



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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July 17, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130796

Claimants: Joan D. Williams and Laura A. Williams

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)	FINAL ORDER A
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M130796
(BALLOT MEASURE 37) OF)	
Laura A. Williams, CLAIMANT)	

Claimant: Laura A. Williams (the Claimant)

Property: Township 37S, Range 2W, Section 27D, Tax lot 1100, Jackson 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 Laura Williams' division of the 3.34-acre subject property into six approximately 0.56-acre parcels and to her development of a dwelling and accessory structures on each resulting: applicable provisions of Goals 3 and 11, ORS 215 and OAR 660, divisions 11, and 33, enacted or adopted after May 18, 2006. Goal 11 will not apply only to the extent that it prohibits Laura Williams from establishing an urban level of public facilities and services to serve the development of the property. Goal 11 will continue to apply to public service providers seeking to extend or establish public facilities to serve the subject property. These laws will not apply to Laura Williams 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 on May 18, 2006. The department acknowledges that the relief to which Laura Williams is entitled under ORS 197.352 will 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 Laura Williams to use the subject property for the use described in this report, subject to the standards in effect on May

18, 2006. At that time, the property was subject to applicable provisions of Goals 3 and 11, ORS 215 and OAR 660, divisions 11, and 33, currently in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Laura Williams 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. The department notes that there may not be legal access to tax lot 1100. Nothing in this report authorizes such access.

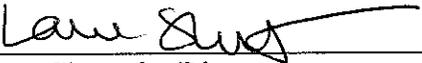
4. Any use of the subject property by Laura Williams under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 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 Laura Williams 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 Laura Williams 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.

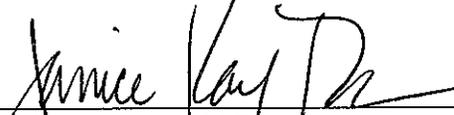
6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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 17th day of July, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 17th day of July, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

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

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

FOR INFORMATION ONLY

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

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

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER B
COMPENSATION UNDER ORS 197.352) CLAIM NO. M130796
(BALLOT MEASURE 37) OF)
Joan D. Williams, CLAIMANT)

Claimant: Joan D. Williams (the Claimant)

Property: Township 37S, Range 2W, Section 27D, Tax lot 1100, Jackson 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 17th day of July, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 17th day of July, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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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

July 16, 2007

STATE CLAIM NUMBER: M130796

NAMES OF CLAIMANTS: Joan D. Williams
Laura A. Williams

MAILING ADDRESSES: Joan D. Williams
3634 Madrona Lane
Medford, Oregon 97501

Laura A. Williams
PO Box 6548
Kamuela, Hawaii 96743

PROPERTY IDENTIFICATION: Township 37S, Range 2W, Section 27D
Tax lot 1100
Jackson County

OTHER CONTACT INFORMATION: Erik J. Glatte, Attorney
Kellington, Krack, Richmond,
Blackhurst and Glatte, LLP
PO Box 1583
Medford, Oregon 97501

DATE RECEIVED BY DAS: November 16, 2006

DEADLINE FOR FINAL ACTION:¹ May 9, 2008

I. SUMMARY OF CLAIM

The claimants, Joan and Laura Williams, seek compensation in the amount of \$669,570 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 3.34-acre subject property into six approximately 0.56-acre parcels and to develop a dwelling

¹ ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

and accessory structures on each resulting parcel.² The subject property is located north of Madrona Lane, near Medford, in Jackson 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 Laura Williams' division of the 3.34-acre subject property into six approximately 0.56-acre parcels and to her development of a dwelling and accessory structures on each resulting parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 11 (Public Facilities and Services), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 11 and 33, enacted or adopted after May 18, 2006. These laws will not apply to the claimant 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 on May 18, 2006. The department acknowledges that the relief to which Laura Williams is entitled under ORS 197.352 will not allow her to use the subject property in the manner set forth in the claim.

The department has further determined that this claim is not valid as to Joan Williams because she was deceased prior to the date the claim was filed and therefore, is not an owner of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On May 23, 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, two written comments were received in response to the 10-day notice.

² The claim also indicates that the claimants desire to sell or transfer the newly created parcels for development. In effect, the claimants request that a decision of the department to "not apply" (waive) certain laws as set forth in this report be transferable with the property. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. A determination of transferability is beyond the scope of relief that the department may grant under ORS 197.352. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost."

The claimants also request that the department remove the subject property's exclusive farm use zoning and reinstate the property's unregulated status as of the date claimant Joan Williams acquired the subject property in 1965. In addition, the claimants request that the property's prior unregulated status be made the property's new legal zoning applicable to third party purchasers. However, ORS 197.352 does not allow what the claimants request. By its terms, ORS 197.352 does not remove zoning or eliminate land use regulations. Rather, it provides that "the governing body responsible for enacting the land use regulation may modify, remove, or not to apply [*sic*] the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property."

One of the comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the 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.

One comment is relevant to whether the claimants are owners; when the claimants became the owners of the subject property; and whether the laws that are the basis for the claim are exempt under ORS 197.352(3). This comment has been considered by the department in preparing this report. (See the comment letters in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

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

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on November 16, 2006, for processing under OAR 125, division 145. The claim identifies the following as the basis for the claim: all the statewide planning goals, including Goal 11; provisions of ORS 197 and 215; provisions of OAR 660, including regulations pertaining to agricultural lands and urban fringe regulations; provisions of Jackson County Comprehensive Plan and Land Development Ordinance, including resource and rural residential zoning; and provisions of state transportation planning rules, county transportation system plans and "any private access road requirements." Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

Claimant Joan Williams acquired the subject property on November 22, 1963, as reflected by a warranty deed included with the claim. On October 28, 1996, Joan Williams transferred the subject property to a revocable trust, the Joan D. Williams Trust, as evidenced by a warranty deed included with the claim.³ Joan Williams died on May 18, 2006, as reflected by a death certificate included in the claim. Claimant Laura Williams acquired the subject property from her mother, Joan Williams, as successor trustee of the Joan D. Williams Trust upon Joan Williams’ death, as reflected by a certification of trust included with the claim. The Jackson County Assessor’s Office confirms Laura Williams’ current ownership of the subject property.

Conclusions

Claimant Laura Williams is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of May 18, 2006. Joan Williams is a “family member” as defined by ORS 197.352(11)(A) and acquired the subject property on November 22, 1963. Joan Williams is not an “owner” of the property, 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 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 3.34-acre subject property into six approximately 0.56-acre parcels and to develop a dwelling and accessory structures on each resulting parcel. It indicates that current land use regulations prohibit the desired use.⁴

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 subject property is zoned

³ Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

⁴ The claimants summarily list numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants’ desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the subject property or do not restrict the use of the property with the effect of reducing its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants’ desired use of the subject property, based on the claimants’ description of their desired use.

EFU by Jackson County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is “agricultural land” as defined by Goal 3.⁵ 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, 1994.⁶

Goal 11, which also became effective on January 25, 1975, generally prohibits urban levels of public facilities and services on lands that are outside an Urban Growth Boundary (UGB). Goal 11 and its implementing rules have two components: one that prohibits an owner from utilizing urban-level facilities or services to serve the property, and another that prohibits service providers from extending their facilities to serve property outside a UGB. The former can restrict a claimant’s use of property. The latter is a restriction on service providers. Goal 11 and OAR 660, division 11, apply to a claimant’s use of the property only to the extent that they would restrict a claimant’s development of urban-level public or community sewer or water facilities on the subject property.

The Williams family first acquired the subject property in 1963, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1963.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3 and 11, ORS 215 and OAR 660, divisions 11, and 33, were all enacted or adopted after the Williams family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when the Williams family acquired the property.

⁵ The subject property is “agricultural land” because it contains National Resources Conservation Service Class I-IV soils.

⁶ 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. These amendments clarified but did not further restrict dwelling standards under OAR 660, division 33, for EFU-zoned land.

Those elements of Goal 11 that prohibit a public service provider from extending or establishing public facilities or services outside of a UGB restrict the actions of local government rather than a claimant's use of the property. That component of Goal 11 is not subject to ORS 197.352 and will continue to apply to those service providers. Only the general prohibition under Goal 11 on the establishment of an urban level of public facilities and services is subject to ORS 197.352 and restricts the claimants' desired use of the subject property.

As explained in Section V.(1), Joan Williams is not an owner of the subject property under ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict her 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 \$669,570 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 value of the subject property.

Conclusions

As explained in Section V.(1) of this report, the claimants are Joan Williams who acquired the subject property in 1963 and her daughter, Laura Williams. As explained in Section V.(1) of this report, Joan Williams was deceased prior to the date this claim was filed and therefore, is not an owner of the subject property under ORS 197.352(11)(C). 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, Laura William 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 Williams family acquired the subject property restrict Laura Williams' 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 \$669,570.

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 Williams 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 11, ORS 215 and OAR 660, divisions 11, and 33, which Jackson County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the Williams 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 Williams family acquired the property on November 22, 1963. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the Williams 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, Joan Williams is not an owner under ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to her.

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 claimant Joan Williams' desired use of the property because she is not a current owner of the property. Laws enforced by the Commission or the department do restrict Laura Williams' 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 \$669,570. 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 claimants' desired use of the subject property was allowed under the standards in effect when the Williams 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 Laura Williams to use the subject property for a use permitted at the time she acquired the property on May 18, 2006.

At the time Laura Williams acquired the subject property, it was zoned EFU by Jackson County and subject to the current lot size and dwelling standards under Goals 3 and 11, ORS 215 and OAR 660, divisions 11, and 33, and as described in Section V.(2) of this report.

In addition to the provisions of Goals 3 and 11, ORS 215 and OAR 660, divisions 11, and 33, in effect when Laura Williams acquired the property, there may be other laws that continue to apply to her use of the property that have not been identified in the claim. In addition, Jackson County notes that a portion of the parcel is located in a flood plain zone. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety. . . ." To the extent the county's flood plain regulations are based on state law, these regulations would be 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. Laura Williams should be aware that the less information she has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the subject property.

Conclusions

Based on the record, claimant Joan Williams is not entitled to relief under ORS 197.352 because she was deceased prior to the date the claim was filed and therefore, is not an owner of the property. Therefore, the department recommends that Joan Williams' claim be denied. The department otherwise recommends that Laura Williams' claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Laura Williams' division of the 3.34-acre subject property into six approximately 0.56-acre parcels and to her development of a dwelling and accessory structures on each resulting: applicable provisions of Goals 3 and 11, ORS 215 and OAR 660, divisions 11, and 33, enacted or adopted after May 18, 2006. Goal 11 will not apply only to the extent that it prohibits Laura Williams from establishing an urban level of public facilities and services to serve the development of the property. Goal 11 will continue to apply to public service providers seeking to extend or establish public facilities to serve the subject property. These laws will not apply to Laura Williams 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 on May 18, 2006. The department acknowledges that the relief to which Laura Williams is entitled under ORS 197.352 will 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 Laura Williams to use the subject property for the use described in this report, subject to the standards in effect on May 18, 2006. At that time, the property was subject to applicable provisions of Goals 3 and 11, ORS 215 and OAR 660, divisions 11, and 33, currently in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Laura Williams 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. The department notes that there may not be legal access to tax lot 1100. Nothing in this report authorizes such access.

4. Any use of the subject property by Laura Williams 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 Laura Williams 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 Laura Williams 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.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 18, 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.