

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 A
COMPENSATION UNDER ORS 197.352) CLAIM NO. M129513
(BALLOT MEASURE 37) OF)
Jesse L. Pattison, CLAIMANT)

Claimant: Jesse L. Pattison (the Claimant)

Property: Township 16S, Range 8W, Section 6, Tax lot 202, Lane 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 Jesse and Elaine Pattison's development of a retreat center dwelling on the 43-acre subject property: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Jesse Pattison acquired portions of the property on May 30, 1972, and August 16, 1973, and when Elaine Pattison acquired the southern middle portion of the property on November 17, 1986.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on May 30, 1972, and August 16, 1973, for Jesse Pattison and on November 17, 1986, for Elaine Pattison as to the southern middle portion of the subject property. On November 17, 1986, the property was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Lane County's acknowledged forest zone.

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

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

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

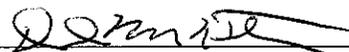
This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS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

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



Cora R. Parker, Deputy Director
DLCD
Dated this 8th day of December, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 8th day of December, 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 B
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M129513
(BALLOT MEASURE 37) OF)	
Elaine M. Pattison, CLAIMANT)	

Claimant: Elaine M. Pattison (the Claimant)

Property: Township 16S, Range 8W, Section 6, Tax lot 202, Lane 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 the northern portion of the subject property as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Jesse and Elaine Pattison's development of a retreat center dwelling on the 43-acre subject property: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Jesse Pattison acquired portions of the property on May 30, 1972, and August 16, 1973, and when Elaine Pattison acquired the southern middle portion of the property on November 17, 1986.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on May 30, 1972, and August 16, 1973, for Jesse Pattison and on November 17, 1986, for Elaine Pattison as to the southern middle portion of the subject property. On November 17, 1986, the property

was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Lane County's acknowledged forest zone.

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

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

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

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

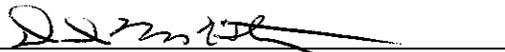
Lane Shetterly, Director



Cora R. Parker, Deputy Director
DLCD

Dated this 8th day of December, 2006.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division

Dated this 8th day of December, 2006.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

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

FOR INFORMATION ONLY

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

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

December 6, 2006

STATE CLAIM NUMBER: M129513

NAMES OF CLAIMANTS: Jesse L. and Elaine M. Pattison

MAILING ADDRESS: 94300 Deadwood Creek Road
Deadwood, Oregon 97430

PROPERTY IDENTIFICATION: Township 16S, Range 8W, Section 6
Tax lot 202¹
Lane County

OTHER CONTACT INFORMATION: Steve Cornacchia
Hershner Hunter, LLP
180 E 11th Avenue
Eugene, Oregon 97401

DATE RECEIVED BY DAS: June 14, 2006

180-DAY DEADLINE: December 11, 2006

I. SUMMARY OF CLAIM

The claimants, Jesse and Elaine Pattison, seek compensation in the amount of \$3.5 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 claimants desire compensation or the right to develop the subject property consisting of approximately 43 acres for a "commercial use (resort/retreat center) on parcels less than 80 acres in size."² The subject property is located at 94300 Deadwood Creek Road, near Deadwood, in Lane County. (See claim.)

¹ Tax lot 202 consists of 89.04 acres; however, the claimants seek relief only as to the northern approximately 43-acre portion. This report does not authorize any use of the southern approximately 46-acre portion of tax lot 202.

² The claim does not state the claimants' desired use with sufficient specificity for the department to evaluate whether or to what extent state land use regulations enacted or adopted after the claimants acquired the property may restrict that desired use. Under ORS 197.352(8), if a public entity elects to not apply one or more land use regulations to the claimants' use of the property, it may do so only to allow "a use." Further, in order to determine that land use regulations have restricted the claimants' use of the subject property, the department must base that determination on a use. The department makes every effort to determine what use of the property the claimant seeks to carry out, but in circumstances where the claimant does not provide the information necessary for the department to determine the use sought, the department will conclude that the desired use is to develop a dwelling on the subject property. On October 23, 2006, department staff sent a letter to the claimants and the claimants' agent explaining this and requesting clarification of the claimants' desired use. On October 25, 2006, the claimants' agent submitted a letter which did not clarify the intended desired use. Instead, the letter generally described multiple desired uses

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 Jesse and Elaine Pattison's development of a retreat center dwelling on the 43-acre subject property: applicable provisions of Statewide Planning Goal 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 6, enacted or adopted after each claimant acquired portions of the subject property.³ These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Jesse Pattison acquired portions of the property on May 30, 1972 and August 16, 1973, and when Elaine Pattison acquired the southern middle portion of the property on November 17, 1986. The department acknowledges that it is unlikely that Elaine Pattison's desired development of the property would have been permitted at the time she acquired the southern middle portion of the subject property.

The department has further determined that this claim is not valid as to Elaine Pattison for the remaining northern portion of the subject property because the claimants have not established her ownership of that portion of the property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On September 25, 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

"to construct habitable structures on the subject property that can be used for commercial visitor accommodations". Therefore, the department will evaluate the claim based on the development of a retreat center dwelling. Given the claimants' lack of specificity as to the nature of this "retreat center," and depending on the actual use the claimants may propose in the future, it is likely that an additional claim for relief under ORS 197.352 will be necessary for land use regulations that may restrict the use the claimants actually desire. If the claimants wish to make a claim for a different use, the claimants may submit a new claim.

³ Prior to issuance of the draft staff report, department staff requested clarification of the claimants' intended use, and attempted to determine the intended use based on information the claimants' attorney provided. In response to the draft staff report, both the claimants and the claimants' attorney provided the necessary information but did not provide or explain, prior to the staff report, the desired use with the specificity necessary to allow evaluation of the claim. Within the strict timeline required under ORS 197.352, the department makes every effort to obtain information regarding the claimants' desired use in order to analyze claims within the required timeline. When that information is not provided in a timely manner to allow the department's evaluation, the department must evaluate the claim based on the information available. To the extent the relief granted in this claim, based on information the claimants' attorney provided to the department, does not provide the full relief the claimants desire, the claimants may file a new claim, following the claimants' submission to the county a land use application in which the land use regulations applicable to the desired use were applied as approval criteria.

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 June 14, 2006, for processing under OAR 125, division 145. The claim identifies Goals 4 and 14 (Urbanization), provisions of OAR 660, divisions 6, 14, and 15 and ORS 197 and 215 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 Jesse Pattison (also known as Michael Pattison) acquired portions of platted lots 7 and 8 on May 30, 1972, and portions of tax lots 202, 401, 402 and 403 on August 16, 1973, all of which compose the 43-acre subject property, as reflected by warranty deeds included with the claim. Claimant Elaine Pattison acquired an interest in the southern middle portion of the subject property from her husband, Jesse Pattison, on November 16, 1986, as reflected by a bargain and

sale deed included with the claim. The Lane County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Jesse and Elaine Pattison, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C). Jesse Pattison has been an owner of the subject property since May 30, 1972, and August 16, 1973. Elaine Pattison has been an owner of the southern middle portion of the subject property since November 16, 1986. Jesse Pattison is a "family member" of Elaine Pattison as defined by ORS 197.352(11)(A) as to that portion of the property. Elaine Pattison is not an "owner" of the northern portion 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 the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to develop a retreat center dwelling on the 43-acre subject property, and that current land use regulations restrict the desired use.⁴

The claim is based generally on the applicable provisions of state law that require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned by Lane County as Impacted Forest (F2) as required by Goal 4, in accordance with ORS 215 and OAR 660, division 6, because the claimants' property is "forest land" under Goal 4. Goal 4 became effective on January 25, 1975, and requires that forest land be zoned for forest use (see statutory and rule history under OAR 660-015-0000(4)). The forest land administrative rules (OAR 660, division 6) became effective on September 1, 1982, and ORS 215.705 to 215.755 and 215.780 became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). OAR 660-006-0026 and 660-006-0027 were amended on March 1, 1994, to implement those statutes.

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

⁴ The claimants summarily cite numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants' desired use of the property or do not restrict the claimants' desired use of the property with the effect of reducing its fair market value. In particular, the claimants generally cite Goal 14, OAR 660, divisions 14 and 15 and ORS 197. However, they have not established how those regulations apply to or restrict their desired use of the property. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' desired use of the subject property, based on the claimants' description of their desired use.

Claimant Jesse Pattison acquired the subject property on May 30, 1972, and August 16, 1973, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 and provisions applicable to land zoned for forest use in ORS 215 and OAR 660, division 6, were all enacted or adopted after Jesse Pattison acquired the subject property in 1972 and 1973 and do not allow the desired use of the property. These laws restrict the use of the property relative to the uses allowed when Jesse Pattison acquired the property.

As explained in Section V.(1), Elaine Pattison, is not an “owner” of the northern portion 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 her use of that portion of the subject property with the effect of reducing 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 the claimants have identified. There may be other laws that currently apply to the claimants’ use of the subject property, and that may continue to apply to the claimants’ use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) described in Section V.(2) of this report must have “the effect of reducing the fair market value of the property, or any interest therein.”

Findings of Fact

The claim includes an estimate of \$3.5 million as the reduction in the subject property’s fair market value due to the regulations that restrict the claimants’ desired use of the property. This amount is based on an appraisal included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Jesse Pattison, who acquired the subject property on May 30, 1972, and August 16, 1973, and his wife, Elaine Pattison. As explained in Section V.(1) of this report, Elaine Pattison, is not an “owner” of the northern portion of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict her use of that portion of the subject property with the effect of reducing the fair market value of the property. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Jesse Pattison acquired the subject property restrict the claimants’

desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$3.5 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.

4. Exemptions Under ORS 197.352(3)

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

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 4, ORS 215 and OAR 660, division 6, which Lane County has implemented through its current F2 zone. All of these land use regulations were enacted or adopted after Jesse Pattison acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when Jesse Pattison acquired the property in 1972 and 1973. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when Jesse Pattison acquired the property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other 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.(1) of this report, Elaine Pattison, is not an "owner" of the northern portion of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant as to that portion of the 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 the claim is not valid as to Elaine Pattison for the northern portion of the subject property because she is not an owner of that portion of the property. The department further finds laws enforced by the Commission or the department restrict Jesse Pattison's desired use of the subject property, and Elaine Pattison's desired use of the southern middle portion 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 \$3.5 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 claimants' desired use of the subject property was allowed under the standards in effect when Jesse Pattison 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 Jesse and Elaine Pattison to use the subject property for a use permitted at the time Jesse Pattison acquired the property on May 30, 1972, and August 16, 1973, and at the time Elaine Pattison acquired the southern middle portion of the subject property on November 17, 1986.

When Elaine Pattison acquired the southern middle portion of the subject property, it was subject to Lane County's acknowledged forest zone.⁵ When Elaine Pattison acquired that portion of the property, the desired division and development of the property would have been governed by the applicable provisions of Goal 4 and OAR 660, division 6, as implemented through the county's acknowledged forest zone.⁶

In addition to the applicable provisions of Goal 4, and OAR 660, division 6, in effect when Elaine Pattison acquired the southern middle portion of the subject property on November 17, 1986, and other laws in effect when either claimant acquired the subject property, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim. In addition, the department notes that ORS 215.730 and OAR 660, division 6, and in particular OAR 660-006-0029, include standards for siting dwellings in forest zones. Those provisions include fire protection standards for dwellings. ORS 197.352(3)(B) specifically

⁵ Lane County's forest zone was acknowledged by the Commission for compliance with Goal 4 on October 3, 1984.

⁶ 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, insofar as the state and local provisions implement the requirements of the goals and rules, 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).

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). There may be other laws that continue to apply to the claimants’ use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of the subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

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

Conclusions

Based on the record before the department, Elaine Pattison, has not established that she is entitled to relief for the northern portion of the subject property under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because she is not an owner of that portion of the subject property. Therefore, the department recommends that this claim as to Elaine Pattison for the northern portion of the subject property be denied. The department further 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 Jesse and Elaine Pattison’s development of a retreat center dwelling on the 43-acre subject property: applicable provisions of Goal 4, ORS 215 and OAR 660, division 6. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Jesse Pattison acquired portions of the property on May 30, 1972, and August 16, 1973, and when Elaine Pattison acquired the southern middle portion of the property on November 17, 1986.
2. The action by the State of Oregon provides the state’s authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on May 30, 1972, and August 16, 1973, for Jesse Pattison and on November 17, 1986, for Elaine Pattison as to the southern middle portion of the subject property. On November 17, 1986, the property was subject to compliance with Goal 4 and OAR 660, division 6, as implemented through Lane County’s acknowledged forest zone.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a

“permit” as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

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

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

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on November 15, 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.