Oregon
Theodore R. Kulongoski, Governor

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April 10, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130321

Claimants: Kathryn Douglas and Beverly Birr

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

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Kathryn Douglas, CLAIMANT	))))	FINAL ORDER A CLAIM NO. M130321

Claimant: Kathryn Douglas (the Claimant)

Property: Township 7S, Range 5W, Section 19, Tax lot 1300, Polk 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 Kathryn Douglas' division of the seven-acre subject property into one-acre parcels or to her development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after January 18, 1989. These laws will not apply to Kathryn Douglas only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property January 18, 1989. The department acknowledges that the relief to which Kathryn Douglas is entitled under ORS 197.352 may not allow her 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 Kathryn Douglas to use the subject property for the use described in this report, subject to the standards in effect on January 18, 1989. At that time, the property was subject to applicable provisions of Goals 3 and 4, and OAR 660, divisions 5, and 6, as implemented through Polk County's acknowledged FF zone, and the applicable provisions ORS 215 then in effect.

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

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 10th day of April, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 10th day of April, 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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Beverly Birr, CLAIMANT	))))	FINAL ORDER B CLAIM NO. M130321

Claimant: Beverly Birr (the Claimant)

Property: Township 7S, Range 5W, Section 19, Tax lot 1300, Polk 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 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 Administrator 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
DLCD
Dated this 10th day of April, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 10th day of April, 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

April 10, 2007

STATE CLAIM NUMBER:	M130321
NAMES OF CLAIMANTS:	Kathryn Douglas Beverly Birr
MAILING ADDRESSES:	Kathryn Douglas 550 James Howe Road Dallas, Oregon 97338 Beverly Birr 565 James Howe Road Dallas, Oregon 97338
PROPERTY IDENTIFICATION:	Township 7S, Range 5W, Section 19 Tax lot 1300 Polk County
OTHER CONTACT INFORMATION:	Michael J. Martinis 110 Madrona Avenue SE Salem, Oregon 97302
DATE RECEIVED BY DAS:	October 17, 2006
180-DAY DEADLINE:	April 15, 2007

I. SUMMARY OF CLAIM

The claimants, Kathryn Douglas and Beverly Birr, seek compensation in the amount of $378,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the seven-acre subject property into one-acre parcels and to develop a dwelling on each parcel. The subject property is located on James Howe Road, near Dallas, in Polk 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 Kathryn Douglas' division of the seven-acre subject property into one-acre parcels

and to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after January 18, 1989. These laws will not apply to Kathryn Douglas only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property January 18, 1989. The department acknowledges that the relief to which Kathryn Douglas is entitled under ORS 197.352 may not allow her to use the subject property in the manner set forth in the claim.

The department has further determined that the claim is not valid as to Beverly Birr because she is not an owner with a present right to use the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 2, 2007, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 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 October 17, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215.780(c) and OAR 660, division 6, and 660-033-0100 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, Kathryn Douglas, first acquired an interest in the subject property from her family member on June 24, 1974, as reflected by a deed creating estate in entirety, included with the claim. However, the deed by which she acquired the property was subject to a life estate in favor of John, Clara, Fred and Ed Guy, which reserved in them the exclusive right to use the property during their lifetimes. Kathryn Douglas' interest did not provide her with any present right to use the subject property during the lives of John, Clara, Fred and Ed Guy. Kathryn Douglas acquired her present interest and right to use the property on January 18, 1989, as evidenced by a death certificate for Ed Guy, included with the claim.[1] Kathryn Douglas' family members first acquired an interest in the subject property on or before February 10, 1960, as evidenced by a deed included with the claim.[2] The Polk County Assessor's Office confirms Kathryn Douglas' current ownership of the subject property, as the holder of a life estate.

Kathryn Douglas conveyed an interest in the subject property to her daughter, claimant Beverly Birr, on February 8, 1989, subject to a life estate in favor of Bud and Kathryn Douglas. That life estate reserved in Bud and Kathryn Douglas the exclusive right to use the property during their lifetimes. Beverly Birr's future interest in the subject property does not provide her with any present right to use the property during the term of Bud and Kathryn Douglas' lives.[3]

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[1] According to the evidence in the file, Clara Guy died in June 1974; Fred Guy died on May 31, 1975; John Guy died in March 1986; and Ed Guy died on January 18, 1989.

[2] The claim does not establish when John, Clara, Fred and Ed Guy acquired the subject property. Absent documentation from the claimants to establish an earlier family acquisition date, the department must rely on the available documentation to establish a family member's date of acquisition. Accordingly, the department evaluated the claim for compensation based on the February 10, 1960, acquisition date.

[3] The department acknowledges receipt of the claimants' agent's correspondence dated March 30, 2007, relative to the department's finding as to the claimants' date of acquisition of the subject property. The department has considered the comment and finds that the record before the department supports the department's initial determination of the claimants' date of acquisition.

Conclusions

Claimant Kathryn Douglas is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of January 18, 1989. Claimant Beverly Birr is not an "owner" of the subject property, as that term is defined by ORS 197.352(11)(C), because her future interest in the property does not provide her with a present right to use the property. John, Clara, Fred and Ed Guy are "family members" of Kathryn Douglas, as defined by ORS 197.352(11)(A) and acquired the subject property on or before February 10, 1960.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the 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 seven-acre subject property into one-acre parcels and to develop a dwelling on each parcel, and that the desired use is not allowed under current state land use regulations.

The claim is based generally on the applicable provisions of state law that require mixed farm-forest zoning and restrict uses on land zoned mixed farm-forest. The subject property is zoned by Polk County as FF (Farm/Forest), which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.[4] Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under Exclusive Farm Use (EFU) zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. ORS 215.780(2)(a) authorizes counties to adopt minimum lot or parcel sizes less than 80 acres, subject to acknowledgement by the Commission. Under ORS 215.780(2)(a), the minimum lot size in Polk County's FF zone is 40 acres. The subject property cannot be divided into parcels smaller than 40 acres.

The Douglas family first acquired the subject property in 1960, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1960.

[4] No information was provided to the department regarding the predominant use of the property on January 1, 1993.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted after the Douglas family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when the Douglas family acquired the property.

As explained in Section V.(1) of this report, Beverly Birr is not a present owner of the subject property, as that term is defined in ORS 197.352(11)(C), because her future interest in the property provides her no present right to use the subject property, a use which can be restricted by land use regulations. Therefore, no laws enforced by the Commission or the department restrict Beverly Birr's use of private real property with the effect of reducing the fair market value of the property.

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 $378,000 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on the claimants' assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Kathryn Douglas and Beverly Birr. The Douglas family acquired the subject property in 1960. As explained in Section V.(1) of this report, Beverly Birr is not a present "owner" of the subject property as that term is defined in ORS 197.352(11)(C) because her future interest does not provide her a present right use the subject property. Therefore, no laws restrict her use of the subject property with the effect of reducing the fair market value of the subject property.. Under ORS 197.352, Kathryn Douglas is due compensation for land use regulations that restrict the use of the 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 Douglas family acquired the subject property restrict Kathryn Douglas' desired use 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 $378,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the Douglas 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 Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Polk County has implemented through its current FF zone. All of these land use regulations were enacted or adopted after the Douglas family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the Douglas family acquired the property on or before June 10, 1960. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the Douglas family acquired the subject property 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, Beverly Birr is not a present "owner" 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.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department do not restrict Beverly Birr's use of the subject property because she is not an owner with a present right to use the property. The department further finds laws enforced by the Commission or the department restrict Kathryn Douglas' 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 $378,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of 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 Kathryn Douglas' desired use of the subject property was allowed under the standards in effect when the Douglas 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 Kathryn Douglas to use the subject property for a use permitted at the time she acquired the property on January 18, 1989.

At the time Kathryn Douglas acquired an interest in the subject property, it was zoned FF (Farm/Forest) and was subject to Polk County's acknowledged FF zone.[5] When the Kathryn Douglas acquired the subject property, her desired use of the property would have been governed by Goals 3 and 4, and OAR 660, divisions 5, and 6, as implemented through the county's acknowledged FF zone and the applicable provisions of ORS 215 then in effect.[6]

The claim does not establish whether or to what extent Kathryn Douglas' desired division and development of the subject property were allowed under the standards in effect when she acquired the property on January 18, 1989.

In addition to the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 5, and 6, in effect on January 18, 1989, and other laws in effect when Kathryn Douglas acquired the subject property, there may be other laws that apply to her 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 Kathryn Douglas seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use, and depending on when they were enacted or adopted, may continue to apply to the subject property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the subject property on that basis.

ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0029, include standards for siting dwellings in forest zones. The provisions include fire protection standards for dwellings

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[5] Polk County's FF zone was acknowledged by the Commission for compliance with Goal 3 and 4 on April 22, 1988.

[6] 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 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).
In 1989, ORS 215.263 (1987 edition) 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.

and for surrounding forest zones. ORS 197.352 (3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." To the extent they are applicable to the subject property, the siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

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 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. The claimants should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to Kathryn Douglas' use of the subject property.

Conclusions

Based on the record and the foregoing findings and conclusions, Beverly Birr is not entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because she is not an owner with a present right to use the subject property, a use which can be restricted by land use regulations. Therefore, the department recommends that the claim be denied as to Beverly Birr.

The department further recommends that the claim be approved as to Kathryn Douglas, 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 Kathryn Douglas' division of the seven-acre subject property into one-acre parcels or to her development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after January 18, 1989. These laws will not apply to Kathryn Douglas only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property January 18, 1989. The department acknowledges that the relief to which Kathryn Douglas is entitled under ORS 197.352 may not allow her 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 Kathryn Douglas to use the subject property for the use described in this report, subject to the standards in effect on January 18, 1989. At that time, the property was subject to applicable provisions of Goals 3 and 4, and OAR 660, divisions 5, and 6, as implemented through Polk County's acknowledged FF zone, and the applicable provisions ORS 215 then in effect.

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

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 20, 2007. 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.