

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. M125005 |
| (BALLOT MEASURE 37) OF |) | |
| Elizabeth Jacobson, CLAIMANT |) | |

Claimant: Elizabeth Jacobson (the Claimant)

Property: Township 10, Range 10E, Section 4, Tax lots 800 and 801
Township 10, Range 10E, Section 9, Tax lots 100, 101, 300 and 302
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 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 Elizabeth Jacobson's division of the subject property into one 40-acre parcel, two 50-acre parcels and three 20-acre parcels, and to her establishment 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 the claimant acquired the subject property on February 26, 1986, and July 7, 1992.
2. This action by the State of Oregon provides the state's authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on February 26, 1986, and July 7, 1992. On those dates, the property was subject to applicable provisions of Goals 3 and 4 and OAR 660, divisions 5, and 6, as implemented by Hood River County's acknowledged EFU and forest zones, and 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 property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

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

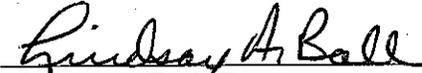
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable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

This Order is entered by the Manager for the Measure 37 Services Division 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


Michael Morrissey, Manager
DLCD, Measure 37 Division
Dated this 11th day of October, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Lindsay A. Ball, Director
DAS
Dated this 11th day of October, 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
AND OREGON DEPARTMENT OF ADMINISTRATIVE SERVICES
Final Staff Report and Recommendation**

October 11, 2006

STATE CLAIM NUMBER: M125005

NAME OF CLAIMANT: Elizabeth Jacobson

MAILING ADDRESS: 7130 Smullin Road
Mt. Hood, Oregon 97041

PROPERTY IDENTIFICATION: Township 10, Range 10E
Section 4: tax lots 800 and 801
Section 9: tax lots 100, 101, 300 and 302
Hood River County

DATE RECEIVED BY DAS: April 19, 2006

180-DAY DEADLINE: October 16, 2006

I. SUMMARY OF CLAIM

The claimant, Elizabeth Jacobson, seeks compensation in the amount of \$1,860,000 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.¹ The claimant desires compensation or the right to divide the subject property (which consists of approximately 200 acres) into one 40-acre parcel, two 50-acre parcels and three 20-acre parcels and to develop a dwelling on each parcel.² The subject property is located at 7130 Smullin Road, near the community of Mt. Hood, in Hood River County. (See claim.)

¹ The subject property includes six tax lots. Tax lot 100 consists of 22.43 acres; tax lot 101 consists of 17.57 acres; tax lot 300 consists of 78.49 acres; tax lot 302 consists of 6.72 acres; tax lot 800 consists of 18.22 acres; and tax lot 801 consists of 56.87 acres.

² The claimant requests that any right to develop the property that is authorized by the state be transferable. ORS 197.352 only authorizes a state agency to waive a law in order to allow the current owner a use of the property permitted at the time that owner acquired the property. Whether, or under what circumstances, a subsequent owner may use the property for a particular use is beyond the scope of this order, but may depend on whether that use is first established by the current owner. The Oregon Department of Justice has advised the department that "[i]f the current owner of the real property conveys the property before a new use allowed by the public entity is established, then the entitlement to relief will be lost." If the claimant has questions about the transfer of any rights authorized by this order, the claimant should confer with an attorney.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (DLCD or 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 Elizabeth Jacobson's division of the subject property (tax lots 100, 101, 300, 302, 800 and 801) into one 40-acre parcel, two 50-acre parcels and three 20-acre parcels and to her establishment 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 the claimant acquired each of the tax lots that makes up the subject property.³

These above land use regulations will not apply to the claimant only to the extent necessary to allow her to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the tax lots. The claimant acquired tax lots 101 and 801 on February 26, 1986, and tax lots 100, 300, 302 and 800 on July 7, 1992. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 8, 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, no written comments were received in response to the 10-day notice.

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.

³ The cover letter included with this claim lists several sets of statutes administered by state agencies other than DLCD: ORS 527 (relating to forest practices) and ORS 537, 539 and 540 (all relating to water rights). The claim contains no information or evidence demonstrating that these laws apply to the claimant's desired use of the property, or that they restrict that use. As a result, the state's order for this claim addresses only laws administered by DLCD that the department has determined apply to and restrict the claimant's desired use.

Findings of Fact

This claim was submitted to DAS on April 19, 2006, for processing under OAR 125, division 145. The claim identifies Goals 3, 4 and 5 (Open Spaces, Scenic & Historic Areas, Natural Resources); ORS chapters 197 to 215 and chapters 527, 537, 539 and 540; OAR 660, divisions 6, and 33; and Hood River zoning as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004 are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

The claimant, Elizabeth Jacobson, acquired tax lots 101 and 801 on February 26, 1986, and tax lots 100, 300, 302 and 800 on July 7, 1992, as reflected by deeds included with the claim. Charles Marvin, the claimant’s father, acquired the subject property on February 8, 1982, as evidenced by a warranty deed included with the claim. The Hood River County Assessor’s Office confirms the claimant’s current ownership of the subject property.

Conclusions

The claimant, Elizabeth Jacobson, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C), as of February 26, 1986, for tax lots 101 and 801 and as of July 7, 1992, for tax lots 100, 300, 302 and 800. The claimant’s father, Charles Marvin, is a “family member” as defined by ORS 197.352(11)(A) and acquired the subject property on February 8, 1982.

2. The Laws That are the Basis for This Claim

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

Findings of Fact

The claim indicates that the claimant desires the right to divide the portion of the subject property zoned F-1 into two 50-acre parcels and one 40-acre parcel, and to divide the portion of the subject property zoned EFU into three 20-acre parcels, and to develop a dwelling on each parcel. According to the claimant, her desired use is not allowed under current land use restrictions.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) and forest zoning.

Regarding a portion of tax lot 300 and a portion of 800, the claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. These portions are zoned EFU by Hood River County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because they 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 Goal 3 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.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

The claimant's family acquired a portion of tax lot 300 and a portion of 800 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. Because the Commission had not acknowledged the county's plan and land use regulations when the claimant's family acquired these portions of the subject property on February 8, 1982, the statewide planning goals, and Goal 3 in particular, applied directly to these portions when the claimant's family acquired them.⁵

⁴ A portion of tax lot 300 and a portion of tax lot 800 are "agricultural land" because they contain Natural Resources Conservation Service Class I-IV soils.

⁵ The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's

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, the claimant's opportunity to divide a portion of tax lot 300 and a portion of tax lot 800 when her family acquired these portions in 1982 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) 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.

Under the Goal 3 standards in effect on February 8, 1982, 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).

Regarding tax lots 100, 101, 302 and 801; a portion of tax lot 300 (26.5 acres); and a portion of tax lot 800 (9.06 acres), the claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. These portions are zoned Forest (F-1) by Hood River County, as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because they are "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 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.

The claimant's family acquired tax lots 100, 101, 302 and 801; a portion of tax lot 300; and a portion of tax lot 800 after the adoption of the statewide planning goals and certain statutory restrictions, but before the Commission acknowledged the Hood River County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged the county's plan and land use regulations when the claimant's family acquired these portions of the subject property on February 8, 1982, the statewide planning goals, and Goal 4 in particular, applied directly to the these portions when the claimant's family acquired them.⁶

comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev. den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such 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).

⁶ See footnote 5.

Goal 4 went into effect on January 25, 1975, and was intended to “conserve forest lands for forest uses” and required, “Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan.” Those forest uses were defined as follows: “(1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.”

Under Goal 4, forest dwellings were allowed if they were shown to be “necessary and accessory” to a commercial forest use. *Lamb v. Lane County*, 7 Or LUBA 137 (1983).

Finally, the cover letter to the claim also lists Goal 5, but the claim contains no information or evidence demonstrating that this goal applies to or restricts the claimant’s desired use of the subject property. As a result, the department is unable to determine that Goal 5 applies to the property or restricts the claimant’s desired use, and recommends that the claim be denied with respect to Goal 5.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established pursuant to Goal 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted after the claimant’s family acquired the subject property in 1982 and do not allow the claimant’s desired division or development of the property. However, the claim does not establish whether or to what extent the claimant’s desired use of the subject property complies with the standards for land divisions and development under Goals 3 and 4 and ORS 215.213 and 215.263 in effect when the claimant’s family acquired the subject property on February 8, 1982.

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 \$1,860,000 as the reduction in the subject property’s fair market value due to the regulations that restrict the claimant’s desired use of the property. This amount is based on a market analysis submitted with the claim, along with a prior appraisal of the property.

Conclusions

As explained in Section V.(1) of this report, the claimant is Elizabeth Jacobson whose family acquired the subject property in 1982. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the 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 claimant's family acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the regulations on the fair market value of the subject property is a reduction of \$1,860,000.

Without further documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject 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 since the claimant's family acquired 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 relative to the uses permitted when the claimant's family acquired the property, including applicable provisions of Goal 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Hood River County has implemented through its current EFU and forest zones.

Conclusions

It appears that the general statutory, goal and rule restrictions on division and residential development of the subject property are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after the claimant's family acquired the property on February 8, 1982. Those provisions of Goals 3 and 4 and ORS 215.213 and 215.263 that were in effect prior to February 8, 1982, are exempt under ORS 197.352(3)(E), and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

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 claimant's 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 \$1,860,000. However, because the claim does not additional 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 claimant's desired use of the subject property was allowed under the standards in effect when the claimant's family 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 Elizabeth Jacobson to use the subject property for a use permitted at the time she acquired tax lots 101 and 801 on February 26, 1986, and tax lots 100, 300, 302 and 800 on July 7, 1992.

During the times the claimant acquired the subject property, it was subject to Hood River County's acknowledged EFU and F-1 zones, along with ORS 215.263 and 215.283 (1985 edition).⁷ When the claimant acquired the subject property, the claimant's desired use of the property would have been governed by the county's acknowledged EFU and F-1 zones and the applicable provisions of ORS 215 then in effect.⁸

In 1986 and 1992, ORS 215.263 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) 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.

The claim does not establish whether or to what extent the claimant's desired division and development of the subject property were allowed under the standards in effect when she acquired the property on February 26, 1986, and July 7, 1992.

Other laws in effect when the claimant acquired the subject property are exempt under ORS 197.352(3)(E) and will also continue to apply to the claimant's 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. These provisions include fire protection standards for dwellings and

⁷ Hood River County's EFU and F-1 zones were acknowledged by the Commission for compliance with Goals 3 and 4 on January 11, 1985.

⁸ See footnote 5.

for surrounding forest lands. 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).

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

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 Elizabeth Jacobson’s division of the subject property into one 40-acre parcel, two 50-acre parcels and three 20-acre parcels, and to her establishment 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 the claimant acquired the subject property on February 26, 1986, and July 7, 1992.
2. This action by the State of Oregon provides the state’s authorization to the claimant to use the subject property for the use described in this report, subject to the standards in effect on February 26, 1986, and July 7, 1992. On those dates, the property was subject to applicable provisions of Goals 3 and 4 and OAR 660, divisions 5, and 6, as implemented by Hood River County’s acknowledged EFU and forest zones, and 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 property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a “permit” as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimant under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the subject property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use

regulations applicable to the property. Nothing in this order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on September 25, 2006. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.