



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Web Address: <http://www.oregon.gov/LCD>

April 13, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130362

Claimants: Guy R. Scherer, C. Gregory Scherer, Bonnie S. Iverson, and Kids Place Farms, Inc

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 A
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M130362
(BALLOT MEASURE 37) OF)	
Guy R. and C. Gregory Scherer, and)	
Bonnie S. Iverson,, CLAIMANTS)	

Claimants: Guy R. and C. Gregory Scherer, and Bonnie S. Iverson. (the Claimants)

Property: Township 29S, Range 14W, Section 5, Tax lots 100, 200, and 300, Coos 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 Guy and Gregory Scherer and Bonnie Iverson's division of tax lots 100, 200 and 300 into 20-acre parcels, and to their development of a dwelling on each resulting parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to Guy and Gregory Scherer and Bonnie Iverson only to the extent necessary to allow them to use tax lots 100, 200 and 300 for the use described in this report, and only to the extent that use was permitted when they acquired those tax lots on February 13, 1980.
2. The action by the State of Oregon provides the state's authorization to Guy and Gregory Scherer and Bonnie Iverson to use tax lots 100, 200 and 300 for the use described in this report, subject to the standards in effect they acquired them on February 13, 1980. On that date, the tax lots were 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 the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties. The department notes that there may not be legal access to the subject property. Nothing in this report authorizes such access.

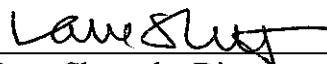
4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.


This Order is entered by the 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 13th day of April, 2007.

FOR the DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 13th 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.”

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)
Guy R. and C. Gregory Scherer,)
Bonnie S. Iverson, and)
Kids Place Farms, Inc., CLAIMANTS)

FINAL ORDER B
CLAIM NO. M130362

Claimants: Guy R. and C. Gregory Scherer, and Bonnie S. Iverson, and Kids Place Farms, Inc. (the Claimants)

Property: Township 29S, Range 14W, Section 5, Tax lot 301, Coos 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.

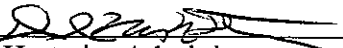
This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under 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 13th day of April, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 13th day of April, 2007.

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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)

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 C
COMPENSATION UNDER ORS 197.352) CLAIM NO. M130362
(BALLOT MEASURE 37) OF)
Kids Place Farms, Inc., CLAIMANT)

Claimant: Kids Place Farms, Inc. (the Claimant)

Property: Township 29S, Range 14W, Section 5, Tax lots 100, 200, and 300,
Coos 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

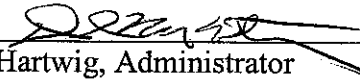
The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

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 13th day of April, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 13th day of April, 2007.

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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**

April 13, 2007

STATE CLAIM NUMBER: M130362

NAMES OF CLAIMANTS: Guy R. and C. Gregory Scherer
Bonnie S. Iverson
Kids Place Farms, Inc.

MAILING ADDRESSES: Guy R. Scherer
PO Box 2086
Bandon, Oregon 97411

Bonnie S. Iverson
PO Box 95
Bandon, Oregon 97411

C. Gregory Scherer
10624 SW Cottonwood Street
Tualatin, Oregon 97062

Kids Place Farms, Inc.
PO Box 2086
Bandon, Oregon 97411

PROPERTY IDENTIFICATION: Township 29S, Range 14W, Section 5
Tax lots 100, 200, 300 and 301
Coos County

OTHER CONTACT INFORMATION: Emmett R. McIntonsh, Agent
33711 Oak Flat Road
Agness, Oregon 97406

DATE RECEIVED BY DAS: October 20, 2006

180-DAY DEADLINE: April 18, 2007

I. SUMMARY OF CLAIM

The claimants, Guy and Gregory Scherer, Bonnie Iverson and Kids Place Farms, Inc., seek compensation in the amount of \$1,300,982 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 156.09-acre subject property¹ into seven 20-acre parcels, and to develop a dwelling on each resulting parcel. The subject property is located northeast of the intersection of Windhurst Road and Haga Lane, near Bandon, in Coos 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 Guy and Gregory Scherer and Bonnie Iverson's division of tax lots 100, 200 and 300 into 20-acre parcels and to their development of a dwelling on each resulting parcel: applicable provisions of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33. These laws will not apply to Guy and Gregory Scherer and Bonnie Iverson only to the extent necessary to allow them to use tax lots 100, 200 and 300 for the use described in this report, and only to the extent that use was permitted when they acquired those tax lots on February 13, 1980.

The department has determined that the claim is invalid as to tax lot 301 for Guy and Gregory Scherer and Bonnie Iverson and as to tax lots 100, 200 and 300 for Kids Place Farms, Inc. because they are not owners of those tax lots; and invalid as to tax lot 301 for Kids Place Farms, Inc. because its desired use of that tax lot was prohibited under the laws in effect when it acquired that tax lot in 1998. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 6, 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 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

¹ The subject property includes four tax lots. Tax lot 100 consists of 38.42 acres, tax lot 200 consists of 39.32, tax lot 300 consists of 40.1 acres, and tax lot 301 consists of 30.25 acres.

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 20, 2006, for processing under OAR 125, division 145. The claim identifies ORS 215 and provisions of Coos County zoning and land development ordinance 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 Guy and Gregory Scherer and Bonnie Iverson acquired the subject property from their grandparents, Guy and Mildred Briney, on February 13, 1980, as reflected by a warranty deed included with the claim. Guy and Gregory Scherer and Bonnie Iverson transferred tax lot 301 to Kids Place Farms, Inc., on May 19, 1998, as reflected by a warranty deed included in the claim.² Guy and Gregory Scherer and Bonnie Iverson are shareholders in Kids Place Farms, Inc., but did not retain any individual interest in tax lot 301 when they transferred that tax lot to Kids Place Farms, Inc. Guy and Mildred Briney acquired the subject property on May 7, 1971, as reflected by a warranty deed included with the claim.

The Coos County Assessor’s Office confirms Guy and Gregory Scherer and Bonnie Iverson’s current ownership of tax lots 100, 200 and 300, and Kids Place Farms, Inc.’s current ownership of tax lot 301. Claimants Guy and Gregory Scherer and Bonnie Iverson no longer own tax lot 301.

Conclusions

Guy and Gregory Scherer and Bonnie Iverson are “owners” of tax lots 100, 200 and 300, as that term is defined by ORS 197.352(11)(C) as of February 13, 1980. Kids Place Farms, Inc. is an owner of tax lot 301 as of May 19, 1998. Guy Scherer and Scherer and Bonnie Iverson are not

² Kids Place Farms, Inc. is an active domestic business corporation registered with the Oregon Secretary of State.

owners of tax lot 301, and Kids Place Farms, Inc. is not an owner of tax lots 100, 200 and 300. Guy and Mildred Briney are "family members" of Guy and Gregory Scherer and Bonnie Iverson, as defined by ORS 197.352(11)(A), as to tax lots 100, 200 and 300 and acquired the subject property on May 7, 1971.³

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 the claimants desire to divide the 156.09-acre subject property into seven 20-acre parcels, and to develop a dwelling on each resulting parcel, and that current land use regulations prohibit 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 subject property is zoned EFU by Coos County as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the subject property is "agricultural land" as defined by Goal 3.⁴ 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, 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.)

³ Under ORS 197.352(11)(A), legal entities can be "family members" of individuals who are owners of property under ORS 197.352(11)(C). However, legal entities cannot have family members under the statute. Therefore, the individuals who transferred tax lot 301 to the Kids Place Farms, Inc. are not considered family members under the definition of family member in ORS 197.352(11)(A).

⁴ The subject property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

Guy and Gregory Scherer and Bonnie Iverson's family first acquired the subject property in 1971, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1971.

Kids Place Farms, Inc. acquired tax lot 301 on May 19, 1998. At that time, the property was subject to the current zoning and development standards, 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 after Guy and Gregory Scherer and Bonnie Iverson's family acquired tax lots 100, 200 and 300 in 1971, and do not allow the desired division or development of those tax lots. These laws restrict the use of tax lots 100, 200 and 300 relative to the uses allowed when Guy and Gregory Scherer and Bonnie Iverson's family acquired the property in 1971. These laws were all enacted or adopted before Kids Place Farms, Inc. acquired tax lot 301. Laws enacted or adopted since Kids Place Farms, Inc. acquired tax lot 301 in 1998 do not restrict the claimants' desired use of the property relative to when Kids Place Farms, Inc. acquired it in 1998.

As explained in Section V.(1), Guy and Gregory Scherer and Bonnie Iverson are not "owners" of tax lot 301, and Kids Place Farms, Inc. is not an "owner" of tax lots 100, 200 and 300, as that term is defined in ORS 197.352(11)(C). Therefore, no laws enforced by the Commission or the department restrict Guy and Gregory Scherer and Bonnie Iverson's use of tax lot 301, or Kids Place Farms, Inc.'s use of tax lots 100, 200 and 300 with the effect of reducing their fair market value.

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 use 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 currently apply to and may continue to 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 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 \$1,300,982 as the reduction in the subject property's fair market value due to the regulations that restrict the claimants' desired use of the property. This amount is based on a comparative market analysis included with the claim.

Conclusions

As explained in Section V.(1) of this report, the claimants are Guy and Gregory Scherer and Bonnie Iverson whose family acquired tax lots 100, 200 and 300 in 1971, and Kids Place Farms, Inc., which acquired tax lot 301 in 1998. Kids Place Farms, Inc., is not entitled to compensation because no state laws enacted or adopted since Kids Place Farms, Inc. acquired tax lot 301 restrict the use of the property relative to the uses allowed in 1998. Guy and Gregory Scherer and Bonnie Iverson are not entitled to compensation tax lot 301, and Kids Place Farms, Inc. is not entitled to compensation for tax lots 100, 200 and 300 because these claimants are not owners of those tax lots, as that term is defined in ORS 197.352(11)(C).

Under ORS 197.352, Guy and Gregory Scherer and Bonnie Iverson are due compensation for land use regulations that restrict the use of tax lots 100, 200 and 300 and have the effect of reducing the fair market value of those tax lots. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since Guy and Gregory Scherer and Bonnie Iverson's family acquired tax lots 100, 200 and 300 restrict their desired use of those tax lots. The claimants estimate that the effect of the regulations on the subject property's fair market value is a reduction of \$1,300,982.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of tax lots 100, 200 and 300. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of those tax lots has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the individual claimants' family acquired those tax lots.

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 Coos County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after Guy and Gregory Scherer and Bonnie Iverson's family acquired tax lots 100, 200 and 300 and before Kids Place Farms, Inc. acquired tax lot 301 on May 19, 1998.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when Guy and Gregory Scherer and Bonnie Iverson's family acquired tax lots 100, 200 and 300 on May 7, 1971. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when Guy and Gregory Scherer and Bonnie Iverson's family acquired tax lots 100, 200 and 300 are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use

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.

All of the state land use regulations that restrict the claimants' desired use of the subject property were in effect when Kids Place Farms, Inc. acquired tax lot 301 in 1998. Therefore, these state land use regulations are exempt under ORS 197.352(3)(E).

As explained in Section V.(1) of this report, Guy and Gregory Scherer and Bonnie Iverson are not "owners" of tax lot 301, and Kids Place Farms, Inc. is not an "owner" of tax lots 100, 200 and 300 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 Guy and Gregory Scherer and Bonnie Iverson for tax lot 301, and as to Kids Place Farms, Inc. for tax lots 100, 200 and 300.

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 Guy and Gregory Scherer and Bonnie Iverson for tax lot 301, and as to Kids Place Farms, Inc. for tax lots 100, 200 and 300 because they are not "owners" of those tax lots as that term is defined in ORS 197.352(11)(C). Laws enforced by the Commission or the department do not restrict the Kids Place Farms, Inc.'s desired use of tax lot 301 relative to what was permitted when Kids Place Farms, Inc. acquired that tax lot in 1998 and do not reduce the fair market value of that tax lot. All state laws restricting Kids Place Farms, Inc.'s use of tax lot 301 are exempt under ORS 197.352(3)(E).

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict Guy and Gregory Scherer and Bonnie Iverson's desired use of tax lots 100, 200 and 300. 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 \$1,300,982. 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 to claimants' desired use of the subject property was allowed under the standards in effect when Guy and Gregory Scherer and Bonnie Iverson's family acquired the property. Nevertheless, based on the record for this claim, the department acknowledges 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 Guy and Gregory Scherer and Bonnie Iverson to use tax lots 100, 200 and 300 for a use permitted at the time they acquired those tax lots on February 13, 1980.

Guy and Gregory Scherer and Bonnie Iverson acquired the subject property after the adoption of the statewide planning goals, but before the Commission acknowledged Coos 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, tax lots 100, 200 and 300 were zoned by Coos County as Interim Exclusive Agriculture (IA-20), which required 20 acres for the creation of a new parcel. However, because the Commission had not acknowledged the county's plan and land use regulations when Guy and Gregory Scherer and Bonnie Iverson acquired tax lots 100, 200 and 300 on February 13, 1980, the statewide planning goals, and Goal 3 in particular, applied directly to tax lots 100, 200 and 300 when Guy and Gregory Scherer and Bonnie Iverson acquired them.⁶

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, Guy and Gregory Scherer and Bonnie Iverson's opportunity to divide tax lots 100, 200 and 300 when they acquired them in 1980 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 February 13, 1980, 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 the claimants' desired division of the subject property into 20-acre parcels complies with the standards under Goal 3 and ORS 215.263 (1973 edition), nor is there any information to establish that the claimants' desired

⁵ Coos County's comprehensive plan and land use regulations were acknowledged by the Commission for compliance with Goal 3 on August 29, 1985.

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 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).

development of a dwellings on each resulting parcel satisfies the standards for farm or non-farm dwellings under ORS 215.213 (1973 edition).

In addition to the applicable provisions of Goal 3 and ORS 215 in effect when Guy and Gregory Scherer and Bonnie Iverson's family acquired tax lots 100, 200 and 300, and other laws in effect when these claimants acquired these tax lots, 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 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. 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 use 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 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.

Conclusions

Based on the record before the department, claimants Guy and Gregory Scherer, and Bonnie Iverson 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 with regard to tax lot 301, and Kids Place Farms, Inc. has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department with regard to tax lots 100, 200 and 300 because they are not owners of those tax lots. Kids Place Farms, Inc. has not established that it is entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department with regard to tax lot 301 because its desired use of that tax lot was prohibited when it acquired that tax lot in 1998. Therefore, the department recommends that this claim be denied as to Kids Place Farms, Inc., and as to tax lot 301 for Guy and Gregory Scherer and Bonnie Iverson.

The department otherwise recommends that the claim be approved for Guy and Gregory Scherer and Bonnie Iverson, 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 Guy and Gregory Scherer and Bonnie Iverson's division of tax lots 100, 200 and 300 into 20-acre parcels, and to their development of a dwelling on each resulting parcel: applicable provisions of Goal 3, ORS 215 and OAR 660, division 33. These land use regulations will not apply to Guy and Gregory Scherer and Bonnie Iverson only to the extent necessary to allow them to use tax lots 100, 200 and 300 for the use described in this report, and only to the extent that use was permitted when they acquired those tax lots on February 13, 1980.
2. The action by the State of Oregon provides the state's authorization to Guy and Gregory Scherer and Bonnie Iverson to use tax lots 100, 200 and 300 for the use described in this report,

subject to the standards in effect they acquired them on February 13, 1980. On that date, the tax lots were 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 the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties. The department notes that there may not be legal access to the subject property. Nothing in this report authorizes such access.

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

6. Nothing in this report or the state's final order for this claim constitutes any determination of ownership by the State of Oregon as to submerged or submersible lands, or as to public rights to the use of waters of the state.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on March 23, 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.