Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Coastal Fax: (503) 378-6033
Second Floor/Director's Office Fax: (503) 378-5518
Third Floor/Measure 37 Fax: (503) 378-5318
Web Address: http://www.oregon.gov/LCD

August 22, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130951

Claimants: Sunray Vacation Rentals Inc., Edward and Sandra Willard and Donna King

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Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

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 Donna King, CLAIMANT	))))	FINAL ORDER A CLAIM NO. M130951

Claimant: Donna King (the Claimant)

Property: Township 18S, Range 13E, Section 20, Tax lots 100 and 104
Deschutes 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 for tax lot 100 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 for tax lot 104 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 Donna King's development of a dwelling on tax lot 104: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 18, 1981. These laws will not apply to Donna King only to the extent necessary to allow her to use tax lot 104 for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 104 on December 18, 1981.

2. The action by the State of Oregon provides the state's authorization to Donna King to use tax lot 104 for the use described in this report, subject to the standards in effect on December 18, 1981. On that date, tax lot 104 was subject to compliance with Goal 3 and as implemented by Deschutes County's acknowledged EFU zone, 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 Donna King first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of tax lot 104 imposed by private parties.

4. Any use of tax lot 104 by Donna King 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 Donna King to use tax lot 104, 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 Donna King from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of tax lot 104 by Donna King.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

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

Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 22nd day of August, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Janice Dean, SSD Administrator
DAS, State Services Division
Dated this 22nd day of August, 2007.

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 COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Sunray Vacation Rentals Inc. and Edward and Sandra Willard, CLAIMANTS	)))))	FINAL ORDER B CLAIM NO. M130951

Claimants: Sunray Vacation Rentals Inc. and Edward and Sandra Willard (the Claimants)

Property: Township 18S, Range 13E, Section 20, Tax lots 100 and 104 Deschutes County (the property)

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

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

ORDER

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

This Order is entered by the Manager for the Measure 37 Services Division of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

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

Michael Morrissey, Manager
DLCD, Measure 37 Services Division
Dated this 22nd day of August, 2007

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Janice Dean, SSD Administrator
DAS, State Services Division
Dated this 22nd day of August, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

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

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.

2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

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

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

August 22, 2007

STATE CLAIM NUMBER:	M130951
NAMES OF CLAIMANTS:	Sunray Vacation Rentals Inc.[1] Edward and Sandra Willard Donna King
MAILING ADDRESSES:	Sunray Vacation Rentals Inc. and Edward and Sandra Willard PO Box 4518 Sunriver, Oregon 97707 Donna King 326 NW Congress Street Bend, Oregon 97701
PROPERTY IDENTIFICATION:	Township 18S, Range 13E, Section 20 Tax lots 100 and 104 Deschutes County
OTHER CONTACT INFORMATION:	Robert S. Lovlien PO Box 1151 Bend, Oregon 97709
DATE RECEIVED BY DAS:	November 20, 2006
DEADLINE FOR FINAL ACTION:[2]	May 13, 2008

I. SUMMARY OF CLAIM

The claimants, Sunray Vacation Rentals Inc., Edward and Sandra Willard and Donna King, seek compensation in the amount of $1,250,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 18.78-acre subject property into two

[1] The claimants' attorney submitted a letter on June 18, 2007, stating that Sunray Inc. was the previous corporate name and that the current corporate name is Sunray Vacation Rentals Inc.

[2] ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

legal parcels and to develop a dwelling on each parcel.[3] The subject property is located at 22605 Rickard Road, near Bend, in Deschutes 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 Donna King's development of a dwelling on tax lot 104: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after December 18, 1981. These laws will not apply to Donna King only to the extent necessary to allow her to use tax lot 104 for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 104 on December 18, 1981.

The department has further determined that (1) the claim is not valid as to Donna King for tax lot 100 because she is not an owner as to that tax lot; (2) the claim is not valid as to Edward and Sandra Willard because they are not owners of the subject property; and (3) the claim is not valid as to Sunray Vacation Rentals Inc. because its desired use of tax lot 100 was prohibited under the laws in effect when it acquired that tax lot in 1997 and because it is not a current owner of tax lot 104. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 21, 2007, 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 15-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 subject property includes two tax lots. Tax lots 100 and 104 each consists of 9.39 acres.

Findings of Fact

This claim was submitted to DAS on November 20, 2006, for processing under OAR 125, division 145. The claim identifies Deschutes County's Exclusive Farm Use (EFU)/Timber (TBR) zoning and ORS 215.750 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 Donna King acquired tax lot 104 on December 18, 1981, as reflected by a trustee's deed included with the claim. On April 25, 2006, Donna King transferred tax lot 104 to a revocable trust, the Donna R. King Trust, as reflected by a warranty deed included with the claim. Claimants Edward and Sandra Willard acquired tax lot 100 on November 7, 1991, as reflected by a warranty deed included with the claim.[4] On February 10, 1997, Edward and Sandra Willard conveyed tax lot 100 to Sunray Vacation Rentals Inc., as reflected by a bargain and sale deed included with the claim.

The Deschutes County Assessor's Office confirms Donna King's current ownership of tax lot 104 and confirms Sunray Vacation Rentals Inc.'s current ownership of tax lot 100. Donna King is not a current owner of tax lot 100, Edward and Sandra Willard are not current owners of the subject property and Sunray Vacation Rentals Inc. is not a current owner of tax lot 104.

Conclusions

Claimant Donna King is an "owner" of tax lot 104 as that term is defined by ORS 197.352(11)(C), as of December 18, 1981. Claimant Sunray Vacation Rentals Inc. is an "owner" of tax lot 100 as that term is defined by ORS 197.352(11)(C), as of February 10, 1997. Donna King is not an owner of tax lot 100, Edward and Sandra Willard are not owners of the subject property and Sunray Vacation Rentals Inc. is not an owner of tax lot 104, as that term is defined by ORS 197.352(11)(C).

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[4] In response to the draft staff report dated July 16, 2007, pursuant to OAR 125-145-0080 on July 27, 2007, the claimants' attorney submitted a letter. The department has considered the comment.

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 divide the 18.78-acre subject property into two legal parcels and to develop a dwelling on each parcel, and that current land use regulations prevent the desired use.

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The subject property is zoned EFU by Deschutes County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3.[5] 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 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.[6]

At the time Donna King acquired tax lot 104, it was subject to Deschutes County's acknowledged comprehensive plan and EFU-20 zone.[7] That zone allowed a 20-acre minimum lot size and permitted dwellings as an outright use. At that time, Donna King's desired use of the property would have been subject to compliance with Goal 3, and OAR 660, division 5, as implemented through the county's acknowledged EFU-20 zone, and the applicable provisions of

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[5] The subject property is "agricultural land" because it contains Natural Resources Conservation Service Class I–VI soils.

[6] The Commission adopted amendments to OAR 660-033-0100, -0130 and -0135 to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. These amendments clarified but did not further restrict dwelling standards for EFU-zoned land.

[7] Deschutes County's EFU zone was acknowledged by the Commission for compliance with Goal 3 on May 11, 1981.

ORS 215 then in effect.[8] On December 18, 1981, ORS 215.263 (1981 edition) required that before approving the division of land in an EFU zone, the governing body was required to find that "the proposed division of land is in conformity with the legislative intent set forth in ORS 215.243." (Agricultural Land Use Policy.) ORS 215.283(1)(f) (1981 edition) generally allowed farm dwellings "customarily provided in conjunction with farm use." Non-farm dwellings were allowed under ORS 215.283(3) if they were determined to be compatible with farm use, not interfere seriously with accepted farm practices, not materially alter the stability of the land use pattern in the area and be situated on generally unsuitable land for the production of farm crops and livestock.

The claim does not establish whether or to what extent Donna King's desired division and development of tax lot 104 were allowed under the standards in effect when she acquired the property on December 18, 1981.

Claimant Sunray Vacation Rentals Inc. acquired tax lot 100 on February 10, 1997, after the adoption of the statewide planning goals and their implementing statutes and regulations, as identified above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after Donna King acquired tax lot 104 in 1981 and do not allow her desired division or development of the property. However, the claim does not establish whether or to what extent Donna King's desired use of tax lot 104 complies with the standards for land divisions and development under Goal 3 and OAR 660, division 5, as implemented through Deschutes County's comprehensive plan and EFU zone and applicable provisions of ORS 215, in effect when she acquired tax lot 104 on December 18, 1981.

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted before Sunray Vacation Rentals, Inc. acquired tax lot 100. These land use regulations do not allow Sunray Vacation Rentals Inc.'s desired use of tax lot 100. Laws enacted or adopted since Sunray Vacation Rentals Inc. acquired tax lot 100 in 1997 do not restrict its desired use of that tax lot relative to when Sunray Vacation Rentals Inc. acquired it in 1997.

As explained in Section V.(1) of this report, Donna King is not an owner of tax lot 100, Edward and Sandra Willard are not owners of the subject property and Sunray Vacation Rentals Inc. is not an owner of tax lot 104 as that term is defined in ORS 197.352(11)(C). Therefore, no land use regulations restrict Donna King's use of tax lot 100, Edward and Sandra Willard's use of any of the subject property or Sunray Vacation Rentals, Inc.'s use of tax lot 104.

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

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 Donna King's use of tax lot 104, and that may continue to apply to her 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 $1,250,000 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 a real estate broker's assessment included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Sunray Vacation Rentals Inc., Edward and Sandra Willard and Donna King. Donna King acquired tax lot 104 on December 18, 1981. Sunray Vacation Rentals Inc. acquired tax lot 100 on February 10, 1997. Donna King is not an owner of tax lot 100, Edward and Sandra Willard are not owners of the subject property and Sunray Vacation Rentals Inc. is not an owner of tax lot 104. Therefore, the fair market value of tax lot 104 has not been reduced for Sunray Vacation Rentals Inc., the fair market value of the subject property has not been reduced for Edward and Sandra Willard and the fair market value of tax lot 100 has not been reduced for Donna King. No state laws enacted or adopted since Sunray Vacation Rentals Inc. acquired tax lot 100 restrict its use of the property relative to the uses allowed in 1997.

Under ORS 197.352, Donna King is due compensation for land use regulations that restrict the use of tax lot 104 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 Donna King acquired tax lot 104 restrict her 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 $1,250,000.

Without an appraisal or other documentation and without verification of whether or the extent to which Donna King's desired use of tax lot 104 was allowed under the standards in effect when she acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of tax lot 104. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of tax lot 104 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 3, ORS 215 and OAR 660, division 33, which Deschutes County has implemented through its current EFU zone. With the exception of amendments enacted or adopted after December 18, 1981, Goal 3, ORS 215 and OAR 660 were in effect when Donna King acquired tax lot 104. As set forth in Section V.(2) of this report, all of the state land use regulations that restrict Sunray Vacation Rentals Inc.'s desired use of tax lot 100 were in effect when it acquired the property in 1997.

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 the general statutory, goal and rule restrictions on division and development of the subject property are not exempt under ORS 197.352(3)(E) only to the extent they were enacted or adopted after Donna King acquired tax lot 104 on December 18, 1981. Provisions of Goal 3, ORS 215 and OAR 660 in effect when Donna King acquired tax lot 104 in 1981 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

All of the state land use regulations that restrict Sunray Vacation Rentals Inc.'s desired use of tax lot 100 were in effect when it acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when Sunray Vacation Rentals Inc. acquired tax lot 100.

As explained in Section V.(1) of this report, Donna King is not an owner of tax lot 100, Edward and Sandra Willard are not owners of the subject property and Sunray Vacation Rentals Inc. is not an owner of tax lot 104, 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 Donna King for tax lot 100, Edward and Sandra Willard for the subject property and Sunray Vacation Rentals Inc. for tax lot 104.

Other laws in effect when Donna King acquired tax lot 104 are also exempt under ORS 197.352(3)(E) and will continue to apply to her use of the property. There may be other laws that continue to apply to Donna King's use of tax lot 104 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 Donna King seeks a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property, based on the uses that the claimants have identified.

Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to Donna King's use of tax lot 104.

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 do not restrict Sunray Vacation Rentals Inc.'s desired use of tax lot 100 relative to what was permitted when it acquired it in 1997; and do not restrict Donna King's use of tax lot 100, Edward and Sandra Willard's use of the subject property or Sunray Vacation Rentals Inc.'s use of tax lot 104 because they are not owners as to those tax lots.

The department has further determined laws enforced by the Commission or the department restrict Donna King's desired use of tax lot 104. 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 $1,250,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of the compensation due for this claim, it would also be necessary to verify whether or the extent to which Donna King's desired use of tax lot 104 was allowed under the standards in effect when she 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 104 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 Donna King to use tax lot 104 for a use permitted at the time she acquired the property on December 18, 1981.

Conclusions

Based on the record and foregoing findings and conclusions, Sunray Vacation Rentals Inc. has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. In addition, Donna King has not

established that she is entitled to relief for tax lot 100, Edward and Sandra Willard have not established that they are entitled to relief for the subject property and Sunray Vacation Rentals Inc. has not established that it is entitled to relief for tax lot 104, under ORS 197.352(1), as a result of land use regulations enforced by the Commission or the department because they are not owners of those tax lots. Therefore, the department recommends that the claim be denied as to Donna King's claim for tax lot 100 and Edward and Sandra Willard's and Sunray Vacation Rentals Inc.'s claim for the subject property.

The department further recommends that the claim be approved, as to Donna King for tax lot 104 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 Donna King's development of a dwelling on tax lot 104: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after December 18, 1981. These laws will not apply to Donna King only to the extent necessary to allow her to use tax lot 104 for the use described in this report, and only to the extent that use was permitted when she acquired tax lot 104 on December 18, 1981.

2. The action by the State of Oregon provides the state's authorization to Donna King to use tax lot 104 for the use described in this report, subject to the standards in effect on December 18, 1981. On that date, tax lot 104 was subject to compliance with Goal 3 and as implemented by Deschutes County's acknowledged EFU zone, 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 Donna King first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of tax lot 104 imposed by private parties.

4. Any use of tax lot 104 by Donna King 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 Donna King to use tax lot 104, 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 Donna King from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of tax lot 104 by Donna King.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 16, 2007. 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.