM

The claimant, May M. Harris, LLC, seeks compensation in the amount of \$758,000 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 7.44-acre subject property into five parcels and to develop a dwelling on each parcel. The subject property is located at 28002 River Road, near Mill City, in Marion 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 the claimant's desired use of the subject property was prohibited under the laws in effect when the claimant acquired the property in 1998. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 17, 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. 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 June 23, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215, OAR 660, division 6, and all statewide planning goals as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.¹

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.

¹ The claimant has summarily cited numerous state land use laws as applicable to this claim, but does not establish how they either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimant's property or do not restrict the use of the claimant's property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimant's use of the subject property, based on the claimant's asserted desired use.

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, May M. Harris, LLC, acquired the subject property on December 18, 1998, as reflected by a bargain and sale deed included with the claim.² The Marion County Assessor’s Office confirms that the claimant is a current owner of the subject property.

Conclusions

The claimant, May M. Harris, LLC, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of December 18, 1998.³

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 the claimant’s family member acquired the property.

Findings of Fact

The claim indicates that the claimant desires to divide the 7.44-acre subject property into five parcels and to develop a dwelling on each resulting parcel, and that state land use regulations prevent the desired use.

The claim is based on the applicable provisions of state law that require forest zoning and restrict uses on land zoned for forest uses. The claimant’s property is zoned by Marion County as Timber Conservation (TC) as required by Goal 4 and provisions applicable to land zoned for forest use in ORS chapter 215 and OAR 660, division 6, because the claimant’s property is “forest land” as defined by 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

² In response to the draft staff report, the claimant’s attorney submitted a legal analysis asserting that a transfer of property to a Limited Liability Corporation (LLC) should be treated the same as a transfer of property to a revocable trust for purposes of ORS 197.352. Contrary to the attorney’s assertions, LLC’s and revocable trusts are not equivalent. A transfer of property to an LLC transfers the legal obligations of the parties and the legal ownership of the property conveyed to the LLC.

³ Under ORS 197.352(11)(A), legal entities can be “family members” of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, individuals who transferred property to the LLC are not considered family members under ORS 197.352(11)(A).

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, May M. Harris, LLC, acquired the subject property on December 18, 1998. At that time, the subject property was subject to the current provisions of Goal 4, ORS 215 and OAR 660, division 6, as described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted before the claimant, May M. Harris, LLC, acquired the subject property on December 18, 1998. These land use regulations do not allow the desired division of the subject property and the development of dwellings on the resulting parcels. No laws have been enacted or adopted since the claimant acquired the subject property in 1998 that restrict the claimant's desired use of the property relative to when the claimant acquired it in 1998.

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."

Findings of Fact

The claim includes an estimate of \$758,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. The claim indicates this amount is based on "the generally accepted value per acre of land of this type."

Conclusions

As explained in Section V.(1) of this report, the claimant is May M. Harris, LLC. It acquired the subject property on December 18, 1998. No state laws enacted or adopted since the claimant acquired the subject property restrict the use of the property relative to the uses allowed in 1998. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Use Conservation and Development Commission (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 does not identify any state land use regulations enacted or adopted since the claimant acquired the subject property that restrict the use of the property relative to what would have been allowed when it acquired it on December 18, 1998. As set forth in Section V.(2) of this report, the state land use regulations restricting the claimant's desired use of the subject property were in effect when the claimant acquired the property in 1998.

Conclusions

All of the state land use regulations that restrict the claimant's desired use of the subject property were in effect when the claimant acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant acquired the subject property.

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 findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict the claimant's desired use of the subject property relative to what was permitted when the claimant acquired it in 1998 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record and the foregoing findings and conclusions, the claimant 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 November 24 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.