



Oregon

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October 11, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131587

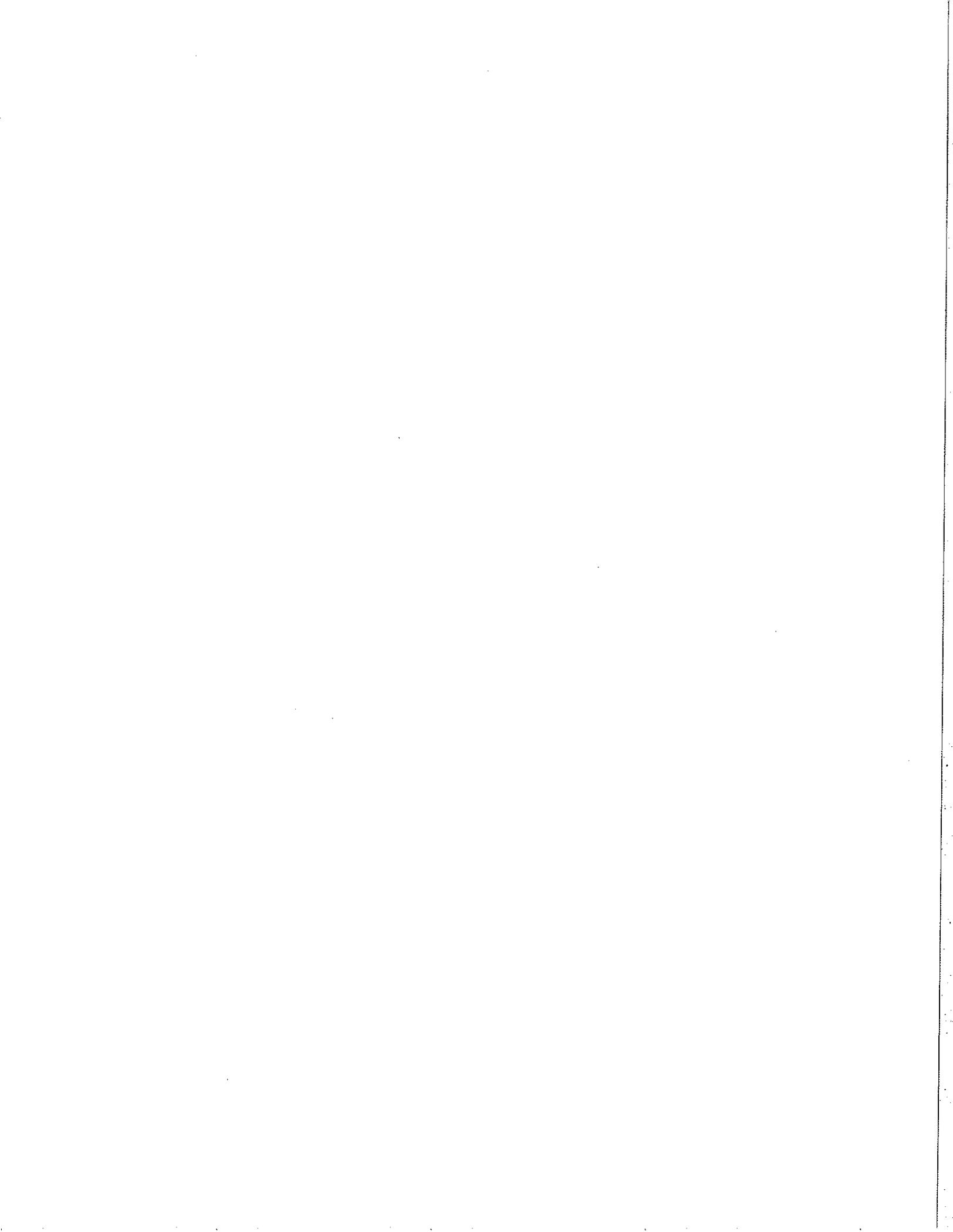
Claimant: Jean M. Allen

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

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than 15 calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the 15th day or actually delivered to DAS by the close of business on the 15th day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.





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

October 11, 2007

STATE CLAIM NUMBER: M131587

NAME OF CLAIMANT: Jean M. Allen

MAILING ADDRESS: 1220 Cole Road
Oakland, Oregon 97462

PROPERTY IDENTIFICATION: Township 25S, Range 6W, Section 15
Tax lots 500, 501 and 502
Douglas County

DATE RECEIVED BY DAS: November 29, 2006

DEADLINE FOR FINAL ACTION:¹ May 22, 2008

I. SUMMARY OF CLAIM

The claimant, Jean Allen, seeks compensation in the amount of \$600,000 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 the 108.22-acre subject property into three parcels, each greater than 10 acres, and to develop a dwelling on the one resulting undeveloped parcel.² The subject property is located at 1220 Cole Road, near Oakland, in Douglas County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary 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

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 At the time the claim was filed, the 108.22-acre subject property was identified as Township 25S, Range 6W, Section 15, tax lots 200 and 500, and Section 16, tax lot 600. Tax lot 200 consisted of 2.38 acres, tax lot 500 consisted of 90.81 acres, and tax lot 600 consisted of 15.03 acres. Since that time the subject property has been altered through a land partition approved by Douglas County on November 29, 2006, and a boundary line adjustment approved by Douglas County on February 17, 2007. The 108.22-acre subject property is now identified as Township 25S, Range 6W, Section 15, tax lots 500, 501 and 502. Tax lot 500 consists of 93.83 acres, tax lot 501 consists of 6.36 acres, and tax lot 502 consists of 8.03 acres.

state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Jean Allen's division of tax lots 500 and 501 into three parcels, each greater than 10 acres in size, and to her development of a dwelling on the one resulting undeveloped parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after July 18, 1975. These laws will not apply to the claimant only to the extent necessary to allow her to use tax lots 500 and 501 for the use described in this report, and only to the extent that use was permitted when she acquired tax lots 500 and 501 on July 18, 1975. (See the complete recommendation in Section VI. of this report.)

The department has further determined that this claim is not valid as to tax lot 502 because the claimant is not an owner of that tax lot. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 2, 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 29, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215, OAR 660, divisions 6, and 33, and provisions of Douglas County's zoning code 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, Jean Allen, acquired the subject property on July 18, 1975, as reflected by a warranty deed included with the claim. However, on March 9, 2007, the claimant conveyed tax lot 502 to Todd and Stacey Carson, as evidenced by deed information obtained from Douglas County’s Assessor’s and Clerk’s websites. The Douglas County Assessor’s Office confirms the claimant’s current ownership of tax lots 500 and 501.

Conclusions

The claimant, Jean Allen, is an “owner” of tax lots 500 and 501 as that term is defined by ORS 197.352(11)(C), as of July 18, 1975. The claimant is not an “owner” of tax lot 502 as that term is defined in ORS 197.352(11)(C).

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the 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 acquired the property.

Findings of Fact

The claim indicates that the claimant desires to divide the 108.22-acre subject property into three parcels, each greater than 10 acres, and to develop a dwelling on the one resulting undeveloped parcel, and that current land use regulations prevent the desired use.³

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

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

The portion of the subject property located south of Cole Road is zoned Exclusive Farm Use-Grazing (FG) by Douglas County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because that portion of claimant's property 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 development of dwellings on existing or proposed parcels on that land.

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

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994.⁵

The portion of the subject property located north of Cole Road is zoned Farm Forest (FF) by Douglas County. The county's FF zone is a mixed agricultural and forest land zone, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. Goals 3 and 4 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned for farm uses and that forest lands under Goal 4 be zoned for forest uses. OAR 660-006-0050 authorizes local governing bodies to establish mixed agriculture-forest zones in accordance with both Goals 3 and 4 and OAR 660, divisions 6, and 33.

Under OAR 660-006-0050(2), effective on February 5, 1990, and subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993), uses allowed in EFU zones under Goal 3 and forest zones under Goal 4 are allowed in mixed agriculture-forest zones.

For land divisions, OAR 660-006-0055 requires local governing bodies to apply the standards of OAR 660-006-0026 and 660-033-0100, which implement the minimum lot size requirements in ORS 215.780. ORS 215.780(1) establishes an 80-acre minimum for the creation of new lots or

⁴ This portion of the claimant's property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

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.

parcels in EFU and forest zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993).

For the approval and siting of dwellings, under OAR 660-006-0050(2) and (3), counties must apply either the OAR 660, division 6, or 33, standards based on the predominant use of the tract on January 1, 1993.⁶ The provisions of OAR 660-006-0027 and 660-006-0029 apply to dwelling approval and siting where the predominant use of the tract on that date was forest, and the provisions of OAR 660-033-0030 and 660-033-0035 apply where the predominant use of the tract on that date was agriculture.

The claimant acquired tax lots 500 and 501 after the adoption of the statewide planning goals, but before the Commission acknowledged Douglas County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.⁷ At that time, the property was zoned General Agriculture by Douglas County, which allowed land divisions subject to review and authorized a dwelling in conjunction with a permitted use. However, because the Commission had not acknowledged the county's plan and land use regulations when the claimant acquired the subject property on July 18, 1975, the applicable statewide planning goals, and Goals 3 and 4 in particular, would have applied directly to any development application for the subject property.⁸

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, under Goal 3, the claimant's opportunity to divide the property when she acquired it in 1975 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect on July 18, 1975, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

⁶ The claim does not include information regarding the predominant use of the property on January 1, 1993.

⁷ Douglas County's comprehensive plan was acknowledged by the Commission for compliance with Goals 3 and 4 on December 24, 1985.

⁸ 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 569 (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. *Forster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

As adopted in 1975, Goal 4 was intended to “conserve forest lands for forest uses” and required that lands suitable for forest uses “be inventoried and designated as forest lands” and that existing forest land uses “be protected unless proposed changes are in conformance with the comprehensive plan.” Those forest uses were defined as: “(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.” Specifically, Goal 4 only allowed land divisions that would protect commercial forest lands for commercial forest uses. Dwellings in forest zones could only be allowed if found to be “necessary and accessory” to one of the enumerated forest uses listed in Goal 4.⁹

The claim does not establish whether or to what extent the claimant’s desired division and development of the subject property were allowed under the standards in effect when she acquired tax lots 500 and 501 on July 18, 1975.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established under the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, for lands zoned for agricultural use and for mixed agriculture-forest use were enacted or adopted after the claimant acquired tax lots 500 and 501 in 1975 and do not allow the claimant’s desired division and development of the property. However, the claim does not establish whether or the extent to which the claimant’s desired use of the subject property complies with the standards for land divisions and development under the requirements of Goal 3 and 4 and ORS 215 in effect when the claimant acquired tax lots 500 and 501 on July 18, 1975.

As explained in Section V.(1), claimant Jean Allen is not an “owner” of tax lot 502 as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict the claimant’s use of tax lot 502 with the effect of reducing the fair market value of the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant’s use of the subject property, and that may continue to apply to the claimant’s use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property

⁹ 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)*.

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 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 \$600,000 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 a real estate broker’s comparative market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimant is Jean Allen who acquired the subject property on July 18, 1975. However, as explained in Section V.(1) of this report, the claimant is no longer an “owner” of tax lot 502 as that term is defined by ORS 197.352(11)(C). Therefore, no laws restrict her use of tax lot 502 with the effect of reducing the fair market value of that tax lot.

Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of tax lots 500 and 501 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 claimant acquired tax lots 500 and 501 restrict the claimant’s desired use of those tax lots. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$600,000.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimant’s desired use of tax lots 500 and 501 was allowed under the standards in effect when she acquired those tax lots, 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 tax lots 500 and 501 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 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Douglas County has implemented through its current FG and FF zones. With the

exception of provisions of Goals 3 and 4 and ORS 215 in effect when the claimant acquired tax lots 500 and 501 on July 18, 1975, these land use regulations were enacted or adopted after 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 with the exception of provisions of Goal 3 and 4 and ORS 215 in effect in 1975, the statutory, goal and rule restrictions on division and development of the claimant's property were not in effect when the claimant acquired tax lots 500 and 501, and therefore, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3 and 4 and ORS 215 in effect when the claimant acquired tax lots 500 and 501 in 1975 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired tax lots 500 and 501 are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of these tax lots. 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 and mixed agriculture-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 in forest and mixed agriculture-forest zones in 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 tax lots 500 and 501 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 these tax lots 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).

As explained in Section V.(1) of this report, the claimant is not an "owner" of tax lot 502 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 this tax lot.

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 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 tax lots 500 and 501.

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 claimant's desired use of tax lot 502 because she is not an owner of that tax lot. Laws enforced by the Commission or the department do restrict the claimant's desired use of tax lots 500 and 501. 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 \$600,000. 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 500 and 501, 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 tax lots 500 and 501 was allowed under the standards in effect when she acquired those 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 500 and 501 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 Jean Allen to use tax lots 500 and 501 for a use permitted at the time she acquired those tax lots on July 18, 1975.

Conclusions

Based on the record before the department, the claimant has not established that she is entitled to relief for tax lot 502 under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because she is not an owner of that tax lot. Therefore, the department recommends that the claim be denied as to tax lot 502.

The department otherwise 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 Jean Allen's division of tax lots 500 and 501 into three parcels, each greater than 10 acres in size, or to her development of a dwelling on the one resulting undeveloped parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after July 18, 1975. These land use regulations will not apply to the claimant only to the

extent necessary to allow her to use tax lots 500 and 501 for the use described in this report, and only to the extent that use was permitted when she acquired those tax lots on July 18, 1975.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 500 and 501 for the use described in this report, subject to the standards in effect on July 18, 1975. On that date, tax lots 500 and 501 were subject to applicable provisions of Goal 3 and 4 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of tax lots 500 and 501 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 tax lots 500 and 501 imposed by private parties.

4. Any use of tax lots 500 and 501 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 tax lots 500 and 501, 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 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 tax lots 500 and 501 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. NOTICE OF OPPORTUNITY TO COMMENT

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides 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. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimant and any third parties. Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management-State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 and will be deemed timely filed if either postmarked on the 15th day, or actually delivered to DAS by the close of business on the

15th day. Note: Please reference the claim number, claimant name and clearly mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.

