



Oregon

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Department of Land Conservation and Development

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April 9, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130308

Claimants: Lonnie L., Carol M., and Lonnie R. Kuatt

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)	FINAL ORDER
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M130308
(BALLOT MEASURE 37) OF)	
Lonnie L. Kuatt, Carol M. Kuatt, and)	
Lonnie R. Kuatt, CLAIMANTS)	

Claimants: Lonnie L. Kuatt, Carol M. Kuatt, Lonnie R. Kuatt (the Claimants)

Property: Township 1S, Range 10E, Section 8, Tax lots 2900 and 3200, 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 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 Lonnie L. and Carol Kuatt's division of tax lot 2900 and Lonnie R. Kuatt's division of tax lot 3200 into 5-acre parcels or 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 Lonnie L. and Carol Kuatt acquired tax lot 2900 and after Lonnie R. Kuatt acquired tax lot 3200. These land use regulations will not apply to Lonnie L. and Carol Kuatt only to the extent necessary to allow them to use tax lot 2900 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 2900 on February 15, 1974. These land use regulations will not apply to Lonnie R. Kuatt only to the extent necessary to allow him to use tax lot 3200 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 3200 on December 1, 1994. The department acknowledges that the relief to which Lonnie R. Kuatt is entitled under ORS 197.352 will not allow him to use tax lot 3200 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Lonnie L. and Carol Kuatt to use tax lot 2900 and to Lonnie R. Kuatt to use tax lot 3200 for the use described in this report, subject to the standards in effect when Lonnie L. and Carol Kuatt acquired tax lot 2900 on February 15, 1974, and subject to the standards in effect when Lonnie R. Kuatt acquired tax lot 3200 on December 1, 1994. On February 15, 1974, tax lot 2900 was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set forth in ORS 215.515 (1973 edition). On December 1, 1994, tax lot 3200 was subject to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 33, currently in effect.

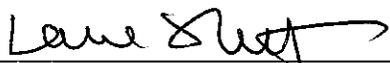
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless Lonnie L. and Carol Kuatt 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 tax lot 2900 imposed by private parties.

4. Any use of the subject property by Lonnie L. and Carol Kuatt 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).

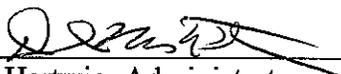
5. Without limiting the generality of the foregoing terms and conditions, in order for Lonnie L. and Carol Kuatt to use tax lot 2900, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable 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 property by the claimants.

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 9th day of April, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 9th day of April, 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

April 9, 2007

STATE CLAIM NUMBER: M130308

NAMES OF CLAIMANTS: Lonnie L. Kuatt
Carol M. Kuatt
Lonnie R. Kuatt

MAILING ADDRESS: Lonnie and Carol Kuatt
4460 Hutson Drive
Parkdale, Oregon 97041

Lonnie R. Kuatt
8260 Jordan Road
Parkdale, Oregon 97041

PROPERTY IDENTIFICATION: Township 1S, Range 10E, Section 8
Tax lots 2900 and 3200
Hood River County

OTHER CONTACT INFORMATION: Steven B. Andersen
PO Box 135
Mosier, Oregon 97040

DATE RECEIVED BY DAS: October 16, 2006

180-DAY DEADLINE: April 14, 2007

I. SUMMARY OF CLAIM

The claimants, Lonnie L., Carol and Lonnie R. Kuatt, seek compensation in the amount of \$2,066,067 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 48.57-acre subject property into five-acre parcels and to develop a dwelling on each parcel. Tax lot 2900 is located at 4435 Hutson Drive and tax lot 3200 is located at 8260 Jordan Road, near Parkdale, 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 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 Lonnie L. and Carol Kuatt's division of tax lot 2900 and to Lonnie R. Kuatt's division of tax lot 3200 into five-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 Lonnie L. and Carol Kuatt acquired tax lot 2900 and after Lonnie R. Kuatt acquired tax lot 3200. These land use regulations will not apply to Lonnie L. and Carol Kuatt only to the extent necessary to allow them to use tax lot 2900 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 2900 on February 15, 1974. These land use regulations will not apply to Lonnie R. Kuatt only to the extent necessary to allow him to use tax lot 3200 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 3200 on December 1, 1994. The department acknowledges that the relief to which Lonnie R. Kuatt is entitled under ORS 197.352 will not allow him to use tax lot 3200 in the manner set forth in the claim.

The department has determined that the claim is not valid as to Lonnie L. and Carol Kuatt for tax lot 3200 and as to Lonnie R. Kuatt for tax lot 2900 because the claimants are not owners of those tax lots. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On February 26, 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, one written comment was received in response to the 10-day notice.

The comment does 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 letter 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 October 16, 2006, for processing under OAR 125, division 145. The claim identifies provisions of Hood River County's zoning ordinances, ORS 197 and 215 and OAR 660 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 Lonnie L. and Carol Kuatt originally acquired the subject property on February 15, 1974, as reflected by a contract included with the claim. On December 1, 1994, Lonnie L. and Carol Kuatt conveyed tax lot 3200 to their son, claimant Lonnie R. Kuatt, as reflected by a contract included with the claim.¹ The Hood River County Assessor's Office confirms Lonnie L. and Carol Kuatt's current ownership of tax lot 2900 and Lonnie R. Kuatt's current ownership of tax lot 3200.

Conclusions

Claimants Lonnie L. and Carol Kuatt are "owners" of tax lot 2900 as that term is defined by ORS 197.352(11)(C), as of February 15, 1974. Claimant Lonnie R. Kuatt is an "owner" of tax lot 3200 as that term is defined by ORS 197.352(11)(C), as of December 1, 1994. Lonnie L. and Carol Kuatt are "family members" of Lonnie R. Kuatt, as that term is defined by ORS 197.352(11)(A), as to tax lot 3200, as of February 15, 1974. Lonnie L. and Carol Kuatt are

¹ Lonnie L. and Carol Kuatt transferred their contract vendor's interest in tax lot 3200 to the Nobility Security Trust, a "business trust organization," on April 11, 1995, as evidenced by a quitclaim deed included with the claim. On January 28, 2001, Nobility Security Trust conveyed legal title to tax lot 3200 to Lonnie R. Kuatt, as evidenced by a quitclaim deed included with the claim. The claimants state that the Nobility Security Trust never existed and that the claimants entered into the agreement under fraudulent pretences. However, regardless of whether the transfer to Nobility Security Trust was fraudulent, Lonnie and Carol Kuatt had conveyed tax lot 3200 to Lonnie R. Kuatt before that transfer.

not “owners” of tax lot 3200 and Lonnie R. Kuatt is not an “owner” of tax lot 2900 as that term is defined in ORS 197.352(11)(C).

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 48.57-acre subject property into 5-acre parcels and to develop a dwelling on each parcel, and that the use is not allowed under current land use regulations.²

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 EFU/High Value Farmland (EFU/HVF) 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 the development of dwellings on existing or any proposed parcel 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,

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 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 National Resources Conservation Service Class I-IV soils.

Oregon Laws 2001, effective on January 1, 2002), which became effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Lonnie L. and Carol Kuatt acquired both tax lot 2900 and tax lot 3200 on February 15, 1974, after the adoption of Senate Bill 100 (Chapter 80, Oregon Laws 1973) effective on October 5, 1973, but before the adoption of the statewide planning goals, effective on January 25, 1975. At that time, it was zoned by Hood River County as A-1. The A-1 zone established a five-acre minimum lot size for new parcels and dwellings in conjunction with farm use.

However, during the period between October 5, 1973, and January 25, 1975, ORS 197.175(1) and 197.280 (1973 editions) required, in addition to any local plan or zoning provisions, that cities and counties exercise their planning responsibilities in accordance with the interim land use planning goals set forth in ORS 215.515 (1973 edition). *Petersen v. Klamath Falls*, 279 Or 249 (1977); see also, *Meeker v. Board of Comm'rs*, 287 Or 665 (1979) (review of a subdivision is an exercise of planning responsibilities requiring application of the goals); *State Housing Council v. Lake Oswego*, 48 Or App. 525 (1981) (noting that while “[l]and use planning responsibility is not defined in ORS ch 197, the Supreme Court has interpreted that term as including annexation approvals, *subdivision approvals* [emphasis added] and partition approvals”) citing *Petersen*, *Meeker* and *Alexanderson v. Polk County*, 285 Or 427 (1980). Lonnie L. and Carol Kuatt’s desired use includes subdivision of their land. If Lonnie L. and Carol Kuatt had sought to create that use in 1974, as a matter of law, the use would have been subject to the interim planning goals at ORS 215.515.⁴

The following interim goals are directly applicable to this claim: “To preserve the quality of the air, water and *land* [emphasis added] resources of the state”; “To conserve prime farm lands for the production of crops”; “To provide for the orderly and efficient transition from rural to urban land use”; “To protect life and property in areas subject to floods, landslides and other natural disasters”; “To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation”; and “To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.” ORS 215.515 (1973 edition).

One of the interim goals was to “conserve prime farm lands for the production of crops.” Soil types are a determinant of prime farm land. Twenty percent (4 acres) of the soils on tax lot 2900 are rated as “prime” and eighty percent (15 acres) of the soils on tax lot 2900 are rated as “prime

⁴ The “interim” land use goals are set forth in ORS 215.515(1)(a) to (j) (1973 edition) as follows: (a) “To preserve the quality of the air, water and land resources of the state,” (b) “To conserve open space and protect natural and scenic resources,” (c) “To provide for the recreational needs of citizens of the state and visitors,” (d) “To conserve prime farm lands for the production of crops,” (e) “To provide for the orderly and efficient transition from rural to urban land use,” (f) “To protect life and property in areas subject to floods, landslides and other natural disasters,” (g) “To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit and recognizing differences in the social costs in the various modes of transportation,” (h) “To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development,” (i) “To diversify and improve the economy of the state” and (j) “To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land.” ORS 215.515 (1973 edition).

if drained” by the Natural Resource Conservation Service (NRCS). Twenty-nine percent (9 acres) of the soils on tax lot 3200 are rated as “prime” and ten percent (3 acres) of the soils on tax lots 3200 are rated as “prime if drained” by the NRCS.⁵

No information has been provided establishing whether or to what extent the claimants’ desired division of the subject property for residential development complies with the interim planning goals set forth in ORS 215.515 (1973 edition) in effect at the time Lonnie L. and Carol Kuatt acquired the property on February 15, 1974. In particular, it is unclear whether division and development of the prime farm land portion of the subject property could satisfy the interim goal requirement to “conserve prime farm lands for the production of crops.”

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 3, ORS 215 and OAR 660, division 33, were all enacted or adopted after Lonnie L. and Carol Kuatt acquired tax lots 2900 and 3200 in 1974 and do not allow the desired division or development of the property. However, the claim does not establish whether or to what extent their desired use of the subject property complies with the interim planning goals in effect when Lonnie L. and Carol Kuatt acquired the property on February 15, 1974.

As explained in Section V.(1) of this report, claimants Lonnie L. and Carol Kuatt are not “owners” of tax lot 3200 and claimant Lonnie R. Kuatt is not an “owner” of tax lot 2900, as that term is defined in ORS 197.352(110)(C). Therefore, no laws enforced by the Commission or the department restrict Lonnie L. and Carol Kuatt’s use of tax lot 3200, and no laws enforced by the Commission or the department restrict Lonnie R. Kuatt’s use of tax lot 2900, 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 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. 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.”

⁵ NRCS soil survey for Hood River County.

Findings of Fact

The claim includes an estimate of \$2,066,067 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 consultant's comparative market analysis.

Conclusions

As explained in Section V.(1) of this report, the claimants are Lonnie L. and Carol Kuatt, who acquired the subject property on February 15, 1974, and their son, Lonnie R. Kuatt. As explained in Section V.(1) of this report, Lonnie L. and Carol Kuatt are no longer "owners" of tax lot 3200 and Lonnie R. Kuatt is not an "owner" of tax lot 2900 as that term is defined in ORS 197.352(11)(C). Therefore, no laws restrict their use of those tax lots with the effect of reducing the fair market value of the property.

Under ORS 197.352, the claimants are due compensation for land use regulations that restrict Lonnie L. and Carol Kuatt's use of tax lot 2900 and Lonnie R. Kuatt's use of tax lot 3200 and have the effect of reducing the property's fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Lonnie L. and Carol Kuatt acquired both of the subject tax lots restrict Lonnie L. and Carol Kuatt's desired use of tax lot 2900 and Lonnie R. Kuatt's desired use of tax lot 3200. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$2,066,067.

Without an appraisal or other documentation and without verification of whether or the extent to which Lonnie L. and Carol Kuatt's desired use of tax lot 2900 and Lonnie R. Kuatt's desired use of tax lot 3200 was allowed under the standards in effect when Lonnie L. and Carol Kuatt 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 since Lonnie L. and Carol Kuatt acquired the property.

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 Hood River County has implemented through its current EFU/HVF zone. With the exception of applicable provisions of ORS 215, including the interim land use planning goals, in effect on February 15, 1974, when Lonnie L. and Carol Kuatt acquired the subject property, these state land use regulations were not in effect when they acquired it.

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 ORS 215 in effect on February 15, 1974, the general statutory, goal and rule restrictions on division and development of the subject property were not in effect when Lonnie L. and Carol Kuatt acquired it. As a result, these laws are not exempt under ORS 197.352(3)(E). Provisions of ORS 215, including the interim statewide planning goals in effect when Lonnie L. and Carol Kuatt acquired the subject property on February 15, 1974, are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other 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, Lonnie L. and Carol Kuatt are not “owners” of tax lot 3200 and Lonnie R. Kuatt is not an “owner” of tax lot 2900 as that term is defined in ORS 197.352(11)(C). Therefore, the issue of whether any laws are exempt from ORS 197.352 is not relevant as to those portions of the claim.

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, the department finds that the claim is not valid as to Lonnie L. and Carol Kuatt for tax lot 3200 and as to Lonnie R. Kuatt for tax lot 2900 because they are not owners of those tax lots.

The department further finds laws enforced by the Commission or the department restrict Lonnie L. and Carol Kuatt’s desired use of tax lot 2900 and Lonnie R. Kuatt’s desired use of tax lot 3200. The claim asserts that existing land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$2,066,067. 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 Lonnie L. and Carol Kuatt’s desired use of tax lot 2900 and Lonnie R. Kuatt’s desired use of tax lot 3200 was allowed under the standards in effect when Lonnie L. and Carol Kuatt 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 Lonnie L. and Carol Kuatt to use tax lot 2900 for a use permitted at the time they acquired the property on February 15, 1974, and to allow Lonnie R. Kuatt to use tax lot 3200 for a use permitted at the time he acquired that tax lot on December 1, 1994.

When Lonnie R. Kuatt acquired tax lot 3200 on December 1, 1994, it was subject to the current regulations that restrict the use of the subject property, as discussed in Section V.(2) above. These regulations do not allow Lonnie R. Kuatt's desired use of tax lot 3200.

Conclusions

Based on the record and the foregoing findings and conclusions, Lonnie L. and Carol Kuatt have not established that they are entitled to relief for tax lot 3200 and Lonnie R. Kuatt has not established that he is entitled to relief for tax lot 2900 under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department because Lonnie L. and Carol Kuatt are not owners of tax lot 3200 and Lonnie R. Kuatt is not an owner of tax lot 2900. Therefore, the department recommends that this claim be denied as to Lonnie L. and Carol Kuatt for tax lot 3200 and as to Lonnie R. Kuatt for tax lots 2900.

The department otherwise recommends that the claim be approved, 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 Lonnie L. and Carol Kuatt's division of tax lot 2900 and Lonnie R. Kuatt's division of tax lot 3200 into 5-acre parcels or 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 Lonnie L. and Carol Kuatt acquired tax lot 2900 and after Lonnie R. Kuatt acquired tax lot 3200. These land use regulations will not apply to Lonnie L. and Carol Kuatt only to the extent necessary to allow them to use tax lot 2900 for the use described in this report, and only to the extent that use was permitted when they acquired tax lot 2900 on February 15, 1974. These land use regulations will not apply to Lonnie R. Kuatt only to the extent necessary to allow him to use tax lot 3200 for the use described in this report, and only to the extent that use was permitted when he acquired tax lot 3200 on December 1, 1994. The department acknowledges that the relief to which Lonnie R. Kuatt is entitled under ORS 197.352 will not allow him to use tax lot 3200 in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to Lonnie L. and Carol Kuatt to use tax lot 2900 and to Lonnie R. Kuatt to use tax lot 3200 for the use described in this report, subject to the standards in effect when Lonnie L. and Carol Kuatt acquired tax lot 2900 on February 15, 1974, and subject to the standards in effect when Lonnie R. Kuatt acquired tax lot 3200 on December 1, 1994. On February 15, 1974, tax lot 2900 was subject to the applicable provisions of ORS 215 then in effect, including the interim planning goals set

forth in ORS 215.515 (1973 edition). On December 1, 1994, tax lot 3200 was subject to the applicable provisions of Goal 3, ORS 215 and OAR 660, division 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 Lonnie L. and Carol Kuatt 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 tax lot 2900 imposed by private parties.

4. Any use of the subject property by Lonnie L. and Carol Kuatt 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 Lonnie L. and Carol Kuatt to use tax lot 2900, 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 property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 20, 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.