



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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March 14, 2007

To: Interested Persons

From: Lane Shetterly, Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130074*

*Claimants: Milton and Bonnie Bedortha*

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Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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 A  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M130074  
(BALLOT MEASURE 37) OF )  
Milton Bedortha, CLAIMANT )

Claimant: Milton Bedortha (the Claimant)

Property: Township 20S, Range 3W, Section 3: tax lot 200  
Township 20S, Range 3W, Section 34: tax lot 2300  
Lane 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 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 Milton Bedortha's division of the 103.56-acre subject property into eight 6- to 18-acre parcels and to his development of a dwelling on each of the seven resulting undeveloped parcels: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after he acquired each of the subject tax lots. These land use regulations will not apply to Milton Bedortha 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 tax lot 2300 on January 10, 1969, and only to the extent that use was permitted when he acquired tax lot 200 on February 1, 1974.

2. The action by the State of Oregon provides the state's authorization to Milton Bedortha to use the subject property for the use described in this report, subject to the standards in effect when he acquired tax lot 2300 January 10, 1969, and tax lot 200 on February 1, 1974. In 1974,

tax lot 200 was subject to the provisions of ORS 215, including the interim planning goals set forth in ORS 215.515 (1973 edition), then in effect.

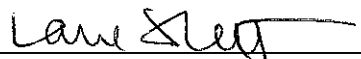
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Milton Bedortha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

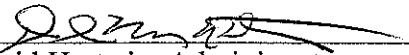
5. Without limiting the generality of the foregoing terms and conditions, in order for Milton Bedortha to use the subject property, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Milton Bedortha 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 his use of the subject property.

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.

FOR DLCD AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:

  
Lane Shetterly, Director  
DLCD  
Dated this 14<sup>th</sup> day of March, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 14<sup>th</sup> day of March, 2007.

## **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

You are entitled, or may be entitled, to judicial remedies including the following:

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.”

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 )  
Bonnie Bedortha, CLAIMANT )

FINAL ORDER B  
CLAIM NO. M130074

Claimant: Bonnie Bedortha (the Claimant)

Property: Township 20S, Range 3W, Section 3: tax lot 200  
Township 20S, Range 3W, Section 34: tax lot 2300  
Lane County (the property)

Claim: The demand for compensation and any supporting information received  
from the Claimant by the State of Oregon (the Claim).

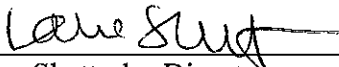
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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

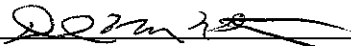
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the 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, 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  
DLCD  
Dated this 14<sup>th</sup> day of March, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
\_\_\_\_\_  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 14<sup>th</sup> day of March, 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)

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

March 14, 2007

**STATE CLAIM NUMBER:** M130074

**NAMES OF CLAIMANTS:** Milton and Bonnie Bedortha

**MAILING ADDRESS:** 78190 Pitcher Lane  
Cottage Grove, Oregon 97424

**PROPERTY IDENTIFICATION:** Township 20S, Range 3W  
Section 3: tax lot 200  
Section 34: tax lot 2300  
Lane County

**OTHER CONTACT INFORMATION:** Norman Waterbury  
28788 Gimpl Hill Road  
Eugene, Oregon 97402

**DATE RECEIVED BY DAS:** September 20, 2006

**180-DAY DEADLINE:** March 19, 2007

**I. SUMMARY OF CLAIM**

The claimants, Milton and Bonnie Bedortha, seek compensation in the amount of \$780,000 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 claimants desire compensation or the right to divide the 103.56-acre subject property into eight 6- to 18-acre parcels and to develop a dwelling on each of the seven resulting undeveloped parcels. The subject property consists of tax lots 200 and 2300 located at 78190 Pitcher Lane, near Cottage Grove, in Lane 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, in part. 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 Milton Bedortha's division of the 103.56-acre subject property into eight 6- to 18-acre parcels and to his development of a dwelling on each of the seven resulting undeveloped parcels: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after he acquired each of the subject tax lots. These laws will not apply to Milton Bedortha 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 tax lot 2300 on January 10, 1969, and only to the extent that use was permitted when he acquired tax lot 200 on February 1, 1974.

The department has further determined that this claim is not valid as to Bonnie Bedortha because the claimants have not established her ownership of the property. (See the complete recommendation in Section VI of this report.)

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

#### **Comments Received**

On December 20, 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 September 20, 2006, for processing under OAR 125, division 145. The claim identifies statewide Goal 4 and ORS 527.630 and 527.722 as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.<sup>1</sup>

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<sup>1</sup> ORS 527.630 and 527.722 address forest practices and are administered by the Department of Forestry. However, the claim does not establish that these statutes restrict the claimants' desired use of the property. ORS 527.730 provides that nothing in the Forest Practices Act prohibits the conversion of forest land to other uses, and the claimants' desired use in this case is a conversion to residential use, not a forest operation. Accordingly, no report from the Department of Forestry will be issued on 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**

Claimant Milton Bedortha acquired tax lot 2300 on January 10, 1969, as reflected by a deed included with the claim, and tax lot 200 on February 1, 1974, as reflected by a contract included with the claim. The Lane County Board of Commissioners confirms Milton Bedortha’s current ownership based on information in the county’s records.

The claim does not establish when claimant Bonnie Bedortha acquired the subject property and does not include copies of any deeds or other documentation to establish that she is an owner of the subject property.<sup>2</sup>

### **Conclusions**

Claimant Milton Bedortha is an “owner” as that term is defined by ORS 197.352(11)(C) as of January 10, 1969, for tax lot 2300 and as of February 1, 1974, for tax lot 200.

Claimant Bonnie Bedortha has not established that she is an “owner” of the subject property as that term is defined in 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 claimants’ 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 indicates that the claimants desire to divide the 103.56-acre subject property into eight 6- to 18-acre parcels and to develop a dwelling on each of the seven undeveloped parcels, and that Goal 4 prohibits the desired use.

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<sup>2</sup> Both DAS and Department of Justice contacted the claimants requesting confirmation of Bonnie Bedortha’s ownership. No documentation has been received to date.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The subject property is zoned F-2 (Impacted Forest) by Lane County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the 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.

Claimant Milton Bedortha acquired tax lot 2300 on January 10, 1969, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. He acquired tax lot 200 on February 1, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973) effective on October 5, 1973, but before the adoption of the statewide planning goals effective on January 25, 1975.

During the period between October 5, 1973, and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); *see also, Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the goals); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while "[l]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals") citing *Petersen, Meeker* and *Alexanderson v. Polk County*, 285 Or 427 (1980). The claimants' desired use includes subdivision of land. If the claimants had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.

The "interim" land use goals were set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j)

“To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land.” ORS 215.515 (1973 edition).<sup>3</sup>

No information has been provided establishing whether or to what extent the claimants’ desired division of the subject property for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time Milton Bedortha acquired tax lot 200 on February 1, 1974.

### **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 Milton Bedortha acquired the subject property in 1969 and 1974 and do not allow the desired division or development of the property. These laws restrict the use of the subject property relative to the uses allowed when Milton Bedortha acquired the property. However, the claim does not establish whether or the extent to which the claimants’ desired use of tax lot 200 was permitted under the provisions of ORS 215.515, including the interim planning goals, in effect when Milton Bedortha acquired tax lot 200 in 1974.

As explained in Section V.(1), claimant Bonnie Bedortha has not established that she is an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, the department cannot determine that any land use regulations restrict her use of subject 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 she or a family member may have 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 use that the claimants have identified. There may be other laws that currently apply to Milton Bedortha’s use of the subject property, and that may continue to apply to his 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 Milton Bedortha seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

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<sup>3</sup> Goal 4 replaced the interim goals with regard to forest resource land, and went into effect on January 25, 1975, “to conserve forest lands for forest uses” and required, “Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan.” Those forest uses were defined as follows: “(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.” Specifically, Goal 4 only allowed land divisions that would protect commercial forest lands for commercial forest uses. Dwellings in forest zones could only be allowed if found to be “necessary and accessory” to one of the enumerated forest uses listed in Goal 4.

### **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 \$780,000 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimants’ desired use of the property. This amount is based on a real estate appraiser’s assessment submitted by the claimants.

#### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Milton Bedortha who acquired tax lot 2300 on January 10, 1969, and tax lot 200 on February 1, 1974, and his wife, Bonnie Bedortha. Bonnie Bedortha has not established that she is an owner of the subject property and, therefore, has not established that she is entitled to compensation under ORS 197.352. Under ORS 197.352, Milton Bedortha 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 Milton Bedortha acquired the subject property restrict his desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$780,000.

Without an appraisal or other documentation, and without verification of whether or the extent to which Milton Bedortha’s desired use of the subject property was permitted at the time he acquired it, 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 Lane County has implemented through its current F-2 zone. With the exception of provisions of ORS 215, including the interim planning goals set forth at ORS 215.515 (1973 edition) in effect when Milton Bedortha acquired tax lot 200 in 1974, these land use regulations were enacted or adopted after he 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, with the exception of the provisions of ORS 215, including the interim planning goals set forth at ORS 215.515 (1973 edition) in effect when Milton Bedortha acquired tax lot 200 in 1974, none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when Milton Bedortha acquired it. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of ORS 215 in effect when Milton Bedortha acquired tax lot 200 in 1974 are exempt and will continue to apply to the tax lot.

Other laws in effect when Milton Bedortha acquired the subject property are also exempt under ORS 197.352(3)(E) and will also continue to apply to his 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 Milton Bedortha’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 Milton Bedortha 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).

As explained in Section V.(1) of this report, claimant Bonnie Bedortha has not established that she is an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, the department can make no determination as to whether any land use laws are exempt from ORS 197.352 as to her claim.

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 use that the claimants have 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 claimants should be aware that the less information they have 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 Milton Bedortha’s 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, the claimants have not established Bonnie Bedortha's ownership of the subject property and therefore, have not established that she is entitled to relief under ORS 197.352.

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict Milton Bedortha'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 \$780,000. 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 Milton Bedortha'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 Milton Bedortha to use the subject property for a use permitted at the time he acquired tax lot 2300 on January 10, 1969, and tax lot 200 February 1, 1974.

### **Conclusions**

Based on the record before the department, claimant Bonnie Bedortha has not established that she is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because the claimants have not established that she is an "owner" of the subject property, as that term is defined in ORS 197.352(11)(C). Therefore, the department recommends that her claim be denied.

The department otherwise recommends that Milton Bedortha's 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 Milton Bedortha's division of the 103.56-acre subject property into eight 6- to 18-acre parcels and to his development of a dwelling on each of the seven resulting undeveloped parcels: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after he acquired each of the subject tax lots. These land use regulations will not apply to Milton Bedortha 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 tax lot

2300 on January 10, 1969, and only to the extent that use was permitted when he acquired tax lot 200 on February 1, 1974.

2. The action by the State of Oregon provides the state's authorization to Milton Bedortha to use the subject property for the use described in this report, subject to the standards in effect when he acquired tax lot 2300 January 10, 1969, and tax lot 200 on February 1, 1974. In 1974, tax lot 200 was subject to the provisions of ORS 215, including the interim planning goals set forth in ORS 215.515 (1973 edition), then in effect.

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 Milton Bedortha 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 Milton Bedortha 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 Milton Bedortha 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 Milton Bedortha 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 his use of the subject property.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on February 22, 2007. 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.