



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>

September 26, 2007

To: Interested Persons
From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131122

Claimants: William Pierson, Deceased; Rebecca Force, Personal Representative

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. M131122
(BALLOT MEASURE 37) OF)	
Rebecca Force, Personal Representative,)	
The Estate of William R. Pierson, CLAIMANT)	

Claimant: Rebecca Force, Personal Representative, The Estate of William R. Pierson
(the Claimant)

Property: Township 39S, Range 1E, Section 11, Tax lot 2100
Township 39S, Range 1E, Section 3, Tax lot 1500
Jackson 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 Rebecca Force's division of the 242.34-acre subject property into 193 parcels or to her development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, and 660-004-0040, enacted or adopted after January 1, 2003. These laws will not apply to Rebecca Force, as personal representative of the Estate of William R. Pierson, only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on January 1, 2003. The department acknowledges that the relief to which Rebecca Force, as personal representative of the Estate of William R. Pierson, is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to Rebecca Force, as personal representative of the Estate of William R. Pierson, to use the subject property for the use described in this report, subject to the standards in effect on January 1, 2003. At that time,

the property was subject to applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, and 660-004-0040, currently 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 Rebecca Force, as personal representative of the Estate of William R. Pierson, 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 Rebecca Force, as personal representative of the Estate of William R. Pierson, 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 Rebecca Force, as personal representative of the Estate of William R. Pierson, to use the subject property, it may be necessary for her 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 Rebecca Force, as personal representative of the Estate of William R. Pierson, 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 her.


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 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 Manager of the Measure 37 Services Unit 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:
Cora R. Parker, Acting Director


Michael Morrissey, Manager
DLCD, Measure 37 Division
Dated this 26th day of September, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 26th day of September, 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. M131122
(BALLOT MEASURE 37) OF)
William Pierson, CLAIMANT)

Claimant: William Pierson (the Claimant)

Property: Township 39S, Range 1E, Section 11, Tax lot 2100
Township 39S, Range 1E, Section 3, Tax lot 1500
Jackson County (the property)

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

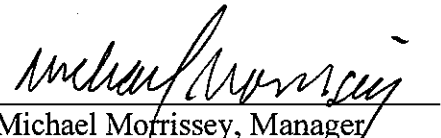
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCDC) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCDC (the DLCDC Report) attached to and by this reference incorporated into this order.

ORDER

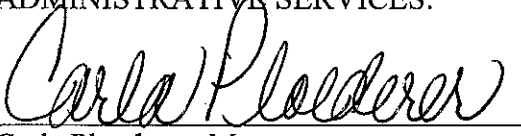
The Claim is denied as to laws administered by DLCDC and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCDC Report.

This Order is entered by the Manager of 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 chapter 125, division 145, and by the Manager of the Measure 37 Services Unit of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

FOR DLCDC AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Cora R. Parker, Acting Director


Michael Morrissey, Manager
DLCDC, Measure 37 Services Division
Dated this 26th day of September, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 26th day of September, 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**

September 26, 2007

STATE CLAIM NUMBER: M131122

NAMES OF CLAIMANTS: William Pierson, Deceased
Rebecca Force, Personal Representative,
The Estate of William R. Pierson

MAILING ADDRESS: 2357 Crescent Avenue
Eugene, Oregon 97408

PROPERTY IDENTIFICATION: Township 39S, Range 1E
Section 11: tax lot 2100
Section 3: tax lot 1500
Jackson County

OTHER CONTACT INFORMATION: David C. Force
96 E Broadway, Suite 2
Eugene, Oregon 97401

DATE RECEIVED BY DAS: November 22, 2006

DEADLINE FOR FINAL ACTION:¹ May 15, 2008

I. SUMMARY OF CLAIM

The claimants, William Pierson, deceased, and Rebecca Force, personal representative of the Estate of William R. Pierson, seek compensation in the amount of \$19.39 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 claimants desire compensation or the right to divide the 242.34-acre subject property² into 193 parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 1779 E Main Street, near Ashland, in Jackson County. (See claim).

¹ 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.

² The subject property includes two tax lots. Tax lot 2100 consists of 233.44 acres and tax lot 1500 consists of 8.90 acres.

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 Rebecca Force's division of the 242.34-acre subject property into 193 parcels and to her development of a dwelling on each resulting undeveloped parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, and 660-004-0040, enacted or adopted after January 1, 2003. These laws will not apply to Rebecca Force, as personal representative of the Estate of William R. Pierson, only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on January 1, 2003. The department acknowledges that the relief to which Rebecca Force, as personal representative of the Estate of William R. Pierson, is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim.

The department further determines that the claim is not valid as to William Pierson because he is deceased and, therefore, is no longer an owner of the subject property. (See the complete recommendation in Section VI. of this report).

III. COMMENTS ON THE CLAIM

Comments Received

On June 18, 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, fifteen written comments were received in response to the 15-day notice.

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

Twelve comments are relevant to whether the claimants are owners; when the claimants became the present owners of the subject property; whether a state law restricts the claimants' use of the subject property; and whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comments have been considered by the department in preparing this report. (See the comment letters in the department's claim file).

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on November 22, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3 and 14, ORS 197 and provisions of ORS 215 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

Claimant William Pierson acquired tax lot 2100 on December 9, 1967, and tax lot 1500 on January 11, 1968, as reflected by warranty deeds included with the claim. William Pierson died on January 1, 2003, as evidenced by the Social Security Death Index. William Pierson’s daughter, claimant Rebecca Force, as personal representative of the Estate of William R. Pierson, acquired an interest in the subject property upon William Pierson’s death on January 1, 2003. The Jackson County Assessor’s Office confirms the current ownership of the subject property.

Conclusions

Claimant William Pierson is not an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), because he is deceased. Claimant Rebecca Force, as personal representative of the Estate of William R. Pierson, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of January 1, 2003. William Pierson is a “family member” of Rebecca Force, as defined by ORS 197.352(11)(A) and acquired tax lot 2100 on December 9, 1967, and tax lot 1500 on January 11, 1968.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants’ use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 242.34-acre subject property into 193 parcels and to develop a dwelling on each resulting undeveloped parcel, and that current land use regulations prevent the desired use.³

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land, and the provisions of state law that regulate rural residential zoning.

Tax lot 2100 is zoned EFU by Jackson County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because this tax lot is “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 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.

³ The claimants summarily cite numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants’ desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of these regulations either do not apply to the claimants’ property or do not restrict the claimants’ desired use of the 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 claimants’ desired use of the subject property, based on the claimants’ description of that desired use.

⁴ Tax lot 2100 is “agricultural land” because it contains Natural Resources Conservation Service Class I–IV soils.

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, 1994.⁵

Tax lot 1500 is zoned Rural Residential (RR-00) by Jackson County. The RR-00 zone is a rural residential zone, in accordance with Goal 14, which prohibits urban use of rural lands. The county's RR-00 zone does not allow for the creation of any new lot or parcel and was in effect and applied to the subject property on or before October 4, 2000.

Goal 14 became effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,⁶ the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

For properties less than one mile from the UGB of the city or urban area of Ashland, Central Point, Medford, Sandy or Newberg, where that city or urban area does not have an urban reserve area acknowledged to comply with OAR 660, division 21, or is not part of an acknowledged regional growth plan under ORS 197.652 to 197.658, the rule states that the minimum area of any new lot or parcel must be 10 acres (OAR 660-004-0040(8)(a), (b) and (c)).⁷ Because the subject property is located less than one mile from the UGB of the city of Ashland, all new lots or parcels must be at least 10 acres in size.

The Pierson's family first acquired tax lot 2100 in 1967 and tax lot 1500 in 1968, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to tax lot 2100 in 1967 or tax lot 1500 in 1968.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, and 660-004-0040, were all enacted or adopted after the Pierson family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when the Pierson family acquired the property.

As explained in Section V.(1), William Pierson is no longer an owner of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict his use of the subject real property with the effect of reducing the fair market value of the property.

⁵ The Commission 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 under OAR 660, division 33, for EFU-zoned land.

⁶ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

⁷ Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(8)(g).

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (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 \$19.39 million 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 an appraisal included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are William Pierson, who died in 2003 and who acquired the property in 1967 and 1968, and Rebecca Force, as personal representative of the Estate of William R. Pierson. Because he is deceased, William Pierson is not an owner of the subject property and, therefore, is not entitled to compensation under ORS 197.352. Under ORS 197.352, as personal representative of her father’s estate, Rebecca Force 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 Pierson family acquired the subject property restrict Rebecca Force’s desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$19.39 million.

Without additional evidence and documentation to establish whether or the extent to which the land use regulations identified in Section V.(2) have the effect of reducing the subject property’s fair market value, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the 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 since the Pierson family acquired the property.

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 and 14, ORS 215 and OAR 660, division 33, and 660-004-0040, which Jackson County has implemented through its current EFU and RR-00 zones. All of these land use regulations were enacted or adopted after the Pierson family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the Pierson family first acquired the property in 1967 and 1968. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the Pierson family first acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

As explained in Section V.(1) of this report, William Pierson is no longer an owner of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to him.

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 William Pierson's desired use of the property because he is no longer an owner of the property. Laws enforced by the Commission or the department do restrict claimant Rebecca Force's, as personal representative of the Estate of William R. Pierson, 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 \$19.39 million. However, without additional evidence and documentation to establish whether or the extent to which the land use regulations identified in Section V.(2) have the effect of reducing the subject property's fair market value, 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 Rebecca Force's desired use of the subject property was allowed under the standards in effect when her family 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 Rebecca Force, as personal representative of the Estate of William R. Pierson, to use the subject property for a use permitted at the time she acquired the property, as personal representative of her father's estate, on January 1, 2003.

At the time Rebecca Force acquired an interest in the subject property, it was zoned EFU and RR-00 by Jackson County and subject to the current lot size and dwelling standards under Goals 3 and 14, ORS 215 and OAR 660, division 33, and 660-004-0040, and as described in Section V.(2) of this report.

In addition to the provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, and 660-004-0040, in effect when Rebecca Force, as personal representative, acquired an ownership interest in the property, there may be other laws that continue to apply to her use of the property that have not been identified in the claim. This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the 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. Claimant Rebecca Force should be aware that the less information she 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 her use of the subject property.

Conclusions

Based on the record before the department, William Pierson is not entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because he is deceased and no longer an owner of the subject property. Therefore, the department recommends that the claim from William Pierson be denied.

The department otherwise recommends that the claim be approved as to Rebecca Force, as personal representative of the Estate of William R. Pierson, 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 Rebecca Force's division of the 242.34-acre subject property into 193 parcels or to her development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, and 660-004-0040, enacted or adopted after January 1, 2003. These laws will not apply to Rebecca Force, as personal representative of the Estate of William R. Pierson, only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on January 1, 2003. The department acknowledges that the relief to which Rebecca Force, as personal representative of the Estate of William R. Pierson, is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to Rebecca Force, as personal representative of the Estate of William R. Pierson, to use the subject property for the use described in this report, subject to the standards in effect on January 1, 2003. At that time, the property was subject to applicable provisions of Goals 3 and 14, ORS 215 and OAR 660, division 33, and 660-004-0040, currently 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 Rebecca Force, as personal representative of the Estate of William R. Pierson, 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 Rebecca Force, as personal representative of the Estate of William R. Pierson, 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 Rebecca Force, as personal representative of the Estate of William R. Pierson, to use the subject property, it may be necessary for her 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 Rebecca Force, as personal representative of the Estate of William R. Pierson, 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 her.

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 August 28, 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. Comments received have been taken into account by the department in the issuance of this final report.