



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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August 27, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131048

Claimant: Mary Ann Mast and Mast Farms Inc.

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. M131048
(BALLOT MEASURE 37) OF)	
Mast Farms Inc., CLAIMANT)	

Claimant: Mast Farms Inc. (the Claimant)

Property: Township 28S, Range 11W, Section 7: tax lot 301
Township 28S, Range 12W, Section 1: tax lots 200 and 300
Township 28S, Range 12W, Section 2: tax lots 100 and 300
Township 28S, Range 12W, Section 12: tax lots 100, 200 and 300
Coos 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 Mast Farms Inc.'s division of the 613.91-acre subject property into 15 approximately 40-acre parcels or to its 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 March 22, 1988. These land use regulations will not apply to Mast Farms Inc. only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on March 22, 1988.
2. The action by the State of Oregon provides the state's authorization to Mast Farms Inc. to use the property for the use described in this report, subject to the standards in effect on March 22, 1988. On that date, the property was subject to compliance with Goals 3 and 4, and OAR 660, divisions 5, and 6, as implemented by Coos County's acknowledged EFU and Forest zones, 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 Mast Farms Inc. 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.

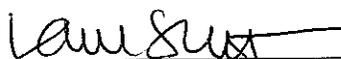
4. Any use of the property by Mast Farms Inc. under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 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 Mast Farms Inc. to use the subject property, it may be necessary for it 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 Mast Farms Inc. 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 its use of the subject property.

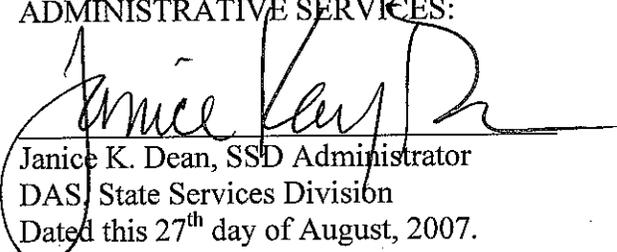
6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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 27th day of August, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 27th day of August, 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. M131048
(BALLOT MEASURE 37) OF)
Mary Ann Mast, CLAIMANT)

Claimant: Mary Ann Mast (the Claimant)

Property: Township 28S, Range 11W, Section 7: tax lot 301
Township 28S, Range 12W, Section 1: tax lots 200 and 300
Township 28S, Range 12W, Section 2: tax lots 100 and 300
Township 28S, Range 12W, Section 12: tax lots 100, 200 and 300
Coos County (the Property)

Claim: The demand for compensation and any supporting information received
from the Claimant by the State of Oregon (the Claim).

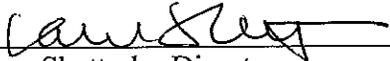
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, 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

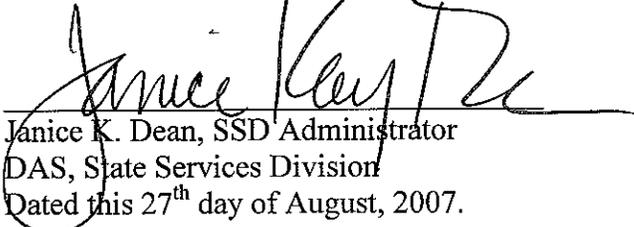
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 27th day of August, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Janice K. Dean, SSD Administrator
DAS, State Services Division
Dated this 27th day of August, 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

August 27, 2007

STATE CLAIM NUMBER: M131048

NAMES OF CLAIMANTS: Mary Ann Mast
Mast Farms Inc.

MAILING ADDRESS: 97230 McKinley Lane
Myrtle Point, Oregon 97458

PROPERTY IDENTIFICATION: Township 28S, Range 11W
Section 7: tax lot 301
Township 28S, Range 12W
Section 1: tax lots 200 and 300
Section 2: tax lots 100 and 300
Section 12: tax lots 100, 200 and 300
Coos County

DATE RECEIVED BY DAS: November 21, 2006

DEADLINE FOR FINAL ACTION:¹ May 14, 2008

I. SUMMARY OF CLAIM

The claimants, Mary Ann Mast and Mast Farms Inc., seek compensation in the amount of \$2.5 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 claimants desire compensation or the right to divide the 613.91-acre subject property into 15 approximately 40-acre parcels and to develop a dwelling on each parcel.² The subject property is located in Coos County. (See claim.)

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.

² The subject property includes eight tax lots. Tax lot 301 consists of 72.53 acres; tax lot 200(section 1) consists of 96.66 acres; tax lot 300(section 1) consists of 202.61 acres; tax lot 100(section 2) consists of 51.94 acres; tax lot 300(section 2) consists of 1.33 acres; tax lot 100(section 12) consists of 78.2 acres; tax lot 200(section 12) consists of 83.19 acres; and tax lot 300(section 12) consists of 27.45 acres.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Mast Farm Inc.'s division of the 613.91-acre subject property into 15 approximately 40-acre parcels and its 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 March 22, 1988. These laws will not apply to Mast Farms Inc. only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on March 22, 1988.

The department has further determined that the claim is not valid as to Mary Ann Mast because she 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 June 12, 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 15-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 November 21, 2006, for processing under OAR 125, division 145. The claim identifies Goal 14 (Urbanization), ORS 197 and 215 and OAR 660-004-0040 and 660, division 6, 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

Claimant Mary Ann Mast acquired portions of the subject property on several dates between 1962 and 1980, as reflected by documents included with the claim. However, on March 22, 1988, she conveyed the subject property to claimant Mast Farms Inc., as reflected by a correction deed included with the claim.³ The Coos County Assessor’s Office confirms Mast Farms Inc.’s current ownership of the subject property. Mary Ann Mast no longer owns the subject property.

Conclusions

Claimant Mast Farms Inc. is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of March 22, 1988. Claimant Mary Ann Mast is not an “owner” of the subject property as that term is defined by ORS 197.352(11)(C).⁴

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 613.91-acre subject property into 15 approximately 40-acre parcels and to develop a dwelling on each parcel, and that current land use regulations prevent the desired use.

³ Mast Farms Inc. is a domestic business corporation registered with the Oregon Secretary of State.

⁴ Under ORS 197.352(11)(A), legal entities can be “family members” of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, an individual who transferred property to Mast Farms, Inc. is not considered a family member under the definition of family member in ORS 197.352(11)(A).

The zoning of the property is based generally on the applicable provisions of state law that require EFU zoning and forest zoning and restrict uses on EFU- and forest-zoned lands.

Tax lot 300 (section 1), tax lots 100 and 300 (section 2), tax lot 300 (section 12), a portion of tax lot 200 (section 1), a portion of tax lot 301 and portions of tax lots 100 and 200 (section 12) are zoned EFU by Coos County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because those portions of the subject property are "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 development of dwellings on existing or proposed parcels 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

A portion of tax lot 200 (section 1), a portion of tax lot 301 and portions of tax lots 100 and 200 (section 12) are zoned Forest (F) by Coos County as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because those portions of the subject property are "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use.

Current land use regulations, including ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, generally prohibit the division of forest-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 generally establishes an 80-acre minimum size for the creation of new lots or parcels on forest-zoned land and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.705 to 215.755 establish standards for the creation of new parcels and dwellings allowed in forest zones.

⁵ Tax lot 300 (section 1), tax lots 100 and 300 (section 2), tax lot 300 (section 12), a portion of tax lot 200 (section 1), a portion of tax lot 301 and portions of tax lots 100 and 200 (section 12) are "agricultural land" because they contain Natural Resources Conservation Service Class I-IV soils.

⁶ The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 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.

OAR 660, division 6, became effective on September 1, 1982, to implement Goal 4 and establish standards for divisions and development of land zoned for forest use, and was amended on March 1, 1994, to implement ORS 215.705 to 215.755 and 215.780. OAR 660-006-0025 interprets the goal and statutory standard for uses allowed in forest zones. OAR 660-006-0026 interprets land division requirements in forest zones, and 660-006-0027 and 660-006-0029 interpret the standards for dwellings in forest zones.

At the time Mast Farms Inc. acquired the subject property on March 22, 1988, tax lot 300 (section 1), tax lots 100 and 300 (section 2), tax lot 300 (section 12), a portion of tax lot 301, a portion of tax lot 200 (section 1) and portions of tax lots 100 and 200 (section 12) were subject to Coos County's acknowledged comprehensive plan and EFU zone and a portion of tax lot 200 (section 1), a portion of tax lot 301 and portions of tax lots 100 and 200 (section 12) were subject to Coos County's acknowledged comprehensive plan and Forest zone.⁷

At that time, Coos County's EFU zone generally required that the size of a proposed lot or parcel be appropriate for existing commercial agricultural enterprise within the county, with factors such as soil, type of crop and other considerations evaluated. Dwellings were allowed on parcels that met requirements for a minimum lot size. At that time, Mast Farms Inc.'s desired use of the EFU-zoned portion of property would have been subject to compliance with Goal 3, and OAR 660, division 5, as implemented through the county's acknowledged EFU zone, and the applicable provisions of ORS 215 then in effect.⁸ 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 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.

Coos County's Forest zone required new parcels to be of a size adequate for the specific use proposed and to be compatible with other parcels being managed for the same purpose and in the general area. At that time, Mast Farms Inc.'s desired use of the forest-zoned portion of the property would have been subject to compliance with Goal 4, and OAR 660, division 6, as implemented through the county's acknowledged comprehensive plan and Forest zone.

The claim does not establish whether or to what extent Mast Farms Inc.'s desired division and development of the subject property were allowed under the standards in effect when it acquired the property on March 22, 1988.

⁷ Coos County's EFU and Forest zones were acknowledged by the Commission for compliance with Goals 3 and 4 on August 29, 1985.

⁸ 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).

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted after Mast Farms Inc. acquired the subject property in 1988 and do not allow its desired division or development of the property. However, the claim does not establish whether or to what extent Mast Farms Inc.'s desired use of the subject property complies with the standards for land divisions and development under Goals 3 and 4, and OAR 660, divisions 5, and 6, as implemented through Coos County's comprehensive plan and EFU and Forest zones, and applicable provisions of ORS 215, in effect when it acquired the property on March 22, 1988.

As explained in Section V.(1) of this report Mary Ann Mast is not an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict her use of the subject property with the effect of reducing its fair market value.

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. There may be other laws that currently apply to Mast Farms Inc.'s use of the subject property, and that may continue to apply to Mast Farms Inc.'s use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When Mast Farms Inc. seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use 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 \$2.5 million 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 Mast Farms Inc., which acquired the subject property on March 22, 1988, and Mary Ann Mast. As explained in Section V.(1) of this report, Mary Ann Mast is not an owner of the subject property. Therefore, no laws restrict Mary Ann Mast's use of the subject property with the effect of reducing the fair market value of the property. Under ORS 197.352, Mast Farms Inc. is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Mast Farms Inc. acquired the subject property restrict its 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 \$2.5 million.

Without an appraisal or other documentation and without verification of whether or the extent to which Mast Farms Inc.'s desired use of the subject property was allowed under the standards in effect when it acquired the property, 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 the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Coos County has implemented through its current EFU and Forest zones. With the exception of amendments enacted or adopted after March 22, 1988, Goals 3 and 4, ORS 215 and OAR 660 were in effect when Mast Farms Inc. acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that the general statutory, goal and rule restrictions on division and development of the subject property are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after Mast Farms Inc. acquired the property on March 22, 1988. Provisions of Goals 3 and 4, ORS 215 and OAR 660 in effect when Mast Farms Inc. acquired the subject property in 1988 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when Mast Farms Inc. acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to its use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, particularly OAR 660-006-0027, -0029 and -0035, include fire protection standards for dwellings and structures in 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. . . ." Accordingly, the siting standards for dwellings and structures 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 Mast Farms Inc.'s use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When Mast Farms Inc. 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).

As explained in Section V.(1) of this report, Mary Ann Mast is not an "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 to Mary Ann Mast.

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 the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to Mast Farms Inc.'s use of the subject property.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the findings and conclusions set forth in this report, the department finds that laws enforced by the Commission or the department do not restrict Mary Ann Mast's desired use of the subject property because she is not an owner of the subject property. The department further finds that laws enforced by the Commission or the department restrict Mast Farms Inc.'s desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$2.5 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of the compensation due for this claim, it would also be necessary to verify whether or the extent to which Mast Farms Inc.'s desired use of the subject property was allowed under the standards in effect when it 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 Mast Farms Inc. to use the subject property for a use permitted at the time it acquired the property on March 22, 1988.

Conclusions

Based on the record before the department, Mary Ann Mast has not established that she is 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 of the subject property. Therefore, the department recommends that this claim be denied as to Mary Ann Mast.

The department otherwise recommends that the claim be approved as to Mast Farms Inc., 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 Mast Farms Inc.'s division of the 613.91-acre subject property into 15 approximately 40-acre parcels or to its 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 March 22, 1988. These land use regulations will not apply to Mast Farms Inc. only to the extent necessary to allow it to use the subject property for the use described in this report, and only to the extent that use was permitted when it acquired the property on March 22, 1988.
2. The action by the State of Oregon provides the state's authorization to Mast Farms Inc. to use the property for the use described in this report, subject to the standards in effect on March 22, 1988. On that date, the property was subject to compliance with Goals 3 and 4, and OAR 660, divisions 5, and 6, as implemented by Coos County's acknowledged EFU and Forest zones, 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 Mast Farms Inc. 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 property by Mast Farms Inc. 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 Mast Farms Inc. to use the subject property, it may be necessary for it 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 Mast Farms Inc. 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 its 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 July 26, 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.