



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>

April 13, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130361

Claimant: Circle Five Ranch, Inc.

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
COMPENSATION UNDER ORS 197.352) CLAIM NO. M130361
(BALLOT MEASURE 37) OF)
Circle Five Ranch, Inc., CLAIMANT)

Claimant: Circle Five Ranch, Inc. (the Claimant)

Property: Township 38S, Range 15E, Tax lot 700 in sections 6 and 7
Township 39S, Range 12E, Tax lot 2300 in sections 11 and 14,
Section 13: tax lot 4401, Tax lot 4400 in sections 13, 23 and 24,
Section 23: tax lot 4200, Tax lot 4700 in sections 24 and 25,
Section 25: tax lot 4800, Section 36: tax lot 7200 section 36B: tax
lot 100
Township 39S, Range 13E, Tax lot 1002 in sections 18 and 19,
Section 19: tax lot 1000, Section 30: tax lots 200 and 800, Section 31:
tax lots 600, 601, 800 and 1400
Township 39S, Range 14E, Tax lot 900 in sections 12 and 13,
Section 16B: tax lot 900
Township 40S, Range 13E, Section 1: tax lot 100, Section 12: tax
lot 2200
Township 40S, Range 14E, Section 19: tax lot 500, Tax lot 1600 in
sections 30, 31 and 32
Township 41S, Range 14E, Section 5: tax lot 300, Section 6: tax lot 1200
Klamath 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 Circle Five Ranch, Inc.'s division of the 6,611.28-acre subject property into 1-acre parcels, its development of a dwelling on each parcel, or its development of a community water and sewer system, as follows:

Laws That Will Not Apply:	Applicable provisions of Goals 3, 11 and 14, ORS 215 and OAR 660, division 33.	
Acquisition Date:	June 17, 1964	
Tax Lots:	300, 500, 1200, 1600 and 2200	

Laws That Will Not Apply:	Applicable provisions of Goals 4, 11 and 14, ORS 215 and OAR 660, division 6.	
Acquisition Date:	June 17, 1964	December 11, 1974
Tax Lots:	900 (Sections 12 and 13) and 900 (Section 16B)	700

Laws That Will Not Apply:	Applicable provisions of Goals 3, 4, 11 and 14, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimant acquired each tax lot.	
Acquisition Date:	June 17, 1964	September 20, 1967
Tax Lots:	100 (Section 1), 100 (Section 36B), an 80.35-acre portion of 200, 600, 601, 800 (Section 30), 800 (Section 31), 1002, 1400, 2300, 4401, 4700 and 7200	a 200-acre portion of 200, 1000, 4200, 4400 and 4800

These land use regulations will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired each tax lot. Goal 11 will not apply only to the extent that it prohibits the claimant from establishing an urban level of public facilities and services to serve the development of the property. Goal 11 will continue to apply to public service providers seeking to extend or establish public facilities to serve the subject property.

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 as identified above. On December 11, 1974, tax lot 700 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 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.

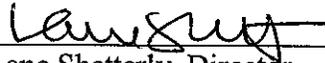
4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 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 it 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.

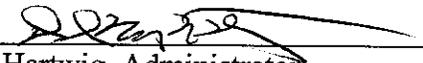
6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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 13th day of April, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 13th day of April, 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."

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation**

April 13, 2007

STATE CLAIM NUMBER: M130361

NAME OF CLAIMANT: Circle Five Ranch, Inc.

MAILING ADDRESS: Route 1 Box 69 A
Bonanza, Oregon 97623

PROPERTY IDENTIFICATION: Township 38S, Range 15E
Tax lot 700 in sections 6 and 7

Township 39S, Range 12E
Tax lot 2300 in sections 11 and 14
Section 13: tax lot 4401
Tax lot 4400 in sections 13, 23 and 24
Section 23: tax lot 4200
Tax lot 4700 in sections 24 and 25
Section 25: tax lot 4800
Section 36: tax lot 7200
Section 36B: tax lot 100

Township 39S, Range 13E
Tax lot 1002 in sections 18 and 19
Section 19: tax lot 1000
Section 30: tax lots 200 and 800
Section 31: tax lots 600, 601, 800 and 1400

Township 39S, Range 14E
Tax lot 900 in sections 12 and 13
Section 16B: tax lot 900

Township 40S, Range 13E
Section 1: tax lot 100
Section 12: tax lot 2200

Township 40S, Range 14E
Section 19: tax lot 500
Tax lot 1600 in sections 30, 31 and 32

Township 41S, Range 14E
Section 5: tax lot 300
Section 6: tax lot 1200
Klamath County

OTHER CONTACT INFORMATION:

Michael L. Spencer
409 Pine Street, Suite 204
Klamath Falls, Oregon 97601

DATE RECEIVED BY DAS:

October 20, 2006

180-DAY DEADLINE:

April 18, 2007

I. SUMMARY OF CLAIM

The claimant, Circle Five Ranch, Inc., seeks compensation in the amount of \$40 million 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 6,611.28-acre subject property into 1-acre parcels, to develop a dwelling on each parcel¹ and to develop a community water and sewer system.² The subject property is located at the geographic coordinates listed above, near Bonanza, in Klamath 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

¹ The claim as filed summarily indicates that the claimant desires to develop "1 acre or larger parcels for residences, commercial or industrial uses." However, the claim does not explain those uses or establish how current land use regulations restrict the claimant from developing commercial or industrial use. Moreover, the claim does not explain how land use regulations have had the effect of reducing the property's fair market value, other than a demand for \$40 million in compensation based on the ability to sell the property for development of residences on one-acre parcels.

ORS 197.352 allows the department to waive certain land use regulations to allow the present owners to use the property for "a use" that was permitted at the time they acquired it. It does not authorize the department to waive regulations to allow multiple alternative (and, presumably mutually exclusive) uses, particularly where the claim does not establish how specific land use regulations that may preclude those uses have had the effect of reducing the property's fair market value. In addition, the department cannot evaluate multiple alternative uses through a single claim. Accordingly, because the summarily cited "residences, commercial or industrial use" has not been sufficiently articulated to allow evaluation and because the claimant has not established how any land use regulations have restricted its ability to develop the property for those generally described commercial and industrial uses, the department has evaluated this claim based on the claimant's desire to divide the property into one-acre parcels for residential development, which is the desired use that the department can determine has been restricted by land use regulations

² 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."

not apply to Circle Five Ranch, Inc.'s division of the 6,611.28-acre subject property into 1-acre parcels, its development of a dwelling on each parcel and its development of a community water and sewer system, as follows:

Laws That Will Not Apply:	Applicable provisions of Goals 3 (Agricultural Lands), 11 (Public Facilities and Services) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33.	
Acquisition Date:	June 17, 1964	
Tax Lots:	300, 500, 1200, 1600 and 2200	

Laws That Will Not Apply:	Applicable provisions of Goals 4 (Forest Lands), 11 and 14, ORS 215 and OAR 660, division 6.	
Acquisition Date:	June 17, 1964	December 11, 1974
Tax Lots:	900 (Sections 12 and 13) and 900 (Section 16B)	700

Laws That Will Not Apply:	Applicable provisions of Goals 3, 4, 11 and 14, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimant acquired each tax lot.	
Acquisition Date:	June 17, 1964	September 20, 1967
Tax Lots:	100 (Section 1), 100 (Section 36B), an 80.35-acre portion of 200, 600, 601, 800 (Section 30), 800 (Section 31), 1002, 1400, 2300, 4401, 4700 and 7200	a 200-acre portion of 200, 1000, 4200, 4400 and 4800

The above laws will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired each tax lot. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 6, 2007, 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 October 20, 2006, for processing under OAR 125, division 145. The claim identifies Goals 2 (Land Use Planning) and 4, provisions of ORS 92, 197 and 215 and OAR 660, divisions 4, and 6, 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, Circle Five Ranch, Inc., acquired the subject property on separate dates, as follows:

Acquisition Date:	June 17, 1964	September 20, 1967	December 11, 1974
Document:	Indenture	Deed	Bargain and Sale Deed
Tax Lots:	100 (Section 1), 100 (Section 36B), an 80.35-acre portion of 200, 300, 500, 600, 601, 800 (Section 30), 800 (Section 31), 900 (Sections 12 and 13), 900 (Section 16B), 1002, 1200, 1400, 1600, 2200, 2300, 4401, 4700 and 7200	A 200-acre portion of 200, 1000, 4200, 4400 and 4800	700

The Klamath County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Circle Five Ranch, Inc., is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of June 17, 1974, for tax lots 100 (Section 1) and 100 (Section 36B), an 80.35-acre portion of tax lots 200, 300, 500, 600, 601, 800 (Section 30), 800 (Section 31), 900 (Sections 12 and 13), 900 (Section 16B), 1002, 1200, 1400, 1600, 2200, 2300,

4401, 4700 and 7200; as of September 20, 1967, for a 200-acre portion of tax lots 200, 1000, 4200, 4400 and 4800; and as of December 11, 1974, for tax lot 700.

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.

Findings of Fact

The claim indicates that the claimant desires to divide the 6,611.28-acre subject property into 1-acre parcels, to develop a dwelling on each parcel and to develop a community water and sewer system. The claim also indicates that the use is not allowed under current land use regulations.³

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU), forest and mixed-farm forest zoning and restrict uses on lands zoned EFU, forest and mixed-farm forest.

Tax lots 300, 500, 1200, 1600 and 2200 are zoned EFU-CG by Klamath County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because these tax lots are "agricultural land" as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective

³ The claimant summarily lists numerous state land use laws 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. On their face, most of the regulations either do not apply to the claimant's property or do not restrict the use of the claimant's property with the effect of reducing its fair market value. Without any explanation of how these land use regulations apply to the claimant's desired use of the property, the department cannot evaluate how or whether they apply. This report addresses only those regulations that the department finds are applicable to and restrict the claimant's desired use of the subject property, based on the claimant's description of its desired use.

⁴ Tax lots 300, 500, 1200, 1600 and 2200 are "agricultural land" because they contain Natural Resources Conservation Service Class I-IV soils.

on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Tax lots 700, 900 (Sections 12 and 13) and 900 (Section 16B) are zoned Forestry (F) by Klamath County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because these tax lots are "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.

Tax lots 100 (Section 1), 100 (Section 36B), 200, 600, 601, 800 (Section 30), 800 (Section 31), 1000, 1002, 1400, 2300, 4200, 4400, 4401, 4700, 4800 and 7200 are zoned by Klamath County as Forestry Range (FR), which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.⁵ Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under EFU zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Klamath County's FR zone is 80 acres. The property cannot be divided into parcels smaller than 80 acres.

Goal 11, which also became effective on January 25, 1975, generally prohibits urban levels of public facilities and services on lands that are outside an urban growth boundary. Goal 11 and its implementing rules have two components: one that prohibits an owner from utilizing urban-level facilities or services to serve the property, and another that prohibits service providers from extending their facilities to serve property outside an urban growth boundary. The former can restrict a claimant's use of property. The latter is a restriction on service providers. Goal 11 and OAR 660, division 11, apply to the claimant's use of the property only to the extent that they would restrict the claimant's development of urban-level public or community sewer or water facilities on the subject property.

⁵ No information was provided to the department regarding the predominant use of the tax lots on January 1, 1993.

Goal 14, which also became effective on January 25, 1975, would likely apply to the division of the claimant's property into parcels less than two acres. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses.

The claimant acquired tax lots 100 (Section 1), 100 (Section 36B), 200, 300, 500, 600, 601, 800 (Section 30), 800 (Section 31), 900 (Sections 12 and 13), 900 (Section 16B), 1000, 1002, 1200, 1400, 1600, 2200, 2300, 4200, 4400, 4401, 4700, 4800 and 7200 in 1964 and 1967, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

The claimant acquired tax lot 700 on December 11, 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 claimant's desired use includes subdivision of its land. If the claimant 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).⁶

⁶ 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

No information has been provided establishing whether or to what extent the claimant's desired division of tax lot 700 for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimant first acquired that tax lot on December 11, 1974.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3, 4, 11 and 14, ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted after the claimant acquired the subject property in 1964, 1967 and 1974 and do not allow the desired division or residential development of the property. However, the claim does not establish whether or to what extent the claimant's desired use of tax lot 700 complies with the interim planning goals in effect when it acquired that tax lot on December 11, 1974.

Those elements of Goal 11 that prohibit a public service provider from extending or establishing public facilities or services outside of an urban growth boundary restrict the actions of local government rather than the claimant's use of the property. That component of Goal 11 is not subject to ORS 197.352 and will continue to apply to those service providers. Only the general prohibition under Goal 11 on the claimant's establishment of an urban level of public facilities and services is subject to ORS 197.352 and restricts the claimant's desired use of its 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 \$40 million 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 assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimant is Circle Five Ranch, Inc., which acquired the subject property in 1964, 1967 and 1974. Under ORS 197.352, the claimant is due

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.

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 property is a reduction of \$40 million.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimant's desired use of the property would have satisfied the standards in effect at the time the claimant acquired the property, 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 Goals 3, 4, 11 and 14, ORS 215 and OAR 660, divisions 6, and 33, which Klamath County has implemented through its current EFU-CG, F and FR zones. With the exception of provisions of ORS 215, including the interim statewide planning goals, in effect when the claimant acquired tax lot 700 on December 11, 1974, these state land use regulations were not in effect when 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 the general statutory, goal and rule restrictions on residential division and development of the subject property are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimant acquired the subject property in 1964, 1967 and 1974. Provisions of ORS 215, including interim statewide planning goals in effect when the claimant acquired tax lots 700 on December 11, 1974, are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other 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 and for surrounding forest lands. 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, the 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 it 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 its 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 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 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 \$40 million. 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 it 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 Circle Five Ranch, Inc. to use the subject property for a use permitted at the time it acquired the property in 1964, 1967 and 1974.

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 Circle Five Ranch, Inc.'s division of the 6,611.28-acre subject property into 1-acre parcels, its development of a dwelling on each parcel, or its development of a community water and sewer system, as follows:

Laws That Will Not Apply:	Applicable provisions of Goals 3, 11 and 14, ORS 215 and OAR 660, division 33.	
Acquisition Date:	June 17, 1964	
Tax Lots:	300, 500, 1200, 1600 and 2200	

Laws That Will Not Apply:	Applicable provisions of Goals 4, 11 and 14, ORS 215 and OAR 660, division 6.	
Acquisition Date:	June 17, 1964	December 11, 1974
Tax Lots:	900 (Sections 12 and 13) and 900 (Section 16B)	700

Laws That Will Not Apply:	Applicable provisions of Goals 3, 4, 11 and 14, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimant acquired each tax lot.	
Acquisition Date:	June 17, 1964	September 20, 1967
Tax Lots:	100 (Section 1), 100 (Section 36B), an 80.35-acre portion of 200, 600, 601, 800 (Section 30), 800 (Section 31), 1002, 1400, 2300, 4401, 4700 and 7200	a 200-acre portion of 200, 1000, 4200, 4400 and 4800

These land use regulations will not apply to the claimant only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired each tax lot. Goal 11 will not apply only to the extent that it prohibits the claimant from establishing an urban level of public facilities and services to serve the development of the property. Goal 11 will continue to apply to public service providers seeking to extend or establish public facilities to serve the subject property.

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 as identified above. On December 11, 1974, tax lot 700 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 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 it 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.

6. Nothing in this report or the state’s final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

VII. COMMENTS ON THE DRAFT STAFF REPORT

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