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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Alvina Brown, CLAIMANT	))))	FINAL ORDER CLAIM NO. M129575

Claimant: Alvina Brown (the Claimant)

Property: Township 4S, Range 1W, Section 31, Tax lot 500, 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

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

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

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:	M129575
NAME OF CLAIMANT:	Alvina Brown
MAILING ADDRESS:	9494 Broadacres Road NE Hubbard, Oregon 97032
PROPERTY IDENTIFICATION:	Township 4S, Range 1W, Section 31 Tax lot 500 Marion County
OTHER CONTACT INFORMATION:	Patrick E. Doyle 110 N Second Street Silverton, Oregon 97381
DATE RECEIVED BY DAS:	June 23, 2006
180-DAY DEADLINE:	December 20, 2006

I. SUMMARY OF CLAIM

The claimant, Alvina Brown, seeks compensation in the amount of $750,000 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 6-acre subject property into six 1-acre parcels and to develop a dwelling on each parcel.[1] The subject property is located at the intersection of Butteville and Broadacres Roads, near Aurora, 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 is

[1] The claim also suggests that the claimant desires to sell the newly created parcels for development. In effect, the claimant requests that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost."

no longer an owner, as she passed away on July 25, 2006.[2] (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 4, 2006, pursuant to 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 EFU zoning, provisions of ORS 215, OAR 660, division 33, and county land use ordinances 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.

[2] On November 28, 2006, the Marion county planner informed the department that the claimant had passed away in June or July 2006. The claimant's attorney confirmed that the claimant passed away on July 25, 2006.

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, Alvina Brown, acquired the subject property on November 21, 1936, as reflected by deeds included with the claim. On April 26, 1999, the claimant transferred the subject property to the Alvina M. Brown Trust, a revocable living trust with herself as trustee, as reflected by a deed included with the claim.[3] On July 25, 2006, the claimant passed away, transferring the property from her to her estate.

Conclusions

As of July 25, 2006, the claimant, Alvina Brown, is no longer an "owner" of the subject property as that term is defined by 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 Seciton V.(1), the claimant, Alvina M. Brown, is no longer an owner of the subject property, as that term is defuined 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 fo the private real property in a manner that reduces the 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 regulations (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 Seciton V.(1), the claimant, Alvina M. Brown, is no longer an owner of the subject property, as that term is defuined 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 fo the private real property in a manner that reduces the fair market value.

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[3] Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

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.(1) of this report, the claimant, Alvina M. Brown, is no longer an "owner" of the subject property, as that term is defined in ORS 197.352(11)(c). There, 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 laws that restrict the use of the subject 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 subject 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 no longer an owner of the subject property.

Conclusions

Based on the record before the department, the claimant, Alvina M. Brown, is no longer no longer an owner of the property and, therefore, is not entitled ot 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 the 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.