Oregon
Theodore R. Kulongoski, Governor

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March 15, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number M130081

Claimants: Michael J. and Geraldine K. Goe; Kenneth J. and Darla L. Goe

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

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

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

IN THE MATTER OF THE CLAIM FOR COMPENSATION UNDER ORS 197.352 (BALLOT MEASURE 37) OF Michael J. Goe, Geraldine K. Goe, Kenneth J. Goe and Darla L. Goe, CLAIMANTS	)))))	FINAL ORDER CLAIM NO. M130081

Claimants: Michael J. Goe, Geraldine K. Goe, Kenneth J. Goe and Darla L. Goe (the Claimants)

Property: Township 2N, Range 10E, Section 23, Tax lot 200, Hood River County (the property)

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

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

ORDER

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

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

Cora R. Parker, Deputy Director
DLCD
Dated this 15th day of March, 2007.

FOR the DEPARTMENT OF ADMINISTRATIVE SERVICES:

David Hartwig, Administrator
DAS, State Services Division
Dated this 15th day of March, 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

March 15, 2007

STATE CLAIM NUMBER:	M130081
NAMES OF CLAIMANTS:	Michael J. Goe Geraldine K. Goe Kenneth J. Goe Darla L. Goe
MAILING ADDRESSES:	Michael J. Goe Geraldine K. Goe 3268 Ehrck Hill Road Hood River, Oregon 97031 Kenneth J. Goe Darla L. Goe 3501 Ehrck Hill Road Hood River, Oregon 97031
PROPERTY IDENTIFICATION:	Township 2N, Range 10E, Section 23 Tax lot 200 Hood River County
OTHER CONTACT INFORMATION:	Steven B. Andersen PO Box 135 Mosier, Oregon 97040
DATE RECEIVED BY DAS:	September 21, 2006
180-DAY DEADLINE:	March 20, 2007

I. SUMMARY OF CLAIM

The claimants, Michael, Geraldine, Kenneth and Darla Goe, seek compensation in the amount of $665,509 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 19.77-acre subject property into three 5-acre parcels and one 4.77-acre parcel and to develop a dwelling on each resulting undeveloped parcel. The subject property is located at 3343 Dethman Ridge Road, near Hood River, in Hood River 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 not valid because the claimants' desired use of the subject property was prohibited under the laws in effect when the claimants acquired the property in 2002. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On December 29, 2006, pursuant to Oregon Administrative Rule (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 10-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 September 21, 2006, for processing under OAR 125, division 145. The claim identifies ORS chapters 197 and 215; OAR 660, division 33; and Hood River County's "Interim Farm-Use Ordinances (Ord. No. 89, 90, and 92)," Exclusive Farm Use (EFU) zoning and 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

The claimants, Michael, Geraldine, Kenneth and Darla Goe, acquired the subject property on February 25, 2002, as reflected by a warranty deed included with the claim.[1] The Hood River County Assessor's Office confirms the claimants' current ownership of the subject property.

Conclusions

The claimants, Michael, Geraldine, Kenneth and Darla Goe, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of February 25, 2002.

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 19.77-acre subject property into three 5-acre parcels and one 4.77-acre parcel and to develop a farm dwelling on each resulting undeveloped parcel, and that the use is not allowed under current land use regulations.[2]

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[1] Claimants Michael and Geraldine Goe assert acquisition of the property on various dates. They assert that they acquired the property on February 1, 1976, as reflected by an Orchard Operating Agreement included with the claim. However, Geraldine Goe was not a party to that agreement, and that agreement did not allow the claimants' desired use. Michael and Geraldine Goe also assert that they acquired the property on January 1, 1980, as reflected by an Orchard Lease included with the claim. However, that lease also did not allow the claimants' desired use. All four claimants assert acquisition of the subject property on January 1, 1997, as reflected by an Orchard Lease with Option to Purchase included with the claim. However, that lease also did not allow claimants' desired use. Therefore, while the claimants, or some of them, may have had an interest in the property at various times between 1976 and the date they acquired ownership of the property, the interests they assert did not provide them the right to carry out the use of the property they now desire. Consequently, they did not have an ownership interest that allowed them to use the property for their desired use, which interest was then restricted by land use regulations enacted or adopted subsequent to their leasehold interest, which could have the effect of reducing the property's fair market value relative to uses permitted when they acquired those various leasehold interests.

[2] The claimants summarily list numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants' property or do not restrict the use of the claimants' property with the effect of reducing its fair market value. Without any explanation of how these land use regulations apply to the claimants' desired use of the property, the department cannot evaluate how or whether they apply. This report addresses only those regulations that the department finds are applicable to

The claim is based generally on the applicable provisions of state law that require EFU zoning and restrict uses on EFU-zoned land. The claimants' property is zoned EFU by Hood River County 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.[3] Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by Goal 3 be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. 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.)

When the claimants acquired the subject property on February 25, 2002, it was subject to the state land use regulations currently in effect, as described above.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted before the claimants acquired the subject property on February 25, 2002. These land use regulations do not allow the claimants' desired use of the subject property. Laws enacted or adopted since the claimants acquired the subject property in 2002 do not restrict the claimants' desired use of the property relative to when the claimants acquired it in 2002.

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."

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and restrict the claimants' desired use of the subject property, based on the claimants' description of their desired use.

[3] The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I–IV soils.

Findings of Fact

The claim includes an estimate of $665,509 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' land use planner's comparison of similar properties in Hood River County.

Conclusions

As explained in Section V.(1) of this report, the claimants are Michael, Geraldine, Kenneth and Darla Goe who acquired the subject property on February 25, 2002. No state laws enacted or adopted since the claimants acquired the subject property restrict the use of the property relative to the uses allowed in 2002. Therefore, the fair market value of the subject property has not been reduced as a result of land use regulations enforced by the Land Conservation and Development Commission (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 does not identify any state land use regulations enacted or adopted since the claimants acquired the subject property that restrict the use of the property relative to what would have been allowed when they acquired it on February 25, 2002. As set forth in Section V.(2) of this report, the state land use regulations restricting the claimants' desired use of the subject property were in effect when the claimants acquired the property in 2002.

Conclusions

All of the state land use regulations that restrict the claimants' desired use of the subject property were in effect when the claimants acquired the property. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimants acquired 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 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 subject property relative to what was permitted when the claimants acquired it in 2002 and do not reduce the fair market value of the property. All state laws restricting the use of the subject property are exempt under ORS 197.352(3)(E).

Conclusions

Based on the record and the foregoing findings and conclusions, the claimants have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on February 22, 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.