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 Mary Holtan, CLAIMANT	))))	FINAL ORDER CLAIM NO. M118660

Claimant: Mary Holtan (the Claimant)

Property: Township 3S, Range 2W, Section 36, Tax lot 4304, Yamhill County (the Property)

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

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

ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Mary Holtan's division of the 28-acre property into 10-acre parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 18, 1974. These regulations will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on December 18, 1974.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the property for the use described in this report, subject to the provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition) in effect on December 18, 1974.

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 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 the subject property imposed by private parties.

4. Any use of the subject property 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 the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves 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 the property by the claimant.

This Order is entered by the Deputy 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 Deputy 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

George Naughton, Deputy Director
DLCD
Dated this 1st day of May, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Dugan Petty, Deputy Administrator
DAS, State Services Division
Dated this 1st day of May, 2006.

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[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)

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."

[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

May 1, 2006

STATE CLAIM NUMBER:	M118660
NAME OF CLAIMANT:	Mary Holtan
MAILING ADDRESS:	PO Box 3192 Newberg, Oregon 97132
PROPERTY IDENTIFICATION:	Township 3S, Range 2W, Section 36 Tax lot 4304 Yamhill County
OTHER CONTACT INFORMATION:	Ross Day PO Box 230637 Tigard, Oregon 97281
DATE RECEIVED BY DAS:	June 22, 2005
180-DAY DEADLINE:	May 7, 2006[1]

I. SUMMARY OF CLAIM

The claimant, Mary Holtan, seeks 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 claimant desires compensation or the right to partition the subject 28-acre property into 10-acre parcels not in conjunction with farm use and to develop a dwelling on each parcel.[2] The subject property is located at 34105 NE Wilsonville Road, near 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 valid.

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[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).

[2] Subsequent to the filing of this claim and after notification was provided pursuant to OAR 125-145-0080 on September 16, 2005, the claimant's attorney submitted a letter requesting to amend the claim to change the claimant's intended use of the property. The department cannot accept substantive amendments to previously filed claims. The department will treat the September 16, 2005, letter as a new claim and will process the claim as expeditiously as possible.

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 Mary Holtan's partition of the subject 28-acre property into 10–acre parcels and to her 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 December 18, 1974. These laws will not apply to the claimant only to the extent necessary to allow her to use the property for the use described in this report, and only to the extent that use was permitted when she acquired the property on December 18, 1974. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 6, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment, evidence or information was received in response to the 10-day notice.

The comment does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

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

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval 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 22, 2005, for processing under OAR 125, division 145. The claim identifies Goals 3, 11 (Public Facilities and Services) and 14

(Urbanization), ORS 215 and OAR 660, divisions 4 and 33, as the basis for the claim.[3] 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, Mary Holtan, acquired the subject property on December 18, 1974, as reflected by a bargain and sale deed included with the claim. A February 22, 2005, "consumer information" report from a title company submitted with the claim establishes the claimant's current ownership of the subject property.

Conclusions

The claimant, Mary Holtan, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C) as of December 18, 1974.

2. The Laws That are the Basis for This Claim

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

Findings of Fact

The claim indicates that the claimant desires to "partition her property into ten (10) acre parcels eligible for dwellings not in conjunction with farm use." The claim identifies Goals 3, 11, and 14, ORS 215 and OAR 660, divisions 4 and 33, as laws that restrict her use of the property.[4]

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[3] The claim identifies OAR 660, division 44, and specifically OAR 660-044-0040(8). OAR 660 does not include a division 44. The department concludes that this reference is in error, and the claimant's intent was to cite OAR 660-004-0040(8).

[4] The claimant's representative identifies Goal 14 and OAR 660-004-0040(8) as restricting the desired use. The claim does not explain how Goal 14 restricts the claimant's intended use of the property and asserts that OAR 660-004-0040(8) "restricts uses and parcel sizes on the urban fringe." Goal 14 would not apply to the division of the property into 10-acre parcels. OAR 660-004-0040(8) addresses divisions of rural residential land within one mile of

The claim is based generally on Yamhill County's current EF-80 zone, an Exclusive Farm Use (EFU) zone, and the applicable provisions of state law that require such zoning. The claimant's property is zoned EFU 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 land as defined by the Goal 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. 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 also cites Goal 11, relating to public facilities and services and administrative rules relating to public facilities (OAR 660, division 11) as limiting her desired use. Goal 11, which became effective on January 25, 1975, generally prohibits urban levels of public facilities and services on lands that are outside an urban growth boundary. Goal 11 has two components. The first component of the Goal restricts an owner's use of land outside of an urban growth boundary by prohibiting the owner from utilizing urban levels of public services or facilities. The second component restricts service providers from extending urban facilities to serve property outside an urban growth boundary. The former can restrict a claimant's use of property. The latter is a restriction on service providers.

The claimant acquired the subject property on December 18, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973, effective on October 5, 1973) but before the adoption of the statewide planning goals, effective on January 25, 1975. At that time, it was not zoned by Yamhill County, but may have been subject to a comprehensive plan designation under the

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the urban growth boundary for specified cities and urban areas. It appears that the claimant's property is within one mile of the City of Newberg. However, the property is not designated for rural residential development, and therefore, OAR 660-004-0040(8) does not appear to apply to the subject property. Absent further explanation from the claimant establishing how these regulations apply to the subject property and restrict the claimant's use of the property in a manner that reduces its fair market value, these regulations are not addressed further in this report.

[5] The claimant's property is "agricultural land" because it contains Natural Resources Conservation Service (NRCS) Class I-IV soils. Approximately 50 percent of the subject property consists of soil type Woodburn Silt Loam, which is a class 2 "prime" soil designation according to NRCS.

county's comprehensive plan, which was adopted in August 1974.[6] The claim states that when the claimant acquired the property, "it could be subdivided into 10 acre parcels."

During the period between October 5, 1973, and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); *see also*, *Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the goals); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while "[l]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals") citing *Petersen*, *Meeker* and *Alexanderson v. Polk County*, 285 Or 427 (1980). The claimant's desired use includes subdivision of her land. If the claimant had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.[7]

The following interim goals are directly applicable to this claim: "To preserve the quality of the air, water and *land* [emphasis added] resources of the state"; "To conserve prime farm lands for the production of crops"; "To provide for the orderly and efficient transition from rural to urban land use"; "To protect life and property in areas subject to floods, landslides and other natural disasters"; "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation"; and "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." ORS 215.515 (1973 edition).

One of the interim goals was to "conserve prime farm lands for the production of crops." Soil types are a determinant of prime farm land. Approximately 50 percent of the soils on the subject 28-acre property are rated as "prime" by the Natural Resource Conservation Service (NRCS).[8] Based on the Yamhill County soil survey, these "prime" soils are located on one portion of the property, adjacent to the road that serves as the property's boundary.

No information has been provided establishing whether or to what extent the claimant's desired division of the property for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition), in effect at the time the claimant acquired the property on December 18, 1974. To the contrary, and in particular, it appears that the desired division and

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[6] The subject property was zoned farm-forest AF-10 by Yamhill County on February 11, 1976.

[7] The "interim" land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) "To preserve the quality of the air, water and land resources of the state," (b) "To conserve open space and protect natural and scenic resources," (c) "To provide for the recreational needs of citizens of the state and visitors," (d) "To conserve prime farm lands for the production of crops," (e) "To provide for the orderly and efficient transition from rural to urban land use," (f) "To protect life and property in areas subject to floods, landslides and other natural disasters," (g) "To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation," (h) "To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development," (i) "To diversify and improve the economy of the state" and (j) "To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land." ORS 215.515 (1973 edition).

[8] See the Yamhill County soil survey (NRCS).

development of approximately 14 acres of predominantly "prime," high-value farm land would likely not "conserve prime farm lands for the production of crops" as required by the interim goals in effect at the time the claimant acquired the subject property in 1974.

The claim also provides no information establishing that Goal 11 applies to and restricts the claimant's desired use. The claim states that Goal 11 "and all regulations thereunder" render the claimant "unable to construct a viable, environmentally safe sewer/water system to support development on the subject property." However, no information has been provided establishing that the claimant's desired division of the property into 10-acre parcels (and the establishment of a residence on each parcel) is restricted by Goal 11. The claim also does not address whether current provisions of Goal 11 restrict the claimant's desired use of the property relative to the interim goal on public facilities and services that was in effect when the claimant acquired the property.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant, Mary Holtan, acquired the subject property in 1974 and do not allow the desired division of the property into parcels less than 80 acres in size or allow the approval of dwellings. However, on December 18, 1974, the "interim" land use goals set forth in ORS 215.515 required the conservation of prime farm land for the production of crops. Approximately 50 percent of the claimant's 28-acre property is composed of very limited farm land soils rated as "prime. This portion of the property likely could not be divided for residential use under the "interim" land use goals applicable in 1974. The claim does not establish whether or to what extent the claimant's desired use of the property complies with the interim planning goals in effect when she acquired the property on December 18, 1974.

Those elements of Goal 11 that prohibit local government from extending or establishing public facilities or services outside of an urban growth boundary restrict the actions of local government rather than the claimant's use of the property. The claimant has not established how Goal 11 restricts the division of the property into 10-acre parcels, or the development of residences on each parcel. The claim also does not address whether current provisions of Goal 11 restrict the claimant's desired use of the property relative to the interim goal on public facilities and services that was in effect when the claimant acquired the property.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the property based on the uses that the claimant has identified. 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 includes an estimate of $2.5 million as the reduction in the property's fair market value due to current regulations. This amount is based on the claimant's estimate of the value of comparable lots in the area.[9]

Conclusions

As explained in Section V. (1) of this report, the claimant is Mary Holtan who acquired the subject property on December 18, 1974. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property in a manner that reduces its fair market value. Based on the findings and conclusions in Section V. (2) of this report, laws enacted or adopted since the claimant acquired the subject property may restrict the desired division and development of the property. The claimant estimates the reduction in value due to the restrictions to be $2.5 million. It is not clear how the claimant arrived at an estimate of $2.5 million given that the desired use would create one additional buildable lot.

Without an appraisal or other documentation and without verification of whether or to what extent the claimant's desired use of the property was allowed under the standards in effect when the claimant acquired the property, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, based on the submitted information, the department determines that it is more likely than not 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 Goal 3 , ORS 215 and OAR 660, division 33, which Yamhill County has implemented, in part, through its current EF-80 zone. With the exception of applicable provisions of ORS 215, including the interim land use planning goals in effect on December 18, 1974, these state land use regulations were not in effect when the claimant acquired the property.

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[9] The claim also includes a title report estimating the current real market value of the subject property, with improvements, to be approximately $274,469.

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, with the exception of provisions of ORS 215 in effect on December 18, 1974, the general statutory, goal and rule restrictions on division and development of the claimant's property were not in effect when the claimant acquired the property. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of ORS 215, including the interim statewide planning goals in effect when the claimant acquired the subject property on December 18, 1974, are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when the claimant acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to the claimant's use of the property. There may be other laws that continue to apply to the claimant'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 the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimant has identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimant should be aware that the less information she has provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to her use of the subject property.

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 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 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, laws enforced by the Commission or the department restrict the claimant's ability to divide the 28-acre property into 10-acre parcels and to establish a dwelling on each parcel. The claim asserts that the laws enforced by the Commission or the department reduce the fair market value of the subject property by $2.5 million. However, because the claim does not provide an appraisal or other specific documentation for how the specified restrictions reduce the fair market value of the property, and

without verification of whether or to what extent the claimant's desired use of the property was allowed under the standards in effect when she acquired the property, a specific amount of compensation cannot be determined. Nevertheless, based on the record for this claim, the department acknowledges that the laws on which the claim is based likely have reduced the fair market value of the 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 Mary Holtan to use the subject property for a use permitted at the time she acquired the property on December 18, 1974.

Conclusions

Based on the record, the department 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 Mary Holtan's division of the 28-acre property into 10-acre parcels or to her development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 18, 1974. These regulations will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on December 18, 1974.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the property for the use described in this report, subject to the provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition) in effect on December 18, 1974.

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 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 the subject property imposed by private parties.

4. Any use of the subject property 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 the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves 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 the property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on April 14, 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.