

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF FORESTRY

Final Staff Report and Decision

February 14, 2007

STATE CLAIM NUMBER: M129912

NAMES OF CLAIMANTS: Roy T. Johnson

MAILING ADDRESS: 92206 Hwy 42 S.
Coquille, Oregon 97423

PROPERTY IDENTIFICATION: Township 29S, Range 12W, Section 15
Tax lot 500
Coos County, aka
95766 Sugarloaf Lane
Myrtle Point, Oregon 97458

OTHER CONTACT INFORMATION: None

DATE RECEIVED BY DAS: August 23, 2006

180-DAY DEADLINE: February 19, 2007

I. SUMMARY OF CLAIM

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

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Forestry (ODF) denies the claim with regard to land use regulations administered by ODF or the Oregon Board of Forestry (Board) because the department has not taken any action to enforce any land use regulation to restrict the claimant's use of the property on or after December 2, 2004, and because none of the laws identified in the claim and administered by the Board or ODF restrict the claimant's right to divide the 13-acre property into up to four parcels and to develop a dwelling on each parcel. One of the claimant's desired uses is to harvest timber on the undeveloped portion of the property. To the extent that the claimant intends to carry out a "forest operation" (a commercial activity relating to the establishment, management or harvest of forest tree species), the claimant has not submitted a written notification as required by law. Without a notification, ODF is unable to determine whether the laws listed in the claim apply to the claimant's use of the property or restrict his use of the property. ODF has not enforced an existing state land use regulation with respect to the claimant's use of the property. In addition, ORS 527.730 provides that "[n]othing in the Oregon Forest Practices Act shall prevent the

conversion of forestland to any other use.” (See the complete decision in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

See DLCD Final Staff Report.

IV. TIMELINESS OF CLAIM

Findings of Fact

This claim was submitted to DAS on August 23, 2006, for processing under OAR 125, division 145. The claim identifies a list of statutes and rules, which includes ORS 527.676 and Oregon Administrative Rule divisions 610, 630, 640, and 665 as a partial 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

ODF adopts the findings of fact and conclusions of law regarding ownership contained in the DLCD Final Staff Report for this claim.

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 desired use of private real property, and that the enactment or enforcement of the regulation has had the effect of reducing the fair market value of the property.

Findings of Fact

The claim indicates the claimant’s desired use is to divide the 13-acre subject property into four parcels for residential development, and to harvest timber except on the home sites. The claim lists ORS 527.676 and Oregon Administrative Rule divisions 610, 630, 640, and 665 as regulations that restrict the use of the property as a basis for the claim.¹ These are state laws administered by ODF or the Board. The claim states that the listed laws prohibit “my

¹ The claim identifies other laws administered by Coos County. Those laws are addressed in a separate report by that agency.

development intentions.” The property is presently zoned Exclusive Forest Use. The laws listed in the claim include statutes that only apply to forest operations, which is one of the uses the claimant has described in his claim.

Certain uses of property are forest “operations” that are regulated under the Forest Practices Act. If trees are harvested for commercial use, some laws listed in the claim will apply to the operation. A notification of intent to conduct a forest operation is required in order for ODF to determine whether laws it or the Board may enforce apply to the claimant’s intended use of the subject property in a way that restricts the use of the subject property, and reduces its fair market value. No notification has been made on or since December 2, 2004, the effective date of Measure 37.

A relevant section of the cited laws, ORS 527.730, “Conversion of forestland to other uses”, states, “Nothing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use.” No laws enforced by the Board or ODF restrict the division of the property or the establishment of dwellings.

Conclusions

Persons proposing to conduct a forest operation are required to submit a notification of the operation to ODF. Nothing in ORS 197.352 relieves an operator or landowner from this obligation, and until a notification is submitted, ODF is unable to determine whether laws it or the Board administers would apply to or restrict the harvest of any timber.

In addition, nothing in the laws that are listed in the claim and enforced or administered by ODF or the Board applies to or restricts the division of the property or the construction of dwellings by the claimant.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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 claimant has not demonstrated that any land use regulations administered by ODF or the Board restrict his use of the subject property or have the effect of reducing its fair market value. The documentation submitted with the claim does not include any information concerning how laws administered by ODF or the Board have had the effect of reducing the fair market value of the property.

Until the claimant submits a notification, ODF is unable to determine whether any laws apply to or may restrict the claimant’s desired use of the property or reduce its fair market value.

Conclusions

The claimant has not demonstrated that laws enforced or administered by ODF or the Board apply to or restrict his desired use of this property or affect its fair market value.

4. Exemptions Under Section 3 of Measure 37

Ballot Measure 37 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from the Measure.

Findings of Fact

ORS 197.352(3) exempts laws that were enacted before claimants acquired their interest in the property. Claimant Roy T. Johnson acquired an interest in the subject property on February 23, 1953. Most forest practice laws were first enacted in 1971 and July 1, 1972, although some date back to 1941. Additions and amendments were made to the statutes and rules since that time. ODF is unable to determine whether 197.352(3)(E) or other exemptions in 197.352(3) may apply because the claimant has not submitted a notification of operations to conduct commercial forest activities on the subject property.

Some FPA regulations were enacted to control water pollution resulting from forest operations. ORS 197.352(3)(B) specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety..., including pollution control.” Such regulations may apply to the property, depending upon the activities the claimant may wish to undertake.

Other FPA regulations cited by the claimant may also be exempted under 197.352(3).

Conclusions

ODF concludes that some of the listed land use regulations are likely exempt under ORS 197.352(3). Until there is a notification of an operation, however, a final determination of the applicability of the listed laws to a particular forest operation on the property cannot be made.

Laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E), and will continue to apply to the claimant’s use of the property. There may be other laws that continue to apply to the claimant’s use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of property until the claimant submits a notification of intent to conduct a commercial forest operation. When the claimant submits a notification, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (3)(D).

This report addresses only those state laws that are identified in the claim, or that ODF is certain apply to the subject property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information he has provided to the department in the claim, the greater the

possibility that there may be additional laws that will later be determined to continue to apply to his use of the subject property.

VI. FORM OF RELIEF

Based on the current record, the claimant is not entitled to relief under ORS 197.352 from ODF or the Board. ODF denies this claim because ODF has not taken any action to enforce any land use regulation to restrict the claimant's desired use of the property on or after December 2, 2004, and because the ODF is unable to determine that the statutes identified in the claim apply to or restrict the claimant's desired use of the property, or have had the effect of reducing the fair market value of the property.

VII. NOTICE OF OPPORTUNITY TO COMMENT

ODF issued its draft staff report on this claim on January 29, 2007. OAR 125-145-0100(3), provides 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.

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

IN THE MATTER OF THE CLAIM FOR)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M129912
(BALLOT MEASURE 37) OF)	
Roy Johnson, CLAIMANT)	

Claimant: Roy Johnson (the Claimant)

Property: Township 29S, Range 12W, Section 15, Tax lot 500, Coos 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), and the Oregon Department of Forestry (the ODF Report), attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by the Oregon Department of Forestry or the Oregon Board of Forestry, for the reasons set forth in the ODF Report.

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Roy Johnson's division of the 13-acre subject property into four 3.25-acre parcels or to his development of a dwelling on each of three resulting undeveloped parcels: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on February 23, 1953.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on February 23, 1953.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property

unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.


4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

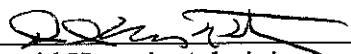
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

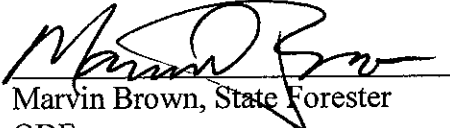
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352,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

This Order is entered by the Oregon Board and Department of Forestry as a final order of the Board under ORS 197.352, OAR 629-001-0057, and OAR Chapter 125, division 145.

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


Cora R. Parker, Deputy Director
DLCD
Dated this 14th day of February, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:

David Hartwig Administrator
DAS, State Services Division
Dated this 14th day of February, 2007.

FOR THE OREGON BOARD OF
FORESTRY AND THE OREGON
DEPARTMENT OF FORESTRY:

Marvin Brown, State Forester
ODF
Dated this 14th day of February, 2007

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)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

February 14, 2007

STATE CLAIM NUMBER: M129912

NAME OF CLAIMANT: Roy Johnson

MAILING ADDRESS: 92206 Highway 42 S.
Coquille, Oregon 97423

PROPERTY IDENTIFICATION: Township 29S, Range 12W, Section 15
Tax lot 500
Coos County

DATE RECEIVED BY DAS: August 23, 2006

180-DAY DEADLINE: February 19, 2007

I. SUMMARY OF CLAIM

The claimant, Roy Johnson, seeks compensation in the amount of \$150,000 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 harvest timber from the 13-acre subject property and divide the property into four 3.25-acre parcels and develop a dwelling on each of three resulting undeveloped parcels.¹ The subject property is located at 95766 Sugarloaf Lane, east of the City of Myrtle Point, in Coos 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 valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Roy Johnson's division of the 13-acre subject property into four 3.25-acre parcels and to his development of a dwelling on each of three resulting undeveloped parcels: applicable

¹ The claim also indicates that the claimant desires to sell or transfer the subject property or the parcels created through a division thereof after approval of this claim. 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."

provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property in 1953. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On November 3, 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, one written comment was received in response to the 10-day notice.

The comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letter in the department's claim file.)

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 August 23, 2006, for processing under OAR 125, division 145. The claim identifies ORS 527.676; OAR 610, 630, 640 and 665; Coos County Land Use Planning Ordinances: Appendix 5, Article 4.8, Article 5.6, chapters VI and VII; and "all land use laws, regulations, and rules (except those specified in subsection (3) of ORS 297.352) which were in effect at the time of acquisition, February 23, 1953," as restricting the

claimant's desired use of the subject property.² 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, Roy Johnson, acquired the subject property on February 23, 1953, as reflected by a deed included with the claim. On November 29, 2001, the property was transferred to the Roy Johnson Revocable Living Trust with Roy Johnson as trustee, as reflected by a bargain and sale deed included with the claim.³ The Coos County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Roy Johnson, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of February 23, 1953.

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.

² The claimant has summarily cites "all land use laws ... in effect at the time of acquisition, February 23, 1953," as applicable to this claim, but does not establish how the laws either apply to the claimant's desired use of the subject property or restrict its use with the effect of reducing its fair market value. This report addresses only those land use regulations that the department finds are applicable to and restrict the claimant's desired use of the property, based on the claimant's description of his desired use. The claim also lists the Oregon Forest Practices Act and Forest Practices Administrative Rules as restricting the claimant's desired use of the property. Laws administered by the Oregon Department of Forestry will be addressed in a separate report that will be issued by that agency.

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

Findings of Fact

The claim indicates the claimant's desire to harvest timber from the 13-acre subject property and divide the property into four 3.25-acre parcels and develop a dwelling on each of three resulting undeveloped parcels. The claim states that state and local land use regulations restrict the claimant's desired use.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimant's property is zoned Forest by Coos County, as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimant's property is "forest land" under 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 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 acquired the subject property on February 23, 1953, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

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 after the claimant acquired the subject property in 1953 and do not allow the desired division or development of the property. These laws restrict the use of the property relative to the uses allowed when the claimant acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property, based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of the subject property, and that may continue to apply to the claimant's use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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 \$150,000 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. This amount is based on the claimant's estimate of the current value of the subject property and timber (\$210,000) compared to the estimated value of the property and timber under regulations in effect prior to the date of acquisition (\$360,000).

Conclusions

As explained in Section V.(1) of this report, the claimant is Roy Johnson who acquired the subject property on February 23, 1953. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$150,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by 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 is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Coos County has implemented through its current Forest zone. All of these land use regulations were enacted or adopted after the claimant acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimant acquired the property in 1953. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimant's use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-

0029, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings. ORS 197.352(3)(B) specifically exempts regulations “restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...” Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the claimant’s use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information he has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of 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 restrict the claimant’s desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$150,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant’s desired use of the subject property was allowed under the standards in effect when he acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Roy Johnson to use the subject property for a use permitted at the time he acquired the property on February 23, 1953.

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Roy Johnson's division of the 13-acre subject property into four 3.25-acre parcels or to his development of a dwelling on each of three resulting undeveloped parcels: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired the property on February 23, 1953.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on February 23, 1953.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on January 29, 2007. 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.