

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

IN THE MATTER OF THE CLAIM FOR)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M124324,
(BALLOT MEASURE 37) OF)	M124325, M124326
Norma Jean Willis, CLAIMANT)	

Claimant: Norma Jean Willis (the Claimant)

Property: Township 1N, Range 10E, Section 3, Tax lot 2400 (M124324)

Township 2N, Range 10E, Section 12, Tax lot 3401, and
Section 13 tax lots 600, 700, 800,900 and 1000 (collectively M124326)

Township 2N, Range 10E, Section 13D
Tax lots 100, 200, 300, 1800, 2200 and 2600, and Section 18 tax lots
1400, 1800, 1900, 2400 and 2600 (collectively M124325)

All in Hood River County
(the property)

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

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

ORDER

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

This Order is entered by the 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 chapter 125, division 145, and by the Director of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

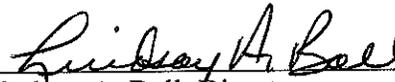
FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 5th day of September, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



Lindsay A. Ball, Director
DAS

Dated this 5th day of September, 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 197.352¹, 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.

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES AND
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)
Willis Family, Inc., an Oregon Corporation, CLAIMANTS)

FINAL ORDER
CLAIM NO. M124324,
M124325, M124326

Claimants: Willis Family, Inc., an Oregon Corporation (the Claimants)

Property: Township 1N, Range 10E, Section 3, Tax lot 2400 (M124324)
Township 2N, Range 10E, Section 12 tax lot 3401, and
Section 13 tax lots 600, 700, 800, 900 and 1000 (collectively M124326)
Township 2N, Range 10E, Section 13D tax lots 100, 200, 300, 1800, 2200 and
2600, and Section 18 tax lots 1400, 1800, 1900, 2400 and 2600 (collectively
M124325)
All in Hood River 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) 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 otherwise applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, that are land use regulations, to Willis Family, Inc.'s partition of the following properties into parcels of 20 acres or more or to its development of a dwelling on each parcel: tax lot 3401 (in 2N 10E, section 12); tax lots 800, 900, 1000 (all in 2N 10E, section 13D); tax lots 100, 200, 300, 600, 700, 1400, 1800, 2200 and 2600 (all in 2N 10E, section 13D); tax lots 1400, 1800, 1900, 2400 and 2600 (in 2N 10E, section 18); and tax lot 902 (in T2N 11E, section 30). These laws will not apply to Willis Family, Inc.'s use of each property only to the extent necessary to allow it to use the subject properties for the use described above, and only to the extent that use was permitted when it acquired each property (as shown in the table in Section II of this report).

2. The action by the State of Oregon provides the state's authorization to Willis Family, Inc. to divide the subject properties into parcels of 20 acres or more and to establish a dwelling on each parcel, subject to the standards in effect in 1981, 1988 and 1990. In 1981, Willis Family, Inc.'s use of the properties was subject to applicable provisions of Goal 3, ORS 215, OAR 660, division 5, (as well as Hood River County's zoning ordinance) then in effect. In 1988 and 1990, Willis Family, Inc.'s use of the subject properties was subject to Hood River County's acknowledged EFU zoning ordinance, along with the applicable provisions ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject properties may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the properties unless Willis Family, Inc. first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject properties imposed by private parties.

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

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

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 Director 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

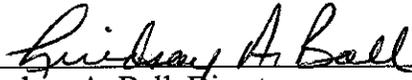


Cora R. Parker, Deputy Director

DLCD

Dated this 5th day of September, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:



Lindsay A. Ball, Director

DAS

Dated this 5th day of September, 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, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

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

FOR INFORMATION ONLY

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

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

September 5, 2006

STATE CLAIM NUMBERS: M124324, M124325 and M124326

NAMES OF CLAIMANTS: Norma Jean Willis
Willis Family, Inc., an Oregon corporation¹

MAILING ADDRESS: 2385 Eastside Road
Hood River, Oregon 97031

PROPERTY IDENTIFICATION:² Township 1N, Range 10E, Section 3
Tax lot 2400 (M124324)

Township 2N, Range 10E
Section 12 tax lot 3401, and
Section 13 tax lots 600, 700, 800, 900
and 1000 (collectively M124326)

Township 2N, Range 10E
Section 13D tax lots 100, 200, 300, 1800,
2200 and 2600, and
Section 18 tax lots 1400, 1800, 1900, 2400
and 2600 (collectively M124325)

All in Hood River County

DATE RECEIVED BY DAS: March 13, 2006

180-DAY DEADLINE: September 9, 2006

¹ Willis Family, Inc. is an active Oregon corporation according to the records of the Corporations Division of the Office of the Oregon Secretary of State.

² The claimants submitted four separate claims for relief under ORS 197.352. This is a consolidated report on three of those claims. A separate report was prepared for the fourth claim (M124323, involving tax lot 902, T2N, R11E, section 30). Tax lot 2400 (section 3) consists of 10 acres; tax lot 600 consists of 9.55 acres; tax lot 700 consists of 10.19 acres; tax lot 800 consists of 16.95 acres; tax lot 900 consists of 10 acres; tax lot 1000 consists of 18.62 acres; tax lot 100 consists of 20.11 acres; tax lot 200 consists of 0.57 acres; tax lot 300 consists of 6.98 acres; tax lot 1800 (section 13D) consists of 18.47 acres; tax lot 2000 consists of 8.81 acres; tax lot 2200 consists of 13.78 acres; tax lot 1400 consists of 3.80 acres; tax lot 1800 (section 18) consists of 33.39 acres; tax lot 1900 consists of 1.51 acres; tax lot 2400 (section 18) consists of 7.51 acres; and tax lot 2600 consists of 5.47 acres.

I. SUMMARY OF CLAIM

The claimants, Willis Family, Inc. and Norma Jean Willis, seek compensation in the amount of \$35,568,767.46 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 use the subject properties as stated in the following table.

Claim M124324	Tax Lot(s)	Desired Use
	T2N, R10E, section 3, tax lot 2400	Divide the property into parcels averaging 2.5 acres in size and establish a dwelling on each parcel.
Claim M124325	Tax Lot(s)	Desired Use
	T2N, R10E, section 13 D, tax lots 100, 200, 300, 1800, 2200 and 2600	Develop 100 acres as a golf course and 20 acres for residential use at a density of 8 units per acre (160 total units).
	T2N, R11E, section 18, tax lots 1400, 1800, 1900, 2400 and 2600	
Claim M124326	Tax Lot(s)	Desired Use
	T2N, R10E, section 13, tax lots 600, 700, 800, 900 and 1000	Develop 51.21 acres as a golf course and 12.8 acres for residential use at a density of 8 units per acre (102 total units).
	T2N, R10E, section 12, tax lot 3401	

In the event that these uses are not possible, the claims indicate that the claimants wish to divide the subject properties into parcels of 20 acres or more, and to establish a dwelling on each parcel. The subject properties are located south of the intersection of Wy'East Road and Central Vale Drive, near Hood River, in Hood River 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 claims are valid in part and not valid in part. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Willis Family, Inc.'s division of the subject properties into parcels of 20 acres or more, and to its establishment of a dwelling on each parcel. The department recommends that to Norma Jean Willis' claim be denied as to all of the properties. The department also recommends that the claims be denied as to Willis Family, Inc.'s use of the properties for a golf course, or division of the properties into parcels less than 20 acres or the establishment of dwellings on parcels less than 20 acres.

Claim	Tax Lot(s) and Acquisition Dates	Laws that Will Not Apply
M124324	T2N, R10E, section 3, tax lot 2400 – acquired December 10, 1981	Applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, that took effect after December 10, 1981.
Claim	Tax Lot(s) and Acquisition Dates	Laws that Will Not Apply
M124325	T2N, R10E, section 13 D, tax lots: 100 – acquired 11/3/1981 200 – acquired 11/3/1981 300 – acquired 11/3/1981 1800 – acquired 12/10/1981 2200 – acquired 12/10/1981 2600 – acquired 12/10/1981	Applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, that took effect after December 10, 1981, or November 3, 1981, or December 1, 1981 (as applicable based on the acquisition dates identified in the second column).
	T2N, R11E, section 18, tax lots 1400 – acquired 12/1/1981 1800 – acquired 12/1/1981 1900 – acquired 12/10/1981 2400 – acquired 12/10/1981 2600 – acquired 12/10/1981	
Claim	Tax Lot(s) and Acquisition Dates	Laws that Will Not Apply
M124326	T2N, R10E, section 13, tax lots 600 – acquired 7/3/1990 700 – acquired 3/24/1988 800 – acquired 12/10/1981 900 – acquired 12/10/1981 1000 – acquired 12/10/1981	Applicable provisions of Goals 3, ORS 215 and OAR 660, division 33, that took effect after December 10, 1981, or November 3, 1981, or December 1, 1981 (as applicable based on the acquisition dates identified in the second column).
	T2N, R10E, section 12, tax lot 3401 – acquired 12/10/1981	

These laws will not apply to Willis Family, Inc. only to the extent necessary to allow it to divide the subject properties into parcels of 20 acres or more and to establish a dwelling on each parcel, and only to the extent that use was permitted when it acquired the properties on the dates set forth in the table above. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 12, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment 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 subject properties 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

The claims were submitted to DAS on March 13, 2006, for processing under OAR 125, division 145. The claims identify numerous provisions of Hood River County Exclusive (EFU) zoning ordinances, ORS 197 and 215 and OAR 660 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 claims have been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

Claimant Norma Jean Willis acquired an interest in some of the properties included in these claims in 1954, 1958, and 1963. However, in each of these cases (based on the information provided with the claim) Ms. Willis conveyed her interest in the properties to Bo-Nor, Inc. Bo-Nor, Inc. then merged with claimant Willis Family, Inc. on December 10, 1981. In the other cases, the properties were acquired directly by claimant Willis Family, Inc. on the dates shown in the table in Section II of this report.

A January 3, 2006, plant service report submitted with the claims establishes Willis Family, Inc.'s current ownership of the subject properties.

Conclusions

Claimant Willis Family, Inc. is a present “owner” of the subject properties as that term is defined by ORS 197.352(11)(C), per the table in Section II of this report. Claimant Norma Jean Willis has not established that she is a present “owner” of any of the subject properties. Although a corporation can be a “family member” of an owner as that term is defined by ORS 197.352(11)(A), an “owner” that is a corporate entity cannot claim an individual as a “family member,” as defined in ORS 197.352(11)(A). Therefore, none of the individuals who transferred the subject properties to Willis Family, Inc. can be considered a “family member” of Willis Family, Inc. Willis Family, Inc. acquired the subject properties on the dates shown in the table in Section II of this report.

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 acquired the property.

Findings of Fact

The claims indicate that the claimants desire to use the subject properties for particular uses, with some areas used as a golf course, some for high-density residential development and some for residential development on 2.5-acre parcels.³ Alternatively, the claims indicate that the claimants desire to divide the subject properties into 20-acre parcels and develop a dwelling on each parcel.

The claims are based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The subject properties are zoned EFU, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the properties are “agricultural land” as defined by Goal 3.⁴ Goal 3 became effective on January 25, 1975, and required that agricultural lands 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 the development of dwellings on existing or proposed parcels on that land. Those land use regulations also prohibit the establishment of a golf course on high-value farm land (OAR 660-033-0120).

³ The claimants listed numerous state laws as applicable to their desired use of particular properties, but do not establish how these laws apply to particular uses or restrict their uses with the effect of reducing the fair market value. On their face, most of the listed laws either do not apply to the claimants’ desired uses of the properties or do not restrict the uses of the properties in a manner that reduces the fair market value. This report addresses only those laws that the department finds are applicable to and restrict the claimants’ uses of the subject properties, based on the claimants’ description of their desired uses.

⁴ The subject properties are “agricultural land” because they contain Natural Resources Conservation Service Class I-IV soils.

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.)

OAR 660-033-0120, prohibiting golf courses on high-value farm land, took effect on August 7, 1993. Prior to that time, golf courses were allowed on EFU-zoned land subject to certain standards, including ORS 215.243 and 215.296. However, under Hood River County zoning ordinances in effect when Willis Family, Inc. acquired the subject properties, golf courses were not an allowed use.

Claimant Willis Family, Inc. acquired the subject properties (with the exception of tax lots 600 and 700) after the adoption of the statewide planning goals, but before the Commission acknowledged Hood River County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. When Willis Family, Inc. acquired the subject properties (except for tax lots 600 and 700) in 1981, they were zoned EFU, by Hood River County, which established a 20-acre minimum for new lots or parcels and conditionally permitted single-family dwellings not provided in conjunction with farm use. As noted above, golf courses were not permitted under Hood River County's 1981 EFU zone.⁵ Division of the subject properties would have been subject to the provisions of Goal 3 then in effect, which required that the size of lots or parcels be appropriate for the continuation of agriculture.

Under the Goal 3 standards in effect on 1981, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, Willis Family, Inc.'s right to divide the subject properties when it acquired them in 1981, 1988 and 1990 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1)

⁵ As indicated in Hood River County's Measure 37 claim notices for these properties, dated July 20 and 21, 2006, and as set forth in Zoning Ordinance No. 90, included with the claim.

appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.423.

At the time Willis Family, Inc. acquired tax lots 600 and 700, these properties were subject to Hood River County's acknowledged EFU zone, as well as the applicable provisions of ORS 215 then in effect.⁶ In 1988 and 1990, ORS 215.263 (1988 and 1990 editions) required that divisions of land in EFU zones be "appropriate for the continuation of the existing commercial agricultural enterprise within the area" or not smaller than the minimum size in the county's acknowledged plan. ORS 215.283(1)(f) (1988 and 1990 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow Willis Family, Inc.'s desired division of the properties, or residential or golf course development of the subject properties. However, these uses were already prohibited by the county's Zoning Ordinance No. 90 when Willis Family, Inc. acquired the properties. The only use of the properties that may have been lawful when Willis Family, Inc. acquired them was the division of the properties into parcels greater than 20 acres and the development of a dwelling. Even these uses were subject to additional state and local standards, as described above.

For these reasons, the department determines that the desired golf course and small-lot/high-density residential uses of the properties desired by the claimants were prohibited when Willis Family, Inc. acquired the properties. As a result, state laws administered by the department have not restricted these uses.

The claim also indicates that the claimants may desire to develop the properties by dividing them into 20-acre parcels, and establish a dwelling on each parcel. Based on the findings above, this use may have been lawful under applicable county and state laws on the dates Willis Family, Inc. acquired the properties. For that reason, the department determines that the claim is valid as to this use only (division of the properties into parcels of 20 acres or more and establishment of a dwelling on each parcel).

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."

⁶ Hood River County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on January 11, 1985.

Findings of Fact

The claims include an estimate of \$35,568,767.46⁷ as the reduction in the subject properties' fair market value due to the regulation(s) that restrict the claimants' desired use of the properties. This amount is based on the difference of the assessed value of the properties and a market analysis of the properties' maximum development potential. As set forth in the preceding section, Willis Family, Inc. did not have the right to develop the properties to this extent when it acquired the properties in 1981, 1988 and 1990. As a result, the particular estimate of the effect on fair market value included in the claims is not a basis for determining a particular amount by which the fair market value of the properties has been affected by state land use regulations. In particular, there is no evidence that state laws restricting golf courses or high-density residential use of the properties have reduced the fair market value of the properties because these uses were prohibited when Willis Family, Inc. acquired the properties.

Nevertheless, as noted in the preceding section, Willis Family, Inc. may have had the right to divide the properties into parcels of 20 acres or more, and to establish a dwelling on each parcel when it acquired the properties. Based on this and the information in the record, the department determines that state land use regulations have reduced the fair market value of the properties to some extent as a result of state laws applicable to this use.

Conclusions

As explained in Section V.(1) of this report, claimant Willis Family, Inc. acquired the subject properties in 1981, 1988 and 1990. Under ORS 197.352, Willis Family, Inc. is due compensation for land use regulations that restrict the use of the subject properties 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 Willis Family, Inc. acquired the properties restrict its ability to divide the properties into 20-acre parcels and establish a dwelling on each parcel. Without an appraisal or other documentation and without verification of whether or the extent to which Willis Family, Inc.'s desired use of the subject properties was allowed under the standards in effect when it acquired the properties, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the properties. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject properties have 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 claims are based on state land use regulations that restrict the use of the subject properties, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Hood

⁷ This amount represents the total compensation sought for all tax lots subject to claims M124324, M124325 and M124326.

River County has implemented through its current EFU zone. With the exception of applicable provisions of Goal 3, ORS 215 and OAR 660, division 5, in effect when Willis Family, Inc. acquired the subject properties in 1981, 1988 and 1990, these state land use regulations were enacted or adopted after Willis Family, Inc. acquired the properties.

Conclusions

Without a specific development proposal for the subject properties, it is not possible for the department to determine all the laws that may apply to a particular use of the properties, or whether those laws may fall under one or more of the exemptions under ORS 197.352. The prohibition on golf courses on high-value farm land is not exempt under ORS 197.352(3)(E). The statutory, goal and rule restrictions on land divisions and dwellings are not exempt to the extent they were enacted or adopted after Willis Family, Inc. acquired the properties in 1981, 1988 and 1990. Many of these restrictions were in effect on these dates. Provisions of ORS 215 in effect when Willis Family, Inc. acquired the subject properties in 1981, 1988 and 1990 are exempt under ORS 197.352(3)(E) and will continue to apply to the properties.

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

This report addresses only those state laws that are identified in the claims, or that the department is certain apply to the properties, 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 claims, the greater the possibility that there may be additional laws that will later be determined to continue to apply to Willis Family, Inc.'s use of the subject properties.

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 Willis Family, Inc.'s desired use of the subject properties. The claims assert 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 properties by \$35,568,767.46.

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 properties, a specific amount of compensation cannot be determined. In order to determine a specific amount of the compensation due for this claim, it would also be necessary to verify whether or the extent to which Willis Family, Inc.'s desired use of the properties was allowed under the standards in effect when it acquired the properties. 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 properties 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 Willis Family, Inc. to use the properties for a use permitted at the time it acquired them in 1981, 1988 and 1990.

Conclusions

Based on the record and the preceding findings and conclusions, the department recommends that the claim as to Norma Jean Willis be denied because the claimant has not demonstrated her ownership of the subject properties.

Based on the record and the preceding findings and conclusions, the department also recommends that the claims be denied as to Willis Family, Inc., for all of the uses described in the claims except for the division of the properties into parcels of 20 acres or more and the establishment of a dwelling on each of the parcels.

The department otherwise recommends that the claims be approved for Willis Family, Inc., subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the otherwise applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, that are land use regulations, to Willis Family, Inc.'s partition of the following properties into parcels of 20 acres or more or to its development of a dwelling on each parcel: tax lot 3401 (in 2N 10E, section 12); tax lots 800, 900, 1000 (all in 2N 10E, section 13D); tax lots 100, 200, 300, 600, 700, 1400, 1800, 2200 and 2600 (all in 2N 10E, section 13D); tax lots 1400, 1800, 1900, 2400 and 2600 (in 2N 10E, section 18); and tax lot 902 (in T2N 11E, section 30). These laws will not apply to Willis Family, Inc.'s use of each property only to the extent necessary to allow it to use the subject properties for the use described above, and only to the extent that use was permitted when it acquired each property (as shown in the table in Section II of this report).

2. The action by the State of Oregon provides the state's authorization to Willis Family, Inc. to divide the subject properties into parcels of 20 acres or more and to establish a dwelling on each parcel, subject to the standards in effect in 1981, 1988 and 1990. In 1981, Willis Family, Inc.'s

use of the properties was subject to applicable provisions of Goal 3, ORS 215, OAR 660, division 5, (as well as Hood River County's zoning ordinance) then in effect. In 1988 and 1990, Willis Family, Inc.'s use of the subject properties was subject to Hood River County's acknowledged EFU zoning ordinance, along with the applicable provisions ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject properties may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the properties unless Willis Family, Inc. first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject properties imposed by private parties.

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

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

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 17, 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.