

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

IN THE MATTER OF THE CLAIM FOR	)	FINAL ORDER
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M129869
(BALLOT MEASURE 37) OF	)	
Lois Gray, CLAIMANT	)	

Claimant: Lois Gray (the Claimant)

Property: Township 40S, Range 9E, Section 7: tax lot 1400  
Township 40S, Range 9E, Section 8: tax lots 600 and 900  
Township 40S, Range 9E, Section 9: tax lot 1100  
Township 40S, Range 9E, Section 16: tax lot 300  
Township 40S, Range 9E, Section 17: tax lot 100  
Klamath 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 Lois Gray's division of tax lots 900 and 1100 into 80 one-acre parcels and to her division of tax lots 100, 300, 600 and 1400 into 85 five-acre parcels or her development of a dwelling on each parcel: applicable provisions of Goals 4 and 14, ORS 215 and OAR 660, division 6, enacted or adopted after the claimant acquired the subject property. These land use regulations will not apply to the claimant only to the extent necessary to allow her to use tax lots 900 and 1100 for the use described in this report, and only to the extent that use was permitted when she acquired these tax lots on March 4, 1965; and only to the extent necessary to allow her to use tax lots 100, 300, 600 and 1400 for the use described in this report, and only to the extent that use was permitted when she acquired these tax lots on September 22, 1980. The department

acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow her to use tax lots 100, 300, 600 and 1400 in the manner set forth in the claim.

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 when she acquired tax lots 900 and 1100 on March 4, 1965, and when she acquired tax lots 100, 300, 600 and 1400 on September 22, 1980. In 1980, tax lots 100, 300, 600 and 1400 were subject to the provisions of Goals 4 and 14 then in effect.

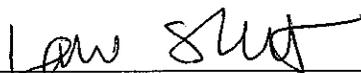
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant 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).

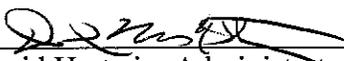
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 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 7<sup>th</sup> day of February, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 7<sup>th</sup> day of February, 2007.

## **NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF**

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

### **FOR INFORMATION ONLY**

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

**ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
Final Staff Report and Recommendation**

February 7, 2007

**STATE CLAIM NUMBER:** M129869

**NAME OF CLAIMANT:** Lois Gray

**MAILING ADDRESS:** 4200 Summers Lane  
Klamath Falls, Oregon 97603

**PROPERTY IDENTIFICATION:** Township 40S, Range 9E  
Section 7: tax lot 1400  
Section 8: tax lots 600 and 900  
Section 9: tax lot 1100  
Section 16: tax lot 300  
Section 17: tax lot 100  
Klamath County

**OTHER CONTACT INFORMATION:** Michael L. Spencer  
419 Main Street  
Klamath Falls, Oregon 97601

**DATE RECEIVED BY DAS:** August 16, 2006

**180-DAY DEADLINE:** February 12, 2007

**I. SUMMARY OF CLAIM**

The claimant, Lois Gray, seeks compensation in the amount of \$2 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 tax lots 900 and 1100, which total 80 acres<sup>1</sup> into 80 one-acre parcels and to develop a dwelling on each parcel,<sup>2</sup> and the right to divide tax lots 100, 300, 600 and 1400, which total 426.98 acres<sup>3</sup> into 85 five-

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<sup>1</sup> Tax lots 900 and 1100 consist of 40 acres each.

<sup>2</sup> The claimant also indicates she desires rezoning of tax lots 900 and 1100 to R1 so that she can sell the new parcels without their being subject to current land use regulations. ORS 197.352 does not authorize this request. By its terms, ORS 197.352 does not remove zoning, rezone or eliminate land use regulations. Rather, it provides that "the governing body responsible for enacting the land use regulation may modify, remove, or not to apply [*sic*] the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property."

<sup>3</sup> Tax lot 100 consists of 130.6 acres; tax lot 300 consists of 90 acres; tax lot 600 consists of 201.98 acres; and tax lot 1400 consists of 4.4 acres.

acre parcels and to develop a dwelling on each parcel.<sup>4</sup> The subject property is located at the coordinates listed above, near Klamath Falls, in Klamath 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. 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 Lois Gray's division of tax lots 900 and 1100, into 80 one-acre parcels, and to her division of tax lots 100, 300, 600 and 1400 into 85 five-acre parcels, and to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 4 (Forest Lands) and 14 (Urbanization), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after the claimant acquired the subject property. These laws will not apply to the claimant only to the extent necessary to allow her to use tax lots 900 and 1100 for the use described in this report, and only to the extent that use was permitted when she acquired these tax lots in 1965; and only to the extent necessary to allow her to use tax lots 100, 300, 600 and 1400 for the use described in this report, and only to the extent that use was permitted when she acquired these tax lots in 1980. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow her to use tax lots 100, 300, 600 and 1400 in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

## III. COMMENTS ON THE CLAIM

### Comments Received

On October 30, 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, two written comments were received in response to the 10-day notice.

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

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<sup>4</sup> The claim also indicates that the claimant desires to sell or transfer all of the newly created parcels for development. In effect, the claimant request 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."

## 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 August 16, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3 (Agricultural Lands), 4, 12 (Transportation) and 14, ORS 215.263(5)(b) and OAR 660, division 4, 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, Lois Gray, acquired tax lots 900 and 1100 of the subject property on March 4, 1965, and tax lots 100, 300, 600 and 1400 on September 22, 1980, as reflected by deeds included with the claim. The Klamath County Assessor's Office confirms the claimant's current ownership of the subject property.

## **Conclusions**

The claimant, Lois Gray, is an "owner" of the subject property, as that term is defined by ORS 197.352(11)(C), as of March 4, 1965, for tax lots 900 and 1100 and as of September 22, 1980, for tax lots 100, 300, 600 and 1400.

## **2. The Laws That are the Basis for This Claim**

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

## **Findings of Fact**

The claim indicates that the claimant desires to divide tax lots 900 and 1100, into 80 one-acre parcels and to divide the tax lots 100, 300, 600 and 1400, into 85 five-acre parcels and to develop a dwelling on each parcel, and that specified state land use regulations prevent the desired use.<sup>5</sup>

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimant's property is zoned Forestry Range (FR) by Klamath County, as 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.

Goal 14 would likely apply to the division of the property into parcels of less than two acres. Goal 14 generally requires that land outside of urban growth boundaries be used for rural uses. Goal 14 became effective on January 25, 1975.

The claimant acquired tax lots 900 and 1100 on March 4, 1965, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

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<sup>5</sup> The claimant summarily cites 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. In particular, the claimant generally lists Goals 3 and 12, ORS 215,263(5)(b) and OAR 660, division 4, but does not establish how those regulations apply to and restrict the desired use of the property. On their face, these regulations either do not apply to the claimant's desired use of the property, as the claimant has described it, 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 identified by the claimant 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 that desired use.

The claimant acquired tax lots 100, 300, 600 and 1400 after the adoption of the statewide planning goals but before the Commission acknowledged the Klamath County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. At the time the claimant acquired tax lots 100, 300, 600 and 1400 in 1980, they were zoned Agriculture Forest (AF), which allowed for a 20-acre minimum lot size. However, because the Commission had not acknowledged the county's plan and land use regulations when the claimant acquired tax lots 100, 300, 600 and 1400 on September 22, 1980, the statewide planning goals, and Goal 4 in particular, applied directly to those tax lots when claimant acquired them.<sup>6</sup>

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.<sup>7</sup>

No information has been presented in the claim to establish that the claimant's desired division of tax lots 100, 300, 600 and 1400 into 85 five-acre parcels and her development of a dwelling on each parcel comply with the Goal 4 standards in effect when the claimant acquired the 426.98-acre portion of the subject property in 1980. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow her to use tax lots 100, 300, 600 and 1400 in the manner set forth in the claim.

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<sup>6</sup> 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).

<sup>7</sup> 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)*.

## **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established pursuant to Goals 4 and 14, 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 claimant acquired the subject property and do not allow the claimant's desired division or development of the property. However, the claim does not establish whether or to what extent the claimant's desired use of the subject property complies with the standards for land divisions and development under Goal 4 in effect when the claimant acquired tax lots 100, 300, 600 and 1400 on September 22, 1980.

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 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 \$2 million as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's assessment of the property's value.

## **Conclusions**

As explained in Section V.(1) of this report, the claimant is Lois Gray who acquired tax lots 900 and 1100 on March 4, 1965, and tax lots 100, 300, 600 and 1400 on September 22, 1980. 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 \$2 million.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimant's desired use of the property was permitted at the time she acquired it, 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 14, ORS 215 and OAR 660, division 6, which Klamath County has implemented through its current FR zone. With the exception of provisions of Goals 4 and 14 in effect when the claimant acquired tax lots 100, 300, 600 and 1400, 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 with the exception of provisions of Goals 4 and 14 in effect when the claimant acquired tax lots 100, 300, 600 and 1400, 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 the subject property. These laws are not exempt under ORS 197.352(3)(E) to the extent they were enacted or adopted after the claimant acquired the subject property. Provisions of Goals 4 and 14 in effect when the claimant acquired tax lots 100, 300, 600 and 1400 of the subject property in 1980 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired the subject property are also exempt under ORS 197.352(3)(E) and will also continue to apply to the claimant's use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0029, 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 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 the subject property.

## **VI. FORM OF RELIEF**

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

### **Findings of Fact**

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$2 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 she 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 Lois Gray to use tax lots 900 and 1100 for a use permitted at the time she acquired these tax lots on March 4, 1965; and to use tax lots 100, 300, 600 and 1400 for a use permitted at the time she acquired these tax lots on September 22, 1980.

### **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 Lois Gray's division of tax lots 900 and 1100 into 80 one-acre parcels and to her division of tax lots 100, 300, 600 and 1400 into 85 five-acre parcels or her development of a dwelling on each parcel: applicable provisions of Goals 4 and 14, ORS 215 and OAR 660, division 6, enacted or adopted after the claimant acquired the subject property. These land use regulations will not apply to the claimant only to the extent necessary to allow her to use tax lots 900 and 1100 for the use described in this report, and only to the extent that use was permitted when she acquired these tax lots on March 4, 1965; and only to the extent necessary to allow her to use tax

lots 100, 300, 600 and 1400 for the use described in this report, and only to the extent that use was permitted when she acquired these tax lots on September 22, 1980. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow her to use tax lots 100, 300, 600 and 1400 in the manner set forth in the claim.

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 when she acquired tax lots 900 and 1100 on March 4, 1965, and when she acquired tax lots 100, 300, 600 and 1400 on September 22, 1980. In 1980, tax lots 100, 300, 600 and 1400 were subject to the provisions of Goals 4 and 14 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 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 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 the subject property by the claimant.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on January 18, 2007. OAR 125-145 0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.