

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. M129654
(BALLOT MEASURE 37) OF)	
Michael L. Zeman, CLAIMANT)	

Claimant: Michael L. Zeman (the Claimant)

Property: Township 1N, Range 10E, Section 14, Tax lot 400

Township 1N, Range 10E, Section 15A, Tax lot 2400

Hood River 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 Michael Zeman's division of the 42.44-acre subject property into 14 parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after November 5, 2004. These land use regulations will not apply to Michael Zeman 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 the property on November 5, 2004. The department acknowledges that the relief to which Michael Zeman is entitled under ORS 197.352 will not allow him 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 Michael Zeman to use the property for the use described in this report, subject to the standards in effect on November 5,

2004. On that date, the property was subject to the applicable provisions of Goal 4, ORS 215 and OAR 600, division 6, 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 Michael Zeman 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 Michael Zeman 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).

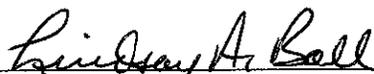
5. Without limiting the generality of the foregoing terms and conditions, in order for Michael Zeman to use the subject property, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves Michael Zeman 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 him.

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 Director of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Lane Shetterly, Director


Michael Morrissey, Manager
DLCD, Measure 37 Division
Dated this 5th day of January, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Lindsay A. Ball, Director
DAS

Dated this 5th day of January, 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. M129654
(BALLOT MEASURE 37) OF)
Louis C. Zeman Jr. and Julia R. Zeman, CLAIMANTS)

Claimants: Louis C. Zeman Jr. and Julia R. Zeman (the Claimants)

Property: Township 1N, Range 10E, Section 14, Tax lot 400
Township 1N, Range 10E, Section 15A, Tax lot 2400
Hood River County (the property)

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

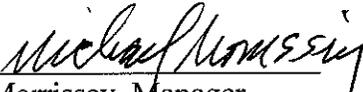
Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein,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

ORDER

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

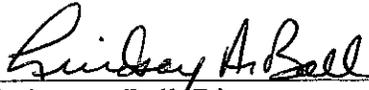
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Director for the State Services Division of the DAS as a final order of DAS under ORS 197.352,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

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Lane Shetterly, Director



Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 5th day of January, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Lindsay A. Ball, Director
DAS, State Services Division
Dated this 5th day of January, 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

January 5, 2007

STATE CLAIM NUMBER: M129654

NAMES OF CLAIMANTS: Louis C. Zeman Jr.
Julia R. Zeman
Michael L. Zeman

MAILING ADDRESS: PO Box 158
Underwood, WA 98651

PROPERTY IDENTIFICATION: Township 1N, Range 10E
Section 14: tax lot 400
Section 15A: tax lot 2400
Hood River County

DATE RECEIVED BY DAS: July 12, 2006

180-DAY DEADLINE: January 8, 2007

I. SUMMARY OF CLAIM

The claimants, Louis Zeman Jr., Julia Zeman and Michael Zeman, seek compensation in the amount of \$3,006,285 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 42.44-acre subject property into 14 parcels and to develop a dwelling on each parcel.¹ The subject property is located at 5300 Wild Dogwood Road, near Hood River, in Hood River County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Michael Zeman's division of the 42.44-acre subject property into 14 parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after November 5, 2004. These laws will not apply to Michael Zeman only

¹ The subject property includes two tax lots. Tax lot 400 consists of 38.81 acres and tax lot 2400 consists of 3.63 acres.

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 an interest in the property on November 5, 2004. The department acknowledges that the relief to which Michael Zeman is entitled under ORS 197.352 will not allow him to use the subject property in the manner set forth in the claim.

The department has further determined that the claim is not valid for Louis Zeman Jr. and Julia Zeman because they have not established their ownership of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 26, 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, one written comment was received in response to the 10-day notice.

The comment is relevant to whether the restriction of the claimants' use of the subject property reduces the fair market value of the property and whether the laws that are the basis for the claim are exempt under ORS 197.352(3). The comment has been considered by the department in preparing this report. (See the comment letter 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 July 12, 2006, for processing under OAR 125, division 145. The claim identifies ORS 92, 197 and 215, OAR 660 and Hood River County's land use ordinances 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 Michael Zeman acquired the subject property from his parents, Louis Zeman Jr. and Julia Zeman, on November 5, 2004, as reflected by a sales contract included with the claim. Claimant Louis Zeman Jr. acquired the subject property upon the death of his father, Louis Zeman Sr., as reflected by a personal representative’s deed dated March 1, 1995, included with the claim. Claimant Julia Zeman acquired a one-half interest in the subject property from her husband, Louis Zeman Jr., on January 4, 2004, as reflected by a warranty deed included with the claim. On January 4, 2004, and January 13, 2004, Louis Zeman Jr. and Julia Zeman conveyed their interests in the subject property to their own revocable trusts, as reflected by deeds included with the claim. On November 5, 2004, Louis Zeman Jr. and Julia R. Zeman, as trustees of their respective trusts, conveyed all of their interest in the subject property to Michael Zeman, as reflected by a real estate contract included with the claim.

The claimants’ family, Louis Zeman Sr. and Milada Zeman, acquired tax lot 400 on March 26, 1946, and tax lot 2400 on December 14, 1976, as evidenced by deeds included with the claim. The Hood River County Assessor’s Office confirms Michael Zeman’s current ownership of the subject property.

Conclusions

Claimant Michael Zeman is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of November 5, 2004. Claimants Louis Zeman Jr. and Julia Zeman are not “owners” of the subject property as that term is defined in ORS 197.352(11)(C). Louis Zeman Sr. and Milada Zeman are “family members” of Michael Zeman as defined by ORS 197.352(11)(A) and acquired tax lot 400 on March 26, 1946, and tax lot 2400 on December 14, 1976. Louis Zeman Jr. and Julia Zeman are also “family members” of Michael Zeman as defined by ORS 197.352(11)(A).

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 42.44-acre subject property into 14 parcels and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.²

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned by Hood River County as F-1 as required by Goal 4 in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

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.

The claimants' family first acquired tax lot 400 in 1946, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

The claimants' family acquired tax lot 2400 in 1976, after the adoption of the statewide planning goals but before the Commission acknowledged Hood River County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when the claimants' family acquired tax lot 2400 on December 14, 1976, the statewide planning goals, and Goal 4 in particular, applied directly to tax lot 2400 when the claimants' family acquired it.³ When the claimants' family acquired tax lot 2400, the desired division and development of that

² 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 the desired use.

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

tax lot would have been governed by the applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, then in effect.

Goal 4 went into effect on January 25, 1975, and was intended to “conserve forest lands for forest uses” and required, “Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan.” Those forest uses were defined as follows: “(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.” Specifically, 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 4.⁴

No information has been presented in the claim to establish that the claimants’ desired division and residential development of tax lot 2400 comply with the Goal 4 standards in effect when the claimants’ family acquired it in 1976.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4, ORS 215.705 to 215.755 and 215.780 and OAR 660-006-0026 and 660-006-0027 were all enacted or adopted after the claimants’ family acquired tax lot 400 in 1946 and tax lot 2400 in 1976. These laws restrict the use of the subject property relative to the uses allowed when the claimants’ family acquired the property. However, the claim does not establish whether or to what extent the claimants’ desired use of tax lot 2400 complies with the standards for land divisions and development under Goal 4 in effect when the claimants’ family acquired tax lot 2400 on December 14, 1976.

As explained in Section V.(1) of this report, claimants Louis Zeman Jr. and Julia Zeman are not “owners” 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 their use of private real property with the effect of reducing the fair market value of the property.

⁴ 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)*.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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 \$3,006,285 as the reduction in the subject’s property’s fair market value due to current regulations. This amount is based on the claimants’ assessment of market values for similar properties in Hood River County.

Conclusions

As explained in Section V.(1) of this report, the claimants are Louis Zeman Jr., Julia Zeman and Michael Zeman whose family members acquired tax lot 400 in 1946 and tax lot 2400 in 1976. As explained in Section V.(1) of this report claimants Louis Zeman Jr. and Julia Zeman are not “owners” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict their use of the subject property with the effect of reducing the fair market value of the property. Under ORS 197.352, Michael Zeman is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants’ family acquired the subject property restrict the desired division and development 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 \$3,006,285.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount the claimants demand for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not 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 claimants’ 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 Goal 4, ORS 215 and OAR 660, division 6, which Hood River County has implemented through its current F-1 zone. With the exception of provisions of Goal 4 adopted before the claimants’ family acquired tax lot 2400 on December 14, 1976, these state land use regulations were not in effect when the claimants’ family acquired the property.

Conclusions

It appears that, with the exception of provisions of Goal 4 in effect when the claimants' family acquired tax lot 2400 in 1976, none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimants' family acquired the subject property. Provisions of Goal 4 in effect when the claimants' family acquired tax lot 2400 in 1976 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, claimants Louis Zeman Jr. and Julia Zeman are not "owners" 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 as to them.

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 record, the department finds that Louis Zeman Jr. and Julia Zeman are not entitled to compensation under ORS 197.352 because they are not owners of the subject property. The department further finds laws enforced by the Commission or the department restrict Michael Zeman's desired use of the subject property. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by \$3,006,285. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) of this report 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 Michael Zeman's desired use of the subject property was allowed under the standards in effect when his 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 Michael Zeman to use the subject property for a use permitted at the time he acquired the property on November 5, 2004.

When Michael Zeman acquired the property on November 5, 2004, the property was subject to applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, currently in effect, as described above in Section V.(2) of this report.

In addition to the current laws in effect when Michael Zeman acquired the subject property, there may be other laws that apply to Michael Zeman's 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 use 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. Michael Zeman 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.

Conclusions

Based on the record before the department, claimants Louis Zeman Jr. and Julia Zeman have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because they are not owners of the subject property. Therefore, the department recommends that this claim be denied as to them. The department further recommends that the claim be approved as to Michael Zeman, 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 Michael Zeman's division of the 42.44-acre subject property into 14 parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, enacted or adopted after November 5, 2004. These land use regulations will not apply to Michael Zeman 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 the property on November 5, 2004. The department acknowledges that the relief to which Michael Zeman is entitled under ORS 197.352 will not allow him 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 Michael Zeman to use the property for the use described in this report, subject to the standards in effect on November 5, 2004. On that date, the property was subject to the applicable provisions of Goal 4, ORS 215 and OAR 600, division 6, 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 Michael Zeman 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 Michael Zeman 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 Michael Zeman to use the subject property, it may be necessary for him 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 Michael Zeman 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 him.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on December 12, 2006. 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.