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

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Delores L. Stills, CLAIMANT	))))	FINAL ORDER CLAIM NO. M125113

Claimant: Delores L. Stills (the Claimant)

Property: Township 11, Range 11E, Tax lot 2200

Township 11, Range 11E, Section 26D, Tax lot 100, Jefferson 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 tax lot 100 and as to that portion of tax lot 2200 zoned Three Rivers Recreation Area Waterfront (TRRAW) for the reasons set forth in the DLCD Report.

The Claim is approved, as to the portion of tax lot 2200 zoned Rangeland, 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 Delores Stills' division of the portion of tax lot 2200 zoned Rangeland to create two additional parcels and to her development of a recreational home on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after January 19, 1981. These laws will not apply to the claimant only to the extent necessary to allow her to use the portion of tax lot 2200 zoned Rangeland for the use described in this report, and only to the extent that use was permitted when she acquired the portion on January 19, 1981.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the portion of tax lot 2200 zoned Rangeland for the use described in this report, subject to the

standards in effect on January 19, 1981. At that time, this portion was subject to applicable provisions of Goal 3 and 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 portion of tax lot 2200 zoned Rangeland 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 obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use by the claimant of the portion of tax lot 2200 zoned Rangeland 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 portion of tax lot 2200 zoned Rangeland, 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 the claimant's use of the portion of tax lot 2200 zoned Rangeland.

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 19th day of October, 2006.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 19th 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 19, 2006

STATE CLAIM NUMBER:	M125113
NAME OF CLAIMANT:	Delores L. Stills
MAILING ADDRESS:	c/o Lorne Stills 10245 NE Clemens Drive Madras, Oregon 97741
PROPERTY IDENTIFICATION:	Township 11, Range 11E Tax lot 2200 Township 11, Range 11E, Section 26D Tax lot 100 Jefferson County
OTHER CONTACT INFORMATION:	Edward P. Fitch PO Box 457 Redmond, Oregon 97756
DATE RECEIVED BY DAS:	April 26, 2006
180-DAY DEADLINE:	October 23, 2006

I. SUMMARY OF CLAIM

The claimant, Delores Stills, seeks compensation in the amount of $1.6 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide tax lot 2200 to create two additional parcels and to develop a recreational home on each parcel. Tax lot 2200 contains approximately 122 acres, of which 50 are above the water line. The claimant desires compensation or the right to develop condominiums or homes on tax lot 100. Tax lot 100 contains seven acres of dry land. The subject property (consisting of tax lots 100 and 200) is located on Lakeview Drive and Graham Road, adjacent to Lake Billy Chinook, in Jefferson 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 Delores Stills' division of the portion of tax lot 2200 zoned Rangeland into two parcels and to her development of a recreational home on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after January 19, 1981.[1] These laws will not apply to the claimant only to the extent necessary to allow her to use the portion of tax lot 2200 zoned Rangeland for the use described in this report, and only to the extent that use was permitted when she acquired this portion on January 19, 1981.

The department further determined that the claim is not valid as to tax lot 100 and as to that portion of portion of tax lot 2200 zoned Three Rivers Recreation Area Waterfront (TRRAW) because no state land use regulations apply to the claimant's desired use of these portions of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 15, 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.

[1] Under ORS 197.352(8), if a public entity elects to not apply one or more land use regulations to the claimant's use of the property, it may do so only to allow "a use." Further, in order to determine that land use regulations have been restricted the claimant's use of the property, the department must base that determination on a use. In this case, the description of the desired use in the claim is ambiguous in several respects, including the number of lots or parcels desired. The department has evaluated the claim on the basis that the desired use is as stated in Section I, Summary of the Claim. If the claimant wishes to make a claim for a different use, the claimant is free to submit a new claim.

Findings of Fact

This claim was submitted to DAS on April 26, 2006, for processing under OAR 125, division 145. The claim identifies all statewide planning goals and regulations, which restricts the desired use and statewide regulations, which would restrict or impair the ability of the owner to engage in the desired use 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, Delores Stills, acquired an interest in tax lot 2200 on January 19, 1981, and tax lot 100 on May 14, 1986, as reflected by a bargain and sale deed and a deed card included with the claim. On November 22, 2002, the subject property was transferred to the Delores L. Stills Revocable Trust with Delores L. Stills as trustee, as reflected by a trust agreement included with the claim.[2] Douglas Stills, the claimant's husband, first acquired the subject property on March 4, 1969, as evidenced by an agreement included with the claim. The Jefferson County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Delores Stills, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of January 19, 1981, and May 14, 1986. The claimant's husband is a "family member" as defined by ORS 197.352(11)(A) and acquired the subject property on March 4, 1969.

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.

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

Findings of Fact

The claim indicates that the claimant desires to divide and develop tax lot 2200 into two recreational homesites and to develop condominiums or homesites on tax lot 100. It indicates that these uses are not allowed under the current land use regulations.[3]

According to the claim and a letter from Jefferson County included with the claim, the western 1320 feet of tax lot 2200 is zoned TRRAW, and the eastern 870 feet is zoned Rangeland. The portion of tax lot 2200 zoned TRRAW is in an "exception" area, and Goal 3, the provisions of ORS 215 applying to lands zoned for exclusive farm use, and the Commission's Goal 3 rules (OAR 660, division 33) do not apply to this portion of the property.

A portion of tax lot 2200 is zoned Rangeland (RL) by Jefferson County, as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because this portion of the property is "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 any proposed parcel 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 215.780(1)(b) establishes a 160-acre minimum size for the creation of new lots or parcels in EFU zones that are designated rangeland 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

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[3] The claim also lists "all statewide planning regulations, goals and guidelines, ORS 215 and any acknowledgement since 1969." The claim does not establish how particular laws either apply to the claimant's desired use of the subject property or restrict the claimant's use and have the effect of reducing its fair market value. On their face, most of the statewide planning goals and the Commission's rules either do not apply to the claimant's desired use of the property or do not restrict the use of the claimant's property in a manner that reduces its fair market value. This report addresses only those state regulations that the department finds are applicable to and restrict the claimant's use of the subject property, based on the claimant's desired use as described in the claim. The claim also lists "regulations from State Land Fish and Wildlife, Marine Board, etc., which would impair the ability of the owner to construct or expand dock at Lake Billy Chinook." Nothing relating to a dock is included in the description of the desired use in the claim, and the claim does not identify particular state land use regulations or describe how they restrict the claimant's desired use. The state is unable to take any action regarding a dock without a description of what the claimant desires and which state laws restrict that use. The state also notes that the claimant's use of this portion of the property appears to be limited by certain easements and restrictive covenants to which the claimant has entered.

[4] The portion of tax lot 2200 zoned Rangeland is "agricultural land" because it contains National Resources Conservation Service Class I–VI soils.

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.)

These state land use regulations apply to and restrict the claimant's desired use of the portion of tax lot 2200 that is zoned Rangeland and that is upland.

Tax lot 100 and the portion of tax lot 2200 zoned TRRAW are not subject to Goal 3, the provisions of ORS 215 that apply to land zoned for exclusive farm use, or to OAR 660, division 33. The claim does not identify any other state land use regulations that apply to land divisions of exception lands, or to development of recreational homesites or condominiums.

The claimant's family first acquired both tax lot 2200 and tax lot 100 in 1969, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1969.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after the claimant's family acquired the subject property. These laws restrict the use of the portion of tax lot 2200 that is zoned as Rangeland relative to the uses allowed when the claimant's family acquired the property.

As explained in Section V.(2) above, the claim does not establish that any state laws apply to or restrict the claimant's desired use of the portion of tax lot 2200 that is zoned TRRAW or of tax lot 100.

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 $1.6 million 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 included with the claim.

The market analysis assumes that state land use regulations apply to all of tax lot 2200 and tax lot 100, and it does not differentiate between state and local land use regulations. Nevertheless, the analysis provides some evidence that state land use regulations have had the effect of reducing the fair market value of tax lot 2200 to some extent.

Conclusions

As explained in Section V.(1) of this report, the claimant is Delores Stills whose family member acquired the subject property in 1969. 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 $1.6 million.

Without an appraisal or other 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 a portion of tax lot 2200 relative to the uses permitted when the claimant's family acquired the property in 1969, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Jefferson County has implemented through its current Rangeland zone. All of these land use regulations were enacted or adopted after the claimant's family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimant's family acquired the property on March 4, 1969. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimant's family acquired the subject property 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.

As explained in Section V.(2), claimant Delores Stills does not establish any state laws that currently restrict her use of tax lot 100 and her use of the portion of tax lot 2200 zoned TRRAW. Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant to Delores Stills' use of these tax lots.

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 portion of tax lot 2200 zoned Rangeland. 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 $1.6 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimant's desired use of tax lot 2200 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 tax lot 2200 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 Delores Stills to use a portion of tax lot 2200 zoned Rangeland for a use permitted at the time she acquired the property on January 19, 1981.

The claimant acquired tax lot 2200 after the adoption of the statewide planning goals, but before the Commission acknowledged Jefferson 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 acquired tax lot 2200 on January 19, 1981, the statewide planning goals, and Goal 3 in particular, applied directly to the property when she acquired it.[5]

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[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 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

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 (1979 edition) 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 tax lot 2200 when she acquired it in 1981 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 215.242 (which, among other things, called for preserving agricultural land in large blocks).

Under the Goal 3 standards in effect on January 19, 1981, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1979 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1979 edition). That statute required that the dwelling: (a) be compatible with farm uses and consistent with ORS 215.243; (b) not interfere seriously with farm practices; (c) not materially alter the stability of the overall land use pattern in the area; (d) be situated on land physically unsuitable for farm use; and (e) comply with any other conditions imposed by the county.

No information has been presented in the claim to establish that the claimant's desired division of the portion of tax lot 2200 zoned Rangeland into two parcels complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1973 edition), nor is there any information to establish that the claimant's desired development of two additional dwellings on the resulting parcels satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition).

In addition to the applicable provisions of Goal 3 and ORS 215 in effect on January 19, 1981, and other laws in effect when the claimant acquired tax lot 2200, there may be other laws that apply to the claimant's use of the property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the portion of tax lot 2200 zoned Rangeland until there is a specific proposal for that use. When the claimant seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use, and depending on when they were enacted or adopted, may continue to apply to the claimant's property. In addition, some of these laws may be exempt under ORS 197.352(3)(A) to (D) and will continue to apply to the portion of tax lot 2200 zoned Rangeland on that basis.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the portion of tax lot 2200 zoned Rangeland based on the use 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

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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).

later be determined to continue to apply to her use of the portion of tax lot 2200 zoned Rangeland.

Conclusions

Based on the record, the department recommends that the claim be denied as to tax lot 100 and as to that portion of tax lot 2200 zoned TRRAW because the claim does not establish that the state land use regulations apply to the claimant's desired use of these portions of the property or that they have had the effect of reducing the fair market value. The department further recommends that the claim be approved for that portion of tax lot 2200 zoned Rangeland, 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 Delores Stills' division of the portion of tax lot 2200 zoned Rangeland to create two additional parcels and to her development of a recreational home on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after January 19, 1981. These laws will not apply to the claimant only to the extent necessary to allow her to use the portion of tax lot 2200 zoned Rangeland for the use described in this report, and only to the extent that use was permitted when she acquired the portion on January 19, 1981.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the portion of tax lot 2200 zoned Rangeland for the use described in this report, subject to the standards in effect on January 19, 1981. At that time, this portion was subject to applicable provisions of Goal 3 and 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 portion of tax lot 2200 zoned Rangeland 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 obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use by the claimant of the portion of tax lot 2200 zoned Rangeland 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 portion of tax lot 2200 zoned Rangeland, 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 the claimant's use of the portion of tax lot 2200 zoned Rangeland.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on October 2, 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.