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

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Guy and Jessie Ramsey, trustees of the Ramsey Revocable Trust, CLAIMANTS	))))	FINAL ORDER CLAIM NO. M122277

Claimants: Guy and Jessie Ramsey, trustees of the Ramsey Revocable Trust (the Claimants)

Property: Township 36, Range 3W, Section 8, Tax lot 400, Jackson County (the Property)

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

Claimants 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), and the Oregon Department of Forestry (the ODF Report), attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by the Oregon Department of Forestry or the Oregon Board of Forestry, for the reasons set forth in the ODF Report.

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 Guy and Jessie Ramsey's division of the 80-acre property into five parcels or to their development of a dwelling on each vacant parcel: applicable provisions of Goal 4, ORS 215.705 to 755 and 215.780 and OAR 660, division 6. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on November 4, 1965.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on November 4, 1965.

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 claimants first obtain 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 claimants 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 claimants to use the subject property, it may be necessary for them 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 claimants 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 subject property by the claimants.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Director of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

This Order is entered by the Oregon Board and Department of Forestry as a final order of the Board under ORS 197.352, OAR 629-001-0057, and OAR Chapter 125, division 145.

FOR DLCD AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION:

Lane Shetterly, Director
DLCD
Dated this 25th day of July, 2006.

FOR THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

Lindsay A. Ball, Director
DAS
Dated this 25th day of July, 2006.

FOR THE OREGON BOARD OF FORESTRY AND THE OREGON DEPARTMENT OF FORESTRY:

Marvin Brown, State Forester
ODF
Dated this 25th day of July, 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)

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

July 25, 2006

STATE CLAIM NUMBER:	M122277
NAMES OF CLAIMANTS:	Guy and Jessie Ramsey, trustees of the Ramsey Revocable Trust
MAILING ADDRESS:	PO Box 247 Gold Hill, Oregon 97525
PROPERTY IDENTIFICATION:	Township 36, Range 3W, Section 8 Tax lot 400 Jackson County (1363 Sardine Creek Road Gold Hill, Oregon 97525)
OTHER CONTACT INFORMATION:	Christian Hearn 515 East Main Street Ashland, Oregon 97520
DATE RECEIVED BY DAS:	September 12, 2005
180-DAY DEADLINE:	July 28, 2006[1]

I. SUMMARY OF CLAIM

The claimants, Guy and Jessie Ramsey, seek compensation in the amount of $370,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 80-acre property into five parcels and to develop a dwelling on each vacant parcel. The subject property is located at 1363 Sardine Creek Road, near Gold Hill, in Jackson County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. 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 Guy and Jessie Ramsey's division of the 80-acre property into five parcels and to

[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).

their development of a dwelling on each vacant parcel: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215.705 to 215.755 and 215.780 and Oregon Administrative Rules (OAR) 660, division 6. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property in 1965. (See the complete recommendation in Section VI of this report.)

The claimants also seek relief from certain laws administered by the Oregon Department of Forestry (ODF). Those aspects of the claim are addressed in a separate report issued by ODF.

III. COMMENTS ON THE CLAIM

Comments Received

On September 21, 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, two comments were received in response to the 10-day notice.

One of the comments supports the proposal but does not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject 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.

The other comment is relevant to whether the restriction of the claimants' use of the subject property reduces the fair market value of the property. The comment has been considered by the department in preparing this report. (See the comment letters in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

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

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

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

Findings of Fact

This claim was submitted to DAS on September 12, 2005, for processing under OAR 125, division 145. The claim identifies the statewide planning goals; provisions of ORS chapters 92, 197, 215 and 227; and OAR chapters 629 and 660 adopted after 1965 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 claimants, Guy and Jessie Ramsey, acquired the subject property on November 4, 1965, as reflected by an agreement for the sale of real estate included with the claim. The claimants conveyed the subject property to themselves, Guy Ramsey Jr. and Susan Ramsey in 1989. In 1990, Guy Ramsey Jr. and Susan Ramsey conveyed their interest back to the claimants. In 2003, the claimants conveyed the subject property to themselves, as trustees of the Ramsey Revocable Trust.[2] The Jackson County Assessor's Office confirms that claimants' current ownership of the subject property.

Conclusions

The claimants, Guy and Jessie Ramsey, as trustees of the Ramsey Revocable Trust, are "owners" of the subject property, as that term is defined by ORS 197.352(11)(C), as of November 4, 1965.

2. The Laws That are the Basis for This Claim

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

[2] Transfer of property to a revocable trust does not result in a change of ownership for the purposes of ORS 197.352.

Findings of Fact

The claim indicates that the claimants desire to divide the property into three 10-acre parcels and two 20-acre parcels and to develop a dwelling on each of the five new parcels. It indicates that the desired use of the property is not allowed under current state and local land use regulations.

The claimants have listed the following state land use regulations as those that restrict the use of property compared to the uses permitted in 1965: ORS 92, 197, 215, 227, 526 and 527; OAR 629; and OAR 660 in its entirety.

ORS 526 and 527 and OAR 629 are not enforced by the department or the Commission and are addressed in the ODF report on this claim. ORS 92 establishes procedures for partitioning and subdividing property. ORS 197 establishes procedures for coordination of local comprehensive plans, and ORS 227 establishes procedures for city comprehensive plans. The claim does not establish how ORS 92, 197 or 227 restricts their desired use of the subject property. None of these statutes, on their face, restrict the desired use of the subject property. Absent an explanation by the claimants as to how these laws restrict the desired use of the subject property in a manner that reduces the fair market value of the property, these laws are not discussed further in this report.

The claim is based generally on Jackson County's current Woodland Resource (WR) zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned WR as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 (restricting land divisions and the establishment of dwellings on forest land) became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

Together, ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, prohibit the division of forest land into parcels of less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on forest lands.

The claimants acquired the subject property on November 4, 1965, prior to the adoption of the statewide planning goals and their implementing regulations, and prior to the enactment of ORS 215.705 to 215.755 and 215.780. The claimants have not established that other statutes in ORS 215 or other rules in OAR 660 restrict the claimants' desired use of the subject property.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and ORS 215.705 to 215.755 and 215.780 and in OAR 660, division 6, were all enacted or adopted after the claimants acquired the subject property in 1965 and do not allow the desired division and residential development of the property. These laws restrict the use of the subject property relative to the uses allowed when the claimants 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 subject property, based on the uses that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek 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 $370,000 as the reduction in the subject property's fair market value due to the regulation(s). This amount is based on a market analysis prepared by a realtor.

Conclusions

As explained in Section V.(1) of this report, the claimants are Guy and Jessie Ramsey, as trustees of the Ramsey Revocable Trust. The claimants acquired the subject property on November 4, 1965. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the subject property restrict their desired use of the property. The claimants estimate that the effect of the regulation(s) on the fair market value of the subject property is a reduction of $370,000.

Without an appraisal or other documentation and without verification of whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when the claimants acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 4, ORS 215.705 to 755 and 215.780 and OAR 660,

division 6, which Jackson County has implemented through its current WR zone. All of these land use regulations were enacted or adopted after the claimants acquired the subject property in 1965.

This claim also cites the statewide planning goals, ORS 92, 197 and 227 and OAR 660 generally. Some of the "land use regulations" included in these goals, statutes or rules were enacted or adopted before the claimants acquired the subject property. The claimants have not established these goals, statutes and rules restrict or otherwise apply to their desired use of the subject property or how they have the effect of reducing its value.

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 few of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimants acquired the property in 1965. As a result, these laws are not exempt under ORS 197.352(3)(E).

Other laws in effect when the claimants acquired the subject property are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimants' use of the property. In addition, the department notes that ORS 215.730 and OAR 660, division 6, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." Accordingly, siting standards for dwellings in forest zones in ORS 215.730 and OAR 660, division 6, are exempt under ORS 197.352(3)(B).

The claim cites several other statutes, goals and rules in addition to those discussed above. The claim does not assert how these state land use regulations restrict the use of the subject property in a manner that reduces its fair market value. Several of these statutes and rules are either not applicable to the subject property or do not, on their face, restrict the use of the subject property. Except for the regulations addressed in this report, absent an explanation by the claimants as to how these land use regulations restrict their use of the subject property in a manner that reduces the property's fair market value, these regulations are not addressed further.

There may be other laws that continue to apply to the claimants' 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 subject property until there is a specific proposal for that use. When the claimants seek 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 claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the

greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

VI. FORM OF RELIEF

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

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by $370,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the property was allowed under the standards in effect when they acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Guy and Jessie Ramsey to use the subject property for a use permitted at the time they acquired the property on November 4, 1965.

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 Guy and Jessie Ramsey's division of the 80-acre property into five parcels or to their development of a dwelling on each vacant parcel: applicable provisions of Goal 4, ORS 215.705 to 755 and 215.780 and OAR 660, division 6. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on November 4, 1965.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on November 4, 1965.

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 claimants first obtain 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 claimants 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 claimants to use the subject property, it may be necessary for them 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 claimants 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 subject property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 5, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF FORESTRY

Final Staff Report and Recommendation
July 25, 2006

STATE CLAIM NUMBER:	M122277
NAMES OF CLAIMANTS:	Guy Ramsey Sr. and Jessie Ramsey, trustees of the Ramsey Revocable Trust
MAILING ADDRESS:	PO Box 247 Gold Hill, OR 97525
PROPERTY IDENTIFICATION:	Township 36S, Range 3W, Section 8 Tax lot 400 Jackson County aka 1363 Sardine Creek Road Gold Hill, OR 97525
OTHER CONTACT INFORMATION:	Christian E. Hearn, Attorney Davis, Hearn, Saladoff & Smith, P.C. 515 East Main Street Medford, OR 97520
DATE RECEIVED BY DAS:	September 12, 2005
180-DAY DEADLINE:	July 28, 2006[1]

I. SUMMARY OF CLAIM

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

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Forestry (ODF) has determined the claim is not valid as to land use regulations administered by ODF or the Oregon Board of Forestry (Board) because none of the laws identified in the claim and administered by the Board or ODF restrict the claimants' right to divide the property and develop a dwelling on each parcel. ORS 527.730 provides that "[n]othing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use." The claim submitted by the claimants states that their desired use is to carry out a residential

[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).

use of the property, which is a conversion. To the extent that the claimants may propose a forest operation in conjunction with the conversion, claimants have not submitted a written notification as required by law. Without a notification ODF is unable to determine whether the laws listed in the claim apply to the claimants' use of the property or restrict their use of the property. As a result, ODF has not enforced an existing state land use regulation with respect to the claimants' use of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

See DLCD Draft Staff Report.

IV. TIMELINESS OF CLAIM

See DLCD Final Staff Report.

Findings of Fact and Conclusions

ODF adopts the findings of fact and conclusions of law regarding the timeliness of this claim contained in the DLCD Final Staff Report for this claim.

V. ANALYSIS OF CLAIM

1. Ownership

ODF adopts the findings of fact and conclusions of law regarding ownership contained in the DLCD Final Staff Report for this claim.

2. The Laws that are the Basis for this Claim

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

Findings of Fact

The claimants desire compensation or the right to divide the 80-acre property into five parcels and to develop a dwelling on each parcel. The claim lists the following state statutes and rules administered by ODF or the Board as laws that restrict the use of the property as the basis for the claim: ORS 526 and 527 and OAR 629. The only discussion in the claim as to how or why these laws restrict the use of the property that the claimants seek to carry out is the following statement: ". . . Claimants request the Department modify, remove, or not apply . . . any and all land use regulations enacted by State since Claimants purchased the

Property on November 4, 1965, which would act to preclude Claimants from partitioning the Property into 5 lots, . . . for sale to the public as discussed on Exhibit "1"." The property is zoned Woodland Resource. The laws listed in the claim that are administered by ODF only apply to forest operations, which is not the use the claimants have described in their claim.

One of the cited laws, ORS 527.730, Conversion of forestland to other uses, states, "Nothing in the Oregon Forest Practices Act shall prevent the conversion of forestland to any other use." No laws enforced by the Board or ODF restrict the division of the property or the establishment of dwellings.

The subject property does appear to include trees. Certain uses of property are forest "operations" that are regulated under the Forest Practices Act. If trees are harvested for commercial use, some laws listed in the claim will apply to the operation.

A notification of intent to conduct a forest operation is required in order for ODF to determine whether laws it or the Board may enforce apply to the claimants' intended use of the subject property in a way that restricts the use of the subject property, and reduces its fair market value. No notification has been made.

The claim lists additional state statutes and regulations that are administered by the Department of Land Conservation and Development. These statutes and regulations are not administered or enforced by the Board and ODF and are not addressed in this report.

Conclusions

Nothing in the laws that are listed in the claim and enforced or administered by ODF or the Board applies to or restricts the division of the property or the construction of dwellings by the claimants.

Persons proposing to conduct a forest operation are required to submit a notification of the operation to ODF. Nothing in ORS 197.352 relieves an operator or landowner from this obligation, and until a notification is submitted, ODF is unable to determine whether laws it or the Board administers apply to the claimants' use of the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 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 claimants have not demonstrated that any land use regulations administered by ODF or the Board restrict their use of the subject property or reduce its fair market value. The documentation submitted with the claim does not include any information concerning how

laws administered by ODF or the Board have had the effect of reducing the fair market value of the property.

Conclusions

The claimants have not demonstrated that laws enforced or administered by ODF or the Board restrict their use of this property or affect its fair market value.

4. Exemptions under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. These exemptions are set forth in ORS 197.352(3).

Findings of Fact

ORS 197.352(3) exempts laws that were enacted before a claimant acquired their interest in the property. Claimants Guy and Jessie Ramsey acquired an interest in the subject property on November 4, 1965. Most forest practice laws were first enacted in 1971 and July 1, 1972, although some date back to 1941. ODF is unable to determine whether 197.352(3)(E) or other exemptions in 197.352(3) may apply because the claimants have not proposed a use that is subject to these laws.

Some FPA regulations were enacted to control water pollution resulting from forest operations. ORS 197.352(3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety..., including pollution control." Such regulations may apply to the property, depending upon the activities the claimants may wish to undertake.

Other FPA regulations cited by the claimants may be exempted under 197.352(3).

Conclusions

ODF concludes that some of the listed land use regulations are likely exempt under ORS 197.352(3). Until there is a notification of an operation, however, a final determination of the applicability of the listed laws to a particular forest operation on the property cannot be made.

Laws in effect when claimants Guy and Jessie Ramsey acquired the subject property are exempt under ORS 197.352(3)(E), and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' 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 property until claimants submit a notification of intent to conduct a commercial forest operation. When the claimants submit a notification, 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 (3)(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 claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

VI. FORM OF RELIEF

Based on the current record, the claimants are not entitled to relief under ORS 197.352 from ODF or the Board. ODF denies any relief for this claim because neither the Board nor the Department has enforced laws that restrict the division of the subject property into parcels or lots, or the use of the property for residential purposes.

VII. COMMENTS ON THE DRAFT REPORT

ODF issued its draft staff report on this claim on July 5, 2006. OAR 125-145-0100(3), provides 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.