

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. M124354  
(BALLOT MEASURE 37) OF )  
Ambar Enterprises, Inc, CLAIMANT )

Claimant: Ambar Enterprises, Inc (the Claimant)

Property: Township 29S, Range 14W, Section 3, Tax lot 200

Township 28S, Range 14W, Section 34, Tax lot 1000, Coos 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 Ambar Enterprises, Inc.'s division of six five- to seven-acre parcels from tax lot 1000 or to its development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after May 15, 1991. These land use regulations will not apply Ambar Enterprises, Inc. only to the extent necessary to allow it to use tax lot 1000 for the use described in this report, and only to the extent that use was permitted when it acquired this tax lot on May 15, 1991.
2. The action by the State of Oregon provides the state's authorization to Ambar Enterprises, Inc. to use tax lot 1000 for the use described in this report, subject to the standards in effect on May 15, 1991. On that date, tax lot 1000 was subject to compliance with Coos County's acknowledged F mixed zone, and the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 5, and 6, then in effect.

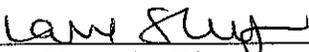
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lot 1000 may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Ambar Enterprises, 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 tax lot 1000 imposed by private parties.

4. Any use of tax lot 1000 by Ambar Enterprises, 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 Ambar Enterprises, Inc. to use tax lot 1000, 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 property. Nothing in this order relieves Ambar Enterprises, 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 tax lot 1000 by Ambar Enterprises, Inc.

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 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  
DLCD  
Dated this 6<sup>th</sup> day of September, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE  
SERVICES:

  
\_\_\_\_\_  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 6<sup>th</sup> 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.”

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. M124354  
(BALLOT MEASURE 37) OF )  
Michael McGettigan, CLAIMANT )

Claimants: Michael McGettigan (the Claimant)

Property: Township 29S, Range 14W, Section 3, Tax lot 200  
Township 28S, Range 14W, Section 34, Tax lot 1000, Coos 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 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 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 Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:

  
Lane Shetterly, Director  
DLCD  
Dated this 6<sup>th</sup> day of September, 2006.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 6<sup>th</sup> 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 197.352, 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)

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

September 6, 2006

**STATE CLAIM NUMBER:** M124354

**NAMES OF CLAIMANTS:** Michael McGettigan  
Ambar Enterprises, Inc

**MAILING ADDRESS:** 3939 N. Marine Drive #12  
Portland, Oregon 97217

**PROPERTY IDENTIFICATION:** Township 29S, Range 14W, Section 3  
Tax lot 200

Township 28S, Range 14W, Section 34  
Tax lot 1000

Coos County

**OTHER CONTACT INFORMATION:** Timm Alan Slater  
PO Box 1001  
North Bend, Oregon 97459

**DATE RECEIVED BY DAS:** March 14, 2006

**180-DAY DEADLINE:** September 10, 2006

**I. SUMMARY OF CLAIM**

The claimants, Michael McGettigan and Ambar Enterprises, Inc., seek compensation in the amount of \$1,330,000 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 six five- to seven-acre parcels from 58.76-acre tax lot 1000 and develop a dwelling on each parcel, and to use 77-acre tax lot 200 and the remainder of tax lot 1000 for a "natural resource use." The subject property is located on Morrison Road, near Bandon, in Coos 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 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 Ambar Enterprises, Inc.'s division of six five- to seven-acre parcels from tax lot 1000 and its development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after May 15, 1991. These laws will not apply to Ambar Enterprises, Inc. only to the extent necessary to allow it to use tax lot 1000 for the use described in this report, and only to the extent that use was permitted when it acquired this tax lot in 1991.

The department has determined that Ambar Enterprises, Inc. has not established its entitlement to relief under ORS 197.352 with regard to its desired use of tax lot 200 and the remainder of tax lot 1000 for a "natural resource use" because it has not established whether or how any land use regulations enacted or enforced since it acquired the subject property restrict the use of the property and have the effect of reducing its fair market value.

The department has further determined that this claim is not valid as to Michael McGettigan because he is not an owner of the subject property. (See the complete recommendation in Section VI of this report.)

### **III. COMMENTS ON THE CLAIM**

#### **Comments Received**

On June 22, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, 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 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 March 14, 2006, for processing under OAR 125, division 145. The claim identifies Exclusive Farm Use (EFU) zoning and county zoning ordinances 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**

Claimant Michael McGettigan acquired the subject property on August 24, 1978, as reflected by a land sale contract included with the claim. On May 15, 1991, Michael McGettigan transferred the subject property to claimant Ambar Enterprises, Inc., as reflected by bargain and sale deeds included with the claim.<sup>1</sup> The Coos County Assessor’s Office confirms Ambar Enterprises, Inc.’s current ownership of the subject property.

## **Conclusions**

Claimant Ambar Enterprises, Inc. is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of May 15, 1991. Claimant Michael McGettigan is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C).

### **2. The Laws That are the Basis for This Claim**

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict 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 claimants acquired the property.

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<sup>1</sup> Claimant Michael McGettigan asserts that Ambar Enterprises, Inc. acquired the subject property on October 2, 1987. The claim included documentation of Ambar Enterprises Inc.’s acquisition date, but the date on the bargain and sale deed is May 15, 1991. Absent documentation from the claimants to establish an earlier acquisition date, the department must rely on the available documentation to establish the date of acquisition.

## Findings of Fact

The claim indicates that the claimants desire to divide six five- to seven-acre parcels from tax lot 1000 and develop a dwelling on each parcel and to use tax lot 200 and the remainder of tax lot 1000 for a “natural resource use.” It indicates that the current zoning prohibits the desired use.

The claim is based on the applicable provisions of state law that require Exclusive Farm Use (EFU) and Forest (F) zoning. Tax lot 200 is zoned EFU by Coos County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because tax lot 200 is “agricultural land” as defined by Goal 3.<sup>2</sup> 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 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.)

Tax lot 1000 is zoned EFU/Forest (F mixed use) by Coos County, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.<sup>3</sup> Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under EFU zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size

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<sup>2</sup> Claimant Ambar Enterprises Inc.’s property is “agricultural land” because it contains Natural Resources Conservation Service Class I-IV soils.

<sup>3</sup> No information was provided to the department regarding the predominant use of the property on January 1, 1993.

specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Coos County's F mixed use zone is 80 acres. Tax lot 1000 cannot be divided into parcels smaller than 80 acres.

At the time Ambar Enterprises, Inc. acquired the subject property, it was subject to Coos County's acknowledged EFU and F mixed use zones.<sup>4</sup> When Ambar Enterprises, Inc. acquired the subject property, the desired use of the property would have been governed by the county's acknowledged EFU and F mixed use zones and the applicable provisions of ORS 215 then in effect.<sup>5</sup> In 1991, ORS 215.263 (1989 edition) 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) (1989 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.

In addition to the applicable provisions of ORS 215, the F mixed use-zoned portion of the property would have been subject to compliance with the county's plan and zoning designations, as implemented by Goal 4 and the applicable provisions of OAR 660, division 6.

The claim does not establish whether or to what extent Ambar Enterprises, Inc.'s desired division of the five- to seven-acre parcels from tax lot 1000 and the development of a dwelling on each parcel were allowed under the standards in effect when it acquired the property on May 15, 1991. Ambar Enterprises, Inc. has not established how any of the land use regulations enacted or adopted after it acquired tax lot 200 and the remainder of tax lot 1000 restrict the desired "natural resource use" with the effect of reducing the fair market value.

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33 were all enacted or adopted after Ambar Enterprises, Inc. acquired the subject property in 1991 and do not allow the desired division of six five- to seven-acre parcels from tax lot 1000 and the development of a dwelling on each parcel. However, the claim does not establish whether or to what extent Ambar Enterprises, Inc.'s desired use of the subject property complies with the standards for land divisions and development under Coos County's EFU and F mixed use zones and comprehensive plan in effect when Ambar Enterprises, Inc. acquired the subject property on May 15, 1991. Ambar Enterprises, Inc. has also not established that any of the land use regulations enacted or adopted after it acquired the subject property restricts the claimants' desired "natural resource use" of tax lot 200 and the remainder of tax lot 1000 with the effect of reducing the fair market value.

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<sup>4</sup> Coos County's EFU zone and F mixed use zones were acknowledged by the Commission for compliance with Goals 3 and 4 on August 29, 1985.

<sup>5</sup> After the county's comprehensive plan and land use regulations were acknowledged by the Commission as complying with the statewide planning goals, the goals and implementing rules no longer applied directly to individual local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

As explained in Section V.(1), claimant Mike McGettigan is not an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict Mike McGettigan’s use of private real property in a manner that reduces the fair market value of 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 Ambar Enterprises, Inc. has identified. There may be other laws that currently apply to Ambar Enterprises, Inc.’s use of the subject property, and that may continue to apply to Ambar Enterprises, Inc.’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 the subject property until there is a specific proposal for that use. When Ambar Enterprises, 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.

### **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 \$1,330,000 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimants’ desired use of the subject property. This amount is based on the claimants’ assessment of the subject property’s value.

### **Conclusions**

As explained in Section V.(1) of this report, claimant Ambar Enterprises, Inc. acquired the subject property on May 15, 1991. Under ORS 197.352, it is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing the fair market value of the property. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Ambar Enterprises, Inc. acquired tax lot 1000 restrict the desired use of the property. The claimants estimate that the effect of the regulations(s) on the fair market value of the subject property is a reduction of \$1,330,000.

Without an appraisal or other documentation and without verification of whether or the extent to which the desired use of tax lot 1000 was allowed under the standards in effect when it 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.

As explained in Section V.(1) of this report, Mike McGettigan has not established that he is an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict his use of the subject property in a manner that reduces the fair market value of the property.

#### **4. Exemptions Under ORS 197.352(3)**

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

#### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Coos County has implemented through its current EFU and EFU/Forest (F mixed use) zones. With the exception of applicable provisions of ORS 215 in effect when Ambar Enterprises, Inc. acquired the subject property on May 15, 1991, these state land use regulations were enacted or adopted after it acquired the property.

#### **Conclusions**

As explained in Section V.(1) of this report, Mike McGettigan has not established the he is an “owner” of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, the department can make no determination as to whether any land use laws are exempt from ORS 197.352. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to Mike McGettigan’s claim.

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 the general statutory, goal and rule restrictions on division and development of the subject property are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after Ambar Enterprises, Inc. acquired the property on May 15, 1991. Provisions of ORS 215 in effect when it acquired the subject property in 1991 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

Other laws in effect when Ambar Enterprises, Inc. acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to Ambar Enterprises, Inc.’s use of the property. There may be other laws that continue to apply to Ambar Enterprises, Inc.’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 subject property until there is a specific proposal for that use. When Ambar Enterprises, 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 claim, or that the department is certain apply to the subject property, based on the uses that Ambar Enterprises, Inc. 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. Ambar Enterprises, Inc. should be aware that the less information it 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 Ambar Enterprises, Inc.’s 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 record, the department finds that Mike McGettigan's claim is not valid because he has not demonstrated his ownership of the subject property.

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict Ambar Enterprises, Inc.'s desired use of tax lot 1000. 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 \$1,330,000. 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 the compensation due for this claim, it would also be necessary to verify whether or the extent to which Ambar Enterprises, Inc.'s desired use of the subject property was allowed under the standards in effect when it 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 tax lot 1000 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 Ambar Enterprises, Inc. to use tax lot 1000 for a use permitted at the time it acquired the property on May 15, 1991.

### **Conclusions**

Based on the record before the department, claimant Michael McGettigan has not established that he is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that Michael McGettigan's claim be denied.

Based on the record, Ambar Enterprises, Inc. has not established that it is entitled to relief under ORS 197.352 with regard to the desired use of tax lot 200 and a portion of tax lot 1000 for a "natural resource use" because it has not established how any land use regulations enacted or enforced since it acquired these portions restrict the desired use and have the effect of reducing the fair market value.

Based on the record, the department further recommends that Ambar Enterprises Inc.'s claim otherwise 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 Ambar Enterprises, Inc.'s division of six five- to seven-acre parcels from tax lot 1000 or to its development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after May 15, 1991. These land use regulations will not apply Ambar Enterprises, Inc. only to the extent necessary to allow it to use tax lot 1000 for the use described in this report, and only to the extent that use was permitted when it acquired this tax lot on May 15, 1991.
2. The action by the State of Oregon provides the state's authorization to Ambar Enterprises, Inc. to use tax lot 1000 for the use described in this report, subject to the standards in effect on May 15, 1991. On that date, tax lot 1000 was subject to compliance with Coos County's acknowledged F mixed zone, and the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 5, and 6, then in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that tax lot 1000 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 Ambar Enterprises, 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 tax lot 1000 imposed by private parties.
4. Any use of tax lot 1000 by Ambar Enterprises, 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 Ambar Enterprises, Inc. to use tax lot 1000, 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 property. Nothing in this order relieves Ambar Enterprises, 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 tax lot 1000 by Ambar Enterprises, Inc.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on August 18, 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.