

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

IN THE MATTER OF THE CLAIM FOR	)	FINAL ORDER A
COMPENSATION UNDER ORS 197.352	)	CLAIM NO. M129704
(BALLOT MEASURE 37) OF	)	
Ron and Sue Archer, Bill Archer and	)	
Edward Archer, CLAIMANTS	)	

Claimants: Ron and Sue Archer, Bill Archer and Edward Archer (the Claimants)

Property: Township 4S, Range 12E, Section 3, Tax lots 200 and 600  
Wasco 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 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 Ron, Sue, Bill and Edward Archer's division of tax lot 200 into 12 parcels, and their division of tax lot 600 into one-acre parcels, and to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after April 20, 1977. These laws will not apply to these 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 they acquired the property on April 20, 1977.
2. The action by the State of Oregon provides the state's authorization to Ron, Sue, Bill and Edward Archer to use the property for the use described in this report, subject to the standards in effect on April 20, 1977. On that date, the property was subject to applicable provisions of Goal 3 and ORS 215 then in effect.

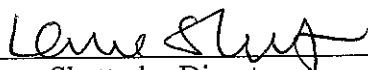
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Ron, Sue,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

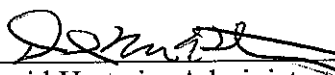
5. Without limiting the generality of the foregoing terms and conditions, in order for Ron, Sue, Bill and Edward Archer to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves them 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 Ron, Sue, Bill and Edward Archer.

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

FOR DLCD AND THE LAND  
CONSERVATION AND  
DEVELOPMENT COMMISSION:

  
Lane Shetterly, Director  
DLCD  
Dated this 10<sup>th</sup> day of January, 2007.

FOR the DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 10<sup>th</sup> day of January, 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 )      FINAL ORDER B  
COMPENSATION UNDER ORS 197.352 )      CLAIM NO. M129704  
(BALLOT MEASURE 37) OF )  
Anna Nolan, CLAIMANT )

Claimant:      Anna Nolan (the Claimant)

Property:      Township 4S, Range 12E, Section 3, Tax lots 200 and 600  
Wasco County (the property)

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

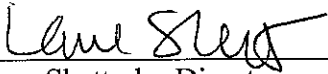
Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein,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

ORDER

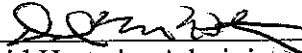
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the 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 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  
DLCD  
Dated this 10<sup>th</sup> day of January, 2007.

FOR THE DEPARTMENT OF  
ADMINISTRATIVE SERVICES:

  
\_\_\_\_\_  
David Hartwig, Administrator  
DAS, State Services Division  
Dated this 10<sup>th</sup> day of January, 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**

January 10, 2006

**STATE CLAIM NUMBER:** M129704

**NAMES OF CLAIMANTS:** Ron and Sue Archer  
Bill Archer  
Edward Archer and Anna Nolan

**MAILING ADDRESS:** Ron and Sue Archer  
PO Box 1  
Dufur, Oregon 97021

Bill Archer  
81015 Ross Road  
Tygh Valley, Oregon 97063

Edward Archer and Anna Nolan  
34 N Frontage Road  
Tygh Valley, Oregon 97063

**PROPERTY IDENTIFICATION:** Township 4S, Range 12E, Section 3  
Tax lots 200 and 600  
Wasco County

**OTHER CONTACT INFORMATION:** Dan Van Vactor  
PO Box 1524  
Bend, Oregon 97709

**DATE RECEIVED BY DAS:** July 19, 2006

**180-DAY DEADLINE:** January 7, 2007

**I. SUMMARY OF CLAIM**

The claimants, Ron, Sue, Bill and Edward Archer and Anna Nolan, seek compensation in the amount of \$8.25 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 39.09 acres of tax lot 200 into 12 parcels; and to divide the 168.44 acres of tax lot 600 into one-acre parcels, and to develop a dwelling on each parcel.<sup>1</sup>

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<sup>1</sup> The subject property includes two tax lots. Tax lot 200 consists of 39.09 acres and tax lot 600 consists of 168.44 acres.

The subject property is located at 81015 Ross Road and 34 N Frontage Road, near Tygh Valley, in Wasco 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 Ron, Sue, Bill and Edward Archer's division of tax lot 200 into 12 parcels, and their division of tax lot 600 into one-acre parcels, and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after April 20, 1977. These laws will not apply to Ron, Sue, Bill and Edward Archer 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 they acquired the property on April 20, 1977.

The department has further determined that this claim is not valid as to Anna Nolan because the claimants have not established her ownership of the property. (See the complete recommendation in Section VI. of this report.)

## **III. COMMENTS ON THE CLAIM**

### **Comments Received**

On November 18, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, four written comments were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters in the department's claim file.)

## **IV. TIMELINESS OF CLAIM**

### **Requirement**

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

### **Findings of Fact**

This claim was submitted to DAS on July 19, 2006, for processing under OAR 125, division 145. The claim identifies numerous Wasco County development ordinances 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**

Claimants Ron, Sue, Bill and Edward Archer acquired the subject property on April 20, 1977, as reflected by a real estate contract and fulfillment deed included with the claim. On April 15, 1997, Ron and Sue Archer transferred their interest in the property to the Ron and Sue Archer Family Living Trust, a revocable trust with themselves as trustees, as reflected by a certification of trust included with the claim.<sup>2</sup> The claim indicates that Anna Nolan also acquired an interest in the subject property on April 20, 1977. However, the claim does not include copies of any deeds or otherwise establish that Anna Nolan is an owner of the subject property. The Wasco County Assessor’s Office confirms Ron, Sue, Bill and Edward Archer’s current ownership of the subject property.

### **Conclusions**

Claimants Ron, Sue, Bill and Edward Archer are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of April 20, 1977. Claimant Anna Nolan has not established that she is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C).

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<sup>2</sup> Transfer of property to a revocable trust does not result in a change in ownership for purposes of ORS 197.352.

## **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 acquired the property.

### **Findings of Fact**

The claim indicates that the claimants desire to divide tax lot 200 into 12 parcels, and to divide tax lot 600 into one-acre parcels, and to develop a dwelling on each parcel. It indicates that the current zoning prohibits the desired use.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU) zoning and restrict uses on EFU-zoned land. The claimants' property is zoned by Wasco County as A-1 as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.<sup>3</sup> Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for the development of dwellings on existing or 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. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Claimants Ron, Sue, Bill and Edward Archer acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Wasco County's land use regulations to be in compliance with the statewide planning goals pursuant to ORS 197.250 and 197.251.<sup>4</sup> Because the Commission had not acknowledged the county's plan and land use regulations when Ron, Sue, Bill and Edward Archer acquired the subject property on April 20,

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<sup>3</sup> The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-VI soils.

<sup>4</sup> Wasco County's Comprehensive Plan was acknowledged for compliance with Goal 3 on August 25, 1993.

1977, the statewide planning goals, and Goal 3 in particular, applied directly to the property when they acquired it.<sup>5</sup>

As adopted on January 25, 1975, Goal 3 required that agricultural land be preserved and zoned for EFU pursuant to ORS 215. The Goal 3 standard for land divisions involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that is "appropriate for the continuation of the existing commercial agricultural enterprise within the area." Further, ORS 215.263 (1973 edition) only authorized the partition of land subject to EFU zoning, and required that all divisions of land subject to EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, Ron, Sue, Bill and Edward Archer's opportunity to divide the subject property when they acquired it in 1977 was limited to land divisions that were consistent with Goal 3, which required that the resulting parcels be (1) appropriate for the continuation of the existing commercial agricultural enterprise in the area and (2) shown to comply with the legislative intent set forth in ORS 215.

Under the Goal 3 standards in effect on April 20, 1977, farm dwellings were allowed if they were determined to be "customarily provided in conjunction with farm use" under ORS 215.213(1)(e) (1973 edition). Non-farm dwellings were subject to compliance with ORS 215.213(3) (1973 edition).

No information has been presented in the claim to establish that Ron, Sue, Bill and Edward Archer's desired division of the subject property complies with the "commercial" standard for farm parcels under Goal 3 or the standards for non-farm parcels under ORS 215.263 (1973 edition), nor is there any information to establish that their desired development of dwellings on the subject property satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition).

### **Conclusions**

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, do not allow Ron, Sue, Bill and Edward Archer's desired division or development of the subject property. However, the claim does not establish whether or the extent to which their desired use of the subject property complies with the standards for land divisions and development under the requirements of Goal 3 and ORS 215 in effect when they acquired the subject property on April 20, 1977.

As explained in Section V.(1) above, claimant Anna Nolan has not established that she is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, no

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<sup>5</sup> The statewide planning goals became effective on January 25, 1975, and were applicable to legislative land use decisions and some quasi-judicial land use decisions prior to the Commission's acknowledgment of each county's comprehensive plan and implementing regulations. *Perkins v. City of Rajneeshpuram*, 300 Or 1 (1985); *Alexanderson v. Polk County*, 289 Or 427, rev. den 290 Or 137 (1980); *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 3 (1977); *Jurgenson v. Union County*, 42 Or App 505 (1979); and *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978). After the county's plan and land use regulations were acknowledged by the Commission, the statewide planning goals and implementing rules no longer applied directly to such local land use decisions. *Byrd v. Stringer*, 295 Or 311 (1983). However, statutory requirements continue to apply, and insofar as the state and local provisions are materially the same, the local provisions must be interpreted consistent with the 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).

laws enforced by the Commission or the department restrict her use of the private real 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 subject property, and that may continue to apply to the 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 Ron, Sue, Bill and Edward Archer 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 \$8.25 million as the reduction in the subject property’s fair market value due to the regulations that restrict the claimants’ desired use of the property. This amount is based on the claimants’ assessment of the subject property’s value.

### **Conclusions**

As explained in Section V.(1) of this report, the claimants are Ron, Sue, Bill and Edward Archer who acquired the subject property on April 20, 1977, and Anna Nolan. As explained in Section V.(1) of this report, claimant Anna Nolan has not established her ownership of the subject property. Therefore, she is not entitled to compensation under ORS 197.352 because she has not established that any land use regulations restrict her use of the property with the effect of reducing the fair market value of the subject property. Under ORS 197.352, Ron, Sue, Bill and Edward Archer are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Ron, Sue, Bill and Edward Archer acquired the subject property restrict their 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 \$8.25 million.

Without an appraisal or other documentation and without verification of whether or the extent to which Ron, Sue, Bill and Edward Archer’s desired use of the subject property was allowed under the standards in effect when they 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 the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

#### **4. Exemptions Under ORS 197.352(3)**

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

#### **Findings of Fact**

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, which Wasco County has implemented through its current A-1 zone. With the exception of provisions of Goal 3 and ORS 215 in effect when Ron, Sue, Bill and Edward Archer acquired the subject property on April 20, 1977, these land use regulations were enacted or adopted after these claimants acquired the 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 with the exception of provisions of Goal 3 and ORS 215 in effect in 1977, the statutory, goal and rule restrictions on division and development of the subject property were not in effect when Ron, Sue, Bill and Edward Archer acquired it, and therefore, these laws are not exempt under ORS 197.352(3)(E). Provisions of Goal 3 and ORS 215 in effect when they acquired the subject property in 1977 are exempt under ORS 197.352(3)(E) and will continue to apply to the property.

As explained in Section V.(1) of this report, claimant Anna Nolan has not established that she is an "owner" of the subject property as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any land use laws are exempt from ORS 197.352 is not relevant to her claim..

Other laws in effect when Ron, Sue, Bill and Edward Archer acquired the subject property are also exempt under ORS 197.352(3)(E) and will continue to apply to their use of the property. There may be other laws that continue to apply to their use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of property until there is a specific proposal for that use. When Ron, Sue, Bill and Edward Archer seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that Ron, Sue, Bill and Edward Archer 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 their use of the subject 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 Anna Nolan because the claimants have not demonstrated her ownership of the subject property. The department further finds laws enforced by the Commission or the department restrict Ron, Sue, Bill and Edward Archer's desired use 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 \$8.25 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which Ron, Sue, Bill and Edward Archer's desired use of the subject property was allowed under the standards in effect when they 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 Ron, Sue, Bill and Edward Archer to use the subject property for a use permitted at the time they acquired the property on April 20, 1977.

### **Conclusions**

Based on the record before the department, the department finds that the claim is not valid as to Anna Nolan because the claimants have 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 because the claimants have not established her ownership of the property. Therefore, the department recommends that this claim be denied as to Anna Nolan. The department further recommends that the claim be approved for Ron, Sue, Bill and Edward Archer 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 Ron, Sue, Bill and Edward Archer's division of tax lot 200 into 12 parcels, and their division of tax lot 600 into one-acre parcels, and to their development of a dwelling on each parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after April 20, 1977. These laws will not apply to these 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 they acquired the property on April 20, 1977.

2. The action by the State of Oregon provides the state's authorization to Ron, Sue, Bill and Edward Archer to use the property for the use described in this report, subject to the standards in effect on April 20, 1977. On that date, the property was subject to applicable provisions of Goal 3 and ORS 215 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the 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 Ron, Sue, Bill and Edward Archer 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 Ron, Sue, Bill and Edward Archer 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 Ron, Sue, Bill and Edward Archer 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 them 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 Ron, Sue, Bill and Edward Archer.

## **VII. COMMENTS ON THE DRAFT STAFF REPORT**

The department issued its draft staff report on this claim on December 13, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.