



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 19, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130437

Claimants: John and Deborah Wilson

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. M130437
(BALLOT MEASURE 37) OF)	
John and Deborah Wilson, CLAIMANTS)	

Claimants: John and Deborah Wilson (the Claimants)

Property: Township 32S, Range 15W, Section 10, Tax lots 2001 and 2002, Curry County
(the Property)

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

Claimants 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 John and Deborah Wilson's development of a dwelling each on tax lots 2001 and 2002: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after February 4, 1979. These laws will not apply to the claimants only to the extent necessary to allow them to use tax lots 2001 and 2002 for the use described in this report, and only to the extent that use was permitted when they acquired those tax lots on February 4, 1979.
2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 2001 and 2002 for the use described in this report, subject to the standards in effect on February 4, 1979. On that date, those tax lots were subject to compliance with the provisions of Goal 4 then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 2001 and 2002 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 claimants first obtain that permit, license or other form of authorization or

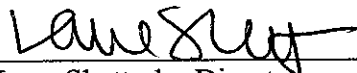
consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of tax lots 2001 and 2002 imposed by private parties.

4. Any use of tax lots 2001 and 2002 by the claimants 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 claimants to use tax lots 2001 and 2002, it may be necessary for them 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 claimants 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 tax lots 2001 and 2002 by the claimants.

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.

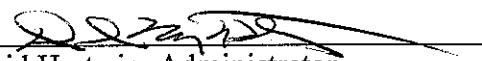
FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD

Dated this 19th day of April, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 19th 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."

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 B
COMPENSATION UNDER ORS 197.352) CLAIM NO. M130437
(BALLOT MEASURE 37) OF)
John and Deborah Wilson, CLAIMANTS)

Claimants: John and Deborah Wilson (the Claimants)

Property: Township 32S, Range 15W, Section 10, Tax lot 2000, Curry County
(the Property)

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


Claimants 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

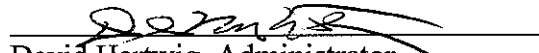
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 19th day of April, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 19th day of April, 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

April 19, 2007

STATE CLAIM NUMBER: M130437

NAMES OF CLAIMANTS: John and Deborah Wilson

MAILING ADDRESS: 34201 Cedar Beach Valley Road
Gold Beach, Oregon 97444

PROPERTY IDENTIFICATION: Township 32S, Range 15W, Section 10
Tax lots 2000, 2001 and 2002
Curry County

DATE RECEIVED BY DAS: October 26, 2006

180-DAY DEADLINE: April 24, 2007

I. SUMMARY OF CLAIM

The claimants, John and Deborah Wilson, seek compensation in the amount of \$300,000 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 develop a dwelling on each of the three existing tax lots that comprises the 160-acre subject property.¹ The subject property is located at the geographical coordinates listed above, near Sixes, in Curry 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 John and Deborah Wilson's development of a dwelling each on tax lots 2001 and 2002: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after February 4, 1979. These laws will not apply to the claimants only to the extent necessary to allow them to use tax lots 2001 and 2002 for the use described in this report, and only to the extent that use was permitted when they acquired those tax lots on February 4, 1979.

¹ The subject property includes three tax lots. Tax lot 2000 consists of 40 acres; tax lot 2001 consists of 40 acres; and tax lot 2002 consists of 80 acres.

The department has further determined that the claim is not valid as to tax lot 2000 because the claimants' desired use of tax lot 2000 was prohibited under the laws in effect when the claimants acquired that tax lot in 2001 . (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 9, 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 26, 2006, for processing under OAR 125, division 145. The claim identifies OAR 660-006-0027 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 claimants, John and Deborah Wilson, acquired the subject property on February 4, 1979, as reflected by a contract of sale included with the claim. On December 22, 1989, the claimants conveyed tax lot 2000 on contract to a third party. Subsequently, the third party defaulted on the contract and the claimants re-acquired tax lot 2000 on December 3, 2001, as reflected by a sheriff's deed included with the claim. The Curry County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, John and Deborah Wilson, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of February 4, 1979, for tax lots 2001 and 2002 and as of December 3, 2001, for tax lot 2000.

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 develop a dwelling on each of the three existing tax lots that comprises the 160-acre subject property and that the desired use is not allowed under current land use regulations.

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned Forest Grazing (FG) by Curry County, as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' 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. In compliance with ORS 215.780, under Curry County's acknowledged comprehensive plan, the FG zone requires a minimum of 160 acres for the placement of a dwelling.

The claimants acquired tax lots 2001 and 2002 after the adoption of the statewide planning goals but before the Commission acknowledged Curry County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when the

claimants acquired tax lots 2001 and 2002 on February 4, 1979, the statewide planning goals, and Goal 4 in particular, applied directly to the tax lots when they acquired them.²

Goal 4 went into effect on January 25, 1975, and was intended 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, under Goal 4, 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

No information has been presented in the claim to establish that the claimants’ desired development of a dwelling each on tax lots 2001 and 2002 complies with the Goal 4 standards in effect when the claimants acquired those tax lots in 1979.

When the claimants acquired tax lot 2000 on December 3, 2001, it was subject to the state land use regulations currently in effect, as described above.

Conclusions

The current zoning requirements and dwelling standards established pursuant to Goal 4, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 660-006-0027 were all enacted or adopted after the claimants acquired tax lots 2001 and 2002 in 1979 and before the claimants acquired tax lot 2000 in 2001. These standards do not allow the claimants’ desired development of the property. However, the claim does not establish whether or to what extent

² The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission’s acknowledgment of each county’s land use regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county’s plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer directly applied to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Foster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

³ Goal 4 prohibited uses that were not enumerated by Goal 4 as permissible uses for forest lands as well as those that were not necessary and accessory to an enumerated forest use. *Lamb v. Lane County*, 7 Or LUBA 137 (1983). Dwellings in forest lands were required to be “necessary and accessory” to show that such dwellings complied with the Goal 4 requirement that local land use regulations must “conserve forest lands for forest uses.” *1000 Friends v. LCDC (Curry County)*, 301 Or 447 (1986). A dwelling that may “enhance” forest uses is not “necessary and accessory” to a forest use to the extent required by Goal 4. *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384 (1988). For additional guidance, the Goal 4 provisions were interpreted under OAR 660, division 6, effective on September 1, 1982, in *1000 Friends of Oregon v. LCDC (Lane County)* and in *1000 Friends v. LCDC (Curry County)*.

the claimants' desired use of the subject property complies with the standards for development under Goal 4 in effect when the claimants acquired the property on February 4, 1979.

Laws enacted or adopted since the claimants acquired tax lot 2000 in 2001 do not restrict the claimants' desired use of the property relative to when the claimants acquired that tax lot in 2001.

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 claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' 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 claimants seek 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 \$300,000 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 the claimants' assessment of the property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are John and Deborah Wilson who acquired tax lots 2001 and 2002 on February 4, 1979, and tax lot 2000 on December 3, 2001. No state laws enacted or adopted since the claimants acquired tax lot 2000 restrict the use of the property relative to the uses allowed in 2001. Therefore, the fair market value of tax lot 2000 has not been reduced as a result of land use regulations enforced by the Commission or the department. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of tax lots 2001 and 2002 and have the effect of reducing their fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired tax lots 2001 and 2002 restrict the claimants' desired use of the tax lots. The claimants estimate that the effect of the land use regulations on the fair market value of the subject property is a reduction of \$300,000.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimants' desired use of tax lots 2001 and 2002 was allowed under the standards in effect when they acquired the tax lots, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of tax

lots 2001 and 2002 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 Curry County has implemented through its current FG zone. With the exception of provisions of Goal 4 adopted before February 4, 1979, these state land use regulations were not in effect when the claimants acquired tax lots 2001 and 2002. As set forth in Section V.(2) of this report, the state land use regulations restricting the claimants' desired use of tax lot 2000 were in effect when the claimants acquired that tax lot on December 3, 2001.

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 development of tax lot 2001 and 2002 are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after the claimants acquired those tax lots. Provisions of Goal 4 in effect when the claimants acquired tax lots 2001 and 2002 in 1979 are exempt under ORS 197.352(3)(E) and will continue to apply to those tax lots.

All of the state land use regulations that restrict the claimants' desired use of tax lot 2000 were in effect when the claimants acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E) as to tax lot 2000.

Other laws in effect when the claimants acquired tax lots 2001 and 2002 are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimants' use of the tax lots. 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. These 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, 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 claimants' use of tax lots 2001 and 2002 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 tax lots until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become

evident that other state laws currently apply to that use and may continue to 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 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 their use of tax lots 2001 and 2002.

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 do not restrict the claimants' desired use of tax lot 2000 relative to what was permitted when the claimants acquired it in 2001 and do not reduce the fair market value of the property. All state laws restricting the use of tax lot 2000 are exempt under ORS 197.352(3)(E).

The department further finds that laws enforced by the Commission or the department restrict the claimants' desired use of tax lots 2001 and 2002. The claim asserts that existing land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$300,000. 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 tax lots 2001 and 2002, 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 claimants' desired use of tax lots 2001 and 2002 was allowed under the standards in effect when they acquired the tax lots. 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 tax lots 2001 and 2002 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 John and Deborah Wilson to use tax lots 2001 and 2002 for a use permitted at the time they acquired those tax lots on February 4, 1979.

Conclusions

Based on the record before the department, for tax lot 2000, the claimants have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied as to tax lot 2000.

The department otherwise recommends that the claim for tax lots 2001 and 2002 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 John and Deborah Wilson's development of a dwelling each on tax lots 2001 and 2002: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after February 4, 1979. These laws will not apply to the claimants only to the extent necessary to allow them to use tax lots 2001 and 2002 for the use described in this report, and only to the extent that use was permitted when they acquired those tax lots on February 4, 1979.
2. The action by the State of Oregon provides the state's authorization to the claimants to use tax lots 2001 and 2002 for the use described in this report, subject to the standards in effect on February 4, 1979. On that date, those tax lots were subject to compliance with the provisions of Goal 4 then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 2001 and 2002 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 claimants first obtain 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 tax lots 2001 and 2002 imposed by private parties.
4. Any use of tax lots 2001 and 2002 by the claimants 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 claimants to use tax lots 2001 and 2002, it may be necessary for them 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 claimants 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 tax lots 2001 and 2002 by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 27, 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.