



Oregon

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October 11, 2007

To: Claimant and Interested Persons

From: Cora R. Parker, Acting Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M131506

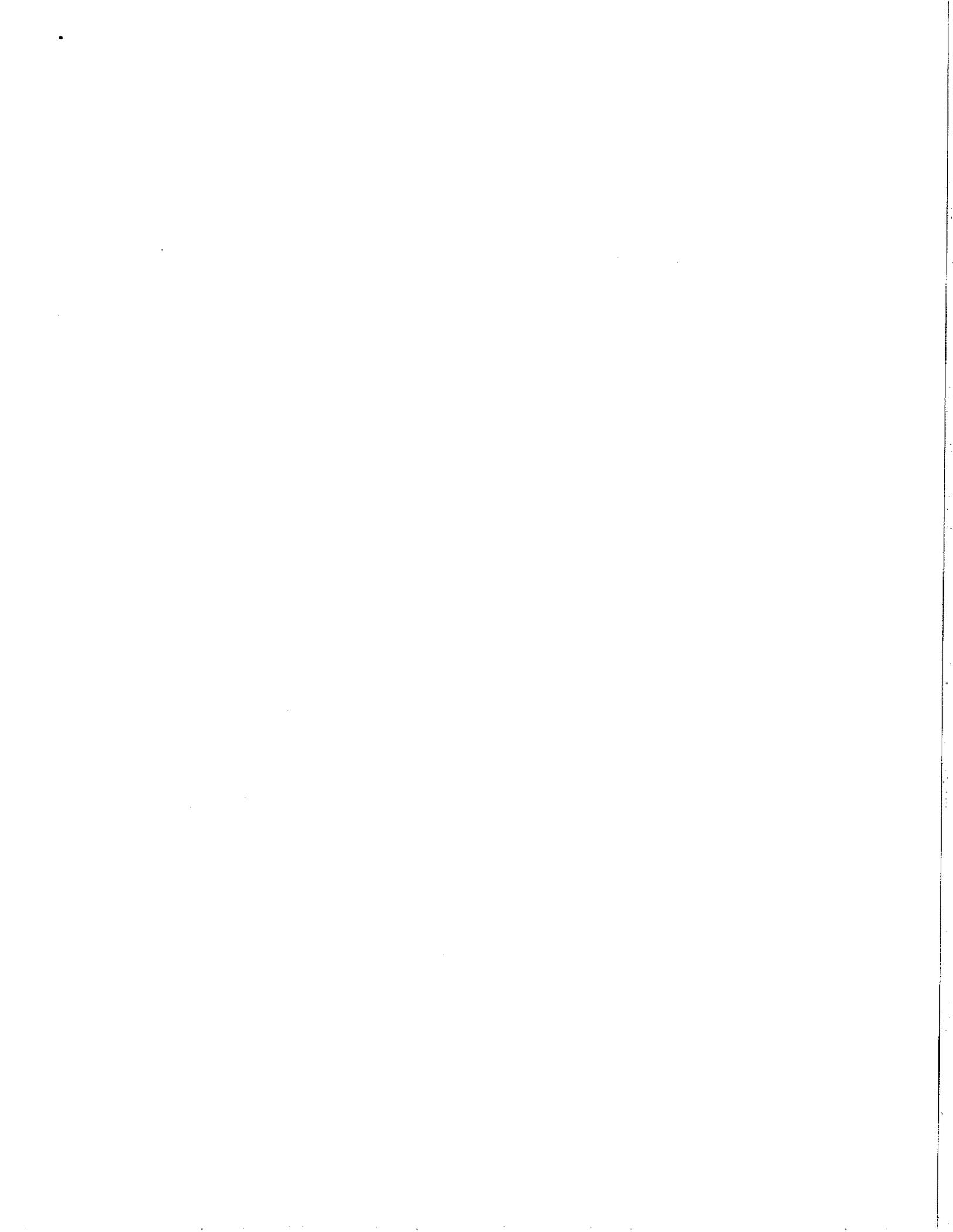
Claimants: John and Margie Anderson

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.





ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Draft Staff Report and Recommendation**

October 11, 2007

STATE CLAIM NUMBER: M131506

NAMES OF CLAIMANTS: John and Margie Anderson

MAILING ADDRESS: 52270 NW Scofield Road
Buxton, Oregon 97109

PROPERTY IDENTIFICATION: Township 3N, Range 4W, Section 29
Tax lot 6500
Washington County

DATE RECEIVED BY DAS: November 29, 2006

DEADLINE FOR FINAL ACTION:¹ May 22, 2008

I. SUMMARY OF CLAIM

The claimants, John and Margie Anderson, seek compensation in the amount of \$500,000 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 36.21-acre subject property into five parcels and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 52270 NW Scofield Road, in Washington County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary 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 John and Margie Anderson's division of a 34.91-acre portion of the subject property into five parcels and to their development of a dwelling on each resulting undeveloped parcel: applicable provisions of Statewide Planning Goals 4 (Forest Lands) and 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), ORS 215 and Oregon

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.

Administrative Rules (OAR) 660, divisions 6, 16, and 23, enacted or adopted after each claimant acquired the subject property. These land use regulations 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 John Anderson acquired a 34.37-acre portion of the property on September 6, 1968, when Margie Anderson acquired that 34.37-acre portion on April 29, 1977, and when John and Margie Anderson acquired a 0.54-acre portion of the property on January 25, 1989.

The department has further determined that the claim is not valid as to a 1.30-acre portion of the subject property because the claimants' desired use of the 1.30-acre portion was prohibited under the laws in effect when the claimants acquired it on February 29, 2000. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On August 23, 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.

Findings of Fact

This claim was submitted to DAS on November 29, 2006, for processing under OAR 125, division 145. The claim identifies Washington County's Exclusive Forest and Conservation (EFC) 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

John Anderson acquired a 34.37-acre portion of the subject property on September 6, 1968, as reflected by a recorded bargain and sale deed included with the claim. John Anderson conveyed an interest in that 34.37-acre portion to his wife, Margie Anderson, on April 29, 1977, as evidenced by a recorded deed creating estate by entirety included with the claim. John and Margie Anderson acquired a 0.54-acre portion of the subject property on January 25, 1989, as reflected by a recorded quitclaim deed provided by Washington County. John and Margie Anderson acquired the remaining 1.30-acre portion of the subject property on February 29, 2000, as reflected by a recorded quitclaim deed provided by Washington County. The Washington County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, John and Margie Anderson, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). John Anderson has been an owner of the 34.37-acre portion of the property since September 6, 1968. Margie Anderson has been an owner of the 34.37-acre portion since April 29, 1977. John and Margie Anderson have been owners of the 0.54-acre portion since January 25, 1989, and of the 1.30-acre portion since February 29, 2000. John Anderson is a “family member” of Margie Anderson as to the 34.47-acre portion of the property, as that term is defined by ORS 197.352(11)(A).

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 36.21-acre subject property into five 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 require forest zoning and restrict uses on forest-zoned land. The claimants' property is zoned EFC by Washington County 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.

Current land use regulations, including ORS 215.705 to 215.755 and 215.780 and OAR 660, division 6, enacted or adopted pursuant to Goal 4, generally prohibit the division of forest-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 generally establishes an 80-acre minimum size for the creation of new lots or parcels on forest-zoned land and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.705 to 215.755 establish standards for the creation of new parcels and dwellings allowed in forest zones.

OAR 660, division 6, became effective on September 1, 1982, to implement Goal 4 and establish standards for divisions and development of land zoned for forest use, and was amended on March 1, 1994, to implement ORS 215.705 to 215.755 and 215.780. OAR 660-006-0025 interprets the goal and statutory standard for uses allowed in forest zones. OAR 660-006-0026 interprets land division requirements in forest zones, and 660-006-0027 and 660-006-0029 interpret the standards for dwellings in forest zones.

The property is also subject to Washington County's Big Game Wildlife Habitat zone, which was adopted in 1982 and acknowledged to implement Goal 5.² The Big Game Wildlife Habitat designation requires a minimum of 40 acres for a dwelling. Under Goal 5, as adopted and effective on January 25, 1975, local governments were required to inventory land and adopt programs to protect natural resources and to conserve scenic, historic and open space resources. Prior to the adoption of local government programs, the requirements of Goal 5 were directly applicable to individual properties through the land use application process. Specifically, Goal 5 required applicants to establish how the natural resources, scenic and historic areas and open space resources on individual properties would be protected through the proposed development. Under OAR 660, division 16, requirements and application procedures for complying with Goal 5 became effective on June 29, 1981. OAR 660, division 23, replaced division 16, and established additional procedures and requirements for complying with Goal 5, and became effective on September 1, 1996.

John Anderson acquired the 34.37-acre portion of the subject property in 1968, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to 34.37-acre portion in 1968.

When the claimants acquired the 0.54-acre portion of the subject property on January 25, 1989, the 0.54-acre portion was subject to Washington County's acknowledged comprehensive plan,

² The Washington County Big Game Wildlife Habitat zone was acknowledged by the Commission for compliance with Goal 5 on July 5, 1982.

EFC zone and Big Game Wildlife Habitat overlay zone.³ The EFC zone required a minimum lot size of 76 acres and allowed one single-family dwelling upon demonstration that the dwelling was necessary and accessory to forest use. At that time, the claimants' desired use of the 0.54-acre portion would have been subject to compliance with Goals 4 and 5 and OAR 660, divisions 6, and 16, as implemented through the county's acknowledged comprehensive plan, Big Game Wildlife Habitat zone and EFC zone.⁴

The claim does not establish whether or to what extent the claimants' desired division and development of the 0.54-acre portion were allowed under the standards in effect when they acquired the property on January 25, 1989.

The claimants acquired the 1.30-acre portion of the subject property on February 29, 2000. At that time, the property was subject to the current state land use regulations in effect, as identified above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 4 and 5 ORS 215 and OAR 660, divisions 6, 16, and 23, were enacted or adopted after John Anderson acquired the 34.37-acre portion and after the claimants acquired the 0.54-acre portion of the subject property in 1989 and do not allow the claimants' desired development of the property. These laws restrict the use of the property relative to the uses allowed when John Anderson acquired the 34.37-acre portion of the property in 1968 and when the claimants acquired the 0.54-acre portion of the property in 1989. However, the claim does not establish whether or to what extent the claimants' desired use of the 0.54-acre portion complies with the standards for land divisions and development in Washington County's acknowledged comprehensive plan, Big Game Wildlife Habitat zone, and EFC zone in effect when the claimants acquired the 0.54-acre portion on January 25, 1989. Laws enacted or adopted since the claimants acquired the 1.30-acre portion do not restrict the claimants' desired use of that portion of the property relative to when the claimants acquired it in 2000.

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 Washington County's EFC zone was acknowledged by the Commission for compliance with Goal 4 on July 30, 1984.

⁴ 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 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).

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (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 \$500,000 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 the claimants' assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimants are John Anderson who acquired 34.37-acre portion of the subject property in 1968 and his wife Margie Anderson. The claimants acquired the 0.54-acre portion on January 25, 1989, and acquired the 1.30-acre portion on February 29, 2000. No state laws enacted or adopted since the claimants acquired the 1.30-acre portion of the property restrict its use relative to the uses allowed in 2000. Therefore, the fair market value of the 1.30-acre portion has not been reduced as a result of land use regulations enforced by the Commission or the department.

Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the 34.91-acre portion 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 John Anderson acquired the 34.47-acre portion and since the claimants acquired the 0.54-acre portion restrict the claimants' desired use of the 34.91-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 \$500,000.

Without an appraisal or other documentation, and without verification of whether or the extent to which the claimants' desired use of the 34.91-acre portion was allowed under the standards in effect when the claimants acquired it, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the 34.91-acre portion. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the 34.91-acre portion has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since John Anderson acquired the 34.37-acre portion and since the claimants acquired the 0.54-acre portion.

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 4 and 5, ORS 215 and OAR 660, divisions 6, 16, and

23, which Washington County has implemented through its current EFC and Big Game Wildlife Habitat zones. With the exception of provisions of Goals 4 and 5 and OAR 660, division 6, and 16, in effect when the claimants acquired the 0.54-acre portion of the property on January 25, 1989, these land use regulations were enacted or adopted after John Anderson acquired the 34.37-acre portion of the subject property and after the claimants acquired the 0.54-acre portion of the property.

As set forth in Section V.(2) of this report, all of these state land use regulations restricting the claimants' desired use of the property were in effect when the claimants acquired the 1.30-acre portion of the property in 2000.

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. With the exception of Goals 4 and 5, and OAR 660, divisions 6, and 16, in effect when the claimants acquired the 0.54-acre portion of the property, it appears that none of the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when John Anderson acquired the 34.37-acre portion in 1968 and when the claimants acquired the 0.54-acre portion in 1989. As a result, these laws are not exempt under ORS 197.352. Laws in effect when John Anderson acquired the 34.37-acre portion of the subject property and when the claimants acquired the 0.54-acre portion of the subject property are 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.

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 the claimants' desired use of the 1.30-acre portion of the subject property relative to what was permitted when the claimants acquired it in 2000 and do not reduce its fair market value. All state laws restricting the use of the 1.30-acre portion are exempt under ORS 197.352(3)(E). The department further finds that laws enforced by the Commission or the department restrict the claimants' desired use of the 34.37-acre portion of the subject property and 0.54-acre 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 \$500,000. 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 the claimants' desired use of the subject property was allowed under the standards in effect when John Anderson acquired the 34.37-portion of the subject property and when the claimants acquired the 0.54-acre portion of the subject 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 34.91-acre portion 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 John Anderson to use the 34.37-acre portion of the subject property for a use permitted at the time he acquired that portion of the property on September 6, 1968; to allow Margie Anderson to use the 34.37-acre portion of the subject property for a use permitted at the time she acquired that portion of the property on April 29, 1977, and to allow John and Margie Anderson to use the 0.54-acre portion for a use permitted at the time they acquired the 0.54-acre portion of the property on January 25, 1989.

Margie Anderson acquired the 34.37-acre portion of the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Washington County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.⁵ At that time, the 34.37-acre portion of the subject property was zoned FRC-38 by Washington County. However, because the Commission had not acknowledged the county's plan and land use regulations when Margie Anderson acquired the 34.37-acre portion of the subject property on April 29, 1977, the applicable statewide planning goals, and Goals 4 and 5 in particular, would have applied directly to any development application for the claimants' property.⁶

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

⁵ Washington County's comprehensive plan was acknowledged for compliance with Goal 4 on July 30, 1984.

⁶ The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's land use regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979) and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer directly applied to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the substance of the goals and implementing rules. *Forster v. Polk County*, 115 Or App 475 (1992); *Kenagy v. Benton County*, 115 Or App 131 (1992).

land for livestock.” Specifically, Goal 4 only allowed land divisions that would protect commercial forest lands for commercial forest uses. Dwellings in forest zones could only be allowed if found to be “necessary and accessory” to one of the enumerated forest uses listed in Goal 4.⁷

As described above, under Goal 5, as adopted and effective on January 25, 1975, local governments were required to inventory land and adopt programs to protect natural resources and to conserve scenic, historic and open space resources. Prior to the adoption of local government programs, the requirements of Goal 5 were directly applicable to individual properties through the land use application process. Specifically, Goal 5 required applicants to establish how the natural resources, scenic and historic areas and open space resources on individual properties would be protected through the proposed development.

The claim does not establish whether or to what extent Margie Anderson’s desired division and development of the 34.37-acre portion of the subject property were allowed under the standards in effect when she acquired that portion of the property on April 29, 1977.

In addition to the applicable provisions of Goals 4 and 5 in effect when Margie Anderson acquired the 34.37-acre portion of the subject property on April 29, 1977, 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 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.

⁷ Goal 4 prohibited uses that were not enumerated by Goal 4 as permissible uses for forest lands as well as those that were not necessary and accessory to an enumerated forest use. *Lamb v. Lane County*, 7 Or LUBA 137 (1983). Dwellings in forest lands were required to be “necessary and accessory” to show that such dwellings complied with the Goal 4 requirement that local land use regulations must “conserve forest lands for forest uses.” *1000 Friends v. LCDC (Curry County)*, 301 Or 447 (1986). A dwelling that may “enhance” forest uses is not “necessary and accessory” to a forest use to the extent required by Goal 4. *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or 384 (1988). For additional guidance, the Goal 4 provisions were interpreted under OAR 660, division 6, effective on September 1, 1982, in *1000 Friends of Oregon v. LCDC (Lane County)* and in *1000 Friends v. LCDC (Curry County)*.

Conclusions

Based on the record and foregoing findings and conclusions, the claimants have not established that they are entitled to relief under ORS 197.352(1) for the 1.30-acre portion of the subject property as a result of land use regulations enforced by the Commission or the department because the claimants' desired use of the property was prohibited at the time they acquired that portion of it. Therefore, the department recommends that this claim be denied as to the 1.30-acre portion.

The department otherwise recommends that the claim be approved for the 34.91-acre portion of the subject 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 the John and Margie Anderson's division of the 34.91-acre portion of the subject property into five parcels or to their development of a dwelling on each resulting undeveloped parcel: applicable provisions of Goals 4 and 5, ORS 215 and OAR 660, divisions 6, 16, and 23, enacted or adopted after each claimant acquired the subject property. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the 34.91-acre portion of the subject property for the use described in this report, and only to the extent that use was permitted when John Anderson acquired the 34.37-acre portion on September 6, 1968, when Margie Anderson acquired the 34.37-acre portion on April 29, 1977, and when John and Margie Anderson acquired the 0.54-acre portion on January 25, 1989
2. The action by the State of Oregon provides the state's authorization to the claimants to use the 34.91-acre portion of the subject property for the use described in this report, subject to the standards in effect when John Anderson acquired the 34.37-acre portion of the property on September 6, 1968, when Margie Anderson acquired the 34.37-acre portion of the property on April 29, 1977, and when the John and Margie Anderson acquired the 0.54-acre portion of the property on January 25, 1989. On April 29, 1977, the 34.37-acre portion of the subject property was subject to compliance with the provisions of Goals 4 and 5 then in effect. On January 25, 1989, the 0.54-acre portion of the subject property was subject to compliance with Goals 4 and 5 and OAR 660, divisions 6, and 16, as implemented through Washington County's acknowledged comprehensive plan and EFC zone.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 34.91-acre portion 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 34.91-acre portion imposed by private parties.
4. Any use of the 34.91-acre portion 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 34.91-acre portion, 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 34.91-acre portion 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. NOTICE OF OPPORTUNITY TO COMMENT

This staff report is not a final decision by the department and does not authorize any use of the property that is the subject of this report. OAR 125-145-0100 provides 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. Such response must be filed no more than 15 calendar days after the date this report is mailed to the claimants and any third parties.

Responses to this draft staff report and recommendation will be considered only as comments related to the claim described in this report. All responses must be delivered to the Oregon Department of Administrative Services (DAS), Measure 37 Unit, Risk Management-State Services Division, 1225 Ferry Street SE, U160, Salem, Oregon 97301-4292 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. Note: Please reference the claim number, claimant name and clearly mark your comments as "Draft Staff Report comments." Comments must be submitted in writing only. Those comments submitted electronically or by facsimile will not be accepted.

