BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

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| IN THE MATTER OF THE CLAIM FOR<br>COMPENSATION UNDER ORS 197.352<br>(BALLOT MEASURE 37) OF<br>Verland L. Reavis, CLAIMANT | )<br>)<br>)<br>) | FINAL ORDER<br>CLAIM NO. M124535 |

Claimant: Verland L. Reavis (the Claimant)

Property: Township 23S, Range 12W, Section 16, Tax lots 400 and 500, Coos 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 Verland Reavis' division of tax lots 400 and 500, each into two parcels and to his development of a dwelling on the two newly created parcels: applicable provisions of Goals 4 and 17, ORS 215 and OAR 660, division 6. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 400 on June 24, 1958, and tax lot 500 on September 9, 1960.

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 June 24, 1958, and September 9, 1960.

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 him 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.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director
DLCD
Dated this 11th day of September, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 11th day of September, 2006.

## 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**

September 11, 2006

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| **STATE CLAIM NUMBER:** | M124535 |
| **NAME OF CLAIMANT:** | Verland L. Reavis |
| **MAILING ADDRESS:** | 71442 Reavis Road<br>Lakeside, Oregon 97449 |
| **PROPERTY IDENTIFICATION:** | Township 23S, Range 12W, Section 16<br>Tax lots 400 and 500<br>Coos County |
| **DATE RECEIVED BY DAS:** | March 21, 2006 |
| **180-DAY DEADLINE:** | September 17, 2006 |

## I. SUMMARY OF CLAIM

The claimant, Verland Reavis, seeks compensation in the amount of $1 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 28.8-acre subject property, tax lots 400 and 500 each into two parcels and to develop a dwelling on the two newly created parcels.[1] The subject property is located at 71442 Reavis Road, near Lakeside, in Coos County. (See claim.)

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[1] The claim does not explain the claimant's desired use of the property other than to establish "more buildings and/or lots to sell." Under ORS 197.352(8), if a public entity elects to not apply one or more land use regulations to the claimant's use of the property, it may do so only to allow "a use." Further, in order to determine that land use regulations have restricted the claimant's use of the property, the department must base that determination on a use. The department makes every effort to determine what use of the property the claimant seeks to carry out, but in circumstances where the claimant refuses to state what use is sought, the department will assume that the desired use is to divide each parcel into one additional parcel, and to establish one dwelling on the new parcel. If the claimant wishes to make a claim for a different use, the claimant is free to submit a new claim.

The claim also suggests that the claimant desires to sell the newly created parcels for development. In effect, the claimant requests that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost." Therefore, the relief granted in this report cannot and does not create a transferable waiver.

## 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 Verland Reavis' division of tax lots 400 and 500, each into two parcels and to his development of a dwelling on the two newly created parcels: applicable provisions of Statewide Planning Goals 4 (Forest Lands) and 17 (Coastal Shorelands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6. These laws will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 400 in 1958 and tax lot 500 in 1960. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

**Comments Received**

On July 5, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 10-day notice.

## IV. TIMELINESS OF CLAIM

**Requirement**

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

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

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

**Findings of Fact**

This claim was submitted to DAS on March 21, 2006, for processing under OAR 125, division 145. The claim identifies Coos County's Forest and Coastal Boundary zoning 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, Verland Reavis, acquired tax lot 400 on June 24, 1958, and tax lot 500 on September 9, 1960, as reflected by warranty deeds included with the claim. The claimant transferred the subject property to the Verland L. Reavis Revocable Living Trust on June 12, 2001.[2] The Coos County Assessor's Office confirms the claimant's current ownership of the subject property.

**Conclusions**

The claimant, Verland Reavis, is an "owner" of tax lot 400, as that term is defined by ORS 197.352(11)(C), as of June 24, 1958, and an "owner" of tax lot 500 as of September 9, 1960.

**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 claimants or a family member acquired the property.

**Findings of Fact**

The claim indicates that the claimant desires to divide the 28.8-acre subject property, tax lots 400 and 500 each into two parcels and to develop a dwelling on the two newly created parcels. It indicates that current county zoning prohibits the desired use.

The claim is based state laws that require forest and coastal shoreland zoning and restrict the use of property in such zones. The subject property is zoned Forest (FL) and Coastal Shoreland (C-S) by Coos County.

[2] Transfer of property to a revocable trust does not result in a change of ownership for the purposes of ORS 197.352.

The subject property's FL zoning is required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimant's property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on those lands.

All of the subject property is within the area defined as "coastal shoreland" under Goal 17. Goal 17 became effective on June 7, 1977, and required that coastal resources within the shoreland area be inventoried and protected.[3] Further, upon its adoption in 1977, Goal 17 provided that:

> [s]horelands in rural areas . . . shall be used as appropriate for:
> (a) farm uses as provided in ORS Chapter 215;
> (b) propagation and harvesting of forest products consistent with the Oregon Forest Practices Act;
> (c) private and public water-dependent recreation developments;
> (d) aquaculture;
> (e) water-dependent commercial and industrial uses and water-related uses only upon a finding by the governing body of the county that such uses satisfy a need which cannot be reasonably accommodated on shorelands in urban and urbanizable areas;
> (f) *subdivisions*, major and minor partitions and other uses *only upon a finding by the governing body of the county that such uses satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas and are compatible with the objectives of this goal to protect riparian vegetation and wildlife habitat* [emphasis added]; and
> (g) a single family residence on existing lots, parcels or units of land when compatible with the objectives and implementation standards of this goal.

The current version of Goal 17 contains similar restrictions, generally allowing uses that are not dependent on or related to water, only upon a showing that the use would not commit shorelands to more intensive uses or cause a permanent or long term change in the features of shorelands, except upon a showing of public need that cannot be met in other areas. No showing that the claimant's desired use would comply with this standard has been made.

The claimant acquired the subject property tax lot 400 on June 24, 1958, and tax lot 500 on September 9, 1960, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

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[3] Goal 17 was adopted in 1976 and became effective on June 7, 1977. The Goal 17 Inventory Requirements defined the shoreland planning wherein the subject property is located. The Goal 17 Comprehensive Plan requirements prescribed Coastal Shoreland Uses for the different types of coastal shorelands, as noted in the text of this report.

## Conclusions

The current zoning requirements, minimum lot size, dwelling standards and coastal development standards established by Goals 4 and 17 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted after the claimant acquired tax lot 400 in 1958 and tax lot 500 in 1960 and do not allow the desired division or development 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 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 $1 million as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's use of the property. This amount is based on the claimant's assessment of the subject property's value.

## Conclusions

As explained in Section V.(1) of this report, the claimant is Verland Reavis who acquired tax lot 400 on June 24, 1958, and tax lot 500 on September 9, 1960. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of $1 million.

Without an appraisal or other documentation, 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 4 and 17, ORS 215 and OAR 660, division 6, which Coos County has implemented through its current FL and C-S zones. All of these land use regulations were enacted or adopted after the claimant acquired the subject property.

### Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimant acquired tax lot 400 in 1958 and tax lot 500 in 1960. As a result, these laws are not exempt under ORS 197.352(3)(E).

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, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes...." Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

There may be other laws that continue to apply to the 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 use 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 he 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 his 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 restricts 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 $1 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of the subject property was allowed under the standards in effect when he 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 Verland Reavis to use the subject property for a use permitted at the time he acquired tax lot 400 on June 24, 1958, and tax lot 500 on September 9, 1960.

**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 Verland Reavis' division of tax lots 400 and 500, each into two parcels and to his development of a dwelling on the two newly created parcels: applicable provisions of Goals 4 and 17, ORS 215 and OAR 660, division 6. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use the subject property for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 400 on June 24, 1958, and tax lot 500 on September 9, 1960.

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 June 24, 1958, and September 9, 1960.

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 him 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.

## VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 25, 2006. 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. Comments received have been taken into account by the department in the issuance of this final report.

In response to the draft staff report, the claimant submitted a comment, objecting to the scope of the waiver granted. Because the claimant had refused to specify a desired use of the property, and as described in footnote 1, the department waived the regulations in effect when he acquired the property in order to allow the claimant to divide the property into two parcels and to develop a dwelling on each parcel. In response, the claimant asserts first that the "claim is for the removal of all regulations/zoning placed on my property since its purchase." Second, the claimant states that he "will accept without protest a zoning of R2, that is two (2) or more acre parcels." Finally, the claimant as for an extension of time beyond the 10 day comment period to further consult with an attorney.

Notwithstanding the claimants' comments, ORS 197352 mandates that the regulating entity issue a final report within 180 days of the date the claim is submitted. The statute does not authorize any extensions. In order to meet this mandatory deadline, the department cannot extend the period to comment on the draft staff report. As to the substance of the claimant's response, ORS 197.352 does not authorize the department to either change zoning or eliminate land use regulations. Rather, as stated above, it allows the regulating entity to "not apply" regulations in order to allow "a use." Further, as indicated above, where the claimant declines to specify "a use" as required by the statute, rather than deny the claim on the basis that the claimant has failed

to establish how any land use regulations restricts the claimant's use of the property with the result of reducing its fair market value, the department will assume that the desired use is to divide each parcel into one additional parcel, and to establish one dwelling on the new parcel. If the claimant wishes to make a claim for a different use, the claimant is free to submit a new claim. The department cannot, however, allow substantive amendments to a claim through comments on the draft staff report.