Oregon
Theodore R. Kulongoski, Governor

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April 23, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130499

Claimant: Norman L. Barnett

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 Orders.

This Final Staff Report and Recommendation and the Final Orders 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 Norman L. Barnett, CLAIMANT	))))	FINAL ORDER A CLAIM NO. M130499

Claimant: Norman L. Barnett (the Claimant)

Property: Township 4S, Range 5W, Section 27, Tax lot 100, Yamhill 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 Norman Barnett's division of the 205-acre tax lot 100 into either one 39-acre parcel and eight 20-acre parcels or ten 20-acre parcels, and to his development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after October 15, 1988. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use tax lot 100 for the use described in this report, and only to the extent that use was permitted when he acquired the property on October 15, 1988.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 100 for the use described in this report, subject to the standards in effect on October 15, 1988. On that date, tax lot 100 was subject to compliance with Goals 3 and 4, and OAR 660, divisions 5, and 6, as implemented through Yamhill County's acknowledged AF-20 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 tax lot 100 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of that tax lot 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 lot 100 imposed by private parties.

4. Any use of tax lot 100 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 lot 100, 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 lot 100 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 23rd day of April, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 23rd 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 Norman L. Barnett, CLAIMANT	))))	FINAL ORDER B CLAIM NO. M130499

Claimant: Norman L. Barnett (the Claimant)

Property: Township 4S, Range 5W, Section 26, Tax lot 1900
Township 4S, Range 5W, Section 27, Tax lot101
Yamhill 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 24th day of April, 2007.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 24th 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 23, 2007

STATE CLAIM NUMBER:	M130499
NAME OF CLAIMANT:	Norman L. Barnett
MAILING ADDRESS:	1412 SE 95th Avenue Vancouver, Washington 98664
PROPERTY IDENTIFICATION:	Township 4S, Range 5W, Section 26 Tax lot 1900 Township 4S, Range 5W, Section 27 Tax lots 100 and 101 Yamhill County
OTHER CONTACT INFORMATION:	Wallace W. Lien Wallace W. Lien, P.C. 1775 32nd Place NE, Suite A Salem, Oregon 97301-8774
DATE RECEIVED BY DAS:	October 30, 2006
180-DAY DEADLINE:	April 28, 2007

I. SUMMARY OF CLAIM

The claimant, Norman Barnett, seeks compensation in the amount of $4.35 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 619-acre subject property into one 39-acre parcel and twenty-nine 20-acre parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 15460 SW Rock of Ages Road, near McMinnville, in Yamhill 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 Norman Barnett's division of the 205-acre tax lot 100 into either one 39-acre parcel and eight 20-acre parcels or ten 20-acre parcels, and to his development of a dwelling on each resulting undeveloped 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 October 15, 1988. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use tax lot 100 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 100 on October 15, 1988.

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that this claim is not valid as to tax lots 1900 and 101 because the claimant is not an owner of those tax lots. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 20, 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, one written comment was received in response to the 10-day notice.

The comment does 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 letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

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

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

Findings of Fact

This claim was submitted to DAS on October 30, 2006, for processing under OAR 125, division 145. The claim identifies the statewide planning goals and guidelines, ORS 197 and 215 and OAR 660 as the bases 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, Norman Barnett, states in the claim that he acquired the subject property on October 15, 1988, as trustee of the Norman Barnett trust, a revocable trust. However, on April 7, 2004, the claimant conveyed tax lots 1900 and 101 to Barnett Timber, LLC, an Oregon limited liability corporation, as reflected by documentation included in the claim.[1]

The Yamhill County Assessor's Office confirms Barnett Timber, LLC's current ownership of tax lots 1900 and 101 and Norman Barnett's current ownership of tax lot 100.

Conclusions

The claimant, Norman Barnett, is an "owner" of tax lot 100 as that term is defined in ORS 197.352(11)(C). As of the date of this claim, he was not an "owner" of tax lots 1900 and 101 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.

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[1] The claimant asserts that his conveyance of tax lots 1900 and 101 to the LLC was not intended to convey his ownership of the property, but was done for business and estate planning purposes only. However, regardless of the purpose of the conveyance, the claimant's transfer of property to a corporation resulted in a change in ownership for the purpose of ORS 197.352. The claimant has subsequently had that transfer voided through a "general judgment" on February 15, 2007. The claimant's affidavit and court documents state that he desired to retroactively negate the earlier conveyance to the corporation for the purpose of re-establishing his 1988 acquisition date in order to take advantage of the benefits available to him under ORS 197.352 had he not conveyed the property to the corporation. That "voiding" of the conveyance was effected after the claimant filed this claim. To the extent the claimant has now voided his earlier conveyance, that transaction creates a new acquisition date. However, at the time the claimant filed this claim, he was not an owner of tax lots 1900 and 101.

The claim indicates that the claimant desires to divide the 619-acre subject property into one 39-acre parcel and twenty-nine 20-acre parcels, and to develop a dwelling on each resulting undeveloped parcel, and that current land use regulations prevent the desired use.[2]
The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) and forest zoning. The subject property is zoned by Yamhill County as AF-80, which is a mixed agricultural and forest land zone, as provided for by Goal 4 and the implementing provisions of OAR 660, division 6 (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.[3] Depending on the predominant use on January 1, 1993, the property is subject to either the requirements for dwellings applicable under 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 minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Yamhill County's AF-80 zone is 80 acres. ORS 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993).

The claimant acquired tax lot 100 on October 15, 1988. At that time, the claimant's property was subject to Yamhill County's acknowledged AF-20 zone.[4] When the claimant acquired the subject property, the claimant's 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 AF-20 zone and the applicable provisions of ORS 215 then in effect.[5]

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[2] 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 these regulations either do not apply to the claimant's 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 that desired use.

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

[4] Yamhill County's AF-20 zone was acknowledged by the Commission for compliance with Goal 3 and 4 on June 12, 1980.

[5] 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 continued 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 1988, 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

The claim does not establish whether or to what extent the claimant's desired division and development of the subject property was allowed under the standards in effect when he acquired tax lot 100 on October 15, 1988.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established pursuant to Goal 4 for lands zoned for mixed farm-forest use and the statutory and rule restrictions under applicable provisions of ORS 215 and OAR 660, divisions 6, and 33, were enacted or adopted after the claimant acquired tax lot 100 in 1988, and do not allow the claimant's desired division and 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 division and development under Goals 3 and 4 and OAR 660, divisions 5, and 6, as implemented through Yamhill County's acknowledged comprehensive plan and zoning regulations and the applicable provisions of ORS 215 in effect when the claimant acquired the property on October 15, 1988.

As explained in Section V.(1), the claimant, Norman Barnett, is not an "owner" of tax lots 1900 and 101 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 tax lots 1900 and 101 with the effect of reducing the fair market value of the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. There may be other laws that currently apply to the claimant's use of tax lot 100, and that may continue to apply to the claimant's use of tax lot 100, 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 on tax lot 100, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an estimate of $4.35 million as the reduction in the subject property's fair market value due to the regulations that restrict claimant's desired use of the property. This amount is based on a market analysis submitted with the claim.

Conclusions

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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.

As explained in Section V.(1) of this report, the claimant is Norman Barnett, who acquired the subject property on October 15, 1988. However, as explained in Section V.(1) of this report, the claimant, Norman Barnett, is not an "owner" of tax lots 1900 and 101 as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict his use of these tax lots with the effect of reducing the fair market value of the subject property.

Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of tax lot 100 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 tax lot 100 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 entire 619- acre subject property is a reduction of $4.35 million.

Without an appraisal or other documentation regarding tax lot 100 and without verification of whether or the extent to which the claimant's desired use of tax lot 100 was allowed under the standards in effect when he acquired that tax lot, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of tax lot 100 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 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Yamhill County has implemented through its current AF-80 zone. With the exception of amendments enacted or adopted after October 15, 1988, these state land use regulations were in effect before the claimant acquired tax lot 100.

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 the general statutory, goal and rule restrictions on division and development of tax lot 100 are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after the claimant acquired tax lot 100 on October 15, 1988. Provisions of Goals 3 and 4, ORS 215 and OAR 660 in effect when the claimant acquired tax lot 100 on October 15, 1988, are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired tax lot 100 are also exempt under ORS 197.352(3)(E) and will 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. These provisions include fire protection standards for dwellings and for surrounding forest lands. 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 claimant's 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).
There may be other laws that continue to apply to the claimant's use of tax lot 100 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 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 he has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to his use of the subject property.

As explained in Section V.(1) of this report, the claimant, Norman Barnett, is not an "owner" of tax lots 1900 and 101 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 those 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 findings and conclusions set forth in this report, no laws enforced by the Commission or the department restrict the claimant's desired use of tax lots 1900 and 101 because the claimant is not an owner of those tax lots for purposes of ORS 197.352.

Laws enforced by the Commission or the department restrict the claimant's desired use of tax lot 101. 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 entire 619 acres of the subject property by $4.35 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 tax lot 100, a specific amount of compensation cannot be determined. In order to determine a specific amount of the 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 lot 101 was allowed under the standards in effect when he acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of tax lot 100 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 Norman Barnett to use tax lot 100 for a use permitted at the time he acquired tax lot 100 on October 15, 1988.

Conclusions

Based on the record before the department, the claimant, Norman Barnett, has not established that he is entitled to relief under ORS 197.352(1) as to tax lots 1900 and 101 as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied as to tax lots 1900 and 101.

The department recommends that the claim be approved as to tax lot 100, 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 Norman Barnett's division of the 205-acre tax lot 100 into either one 39-acre parcel and eight 20-acre parcels or ten 20-acre parcels, and to his development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after October 15, 1988. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use tax lot 100 for the use described in this report, and only to the extent that use was permitted when he acquired the property on October 15, 1988.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lot 100 for the use described in this report, subject to the standards in effect on October 15, 1988. On that date, tax lot 100 was subject to compliance with Goals 3 and 4, and OAR 660, divisions 5, and 6, as implemented through Yamhill County's acknowledged AF-20 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 tax lot 100 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of that tax lot 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 lot 100 imposed by private parties.

4. Any use of tax lot 100 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 lot 100, 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 lot 100 by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on April 2, 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.