Oregon
Theodore R. Kulongoski, Governor

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September 25, 2007

To: Interested Persons

From: Cora R. Parker, Acting Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130978

Claimants: Buddy and Darlene Moore

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

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than 15 calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the 15th day or actually delivered to DAS by the close of business on the 15th day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.

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 Buddy Moore, CLAIMANT	))))	FINAL ORDER A CLAIM NO. M130978

Claimants: Buddy Moore (the Claimant)

Property: Township 31S, Range 6W, Section 5, Tax lot 100, Douglas 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 Buddy Moore's division of the 40.61-acre subject property into three parcels and to his development of a dwelling on each resulting undeveloped parcel, and to Darlene Moore's division and development of the eastern 5-acre portion of the subject property: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after each of the claimants acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow Buddy Moore to use the subject property and Darlene Moore to use the eastern 5-acre portion of the property for the use described in this report, and only to the extent that use was permitted when Buddy Moore acquired the property on September 30, 1959, and when Darlene Moore acquired the eastern 5-acre portion of the property on June 15, 1994. The department acknowledges that the relief to which Darlene Moore is entitled under ORS 197.352 will not allow her to use the eastern 5-acre portion of the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Buddy Moore to use the property for the use described in this report, subject to the standards in effect on September 30, 1959, and to Darlene Moore to use the eastern 5-acre portion of the property for the use described in this report, subject to the standards in effect on June 15, 1994. On June 15, 1994,

the eastern 5-acre portion of the property was subject to applicable provisions of Goal 3 or 4, and OAR 660, division 6, or 33, currently in effect.

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

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 Acting 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 Manager for the Measure 37 Services Unit 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:

Michael Morrissey, for
Cora R. Parker, Acting Director
DLCD
Dated this 24th day of September, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Carla Ploederer

Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 24th day of September, 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 Darlene Moore, CLAIMANT	))))	FINAL ORDER B CLAIM NO. M130978

Claimant: Darlene Moore, (the Claimant)

Property: Township 31S, Range 6W, Section 5, Tax lot 100, Douglas 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 the 35.61-acre 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 for the eastern 5-acre portion of the subject property as to laws administered by DLCD and the 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 Buddy Moore's division of the 40.61-acre subject property into three parcels and to his development of a dwelling on each resulting undeveloped parcel, and to Darlene Moore's division and development of the eastern 5-acre portion of the subject property: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after each of the claimants acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow Buddy Moore to use the subject property and Darlene Moore to use the eastern 5-acre portion of the property for the use described in this report, and only to the extent that use was permitted when Buddy Moore acquired the property on September 30, 1959, and when Darlene Moore acquired the eastern 5-acre portion of the property on June 15, 1994. The department acknowledges that the relief to which Darlene Moore is entitled under ORS 197.352 will not allow her to use the eastern 5-acre portion of the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Buddy Moore to use the property for the use described in this report, subject to the standards in effect on September 30, 1959, and to Darlene Moore to use the eastern 5-acre portion of the property for the use described in this report, subject to the standards in effect on June 15, 1994. On June 15, 1994, the eastern 5-acre portion of the property was subject to applicable provisions of Goal 3 or 4, and OAR 660, division 6, or 33, currently in effect.

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

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 Acting 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 Manager for the Measure 37 Services Unit 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:

Michael Mamsey for
Cora R. Parker, Acting Director
DLCD
Dated this 24th day of September, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

Carla Ploederer
Carla Ploederer, Manager
DAS, Measure 37 Services Unit
Dated this 24th day of September, 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."

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

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

September 24, 2007

STATE CLAIM NUMBER:	M130978
NAMES OF CLAIMANTS:	Buddy and Darlene Moore
MAILING ADDRESS:	1004 Council Creek Road Riddle, Oregon 97469
PROPERTY IDENTIFICATION:	Township 31S, Range 6W, Section 5 Tax lot 100 Douglas County
DATE RECEIVED BY DAS:	November 21, 2006
DEADLINE FOR FINAL ACTION:[1]	May 14, 2008

I. SUMMARY OF CLAIM

The claimants, Buddy and Darlene Moore, seek compensation in the amount of $175,000 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 40.61-acre subject property into three parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 1004 Council Creek Road, near Riddle, in Douglas 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 Buddy Moore's division of the 40.61-acre subject property into three parcels and to his development of a dwelling on each resulting undeveloped parcel, and to Darlene Moore's division and development of the eastern 5-acre portion of the subject property: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215

[1] 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.

and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after each of the claimants acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow Buddy Moore to use the subject property and Darlene Moore to use the eastern 5-acre portion of the property for the use described in this report, and only to the extent that use was permitted when Buddy Moore acquired the property on September 30, 1959, and when Darlene Moore acquired the eastern 5-acre portion of the property on June 15, 1994. The department acknowledges that the relief to which Darlene Moore is entitled under ORS 197.352 will not allow her to use the eastern 5-acre portion of the subject property in the manner set forth in the claim.

The department has further determined that Darlene Moore's claim for the remaining 35.61-acre portion of the subject property is not valid because she has 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 June 16, 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, evidence or information 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.

Findings of Fact

This claim was submitted to DAS on November 21, 2006, for processing under OAR 125, division 145. The claim identifies Douglas County zoning as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

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

V. ANALYSIS OF CLAIM

1. Ownership

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

Findings of Fact

Claimant Buddy Moore acquired the subject property on September 30, 1959, as reflected by a warranty deed included with the claim. Claimant Darlene Moore acquired an ownership interest in the eastern 5-acre portion of the subject property on June 15, 1994, as reflected by a real estate contract submitted with the claim.[2] Darlene Moore has not established her ownership of the remaining 35.61-acre portion of the property.

The Douglas County Assessor's Office confirms Buddy Moore's current ownership of the subject property and Darlene Moore's current ownership of the eastern 5-acre portion.

Conclusions

Claimant Buddy Moore is an "owner" of the subject property and Darlene Moore is an "owner" of the easterly 5-acre portion as that term is defined by ORS 197.352(11)(C). Buddy Moore has been an owner of the subject property since September 30, 1959, and Darlene Moore has been an owner of the easterly 5-acre portion since June 15, 1994. Buddy Moore is a "family member" of Darlene Moore as that term is defined by ORS 197.352(11)(A), as to the eastern 5-acre portion. Darlene Moore has not established her ownership of the 35.61-acre portion of the subject property.

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.

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[2] Claimant Darlene Moore asserts acquisition of an ownership interest in the entire subject property. However, the claim includes documentation only of her acquisition of the 5-acre portion of the property lying easterly of Council Creek Road.

Findings of Fact

The claim indicates that the claimants desire to divide the 40.61-acre subject property into three parcels and to develop a dwelling on each resulting undeveloped parcel, and that the property's current zoning prevents the desired use.

The claim is based generally on the applicable provisions of state law that allow mixed agriculture-forest zoning and restrict uses on land zoned mixed agriculture-forest. The subject property is zoned Farm-Forest (FF) by Douglas County. The county's FF zone is a mixed agricultural and forest land zone, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. Goals 3 and 4 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned for farm uses and that forest lands under Goal 4 be zoned for forest uses. OAR 660-006-0050 authorizes local governing bodies to establish mixed agriculture-forest zones in accordance with both Goals 3 and 4 and OAR 660, divisions 6, and 33.

Under OAR 660-006-0050(2), effective on February 5, 1990, and subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993), uses allowed in Exclusive Farm Use (EFU) zones under Goal 3 and forest zones under Goal 4 are allowed in mixed agriculture-forest zones.

For land divisions, OAR 660-006-0055 requires local governing bodies to apply the standards of OAR 660-006-0026 and 660-033-0100, which implement the minimum lot size requirements in ORS 215.780. ORS 215.780(1) establishes an 80-acre minimum for the creation of new lots or parcels in EFU and forest zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993).

For the approval and siting of dwellings, under OAR 660-006-0050(2) and (3), counties must apply either the OAR 660, division 6, or 33, standards based on the predominant use of the tract on January 1, 1993.[3] The provisions of OAR 660-006-0027 and 660-006-0029 apply to dwelling approval and siting where the predominant use of the tract on that date was forest, and the provisions of OAR 660-033-0030 and 660-033-0035 apply where the predominant use of the tract on that date was agriculture.

Claimant Buddy Moore acquired the subject property on September 30, 1959, prior to the adoption of statewide planning goals and their implementing statutes and regulations.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established under Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, for land zoned for mixed agriculture-forest use, were enacted or adopted after Buddy Moore acquired the subject property in 1959, and do not allow the desired division and development of the property. These laws restrict the use of the subject property relative to the uses allowed when he acquired the property.

[3] The claim does not include information regarding the predominant use of the property on January 1, 1993.

As explained in Section V.(1), the claimant, Darlene Moore, has not established that she is an "owner" of the 35.61-acre portion of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, it is not possible to determine that any laws enforced by the Commission or the department restrict Darlene Moore's desired use of the 35.61-acre portion 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 Buddy Moore's use of the property and Darlene Moore's use of the eastern 5-acre portion 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 $175,000 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 opinion letter included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Buddy Moore, who acquired the subject property on September 30, 1959, and his wife, Darlene Moore. Darlene Moore has not established her ownership of a 35.61-acre portion of the subject property. Without such demonstration, the department can make no determination on the effect of any land use regulations on the fair market value of the subject property. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict Buddy Moore's use of the subject property and Darlene Moore's use the eastern 5-acre portion 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 Buddy Moore acquired the subject property restrict Buddy Moore's desired use of the property and Darlene Moore's desired use of the eastern 5-acre portion 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 $175,000.

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 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 Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Douglas County has implemented through its FF zone. All of these land use regulations were enacted or adopted after Buddy Moore 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 Buddy Moore acquired it in 1959. As a result, these laws are not exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, 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, claimant Darlene Moore has not established that she is an "owner" of the 35.61-acre portion of the subject property as that term is defined in ORS 197.352(11)(C). Without such demonstration, the department can make no determination as to whether any land use laws are exempt from ORS 197.352 as to Darlene Moore for 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 Darlene Moore because she has not demonstrated her ownership of the 35.61-acre portion of the subject property. The department further finds laws enforced by the Commission or the department restrict Buddy Moore's desired use of the subject property and Darlene Moore's desired use of the eastern 5-acre portion of the 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 $175,000. 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 compensation due for this claim, it would also be necessary to verify whether or the extent to which Buddy Moore's desired use of the subject property and Darlene Moore's desired use of the eastern 5-acre portion was allowed under the standards in effect when Buddy Moore 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 Buddy Moore to use the subject property for a use permitted at the time he acquired the property on September 30, 1959, and to allow Darlene Moore to use the property for a use permitted at the time she acquired the eastern 5-acre portion of the subject property on June 15, 1994.

At the time claimant Darlene Moore acquired the eastern 5-acre portion of the subject property on June 15, 1994, it was zoned FF and subject to the current lot size and dwelling standards under Goal 3 or 4, ORS 215 and OAR 660, divisions 6, or 33, as described in Section V.(2) of this report.

In addition to the applicable provisions of Goals 3 or 4, ORS 215, OAR 660, divisions 6, and 33, in effect when Darlene Moore acquired the eastern 5-acre portion of the subject property on June 15, 1994, and other laws in effect when either of the claimants 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, particularly OAR 660-006-0027, -0029 and -0035, include fire protection standards for dwellings and structures in forest and mixed agriculture-forest zones. ORS 197.352 (3)(B) specifically exempts regulations "restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes. . . ." Accordingly, the siting standards for dwellings and structures in forest zones in ORS 215.730 and in forest and mixed agriculture-forest zones in OAR 660, division 6, are exempt under ORS 197.352(3)(B).

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, and depending on when they were enacted or adopted, may continue to apply to the claimants' 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 subject property 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 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, Darlene Moore has not established that she is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department for the 35.61-acre portion of the subject property because she has not established that she is an "owner" of that portion of the property. Therefore, the department recommends that Darlene Moore's claim for the 35.61-acre portion be denied.

The department otherwise recommends that the claim be approved as to Buddy Moore for the subject property and as to Darlene Moore as for the eastern 5-acre portion of the property, 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 Buddy Moore's division of the 40.61-acre subject property into three parcels and to his development of a dwelling on each resulting undeveloped parcel, and to Darlene Moore's division and development of the eastern 5-acre portion of the subject property: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after each of the claimants acquired the subject property. These laws will not apply to the claimants only to the extent necessary to allow Buddy Moore to use the subject property and Darlene Moore to use the eastern 5-acre portion of the property for the use described in this report, and only to the extent that use was permitted when Buddy Moore acquired the property on September 30, 1959, and when Darlene Moore acquired the eastern 5-acre portion of the property on June 15, 1994. The department acknowledges that the relief to which Darlene Moore is entitled under ORS 197.352 will not allow her to use the eastern 5-acre portion of the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Buddy Moore to use the property for the use described in this report, subject to the standards in effect on September 30, 1959, and to Darlene Moore to use the eastern 5-acre portion of the property for the use described in this report, subject to the standards in effect on June 15, 1994. On June 15, 1994, the eastern 5-acre portion of the property was subject to applicable provisions of Goal 3 or 4, and OAR 660, division 6, or 33, currently in effect.

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

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 August 15, 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. Comments received have been taken into account by the department in the issuance of this final report.