

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. M129598  
(BALLOT MEASURE 37) OF )  
Cop Copi Crops, Ltd., CLAIMANT )

Claimant:     Cop Copi Crops, Ltd. (the Claimant)

Property:     Township 2S, Range 40E, Tax lot 3801

               Township 3S, Range 40E

               Union 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

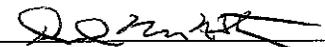
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 22<sup>nd</sup> day of December, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 22<sup>nd</sup> 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 22, 2006

**STATE CLAIM NUMBER:** M129598

**NAME OF CLAIMANT:** Cop Copi Crops, Ltd.

**MAILING ADDRESS:** 61637 Lower Cove Road  
Cove, Oregon 97824

**PROPERTY IDENTIFICATION:** Township 2S, Range 40E  
Tax lot 3801

Township 3S, Range 40E

Union County

**OTHER CONTACT INFORMATION:** D. Rahn Hostetter  
203 East Main Street  
Enterprise, Oregon 97828

**DATE RECEIVED BY DAS:** June 29, 2006

**180-DAY DEADLINE:** December 26, 2006

**I. SUMMARY OF CLAIM**

The claimant, Cop Copi Crops, Ltd., seeks compensation in the amount of \$3,550,000 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 1) divide the 1,075.74-acre subject property into five 5-acre parcels and develop a dwelling on each parcel; 2) develop a senior care home; and 3) develop elk fencing around the remaining agricultural portions of the property.<sup>1</sup> The subject property is located at 61635 and 61637 Lower Cove Road, near Cove, in Union 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 as an administratively dissolved corporation under ORS 197.647, claimant's claim for relief under

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<sup>1</sup> The subject property includes three tax lots. Tax lot 400 consists of 597.56 acres; tax lot 700 consists of 158.18 acres; and tax lot 3801 consists of 320 acres.

ORS 197.352 is not within the scope of activities authorized under its ownership interest, and the claimant's desired use of the property is not within the scope of activities that the claimant is authorized to pursue under ORS 60.651(3) and 60.637. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On October 4, 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 criterion, whichever is later.

#### **Findings of Fact**

This claim was submitted to DAS on June 29, 2006, for processing under OAR 125, division 145. The claim identifies ORS 197 and 215 and "Statewide Planning Goals, especially Goal 5" 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

The claimant, Cop Copi Crops, Ltd., asserts that it acquired the subject property on December 2, 1975, as reflected by a bargain and sale agreement included with the claim.<sup>2</sup> However, on January 13, 2000, Cop Copi Crops, Ltd., was administratively dissolved by the Oregon Secretary of State, pursuant to ORS 60.647. The claimant did not apply for reinstatement within the five years allowed for reinstatement following administrative dissolution pursuant to ORS 60.654. Cop Copi Crops, Ltd. was incorporated as a new corporation on June 2, 2006.<sup>3</sup> The Union County Assessor’s Office confirms that Cop Copi Crops, Ltd. is a current owner of the property.

### Conclusions

The claimant, Cop Copi Crops, Ltd. (as a dissolved corporation), is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C). The claimant acquired the property on December 2, 1975. However, that corporation was administratively dissolved in 2000. The claimant did not reinstate the corporation within the required five-year period.

ORS 60.637(2) provides, “Dissolution of a corporation does not: (a) Transfer title to the corporation’s property.” However, the fact that the claimant corporation was dissolved limits its authority to act as an owner with regard to its property. ORS 60.651(3) provides:

A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under ORS 60.637, and notify claimants under ORS 60.641 and 60.644.

ORS 60.651(3) provides that an administratively dissolved corporation may only carry on those activities listed in ORS 60.637 that are “necessary” to wind up and liquidate its business and affairs. The department finds that the pursuit of this claim for relief under ORS 197.352 is not within the scope of activities in which the claimant, as an administratively dissolved corporation, is permitted to engage. Even if an administratively dissolved corporation may assert a claim for relief under ORS 197.352 as an activity necessary to wind up the corporations business and affairs, the department finds that carrying out the intended use is not within the scope of activities in which the claimant as an administratively dissolved corporation is permitted to engage under ORS 60.651(3). The claimant’s claim for relief under ORS 197.352, six years

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<sup>2</sup> The claimant’s attorney has clarified in a letter dated December 8, 2006, that Cop Copi Crops Corporation, which acquired the property in 1975 and was dissolved in 2000, is the claimant and is the current owner of the subject property for purposes of this claim for relief under ORS 197.352.

<sup>3</sup> As incorporated on June 2, 2006, Cop Copi Crops is a domestic business corporation registered with the Oregon Secretary of State.

after the corporation was administratively dissolved, is not “necessary” to wind up the corporation’s business and affairs and therefore, is not within the scope of activities authorized under its ownership interest. Such activity is in the nature of ongoing business activity, and is not the limited type of activity that an administratively dissolved corporation is authorized to pursue for the purpose of winding up and liquidating its business and affairs.

## **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 with the effect of reducing 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.

The claimant desires to 1) divide the 1,075.74-acre subject property into five 5-acre parcels and develop a dwelling on each parcel; 2) develop a senior care home; and 3) develop elk fencing around the remaining agricultural portions of the property. However, the claim does not establish that the claimant’s desired use of the subject property is within the scope of activities in which the claimant is authorized to engage under ORS 60.637 as an administratively dissolved corporation under ORS 60.647. Based on the record before the department, the claimant is the current owner of the subject property, because the claimant’s claim for relief under ORS 197.352 is not within the scope of activities the claimant is authorized to pursue under ORS 60.651(3) and 60.637 and the claimant is not statutorily authorized to pursue its desired use of the subject property, neither the Commission nor the department enforces any laws that restrict the claimant’s desired use of the subject real property.

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

In order to establish a valid claim, ORS 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.”

As explained in Section V.(2) of this report, the claimant, Cop Copi Crops, Ltd., is the present owner of the subject property. However, as a dissolved corporation, under ORS 60.637, the claimant is not authorized to pursue the claimant’s desired use of the property. Therefore, no laws enforced by the Commission or the department restrict the claimant’s desired use with 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 claimant, Cop Copi Crops, Ltd., is a present owner of the property. However, it has not identified any state land use regulations that restrict its desired use. Therefore, the issue of whether any state land use regulations are exempt under ORS 197.352(3) is not relevant 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, staff recommends that this claim be denied because as an administratively dissolved corporation under ORS 197.647, the claimant's claim for relief under ORS 197.352 is not within the scope of activities authorized under its ownership interest and the claimant's desired use of the property is not within the scope of activities that the claimant is authorized to pursue under ORS 60.651(3) and 60.637.

### **Conclusions**

Based on the record before the department, the claimant, Cop Copi Crops, Ltd., 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 29, 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.