

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. M129888
(BALLOT MEASURE 37) OF)	
Estate of Gertrude Sheirbon, CLAIMANT)	

Claimant: Estate of Gertrude Sheirbon (the Claimant)

Property: Township 2N, Range 10E, Section 27, Tax lots 4600, 4700, 4800 and 6100
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 denied as to tax lots 4700 and 6100 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved for tax lots 4600 and 4800 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 the claimant's division of tax lots 4600 and 4800 into approximately 7,000 to 10,000 square foot parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after May 3, 1995. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use tax lots 4600 and 4800 for the use described in this report, and only to the extent that use was permitted when he acquired them on May 3, 1995. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow the claimant to use tax lots 4600 and 4800 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 tax lots 4600 and 4800 for the use described in this report, subject to the standards in effect on May 3, 1995. At that time, tax lots 4600 and 4800 were subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

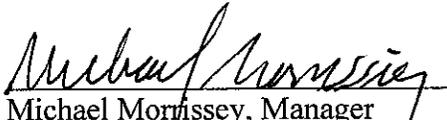
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 4600 and 4800 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant 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 tax lots 4600 and 4800 imposed by private parties.

4. Any use of tax lots 4600 and 4800 by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

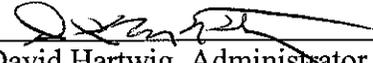
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use tax lots 4600 and 4800, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of tax lots 4600 and 4800 by the claimant.

This Order is entered by the Manager for the Measure 37 Services Division of the DLCDC as a final order of DLCDC and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 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 DLCDC AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:
Lane Shetterly, Director


Michael Morrissey, Manager
DLCDC, Measure 37 Services Division
Dated this 9th day of February, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 9th 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 9, 2007

STATE CLAIM NUMBER: M129888
Report B¹

NAME OF CLAIMANT: Estate of Gertrude Sheirbon

MAILING ADDRESS: Joseph C. Sheirbon, personal representative
4200 Summit Drive
Hood River, Oregon 97031

PROPERTY IDENTIFICATION: Township 2N, Range 10E, Section 27
Tax lots 4600, 4700, 4800 and 6100
Hood River County

OTHER CONTACT INFORMATION: Steven B. Andersen
Cascade Planning Associates
PO Box 135
Mosier, Oregon 97040

DATE RECEIVED BY DAS: August 18, 2006

180-DAY DEADLINE: February 14, 2007

I. SUMMARY OF CLAIM

The claimant, Joseph Sheirbon, as the personal representative of the Estate of Gertrude Sheirbon, seeks compensation in the amount of \$14,902,377.23 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 50.01-acre subject property into 275 approximately 7,000 to 10,000 square foot parcels and to develop a dwelling on each parcel.² The subject property is located on the east side of Lippman Road approximately 1,100 feet south of the intersection with Summit Drive, near Hood River, in Hood River County. (See claim.)

¹ Joseph Sheirbon and the Estate of Gertrude Sheirbon, with Joseph Sheirbon as representative, submitted a claim for relief under ORS 197.352. This report addresses the Estate of Gertrude Sheirbon's claim for relief. The claim for Joseph Sheirbon is addressed in companion staff report A.

² The subject property includes four tax lots. Tax lot 4600 consists of 3.29 acres; tax lot 4700 consists of 36.76 acres; tax lot 4800 consists of 0.17 acre; and tax lot 6100 consists of 9.79 acres.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply the claimant's division of tax lots 4600 and 4800 into approximately 7,000 to 10,000 square foot parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after May 3, 1995. These laws will not apply to the claimant only to the extent necessary to allow him to use tax lots 4600 and 4800 for the use described in this report, and only to the extent that use was permitted when the claimant acquired them on May 3, 1995. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use tax lots 4600 and 4800 in the manner set forth in the claim.

The department has further determined that this claim is not valid as to tax lots 4700 and 6100 because the claimant has not established his ownership of these tax lots. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On November 22, 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 August 18, 2006, for processing under OAR 125, division 145. The claim identifies Hood River County's Exclusive Farm Use (EFU) zoning

ordinance and amendments, including Farm Zone A-2, Interim Farm-Use Protection and High Value Farmland designation (HVF); ORS 197 and 215; and OAR 660, division 33, 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, Joseph Sheirbon, as the personal representative of the Estate of Gertrude Sheirbon, acquired tax lots 4600 and 4800 on May 3, 1995, as reflected by a death certificate of Gertrude Sheirbon included with the claim. The claimant’s family member, Gertrude Sheirbon, acquired tax lot 4600 on August 31, 1979, and acquired tax lot 4800 on November 1, 1988, as evidenced by warranty deeds included with the claim.

The Hood River County Assessor’s Office confirms the claimant’s current ownership of tax lots 4600 and 4800. Joseph Sheirbon, as the personal representative of the Estate of Gertrude Sheirbon, has not established his ownership of tax lots 4700 and 6100.

Conclusions

The claimant, Joseph Sheirbon, as the personal representative of the Estate of Gertrude Sheirbon, is an “owner” of tax lots 4600 and 4800 as that term is defined by ORS 197.352(11)(C), as of May 3, 1995. Gertrude Sheirbon is a “family member” as that term is defined by ORS 197.352(11)(A) and acquired tax lot 4600 on August 31, 1979, and tax lot 4800 on November 1, 1988. Joseph Sheirbon, as the personal representative of the Estate of Gertrude Sheirbon, is not an “owner” of tax lots 4700 and 6100 as that term is defined in ORS 197.352(11)(C).

2. The Laws That are the Basis for This Claim

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

Findings of Fact

The claim indicates that the claimant desires to divide the 50.01-acre subject property into 275 approximately 7,000 to 10,000 square foot parcels and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.³

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimant's property is zoned EFU-High Value Farmland (HVF) by Hood River County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's property is "agricultural land" as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for the development of dwellings on existing or any proposed parcel on that land.

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

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimant's family acquired tax lot 4600 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. At that time, tax lot 4600 was zoned by Hood River County as Agriculture (A-2), which established a 20-acre minimum lot size and permitted dwellings in conjunction with farm use. Because the Commission had not acknowledged the county's plan and land use regulations when the claimant's family acquired tax lot 4600 on August 31, 1979, the statewide planning goals, and

³ 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. On their face, most of the regulations either do not apply to the claimant's desired use of the property or do not restrict the claimant's desired use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimant's desired use of the subject property, based on the claimant's description of his desired use.

⁴ The claimant's property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

Goal 3 in particular, applied directly to the claimant's property when the claimant's family acquired it.⁵

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the opportunity to divide tax lot 4600 when the claimant's family acquired it in 1979 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect in 1979, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

No information has been presented in the claim to establish that the claimant's desired division of tax lot 4600 into approximately 7,000 to 10,000 square foot parcels complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1973 edition), nor is there any information to establish that the claimant's desired development of dwellings on tax lot 4600 satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition).

At the time the claimant's family acquired tax lot 4800, it was subject to Hood River County's acknowledged EFU zone.⁶ When the claimant's family acquired tax lot 4800, the claimant's desired use of the property would have been governed by the county's acknowledged EFU zone and the applicable provisions of ORS 215 then in effect.⁷ In 1988, ORS 215.263 (1987 edition)

⁵ 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 comprehensive plan and implementing 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 applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁶ When Hood River County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on January 11, 1985, the subject property was zoned by Hood River County as EFU, which established a 20-acre minimum lot size and permitted dwellings in conjunction with farm use.

⁷ After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual 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

required that divisions of land in EFU zones be “appropriate for the continuation of the existing commercial agricultural enterprise within the area” or not smaller than the minimum size in the county’s acknowledged plan. ORS 215.283(1)(f) (1987 edition) generally allowed farm dwellings “customarily provided in conjunction with farm use.” Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish whether or to what extent the claimant’s desired division and development of tax lot 4800 were allowed under the standards in effect when the claimant’s family acquired the property on November 1, 1988.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow the claimant’s desired division or development of tax lots 4600 and 4800. However, the claim does not establish whether or the extent to which the claimant’s desired use of tax lot 4600 complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when the claimant’s family acquired tax lot 4600 on August 31, 1979, nor does it establish whether or to what extent the claimant’s desired use of tax lot 4800 complies with the standards of Goal 3 and OAR 660, as implemented through Hood River County’s comprehensive plan and EFU zone and applicable provisions of ORS 215, in effect when the claimant’s family acquired tax lot 4800 on November 1, 1988.

As explained in Section V.(1), Joseph Sheirbon, as the personal representative of the Estate of Gertrude Sheirbon, is not an “owner” of tax lots 4700 and 6100 as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict the claimant’s use of private real property in a manner that reduces the fair market value of the property as to these tax lots.

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 \$14,902,377.23 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 land use consultant’s comparison of properties in Hood River County.

interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

Conclusions

As explained in Section V.(1) of this report, the claimant is Joseph Sheirbon, as the personal representative of the Estate of Gertrude Sheirbon, whose family member acquired tax lot 4600 on August 31, 1979, and tax lot 4800 on November 1, 1988. As explained in Section V.(1) of this report, the claimant is not an "owner" of tax lots 4700 and 6100 as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict the claimant's use of tax lots 4700 and 6100 in a manner that reduces their fair market value. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of tax lots 4600 and 4800 and have the effect of reducing their fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant's family acquired tax lots 4600 and 4800 restrict the claimant's desired use of the tax lots. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$14,902,377.23.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimant's desired use of tax lots 4600 and 4800 would have been permitted under the standards in effect when the claimant's family acquired them, 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 tax lots 4600 and 4800 has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimant's family acquired them.

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 tax lots 4600 and 4800, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Hood River County has implemented through its current EFU-HVF zone. With the exception of provisions of Goal 3 and ORS 215 in effect when the claimant's family acquired tax lots 4600 on August 31, 1979, and tax lot 4800 on November 1, 1988, these land use regulations were enacted or adopted after the claimant's family acquired the property.

Conclusions

Without a specific development proposal for tax lots 4600 and 4800, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that with the exception of provisions of Goal 3 and ORS 215 in effect in 1979 and Goal 3, ORS 215 and OAR 660 in effect in 1988, the statutory, goal and rule restrictions on division and development of tax lots 4600 and 4800 were not in effect when the claimant's family acquired them, and therefore, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3 and ORS 215 in effect when the claimant's family acquired tax lot 4600 in 1979 and

provisions of Goal 3, ORS 215 and OAR 660 in effect when the claimant's family acquired tax lot 4800 in 1988 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, Joseph Sheirbon, as the personal representative of the Estate of Gertrude Sheirbon, is not an "owner" of tax lots 4700 and 6100 as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to these tax lots.

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 the claim is not valid as to tax lots 4700 and 6100 because the claimant is not an owner of these tax lots. The department further finds laws enforced by the Commission or the department restrict the claimant's desired use of tax lots 4600 and 4800. 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 \$14,902,377.23. 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 tax lots 4600 and 4800 was allowed under the standards in effect when the claimant's family acquired them. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of tax lots 4600 and 4800 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 Joseph Sheirbon, as the personal representative of the Estate of Gertrude Sheirbon, to use tax lots 4600 and 4800 for a use permitted at the time he acquired them on May 3, 1995.

At the time the claimant acquired tax lots 4600 and 4800, they were zoned EFU by Hood River County and subject to the current lot size and dwelling standards under Goal 3, ORS 215 and OAR 660, division 33, and as described in Section V.(2) of this report.

In addition to the provisions of Goal 3, ORS 215 and OAR 660, division 33, there may be other laws that apply and will continue to apply to the claimant's use of the subject property. This report addresses only those state laws that are identified in the claim, or that the department is certain apply to tax lots 4600 and 4800 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 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 tax lots 4600 and 4800.

Conclusions

Based on the record before the department, Joseph Sheirbon, as the personal representative of the Estate of Gertrude Sheirbon, has not established that he is entitled to relief under ORS 197.352(1) for tax lots 4700 and 6100 as a result of land use regulations enforced by the Commission or the department because, as the personal representative of the estate, he is not an owner of those tax lots. Therefore, the department recommends that this claim be denied as to tax lots 4700 and 6100. The department otherwise recommends that the claim be approved for tax lots 4600 and 4800, 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 the claimant's division of tax lots 4600 and 4800 into approximately 7,000 to 10,000 square foot parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after May 3, 1995. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use tax lots 4600 and 4800 for the use described in this report, and only to the extent that use was permitted when he acquired them on May 3, 1995. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow the claimant to use tax lots 4600 and 4800 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 tax lots 4600 and 4800 for the use described in this report, subject to the standards in effect on May 3, 1995. At that time, tax lots 4600 and 4800 were subject to applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lots 4600 and 4800 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 tax lots 4600 and 4800 imposed by private parties.
4. Any use of tax lots 4600 and 4800 by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not

subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use tax lots 4600 and 4800, 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 the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of tax lots 4600 and 4800 by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on January 19, 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.