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 Mildred Weatherly, CLAIMANT	))))	FINAL ORDER CLAIM NO. M 118593

Claimant: Mildred Weatherly (the Claimant)

Property: Township 3S, Range 2, Section 30, Tax lot 400, Yamhill County (the property)

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

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

ORDER

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

The Claim is denied as to laws administered by the Oregon Department of Transportation or the Oregon Transportation Commission for the reasons set forth in the ODOT 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 Deputy 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 25th day of April, 2006.

FOR THE DEPARTMENT OF TRANSPORTATION:
Matthew L. Garrett, Director

By: Deolinda G. Jones
State Right of Way Manager
Oregon Department of Transportation
Dated this 25th day of April, 2006

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 25th day of April, 2006.

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[1], 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)

[1] By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

April 25, 2006

STATE CLAIM NUMBER:	M118593
NAME OF CLAIMANT:	Mildred Weatherly
PROPERTY IDENTIFICATION:	Township 3S, Range 2, Section 30 Tax lot 400 Yamhill County
OTHER CONTACT INFORMATION	Jill S. Gelineau Pacwest Center, Suites 1600-1900 1211 Southwest Fifth Avenue Portland, Oregon 97204
DATE RECEIVED BY DAS:	June 13, 2005
180-DAY DEADLINE:	April 28, 2006[1]

I. SUMMARY OF CLAIM

The claimant, Mildred Weatherly, seeks compensation for an unspecified amount for the reduction in fair market value of property as a result of certain 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 28-acre property into an unspecified number of two-acre rural residential parcels. The subject property is located at 1829 Northeast Waterfront Street, Newberg, in Yamhill County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is not valid because neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict the claimant's use of private real property in a manner that reduces the fair market value of the property. (See the complete recommendation in Section VI. of this report.)

[1] This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Srvcs.*, 340 Or 117 (2006).

III. COMMENTS ON THE CLAIM

Comments Received

On July 27, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to owners of surrounding properties. According to DAS, two written comments were received in response to the 10-day notice.

These comments are relevant as to whether the restriction of the claimant's use of the subject property reduces the fair market value of the property. The comments have been considered by the department in preparing this report. (See 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 June 13, 2005, for processing under OAR 125, division 145. The claim identifies all statewide planning goals, provisions of ORS 92, 215, 227 and 184 and all of OAR 660, enacted or adopted prior to December 2, 2004, 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, Mildred Weatherly, acquired an interest in the subject property on November 21, 1963, as evidenced by a warranty deed.[2] The claimant asserts that she acquired an interest in the property on July 21, 1961, via an unrecorded earnest money agreement.[3]

A copy of an October 25, 2005, title report was sent to the department by the claimant's representative on October 26, 2005, demonstrating that Mildred Weatherly is the current owner of the subject property.

Conclusions

The claimant, Mildred Weatherly, is an "owner" of the subject property, as that term is defined in ORS 197.352(11)(C), as of November 21, 1963.

2. The Laws That are the Basis for the Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

Findings of Fact

The claimant lists laws (Exhibit B of the claim in the department's claim file) that are alleged to restrict the use and reduce the value of the subject property and that were enacted or adopted after Mildred Weatherly acquired an interest in the property on November 21, 1963, when the property was not zoned. The claim summarily lists the following laws as restrictions to the use of the subject property: statewide planning goals 1 to 3, 5 to 7 and 10 to 14; certain statutes in ORS chapters 92, 215 and 227; and many divisions of administrative rules contained in OAR 660.[4] The claimant summarily lists these statutes and rules but does describe or establish how

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[2] Yamhill County film volume 34, page 52.

[3] The department does not consider the unrecorded earnest money agreement sufficient to demonstrate that the claimant acquired the subject property on the date of the agreement (July 21, 1961). The department concludes Mildred Weatherly acquired an interest in the subject property on November 21, 1963, as evidenced by the warranty deed included with the claim.

[4] The claim summarily cites certain laws administered by the Oregon Department of Transportation (ODOT). These laws are addressed in a separate report by ODOT and are not within the scope of the department's review of this Measure 37 claim.

particular statutes or rules restrict use of the property. None of these statutes, on their face, restrict the use of the subject property in a manner that reduces its fair market value because the property is located within the urban growth boundary (UGB) of the City of Newberg.

The statutes contained in ORS chapter 92 establish procedures for subdivisions and partitions. In addition, to the extent that ORS chapter 92 could be construed to restrict the use of the property, most operative provisions of these statutes were enacted prior to the claimant's acquisition of the property and therefore, are exempt under ORS 197.352(3)(E). With the exception of laws discussed below, in the absence of any explanation by the claimant as to how the cited laws restrict the use of the property, this report does not address those laws or regulations.

The claimant specifically cites Statewide Planning Goal 14 (Urbanization) as a regulation that restricts the use of the claimant's property. Goal 14 became effective on January 25, 1975, and requires local governments to determine the need and location of land necessary for urban development, to include such land inside a UGB and to plan and zone the land for urban uses. Goal 14 also requires that "urbanizable land" within UGBs shall be considered available for urban development, consistent with plans for the provision of urban facilities and services. Under Goal 14, comprehensive plans and implementing measures are required to "manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned."

The claimant's property was included in the City of Newberg's UGB, subsequent to acquisition by the claimant, and is "urbanizable land" intended for urban development when urban facilities are available. The subject property is currently zoned by Yamhill County as Very Low Density Residential–5-acre minimum lot size (VLDR-5). Goal 14 and the Goal 14 implementing rules for rural residential development (OAR 660-004-0040) do not apply to lands within a UGB, including the subject property. The city and county have jointly adopted a comprehensive plan map for urbanizable land inside Newberg's UGB and outside city limits, including the claimant's property. That map designates the claimant's property as Medium Density Residential with a Riverfront Development overlay. That designation authorizes the property to be developed under the city's R-2 zone at 8.8 residential units per acre when the property is annexed and urban services are available. The county's VLDR-5 zone prevents the claimant from partitioning the subject property into two-acre parcels, but does not prevent the claimant from annexing to the city and developing the property with residential units at 8.8 units per acre.

The claim also cites Goal 5 (Natural Resources) and OAR 660, division 23, as regulations that restrict use of the property. Goal 5 became effective on January 25, 1975, and requires local governments to inventory significant natural resources. OAR 660, division 23, was adopted by the Commission in 1995, but does not apply to the city or county until periodic review. The City of Newberg's comprehensive plan identifies a significant stream corridor and associated riparian areas on the claimant's property and prevents development within that corridor. The city's plan also permits the residential development that would have been allowed in this corridor to be transferred to other portions of the property. If the subject property is annexed to the city, Goal 5 will restrict development on a portion of the property, but will not affect the number of residential units that would be allowed on the claimant's property. As such, it is more likely than not that Goal 5 will not reduce the fair market value of the claimant's property. The claimant has

not provided information to demonstrate that the restriction required by Goal 5 would reduce the fair market value of the subject property. The county's current VLDR-5 zone does not identify the stream corridor and does not restrict development within the stream corridor.

The claimant acquired the subject property in 1963, prior to the adoption of the statewide planning goals and their implementing statutes and rules. At that time, it was not zoned by Yamhill County.

Conclusions

When the claimant acquired the subject property in 1963, the property was not zoned by Yamhill County. Subsequently, the property was placed in Newberg's UGB, planned for medium density urban development in response to the requirements of Goal 14, which was adopted subsequent to the claimant's acquisition of the subject property. In response to Goal 14, the city and county land use plans authorized residential development at a much greater residential density than the two-acre partitions requested by the claimant, and planned for public sewer and water systems to support a much greater residential density than would have been allowed on the property at the time it was acquired by the claimant.

Also subsequent to the claimant's acquisition of the property, the county zoned the property for VLDR-5 authorizing five-acre residential lots. The VLDR-5 zone is currently applied by the county as an interim measure until urban services are available, at which time the city and county comprehensive plan would allow and encourage development of this property at a significantly greater density. Thus, state laws enacted or adopted since the claimant acquired the subject property in 1963 do not restrict the claimant's use of the property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant acquired the property.

This report addresses only those state laws identified by the claimant that the department is certain apply to the subject property and would affect the uses that the claimant has identified. Other state laws identified in the claim do not apply to the subject property or do not appear to restrict the use of the property requested by the claimant. There may be other laws that currently apply to the claimant's use of the property, and that may continue to apply to the claimant'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 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 any land use regulation 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 does not indicate an amount of reduction in the property's fair market value due to current regulations and does not provide an appraisal or other documentation to demonstrate the reduction in the fair market value of the property. However, the claim asserts, "it is more likely than not that there has been some reduction in the fair market value of the subject property" as a result of land use regulations enforced by the state.

As explained in Section V.(1) of this report, the subject property was not zoned at the time it was acquired by the claimant in 1963. Subsequent to acquisition by the claimant and in response to Goal 14, the property was included in the City of Newberg's UGB and designated for medium density residential development at a significantly higher residential density than the two-acre parcels requested by the claimant.

Conclusions

In order to establish a valid claim, ORS 197.352(1) requires that any land use regulation 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."

As a result of Goal 14, the property was included in the City of Newberg's UGB and designated for medium density residential development at a significantly higher residential density than the two-acre parcels requested by the claimant. Therefore, it is more likely than not that the fair market value of this property has been increased rather than reduced as a result of Goal 14.

Although the claim alleges an unspecified reduction in value due to other state land use regulations, as explained in Section V.(2), the claimant has not provided any documentation of how the listed laws restrict the claimant's requested use of the property. Accordingly, the department cannot determine that any of the laws enforced by the Commission or the department have had the effect of reducing the fair market value of 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

As explained in Section V.(2) and (3) of this report, the claimant, Mildred Weatherly, has not established that any state laws restrict the use of the subject property in a manner that reduces the fair market value of the property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to this claim.

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 a law that restricts 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 current owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, no laws administered by the department or Commission restrict the use of the property in a manner that reduces its fair market value.

Conclusions

Based on the record before the department, no laws administered by the Commission or the department restrict the use of the subject property in a manner that reduces its fair market value. As such, the claimant has not established that she is entitled to relief under ORS 197.352(1) as a result of land use regulations administered by the Commission or the department. Therefore, the department recommends that the claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on April 4, 2006. 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. Comments received have been taken into account by the department in the issuance of this final report.

BALLOT MEASURE 37 (ORS 197.352)
CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF TRANSPORTATION

Final Staff Report and Recommendation
April 25, 2006

STATE CLAIM NUMBER:	M118593
NAME OF CLAIMANT:	Mildred Weatherly
IDENTIFICATION OF PROPERTY:	Township 3S, Range 2, Section 30 Tax lot 400 Yamhill County
OTHER CONTACT INFO:	Jill Gelineau Schwabe, Williamson & Wyatt, PC 1211 SW 5th Avenue Portland, OR 97204-3795
DATE RECEIVED BY DAS:	June 13, 2005
180-DAY DEADLINE:	April 28, 2006[1]

I. CLAIM

See Department of Land Conservation and Development (DLCD) Staff Report.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Transportation (the department) has determined that the claim is not valid. The department has determined that the claim does not identify a state land use regulation that the department has enforced since December 2, 2004 in a manner that restricts the claimant's right to partition the property into two acre rural residential parcels, or that has the effect of reducing the fair market value of the claimant's property.

[1] This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Srvcs.*, 340 Or 117 (2006).

III. COMMENTS ON THE CLAIM

See Department of Land Conservation and Development (DLCD) Staff Report.

IV. TIMELINESS OF CLAIM

Requirement

See Department of Land Conservation and Development (DLCD) Staff Report.

Findings of Fact

Exhibit B to the claim submitted June 13, 2005, lists a number of statutes and rules administered by the Oregon Department of Transportation. There is no description in the claim concerning how the listed statutes and rules have been enforced since December 2, 2004, or how they restrict the use of the property that the claimant wishes to carry out. The regulations identified in the claim include: particular statutes in Oregon Revised Statute chapter 184; particular Oregon Administrative Rules in chapter 731, division 015; the Oregon Highway Plan Policy 3C; Interchange Area Management Plans for Newberg – Dundee Bypass and various intergovernmental agreements relating to the Newberg-Dundee Transportation Improvement Project. It appears that the claim concerns only laws that were enacted prior to December 2, 2004, the effective date of Measure 37. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulations 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 findings of the Staff Report of the Department of Land Conservation and Development on this claim regarding ownership are incorporated into this report by this reference.

Conclusions

The conclusions of the Staff Report of the Department of Land Conservation and Development on this claim regarding ownership are incorporated into this report by this reference.

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 "state land use regulation" must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim states in relevant part that:

> "Mrs. Weatherly intends to develop the property into two acre residential parcels, using a series of partitions over several years. The Weatherly property will most likely be bisected by the ...proposed Newberg-Dundee Bypass. Current intergovernmental agreements and other land use regulations established by the State of Oregon prevent both the partition of the property and the construction of dwellings on the parcels."

The claim further states that:

> "The State of Oregon did not have intergovernmental agreements or other land use regulations in effect in 1961 that restricted the proposed residential development and sale of this property."

In the claim submitted to DAS, the claimants cite several sections of Oregon Administrative Rules and Oregon Revised Statutes, including the following:

Particular statutes codified in ORS 184
Particular state rules contained in OAR 731-015
Intergovernmental Agreement – Newberg-Dundee Transportation Improvement Project-Yamhill County

Intergovernmental Agreement – Newberg-Dundee Transportation Improvement Project-City of Newberg

Oregon Highway Plan, Policy 3C

Interchange Area Management Plans for Newberg-Dundee Bypass

In order for a claimant to establish an entitlement to relief under ORS 197.352, there must be a showing of at least the following:

- The claimant's use of the property is restricted by a state "land use regulation";
- The state agency has taken some action, after December 2, 2004, to enforce the land use regulation;
- The enforcement of the land use regulation also reduces the fair market value of the property in question; and
- The law is not one that was adopted to protect public health and safety, or that is otherwise exempt under ORS 197.352(3).

Of the state laws cited by the claimant, none of the Oregon Administrative Rules are state "land use regulations." That term is defined in subsection ORS 197.352(11)(B). The only state administrative rules that are "land use regulations" are rules of the Land Conservation and Development Commission, and administrative rules regulating farming and forest practices. None of the state administrative rules cited by the claimants are rules of LCDC or regulate farm or forest practices.

Under ORS 197.352, state *statutes* restricting the use of land are "land use regulations", however, the claimant has not described how any of the listed statutes restrict the partitioning of the property and the development of a residence on each parcel.

Intergovernmental agreements are not "land use regulations" because they are not within the definition of that term under ORS 197.352(11). Furthermore, the Oregon Highway Plan and the Interchange Area Management Plans for Newberg-Dundee Bypass[2] are not land use regulations[3] because they generally regulate the use of *state highways*, not the use of private real property.

Finally, the department has taken no action since the effective date of ORS 197.352 to enforce any of the listed laws or plans with respect to claimant's partitioning of the property or development of a dwelling.

Conclusions

The claimant has not established that any "land use regulation" administered by the Department restricts the claimant's desired use of the property, or that any "land use regulation" administered by the Department has been enforced to restrict the claimant's use of the property since the effective date of ORS 197.352. Based on the information in the record, the Department has no basis for determining that any law listed in the claim is a state "land use regulation." Until the claimants seek some particular action from the department, the department is unable to determine which, if any, of the laws in the cited statutes or administrative rules may apply to the property. As a result, the claimant has

[2] The Interchange Area Management Plans for the Newberg-Dundee Bypass have not yet been completed or adopted.

[3] See also Section V.4. Exemptions Under ORS 197.352(3) *infra*.

failed to identify a state land use regulation that has been enforced as to the claimant's use of her property in a manner that restricts its use. Since December 2, 2004, the department has not enforced a land use regulation that restricts partitioning the property into two acre rural residential parcels.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, 197.352(1) requires that any laws 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 does not indicate an amount of reduction in the property's fair market value due to current regulations and does not provide an appraisal or other documentation to demonstrate the reduction in the fair market value of the property. However, the claim asserts, "it is more likely than not that there has been some reduction in the fair market value of the subject property" as a result of land use regulations enforced by the state.

The claim does not define what portion, if any, of the alleged reduction in value is attributed to the department's regulations as opposed to other land use regulation.

Conclusions

To state a claim under ORS 197.352(1), claimants must allege some reduction in fair market value of their property, allegedly caused by a land use regulation which restricts the use of the property. Based on the record currently before the department, the department concludes that there are no land use regulations identified in the claim and enforced by the department since December 2, 2004 that restrict the use of the subject property or that have the effect of reducing the fair market value.

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

As explained in Section V.(2) and (3) of this report, the claimant, Mildred Weatherly, has not established that any state laws restrict the use of the subject property in a manner that reduces the fair market value of the property.

Additionally, even *if* the Oregon Highway Plan, Policy 3C were to be considered a land use regulation, its stated purpose is "to plan for and manage grade-separated interchange areas to ensure safe and efficient operation between connecting roadways" and, as such, would restrict or prohibit activities, to the extent that it does at all, for the protection of public health and safety pursuant to ORS 197.352(3)(B).

Conclusions

The Department concludes that based on the information in its record, at this point in time the claimant has failed to identify a state law that restricts the use of her property and that is not exempt under ORS 197.352. As a result, the claim must be denied as to laws administered by the Oregon Department of Transportation.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the department has enacted or enforced a law that restricts 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 to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property.

Findings of Fact

Based on the findings and conclusions set forth in this report, no state land use regulations administered by the department restrict the claimant's use of the property in a manner that reduces the fair market value of the property and that involve a law that is not exempt.

Conclusion

Based on the foregoing findings and conclusions, the claimant has not established entitlement to relief under ORS 197.352(1), as to laws administered by the Department of Transportation. As a result, the department recommends that the claim be DENIED.

VII. NOTICE OF OPPORTUNITY TO COMMENT

The department issued its draft staff report on this claim on April 4, 2006. 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. No comments were received.