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 Joseph C. Sheirbon, CLAIMANT	))))	FINAL ORDER A CLAIM NO. M129888

Claimant: Joseph C. Sheirbon (the Claimant)

Property: Township 2N, Range 10E, Section 27, Tax lots 4600, 4700, 4800 and 6100 Hood River County (the Property)

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

Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to tax lots 4600 and 4800 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved for tax lots 4700 and 6100 as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, 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 Joseph Sheirbon's partition of tax lots 4700 and 6100 into approximately 7,000 to 10,000 square foot parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after May 20, 1980. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use tax lots 4700 and 6100 for the use described in this report, and only to the extent that use was permitted when he acquired the property on May 20, 1980. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow the claimant to use tax lots 4700 and 6100 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 4700 and 6100 for the use described in this report, subject to the standards in effect on May 20, 1980. On that date, tax lots 4700 and 6100 subject to applicable provisions of Goal 3 and 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 lots 4700 and 6100 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of tax lots 4700 and 6100 imposed by private parties.

4. Any use of tax lots 4700 and 6100 by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use tax lots 4700 and 6100, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of tax lots 4700 and 6100 by the claimant.

This Order is entered by the Manager for the Measure 37 Services Division 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

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

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 9th day of February, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.

2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

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

FOR INFORMATION ONLY

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

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

February 9, 2007

STATE CLAIM NUMBER:	M129888 Report A[1]
NAME OF CLAIMANT:	Joseph C. Sheirbon
MAILING ADDRESS:	4200 Summit Drive Hood River, Oregon 97031
PROPERTY IDENTIFICATION:	Township 2N, Range 10E, Section 27 Tax lots 4600, 4700, 4800 and 6100 Hood River County
OTHER CONTACT INFORMATION:	Steven B. Andersen Cascade Planning Associates PO Box 135 Mosier, Oregon 97040
DATE RECEIVED BY DAS:	August 18, 2006
180-DAY DEADLINE:	February 14, 2007

I. SUMMARY OF CLAIM

The claimant, Joseph Sheirbon, seeks compensation in the amount of $14,902,377.23 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 50.01-acre subject property into 275 approximately 7,000 to 10,000 square foot parcels and to develop a dwelling on each parcel.[2] The subject property is located on the east side of Lippman Road approximately 1,100 feet south of the intersection with Summit Drive, near Hood River, in Hood River County. (See claim.)

[1] Joseph Sheirbon and the Estate of Gertrude Sheirbon, with Joseph Sheirbon as representative, submitted a claim for relief under ORS 197.352. This report addresses Joseph Sheirbon's claim for relief. The claim for the Estate of Gertrude Sheirbon, with Joseph Sheirbon as personal representative, is addressed in companion staff report B.
[2] The subject property includes four tax lots. Tax lot 4600 consists of 3.29 acres; tax lot 4700 consists of 36.76 acres; tax lot 4800 consists of 0.17 acre; and tax lot 6100 consists of 9.79 acres.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Joseph Sheirbon's partition of tax lots 4700 and 6100 into approximately 7,000 to 10,000 square foot parcels and to his development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after May 20, 1980. These laws will not apply to the claimant only to the extent necessary to allow him to use tax lots 4700 and 6100 for the use described in this report, and only to the extent that use was permitted when he acquired these tax lots on May 20, 1980. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow the claimant to use tax lots 4700 and 6100 in the manner set forth in the claim.

The department has further determined that this claim is not valid as to tax lots 4600 and 4800 because the claimant has not established his ownership of these tax lots. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On November 22, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, no written comments were received in response to the 10-day notice.

IV. TIMELINESS OF CLAIM

Requirement

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

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

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on August 18, 2006, for processing under OAR 125, division 145. The claim identifies Hood River County's Exclusive Farm Use (EFU) zoning

ordinance and amendments, including Farm Zone A-2, Interim Farm-Use Protection and High Value Farmland designation (HVF); ORS 197 and 215; and OAR 660, division 33, as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimant, Joseph Sheirbon, and his late wife, Gertrude Sheirbon, first acquired tax lot 4700 on December 1, 1942, and tax lot 6100 on April 15, 1955, as reflected by warranty deeds included with the claim. However, on May 16, 1980, they transferred tax lots 4700 and 6100 to Mary P. Stiller, as evidenced by a deed included with the claim. Mary P. Stiller transferred tax lots 4700 and 6100 back to the claimant on May 20, 1980, as evidenced by a deed included with the claim. The Estate of Gertrude Sheirbon, with Joseph Sheirbon as personal representative, acquired tax lots 4600 and 4800 on May 3, 1995, as reflected by a death certificate of Gertrude Sheirbon included with the claim.

The Hood River County Assessor's Office confirms Joseph Sheirbon's current ownership of tax lots 4700 and 6100. Joseph Sheirbon has not established his personal ownership of tax lots 4600 and 4800.

Conclusions

The claimant, Joseph Sheirbon, is an "owner" of tax lots 4700 and 6100 as that term is defined by ORS 197.352(11)(C), as of May 20, 1980.[3] Joseph Sheirbon, personally, is not an "owner" of tax lots 4600 and 4800 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

[3] The department acknowledges receipt of the claimants' agent's correspondence dated January 23, 2007 and a letter dated January 31, 2007, relative to the department's finding as to Joseph Sheirbon's date of acquisition of the subject property. The department has considered the comments and finds that the record before the department supports the department's initial determination of his date of acquisition.

property relative to how the property could have been used at the time the claimant or a family member acquired the property.

Findings of Fact

The claim indicates that the claimant desires to divide the 50.01-acre subject property into 275 approximately 7,000 to 10,000 square foot parcels and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.[4]

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The claimant's property is zoned EFU–High Value Farmland (HVF) by Hood River County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimant's property is "agricultural land" as defined by Goal 3.[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. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimant acquired tax lots 4700 and 6100 after the adoption of the statewide planning goals, but before the Commission acknowledged Hood River County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. At that time, tax lots 4700 and 6100 were zoned by Hood River County as Agriculture (A-2), which established a 20-acre minimum lot size and permitted dwellings in conjunction with farm use. Because the Commission had not acknowledged the county's plan and land use regulations when

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

[5] The claimant's property is "agricultural land" because it contains National Resources Conservation Service Class I–IV soils.

the claimant acquired tax lots 4700 and 6100 on May 20, 1980, the statewide planning goals, and Goal 3 in particular, applied directly to these tax lots when he acquired them.[6]

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the opportunity to divide tax lots 4700 and 6100 when the claimant acquired them in 1980 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect in 1980, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

No information has been presented in the claim to establish that the claimant's desired division of tax lots 4700 and 6100 into approximately 7,000 to 10, 000 square foot parcels complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1973 edition), nor is there any information to establish that the claimant's desired development of dwellings on tax lots 4700 and 6100 satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition). In particular, it is unclear how or the extent to which the claimant's desired division and development of tax lots 4700 and 6100 could satisfy Hood River County's A-2 zone, in effect at the time.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow the claimant's desired division or development of tax lots 4700 and 6100. However, the claim does not establish whether or the extent to which the claimant's desired use of tax lots 4700 and 6100 complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when the claimant acquired the tax lots on May 20, 1980. It is also unclear whether or the extent

[6] The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, *rev. den* 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

to which the claimant's desired development could satisfy the county requirements in effect when he acquired the property.

As explained in Section V.(1), Joseph Sheirbon, personally, is not an "owner" of tax lots 4600 and 4800 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 those tax lots with the effect of reducing their 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 use that the claimant has identified. There may be other laws that currently apply to the claimant's use of tax lots 4700 and 6100, and that may continue to apply to the claimant's use of the tax lots, 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, 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 $14,902,377.23 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's land use consultant's comparison of properties in Hood River County.

Conclusions

As explained in Section V.(1) of this report, the claimant is Joseph Sheirbon who acquired tax lots 4700 and 6100 on May 20, 1980. As explained in Section V.(1) of this report, Joseph Sheirbon, personally, is not an "owner" of tax lots 4600 and 4800 as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict his use of tax lots 4600 and 4800 with the effect of reducing their fair market value. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of tax lots 4700 and 6100 and have the effect of reducing their fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant acquired tax lots 4700 and 6100 restrict the claimant's desired use of these tax lots. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of $14,902,377.23.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimant's desired use of tax lots 4700 and 6100 was allowed under the standards in effect when he acquired them, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market

value of tax lots 4700 and 6100 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 tax lots 4700 and 6100, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Hood River County has implemented through its current EFU-HVF zone. With the exception of provisions of Goal 3 and ORS 215 in effect when the claimant acquired tax lots 4700 and 6100 on May 20, 1980, these land use regulations were enacted or adopted after the claimant acquired the property.

Conclusions

Without a specific development proposal for tax lots 4700 and 6100, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that with the exception of provisions of Goal 3 and ORS 215 in effect in 1980, the statutory, goal and rule restrictions on division and development of tax lots 4700 and 6100 were not in effect when the claimant acquired it, and therefore, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3 and ORS 215 in effect when the claimant acquired tax lots 4700 and 6100 in 1980 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

As explained in Section V.(1) of this report, Joseph Sheirbon, personally, is not an "owner" of tax lots 4600 and 4800 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.

Other laws in effect when the claimant acquired tax lots 4700 and 6100 are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. In addition, Hood River County notes that a portion of tax lot 4700 is located in the Stream Protection Overlay zone and that a portion of tax lot 6100 is located in the floodplain zone and the Stream Protection Overlay 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).

There may be other laws that continue to apply to the claimant's use of tax lots 4700 and 6100 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 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 tax lots 4700 and 6100 based on the use 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 tax lots 4700 and 6100.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the record, the department finds that the claim is not valid as to tax lots 4600 and 4800 because the claimant, personally, is not an owner of these tax lots. The department further finds laws enforced by the Commission or the department restrict the claimant's desired use of tax lots 4700 and 6100. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by $14,902,377.23. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of tax lots 4700 and 6100 was allowed under the standards in effect when he acquired them. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of tax lots 4700 and 6100 to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Joseph Sheirbon to use tax lots 4700 and 6100 for a use permitted at the time he acquired them on May 20, 1980.

Conclusions

Based on the record before the department, the claimant, Joseph Sheirbon, has not established that he is entitled to relief under ORS 197.352(1) for tax lots 4600 and 4800 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 4600 and 4800.

The department further recommends that the 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 Joseph Sheirbon's partition of tax lots 4700 and 6100 into approximately 7,000 to 10,000 square foot parcels or to his development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after May 20, 1980. These land use regulations will not apply to the claimant only to the extent necessary to allow him to use tax lots 4700 and 6100 for the use described in this report, and only to the extent that use was permitted when he acquired the property on May 20, 1980. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 may not allow the claimant to use tax lots 4700 and 6100 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use tax lots 4700 and 6100 for the use described in this report, subject to the standards in effect on May 20, 1980. On that date, tax lots 4700 and 6100 subject to applicable provisions of Goal 3 and 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 lots 4700 and 6100 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of tax lots 4700 and 6100 imposed by private parties.

4. Any use of tax lots 4700 and 6100 by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use tax lots 4700 and 6100, it may be necessary for him to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of tax lots 4700 and 6100 by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on January 19, 2007. OAR 125-145 0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.