



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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August 23, 2007

To: Interested Persons

From: Lane Shetterly, Director



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M130990*

*Claimant: Hastings Bulb Growers, Inc.*

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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  
COMPENSATION UNDER ORS 197.352 ) CLAIM NO. M130990  
(BALLOT MEASURE 37) OF )  
Hastings Bulb Growers, Inc., CLAIMANT )

Claimant: Hastings Bulb Growers, Inc. (the Claimant)

Property: Township 41S, Range 13W, Section 14, Tax lot 400  
Township 41S, Range 13W, Section 22A, Tax lots 300, 400 and 500  
Township 41S, Range 13W, Sections 22B, Tax lots 200 and 300  
Curry 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 Hastings Bulb Growers, Inc.'s division of tax lot 400 (Section 14) (approximately 28.5 acres) into six approximately 5-acre parcels and the remaining 128.33 acres of the subject property into 1- to 5-acre parcels and to its development of a dwelling on each undeveloped parcel: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33 enacted or adopted after it acquired the property. 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 tax lots 200, 300 (Section 22A), 300 (Section 22B) and 500 on October 23, 1967; tax lot 400 (Section 22A) on June 27, 1973; and tax lot 400 (Section 14) on June 18, 1974.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on October

23, 1967, for tax lots 200, 300 (Section 22A), 300 (Section 22B) and 500 and on June 27, 1973, for tax lot 400 (Section 22A), and subject to the provisions of ORS 215, including the interim planning goals set forth in ORS 215.515 (1973 edition), in effect on June 18, 1974, for tax lot 400 (Section 14).

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.

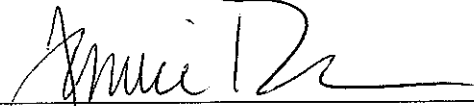
6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

This Order is entered by the Manager for the Measure 37 Services Division of the DLCDC as a final order of DLCDC 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

  
Michael Morrissey, Manager  
DLCD, Measure 37 Services Division  
Dated this 23<sup>rd</sup> day of August, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
Janice Dean, SSD Administrator  
DAS, State Services Division  
Dated this 23<sup>rd</sup> day of August, 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**

August 23, 2007

**STATE CLAIM NUMBER:** M130990

**NAME OF CLAIMANT:** Hastings Bulb Growers, Inc.

**MAILING ADDRESS:** PO Box 2155  
Harbor, Oregon 97415

**PROPERTY IDENTIFICATION:** Township 41S, Range 13W, Section 14  
Tax lot 400  
Township 41S, Range 13W, Section 22A  
Tax lots 300, 400 and 500  
Township 41S, Range 13W, Sections 22B  
Tax lots 200 and 300  
Curry County

**OTHER CONTACT INFORMATION:** Jill Gelineau  
Schwabe, Williamson and Wyatt  
1211 SW 5th Ave., Suite 1900  
Portland, Oregon 97204

**DATE RECEIVED BY DAS:** November 21, 2006

**DEADLINE FOR FINAL ACTION:<sup>1</sup>** May 14, 2008

**I. SUMMARY OF CLAIM**

The claimant, Hastings Bulb Growers, Inc., seeks compensation in the amount of \$5,630,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide tax lot 400 (Section 14) (approximately 28.5 acres) into six approximately 5-acre parcels and the remaining 128.33 acres of the subject property into 1- to 5-acre parcels and to develop a dwelling on each undeveloped parcel. Tax lot 400 (Section 14) is located at 15145 McVay Creek Road, and the remaining tax lots are located between Oceanview Drive and Highway 101, all near Harbor, in Curry County. (See claim.)

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<sup>1</sup> ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

## II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Hastings Bulb Growers, Inc.'s division of tax lot 400 (Section 14) (approximately 28.5 acres) into six approximately 5-acre parcels and the remaining 128.33 acres of the subject property into 1- to 5-acre parcels and to its development of a dwelling on each undeveloped parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), 4 (Forest Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after the claimant acquired the subject property. These 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 tax lots 200, 300 (Section 22A), 300 (Section 22B) and 500 on October 23, 1967; tax lot 400 (Section 22A) on June 27, 1973; and tax lot 400 (Section 14) on June 18, 1974. (See the complete recommendation in Section VI of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On July 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 15-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 November 21, 2006, for processing under OAR 125, division 145. The claim summarily lists numerous statutes, rules and regulations 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, Hastings Bulb Growers, Inc., acquired tax lots 200, 300 (Section 22A), 300 (Section 22B) and 500 on October 23, 1967; tax lot 400 (Section 22A) on June 27, 1973; and tax lot 400 (Section 14) on June 18, 1974, as reflected by warranty deeds and a bargain and sale deed included with the claim. The Curry County Assessor’s Office confirms the claimant’s current ownership of the subject property.

### **Conclusions**

The claimant, Hastings Bulb Growers, Inc., is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of October 23, 1967, for tax lots 200, 300 (Section 22A), 300 (Section 22B) and 500; as of June 27, 1973, for tax lot 400 (Section 22A); and as of June 18, 1974, for tax lot 400 (Section 14).

### **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 tax lot 400 (Section 14) into six approximately 5-acre parcels and the remaining 128.33 acres of the subject property into 1- to 5-acre parcels and to develop a dwelling on each undeveloped parcel, and that current land use regulations prevent the desired use.<sup>2</sup>

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<sup>2</sup> The claimant summarily lists numerous state land use laws as applicable to this claim, but does not establish how any particular land use regulation either applies to the claimant’s desired use of the subject property or restricts 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. 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.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) and Forest zoning and restrict uses on land zoned for EFU and Forest uses. Tax lots 200, 300 (Section 22A), 300 (Section 22B), 400 (Section 22A) and 500 are zoned Agricultural Farm District (AFD), and tax lot 400 (Section 14) is zoned Forest Grazing (FG) by Curry County.

Tax lots 200, 300 (Section 22A), 300 (Section 22B), 400 (Section 22A) and 500 are zoned AFD, which is an EFU zone, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because they are “agricultural land” as defined by Goal 3.<sup>3</sup> 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 the development of dwellings on existing or any proposed parcel 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 on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.<sup>4</sup>

Tax lot 400 (Section 14) 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 tax lot is “forest land” under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use.

Current land use regulations, including ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, generally prohibit the division of forest-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 generally establishes an 80-acre minimum size for the creation of new lots or parcels on forest-zoned land and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.705 to 215.755 establish standards for the creation of new parcels and dwellings allowed in forest zones.

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<sup>3</sup> Tax lots 200, 300 (Section 22A), 300 (Section 22B), 400 (Section 22A) and 500 are “agricultural land” because they contain Natural Resources Conservation Service Class I–IV soils.

<sup>4</sup> The Commission subsequently adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards for EFU-zoned land.

OAR 660, division 6, became effective on September 1, 1982, to implement Goal 4 and establish standards for divisions and development of land zoned for forest use, and was amended on March 1, 1994, to implement ORS 215.705 to 215.755 and 215.780. OAR 660-006-0025 interprets the goal and statutory standard for uses allowed in forest zones. OAR 660-006-0026 interprets land division requirements in forest zones, and OAR 660-006-0027 and 660-006-0029 interpret the standards for dwellings in forest zones.

Goal 14, which 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 200, 300 (Section 22A), 300 (Section 22B) and 500 on October 23, 1967; and tax lot 400 (Section 22A) on June 27, 1973, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

The claimant acquired tax lot 400 (Section 14) on June 18, 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, *Meeke 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*, *Meeke* 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).<sup>5</sup>

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<sup>5</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

The claim does not establish whether or to what extent the claimant's desired division and development of tax lot 400 (Section 14) comply with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time the claimant acquired the property on June 18, 1974.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant acquired the subject property and do not allow the claimant's desired division or development of the property. However, the claim does not establish whether or to what extent the claimant's desired use of tax lot 400 (Section 14) complies with the provisions of ORS 215, including the interim planning goals set forth at ORS 215.515 (1973 edition) in effect when it acquired tax lot 400 (Section 14) on June 18, 1974.

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 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 \$5,630,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's assessment of the value of the subject property.

### **Conclusions**

As explained in Section V.(1) of this report, the claimant is Hastings Bulb Growers, Inc., which acquired the subject property on October 23, 1967; June 27, 1973; and June 18, 1974. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the 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

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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."

the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$5,630,000.

Without an appraisal or other documentation, and without verification of 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, 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 and 14, ORS 215 and OAR 660, divisions 6, and 33, which Curry County has implemented through its current AFD and FG zones. With the exception of provisions of ORS 215, including the interim statewide planning goals, in effect on June 18, 1974, these state land use regulations were not in effect when the claimant acquired the 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 property. Provisions of ORS 215, including interim statewide planning goals in effect when the claimant acquired tax lot 400 (Section 14) on June 18, 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 660-006-0027, -0029 and -0035, include fire protection standards for dwellings and structures in forest zones. 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 and structures 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 one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Findings of Fact**

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$5,630,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of the subject property was allowed under the standards in effect when the claimant 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 Hastings Bulb Growers, Inc. to use the subject property for a use permitted at the time it acquired tax lots 200, 300 (Section 22A), 300 (Section 22B) and 500, on October 23, 1967; tax lot 400 (Section 22A) on June 27, 1973; and tax lot 400 (Section 14) on June 18, 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 Hastings Bulb Growers, Inc.'s division of tax lot 400 (Section 14) (approximately 28.5 acres) into six approximately 5-acre parcels and the remaining 128.33 acres of the subject property into 1- to 5-acre parcels and to its development of a dwelling on each undeveloped parcel: applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6, and 33 enacted or adopted after it acquired the property. 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 tax lots 200, 300 (Section 22A), 300 (Section 22B) and 500 on October 23, 1967; tax lot 400 (Section 22A) on June 27, 1973; and tax lot 400 (Section 14) on June 18, 1974.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on October 23, 1967, for tax lots 200, 300 (Section 22A), 300 (Section 22B) and 500 and on June 27, 1973, for tax lot 400 (Section 22A), and subject to the provisions of ORS 215, including the interim planning goals set forth in ORS 215.515 (1973 edition), in effect on June 18, 1974, for tax lot 400 (Section 14).
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 July 26, 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.